

**Amendment to Declaration of Conditions,  
Covenants, Restrictions and Easements For  
The Following Plats in the City of Madison,  
Dane County, Wisconsin:**

**Walnut Grove**

**Recorded with the Dane County Register of Deeds as  
Document 1248118  
in furtherance of its Plat recorded  
as Document No. 1248117**

**Farmington Addition to Walnut Grove**

**Recorded with the Dane County Register of Deeds as  
Document 1468672 in furtherance of its plat recorded  
as Document 1467409 and the Specific Implementation  
Plan recorded as Document 1468671**

**Foxboro Addition to Walnut Grove**

**Recorded with the Dane County Register of Deeds as  
Document 1334690 in furtherance of its plat recorded  
as Document 1307982 and the Specific Implementation  
Plan recorded as Document 1334689**

**Harwood Addition to Walnut Grove**

**Recorded with the Dane County Register of Deeds as  
Document 1404248 in furtherance of its plat recorded  
as Document 1404246 and the Specific Implementation  
Plan recorded as Document 1404247**

**Oxwood Addition to Walnut Grove**

**Recorded with the Dane County Register of Deeds as  
Document 1383802 in furtherance of its plat recorded  
as Document 1373193 and the Specific Implementation  
Plan recorded as Document 1373193**

**Park Addition to Walnut Grove**

**Recorded with the Dane County Register of Deeds as  
Document 1508325 and amended by Document 1524521 in  
furtherance of its plat recorded  
as Document 1504890 and the Specific Implementation  
Plan recorded as Document 1505268**

**South Park Addition to Walnut Grove**

**Recorded with the Dane County Register of Deeds as  
Document 1545558 and amended by Document 1553390 in  
furtherance of its plat recorded**

**as Document 1529370 and the Specific Implementation Plan recorded as Document 1529371**

**Westfield Addition to Walnut Grove Recorded with the Dane County Register of Deeds as Document 1562819 in furtherance of its plat recorded as Document 1558173 and the Specific Implementation Plan recorded as Document 1558180**

This Amendment to Declarations of Conditions, Covenants, Restrictions and Easements (hereafter referred to as "Amendment") has been adopted as of this \_\_ day of October, 2020 by the owners of at least fifty (50%) percent of the local assessed valuation of all Lots in each of the afore-described Plats as attested to below by the Secretary of the Walnut Grove Homes Association, Inc.

**RECITATIONS:**

**WHEREAS**, the afore-described Plats of Walnut Grove and the seven Additions to Walnut Grove (hereinafter, collectively, "Walnut Grove Plats"), have, with the exception of a single lot, now been developed with either single-family homes, duplex homes or condominiums; and,

**WHEREAS**, the Owners of the Lots described in the Walnut Grove Plats belong to the Walnut Grove Homes Association, Inc. (hereafter "Association"), which was recognized in and incorporated pursuant to the platting process for the Walnut Grove Plats to serve as the entity to succeed the developer of the Plats in order to enforce the original eight separate sets of Conditions, Covenants, Restrictions and Easements (hereinafter, "Original Covenants") for the eight Plats; and,

**WHEREAS**, the Original Covenants are over forty-years old and in some cases contain inconsistent restrictions and provisions from document to document, contain restrictions no longer deemed desirable by the Association, and contain restrictions and provisions which need to be modernized or clarified to facilitate the efficient and effective operation of the Association; and,

**WHEREAS**, all Owners in the Walnut Grove Plats are benefited by the continued viability of the Association, the protections to home values afforded by its Architectural Control Committee, and certain agreed restrictions on the use of Lots and residences in the Walnut Grove Plats; and,

**WHEREAS**, the Board of Directors of the Association (hereafter "Board") has formally recommended that this Amendment be approved by the Lot Owners of all Lots in the Walnut Grove Plats; and,

**WHEREAS**, the Original Covenants may be amended by an instrument executed by the Owners representing at least fifty (50%) percent of the local assessed valuation of all Lots in each Plat of the Walnut Grove Plats; and,

**WHEREAS**, Lot Owners, by their approval of this Amendment, expressly authorize the Association to file this Amendment with the Dane County Register of Deeds by means of a certification by the Association's Secretary as to the percent of the local assessed valuation of each Plat approving this Amendment; and,

**WHEREAS**, any Plat which does not achieve the requisite percentage of acceptance to approve this Amendment shall be excluded from this Amendment, and remain subject to all previously existing covenants; and,

**WHEREAS**, It is the intention of the Declarants (as defined in Part A below) that, unless and except as expressly amended by the following covenants, the Original Covenants for each of the Walnut Grove Plats shall continue in full force and effect; and,

**NOW THEREFORE**, the undersigned Declarants declare that all Lots in the Walnut Grove Plats which Lots are described in Exhibit A, attached hereto and incorporated herein by reference, will and shall be sold, transferred and conveyed subject to the conditions, covenants, easements, restrictions, assessments, charges and liens hereinafter set forth, unless the Lots are located within Plats excluded from this Amendment.

