

**DECLARATION OF RESTRICTIONS**

**FOR**

**LAKESIDE CONSERVANCY SUBDIVISION**

REC. 8/21/03  
DOC. 3050073

Return to:  
Siepmann Realty Corp.  
W240 N1221 Pewaukee Road  
Waukesha, WI 53188

KNOW ALL PERSONS BY THESE PRESENTS; that OLD NORTH SHORE DEVELOPMENT CO., LLC is a limited liability company duly organized and existing under and by virtue of the laws of the State of Wisconsin, located at W240 N1221 Pewaukee Road, Waukesha, Wisconsin (herein referred to as "Developer," which term shall include Siepmann Realty Corporation, hereby designated by Developer as its duly authorized agent). Developer is the owner of LAKESIDE CONSERVANCY, being Lot 31 and part of Lots 26 and 27 Lakeside lying in the NE. ¼ and SE. ¼ of the SW. ¼ of Section 12, Township 7 North, Range 18 East, Town of Delafield, Waukesha County, Wisconsin, (herein referred to as "LAKESIDE CONSERVANCY") and intends to establish a general plan for the use, occupancy and enjoyment of LAKESIDE CONSERVANCY, and in furtherance of the general purpose set forth in Section A, below, does hereby declare for the mutual benefit of present and future owners of lands in LAKESIDE CONSERVANCY and any future stages of development added as provided in Section D, below (herein referred to individually as "Owner" and collectively as "Owners"), that LAKESIDE CONSERVANCY shall be subject to the following restrictions, provisions, conditions, obligations and easements.

**A. GENERAL PURPOSE**

The general purpose of this Declaration is to promote the harmonious development of LAKESIDE CONSERVANCY into a residential district of the highest quality while protecting the natural beauty and quality of the environment. In addition, this Declaration is to help insure that LAKESIDE CONSERVANCY will become and remain an attractive community; to preserve the open space within LAKESIDE CONSERVANCY; to guard against the erection therein of poorly designed or proportioned structures; to obtain harmonious use of materials; to insure the highest and best residential development of the property; to encourage and secure the erection of attractive homes in appropriate locations on building sites; to secure and maintain proper setbacks from streets and adequate free spaces between structures; and in general, to provide adequately for high quality improvements while remaining sensitive to preserving the natural environment and thereby maintain and enhance the value of investments made by purchasers of properties in LAKESIDE CONSERVANCY.

## **B. BUILDING RESTRICTIONS**

1. (a) All lots in LAKESIDE CONSERVANCY are restricted to the erection of a one story, story and one-half, or two story single family residence building with a minimum square footage of living space (without regard for basement level areas) of three thousand (3,000) square feet and with an attached garage which will accommodate at least three cars.

(b) The garage must be attached to the residence directly or by breezeway, or built into the basement of the residence and must be constructed at the same time as the residence. The maximum size of the garage shall conform to Town of Delafield (hereinafter referred to as the "Town") ordinances. Garage entrances must be on the side of the building.

(c) The exterior walls of the residence and attached garage must be constructed of brick, stone, stucco, solid wood siding, Hardiplank siding or its equivalent. Any exposed basement or foundation wall must be covered entirely with full-size brick, natural stone or stucco. At least 80% of the aggregate of the exterior wall surface areas above the basement level of the residence and attached garage, after deducting the surface area of doors and windows, shall be constructed of full-size brick, natural stone or stucco. Siding materials such as aluminum, vinyl, steel, pressed board, Masonite or plywood will not be allowed.

(d) For a residence having one or more fireplaces, the primary fireplace must be of full masonry construction on both the interior and exterior, including the chimney. Chimneys of secondary fireplaces, if any, shall be either of full masonry construction or have a masonry veneer. The masonry veneer of secondary chimneys which project through the roof may consist of cultured stone or thin brick if specifically approved in writing by Developer. All chimneys must have caps of concrete or stone.

(e) All windows shall have true divided-lites or integral grids. The style of the grids shall be consistent with the architectural style of the residence.

(f) All two story and story and one-half residence roofs shall have a minimum pitch of eight feet in height for each twelve feet in length (8/12), except for rear dormers on a story and one-half residence. All one-story residence roofs shall have a minimum pitch of ten feet in height for each twelve feet in length (10/12). A lower minimum roof pitch may be allowed in special circumstances if approved in writing by Developer. All roofs having an appropriate pitch shall be covered with either wood shakes, wood shingles or dimensional fiberglass 50 year shingles of the type and quality of GAF Ultra, Landmark 50, or their equivalents, in a "weatherwood" color.

(g) The residence and attached garage, a sodded or seeded lawn and a driveway paved with concrete, stamped concrete or brick pavers must be completed within one year of the start of construction of the residence.

(h) Only one residence may be erected on a lot.

(i) The minimum setback from any abutting street right-of-way is 50 feet. The minimum side yard offset is 20 feet. The minimum rear yard is 20 feet, except for lots 7, 8 and 9 which have a minimum rear yard of 60 feet.

(j) Each lot shall conform to such open space requirements as may be adopted from time to time by the Town and Waukesha County. As of the date of this Declaration, under Town ordinances at least 75% of the lot area must be open space. The Town defines open space as "a natural area or manmade landscaped area not occupied by any structures, impervious surfaces, gravel drives or parking areas". Under County ordinances the floor area ratio (the total floor area of buildings allowed on a lot, excluding any floor area below ground) shall not exceed 27% of the lot area.

2. No outdoor swimming pools, neither in-ground nor above-ground, shall be permitted on any lot. No more than one "hot tub" or "spa" shall be permitted on any lot, provided the water surface area of the hot tub or spa does not exceed 200 square feet and provided further than that at least one lengthwise side of the hot tub or spa is not more than 15 feet from the residence. Indoor swimming pools shall be permitted provided that such a pool is in the basement of the residence and provided that the exterior walls of the basement do not extend beyond the exterior walls of the first floor level of the residence and attached garage.

3. There shall be no outside storage of boats, trailers, buses, commercial trucks, recreational vehicles or other vehicles or items deemed to be unsightly by the Developer or the LAKESIDE CONSERVANCY Homeowners Association, created pursuant to Section C, below.

4. All building plans and the exterior design of each building to be constructed, added to or modified and all yard grades and stakeout surveys must be approved by Developer in writing prior to application for a building permit. Developer's approval shall be based upon the building and use restrictions contained in this Section B and the Guidelines for Plan Approval for LAKESIDE CONSERVANCY Subdivision, which Owner shall obtain from Developer prior to submitting plans to Developer for approval. The Guidelines for Plan Approval as of the date of execution of this Declaration are attached hereto as Exhibit A. Developer may withhold exterior design approval if the design is too similar in appearance to others in close proximity.

5. Basic site features such as fences (which shall be of a decorative style; in no event will chain link or privacy fences be allowed), decks (which shall only be constructed of wood or certain artificial wood products if specifically approved in writing by Developer), gazebos, retaining walls (which shall only be constructed of natural stone, wood timbers or certain artificial stone products if specifically approved in writing by Developer) berms more than 3 feet in height and other temporary or permanent structures or elements contributing significantly to the total environmental effect of LAKESIDE CONSERVANCY are subject to the prior written approval of Developer. Children's outdoor playground equipment and play structures shall be allowed provided that any part of such equipment or structure that is an enclosure must

be approved in writing by Developer prior to installation. Dog kennels are allowed provided that they are located immediately behind the house or garage with any fences screened from view by adequate landscaping. Following such time that a principal residence has been constructed upon each lot in LAKESIDE CONSERVANCY, Developer may, but shall not be obligated to, delegate to the LAKESIDE CONSERVANCY Homeowners Association Committee the approval authority contained in this Paragraph. Such approval authority, if delegated, shall exclude the authority to approve additions or modifications to buildings constructed in LAKESIDE CONSERVANCY. During the initial term hereof such additions and modifications shall be subject to the prior written approval of Siepmann Realty Corporation. To be effective, notice of such delegation shall be recorded in the office of the Register of Deeds for Waukesha County, Wisconsin.

