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DECLARATION OF SECOND AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS FOR LIBERTY HEIGHTS SUBDIVISION

THIS DECLARATION of AMENDED Conditions, Covenants and Restrictions for **LIBERTY HEIGHTS SUBDIVISION**, City of Neenah, Winnebago County, Wisconsin, is being made by Brighton Pointe, LLC, a Wisconsin Limited Liability Company, Developer and owner of the following described real estate in the City of Neenah, County of Winnebago, State of Wisconsin. Plat of **LIBERTY HEIGHTS SUBDIVISION** was recorded in the Office of the Register of Deeds of Winnebago County in Cabinet Four (4) of Plats, Page 56, April 25, 2004 as Document No. 1395539. Declaration of Covenants, Conditions and Restrictions for **LIBERTY HEIGHTS SUBDIVISION** was recorded in the Office of the Register of Deeds for Winnebago County, April 25, 2006, as Document No. 139554. **FIRST AMENDMENT** to Conditions, Covenants, and Restrictions was recorded in the Office of the Register of Deeds of Winnebago County, June 22, 2006 as Document No.1402200. Brighton Pointe, LLC, Developer and Owner, hereby makes the following **SECOND AMENDMENT** to the declaration of covenants, conditions and restrictions to which the lots or tracts constituting such subdivision shall be put, and hereby specifies that such declarations shall constitute covenants, conditions and restrictions that run with the land, as provided by law, and shall be binding on all parties and all persons claiming under them, and shall be for the benefit of, and limitations on, all future owners in such subdivision, and to the extent necessary, we do adopt and ratify the Declaration of Covenants, Conditions, and Restrictions for **LIBERTY HEIGHTS SUBDIVISION**, recorded as Document No. 1395540, and Amendment to Declaration of Covenants, Conditions, and Restrictions for **LIBERTY HEIGHTS SUBDIVISION**, recorded as Document No. 1402200.

These Covenants, Conditions and Restrictions apply to and affect the following Real Estate;

Lots One (1) through Sixty-nine (69), inclusive and Lots Seventy-one (71) through One Hundred Thirty (130), inclusive, Outlot Three (3) and Outlot Five (5), LIBERTY HEIGHTS SUBDIVISION, City of Neenah, Winnebago County, Wisconsin.

1. **Purpose.** The purpose of these covenants, conditions and restrictions is to insure the use of the property for attractive residential purposes only, to prevent nuisance, to prevent the impairment of the

attractiveness of the property, and to maintain the desired tone of the community, and thereby to secure to each lot owner the full benefit and enjoyment of their property, with no greater restriction on the free and undisturbed use of their property that is necessary to insure the same advantages to all other lot owners.

2. **Architectural Control.** No dwelling, house or other structure shall be erected or constructed on any lot in this subdivision unless and until the plans and specifications have been submitted to, and approved by, Developer. .

3. **Land Use and Building Type.** All of the lots shall be restricted to use for single-family residential purposes. No building shall be erected, altered, placed or permitted to remain on any of the above lots other than one single family dwelling not to exceed two and one-half (2½) stories in height, with additional limits and conditions as set forth herein. Only single-family residences of conventional construction shall be permitted. The front elevation of all residences shall be constructed with a minimum of 20% brick or stone. All exposed concrete on the front elevation shall be covered in the identical brick or stone used in the construction of the home.

4. **Grade.** The maximum height of the house foundation may not be more than sixteen (16) inches above ground level adjacent to the house and no more than twenty-four (24) inches above the finished street grade, provided, however, that all grades shall comply with the Surface Water Drainage Plan approved by the City of Neenah and on file with the City of Neenah.

5. **Basement/Footings.** No slab houses shall be allowed. All residential buildings must have a basement under at least forty percent (40%) of the ground area, and footings of at least four (4) feet in depth below the balance of the residence.

6. **Garages.** Every residence shall have a private attached garage, accommodating not less than two (2) cars, and shall not be less than 576 square feet nor more than 1080 square feet.

