

**Amended and Restated**  
**Declaration Of Restrictions, Covenants and Easements**  
**And Establishment of Homeowners Association**  
**For**  
**Woodland Shores Subdivision**

**This Amended and Restated Declaration** is made this \_\_\_\_ day of February, 2005, by AND-SHORES, LLC, a Wisconsin limited liability company.

**Recitations**

**Whereas**, Developer (as hereinafter defined) previously subjected the Woodland Shores Subdivision, consisting of ten (10) Lots (as herein defined) and five (5) Outlots (as herein defined), located in the Town of Grafton, Ozaukee County, Wisconsin ("Town"), as more particularly described on Exhibit A attached hereto (the "Land"), to the conditions, restrictions, covenants, reservations and easements set forth in that certain Declaration of Restrictions, Covenants and Easements and Establishment of Homeowners Association for Woodland Shores Subdivision, recorded in the Office of the Register of Deeds for Ozaukee County, Wisconsin on November 2, 2004 as Document No. 0805533 (the "Original Declaration"); and

**Whereas**, Developer, as owner of ninety percent (90%) of the Lots of the Woodland Shores Subdivision and pursuant to the rights granted Developer in Section 5.04 of the Original Declaration, desires to amend and restate the Original Declaration in its entirety for the benefit of the Subdivision as a whole and for the benefit of Developer and each Lot Owner (as hereinafter defined) as hereinafter set forth, and the Original Declaration shall have no further force and effect from and after the date hereof. For purposes hereof, this Amended and Restated Declaration shall be referred to herein as this "Declaration."

**Declaration**

**Now, Therefore**, Developer hereby declares that the Land (except for dedicated streets and utilities) shall be subject to the conditions, restrictions, covenants, reservations and easements hereinafter set forth, which shall inure to the benefit of the Developer and the Lot Owners and the Association and shall be binding upon the Lot Owners, the Association, and their respective heirs, personal representatives, successors, assigns, transferees, mortgagees, licensees, lessees, employees, agents and invitees and any other user of the Subdivision, and shall be conditions, restrictions, covenants, reservations and easements running with the Land, including without limitation each Lot and Outlot and all Common Areas.

**Definitions, Purposes and Use Restrictions**

1.01 Definitions

- a) "Additional Property" shall mean those portions of the 44 acres of land located north of and adjacent to the Subdivision, as may be declared by Developer or any Successor Developer from time to time to be a part of Woodland Shores Subdivision under an

instrument executed by Developer and recorded in the office of the Register of Deeds of Ozaukee County, Wisconsin.

- b) “Association” shall mean the Woodland Shores Homeowners Association, a non-profit, non-stock homeowners’ association created under this Declaration.
- c) “Board” or “Board of Directors” shall mean the officers of the Association appointed or elected in accordance with Section 3.07 of this Declaration who shall serve as the Board under this Declaration and shall operate and manage the Association as a Board of Directors.
- d) “Town” shall mean the Town of Grafton, a municipal corporation.
- e) “Common Area” or “Common Areas” shall mean Outlots 1, 2, 3, 4, and 5 and any other area within the Subdivision which is not identified as a Lot in this Declaration or on the Subdivision Plat, and includes, without limitation, the following: all areas conveyed by the Developer to the Association; any street or road not yet dedicated to the Town or any dedicated street or other dedicated area for which the Town has not assumed responsibility for maintenance; the detention ponds; the walking trails; all entranceway improvements; the Lake Michigan bluff located within the Subdivision; all ravines; landscaping located on any part of the Subdivision other than a Lot; signs; the Developer Landscaping; the stairway access to Lake Michigan; and all right, title and interest of the Developer or the Association in the land from the top of the bluff to the high water mark of Lake Michigan; all right, title and interest of Developer or the Association, if any, to use the Lake Michigan beach or land area contiguous to the Developer’s Land between the ordinary high water mark of Lake Michigan and the waters actual edge. Notwithstanding the location of any portion of a Lot on the Lake Michigan bluff, the entire Lake Michigan bluff within the Subdivision and the ravines located below said bluffs, and all right, title and interest of the Developer or the Association in the land from the top of said bluff to the high water mark of Lake Michigan and all right, title and interest of Developer or the Association, if any, to use the Lake Michigan beach or land area contiguous to the Developer’s Land between the ordinary high water mark of Lake Michigan and the waters actual edge are Common Areas.
- f) “Conservation Easement Holder” shall mean the land trust or other easement holder granted a conservation easement upon, over, across and through Outlot 3 pursuant to Section 15.12 of this Declaration.
- g) “Conveyance Event” shall mean that point in time when both of the following have occurred: (i) the closing of the initial sales of 80% of the Lots by the Developer, and (ii) the recording of the final plat of Woodland Shores Subdivision in the office of the Register of Deeds of Ozaukee County, Wisconsin.
- h) “Detention Pond Maintenance Easement” shall mean the easement granted by the Developer to the Town of Grafton, as amended from time to time. The Detention

