

**DECLARATION OF COVENANTS AND  
RESTRICTIONS FOR PLAT OF  
EASTLAWN – PHASE 1, CITY OF  
MADISON, DANE COUNTY, WISCONSIN**

Homburg Equipment, Inc., a Wisconsin corporation (referred to herein as the “Developer”), the owner of the real estate located in the City of Madison platted as Eastlawn (the “Plat”), which Plat was recorded in the Dane County Register of Deeds Office on the 6<sup>th</sup> day of May, 2010, as Document No. 4653784, in order to impose a common plan of restrictions on Phase 1 of the Plat, consisting of lots 99-105, inclusive, and Outlots 6-9, inclusive, hereby declares and provides that all lots in Phase 1 of the Plat be and the same hereby are subject to the following restrictions, covenants and conditions, and that all such lots are and shall be held, sold, occupied, conveyed and transferred subject thereto:

**Return to:**  
Homburg Equipment, Inc.  
6106 Milwaukee Street  
Madison, WI 53718

Parcel Identification Number  
See attached Exhibit A

1. **Residential Living Units.** All lots within Phase 1 of the Plat, except Outlots 6 through 9, shall be used for residential purposes only, except that the Developer may continue to use or lease lands owned by Developer for present agricultural uses and construction staging. No structure shall be erected, altered, placed or permitted to remain on any lot or part thereof other than a residential dwelling not to exceed two stories in height on the street facade (excluding attic or foundation), except as otherwise permitted in this Declaration. Outlots 6, 7 and 9 shall be used for sanitary sewer purposes. Outlot 8 shall be used for trail purposes.

Lots 99-105, inclusive, shall be used for single family residences.

2. **Submission of Plans - Residential.** For all buildings erected or placed on any residential lot subject to this Declaration, the plans, specifications, site plan, and landscape plan must be submitted in duplicate to the Developer, or the Developer’s authorized agent, or to the Developer’s successors and assigns, whichever is then applicable, for written approval prior to commencement of any construction on any lot. Said approval shall also be required for all swimming pools, tennis courts, basketball courts, decks, railings, privacy screenings, fences, patios and walls.

3. **Architectural Control Committee.** At such time as the Developer, in its sole discretion may elect, responsibility for the review and approval of plans, specifications, site plans, and landscape plans, as well as the enforcement of the restrictions, covenants, and conditions of this document, shall be transferred to a committee of three (3) persons appointed by the Developer. The committee shall have authority over all lots in the Plat, not only over the lots in Phase 1 of the Plat. Approval in writing by a majority of said committee shall then be required as to all such actions. Said committee shall hereinafter be referred to as the "Architectural Control Committee." On each third anniversary of the original appointment of the Architectural Control Committee, the members of the Committee shall be elected by a majority vote of persons holding title to the lots of the Plat. Only one vote shall be cast for each lot in the Plat. In the event one person owns more than one lot, that person shall be entitled to one vote for each full lot he or she owns. In the event that one of the original committee members is unable to complete the member's term, the Developer shall have the right to appoint a replacement to fulfill the term. In the event that the Architectural Control Committee becomes inactive or nonfunctional and is unable to fulfill its obligations as herein stated, the Developer reserves the right to resume its authority as if the transfer of authority to the Committee had not occurred and/or appoint a new committee to a new three year term.

4. **Approval Procedures.** The Developer, or the Architectural Control Committee if then applicable, shall approve, approve with condition, or disapprove plans in writing within 30 days after all building plans and site plans are submitted to and marked received by the Developer. The Developer shall endeavor to make its decision as early within said 30 days as is reasonably practical. However, any plan not acted upon within said period shall be deemed disapproved, and any plan upon which the Developer has not specifically endorsed its approval in writing shall be deemed disapproved. The plans and specifications shall indicate the manner in which the exterior of the building is finished, and the site plan shall show in a general way the landscaping contemplated, including, but not limited to, those areas which are seeded or sodded. Developer may mandate installation of a sump pump, drain tile, or clear stone in the basement of any house, as a condition to approval of any proposed building plans.