7. **Roof Pitch.** The roof pitch on all residences must be a minimum of 6/12 pitch, and the exterior design must be harmonious with the neighborhood. The pitch of any gables coming off the main roof may be less than 6/12 pitch.

8. **Parking of Vehicles.** Snowmobiles, boats, trailers, semi tractors and trailers, mini-bikes, motorcycles, recreational vehicles, motor homes, campers, fish shanties or unlicensed, un-operable or junk vehicles shall not be stored on the property other than inside the garage. This restriction is not applicable during the period of construction on the lot.

9. **Construction Time.** All homes shall be completed within twelve (12) months after commencement of building, and shall not be occupied prior to being completed.

10. All lawns must be completed within one (1) year of occupancy.
11. **Minimum Floor Plan Size.** The following shall be the minimum floor areas for homes to be constructed on a lot, exclusive of basement area, garage area and open porch areas:
- (a) Lots One (1) through Twenty-four (24), Lots Thirty (30) and Thirty-one (31), Lots Sixty-one (61) through Sixty-nine (69) and Lots One Hundred Four (104) through One Hundred Thirty (130) inclusive, the ground floor of a one-story house, shall be a minimum of 1,500 square feet living space. For all other Lots in LIBERTY HEIGHTS SUBDIVISION, the ground floor of a one-story house shall be a minimum of 1,700 square feet of living space.
 - (b) Lots One (1) through Twenty-four (24), Lots Thirty (30) and Thirty-one (31), Lots Sixty-one (61) through Sixty-nine (69) and Lots One Hundred Four (104) through One Hundred Thirty (130) inclusive, shall be a minimum of 1700 square feet of living area in a one and one-half (1 ½) story, two (2) story, and two and one-half (2 ½) story house. For all other Lots in LIBERTY HEIGHTS SUBDIVISION, the minimum square feet of living area shall be 2000 square feet.
 - (c) There shall be no bi-level homes
 - (d) The total living space of a split-level or quad-level house shall be a minimum of 2,000 square feet, exclusive of basement area.
12. **Type of Construction.** No used buildings or residences shall be moved onto any lot.
13. **Storage or Utility Building/Outbuilding.** One storage building or outbuilding shall be permitted per lot, but such building must be the same architectural design as the residence, and must have the same roof design, roof material and siding material as the residence. No storage building or outbuilding may be greater than sixteen (16) feet by twenty (20) feet in size.
14. **Compliance with State and Municipal Codes.** Setback lines, side yard lines and building codes for any residence shall be in compliance with all ordinances and regulations of the City of Neenah and the State of Wisconsin.
15. **Driveways.** All driveways are to be hard surfaced, to the sidewalk, with concrete or blacktop, or similar surface, within one (1) year of home occupancy.
16. **Drainage Pattern.** The landscaping of each individual lot shall comply with the drainage plan approved by the City of Neenah and on file at Neenah City Hall.
17. **Trash/Burning/Litter.** All trash and waste shall be kept out of public view and in sanitary containers that shall not be aesthetically offensive nor unsightly. There shall be no burning of any kind, including, but not limited to, leaves, upon any lot. No lot shall be used as a dumping ground for litter, unwanted stones, grass clippings, branches, garbage or other rubbish.