Pond Maintenance Easement will be recorded with the office of the Register of Deeds of Ozaukee County, Wisconsin.

- i) “Developer” shall mean AND-SHORES, LLC, a Wisconsin limited liability company, and any Successor Developer.
- j) “Developer Landscaping” shall mean the landscaping and certain improvements installed by the Developer on certain Lots and in the Common Areas as part of the creation of the Subdivision. Notwithstanding anything to the contrary contained in this Declaration, there shall be no Developer Landscaping on Outlot 3.
- k) “Development Agreement” shall mean the Development Agreement between the Town and the Developer dated as of October 15, 2003, and recorded in the office of the Register of Deeds of Ozaukee County, Wisconsin, as amended from time to time.
- l) “Family” shall mean (i) one or more persons related by blood, marriage or adoption who are living, sleeping, cooking and eating at a Home as a single housekeeping unit, or (ii) not more than two persons unrelated by blood, marriage or adoption who are living, sleeping, cooking and eating at a Home as a single housekeeping unit. The term “Family” shall exclude any person or group of persons where three or more persons are not related as described in this subparagraph 1.01 (k).
- m) “Home” shall mean a single residential building designed and used as a dwelling for one Family. The term “Home” does not include any garage, including without limitation, an attached garage.
- n) “Lot” shall mean a platted lot within the Subdivision identifiable by reference to a lot number, regardless of whether such Lot is currently platted or platted at some future time. The term “Lot” shall include, without limitation, each Lot shown on the final plat of Woodland Shores Subdivision recorded in the office of the Register of Deeds of Ozaukee County, Wisconsin.
- o) “Lot Owner,” “Lot Owners” or “Co-Owners” shall mean the holder(s) of fee simple title to a Lot. The terms “Lot Owner,” “Lot Owners” or “Co-Owners” shall include land contract vendees and vendors. The terms “Lot Owner,” “Lot Owners” or “Co-Owners” shall not include the holder(s) of any leasehold interest or any mortgage or other lien or encumbrance.
- p) “Master Grading Plan” shall mean the Master Grading and Erosion Control Plan prepared by National Survey & Engineering, dated July 23, 2003 and last revised May 18, 2004, on file at the Town of Grafton.
- q) “Outlot” shall mean a platted outlot within the Subdivision identifiable by reference to an outlot number, regardless of whether such outlot is currently platted or platted at some future time. The term “Outlot” shall include, without limitation, each Outlot shown on the final plat of Woodland Shores Subdivision recorded in the office of the Register of Deeds of Ozaukee County, Wisconsin.