5. **Architectural Standards.** In reviewing all plans, the Developer or Architectural Control Committee will pay particular attention to exterior elevations, location of chimneys, roof pitch and roofing material, soffits, fascia, masonry, siding, landscaping, quality of materials and workmanship, harmony of exterior design including exterior colors, size, compatibility with architectural features of surrounding structures (including existing structures and structures previously approved), placement with respect to topography, finished grade, and footprint location of adjacent structures and lots. No changes or

deviation in or from plans and specifications as approved shall be made without the prior written consent of the Developer or Architectural Control Committee. Use of masonry on the front building elevations is required at a minimum of 150 square feet for all single family residences. Door and window openings are not included in the calculation of masonry square footage. All houses shall have as a minimum the following: 6:12 roof pitch or greater; 8" fascia or larger; architectural grade dimensional shingles or better.

The Developer or Architectural Control Committee may waive any of these requirements upon submission of satisfactory alternative architectural detailing.

6. **Responsibilities of Owners and Contractors.** By approval of the plans submitted to the Developer or the Architectural Control Committee, neither the Developer nor the Architectural Control Committee shall be deemed responsible for obtaining any approval necessitated by ordinances of the City of Madison. Neither the Developer nor the Architectural Control Committee shall be deemed to give any opinion or make any representation that the building built pursuant to the plans will be structurally sound, or that the plan will meet any applicable city, county or state codes. Neither the Developer nor the Architectural Control Committee shall have any liability to any builder or lot owner with respect to the construction of and materials used in any building on a lot. It shall be the builder and the owner's sole responsibility to obtain all permits for the construction of any improvement on any lot.

7. **Approval of Contractors.** For each building erected or placed on any lot subject to this Declaration, the prime contractor or builder to be hired for construction of such building shall be approved in writing by the Developer or the Architectural Control Committee prior to the commencement of any construction. In addition, the Developer or the Architectural Control Committee reserves the right to approve or disapprove all contractors or sub-contractors for said building construction. The approval of the Developer or the Architectural Control Committee shall not be unreasonably withheld. Such approval may be withheld for reasons such as the proposed contractor's or builder's financial status, business history, building reputation or any other reason which would be similarly relied upon by a reasonably prudent businessman then developing a neighborhood of quality residential homes.

8. **Minimum Floor Area.** A ranch, or the main level of a raised ranch, bi-level, or tri-level, shall have a minimum ground floor living area of 1300 square feet. A 2-story dwelling shall have a minimum living area of 1600 square feet for the combined footage of the main and second stories. For the purposes of determining living area, stair openings shall be included, but porches, attached garages and basements, whether finished or not, shall be excluded. All measurements shall be taken from the outside walls. The minimum

area requirements may be waived by the Developer or the Architectural Control Committee, whichever is then applicable, in the event the proposed design and quality of the particular structure is deemed to present an appearance compatible with other houses within adjoining areas of the Plat.

9. **Setbacks.** The minimum front building setback line and side yard requirements on lots within the Plat shall be as established by the ordinances of the City of Madison.

10. **Landscaping and Landscaping Maintenance.** The following minimum landscaping requirements shall be met for all lots under construction unless waived in writing by the Developer as a condition of the sale of a lot:

(a) A minimum of \$1,750 shall be spent on trees and foundation plantings and at least two deciduous trees, at least two-inch trunk diameter, must be planted for all single family lots. As an alternative, one two-inch deciduous tree and one four-foot high conifer tree may be planted. The above specified trees must be planted in the front or side yards.

(b) Before planting a tree or trees in the street terrace, an approval must be obtained from the City of Madison. Any tree planted in the street terrace becomes the property of the City of Madison after one year.

(c) Front, side and rear yards, including street terraces, must be sodded or seeded as lawn or cultivated as a garden.

(d) All grass, trees, and shrubbery shall be kept in good appearance at all times. All grass shall be cut as necessary to maintain an attractive appearance. If grass is not cut, or the trees and shrubbery not properly maintained, the City of Madison may serve notice, and if not completed within 10 calendar days, the City may maintain same and add the cost incurred to the lot owner's annual real estate tax bill as a special charge for current services rendered pursuant to Wis. Stats. 66.60(16).