18. **Antennas/Satellite Dishes.** Radio and TV antennas are not allowed on the exterior of a building or on poles. Satellite dishes are allowed, however, they are not allowed in the front or on the roof of a building. Satellite dishes are to be kept to the side or rear of the home and hidden from view as much as possible.
19. **Nuisances.** No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
20. **Animals.** No animals, livestock, reptiles, birds, or poultry of any kind shall be raised, bred or kept on any lot, except that two dogs and two cats per household may be kept inside the residence, provided they are not kept, bred or maintained for any commercial purpose. Nothing contained herein, however, shall be construed to permit the keeping of any dog or cat which, in any way, constitutes a nuisance. Pets must be on a leash or otherwise constrained when outside a residence.
21. **Subdividing.** None of the lots may be subdivided or partitioned, except by Developer.
22. **Lighting.** All outdoor lighting shall be ornamental. Any pole lighting shall be erected on ornamental poles. Flood lighting may be used provided it is not offensive to the neighboring properties or roadway.
23. **Temporary Structures.** No structure of a temporary nature, shanty or similar structure shall be permitted on any lot either temporarily or permanently. No structure other than a fully completed residence shall be occupied.
24. **Pre-construction Maintenance.** Lot owners are responsible for the maintenance of their lots before construction begins. No trash or waste, weeds, woodpiles, or long grass is permitted.
25. **Growth and Debris.** The owners of each improved lot shall keep said lot, together with all lands lying in road right-of-way between the lot and the traveled portion of all roads that abut the lot, mowed and attractive. No refuse pile, rubbish or unsightly objects shall be allowed to be placed or allowed to remain anywhere thereon; and in the event the owners shall refuse, upon written notification to keep the property free of weeds, underbrush, refuse piles or other unsightly growth or objects, then agents of the maker of these covenants may enter upon said land and remove same at the expense of the owner, and such entry shall not be deemed a trespass.
26. **Walls and Fences.** Walls or fencing, excluding hedge fences, shall be approved by the Developer on an individual basis.
27. **Encroachment.** For purposes of these covenants, conditions and restrictions, eaves, steps and open porches shall not be considered as part of a building, provided, however, that this paragraph shall not be construed to permit any portion of a building to encroach upon another lot.
28. **Signs.** No sign of any kind shall be displayed to the public view on any lot except one professional sign no larger than one square foot, or one sign no larger than five square feet advertising the property

during the construction and/or sales period.

29. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved and restricted as shown on the recorded plat. The easement area of each lot and all improvements on the lot shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible. The following uses, structures and activities are prohibited in any easement: filling, grading and excavating; construction or placement of any building or structure; the cultivation of crops, fruits or vegetables; the planting of trees or shrubs; the dumping or depositing of ashes, waste, compost, fill or materials of any kind or nature; and the storage of vehicles, equipment, materials or personal property of any kind or nature.

30. Removal of Dirt. So long as Developer owns any lot in this subdivision, Developer reserves the right to direct the disposition of any dirt which is to be removed from any lot in the subdivision. Such disposition directed by Developer shall remain within the subdivision.

31. Clotheslines. No clothesline or laundry line of any kind whatsoever shall be located in any outdoor area on any lot unless it is of a temporary or completely retractable nature.

32. Outlot One.

- (a) **Purpose.** The purpose of Outlot One is to provide drainage detention/retention facilities for the lots in Liberty Heights Subdivision and to provide open space and recreational opportunities for Lots 71 through 92 adjacent to Outlot One.
- (b) **Prohibit Uses, Structures and Activities.** The following uses, structures and activities are prohibited on Outlot One: filling, grading and excavating except for the construction of utility crossings and drainage improvements or facilities; construction or placement of any building or structure; the cultivation of crops, fruits or vegetables; the planting of trees or shrubs; the dumping or depositing of ashes, waste, compost, fill or materials of any kind or nature; the storage of vehicles, equipment, materials or personal property of any kind or nature; the use of motorized vehicles or watercraft; and the feeding or harboring of waterfowl.
- (c) **Permitted Uses and Structures.** The following uses, structures and activities are permitted on Outlot One: hiking and hiking trails and other passive recreational use and any other use not prohibited or inconsistent with drainage functions.
- (d) **Ownership.** Outlot One shall be owned by Liberty Heights Subdivision Pond Owners Association, Inc., a Wisconsin non-stock, non-profit corporation (the "Association"), consisting of the owners of Lots 71 through 92. Membership in the Association is mandatory. The Association shall obtain a general liability insurance policy with coverage limits not less

than \$1,000,000.00, insuring against any claims, actions or liabilities which may arise from the Association's ownership of Outlot One. The cost of this policy shall be allocated equally among the Association members, and the members agree to pay their pro-rata share within fifteen (15) days of being invoiced.