## **PART A**

### **DEFINITIONS**

The following definitions apply to the terms and conditions of this document, beginning with its title above, and continuing down through the signatures appearing below, and, where appropriate, shall also apply to similar terms used in the Original Covenants:

(A) "Amendment" shall mean this document in its entirety, including Exhibits hereto.

(B) "Annual Assessment" shall mean the assessment levied on each lot by the Annual Meeting of the Owners in order to defray the current and future financial needs of the Association, as more fully described in Part F, below. The term "Annual Assessment" is used herein interchangeably with the term "maximum annual charge" found in the Original Covenants.

(C) "Annual Meeting" shall mean the annual meeting of the Owners conducted in accordance with the Association's By-Laws.

(D) "Annual Budget" for the Association shall mean the budget approved at the Annual Meeting of Owners for, among other expenses, the following: (a) effective, consistent and aesthetic

year-round maintenance of the Common Property (as defined in subparagraph (K) below), (b) administrative, legal, bookkeeping and banking expenses of the Association, (c) utility charges and taxes; (d) expenses of meetings and social events, (e) newsletters, (f) Association directory of Owners, (g) maintenance of the Association's website, (h) property and other liability insurance, and (i) other reasonable periodic expenses of the Association, including the costs incurred in communication between the Association and its members. The Annual Budget may include an amount reasonably necessary and prudent to serve as a reserve to address the costs of unforeseen expenses associated with the Common Property, including tree removal or trimming for reasons of safety, preservation or infestation, and as a reserve fund to replace wasting assets, including, but not limited to trees and shrubs, lights, and pathways.

(E) "Association" shall mean the Walnut Grove Homes Association, Inc., incorporated on August 14, 1969.

(F) "Board" shall mean the board of directors of the Association pursuant to its most current By-laws.

(G) "By-laws" shall mean the current by-laws of the Association, as adopted and amended from time-to-time, pursuant to the terms therein. The By-laws, as amended, shall be available to Members on the Association's website.

(H) "Chair" shall refer to the chair of the Committee, as it is defined below.

(I) "City" shall mean the City of Madison, a Wisconsin municipal corporation, and as appropriate, any agencies or agents of the City of Madison.

(J) "Committee" shall mean the Architectural Control Committee of the Association, generally described in the Original Covenants and more specifically described in the By-laws.

(K) "Common Property" shall mean all areas within the eight plats of Walnut Grove that are not located within the boundaries of a Lot, and which the Association is obligated to maintain under the terms of the Original Covenants. (See Exhibit B, annexed hereto, for a description of these areas.) These areas include, within limitation by express mention, the following:

- a. Greenways, currently four in number, including landscaping, trees and shrubbery on the greenways located within the eight plats of Walnut Grove;
- b. Paved paths in and between Greenways and between Greenways and public streets;
- c. Lighting located on the Greenways and along paths; and,
- d. Circular shaped and landscaped islands located on streets in Walnut Grove designated as a "Circle" or leading into a cul-de-sac, regardless of street designation.

(L) "Communication" shall mean all manner of communication by and among the Association, its Board, the Committee and the Members of the Association (as defined in Part C below) that is specifically authorized by the By-laws, or the rules established by the Committee.

(M) "Covenants" shall mean the Original Covenants (see definition below in subparagraph (T) as amended, modified, restated or superseded by this Amendment.

(N) "Declarants" shall mean those Owners whose signatures of acceptance of this instrument are separately affixed hereto, or, if legally permitted by the By-laws, Owners who have returned a ballot to the Association approving this Amendment, in a form approved by the Board.

(O) "Elevation," as used in Part E below, on the organization and function of the Committee, shall mean a reasonably detailed drawing or diagram of the vertical plane(s) of the exterior of a building, addition to a building, or any other improvements to a Lot in the Plats, sufficient to assess the architectural and visual impact of the exterior of the structure. In other parts below, as appropriate from the context in which it is used, "elevation" may refer to the height of a foundation, building, object, grading of a Lot or an easement, in reference to a known height.