- r) "Property" shall include each Lot and all Improvements located thereon.
- s) "Section" shall mean all those provisions within a numbered heading of this Declaration.
- t) "Structure" and "Improvement" shall be synonymous and shall both mean and include any structure placed on or improvement to any portion of the Subdivision, regardless of whether such structure or improvement is temporary or permanent in character and regardless of the intended use of such structure or improvement, including without limitation, any and all of the following: building, outbuilding, shed, booth, garage, car-port, and storage facility; exterior lighting or electric fixture; antennae; tower; pole; bug control device; satellite dishes; transmission devices; and computer devices; fence, retaining or other wall; fountain; swimming or wading pool; pond; plantings; driveway, sidewalk and walkway; pet kennels and run lines; screened or other type of porch, patio, deck or gazebo; tree house or other exterior play equipment including skateboard ramps; berms and swales; and any other type of equipment or facility for any decorative, recreational or functional purpose of any kind; and all additions or alterations to or deletions from any of the foregoing. Any structure or improvement located entirely within the exterior perimeter walls of a Home constructed on a Lot shall not be included within the terms "Structure" or "Improvement". Use of the phrase "Structure or Improvement" or any other use of such words shall not imply different meanings for such terms.
- u) "Subdivision" shall mean the lands described on the attached Exhibit A, and such other parcels of real estate, if any, as may be declared by Developer from time to time to be a part of Woodland Shores Subdivision under an instrument executed by Developer and recorded in the office of the Register of Deeds of Ozaukee County, Wisconsin. The term "Subdivision" does not include any lands now or hereafter dedicated to the Town.
- v) "Subdivision Plat" means the final plat of Woodland Shores Subdivision, recorded in the office of the Register of Deeds of Ozaukee County, Wisconsin, as such plat may be amended or expanded from time to time.
- w) "Successor Developer" shall mean any person, firm or entity designated by Developer or the heirs of the sole member of Developer or the personal representative of the estate of Developer's sole member, but only if such Successor Developer expressly assumes in writing all then-remaining obligations of Developer to the Town under that certain Development Agreement dated October 15, 2003, recorded in the office of the Register of Deeds for Ozaukee County, Wisconsin, as amended, relating to development of the Subdivision or portions thereof.
- x) "Forestry Plan" shall mean the Forestry Compliance Plan and Land Management Synopsis prepared for Woodland Shores by Jim Uhrinak, dated September 2, 2004, as amended and recorded from time to time, which among other things, governs the maintenance, restoration and enhancement of the woodlands and activities within the Common Areas, the Woodland Buffer Zones and the Primary Environmental

Corridor. The Forestry Plan is hereby incorporated into and made a part of this Declaration as Exhibit B and copies of the Forestry Plan may be obtained from the Developer until a Conveyance Event occurs and thereafter, from the Association. In the event Developer exercises its option pursuant to Section 5.12 herein and grants a conservation easement upon, over, across and through Outlot 3 for the benefit of a Conservation Easement Holder, the Forestry Plan cannot be amended, restated, terminated or revised in any manner whatsoever without the prior written approval of the Conservation Easement Holder.

- y) "Landscape Plan" shall mean the Woodland Shores Landscape Standards (Part A) and the Woodland Shores Landscape Guidelines and Designer Advisory (Part B) prepared for Woodland Shores by Jim Uhrinak, which among other things, provides certain standards, guidance and recommendations for landscaping within the Subdivision. The Landscape Plan is hereby incorporated into and made a part of this Declaration as Exhibit C and copies of the Landscape Plan may be obtained from the Developer until a Conveyance Event occurs and thereafter, from the Association. The Landscape Plan is intended to complement the integrity of Outlot 3.
- z) "Consulting Arborist" shall mean an arborist selected by the Developer prior to the Conveyance Event, and thereafter, selected by the Association, which arborist must be a member of the American Society of Consulting Arborists. The Consulting Arborist must have expertise in natural area management and must be familiar with the Subdivision botanical inventory and natural area preserves and the Forestry Plan.
- aa) "Woodland Buffer Zone" shall mean the woodland buffer areas established for each Lot as defined and described in the Forestry Plan.

## 1.02 General Purpose

The general purpose of this Declaration is to help assure that the Subdivision will become and remain an attractive, safe and healthy residential area and in furtherance of such purpose: to preserve and maintain high aesthetic standards for all Improvements, as well as the natural beauty and quality of open spaces and Common Areas within the Subdivision; to help assure the best use and most appropriate development and improvement of each Lot; to protect owners of Lots against use of surrounding Lots which may detract from the residential value or enjoyment of their Property; to guard against the erection or maintenance of garish or poorly designed or proportioned structures; to obtain a harmonious and aesthetically pleasing blend of materials, structures, and color schemes; to ensure a residential development of the Subdivision consistent with high aesthetic standards and the purposes for which each such Lot is platted; to encourage and secure the erection of attractive residential structures with appropriate locations on the Lots; to prevent installation of Improvements which may adversely affect the aesthetic appearance of a Lot or surrounding area; to secure and maintain a proper spatial relationship of buildings, Structures and other Improvements; to encourage development of the Subdivision in a manner consistent with a conservation subdivision and natural area aesthetics and the preservation of the natural environmental

amenities and natural habitats; and to otherwise secure mutual enjoyment of benefits for owners and occupants of residential property within the Subdivision.