(e) **Management and Maintenance.** The management and maintenance of Outlot One and associated structures shall be the sole responsibility of the LIBERTY HEIGHTS SUBDIVISION POND OWNERS ASSOCIATIONS, INC. subject to the unqualified right of the City of Neenah to enter for inspection and to perform repairs and maintenance as deemed necessary. Upon failure of the Homeowners Association to perform management and maintenance of Outlot One and associated structures, the Developer shall retain the right to perform such management and maintenance, again subject to the unqualified right of the City of Neenah to enter for inspection and to perform repairs and maintenance as the City deems necessary. The payment for said management and maintenance shall be equally assessed among all of the members of the Homeowners Association in accordance with subparagraph (e).

(I.) **Common Expenses.** The Board of Directors of the Association shall determine the common expenses of the Association, and shall prepare an annual operating budget for the Association in order to determine the amount of the common expenses chargeable to each Lot to meet the estimated common expenses of the Association for the ensuing year. The annual budget shall be in a minimum amount equal to 125% of the total of the net real estate property tax bills (excluding special assessments) for the outlot(s) or parcel(s) underlying the pond for the immediately preceding year, plus the total of any noticed (but unpaid) municipal special assessments upon said outlot(s) or parcel(s), plus the premium for the insurance policy described above.

The amounts required by such budget shall be assessed and charged against the Lots, and allocated equally among the members of the Association. On or before January 1 of the year for which the operating budget was prepared, the Board of Directors shall provide the members with a written copy of said budget and their respective allocated assessment. The common charges shall be paid to the Association on or before the first day of February of said year. If not paid on or before the due date, the charges shall bear interest at the rate of three percent (3%) over the then current prime rate, as set forth in the Wall Street Journal, Midwest Edition, per annum until paid in full.

(II.) **Default.** If a member of the Association is in default in payment of any charges or assessments

for a period of more than thirty (30) days, said charges or assessments shall constitute a lien against his or her lot and the Association may bring suit for and on behalf of all members, to enforce collection of such delinquencies or to foreclose the lien therefore, as provided by law, and there shall be added to the amount due the costs of suit and the interest, together with reasonable attorney's fees.

(III.) Collection of Unpaid Taxes/Special Assessments. In the event that the Association fails to pay any real estate property taxes and/or municipal special assessments upon the outlot(s) or parcel(s) underlying the pond, either the City of Neenah or Winnebago County shall have the right to assess an equal one-twenty-second (1/22) share of such unpaid taxes/special assessments against each of Lots 71-92 of the Subdivision.

33. Severability. Invalidation of any of the conditions, covenants or restrictions, by judgment or court order, shall in no way affect any of the remaining conditions, covenants and restrictions, which shall remain in full force and effect.

34. Amendment. This Declaration may be modified, clarified, changed and/or amended at any time and in any manner by written declaration setting forth such modification, change, clarification and/or amendment, which has been executed by the owners of at least fifty percent (50%) of the lots in the subdivision, in such form as to allow it to be recorded in the Winnebago County Register's Office; provided, however, that such modification, change, clarification and/or amendment shall require the written approval, in recordable form, of Developer, so long as Developer owns any lot(s) in the subdivision. Further, so long as Developer owns any property in the subdivision, Developer, by itself alone, and without the approval of any additional lot owners, shall be entitled to modify, clarify, change and/or amend the covenants, conditions and restrictions. Any amendment or modification of paragraphs 31, 33, 34 and 35, respectively, of this Declaration shall require the written approval of any City and County plat approval authority.

35. Enforcement. Enforcement shall be by proceedings at law or equity, against any person or persons violating or attempting to violate any condition, covenant or restriction, either to restrain such violation or to recover damages. Any lot owner may enforce the provisions of this Declaration by proceedings in law or equity against any person, and the Association may enforce the provisions of this Declaration against an owner of Lots 71-92, violating or attempting to violate the provisions of this Declaration, either to restrain violation or to recover damages or both. The City of Neenah and Winnebago County may enforce the provisions of paragraphs 31, 33, and 35, respectively, of this Declaration.

36. Relation to Public Regulations. Where the provisions in this Declaration impose greater restrictions than any statute, ordinance or rule, the provisions of this Declaration shall prevail. Where the provisions of any statute,