6. At the time of construction of a residence the Owner shall install at a location designated by Developer, one outdoor electric post lamp with an unswitched photoelectric control. The design of the post lamp shall be uniform throughout LAKESIDE CONSERVANCY and subject to the approval of the Developer. The Owner shall maintain the post lamp in a proper operating manner. If the post lamp is not so maintained, and the condition has not been rectified by the Owner within 15 days after receipt of a notice from the LAKESIDE CONSERVANCY Homeowners Association specifying the violations of this Paragraph 6, the Owner shall be subject to a penalty of not more than \$10.00 per day from the date of notice until the date the condition has been rectified. The penalty shall be assessed against the Owner and, if not paid, will be enforced as provided in Paragraphs C.12(e), C.12(f), and C.12(h), below.

7. The design and location of each mailbox/newspaper box shall be uniform throughout LAKESIDE CONSERVANCY and subject to approval of the Developer.

8. There shall be no satellite dish antennas having a diameter in excess of 24 inches. No antenna or satellite dish shall be mounted or installed on any roof. Any antenna or satellite dish should, if possible without interfering with reception, be placed and screened so as to minimize its visibility from roadways and neighboring lots.

9. No more than one (1) gazebo shall be located on a lot, and there shall be no other outbuildings permitted.

10. The Developer, and no other, shall have the right and authority to modify the Building and Use Restrictions and Guidelines for Plan Approval or to permit variances from the application thereof, if, in its opinion, the modification or variance is consistent and compatible with the overall scheme of development of LAKESIDE CONSERVANCY, provided that no such modification shall be in violation of local ordinances, or have the effect of revoking an approval previously granted in writing hereunder. Notwithstanding the foregoing, any such modifications or variances shall be at the sole and absolute discretion, aesthetic interpretation and business judgment of the Developer, and this paragraph and any modifications or variances granted hereunder shall not in any way be interpreted (i) as preventing the

Developer from requiring at any time, and from time to time, strict compliance with the Building and Use Restrictions, or (ii) as entitling any person to a modification or variance not approved and granted in writing by the Developer.

11. Each Owner must adhere to and finish grade its lot in accordance with the Master Grading Plan or any amendment thereto approved by the Town Engineer, on file in the office of the Town Clerk. The Developer and/or the Town and/or their agents, employees or independent contractors shall have the right to enter upon any lot, at any time, for the purpose of inspection, maintenance and correction of any drainage condition, and the Owner is responsible for cost of the same. Each Owner, at the time of home construction, shall also be responsible for grading their lot so as to direct drainage toward the street or other established drainageway and to prevent an increase in drainage on to neighboring property. This shall be accomplished by creating swales along common lot lines wherever practical which shall be kept free of any obstructions. No plantings other than grass shall be permitted within 3 feet of side or rear lot lines without prior written approval of Developer. Each Owner must consult with the adjacent lot owner to determine the best manner in which to grade their common lot lines. Neither Developer nor the Town shall be responsible for establishing lot line grades due to varying terrain and drainage conditions on each lot following home construction. The services of a professional engineer may be required to design a proper grading plan for any lot, the cost of which shall be paid by the affected lot Owner.

12. Each Owner shall, from the time construction on his lot has commenced, be responsible for installing and maintaining erosion control measures until such time as a lawn or other plantings sufficient to prevent erosion has been established on the property. These measures include, but are not limited to: installation of silt fence, hay or straw bales and ditch checks; street cleaning following precipitation events or tracking of mud on streets by any vehicle leaving the property; and sodding or seeding and mulching lawn areas. Steep slopes may require installation of straw mat, jute mat or other materials designed to stabilize steep and highly erodable areas. Any areas where erosion control measures have been compromised by weather, construction or any other event, shall be repaired within 7 days of damage. Erosion control measures must be inspected and any necessary maintenance or repairs made after every rainfall exceeding ½ inch and at least once per week. Failure to comply with these requirements may result in sanctions against the Owner by the Town and/or the Wisconsin Department of Industry, Labor and Human Relations or the Wisconsin Department of Natural Resources. All erosion control measures shall be installed and maintained according to the standards and specifications set forth in Wisconsin Construction Site Best Management Practices Handbook and local ordinances.

13. In the event that an Owner or his contractors disturb neighboring property during construction or grading, all disturbed areas shall be immediately restored to their original grade with vegetation of like kind. In the event that any material is deposited onto a street or neighboring property, the Owner of the lot from which the material came shall be responsible for removing the material and restoring the street or property to its original condition.

14. Any Owner violating the restrictions contained herein shall be personally liable for, and shall reimburse Developer and the Association for, all costs and expenses, including attorneys' fees, incurred by Developer or the Association in enforcing the restrictions contained in this Section B. The foregoing shall be in addition to any other rights or remedies that may be available to Developer and the Association..

### **C. OWNERS ASSOCIATION**

1. The Developer has created, or will create, a non-stock, nonprofit Wisconsin corporation known as "Lakeside Conservancy Homeowners Association, Inc." (hereinafter the "Association") for the purpose of managing and controlling subdivision Common Areas (as defined below). The Association shall operate in accordance with the Articles of Incorporation and Bylaws for the Association.

(a) Each Owner shall automatically be a member of the Association and shall be entitled to one membership and one vote for each lot owned, with ownership of a lot being the sole qualification for membership. The membership in the Association appurtenant to a lot shall be owned jointly and severally by all co-owners of the lot, regardless of the form of tenancy, estate, or interest in the lot.

(b) Association membership and voting rights shall be appurtenant to each lot and shall not be assigned, conveyed or transferred in any way except upon transfer of an ownership interest of the lot and then only to the transferee, nor shall membership or voting rights be retained except upon retention of an ownership interest in the lot. Any attempt to make a prohibited transfer or retention of such rights shall be null and void. Membership and voting rights shall not be divided between or among the co-owners of a lot. Co-owners of a lot shall decide between or among themselves how they will exercise their collective right and shall designate one of the co-owners to act on their behalf.

2. The term 'Common Area' shall include the following areas:

(a) Outlots 1 through 13, inclusive of LAKESIDE CONSERVANCY.

(b) The grass area and any fencing and landscaping contained within the public right-of-way of Old North Shore Drive and Lakeside Road. Any portion of the Common Area within a public street right-of-way may only be improved with the consent of the Town and other appropriate public authorities. Consent to any such improvement shall not be considered or construed as an assumption of liability or responsibility for maintenance, nor shall such consent relieve the Association and/or the Owners of duties to maintain such improvements.

