

AMEND TO RESTATED DECLARATION
CONDO PHEASANT CROSSING

Document Number

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DUNN COUNTY, WI
REGISTER OF DEEDS
HEATHER M. KUHN

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Name and Return Address

Dunn Co. Title Services, Inc.
1125 Broadway Street N, Suite 2
Menomonie, WI 54751

Parcel Identification Number (PIN)

*Drafted by
Robert Loberg, Attorney*

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WRDA Rev. 12/22/2010

**AMENDMENT TO RESTATED DECLARATION OF
CONDOMINIUM FOR PHEASANT CROSSING CONDOMINIUMS**

WHEREAS, the Declaration of Condominium for Pheasant Crossing Condominiums was restated by the Restated Declaration of Condominium for Pheasant Crossing Condominiums recorded in the office of the Dunn County Register of Deeds on the 28th day of December, 2009, as Document No. 568879 ("Restated Declaration"); and

WHEREAS, as a result of a certain Removal Instrument there was removed from the Condominium all Units except Units 3 and 4; and

WHEREAS, the Bylaws of Pheasant Crossing Condominiums were not amended following removal of Units as aforesaid nor following recording of the Restated Declaration; and

WHEREAS, the owners of Unit 3, Ronald R. Zezulka and Deanne R. Zezulka, husband and wife, and the owner of Unit 4, Christine L. Tschudy, Trustee of the Christine L. Tschudy Revocable Trust dated June 18, 2008, as amended and restated on September 12, 2017, deem it expedient, necessary and mutually beneficial to amend the Restated Declaration to make clear how they shall treat future issues concerning the vertical wall (interchangeably referred to herein as "Party Wall") separating their respective Units, their yard and driveway area use and maintenance, their shared septic, and access to their shared LP tank and well;

NOW THEREFORE, the undersigned owners of Units 3 and 4, being all of the owners of all of the remaining Units of Pheasant Crossing Condominiums as reflected in the Restated Declaration thereof, hereby amend the Restated Declaration as follows:

1. Article 6.5 is created to read as follows:

6.5 Party Wall "Agreement".

1. "Party Wall" shall mean and refer to the vertical dividing wall between each adjoining Unit. Any matters concerning a Party Wall which are not covered by the terms of this Agreement shall be governed by the general rules of law regarding Party Walls.
2. The Party Wall shall be and remain a Common Element and the common property of the owners of the Units between which the Party Wall lies. Each Unit Owner shall have the right and reciprocal cross easement to use the Party Wall jointly, and each Unit Owner thereof shall be free to do so by inserting beams, timbers, or other materials up to, but not beyond, a vertical line drawn through the center and along the length of the Party

Wall or to otherwise use the Party Wall in any manner that will not interfere with the equal use of the other half of the Party Wall and will not injure or weaken the Party Wall. No Unit Owner shall in any manner cause or permit any damage to result to the Party Wall, but any Unit Owner may attach beams, rafters, machinery or building walls to its side thereof or plaster or decorate its side thereof, provided that such actions do not injure or weaken the Party Wall. Each Unit Owner hereby gives, grants, and demises onto the other Unit Owner an easement of use of so much of the Party Wall as shall rest upon the Unit owned by such owner, which easement shall be a dominant tenement appurtenant to each Unit.

3. The cost of maintaining the Party Wall shall be borne equally by the owners of the Units on either side of said Party Wall.
4. In the event of damage or destruction to the Party Wall, from any cause, other than the negligence of either party hereto, the owners of the Units shall repair or rebuild said Party Wall and the cost of such repair or rebuilding shall be borne equally by the Unit Owners. If either Unit Owner's negligence shall cause damage to or destruction of said Party Wall, such negligent party shall bear the entire cost of repair or reconstruction. If either Unit Owner shall neglect or refuse to pay his share, or all of such costs in case of negligence, the other party may have such Party Wall repaired or restored and shall be entitled to have a mechanic's lien on the Unit of the Unit Owner so failing to pay, for the amount of such defaulting Unit Owner's share of the repair or replacement costs together with interest at the maximum rate allowable. The Unit Owner having such Party Wall repaired shall, in addition to the mechanic's lien, be entitled to recover attorney's fees and shall be entitled to all other remedies provided herein or by law. The mechanic's lien granted herein is effective only if filed in the Real Property Records of the County where the Property is located, by affidavit declaring under oath the claim of the mechanic's lien.
5. Neither Unit Owner shall alter or change the Party Wall, non-structural interior decoration accepted. No Unit Owner shall, at any time, carry up or extend the improvements on its side of a Party Wall, extend the height or depth of a Party Wall, decrease the thickness of a Party Wall, extend the thickness of a Party Wall onto the Unit of another Unit Owner, or construct openings in any Party Wall, without the prior written consent of the Unit Owner of the Unit on the other side of such Party Wall.
6. A Unit Owner who, by the owner's negligence, disinterest or willful act, causes a Party Wall or roof to be exposed to the elements, shall bear the

entire cost of furnishing the necessary protection against such elements and shall pay all damages resulting from such exposure. The cost of normal and timely weatherproofing and maintenance of the roof shall be shared equally between the Units.