### 1.03 Use of Lots

- a) Each Lot shall be used solely for residential purposes by one Family, except that business activities may be conducted in or from any Home if confined solely to the transaction of business by telephone or computer. The term “residential purposes” shall include only those activities necessary for or normally associated with the use and enjoyment of a home site as a place of residence and limited recreation. Except for Lots purchased by Lakeside Development Company (“Lakeside”), Lots shall not be purchased in the Subdivision solely for the purpose of investment or resale.
- b) Only one Home may be constructed on each Lot and no garage, tent, or other Improvement (except for the Home) shall be used for temporary or permanent living or sleeping for any person, including without limitation, family or guests, without the prior approval of the Board, which may be granted or withheld in the Board’s sole discretion. If permitted by all governmental authorities having jurisdiction, a Lot Owner may purchase two adjoining Lots in the Subdivision and treat the two Lots as one Lot for the purposes of construction of a Home on the combined Lots, but the Home (including the size of the Home) and the location of the Home on the combined Lots must otherwise comply with all terms and conditions of this Declaration. For construction and improvement purposes, the two adjoining Lots will be deemed to be one Lot, but for all other purposes of the Declaration, including without limitation, membership in the Association, voting rights and share in common area expenses, the owner of the two adjoining Lots will be deemed to own two Lots.
- c) Each Lot Owner shall maintain and repair his/her Property, including without limitation, all open spaces and all front, side, and rear yards, so that the Property is at all times in good condition and repair and neat in appearance when viewed from any street or other Lot and, if not properly maintained and repaired, the Association may perform such maintenance, repairs and replacements as it deems necessary or appropriate and charge the costs thereof to the Lot Owner and levy a Special Assessment for such costs against the Lot. Developer may, but shall not be obligated to, improve any areas of the Subdivision other than those Lots owned by Lot Owners other than Developer with grass, mature trees, shrubs, foliage and other plantings and cut grass, trees, hedges, foliage and other plantings as Developer sees fit, as long as such improvements conform to the Forestry Plan and the Landscape Plan. The Association may, but shall not be obligated to, improve any areas of the Subdivision other than Lots owned by Lot Owners and Developer with grass, trees, hedges, foliage and other plantings and cut grass, trees, hedges, foliage and other plantings as the Association sees fit, as long as such improvements conform to the Forestry Plan and the Landscape Plan and are not in violation of the provisions of Sections 1.08(g) and 1.08(h) hereof.
- d) No Lot shall be used in whole or in part for conducting any unlawful activity or for any unlawful purpose. No noxious odors or loud noises shall be permitted to escape

from any Home or Lot nor shall any activity be permitted or engaged in which constitutes a public or private nuisance.

1.04 Use and Maintenance of Common Areas; Improvements in Rights-Of-Way

- a) Except as otherwise set forth in this Declaration, all Common Areas, including Outlots 1, 2, 3, 4, and 5, shall be used as open space for the common benefit of the Lot Owners and not for recreational or other activities, unless previously approved in writing by the Board, which approval may be granted or withheld in the Board's sole discretion (except, in the event Developer grants a conservation easement upon, over, across and through Outlot 3 for the benefit of a Conservation Easement Holder, then the prior written approval of the Conservation Easement Holder shall be required with respect to the use of Outlot 3). Any approval may be revoked by the Board and/or the Conservation Easement Holder (if applicable) at any time.
- b) The Association shall maintain and repair all Common Areas and the Improvements located thereon so that the Common Areas and Improvements located thereon are in good condition and repair and neat and attractive in appearance and in compliance with the Forestry Plan. No Lot Owner and no other person or entity (other than Developer and the Association) shall erect any Structure or Improvement in the Common Areas. Developer and the Association shall have the right, but not the obligation, to construct and install Improvements in the Common Areas as they deem necessary and appropriate, including without limitation, signs, monuments and structures and any such Improvements constructed by Developer or the Association on any Common Areas shall be maintained, repaired and replaced by the Association; provided, however, that any sign, monument, structure or any other Improvement to be constructed on Outlot 3 shall be subject to the prior written approval of the Conservation Easement Holder, if applicable.
- c) Upon the occurrence of the Conveyance Event, all right, title and interest of Developer to the Common Areas shall automatically vest in the Association without need of any further document, instrument or action of the Developer or the Association and by acceptance of a deed to a Lot, each Lot Owner and member of the Association agrees that upon the occurrence of the Conveyance Event, the Association is deemed to have accepted delivery of all of Developer's right, title and interest in and to the Common Areas. Notwithstanding the foregoing, at any time following recording of the final plat of the Subdivision, regardless of the number of Lots sold by the Developer, the Developer shall have the right, but not the obligation, at Developer's option and in Developer's sole discretion, to convey all right, title and interest of the Developer in the Common Areas to the Association, upon recording in the office of the Register of Deeds of Ozaukee County, Wisconsin, of a document of conveyance of the Common Areas by Developer to the Association. In such event, each Lot Owner and member of the Association agrees that upon the recording of such conveyance, the Association shall be deemed to have accepted delivery of all of Developer's right, title and interest in and to the Common Areas. The conveyance of the Common Areas to the Association following the recording of the final plat of