3. No improvements shall be allowed on the Common Area except for: landscaping; entrance monuments; a swimming pool; a club house; children's play structures; a gazebo; walking trails; storm-water management facilities and sewer, water, gas, electric, telephone and other utility lines and facilities. Except as provided herein there shall be no construction or placing of storage areas, signs, billboards or other advertising material or other structures, whether temporary or permanent, or materials on the Common Area. There shall be

no commercial or industrial activity undertaken or allowed within the Common Area, nor shall any right of passage across or upon the Common Area be allowed or granted in conjunction with commercial or industrial activity. There shall be no filling, excavating, mining or drilling, removal of top soil, sand, gravel, rock, minerals or other materials nor any building of roads or change in the topography of the Common Area in any manner. Except as may be necessary for proper maintenance and management, there shall be no removal, destruction or cutting of trees or plants within the Common Area. There shall be no dumping of trash, garbage or other unsightly or hazardous material upon or within the Common Area. There shall be no hunting or trapping within the Common Area. Except as may be necessary in conjunction with landscape maintenance, there shall be no operation of any type of motorized vehicle within the Common Area. Anything to the contrary contained herein notwithstanding, Developer and its duly authorized agents may erect and maintain a marketing sign or signs within the Common Area until Developer is no longer an Owner of any lots in LAKESIDE CONSERVANCY. Developer, at Developer's sole discretion, may grant an easement on outlots 2, 3 and 6 or portions thereof to the Waukesha Land Conservancy or similar organizations which would, among other things, allow limited public access to portions of outlots 2 and 6 and give the grantee the right to supervise the maintenance of portions of the Common Area.

4. Each lot shall have an appurtenant undivided fractional interest in the Common Area outlots, the numerator of which shall be one and the denominator of which shall be the total number of lots subject to this Declaration. All deeds and any other conveyances of any lot in LAKESIDE CONSERVANCY shall be deemed to include such undivided interest in the Common Area outlots, whether or not so specifically stated in any such deed or other conveyance.

5. The Association shall have the following duties:

(a) To provide for the maintenance of improvements in Common Areas, including the storm water management and drainage facilities located therein. Common Area maintenance shall be performed in accordance with written guidelines and standards established by Developer for maintenance of Common Areas, as well as generally accepted sound maintenance practices;

(b) To establish rules and regulations governing the use and enjoyment of the LAKESIDE CONSERVANCY Common Areas.

(c) To enforce the provisions of this Declaration.

6. Without limitation, and in addition to those powers bestowed upon the Association in the Articles, Bylaws and Chapter 181 of the Wisconsin Statutes, the Association shall have the following powers, together with any others which may be necessary or incidental to performance of all duties of the Association specified in this Declaration:

(a) To take such action as may be necessary to cause the Common Areas to be maintained, repaired, landscaped (where appropriate) and kept in good, clean, functional and attractive condition.

(b) To take such actions as may be necessary to cause the storm water management and drainage facilities in LAKESIDE CONSERVANCY to be maintained, repaired and kept in a good, clean, functional and attractive condition and in compliance with the requirements of the Town, including an adequate capital reserve fund therefore assessed and collected in accordance with Paragraph C.12, below.

(c) To take such action as may be necessary to enforce the provisions of this Declaration.

(d) To take such action as may be necessary to enforce the rules and regulations governing the use and enjoyment of the LAKESIDE CONSERVANCY Common Areas.

(e) To enter into contracts and to employ agents, attorneys or others for purposes of discharging its duties and responsibilities hereunder.

(f) To grant utility and drainage easements in accordance with the provisions of Section F, below; and

(g) To levy and collect assessments in accordance with the provisions of Paragraph C. 7, below.

7. The Association shall levy and collect assessments in accordance with the following:

(a) The Owner of each lot shall be subject to a general annual (or more frequent, if required) charge or assessment equal to his pro rata share of the costs incurred or anticipated to be incurred by the Association in performing its duties and discharging its obligations. The pro rata share of an Owner of a lot shall be a fraction, the numerator of which shall be one and the denominator of which shall be the total number of lots subject to this Declaration at the time of the assessment. Said costs shall include, but not be limited to: taxes, insurance, repair, replacement and additions to the improvements made to the Common Area, equipment, materials, labor, management and supervision thereof; and all costs for the Association reasonably incurred in conducting its affairs and enforcing the provisions of this Section C. Waukesha County shall not be liable for any fees or special assessments in the event that it should become the Owner of any lots in the subdivision by reason of tax delinquency.

(b) Assessments shall be approved at a duly convened meeting of the Association.

(c) Written notice of an assessment shall be personally delivered to each Owner subject to the assessment or delivered by regular mail addressed to the last known address of Owner.

(d) Assessments shall become due and payable 30 days after the mailing or personal delivery of the notice, as the case may be.

(e) Assessments not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the date due until paid, and such unpaid assessments and the interest thereon shall constitute a



continuing lien on the real estate against which it was assessed until they have been paid in full. The assessments and interest thereon shall also be the personal obligation of any current or subsequent Owner of the lot against which the assessment was made.

(f) The Association may record a document with the Register of Deeds in Waukesha County, Wisconsin, giving notice of a lien for any such unpaid assessment and upon payment or satisfaction of the amount due record a document canceling or releasing any such lien. The failure to file any such notice shall not impair the validity of the lien. All recording and attorney fees relating to any such document shall be borne by the affected Owner.

(g) Upon application by any Owner, any officer of the Association may, without calling a meeting of the Association, provide to such Owner a statement in recordable form certifying (1) that the signer is a duly elected or appointed officer of the Association and (2) as to the existence of any unpaid assessments or other amounts due to the Association. Such statement shall be binding upon the Association and shall be conclusive evidence to any party relying thereon of the payment of any and all outstanding assessments or other amounts due to the Association.

(h) Any lien for assessment may be foreclosed by a suit brought by the Association, in a like manner as the foreclosure of a mortgage on real property.

8. Directors and officers of the Association shall not be liable for any action taken by them in good faith in discharging their duties hereunder, even if such action involved a mistaken judgment or negligence by the directors, officers, agents or employees of the Association. The Association shall indemnify and hold the directors and officers harmless from and against any and all costs or expenses, including reasonable attorney's fees, in connection with any suit or other action relating to the performance of their duties hereunder.

9. Failure of the Association to enforce any provisions contained in this Declaration, upon the violation thereof, shall not be deemed to be a waiver of the rights to do so, or an acquiescence in any subsequent violation.

10. Until such time the Developer is no longer an Owner, the Association shall not have the power to make improvements to the Common Areas in addition to those then in existence (herein referred to as "Additional Improvements") without the written approval of Developer. Thereafter the Association shall not have the power to make Additional Improvements having a cost in excess of Five Thousand dollars (\$5,000.00) without the consent of eighty percent (80%) of the then current Owners.

11. Anything to the contrary contained herein notwithstanding, the Association may not and shall not be dissolved without the prior written consent of the Town Board of the Town of Delafield. In the event that the Association is dissolved the duties of the Association shall become the direct joint responsibilities of the Owners.

**D. STORMWATER MANAGEMENT**

1. The Owners of lots in LAKESIDE CONSERVANCY and the Association shall be responsible for maintenance of the stormwater management measures.

2. The Association shall maintain the stormwater management measures installed on all Outlots in accordance with the approved stormwater design prepared by Jahnke & Jahnke Associates Inc. dated October 21, 2002 and on file in the offices of the Town. Each Owner shall be individually responsible for the maintenance of any portion of a drainage swale that lies within or upon the lot of such Owner.

3. The Town is authorized to access the property to conduct inspections of stormwater practices as necessary to ascertain that the practices are being maintained and operated in accordance with the approved stormwater management plan.

4. The responsible parties, on an annual basis, shall provide maintenance of each stormwater management measure including but not limited to, removal of debris, maintenance of vegetative areas, maintenance of structural stormwater management measures, aeration equipment and sediment removal. Special care shall be taken so as to not damage the synthetic liner of the stormwater detention basin.