(P) "Lessee" shall be used herein in the singular and plural form, and mean a person having possession of a residence on a Lot under a valid lease with the Lot's Owner(s) having a term of one year or greater. Persons whose leases have expired or been terminated, persons holding over under leases that have expired or been terminated, or persons who have been issued a notice of default under their lease are not Lessees hereunder or under the Association's By-laws.

(Q) "Lot" shall be used herein in the singular and plural form, and shall mean any of the real estate parcels described in any of the eight plats of Walnut Grove except the parcels of Common Property described above in subparagraph K.

(R) "Notice" shall refer to each form of official notice provided to the Members of the Association as set forth in the By-laws.

(S) "Occupant" shall mean and refer to the occupant of any of the Lots who shall either be an Owner or a lessee holding a written lease for an initial term of twelve (12) months or more. If any lessee seeks to exercise Voting Rights as an occupant, as to any election of the Association, the lessee(s) of any Lot must present a Proxy by the Owner of the Lot ceding voting rights to the lessee(s).

(T) "Original Covenants" shall mean the Original Covenants recorded with the Dane County Register of Deeds for the eight Walnut Grove Plats, as more particularly described in the title of this instrument and in Exhibit A, annexed hereto.

(U) "Owner" shall be used herein in the singular and plural form, and mean the record title holder, whether one or more persons or entities, including trusts, having title to a Lot in one or more of the eight Walnut Grove plats. A person having equitable title to a Lot as a purchaser under a recorded land contract, i.e., the land contract vendee, shall be the Owner rather than the land contract vendor. No person or entity having a security interest in a Lot, whether by judgment, mortgage, lien, or other

security instrument shall at any time be considered by the Association to be an Owner. This provision will not preclude an Owner from providing any third party a Proxy to participate in any vote to be taken by the Association.

(V) "Plat" shall be used herein in the singular and plural form, and shall mean, collectively, the Plat of Walnut Grove and the seven subsequent recorded plats for the seven additions to the plat of Walnut Grove, and mean individually, any of the eight plats comprising the Plat of Walnut Grove.

(W) "Proxy" shall mean authority, on the form prescribed by the Association, or as otherwise specified in the By-laws of the Association, by which: (a) one Lot Owner gives to another Lot Owner, a lessee of the Lot Owner, or other third party, the right to vote for the first Owner's Lot in connection with any Association meeting or other election; or (b) a director gives another director the right to vote for the grantor of the Proxy. Any determination by the Secretary of the Association as to the legitimacy and effect of a Proxy in an election of the Association hereunder shall be final and thus not reviewable by a court of law.

(X) "Special Assessment" shall mean: (a) an assessment levied against all Lots in Walnut Grove on a one-time basis to cover certain annual budgetary shortfalls specified below in Paragraph 32; or, (b) an assessment levied against a specific Lot to recover the costs of any effort, including a lawsuit, to enforce the covenants to which the Lot is subject.

(Y) "Special Meeting" shall mean a special meeting of the Owners conducted in accordance with the Association's By-Laws.

(Z) "Voting Rights" shall be used herein in the singular and plural form, and shall mean the right of an Owner to participate in elections of the Association under the Association's By-laws and Part C, below.

(AA) "Walnut Grove" shall mean the combined eight plats, including all Lots therein, currently subject to the Association. These eight plats are described on Exhibit A, annexed hereto.

(BB) "Writing" or "Written" shall mean not only letters, notes, minutes, applications or other documents on paper, but also electronic communications, such as, but not limited to electronic mail ("e-mail") communications, except as otherwise provided or where inconsistent with the intent of a provision herein.

**PART B**

**PRESERVATION OF ORIGINAL COVENANTS  
EXCEPT AS MODIFIED OR AMENDED HEREIN**

1. As to each of the Walnut Grove Plats, The Original Covenants may be amended by an instrument executed by the Owners representing at least fifty (50%) percent of the local assessed valuation of all Lots in that Plat;
2. Lot Owners, by their approval of this Amendment, expressly authorize the Association to file this Amendment with the Dane County Register of Deeds by means of a certification by the Association's Secretary as to the percent of the local assessed valuation of each Plat approving this Amendment.
3. Any of the Walnut Grove Plats failing to approve this Amendment by at least fifty (50%) percent of the local assessed valuation of all Lots in the Plat shall be excluded from the force and effect of this Amendment, and thereby remain subject to all existing Original Covenants applicable to the Plat.
4. Except as amended, modified or superseded by this Amendment, the provisions of the Original Covenants for the eight Plats of Walnut Grove shall continue in full force and effect.
5. It is the intention of the Declarants that in the event the interpretation of any provision of the Original Covenants is deemed to be in conflict with any provision of this Amendment, in meaning, direction, operation, scope or restrictions, the provision of this Amendment shall take precedence and be enforced. This intention does not apply to the provisions of the Original Covenants applicable to plats that are excluded from this Amendment under paragraph 3, above.