Woodland Shores Subdivision in the office of the Register of Deeds of Ozaukee County, Wisconsin but prior to the closing of the initial sales of 80% of the Lots by the Developer, shall not be and shall not be deemed to be a Conveyance Event hereunder.

- d) Any Subdivision Improvements located in any public right-of-way or future public rights-of-way lying contiguous to or within the Subdivision are Common Areas and shall be constructed, installed and maintained by the Association and may be removed by the Association at any time, at its option.
- e) No Lot Owner and no other person or entity, other than Developer and the Association, shall construct or install any Improvement in a Common Area. Any Improvements constructed in a Common Area must be constructed in compliance with the Forestry Plan. No Lot Owner and no other person or entity, other than Developer and the Association, shall store or leave any personal property of any kind whatsoever in any Common Area at any time. There shall be no activity conducted by any Lot Owner or any other person or entity in any Common Area, including without limitation, on the Lake Michigan beach, which would endanger the property or lives of any persons. There shall be no hunting in the Subdivision other than prescribed for herbivory control on Outlot 3 as determined necessary by the Conservation Easement Holder (if applicable), with the reasonable cooperation and approval of the Association.
- f) A survey monument denoting the meander corner of the NE corner of the NE ¼ of S 28, T10N, R22E, is centrally located along the south Lot line of Lot 8. The survey monument shall not be altered or moved at any time. Any damage caused to the survey monument by the owner(s) of Lot 8 or their agents, employees, contractors, licensees, guests, invitees, lessees, family members, successors or assigns shall be repaired by the owners of Lot 8, at their cost and expense. If the owners of Lot 8 fail to repair any such damage, then the Association shall have the right to repair such damage and the costs of repair shall be reimbursed to the Association upon demand. The Association shall have a lien against Lot 8 for the amount of any such costs and expenses.

#### 1.05 Restrictions on Use of Recreational Vehicles

Neither recreational vehicles (which shall include without limitation, motorcycles, snowmobiles, trail bikes, travel trailers, vans, motor homes, dune buggies, go carts and other off-street motorized vehicles of any kind and other vehicles as defined by the Board) nor trucks shall be parked, kept or stored on any Common Area or undeveloped area of the Subdivision, nor shall any such recreational vehicle or truck be parked, kept, or stored on any Lot outside an enclosed garage, without the prior approval of the Board, which approval may be granted or withheld by the Board in the Board's sole discretion (and if Developer grants a conservation easement upon, over, across and through Outlot 3 for the benefit of a Conservation Easement Holder, the prior written approval of the Conservation Easement Holder shall be required with respect to Outlot 3). Such

recreational vehicles shall not be used or operated on any Lot or in a Common Area or otherwise within the Subdivision except on dedicated streets in accordance with applicable traffic laws.

1.06 Animals and Pets

No livestock, poultry, reptile, dogs, cats, or other animal of any kind shall be raised, bred or kept on any Lot, except that a total of two usual and customary household pets as may be approved by the Board from time to time may be kept on a Lot so long as not kept, bred or maintained for any commercial purpose or in an unreasonable manner. It is understood that dogs and cats are approved household pets. The right of any person or entity to keep any pet on any Lot is subject to the condition that the pet is not allowed to unreasonably annoy any other Lot Owner or person or entity and is not allowed to run at large and in that regard, excessive barking by dogs, as determined by the Board, shall not be permitted. No dangerous dogs as defined by the Board may be kept on any Lot.