5. Owners of lots on which a drainage or storm water easement is designated will be responsible for maintenance of that portion of the easement to Town standards. If the easement is not maintained according to the Town's standards, the Town may perform the necessary maintenance and charge the cost to the property owners pursuant to section 66.60 (16), Wisconsin statutes. The easement areas shall not be filled nor have berms constructed on them.

6. The storm water retention ponds that have been constructed in LAKESIDE CONSERVANCY are required to assist in the removal of sediment from and detention of storm water. The storm water retention ponds are not intended to be used for swimming or as recreational facilities, and any use of the storm water retention ponds for such use is strictly prohibited. Any one entering or using the storm water retention ponds for uses which are prohibited does so at their own risk. By acceptance of a deed or other conveyance of a lot in LAKESIDE CONSERVANCY, each Owner and its respective successors, assigns, heirs and personal representatives thereby waives, to the fullest extent permitted by law, any and all claims for liability against the Developer and the Association, and their respective agents, contractors, employees, officers and directors, for injury or damage to person or property sustained in or about or resulting from the use or existence of the storm water retention ponds. In addition, each Owner (and its successors, assigns, heirs and personal representatives) agrees to indemnify, defend and hold harmless the Developer and the Association, and their respective agents, contractors, employees, officers and directors from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature (including attorneys fees), arising from any injury or damage to any person (including death) or property sustained in or about or resulting from the use or existence of the storm water retention ponds.

7. If the Association or Owner shall fail to discharge its duties under this Declaration to maintain storm water facilities within 60 days of written demand by the Town, the Town may discharge the duties of the responsible party. The cost of the Town incurred in connection therewith (including, but not limited to, actual attorneys' fees) shall be charged to the delinquent Owners by the Town by adding to each Owner's real estate tax statement a charge equal to such Owner's share. Nothing in this Declaration shall be construed to obligate the Town to discharge the duties of a responsible party.

**E. AMENDMENT PROVISIONS**

Any of the provisions of this Declaration may be annulled, waived, changed, modified or amended at any time by written document setting forth such annulment, waiver, change, modification or amendment, executed by the Owners of lands having at least seventy-five percent (75%) of the votes in the Association; provided, however, that any such action must also be approved in writing by the (i) The Town of Delafield Town Board, (ii) Waukesha County and (iii) the Developer so long as it shall be an Owner of any lands in LAKESIDE CONSERVANCY. This Declaration and all amendments shall be executed as required by law so as to entitle it to be recorded, and shall be effective upon recording in the office of the Register of Deeds for Waukesha County, Wisconsin.

**F. RESERVATION BY DEVELOPER OF RIGHT TO GRANT EASEMENTS.**

Developer hereby reserves the right to grant and convey easements to the Town and/or to any public or private utility or communications company, upon, over, through or across those portions of any lot within 10 feet of any lot line and upon, over through or across any portion of any outlot for purposes of allowing the Town, utility or communications company to furnish gas, electric, water, sewer, cable television, fiber optic or other utility service within or through LAKESIDE CONSERVANCY; or through any portions of LAKESIDE CONSERVANCY for purposes of facilitating drainage of storm or surface water within or through LAKESIDE CONSERVANCY. Developer may grant such easements in its own name and without the consent or approval of any lot Owner, until such time as Developer has conveyed legal title to all lots platted or to be platted in LAKESIDE CONSERVANCY, to persons other than a successor-developer. After that time the Board of Directors of the Association created under Section C, above, shall have the power to grant easements to the Town and/or to any public or private utility or communications company upon, over, through or across any portion of any outlot for purposes of allowing the Town, utility or communications company to furnish gas, electric, sewer, cable television, fiber optic or other utility services within or through LAKESIDE CONSERVANCY; or through any portions of any outlots for purposes of facilitating drainage of storm or surface water within or through LAKESIDE CONSERVANCY.

**G. MISCELLANEOUS**

The Town will not be a party to construction of a sound barrier wall nor will the Town participate in any public mitigation of sound or noise abatement associated with any Town or County road that is adjacent to or nearby LAKESIDE CONSERVANCY.

**H. DURATION OF RESTRICTIONS**

These restrictions and any amendments thereto shall be in force for a term of thirty (30) years from the date this Declaration is recorded, and upon the expiration of such initial 30 year term or any extended term as provided herein, this Declaration shall be automatically extended for successive terms of 10 years each, unless prior to the end of the then-current term a notice of termination is executed by the Town of Delafield Town Board and the Owners of at least ninety percent (90%) of all lots subject to this Declaration (and their mortgagees) and is recorded in the office of the Register of Deeds of Waukesha County. These Restrictions shall be deemed to run with the land and shall bind the Owners and their heirs, successors and assigns and be enforceable by any Owner.

IN WITNESS WHEREOF, the undersigned, OLD NORTH SHORE DEVELOPMENT CO.,  
LLC has executed this Declaration of Restrictions this 24 day of July, 2003.

OLD NORTH SHORE DEVELOPMENT CO., LLC

SIEPMANN DEVELOPMENT COMPANY

LIMITED PARTNERSHIP, Member

BY: SIEPMANN REALTY CORP., General Partner

BY: James P. Siepmann  
James P. Siepmann, President

DS PROPERTY VENTURE, LLC, Member

BY: Scott Wood

Scott Wood, Member

BY: William Hinzey

William Hinzey, Member

BY: Amy Seckinger  
Amy Seckinger, Member

STATE OF WISCONSIN)

) SS

WAUKESHA COUNTY)

Personally came before me this 24 day of July, 2003, the above-named Scott Wood, William Hinzey, and Amy Seckinger, to me known to be the persons who executed the foregoing instrument and acknowledged the same.



[Signature]

Notary Public, Waukesha County,

State of Wisconsin

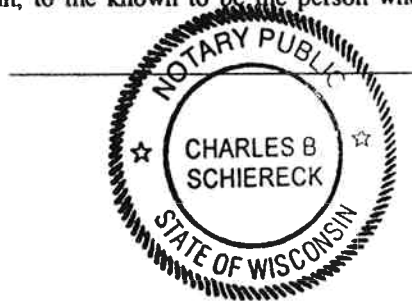
My Commission Expires: 4/1/07

STATE OF WISCONSIN)

) SS

WAUKESHA COUNTY)

Personally came before me this 24 day of July, 2003, the above-named James P. Siepmann, to me known to be the person who executed the foregoing instrument and acknowledged the same.



[Signature]

Notary Public, Waukesha County,

State of Wisconsin

My Commission Expires: 4/1/07

This Instrument Was Drafted By:

Siepmann Development Company

W240 N1221 Pewaukee Rd.

Waukesha, WI 53188

## EXHIBIT A TO DECLARATION OF RESTRICTIONS

### LAKESIDE CONSERVANCY

#### GUIDELINES FOR PLAN APPROVAL

Lakeside Conservancy is an innovative plan for a high quality residential community that blends with the countryside while preserving the natural character of the land. The site plan, which features curved streets, landscaped grounds and generous open space will encourage higher quality homes with enhanced property values. Deed restrictions will require consistent architectural treatment on all building elevations. Consideration of the following guidelines must be given in the design of your home.

**Minimum Size:** Minimum home size must conform to the recorded Declaration of Restrictions. (3,000 square foot minimum living area.)

**Garages:** Homes must have an attached garage for at least three cars. The maximum size of the garage must conform to Town ordinances. Garage entrances must be on the side of the building.