(e) No dumping of brush or yard waste shall be allowed on any vacant lot, public lands, or road right of way at any time.

The existing vegetation of each lot subject to this Declaration, including trees of a diameter of three (3) inches or greater, shall not be destroyed or removed except as approved in writing by the Developer or the Architectural Control Committee. In the event such

vegetation is removed or destroyed without approval, the Developer or the Architectural Control Committee may require the replanting or replacement of comparable vegetation, the cost thereof to be paid by the lot owner.

11. **Exterior Alterations.** No alteration to the exterior appearance of existing buildings, including but not limited to exterior remodeling, construction of patios, decks railings, privacy screenings, fences, tennis courts, basketball courts, and swimming pools shall be made without prior written approval of the Developer or the Architectural Control Committee.

12. **Grading.** All lots in Eastlawn are subject to a "Lot Drainage Plan." The plan is filed in the offices of the City of Madison Engineering Division. No building permit shall be issued for any lot unless the application acknowledges and is consistent with the filed "Lot Drainage Plan." No owner shall alter the drainage of any Lot at any time inconsistent with the "Lot Drainage Plan" unless so approved in writing by the City of Madison Engineering Department. The elevation of a lot shall not be changed so as to materially affect the surface elevation or grade of the surrounding lots. A copy of all plot plans shall be kept by the Developer or the Architectural Control Committee for the benefit of other purchasers in planning their individual elevations. Violation of the grading plan as submitted shall give either the Developer, Architectural Control Committee, or the owner of any adjacent lot a cause of action against the person violating such grading plan for injunctive relief or damages as appropriate. No earth, rock, gravel or clay shall be excavated or removed without the approval of the Developer or the Architectural Control Committee. No drainage swale or drainage way in existence at the time of development shall be altered or obstructed so as to impede the flow of drainage water from other lots across such swale or way.

13. **Relocated Structures.** No building previously erected elsewhere shall be moved onto any lot subject to this Declaration, except new prefabricated, panelized construction which been approved by the Developer or the Architectural Control Committee.

14. **Fences and Accessory Structures.** No outbuildings, outdoor storage units, exterior antennas of any kind, wind powered electric generators, satellite dishes greater than 3 feet in diameter, any type of solar panels, outdoor kennels, walls or fences shall be permitted in the Plat. The Developer or the Architectural Control Committee may grant an exception or variance to the above stated restriction. Said exception or variance shall be based upon the demonstration of a specific need and a unique design solution and granted at the sole discretion of the Developer or the Architectural Control Committee. Retaining

walls for graded exposed lots are allowed and shall be subject to review and approval by the Developer or the Architectural Control Committee.

15. **Nuisances Prohibited.** No noxious or offensive trade or activity shall be carried on, nor shall anything be done which may be or will become a nuisance to the neighborhood. Nuisances such as loud or unreasonable noise shall not be permitted to exist upon any lot so as to be detrimental to any other property or its occupants. Exterior lighting shall not be directed in such a manner as to create an annoyance to neighbors. Trash and garbage containers shall not be visible to the public except on days of trash collection. No clotheslines or other clothes apparatus shall be permitted in any yard.

16. **Utility Easements.** The owner shall not change the elevation of any utility easement in excess of six (6) inches without permission of the applicable electric, gas or other companies and shall be responsible for any damages caused to underground utilities due to any changes made in grade of more than six (6) inches.

17. **Pets.** No more than two (2) domestic pet animals shall be kept in any residence. No other animals, livestock or poultry shall be raised, bred or kept on any lot. Commercial animal boarding, breeding, kenneling or treatment is expressly prohibited whether for fee or not. Accessory buildings and kennels are expressly prohibited.

18. **Maintenance of Walks.** Where public sidewalks exist, the abutting lot owner shall be responsible for maintaining the sidewalks in a safe and travelable condition, reasonably free of snow, ice and obstructions. This shall not apply to the public walkway between lots 99 and 100.

19. **Temporary Residences Prohibited.** No trailer, basement, tent, shack, garage, barn or any part thereof shall ever be used as a residence, temporary or permanent, nor shall any residence be of a temporary character.

