

1913471

DOCUMENT NO.

FIRST AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS FOR POLO POINT SUBDIVISION

FIRST AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS (the "Declaration") is hereby made and established as of the 28th day of May, 2002, by Polo Point, LLC, a Wisconsin limited liability company (hereinafter the "Developer"). The Declarations, Covenants and Restrictions contained herein shall replace and supercede those previously recorded on February 1, 2001 and recorded in the Office Of the Register of Deeds of Brown County, Wisconsin as Document Number 1792620.

BROWN COUNTY REGISTER OF DEEDS CATHY WILLIQUETTE

2002 JUL 17 P 4: 03

RECITALS:

WHEREAS, Developer owns all those lands located in the Village of Hobart, Brown County, Wisconsin, as legally described on Exhibit A attached hereto (the "Land");

WHEREAS, Developer intends to develop the Land as a residential subdivision containing approximately One hundred twenty-eight (128) lots known as "POLO POINT SUBDIVISION" (the "Subdivision"); and

WHEREAS, Developer desires to subject all of the Land (except dedicated streets and utilities), to the conditions, restrictions, covenants, reservations and easements hereinafter set forth, for the benefit of the Subdivision as a whole and for the benefit of each Lot Owner.

DECLARATION

NOW, THEREFORE, DEVELOPER hereby declares that the real estate described on the attached Exhibit A (except for dedicated streets and utilities), shall be used, held, leased, transferred, sold and conveyed subject to the conditions, restrictions, covenants, reservations and easements hereinafter set forth, which shall inure to the benefit of and shall pass with each Lot as covenants running with the land and shall apply to and bind all successors in interest, users and owners.

DEFINITIONS, PURPOSE AND USE RESTRICTIONS

1.01 DEFINITIONS

- (a) "Association" shall mean the POLO POINT HOMEOWNERS ASSOCIATION, an association which may be created under this Declaration.
- (b) "Developer" shall mean POLO POINT, LLC, as well as any successor Developer.
- (c) "Family" shall mean one or more persons related by bond, marriage or adoption who are living, sleeping, cooking and eating on the premises as a single housekeeping unit and shall exclude any person or groups of persons where three or more are not so related or engaged as household employees.
- (d) "Home" shall mean a residential building designed and used as a dwelling for one family (which shall not include any attached garage).
- (e) "Limited Common Areas" shall include property accessible by members of the Homeowner's Association, whether title is retained by the Developer or conveyed to the Association, for general use by all residents of the subdivision.

THIS SPACE RESERVED FOR RECORDING DATA NAME AND RETURN ADDRESS

Schober & Ulatowski, S.C. P.O. Box 1780 Green Bay, WI 54305-1780

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(f) "Lot" shall mean a platted lot within the Subdivision identifiable by reference to a name and lot number, and which has been expressly made subject to this Declaration. The term "Lot" does not include the following lots from the Plat which have been designed for limited common areas: Lots 99 and 116.

(g) "Lot Owner," "Lot Owners" or "Co-Owners" shall mean the holder(s) of a legal or equitable ownership interest in fee simple record title to a lot, regardless of the type of tenancy or estate and shall include land contract vendees and vendors, but shall not include the holder of any leasehold interest or any mortgage or consensual lien prior to acquisition of legal or equitable title.

(h) "Property" shall include a Lot and all improvements thereon.

(i) "Section" shall mean all those provisions within a numbered heading of this Declaration.

(j) "Structure" and "improvement" shall be synonymous and shall both mean and include any and all of the following, regardless of whether temporary or permanent in character or intended use: building, outbuilding, shed, booth, garage, carport or aboveground storage facility; tent; exterior lighting or electric fixture, antennae, tower, pole or bug control device; antenna, tower, dish or other device, free-standing or attached, for transmission or reception of electronic signals; fence, retaining or other wall, fountain or aboveground or in-ground swimming or wading pool; plantings; driveway, sidewalk or walkway; pet kennels or run line; screened or other type of porch, patio or gazebo, tree house or other exterior play equipment; berms and swales; and any other type of equipment or facility for any decorative, recreational or functional purpose of any kind (including, without limitation, additions or alterations to or deletions from any of the foregoing) not located entirely within the exterior perimeter walls of the single family building constructed on the lot. Use of the phrase "structure or improvement" or any other use of such words shall not imply different meanings for such terms.