**Siding:** The exterior walls of the home and attached garage must be constructed of wood, brick, stone or stucco. At least 80% of the aggregate of the exterior wall surface areas above the basement level of the residence and attached garage, after deducting the surface area of doors and windows, must be constructed of full-size brick, natural stone or stucco. Certain manufactured exterior siding products such as Hardi-Plank or its equivalent may be allowed upon specific approval of the developer but in no event will aluminum, vinyl, or steel siding be acceptable. Windows may be vinyl or aluminum clad. Shutters may be textured vinyl. Garage and service doors may be wood, steel or fiberglass and must have a raised panel or similar decorative design. The variety of exterior materials should be kept to a minimum and must be used consistently on all elevations. Only materials that are present on the front elevation of the home and attached garage may be used on the other sides of the home.

**Windows:** When shutters are used on the front of a home, they must also be used on appropriate windows on the sides and rear. This also applies to other trim features on the home. In non-masonry openings, casings of at least four inches in width must be used on all windows without shutters and on all doors. Windows in masonry openings shall have stone or brick sills and a brick or stone soldier course or corbeling at the top and sides, or other appropriate, similar detail. The developer may require the placement of windows in walls that would otherwise be blank or featureless. (Chimneys, bays or other projections on a wall are not, by themselves, an architectural "feature".) An attractive, balanced exterior design will take precedence over concerns about furniture arrangement. All windows must have true divided lites or integral grids. The style of the grid must be consistent with architectural style of the home.

**Masonry:** Masonry material used on the exterior walls must terminate only at an inside corner. Other exterior materials such as lap siding, stone, etc. must also terminate at an inside corner.

**Bays:** Any bays and other projections, which extend down to the top of the foundation level must have a foundation beneath. "Hung bays" not extending down to the foundation are permitted if supported by appropriate brackets.

**Fireplaces and Chimneys:** Any residence having one or more fireplaces must have the primary fireplace built of full masonry construction on the interior and exterior of the residence, including the chimney. Chimneys of secondary fireplaces must be of full masonry construction or have a masonry veneer. Chimney chases must have a foundation beneath. All chimneys must have caps of concrete or stone and clay flues.

**Roof:** All two story and story and one-half residence roofs must have a minimum pitch of eight feet in height for each twelve feet in length (8/12), except for rear dormers on a story and one-half residence. All one story residence roofs must have a minimum pitch of ten feet in height for each twelve feet in length (10/12). A lower minimum roof pitch may be allowed in special circumstances if approved in writing by the developer. Roofs must be of either wood shakes, wood shingles or dimensional fiberglass GAF Ultra or Landmark 50 shingles, or their equivalent, in a "weatherwood" color.

**Sloped Lots:** The developer may require on sloping lots that certain basement walls be exposed to minimize the impact on trees, vegetation and drainage as well as allow for a more natural transition between homes. Any exposed basement or foundation walls must be covered with masonry veneer, plaster or stucco. Homes with exposed basement or foundation walls must have a horizontal band at least 12" wide, at the height of the first floor, to create a visual separation between the foundation and the walls above. Garages must be constructed on the high side of the lot unless a special exception is approved by the developer.

**Setbacks:** The minimum setback from any street is 50 feet. The minimum side yard offset is 20 feet. Per Town of Delafield ordinances, the total area covered by improvements (residence, garage, driveways, walks, decks, patios, etc.) must not exceed 25% of the lot area. Per Waukesha County ordinances the total floor area of buildings allowed on the lot, excluding any floor area below ground, shall not exceed 27% of the lot area.

**Colors:** The number of exterior colors should be kept to a minimum. It is recommended that a maximum of two colors be used on the walls and trim and one color for such items as shutters and doors.

**Miscellaneous:**

1. Homes that are too similar in appearance will not be permitted to be constructed in close proximity to one another.
2. The deed restrictions prohibit outbuildings such as storage sheds. Please make sufficient provisions for storage within the perimeter of the home.
3. The house and attached garage must be completed within one year from the start of construction, including basic landscaping. Basic landscaping is defined as seeding or sodding the entire lot.
4. All driveways must be paved with concrete, stamped concrete or brick within one year from the start of construction of the residence.
5. Upon completion of their home each owner is required to install an outdoor electric lamp with a cedar post and photoelectric control. The location of this lamp shall be on the front lot line, eight feet from the house side of the driveway. The lamp shall be maintained by the lot owner in a proper operating manner. Each owner is also required to install a mailbox and post.



The mailbox location will be as directed by the local Postmaster. Maintenance and repair of the mailbox is the responsibility of the lot owner. The estimated cost of this lamp, post and mailbox is about \$1,400.00 and shall be paid at closing.

6. Each lot owner, at the time of home construction, will be responsible for grading their lot so as to direct drainage toward the street or other established drainageway and to prevent an increase in drainage onto neighboring property. In addition, at the time of construction, erosion control measures must be installed and maintained according to the standards and specifications set forth in Wisconsin Construction Site Best Management Practices Handbook and local ordinances.

7. No mast-type antenna may be mounted or installed on any roof. Satellite dish antennas may not have a diameter in excess of 24 inches and are to be placed to the extent feasible in a location that is not visible from the street while still permitting reception of an acceptable quality signal.

**Approvals:** All house plans, yard grades and stake out surveys must be approved by the developer prior to beginning any construction. The developer must also approve all fences, decks, retaining walls and other landscape features. Private outdoor swimming pools are not allowed. Retaining walls are to be constructed of natural stone or wood timbers only. Fences are to be of a decorative style. Chainlink and privacy fences are not allowed. Fencing of entire yards is not allowed.

**All plans submitted for approval must indicate on their face the total square footage of living area by floor and include a computation of the percentage of exterior wall surface area (above the foundation level) to be constructed of brick, stone or stucco.**

In order to properly evaluate a design, the developer will require that house plans submitted for approval must be drawn by a professional home designer or architect. A preliminary plan must be submitted to the developer for review prior to preparation and submittal of final plans.

As provided in the Declaration of Restrictions for Lakeside Conservancy at Paragraph B. 10, the developer has the right to modify these guidelines and the building and use restrictions if, in its opinion, the modification or variance is consistent and compatible with the overall scheme of development.

It is the intention of the developer to assist the lot owners in achieving a compatible arrangement of quality homes. Please consider these guidelines when advising your design specialist.

CONSENT OF MORTGAGE

M&I Bank as mortgagee of any present or future mortgage on the lands subject to the foregoing Declaration of Restrictions, hereby consents to and agrees that its mortgages shall be subject to the foregoing Declaration of Restrictions.

M & I BANK

BY: [Signature]

BRYAN L. DOWNEY

BY: [Signature]

GREG BAUER

STATE OF WISCONSIN )

) SS

COUNTY OF WAUKESHA )

Personally came before me this 12 day of AUGUST, 2008, the above-named BRYAN L. DOWNEY and GREG BAUER to me known to be the VICE PRESIDENT and VICE PRESIDENT respectively of M&I Bank and to me known to be the persons who executed the foregoing instrument and acknowledged the same.



[Signature]  
Notary Public, County of WAUKESHA

State of Wisconsin

My Commission: Exp 4/1/07

REC 8/21/03 DOC. 3050074

CONSERVATION EASEMENT

*This Grant of Conservation Easement* is made this 10 day of FEB., 2003, by **Old North Shore Development Co., LLC**, having an address of W240 N1221 Pewaukee Road, Waukesha, Wisconsin 53188 (hereinafter referred to as Grantor) in favor of **Waukesha Land Conservancy, Inc.**, a non-profit Wisconsin corporation qualified to do business in the State of Wisconsin, having an address of P.O. Box 2572, Brookfield, Wisconsin 53008, (hereinafter referred to as Grantee).