20. **Chimneys.** No exposed metal chimneys shall be permitted. All exposed chimneys shall be masonry construction or enclosed by materials which are similar to and compatible with the exterior surface of the structure.

21. **Parking of Vehicles.** Parking of commercial or service vehicles owned or operated by residents of homes is prohibited within the Plat unless such vehicles are kept in garages. Storage of trailers, boats, travel trailers, mobile homes, campers, snowmobiles, and other recreational vehicles is prohibited unless kept inside garages. This shall not prohibit the temporary parking of such items for the purpose of loading or unloading for a period not to exceed twenty-four (24) hours. No cars, trailers, campers, boats, recreational

vehicles, or other vehicles shall be parked on lawns or yards at any time. No vehicles under repair or considered by the Developer or the Architectural Control Committee to be unsightly shall be allowed in the Plat except in garages.

22. **Garages and Driveways.** Each single family residence shall include an attached or basement garage having a capacity for not less than two cars. All driveways shall be concrete or blacktop and installed as provided in paragraph 28 hereof.

23. **Wood Piles.** No firewood or wood pile shall be kept outside a structure unless it is neatly stacked, placed adjacent to the building in a rear yard or a side yard not adjacent to a street and screened from view by plantings or a structure approved by the Developer or the Architectural Control Committee.

24. **Lot Appearance.** A lot not used as a building site shall be sodded or seeded as lawn or under cultivation as a garden or have a cover crop or be so cultivated or tended as to keep it free from noxious weeds. The owner shall be responsible for maintaining the lot and adjoining street terrace in a neat appearance. Except for wooded lots left in natural state, the owner must mow the lawn or cover crop on the lot as necessary to comply with the above requirements. This paragraph shall not be construed to prevent a family garden or orchard, provided that all vegetable gardens and orchards shall be located in the back or side yards.

25. **Path Easement.** The Owners of Lots 99 and 100 shall maintain the path outlot adjacent to their respective lots. Maintenance shall include mowing and clearing the outlot of any trash or debris, and watering and maintaining any grass, trees or plantings in the outlot area adjacent to their respective lots.

26. **Commencement of Construction.** Construction of improvements on any lot conveyed by deed from the Developer shall be commenced within one (1) year from the date of such deed unless otherwise approved in writing by the Developer. Upon violation of this restriction, the Developer shall have the option, exercisable by written notice to the owner of said lot within nine (9) months of the expiration of such one (1) year period, to require that said lot be conveyed to the Developer as required in paragraph 27 below. This paragraph shall not apply to any lot which, with written approval of the Developer, is intended to be used for greenspace and which is landscaped and maintained by the owner at a standard comparable to developed lots, including regular mowing or cultivation, as required by paragraph 24 hereof.

**27. Recapture and Resale of Land.**

(a) If a buyer of any lot(s) does not commence construction of a building or buildings thereon within twelve (12) months after the date of purchase, the Developer shall have the option to repurchase the property. Such option shall be exercisable upon delivery in writing of a notice to the buyer within nine (9) months after the expiration of such 12-month period. Closing shall take place within sixty (60) days following the exercise of such option on such date shall be designated by the Developer specified in such notice. The purchase price to be paid by the Developer upon the exercise of such option shall be the sum of the following:

- (1) the purchase price paid for the land by the buyer,
- (2) the current market value of all improvements thereon placed on the property by the buyer, and
- (3) all special assessments which may have been paid by the buyer or levied against the premises during the period of such buyer's ownership,

less the sum of the following:

- (1) unpaid real estate taxes,
- (2) proration of current year's real estate taxes to date of closing,
- (3) title insurance policy premium, and
- (4) liens and encumbrances on the property of a definite or ascertainable amount.

Conveyance shall be by warranty deed, free and clear of all liens and encumbrances except those in existence prior to the buyer's ownership of the property, and subject to municipal and zoning and land division ordinances, recorded easements for public utilities, and this Declaration and amendments thereto. Seller shall furnish title insurance policy at seller's expense for full amount of purchase price.