**PART C**

**MEMBERSHIP AND VOTING**

6. Every Owner of a single family or duplex Lot (whether used for a duplex or condominium unit) in the Walnut Grove Plats shall be a member of the Association. Each Owner shall be entitled to one vote for each Lot owned as to any matter being considered by the Association, and where there is more than one Owner or a co-Owner, the Owners of the Lot are entitled to only one vote. If the joint or common Owners of the Lot cannot agree on the vote to be cast for their Lot, they shall not be entitled to cast a vote. If a joint or common Owner of a Lot is present to cast a vote in person, or submits a proxy, they are presumed to be authorized by all co-Owners to cast the Lot's vote in the absence of prior written notice to the Secretary of the Association to the contrary. Except pursuant to a valid Proxy, those people or entities only owning a security interest in the property shall have no right to vote; but a land contract vendee, in good standing, shall have the voting rights rather than the vendor of the land contract. Notwithstanding the above, each owner of a condominium unit

shall get one vote regardless of the number of Lots involved. A Lessee, as defined in Part A, subparagraph (P) above, may vote the interest of a leased Lot provided the lessee presents a valid Proxy from the Lot's Owner. If a lessee seeks to vote under a Proxy in an election, the lessee is subject to all the foregoing rules and presumptions set forth in this subparagraph as if they were considered the Owner for voting purposes.

7. An Owner, Land Contract Vendee or Lessee with a valid Proxy may only vote on behalf of a Lot if all the Lot's Annual Assessments and Special Assessments are current under the By-laws of the Association.

## **PART D**

### **USE OF LOTS IN WALNUT GROVE**

8. The provisions concerning the use of Lots contained in the Original Covenants for the eight Walnut Grove Plats are amended only in the following respects:

- a. The Owners of domestic animals shall take reasonable steps to address any repeated adverse impacts of the animals on other Owners, including, but not limited to, impacts arising out of repeated violations of the City's ordinances as to ownership of domestic animals. All domestic animals shall be restrained inside the boundaries of a Lot by invisible fencing, physical fencing compliant with all applicable Covenants and City ordinances, or other suitable restraint, and must be on leads or leashes at all times when outside in Walnut Grove.
- b. Commercial boarding, kenneling, day-care services or health treatment of animals is expressly prohibited.
- c. The complete visual screening of any front, rear or side boundaries of Lots using trees, bushes or other plant life is prohibited in all of Walnut Grove. Restrictions on the installation and maintenance of fences, other architectural screenings, gazebos and all other detached improvements to Lots are set forth in the rules published by the Committee and formally approved by the Board, available on the Association's website or upon request from the secretary of the Association. Any such screening or fencing that currently exists and which was established consistent with the Original Covenants for the individual plat in which the Lot is situated cannot be expanded hereafter without Committee approval, but shall be maintained in a neat appearance consistent with the original installation
- d. No outbuildings or accessory buildings, including, but not limited to, sheds, doghouses, kennels, chicken coops, greenhouses, beehives or similar structures shall be permitted unless approved by the Committee under the provisions of Part E.
- e. Grass on lawns shall be regularly cut to prevent it from exceeding eight (8) inches in height above ground. All landscaping in addition to lawns shall be maintained in a neat appearance, and dead or dying trees, shrubs and bushes shall be trimmed or removed as reasonably appropriate to maintain a neat appearance. Lawns shall be



maintained with grass or ground cover, and no prairie restorations or natural lawns will be permitted in this Plat.

- f. Fall leaf removal shall be done to ensure that lawns remain reasonably free of leaves in the Winter, with leaves removed from the property in accordance with established methods and schedules set out by the City.

## **PART E**

### **ARCHITECTURAL CONTROL COMMITTEE**

9. All provisions as to the Walnut Grove Plats' Architectural Control Committee contained in the Original Covenants are hereby superseded by this Part E only as to those Plats adopting this Amendment.

10. It is in the interest of all Lot Owners in Walnut Grove to have all existing or future buildings, and any additions, alterations or changes to such buildings, including any changes to exterior elevations, be of suitable workmanship, building materials, and architectural design so as to preserve architectural and visual harmony with the existing structures in Walnut Grove. Such harmony serves to increase the property values of all the Lots in Walnut Grove.

11. Members of the Committee shall be appointed by the Board and serve at its pleasure until resignation or replacement by the Board.