***Witnesseth:***

***Whereas,*** Grantor is the sole owner in fee simple of certain real property located in Waukesha County, Wisconsin, more particularly described in Exhibit A, attached hereto and incorporated by this reference (hereinafter referred to as Property); and

***Whereas,*** the Property possesses, among others, significant natural, scenic, open space and other values (collectively, conservation values) of great importance to Grantor, the people of the Town of Delafield, the people of Waukesha County and the people of the State of Wisconsin; and

***Whereas,*** in particular, the Property described in Exhibit A has various aesthetic, natural, scenic, open space, wetland, and other educational and/or limited recreational values; and,

***Whereas,*** the specific conservation values of the Property are documented in an inventory of relevant features of the Property, incorporated by this reference (Baseline Documentation), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

***Whereas,*** Grantor intends that the conservation values of the Property be preserved and maintained by the continuation of land use patterns, including, without limitation, those relating to habitat preservation and protection, green space preservation and protection, and wetland functions existing at the time of this grant, that do not impair or interfere with those values; and

*Whereas*, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and

*Whereas*, Grantee is a publicly supported, tax-exempt non-profit organization, qualified under Section 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary purpose is to encourage, perpetuate and promote the preservation and protection of natural resources located within and adjacent to Waukesha County including acquisition of property for conservation purposes; and,

*Whereas*, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come.

*Now, Therefore*, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Wisconsin and in particular Section 700.40 of the Wisconsin Statutes, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (hereinafter referred to as Easement).

1. Purpose. It is the purpose of this Easement to assure that the Property will be retained forever in its natural condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities, including, without limitation, those involving education as are consistent with the purpose of this Easement.
2. Rights of Grantee. To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:
  - (a) To preserve, protect and enhance the conservation values of the Property;
  - (b) To enter upon the Property at reasonable times in order to restore or enhance the conservation values, monitor Grantor's compliance with and otherwise enforce the terms of this Easement in accordance with paragraph five (5), provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not

unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and

- (c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to paragraph five (5).

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- (a) There shall be no residential structures nor garages, sheds, or any kind of other buildings or structures, except as specifically provided herein.
- (b) There shall be no roads or driveways allowed, nor shall any portion of the property be used as a means of ingress or egress to any adjacent property, except as required to connect to walking paths on Grantor's adjoining property.
- (c) There shall be no construction or placing of advertising signs, billboards or other advertising material, or any other structures used in connection with advertising permitted, except as specifically provided herein.
- (d) There shall be no industrial or commercial activity undertaken or allowed, nor shall any right of passage across or upon the Property be allowed or granted if that right of passage is used in conjunction with industrial or commercial activity.
- (e) There shall be no construction of barriers to the free movement of animals, except as specifically provided herein, nor the commercial removal of non-game animals.
- (f) There shall be no horses allowed, nor the grazing of livestock of any variety.
- (g) There shall be no active recreation areas permitted, including, but not limited to, soccer fields, baseball diamonds, or golf courses.
- (h) There shall be no camping.
- (i) There shall be no operation of snowmobiles, dune buggies, motorcycles, all-terrain vehicles, bicycles, or other type of vehicle of any kind, except as may be necessary or required in the furtherance of the terms of this Easement or the Management Plan.

- (j) There shall be no storage or parking of vehicles, mobile homes, house trailers, other accessory or utility vehicles, or implements or accessories used in connection therewith.
- (k) There shall be no dumping or temporary storage of trash, manure, plant material, soil, mulch, or any other refuse or debris nor any storage of chemicals, toxic or otherwise, nor petroleum products of any kind, nor salt.
- (l) There shall be no filling, excavation, mining or drilling, removal of topsoil, sand, gravel, rocks, minerals, peat or other materials, nor any change in the topography of the land in any manner.
- (m) There shall be no tilling or cultivating, except as may be mutually agreed upon by Grantee in accordance with paragraph four (4) herein.
- (n) There shall be no non-native plant or animal species introduced on the Property, except as required in furtherance of the terms of the Easement or the Management Plan.
- (o) There shall be no cutting, destruction or removal of living native plants except as otherwise specifically authorized herein or by other law, without the consent of the Grantee in accordance with paragraph four (4) herein.
- (p) There shall be no harvesting of trees for timber or fuelwood, other than the removal of dead trees which create a hazardous condition.
- (q) There shall be no spraying with pesticides, insecticides or herbicides, except as required in furtherance of the terms of the Easement or the Management Plan.
- (r) There shall be no placement or development of stormwater storage, discharge or treatment facilities except as set forth in accordance with paragraph four (4) herein.
- (s) There shall be no septic or other private waste disposal systems allowed.
- (t) There shall be no pets allowed upon or within the easement area, except in accordance with paragraph four (4) herein.

4. Reserved Rights. Grantor reserves to itself, and to its successors and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

A. Outlot Two (2):

1. The right to construct and maintain storm water drainage and management facilities in accordance with the approved storm water design prepared by Jahnke and Jahnke Associates, Inc. and on file with the Town of Delafield. The owners of the lots and the Homeowners Association of ***Lakeside Conservancy Subdivision*** shall be responsible for any and all ongoing maintenance of said storm water facilities and hereby reserve a right of ingress and egress over the outlot to access the facilities in order to fulfill their responsibility.
2. The right to establish, construct and maintain a public walking path as Grantor in consultation with Grantee shall determine to be appropriate.
3. The right to construct, use, operate, maintain and reconstruct as necessary a sanitary sewer main which serves Grantor's adjacent property.
4. The right to construct, maintain, and reconstruct a decorative-type fence along Lakeside Road.
5. The right to grant easements to any public or private utility company for the purpose of transmitting electric energy, signals, television and telecommunication services within or through ***Lakeside Conservancy Subdivision***.

B. Outlot Three (3):

1. The right to establish, construct and maintain a private walking path as Grantor in consultation with Grantee shall determine to be appropriate.
2. The right to construct and maintain storm water drainage and management facilities in accordance with the approved storm water design prepared by Jahnke and Jahnke Associates, Inc. and on file with the Town of Delafield. The owners of the lots and the Homeowners Association of ***Lakeside Conservancy Subdivision*** shall be responsible for any and all ongoing maintenance of said storm water facilities and hereby reserve a right of ingress and egress over the outlot to access the facilities in order to fulfill their responsibility.
3. The right to grant easements to any public or private utility company for the purpose of transmitting electric energy, signals, television and telecommunication services within or through ***Lakeside Conservancy Subdivision***.

C. Outlot Six (6):

1. The right to establish, construct and maintain a public walking path as Grantor in consultation with Grantee shall determine to be appropriate.
2. The right to select, plant and maintain a variety of native grasses, flowers, shrubs and trees all in accordance with the terms and conditions of the Grantee's management plan for the property which is on file with the Waukesha Land Conservancy, Inc. and the ***Lakeside Conservancy Subdivision*** Homeowners Association.
3. The right to construct, maintain and reconstruct a decorative-type fence and stone wall along Lakeside Road and Old North Shore Drive.
4. The right to grant easements to any public or private utility company for the purpose of transmitting electric energy, signals, television and telecommunication services within or through ***Lakeside Conservancy Subdivision***.

D. Lots 7, 8 and 9.

1. Lots seven (7), eight (8) and nine (9) shall not be required to comply with item (t) as set forth in section 3 (prohibited uses) above.

5. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within ninety (90) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a ninety (90) day period, fails to begin curing such violation within the ninety (90) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, including loss of environmental value, and to require the restoration of the property to the condition that existed prior to any such injury. Grantee may apply any damages recovered to the cost of undertaking any corrective action on the property. If Grantee reasonably believes that the circumstances require immediate action to prevent or mitigate significant damage to the Property, Grantee may pursue its remedies under this paragraph without notice to Grantor, provided however, that 1) Grantee will make best efforts to contact Grantor via telephone prior to taking action; and 2) Grantee will notify Grantor of such action in writing within 24 hours of taking such action. Such notice shall describe the actual or potential



damage and the estimated cost and time frame associated with prevention or correction of the damage and a statement of the reasons why action was necessary prior to notice to Grantor.

5.1 Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and attorneys fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys fees, shall be borne by Grantee.

5.2 Arbitration. If a dispute arises between the parties concerning the consistency of any proposed use of or activity with the purpose of this easement, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to arbitration by request made in writing upon the other. Within thirty (30) days of the receipt of such a request, the parties shall select a single arbitrator, to hear the matter. If, for any reason, the parties are unable to agree on the selection of an arbitrator then in that event either party may petition a court of proper jurisdiction and proceed pursuant to Chap. 788 Wis. Stats. In any event the prevailing party shall be entitled to all costs, expenses and attorneys fees.

5.3 Grantees Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

5.4 Waiver of Certain Defenses. Grantor hereby waives any defence of laches, estoppel, or prescription.

5.5 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

6. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. This specifically excludes any costs associated with Grantee's management activity upon the property, if any.

6.1 Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

6.2 Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively Indemnified Parties) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys fees, arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence or actions of any of the Indemnified Parties; (b) the obligations specified in paragraphs 6 and 6.1; and (c) the existence or administration of this Easement.

7. Extinguishment. If circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Wisconsin law at the time, in accordance with paragraph 8.1. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this grant.

7.1 Proceeds. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purposes of paragraph 8, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code of 1954, as amended. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

7.2 Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law.

8. Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1954, as

amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under Chap. 700.40 Wis. Stats. (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.

9. Subsequent Transfers. Grantors agree to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

10. Estoppel Certificates. Upon request by Grantor, Grantee shall within ten (10) days execute and deliver to Grantors any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement as may be requested by Grantor.

11. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: Old North Shore Development Co., LLC  
C/O Siepmann Realty Corp.  
W240 N1221 Pewaukee Road  
Waukesha, Wisconsin 53188

To Grantee: Waukesha Land Conservancy, Inc.  
P. O. Box 2572  
Brookfield, Wisconsin 53008

or to such other address as either party from time to time shall designate by written notice to the other.

12. Recordation. Grantee shall record this instrument in timely fashion in the office Register of Deeds of Waukesha County, Wisconsin, and may re-record it at any time as may be required to preserve its rights in this Easement.

13. General Provisions.

(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Wisconsin.

(b) Severability. If any provision of this Easement, or the application thereof


to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

- (c) Entire Agreement This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.
- (d) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- (e) Joint Obligation. The obligations imposed by this Easement upon Grantor's shall be joint and several.
- (f) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.
- (g) Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- (h) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- (i) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

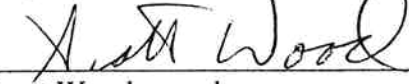
***To Have and To Hold*** unto Grantee, its successors, and assigns forever.

***In Witness Whereof***, Grantor has set its hand on this 10 day of FEB. 2003.

Old North Shore Development Company, LLC.,  
Siepmann Development Company Limited  
Partnership, member  
By: Siepmann Realty Corp., general partner,

By:   
James P. Siepmann, its President

DS Property Venture, LLC, member

By:   
Scott Wood, member

State of Wisconsin     )  
                                      ) ss  
County of Waukesha    )

Personally came before me this 27<sup>th</sup> day of February 2003, the above named  
James P. Siepmann and Scott Wood to me  
known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public State of Wisconsin  
My commission expires Oct. 8, 2006



This Instrument prepared by  
Attorney Steven Schmuki  
11430 W. Bluemound Rd.  
Wauwatosa, WI 53226

ACCEPTANCE

The foregoing Conservation Easement is hereby duly accepted by the Waukesha Land Conservancy, Inc. this 10 day of Feb 2002.

Waukesha Land Conservancy, Inc.

By: Ellen R. Gennrich  
Title: President

State of Wisconsin    )  
                                      )  
County of Waukesha    )

Personally came before me this 10<sup>th</sup> day of February, 2002, the above named Ellen R. Gennrich to me known to be the President of the Waukesha Land Conservancy, Inc. and who has executed the foregoing instrument on behalf of said corporation, and acknowledged the same.

Notary Public State of Wisconsin  
My Commission expires Oct. 8, 2006



**EXHIBIT A**

Outlots 2, 3 and 6 and the west 60 feet of lots 7, 8 and 9 in LAKESIDE CONSERVANCY, being a subdivision of lot 31 and part of lots 26 and 27, Lakeside, lying in the N/E ¼ and S/E ¼ of the S/W ¼ of Section 12, Township 7 North, Range 18 East, Town of Delafield, Waukesha County, Wisconsin.



REC 8/21/03

DOC. 3050075

**PUBLIC TRAIL EASEMENTS**

THIS AGREEMENT made this 24 day of July, 2003.

**WITNESSETH:**

WHEREAS, Old North Shore Development Co., LLC, a Wisconsin Limited Liability Company (hereinafter the "Developer") is the owner of the following described land:

Lots 1 through 32, inclusive, and outlots 1 through 13 inclusive, in LAKESIDE CONSERVANCY, being a subdivision of lot 31 and part of lots 26 and 27, Lakeside, lying in the NE  $\frac{1}{4}$  and SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 12, Township 7 North, Range 18 East, Town of Delafield, Waukesha County, Wisconsin; and

WHEREAS, Developer has agreed to grant a Conservation Easement to the Waukesha Land Conservancy, Inc, (hereinafter the "Land Conservancy") on outlots 2, 3 and 6 and the west 60 feet of lots 7, 8 and 9 in LAKESIDE CONSERVANCY, (hereinafter the "Conservation Easement"); and

WHEREAS, the Conservation Easement, among other things, allows Developer the right to establish, construct and maintain a public walking path as Developer, in consultation with Land Conservancy, shall determine to be appropriate through portions of outlots 2 and 6 in LAKESIDE CONSERVANCY; and

WHEREAS, as a condition of its approval of the plat of LAKESIDE CONSERVANCY, the Town of Delafield has required Developer to establish a public walking path through outlots 1 and 8 in LAKESIDE CONSERVANCY; and

WHEREAS, Developer desires to establish public trail easements upon, over and across portions of outlots 1, 2, 6 and 8 in LAKESIDE CONSERVANCY.