(b) In the event a buyer elects to sell all or any part of any parcel which is vacant, the same shall first be offered for sale, in writing, to the Developer at a price per acre computed as set forth in Subsection (a) above. The Developer shall have sixty (60) days from the receipt of such offer to accept or reject same. Upon acceptance by the Developer, conveyance shall be by warranty deed free and clear of all liens and encumbrances except those in existence prior to the buyer's ownership



of the property, and subject to municipal and zoning and land division ordinances, easements for public utilities, and building restrictions and ordinances. The seller shall furnish title insurance policy at seller's expense.

(c) If the Developer fails to timely exercise the option described in Subsection (a) above or rejects the offer under Subsection (b), buyer may then sell such property to any other buyer and the Developer shall have no further interest therein, except that any use of said property by any subsequent buyer shall be subject to applicable zoning and land division ordinances, restrictions, and regulations of the City of Madison relating to the use of said property at the time of such sale and to the provisions of this Declaration.

(d) Nothing contained herein shall be deemed to give the Developer a right of first refusal or option in the event that a buyer of a parcel who has improved the same by construction of a building or buildings thereon shall propose to sell all of such property as one parcel together with the improvements thereon.

**28. Completion of Construction.** Construction of all buildings shall be completed within six (6) months after issuance of a building permit for the respective building. Landscaping (including grading, sodding, and seeding) shall be completed within six (6) months of substantial completion of construction. All driveways shall be installed immediately upon substantial completion of construction. If such construction or landscaping is delayed due to weather conditions or matters beyond the control of the owner, the time for completion shall be extended by the period of such delay. No building materials or construction equipment of any kind or character shall be stored upon any lot except in connection with construction approved by the Developer or Architectural Control Committee. Construction shall be promptly commenced and diligently pursued as soon as any building materials are placed on any lot.

**29. Subdivision of Lots Restricted.** No lot as platted shall be resubdivided except with prior written approval of the Developer or Architectural Control Committee. This covenant shall not be construed to prevent the use of one lot and part or all of another lot or lots as one building site, provided the Developer or the Architectural Control Committee approves of such use.

**30. Signs - Residential Lots.** No signs of any type shall be displayed to public view upon any lot without prior approval of the Developer or Architectural Control Committee, except for signs not exceeding four (4) square feet in size advertising the property where located for sale.

31. **Term of Covenants and Restrictions.** This Declaration shall run with the land and shall be binding upon and inure to the benefit of all persons having an interest in any portion of the Plat for a period of twenty-five (25) years after this Declaration is recorded, after which time this Declaration shall automatically be deemed renewed for successive ten (10) year periods, unless, at the expiration of the initial term or any 10-year renewal term, the covenants and restrictions are expressly terminated by an instrument signed by the owners of not less than fifty-one percent (51%) of the lots subject to this Declaration.

32. **Enforcement.** While this Declaration is effective, the Developer, Architectural Control Committee, or any person or persons owning any lot or lots in the Plat shall have standing to bring proceedings at law or in equity against any person or persons violating or attempting to violate any such covenants or restrictions, and the prevailing party shall be awarded reasonable attorney fees and costs.

33. **Additional Lands.** The Developer shall have the right, but shall not be obligated, to bring within and subject to these covenants and restrictions, at such time and in such stages as Developer in its sole discretion shall determine, additional lands by executing and recording an amended or supplemental declaration of covenants and restrictions with respect to the additional property, in which case any lots contained within such additional property shall be subject to these covenants and restrictions. In such an event, Developer may choose to supplement an existing Architectural Control Committee by appointing additional members to the Committee.

34. **Local Ordinances.** All buildings constructed on any lots subject to this Declaration shall conform to all governmental zoning requirements and all side yard and set back requirements imposed by local ordinances. The Developer or Architectural Control Committee shall have the right to change the side yard and set back requirements for new construction within the Property from time to time, in their sole discretion.