1.07 Garbage and Refuse

No Lot shall be used or maintained for dumping or storage of trash, garbage, or debris of any kind, except for temporary storage of household garbage in sanitary covered containers suitably screened from view from streets and adjoining Lots and Common Areas. There shall be no burning or burial of any garbage, trash, or debris at any time, other than burning of leaves and light brush if approved in writing in advance by both the Board and the Town Fire Chief.

1.08 Developer Landscaping; Easements; Maintenance; Common Areas; Trees

a) Developer Landscaping. In order to preserve the natural amenities of the Subdivision and to provide for the enhancement of property values for the benefit of the Subdivision as a whole and for the benefit of each Lot Owner, Developer intends to install the Developer Landscaping on certain Lots and in the Common Areas (except for Outlot 3, where no Developer Landscaping is permitted) of the Subdivision. The Developer Landscaping may include various hedge and screen plantings, berms, trees, shrubbery and related landscaping which are to be constructed by the Developer on certain Lots and in the Common Areas (except for Outlot 3) in the Subdivision. The Developer Landscaping also includes the construction of improvements and landscaping for the entranceway to the Subdivision. Developer reserves the right to change the Developer Landscaping at any time, in its sole discretion.

This Declaration hereby grants a non-exclusive, permanent easement to Developer and the Association and their agents, employees, and contractors upon, across, over and through all of the Lots and Common Areas (except for Outlot 3) of the Subdivision, for the purpose of construction and installation and maintenance and repair of the Developer Landscaping.

- b) Forestry Plan. The Developer, the Association, each Lot Owner and, if applicable, the Conservation Easement Holder, shall be governed by the stewardship ethic described in the Forestry Plan. Each Lot Owner shall comply with the guidelines set forth in the Forestry Plan for the preservation and management of existing and planned natural features occurring on the Land and for managing and sustaining the quality of the natural habitat on the Land. This Declaration hereby grants the Developer, the Association, and the Conservation Easement Holder (if applicable), an easement upon, across, over, and through all of the Lots and Common Areas of the Subdivision to establish, preserve, maintain, and repair the natural habitat and existing and planned natural features in the Common Areas and for the purpose of implementing the suggestions, programs, plans and guidelines established in the Forestry Plan. In the event Developer exercises its option pursuant to Section 5.12 of this Declaration and grants a conservation easement upon, over, across and through Outlot 3 for the benefit of a Conservation Easement Holder, all land management and land use decisions regarding Outlot 3 shall be at the sole discretion of the Conservation Easement Holder and no activity, management, intervention, repair or other use of Outlot 3 by the Developer, Association, each Lot Owner and the public is permitted except as governed by the rules, policies and procedures established by the Conservation Easement Holder (which rules, policies and procedures shall be consistent with the rights granted such Conservation Easement Holder under the conservation easement).
- c) Walking Trails. Developer has constructed certain Walking Trails within Outlots 1 and 3. The Walking Trails consist of either a “no mow” grass or “mulched” surfaces. The Walking Trails shall be used exclusively by the Lot Owners. The Walking Trails shall be used exclusively for pedestrian purposes and no motorized vehicles or bicycles of any kind shall be used on the Walking Trails. The Walking Trails shall be maintained by the Association, including, but not limited to mowing, weeding and surface restoration. Developer and/or the Association may change the location of the Walking Trails at any time, in their sole discretions until such time that Developer grants a conservation easement upon, over, across and through Outlot 3 for the benefit of a Conservation Easement Holder, then the Conservation Easement Holder shall have the right to relocate, restrict and/or decommission Walking Trails (or portions thereof) within Outlot 3 in its sole discretion, provided that the Conservation Easement Holder shall reasonably cooperate with the Association in connection therewith.
- d) Maintenance of Landscaping on Lots. Each Lot Owner shall be responsible at its cost and expense for maintaining and repairing and replacing that portion of the Developer Landscaping located on said Lot Owner’s Lot and any other landscaping installed by such Lot Owner on his/her Lot. No Lot Owner shall be permitted to change the Developer Landscaping or any other landscaping previously approved by the Board and located on said Lot Owner’s Lot without first obtaining the written consent of the Association, which consent may be granted or withheld in the sole discretion of the Association.