NOW, THEREFORE, Developer does hereby establish and reserve for the benefit of the public, limited, non-exclusive, permanent easements upon, over and across those portions of outlots 2 and 6 in LAKESIDE CONSERVANCY lying within a corridor 20 feet in width as described on Exhibit A and depicted on Exhibit B attached hereto and made part hereof, (hereinafter the "Conservation Area Trail Easement Corridor"), and

upon, over and across those portions of outlots 1 and 8 in LAKESIDE CONSERVANCY as described on Exhibit A and depicted on Exhibit "B" (hereinafter the "Lakeside Road Trail Easement") subject to the following:

Conservation Area Trail Easement Corridor

1. The purpose of the easement granted herein is to provide for pedestrian access over, upon and within the Conservation Area Trail Easement Corridor for public recreation and enjoyment of the various aesthetic resources located on outlots 2 and 6 in LAKESIDE CONSERVANCY.
2. Public access shall be limited to a trail area not more than 6 feet in width as maybe laid out from time to time within the Conservation Area Trail Easement Corridor and the public shall have no other right of access, other than visual access, to any other property of the Developer, its successors and assigns.
3. The Land Conservancy, after consultation with the Developer or its successors or assigns, shall be allowed to relocate the trail anywhere within the Conservation Area Trial Easement Corridor as may be deemed necessary by the Land Conservancy from time to time in order to protect the natural resources within the Conservation Area Trail Easement Corridor from significant damage. Construction of any relocated trail shall be the responsibility of the Land Conservancy.
4. Maintenance of the trail within the Conservation Area Trail Easement Corridor shall be the responsibility of the Developer or its successors and assigns. Developer hereby agrees that it shall not erect or permit any construction within the Conservation Area Trail Easement Corridor which will in any way interfere with the rights granted herein.

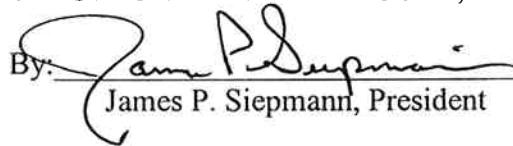
Lakeside Road Trail Easement

1. The purpose of the easement granted herein is to provide for pedestrian access over and upon the Lakeside Road Trail Easement to connect with the Conservation Area Trail Easement Corridor.
2. Public access shall be limited to a trail area not more than 6 feet in width as constructed by Developer, lying within a corridor 20 feet in width as described on Exhibit A and depicted on Exhibit B.
3. Maintenance of the Lakeside Road Trail shall be the responsibility of the Developer and its successors and assigns. Developer hereby agrees that it shall not erect or permit any construction which shall in any way interfere with the rights granted herein.

These Easements shall run with the land and shall be binding upon the parties hereto and their respective successors and assigns, including, without limitation, all subsequent owners of outlots 1, 2, 6 and 8, in Lakeside Conservancy and all persons claiming under them.

IN WITNESS WHEREOF, the Developer has executed this Agreement the day, month and year first written above.

OLD NORTH SHORE DEVELOPMENT CO, LLC  
BY: SIEPMANN DEVELOPMENT COMPANY  
LIMITED PARTNERSHIP, MEMBER  
BY: SIEPMANN REALTY CORP, General Partner

By:   
James P. Siepmann, President

By: DS Property Venture, LLC, Member

By:   
Scott Wood, Member

The Waukesha Land Conservancy, Inc. as holder of a Conservation Easement hereby accepts and approves this Public Trail Easement.

WAUKESHA LAND CONSERVANCY, INC.


By: Ellen R. Hennrich

Its: President

State of Wisconsin )  
 ) ss  
County of Waukesha )

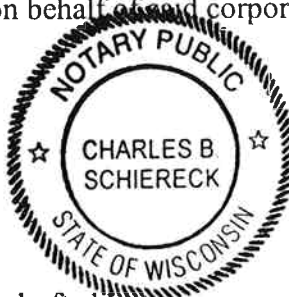
Personally came before me this 24 day of JULY 2003, the above  
named JAMES P. SIEPMANN and SCOTT WOOD to  
me known to be the persons who executed the foregoing instrument and acknowledged  
the same.

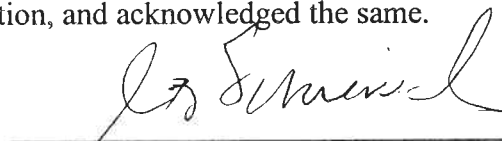


  
Notary Public State of Wisconsin  
My commission expires 4/1/07

State of Wisconsin )  
 ) ss  
County of Waukesha )

Personally came before me this 24 day of JULY 2003, the above  
named ELLEN R. GENNRICH to me known to be the  
PRESIDENT of the Waukesha Land Conservancy, Inc. and who has executed  
the foregoing instrument on behalf of said corporation, and acknowledged the same.



  
Notary Public State of Wisconsin  
My commission expires 4/1/07

This Instrument was drafted by:

OLD NORTH SHORE DEVELOPMENT CO.  
W240 N1221 Pewaukee Road  
Waukesha, WI 53188

## Exhibit A to Public Trail Easements

### Lakeside Conservancy Trail Easement: (North)

A twenty foot (20') wide trail easement described as follows: All that part of Outlots Six and Eight Lakeside Conservancy lying in the Southwest Quarter (SW ¼) of Section 12, Town 7 North, Range 18 East, Town of Delafield, Waukesha County, Wisconsin, bounded and described as follows: Commencing at the northwest corner of Outlot Six; thence North 88°57'37" East along the north line of Outlot Six 292.68 feet to the place of beginning of the centerline of said twenty foot wide trail easement; thence South 14°12'30" West 65.35 feet; thence South 17°23'30" West 45.17 feet; thence South 14°16'30" East 40.10 feet (to a point referred to as point "A"); thence North 72°38'46" East 8.60 feet; thence North 56°02'30" East 59.08 feet; thence South 82°47'40" East 87.69 feet; thence South 67°04'00" East 84.69 feet; thence South 8°07'48" West 81.32 feet; thence South 41°09'20" West 89.65 feet; thence South 32°40'30" West 86.13 feet; thence South 28°04'20" West 93.50 feet; thence South 56°30'17" West 81.54 feet; thence Due West 91.00 feet; thence North 65°10'45" West 88.14 feet; thence North 73°52'20" West 85.20 feet; thence South 0°26'23" East 571.14 feet; thence South 89°33'37" West 10.00 feet to a point on the west line of Outlot Eight North 0°26'23" West 90.00 feet from the southwest corner of said Outlot.

Also commencing at the aforementioned point "A"; thence South 72°38'45" West 24.92 feet; thence South 62°48'00" West 80.95 feet; thence South 72°21'30" West 86.78 feet; thence North 77°38'36" West 95.24 feet to a point on the west line of Outlot Six South 0°26'23" East 190.37 feet from the northwest corner of said outlot.

### Lakeside Conservancy Trail Easement: (South)

A twenty foot (20') wide trail easement described as follows: All that part of Outlots One and Two Lakeside Conservancy lying in the Southwest Quarter (SW ¼) of Section 12, Town 7 North, Range 18 East, Town of Delafield, Waukesha County, Wisconsin bounded and described as follows: Commencing at the northwest corner of Outlot One; thence South 0°26'23" East along the west line of Outlot One 90.00 feet to the place of beginning of the centerline of said Twenty foot wide trail easement; thence North 89°33'37" East 10.00 feet; thence South 0°26'23" East 641.00 feet; thence North 82°43'48" East 38.84 feet; thence South 83°28'07" East 69.45 feet; thence South 85°56'54" East 72.18 feet; thence South 45°08'00" East 91.71 feet; thence South 49°15'00" East 130.68 feet; thence South 61°44'00" East 60.18 feet; thence South 82°41'39" East 78.64 feet; thence South 80°38'50" East 86.15 feet; thence South 33°18'38" East 41.88 feet; thence South 4°34'30" East 125.40 feet; thence South 18°30'18" East 51.67 feet; thence South 9°18'30" West 36.48 feet; thence South 49°10'00" West 53.53 feet; thence South 70°55'30" West 56.61 feet; thence North 83°11'13" West 105.19 feet to a point on the west line of Outlot Two North 11°40'23" West 231.53 feet from the southerly most corner of said Outlot.