12. The Committee shall be comprised of no less than three Owners. The Board shall name one of its members to serve as the Committee's chair (hereafter, "Chair") for its meetings and operations, and to serve as the primary member for communications with the Board and Owners in Walnut Grove desiring to communicate with the Committee. At any time, the Chair can designate any member of the Committee to serve, at the Chair's pleasure, as vice-chair (hereafter, "Vice-Chair"). None of the Committee members shall be entitled to any compensation for their service on the Committee.

13. Each Owner in Walnut Grove agrees, by virtue of the Owner's interest in a Lot, to indemnify and hold harmless all members of the Committee for any of their actions as Committee members with respect to claims, losses, damages, expenses, including reasonable attorney's fees, based on any claims asserted by the Owner, except for any actions later determined by a final adjudication by a court to be the result of gross negligence or willful misconduct on the part of the Committee member or members.

14. Each member or former member of the Committee, together with the personal representatives and heirs of each such person, shall be indemnified by the Association against all loss, costs, damages and expenses, including reasonable attorney's fees, asserted against, incurred by or imposed in connection with or resulting from any claim, action, suit or proceeding, to which such person is made or threatened to be made a party by reason of the Committee member's actions in connection with his or her service on the Committee, except as to actions later determined by a final adjudication by a court to be the result of gross negligence or willful misconduct on the part of such member. In the

event of settlement of such proceeding, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by its counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of such person as a Committee member in the matter involved. This right of indemnification shall be in addition to all other rights and defenses. All liabilities, losses, damages, costs and expenses incurred or suffered by the Association in connection with this indemnification shall be a Common Property expense, leading if necessary, to Special Assessment of Lots in Walnut Grove. Nothing in this paragraph shall be deemed an indemnification of such person with respect to such person's status merely as an Owner, occupant or otherwise.

15. Except as may be expressly allowed under the Original Covenants with respect to fences of three feet in height or less, no buildings or structures may be erected or placed hereafter on any Lot in Walnut Grove, nor shall any existing structure in Walnut Grove have its exterior dimensions or materials altered, without approval by the Committee. Approval of structures subject hereto by the Committee shall be in accordance with the standards set forth in the By-laws of the Association and the published rules of the Committee available from the Chair or from the Association's web site.

16. The Committee, shall, in accordance with the By-laws, establish published rules for the following procedures which shall be used in seeking to secure approval from the Committee:

- a. The applicant must fill out the Architectural Review Application (hereafter, "Application"), which form is available from the Association or available from the chair of the Committee.
- b. The Application must be accompanied by the following, unless the Chair, in their sole discretion, deems in writing that they will not be required:
  - i. Site plan adequate to establish the location of the building, building addition, deck, porch, or structure shown in relation to any existing house on the Lot;
  - ii. Architectural drawings and specifications;
  - iii. Elevations of the building or addition including, at the discretion of the Chair, those of any adjacent existing house.
  - iv. Floor plan(s) of proposed addition/deck
  - v. Dimensions shown on all drawings
  - vi. All major materials proposed for the building, building addition, deck, porch, or structure.

17. The Architectural Review Application and accompanying documents must be submitted to the Chair in the format set forth by the Committee in its published rules.

18. Within seven (7) days following the date of submission of an Application by an applicant the Chair, or Vice-Chair in the Chair's absence or recusal, shall, in his or her exercise of reasonable discretion, notify the applicant whether or not the submission of the Application is considered complete enough for the Committee to take action to approve or disapprove it. If the Application is deemed incomplete, the notification shall be delivered pursuant to the published rules of the Committee. If no such notice is timely made, then the Application shall be acted upon based on the materials contained in and with it. Any notice that the Application is incomplete shall contain details that are reasonably sufficient to inform the Applicant of the deficiencies which need to be cured by the applicant. The

Committee will not take no action thereafter on an Application deemed incomplete until all such deficiencies are cured or the Committee waives them in writing.

19. Upon submission of an Application deemed complete in accordance with paragraphs 16-18, above, the Committee shall, within fifteen (15) days from the date the Application is deemed complete hereunder, notify the applicant as to whether the Application is approved or not. Any approval shall only be binding on the Committee and Association as to work and materials conforming to the information supplied in the Application.

20. The Committee's denial of an Application may be appealed to the Board. This shall be the sole appeal right of the applicant. Any such appeal must be commenced within five (5) working days of the delivery to the applicant of the Committee's determination that the Application was denied. The procedures for filing the appeal, conducting the appeal, and concluding the appeal will be in accordance with rules for the appeal set forth in the published Committee's rules, as adopted by the Board. If the appeal results in a tie vote of the Board, the appeal will be deemed denied. No appeal of a denial or approval of an application may be brought by any person or persons other than the applicant(s) involved in the Application matter as to which the appeal was brought.