7. If it shall be necessary to make repairs to the Party Wall then the owner of the Unit on either side thereof may make such repairs upon thirty (30) days prior notice to the Unit Owner of the Unit on the other side thereof, and upon making such repairs, such owner shall submit all bills therefor to the other Unit Owner who shall promptly pay one half of the costs thereof. If either such Unit Owner receives notice from the other Unit Owner of such intent to repair and objects thereto, within thirty (30) days after receipt thereof, then the matter shall be submitted to arbitration by a mutually acceptable architect which shall be binding upon both such Unit Owners as to the necessity for the repairs. If a Party Wall is damaged or destroyed by the default, negligence, or other act or omission of an Unit Owner, their tenant, agents, contractors, subcontractors, invitees, or employees, then such Unit Owner shall rebuild or repair the Party Wall and compensate the other Unit Owner for any related damages to their Unit. Any repairing or rebuilding of a Party Wall shall be on the same location and of the same or a compatible design and of the same or superior materials. Each adjoining Unit Owner of the Party Wall shall have a perpetual easement on that part of the Unit of the other on which said Party Wall is located, as well as and any other additional area necessary, to repair, replace, and maintain same.
8. If any monolithic slab repairs are required, the entire monolithic foundation must be involved in the repair process. Owners of both properties must cooperate regarding repairs to the slab. Each Unit Owner shall share equally in any necessary repair.
9. In recognition of the fact a Party Wall separates the Units the owners or occupants of the Units shall, respectively, not make, produce or allow to be made or produced, any noise or other disturbance which is or may be heard in or upon the other Unit located adjacent to the Party Wall. Any such noise or disturbance may be subject to an action to enjoin same.

2. Article 7.5 is created to read as follows:

7.5 Yard and Driveway Use and Maintenance Agreement.

1. Definition of Unit 3 and Unit 4 Yard and Driveway Areas. Notwithstanding anything to the contrary herein, for purposes of determining the Unit

Owners' exclusive use rights and their obligations with respect to maintenance of the yard and driveway areas located upon what are identified as Common Elements of Lot 10, Tainter View West Estates, being the Lot upon which the said Units are located, there shall be extended from the midpoint of the wall separating Units 3 and 4, Northeasterly to 500th Street, and Southwesterly to a point South 52°42'48" West, 177.32 feet from a set mag nail located upon the Southerly edge of the right-of-way of 500th Street as shown in the attached proposed Certified Survey Map, thence S5°00'50" East, 170.79 feet +/- to the ordinary highwater mark of Orbison Creek, as shown in said proposed Certified Survey Map, a line, which line shall hereafter serve to demarcate the yard and driveway hereafter considered to be part of, belong to, and be treated as though it were a Limited Common Element of each respective Unit, the yard and driveway lying Westerly of the line being considered the exclusive use area of Unit 3, and the yard and driveway area Easterly of the line being considered the exclusive use area of Unit 4.

2. Either party may install a fence on the boundary line between the two yards at the expense of the installing Unit Owner. The party installing the fence shall face the exterior (more attractive and aesthetically pleasing) side of the fence facing the other Unit Owner's property. Each party shall be responsible to maintain their own yard area.
3. Each party shall be responsible for snow removal and maintenance of their portion of the driveway. Neither shall push or move snow or other debris on to the driveway or yard area of the other. All maintenance, repair and replacement of the driveway shall be done in a manner which is aesthetically pleasing and is consistent with the uniform appearance of the driveway now in existence. By way of example, if the driveway is a blacktop driveway, one Unit Owner may not change his/her driveway portion to a concrete driveway without the express written consent of the other Unit Owner.

3. Article 7.6 is created to read as follows:

7.6 Shared Septic Agreement.

1. A septic system is located upon the yard area associated with Unit 3. That septic system shall serve both Units.
2. The cost of any maintenance, replacement or removal of the sewer system, or yard site improvements necessary for the sewer system operation, maintenance, replacement, improvements, inspection or

testing shall be shared equally between the Unit Owners. Costs to remove and replace common yard boundary fencing or any damage to the yard area of Unit 3 as a result of any said improvements, maintenance, replacement, inspection or testing, shall be shared equally between the Unit Owners.