35. **Discretionary Authority of Developer and Architectural Control Committee.** With respect to any approvals, waivers, variances, or other decisions to be made by them under this Declaration, the Developer or Architectural Control Committee shall hold authority to act with full discretion in furtherance of the following objectives:

(a) to assure the most appropriate development and improvement of the Plat as a residential subdivision;

(b) to prevent the construction of poorly designed or poorly proportioned structures, or structures built with improper or unsuitable materials;

(c) to encourage and secure construction of improvements which harmonize in exterior design and finish with other improvements within the Plat, and which are properly located on their respective lots in accordance with the topography and finished grade of the lots;

(d) to protect each lot owner against the maintenance of nuisances or other improper uses by other lot owners;

(e) to provide for construction and maintenance of high quality improvements which will protect the investments of lot owners;

(f) to preserve and promote the visual attractiveness of the developed Plat.

Neither the Developer, nor the Architectural Control Committee, nor any member of the Architectural Control Committee shall be liable to any person for any injury or loss alleged to be sustained by reason of any approval or disapproval of any proposed use, site plan, building plan or specification, alteration, installation, variance, waiver or other matter under this Declaration of Covenants and Restrictions, which approval or disapproval is given by the Developer or Architectural Control Committee in the good faith exercise of the discretion hereunder, including any loss arising out of the negligence of the Developer or Architectural Control Committee.

36. **Amendments.** This Declaration or any part hereof may be canceled, released, amended or waived in writing, as to any or all of the lots subject to this Declaration, by an instrument signed by the Developer and the owners of not less than fifty-one percent (51%) of the lots subject to this Declaration, or, if the Developer has transferred authority for approval of the plans to the Architectural Control Committee, as provided under this Declaration, then by an instrument signed by the owners of not less than fifty-one percent (51%) of the lots subject to this Declaration.

37. **Exceptions.** The Committee may issue such temporary or permanent exceptions or variances with respect to any of the covenants, restrictions and conditions herein contained as may be approved by unanimous vote, exclusive of any vote of the owner requesting such exception or variance, who may be a member of the Committee. In the event the Developer is acting as the Committee, it shall be the sole decision-maker with respect to such exceptions.

38. **Severability.** Invalidation of any one of these covenants or any severable part of any covenant, by judgment or court order, shall not affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Declaration on the 17<sup>th</sup> day of March, 2014.

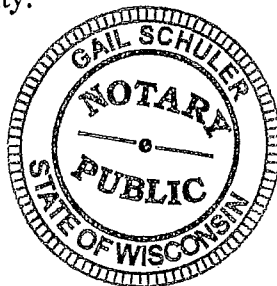
HOMBURG EQUIPMENT, INC.,  
a Wisconsin corporation

By: [Signature]  
Harold N. Homburg, Vice-President

By: [Signature]  
Andrew G. Homburg, Treasurer

STATE OF WISCONSIN    )  
                                      ) ss.  
COUNTY OF DANE        )

Personally came before me this 17<sup>th</sup> day of March, 2014, Harold N. Homburg, Vice-President, and Andrew G. Homburg, Treasurer, of Homburg Equipment, Inc. and to me known to be such Vice-President and Treasurer and acknowledged that they executed the foregoing instrument as such Vice-President and Treasurer as the act of said corporation, by its authority.



Gail Schuler  
\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission expires: 01-17-16.

This instrument drafted by Attorney David S. Uphoff.

F:\DOCS\WD\57040\2\A1844959.DOC

**EXHIBIT "A"**  
**EASTLAWN - PHASE 1**  
**Parcel Numbers**

<b>LOT #</b>	<b>PARCEL NUMBER</b>	<b>STREET ADDRESS</b>
OUTLOT 6	0710 - 024 - 1820 - 2	148 VENUS WAY
99	0710 - 024 - 1821 - 0	202 VENUS WAY
OUTLOT 7	0710 - 024 - 1822 - 8	210 VENUS WAY
OUTLOT 8	0710 - 024 - 1823 - 6	216 VENUS WAY
100	0710 - 024 - 1824 - 4	218 VENUS WAY
101	0710 - 024 - 1825 - 2	224 VENUS WAY
102	0710 - 024 - 1826 - 0	302 VENUS WAY
103	0710 - 024 - 1827 - 8	306 VENUS WAY
OUTLOT 9	0710 - 024 - 1828 - 6	308 VENUS WAY
104	0710 - 024 - 0318 - 8	305 VENUS WAY
105	0710 - 024 - 0319 - 6	301 VENUS WAY