21. Approval of Plans by the Committee shall not constitute a representation or warranty that the Plans conform to the regulatory oversight or approval process of any other party, including but not limited to the City, nor shall any approval of a new building or alteration of an existing building constitute a determination of structural soundness of the drawings, other plans, specifications or materials proposed to used or ultimately used in the construction.

22. The Committee and Board shall promulgate all rules and regulations consistent with this Part E, which are reasonably necessary to its efficient and effective operation. Any such Committee or Board rules shall be available from the Chair or Board Secretary upon request, available on the Association's website, or by other acceptable communication channels of the Association.

23. The Committee shall maintain minutes of its actions on all Applications and archive all the Applications for review by any Owner desiring to review them upon reasonable notice. If an Application was not submitted by approved electronic communication, the Owner seeking a copy shall pay all reasonable cost of copying the Application as a pre-condition of its receipt.

## **PART F**

### **ASSESSMENTS AND ENFORCEMENT OF COVENANTS BY THE ASSOCIATION**

24. The provisions of the Original Covenants concerning general and special assessments are hereby superseded in their entirety by this Part F as to all Walnut Grove Plats which have adopted this Amendment. Those plats excepted from this Amendment under paragraph 3, above, shall remain subject to all the provisions of the Original Covenants, including, without limitation by express mention, the provisions on assessments found in paragraphs 13 and 14 of the Walnut Grove Plat covenants and paragraphs 9 and 10 of the covenants for the seven additional Plats.

25. The major expense of the Association each year will typically be the costs of maintaining the Common Property. The Declarants believe the maintenance of the Common Property, including Greenways, paved paths, lighting and other accouterments, serves to substantially enhance the property value of all Lots in Walnut Grove, and the recreational and visual pleasure of the Owners.

26. The Board will make a recommendation of the proposed Annual Budget to the Owners of all Lots in Walnut Grove in conjunction with the annual meeting notice and encourage comments in writing on the proposed budget by all Owners throughout the balance of the year.

27. The proposed Annual Budget shall then be considered for formal approval at the Annual Meeting of the Association. The Annual Budget proposed by the Board shall be subject to amendment at the Annual Meeting. It shall be deemed approved when more than fifty (50%) of the Owners present for the Annual Meeting, either in person or by written Proxy, vote in favor of its adoption. In the event the budget is not passed at the Annual Meeting, the prior year's budget shall remain in effect until a new budget is adopted at the next Annual or Special Meeting called to consider its adoption.

28. Any existing limits on the annual assessment to Owners in Plats adopting this Amendment are hereby rescinded.

29. Notwithstanding the terms of paragraphs 26 and 27 above, in 2021, the annual assessment for each Lot in Walnut Grove shall be limited to no more than \$150 per Lot. This dollar limit of \$150 ("Cap" on annual assessments) shall be increased annually by an amount sufficient to retain the annual purchasing power of those 2021 limits in future years utilizing the Bureau of Labor Statistics Consumer Price Index, All Urban Consumers. In the event that index is not compiled in the future, the Board shall choose a similar index for inflation. The increase in the budget proposed annually by the Board under paragraph 26, above, and the ultimate approval of the annual budget by the Owners at the Annual Meeting may lead to an annual assessment less than the then annual limit (Cap) on annual assessments established pursuant to this paragraph.

30. The budget as approved at the Annual Meeting shall determine the amount of the annual assessment for each Lot Owner ("Annual Assessment") which shall also be determined and voted on at the Annual Meeting. The Owner of record of each Lot as of the first day of each calendar year shall be personally responsible for the payment of the Annual Assessment for that year, and the Annual Assessment shall also be a lien on the Owner's Lot or Lots, which lien shall be subordinate to any prior mortgage or lien as to the Lot or Lots.

31. The due date for payment of the Annual Assessment shall be set by the By-laws of the Association. Any Annual Assessment not paid by the due date shall incur a late fee as set forth in the By-laws and bear annual interest from the due date at a rate of ten (10%) percent per annum until paid, and, together with interest, costs of collection, and reasonable actual attorney's fees, shall constitute a lien on the Lot when it is assessed.

32. The Association, acting by majority vote of its Members present in person or by Proxy at either an Annual or Special Meeting, may whenever necessary or appropriate levy general Special Assessments against the Lots for annual budgetary shortfalls arising from unanticipated destruction of or City orders as to Association property, including Common Property, or as necessary for the Association to defray the cost of defending or prosecuting unanticipated legal action.