(k) "Subdivision" shall mean the lands described on the attached Exhibit "A," and such other portions of the Land as become subject to this Declaration pursuant to an amendment hereto, excluding lands now or hereafter dedicated to the Village.

(l) "Successor-Developer" shall mean any person, corporation, partnership or other entity to which Developer expressly assigns or otherwise transfers his rights and obligations hereunder, or any successor to the Developer by operation of law.

(m) "Village" shall mean the Village of Hobart, a municipal subdivision of Brown County, Wisconsin.

1.02 GENERAL PURPOSE

The general purpose of this Declaration is to help assure that the Subdivision will become and remain an attractive residential area and in furtherance of such purpose: to preserve and maintain high aesthetic standards for all improvements, as well as the natural beauty of open spaces; to protect owners of Lots against use of surrounding Lots which may detract from the residential value or enjoyment of their Property; to guard against the erection or maintenance of garish or poorly designed or proportioned Structures; to obtain a harmonious and aesthetically pleasing blend of materials, Structures and color schemes; to insure a residential development of the Subdivision consistent with high aesthetic standards and the purposes for which each such Lot is platted; and to otherwise secure mutual enjoyment of benefits for owners and occupants of residential property within the Subdivision.

1.03 SINGLE FAMILY USE: GENERAL RESTRICTIONS

(a) Except for Structures which are part of the limited common areas, each Lot shall be used solely for residential purposes by one Family. The term "residential purposes" shall include only those activities necessary for or normally associated with the use and enjoyment of a homesite as a place of residence and limited recreation. Notwithstanding the foregoing, the Developer or any builders approved by the Developer shall have the right to construct model homes which may be used as temporary sales offices.

(b) Only one Home may be constructed on each Lot and no garage, tent, or other improvement (except for the Home) shall be used for temporary or permanent living or sleeping for family or guests.

(c) No Lot shall be used in whole or in part for conducting any unlawful activity or for any unlawful purpose. No noxious odors or loud noises shall be permitted to escape from any Home or Lot nor shall any activity be permitted or engaged in which constitutes a public or private nuisance.

1.04 RESTRICTIONS ON USE OF RECREATIONAL VEHICLES

Recreational vehicles (which shall include snowmobiles, boats and other watercraft, trail bikes, travel trailers and vans, motor homes and dune buggies and other off-street motorized vehicles of any kind) shall not be parked, kept or stored on any Lot outside an enclosed garage without the prior approval of the Developer (which may be withheld in its sole and absolute discretion, including aesthetic appearances), except for temporary storage of loading and unloading purposes for a period of not more than 48 hours. Such recreational vehicles shall also not be used or operated on any Lot or otherwise within the Subdivision, except on dedicated streets in accordance with applicable traffic laws.

1.05 ANIMALS AND PETS

No livestock, poultry, reptile or other animal of any kind shall be raised, bred or kept on any Lot except that dogs, cats and other normal household pets (as may be approved by the Developer from time to time) may be kept so long as not kept, bred or maintained for any commercial purpose or in an unreasonable number (no more than two (2) dogs and three (3) cats are permitted per Lot) or manner, or which may be contrary to applicable law. The right of any Lot Owner to keep such a pet on any Lot is subject to the condition that the pet is not allowed to unreasonably annoy any other Lot Owner and is not allowed to run at large. No exterior pet kennels or related structures shall be permitted at any time. Dogs shall be restrained from unnecessary or excessive barking.

1.06 GARBAGE AND REFUSE

No Lot shall be used or maintained for dumping or storage of trash, garbage or debris of any kind, except for temporary storage in sanitary covered containers suitably screened from view from streets and adjoining Lot. There shall be no burning or burial of any garbage, trash, or debris at any time.

CONSTRUCTION OF IMPROVEMENTS

2.01 EXCLUSIVE BUILDER

Thomas J. Juza Custom Homes & Design, Inc., or its successor or assign, through Polo Point, LLC, shall be the exclusive builder for all Homes in the Subdivision.

2.02 ARCHITECTURAL CONTROL

(a) The Developer shall have the sole and exclusive right to grant approvals, enforce and determine compliance with the standards and restrictions established herein, and to grant variances therefrom, as set forth in this Declaration. The Developer shall retain such right and authority until Developer no longer holds title to any Lot in the Subdivision and all Homes have been constructed. Thereafter, the Association shall have the authority to grant the approvals required herein and upon such event, the term "Developer" as used herein shall mean the Association.