3. Each of the Unit Owners hereby agrees that they will promptly repair, maintain and replace as is necessary for proper system operation all sewer lines serving their respective Units.
 4. The consent of both Unit Owners shall be obtained prior to making expenditures for system maintenance, replacement or improvement, except in emergency situations. An arbitrator chosen by the Unit Owners and paid one-half by each, shall be consulted in the event the Unit Owners cannot agree regarding the said expenditures, and the arbitrator's decision shall be final.
 5. Each of the Unit Owner does hereby grant to the other, his/her heirs successors and assigns, such easements over, across and through their respective Units as shall be reasonably necessary for the maintenance of the septic system consistent with the purposes of this Article.
 6. No Unit Owner may install landscaping or improvements that will impair the use of said easements.
 7. Each Unit Owner shall have the right to act to correct an emergency situation and shall have access to the pertinent Unit in the absence of the other. An emergency situation shall be defined as the failure of any shared portion of the system.
 8. Only Units 3 and 4 shall be permitted to receive septic services from said septic and pumping equipment; and each of the Unit Owners does hereby covenant and agree that he/she/they will not allow or permit other persons, other than household guests, to use the septic system, nor to permit other persons to connect to the sewer lines serving his/her respective Unit.
4. Article 7.7 is created to read as follows:

7.7 LP Tank.

1. There is an LP tank located upon the yard area associated with Unit 3. The tank is owned by the LP provider and each Unit receives separate metered LP gas from the tank.

2. The owner of Unit 3 hereby agrees that said tank, and any replacement thereof, may remain in its approximate present location in the yard area associated with Unit 3 and that Unit 4 shall have an easement for the existing underground LP gas line leading to Unit 4, which easement shall include the right to repair and replace said line as necessary; provided, however, to the extent any repair or replacement benefits both parties, then the Unit Owner shall share equally in the cost of repair or replacement, and in the event it benefits only one of the parties, then the cost of repair or replacement shall be paid by the Unit Owner solely benefiting.

5. Article 7.8 is created to read as follows:

7.8 Well. The parties have entered, or intend to enter, into a Well Use Agreement with the Unit Owner of an adjoining parcel of real estate whose well provides water to the adjoining parcel as well as Units 3 and 4. The parties agree that the water transmission pipe(s) from the well to the Units shall remain in its present location and if repair or replacement is necessary, same may be repaired or replaced in the same manner as repairs or replacements to the septic system referred to in Article 7.6 above.

6. Article 7.9 is created to read as follows:

7.9 Sprinkler System. There is located upon each of the Units a sprinkler system designed for use in watering the lawn. Each Unit Owner shall have access to the use of the sprinkler system. Each Unit Owner shall have access to the control box for the system; however, each Unit Owner shall only operate the system in a manner which affects sprinkling on that Unit Owner's yard area.

The parties agree that the sprinkler system water transmission lines and control box shall remain in their present location. The Unit Owners shall share in all costs of maintenance and repairs associated with the sprinkler system lines; provided, however, to the extent repair or maintenance is required as a result of the act or negligence of a Unit Owner, their guests or invitees, then that Unit Owner shall be solely responsible for the said maintenance and repairs.

7. Article 7.10 is created to read as follows:

In the event it shall be necessary for any Owner to place this Agreement in the hands of an attorney for the enforcement of any of such Owner's rights hereunder or for the recovery of any monies due to such Owner hereunder, and if it is necessary to bring suit for the enforcement of such rights or such recovery,

the prevailing party in such suit shall recover from the losing party all Court costs and disbursements and actual reasonable attorney's fees, as determined by the Court, in addition to any other relief or recovery awarded by the Court.

Christine L. Tschudy Revocable Trust

Date: 8/20/18

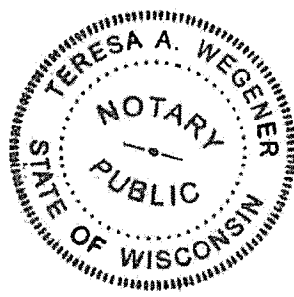
By: Christine L. Tschudy
Christine L. Tschudy, Trustee

STATE OF WISCONSIN }
 } ss.
COUNTY OF DUNN }

Personally came before me this 20 day of August, 2018, the above named Christine L. Tschudy, known to be the person who executed the foregoing instrument and acknowledges the same.

Teresa A. Wegener
Teresa A. Wegener, Notary Public

My Commission expires: 6/20/22



CONSENT OF MORTGAGEE

The undersigned, being the owner of a certain Mortgage executed by Ronald R. Zezulka and Deanne R. Zezulka in favor of the undersigned Mortgagee, dated 5-30-13, recorded 6-4-13, as Document No. 596087 in the office of the Dunn County, Wisconsin, Register of Deeds does hereby consent to each and every of the terms and conditions of the foregoing Amendment to Restated Declaration of Condominium for Pheasant Crossing Condominiums and acknowledges and agrees its interest as Mortgagee in Unit 3 of the Restated Declaration of Condominium for Pheasant Crossing Condominiums, recorded as Document No. 568879, is subject to said Amendment to Restated Declaration of Condominium for Pheasant Crossing Condominiums.

People's State Bank

Dated: 1/24/19

By: Amy Hellmann

Personally came before me this 24th day of January, 2019, the above named Amy Hellmann, known to be the person who executed the foregoing instrument and acknowledges the same.

Nikole Christensen

Nikole Christensen Notary Public

My Commission expires: 3-17-22