33. A Special Assessment may be levied by the Board against a specific Lot to reimburse the Association for the costs of enforcing the covenants applicable to the Lot by a lawsuit. Prior to the Association, acting by its Board, assessing an individual Lot owner for the cost of enforcing the covenants, written notice shall be provided to the Owner of the violation, and the Owner shall be given fifteen days to respond in writing to the notice, or cure the violation. In the event that the written response is deemed inadequate to excuse the violation, or the violation is not otherwise cured, the Association may enforce the covenants against the Owner by legal action.

34. If the use or maintenance of an Owner's Lot violates any enforceable covenants applicable to it, including the covenants under this Amendment, the Association, acting by its Board, may commence an action in Dane County Circuit Court to enforce the covenants.

35. The Association, acting through its Officers and agents, including third-party contractors, for the purposes of inspecting and ascertaining an Owner's compliance with the Covenants, is hereby granted an easement of reasonable ingress and egress onto an Owner's Lot, subject to the following limitations: (a) the Association must have a reasonable basis to believe an Owner is not in compliance with the Covenants; (b) the Association shall provide the Owner written notice prior to any inspection; (c) the inspection must occur during normal working hours; (d) the person or persons performing the inspection must reasonably announce their presence upon arrival; and, the access is limited to the exterior portions of the property only. This section does not authorize the Association to make any changes to the property. Any effort by an Owner to interfere with this easement may lead to the Association bringing a legal action to resolve the dispute and violation of the covenants.

36. Special Assessments shall be paid at such time and in such manner as the Association may determine. Any Special Assessment or installment not paid when due shall bear annual interest from the due date at a rate of ten percent (10%) percent per annum until paid and, together with the interest, collection costs and reasonable actual attorneys' fees, shall constitute a lien on the Lot on which it is assessed.

37. The purchaser of any Lot shall purchase the Lot subject to any unpaid annual or special assessments. The purchaser shall therefore be obligated to personally pay any unpaid annual or special assessments constituting a lien as of the time of the purchase, regardless of whether the lien or liens on the Lot arising from annual or special assessments have been reduced to a court's judgment.

38. Any prospective purchaser of a Lot in Walnut Grove is entitled to a statement from the Association of current and unpaid assessments and all Owners agree that such information may be provided to prospective purchasers by the Association upon written request. Neither the prospective purchaser nor the Lot conveyed subject to a lien for unpaid assessments shall become obligated for any amounts in excess of the amounts stated by the Association as to the unpaid assessments. Each Owner shall reveal the existence of unpaid assessments on the Owner's Lot to any prospective purchaser. Such unpaid assessment should be deducted from the funds payable to the seller at the real estate closing on the Lot. This provision does not alter the continuing obligation of an Owner or Lot subject to lien to pay in full any annual or special assessments in the process of being levied. It serves to provide certainty as to past due assessments only.

39. Upon a voluntary conveyance, a deed between existing owners, or a conveyance by deed in fulfillment of a land contract, the grantee of a Lot shall be jointly and severally liable with the

grantor for all unpaid assessments against the grantor as provided in this Declaration up to the time of conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee to resolve the unpaid assessments. However, any such grantee shall be entitled to a statement from the Association's Treasurer setting forth the amount of such unpaid assessment and any such grantee shall not be liable for, nor shall the Property conveyed be subject to a lien for, any unpaid assessments against the grantee pursuant to this Amendment in excess of the amount therein set forth.

40. The lien of the assessments provided for herein shall be subordinate to the lien of any prior recorded property liens or mortgages. Sale or transfer of any Lot shall not release any existing liens based annual or special assessments hereunder. However, the sale or transfer of any Property pursuant to mortgage foreclosure or any formal court proceeding in lieu thereof shall extinguish the lien of such assessment(s) as to payments which became due prior to such sale or transfer. No sale or transfer pursuant to foreclosure or formal court procedure in lieu thereof shall relieve such Property from liability from any assessments thereafter becoming due or from the lien thereof.

41. In the event that the Association fails to maintain the Common Areas of Walnut Grove, the City of Madison may take over the maintenance of such areas and assess against all the properties in Walnut Grove the pro rata share of such maintenance charges, which assessments shall be liens against the Lots so assessed. Such assessment shall be included on each City of Madison property tax bill for each such Lot assessed. If the Association votes to dissolve or otherwise terminate the corporate existence of the Association, the Common Areas of Walnut Grove, owned by the Association, shall be deeded to the City of Madison at no cost to the City of Madison, and all unexpended maintenance funds then in the control of the Association shall be paid over to the City Treasury without restrictions, and all Lots in Walnut Grove shall be subject to assessment for maintenance of the lands so deeded back to the City of Madison as provided in the first two sentences of this paragraph.