(b) No Home, garage or other Structure or improvement of any kind shall be installed, erected, constructed or placed on any Lot (or altered or changed with respect to layout, location or exterior design, appearance, elevation, color or material composition) without prior written approval by the Developer with respect thereto. The Developer may deny or withhold approval of any proposed improvement in the Developer's sole judgment. ANY LOT OWNER WHO CAUSES OR ALLOWS ANY IMPROVEMENTS TO BE CONSTRUCTED, INSTALLED, PLACED OR ALTERED ON THE LOT WITHOUT PRIOR WRITTEN APPROVAL OF THE DEVELOPER SHALL BE REQUIRED TO REMOVE SUCH IMPROVEMENT (OR RESTORE SUCH ALTERATION) IN ITS ENTIRETY AT THE LOT OWNER'S EXPENSE. Without intending to limit the generality of the foregoing, it is intended that the exterior color or appearance of any portion of a Home, garage or other improvement may not be changed in any significant respect without the prior written approval of the Developer.

(c) Construction must be substantially completed within twelve (12) months of closing of sale of Lot from Developer. The Developer may, in its discretion, extend such completion deadline up to an additional six (6) months in the event the delay has been caused primarily by factors beyond the control of the Lot Owner.

(d) Any approval or permission of the Developer under this Section, to be binding or effective, MUST BE IN WRITING signed by an authorized representative. No oral statements, representations or approvals of the Developer or any of its members or agents shall be binding on the Developer under any circumstances, regardless of any reliance thereon by any Lot Owner.

(f) Except to the extent necessary for the construction of exposed basements or split level homes, no portion of any Home located above grade level shall be covered with ground, soil or similar materials.

2.03 ZERO LOT LINE DECLARATIONS

Certain abutting Lots within the subdivision provide for the construction of a "patio style" building straddling the Lot line. The following shall set forth the rights and duties with respect to any portion of a building which shares a common wall with another Lot Owner's Home:

(a) The foundation and attached wall and wall elements above it are located partially on the property of the Owner of each Lot, the boundary line between the parcels being the common boundary line of said foundation, wall and wall elements and any such foundation wall and/or wall elements which is located over and one-half on each side of the common boundary line is and shall remain a party foundation, party wall and/or party wall element of the Owner of each Lot, their respective heirs, successors and assigns, all in accordance with the provisions set forth in this paragraph 2.04. The description as "party" is not intended to cover separate adjacent wall structures or elements located entirely on a particular Lot and not crossing over the common boundary line between the two Lots.

(b) Certain of the roof elements are located directly above the common boundary line between two Lots. Any roof element for a distance of 24 inches on either side of said common boundary line is and shall remain a party roof element with respect to the Owners of said Lots, their respective heirs, successors and assigns.

(c) Certain portions of the driveways of the adjoining Lots are located directly above the common boundary lines between the two Lots. Any driveway element for a distance of 24 inches on either side of said common boundary line is and shall remain a party driveway element with respect to the Owners of said Lots, their respective heirs, successors and assigns.

(d) Each Owner and/or new Owner shall have the right to continue the present use being made of such party foundation, party wall, party wall elements, party roof elements and party driveway elements and shall contribute one-half to the upkeep and maintenance of each of said items in their present condition except for injury or damage by reason of negligence or fault of either of the Lot Owners, which shall be the sole obligation of the Owner who is negligent or at fault. Each Owner and/or new Owner shall perform his or her own painting or maintenance, if any, on the outside surface of any party element facing that Owner's respective parcel.

(e) If and when maintenance or repairs to any party foundation, party wall, party wall element, party roof element or party driveway element is required, either Owner may notify the other of such fact and the repair or maintenance shall be accomplished by the joint efforts and expenditures of said parties. Should either party fail, after the other requests a required repair or maintenance, to join in such repair or maintenance within a reasonable time (measured with attention to the nature of repair or maintenance and the potential additional damage to one or both Homes if not completed) then the notifying Owner may proceed to effect the required repair or maintenance and charge the other Owner one-half of the cost of the same. Should the Owner who does not join in the maintenance or repair fail to make payment for the same, the matter can be addressed to the Homeowner's Association for inclusion in assessments per the terms of this Agreement. If the Homeowner's Association has not been formed, the Developer shall have the sole right to act as could the Board of Directors of such Association and affect the assessment of the Lot.