## **PART G**

### **ADDITIONAL PROVISIONS**

42. At all special and annual meetings of the Association, the requisite quorum shall be as provided in the By-laws of the Association, as amended from time-to-time.

43. All meetings described herein or in the By-laws may be conducted with attendance solely in person, by combination of in person and teleconferencing, or solely by teleconferencing. A Notice announcing an Association meeting shall indicate if teleconferencing attendance will be permitted; and, if so, provide appropriate information and guidelines for prospective attendees to access the meeting by teleconference when the meeting commences. The rules respecting participation in meetings by tele-conferencing shall be established in the By-laws.

44. All corporate records and documents signed electronically by the Association's Officers, Directors and Members shall be given full legal effect and enforceability pursuant to Wis. Stats., sec. 137.15 (1).

45. This Amendment, and the Original Covenants shall run with the land and shall be binding on the Owners of Lots covered by this Amendment for ten (10) years from the date this instrument is recorded. After that initial ten (10) years period, it shall automatically stand renewed for

successive ten (10) years periods unless an instrument terminating or changing this Amendment or the original Covenants is approved as set forth in paragraph 46 below.

46. Any future amendments to the Original Covenants or this Amendment instrument may be approved for recordation with the Dane County Register of Deeds by any of the following three options:

- a. The Owners of more than fifty (50%) percent of the Lots in Walnut Grove approve the Amendment, by signing ballots approving the Amendment, or signing the Amendment with the validity of signatures and the requisite percentage being attested to by the Secretary of the Association using a single attestation at the foot of the Amendment. Execution of ballots or signing of the Amendment may be accomplished using a widely accepted internet-based electronic execution system, e.g., DocuSign.

or

- b. At a vote taken at a Special or Annual Meeting of the Association, properly noticed for such purpose, the Owners of more than fifty (50%) percent of the Lots in Walnut Grove vote in favor of the Amendment. This vote may be made in person or by Proxy delivered in writing to the Owner exercising the Proxy for another Owner. Thereafter, the Secretary of the Association shall attest to the requisite vote at the foot of the Amendment.

or

- c. The Board will conduct a Special or Annual Meeting of the Association, properly noticed for the purpose of considering an Amendment unanimously recommended by the Board. The notice shall be made not less than thirty (30) days prior to the meeting and shall include the proposed Amendment, and a detailed description of all the changes to the covenants the Board is seeking and the rationale for them. The Amendment shall be approved for recording if seventy-five percent (75%) of the Owners in actual attendance at the meeting, either in person or by Proxies, cast an affirmative vote in favor of the Amendment. Notwithstanding any provision to the contrary in the By-laws, the quorum requirement for any such meeting under this subsection 41 (c), called to consider amendments to the Covenants, shall be sixty Owners entitled to vote at a meeting of the Association, present in person or by Proxy. If the Board utilizes this procedure, the Amendment under consideration at the meeting shall not be subject to amendment by either the Board or the meeting participants, but must be voted either up or down as drafted and attached to the notice of meeting. Thereafter, the Secretary of the Association shall attest to the requisite vote at the foot of the Amendment. The Notice of the meeting using this methodology for amending the Covenants shall quote this sub-paragraph 47(c).

47. No compensation shall ever be paid to any officer or Board member of the Association.

48. All areas of the Common Property are subject to the following regulations:

- a. The planting of trees, flower beds, shrubs, and other flora, the placement of yard waste or trimmings, and the placement of swings, fences, and other improvements and structures are prohibited from occurring on Common Property unless authorized in writing by the chair of the Board's Greenway Committee or the Board's president, in the absence of the chair of the Greenway Committee, under the terms set forth in said writing.
- b. The use of motorized vehicles, including but not limited to mopeds, motorbikes, motorcycles, all-terrain vehicles (ATVs), snowmobiles, automobiles and trucks is prohibited on Common Property, except as necessary for the maintenance or improvement of the Common Property.

## **PART H**

### **SEVERABILITY**

49. It is the intention of the Declarants hereto that all terms and provisions of this Amendment are severable. Therefore, if any term or provision is adjudicated to be unlawful or otherwise unenforceable by a court of law, the intention and desire of the Declarants is that the court should rule in such a way as to maintain the enforceability of all terms and provisions not directly impacted by the adjudication that a term or provision is ambiguous, illegal, or otherwise unenforceable.