In the event a Lot Owner or its agents, employees, contractors or invitees changes the Developer Landscaping located on any Lot or the original landscape plan approved by the Board for the Lot, the Developer and/or the Association and their respective employees, contractors and agents shall have the right to enter upon said Lot to correct, repair, maintain and restore the Developer Landscaping and other landscaping to its original condition. An irrevocable right and permanent easement is hereby granted by each Lot Owner for the benefit of the Developer and the Association upon, over, across and through each Lot and the Common Areas for the purpose of maintaining and making repairs to the Developer Landscaping and other landscaping and for the purpose of exercising the rights granted to Developer and the Association in this Section 1.08(d). The Lot Owner shall be responsible for all costs and expenses incurred by the Developer and/or the Association in connection with the correction, repair, maintenance and restoration of the Developer Landscaping and other landscaping located on said Lot Owner's Lot. In the event a Lot Owner fails to pay for or to reimburse the Developer and/or the Association, as the case may be, for said costs and expense, the Developer and/or the Association shall thereafter have the right to levy a Special Assessment against the Lot of the Lot Owner involved for such costs and expenses pursuant to the provisions of Section 3.10 hereof.

- e) Maintenance of Developer Landscaping in Common Areas. The Association shall be responsible for maintaining and repairing the Developer Landscaping located in the Common Areas (except for Outlot 3, which shall contain no Developer Landscaping). Such responsibility shall include, but is not limited to, the seeding, watering and mowing of all lawns, the pruning, cutting and replacement of all trees and shrubbery so as to maintain these areas in an attractive condition consistent with the original design of the Developer Landscaping. An irrevocable right and permanent easement is hereby granted by each Lot Owner for the benefit of the Developer and the Association upon, over, across and through each Lot and the Common Areas for the purpose of maintaining and making repairs to the Developer Landscaping and for the purpose of exercising the rights granted to Developer and the Association in this Section 1.08(e). The costs and expenses of maintenance, repair and replacement of the Developer Landscaping in the Common Areas shall be levied by the Association equally against all Lots as a General Assessment pursuant to Section 3.10 hereof.
  
- f) Detention Ponds. The detention ponds located within the Subdivision are to be used only for the purpose of detaining surface water runoff from the Subdivision and for no other purpose. The detention ponds shall not be used for any recreational purpose, including without limitation, swimming, wading and/or fishing. The detention ponds shall be maintained in good condition and repair by the Association, in a condition consistent with the original design and condition of the detention ponds and as required by the Development Agreement. An irrevocable right and permanent easement is hereby granted by each Lot Owner for the benefit of the Developer and the Association upon, over, across and through each Lot and the Common Areas for the purpose of maintaining and making repairs to the detention ponds and for the purpose of exercising the rights granted to Developer and the Association in this Section 1.08(f). The costs and expenses of maintenance, repair and replacement of the detention ponds shall be levied by the Association equally against all Lots as a

General Assessment pursuant to Section 3.10 hereof. In the event the detention ponds are not maintained and repaired by the Association in the manner required by the Town in the Development Agreement, then the Town shall have the right to enter the Subdivision for the sole purpose of maintenance and repair of the detention ponds in accordance with the terms and conditions of the Detention Pond Maintenance Easement. The Developer shall have the right at its option and in its sole discretion, to modify or amend the Detention Pond Maintenance Easement if required by the Town or any other governmental authority.

- g) Trees in Common Areas/Pruning in Common Areas. Notwithstanding anything to the contrary contained in this Section 1.08(g), in the event Developer grants a conservation easement upon, over, across and through Outlot 3 for the benefit of a Conservation Easement Holder, then all decisions regarding the management, maintenance, removal, repair, replacement, trimming or any other alteration of any tree, plant or vegetation within Outlot 3 shall be at the sole and absolute discretion of the Conservation Easement Holder. In consideration of the foregoing, the Association shall be responsible for managing, maintaining, removing, replacing, repairing, trimming and planting the Common Area Woodlands (as hereinafter defined) *in compliance with the Forestry Plan* (emphasis added). Except as otherwise specifically set forth in Section 1.08(h) below and in this Section 1.08(g), no part of the forest or woodland, including without limitation, any tree or plant or other vegetation in any Common Area or within the Woodland Buffer Zone or the Primary Environmental Corridor (all of the foregoing being referred to in this subparagraph 1.08(g) as the “Common Area Woodlands”) shall be removed, replaced, trimmed or otherwise altered in any respect without first obtaining the written consent of the Board which consent it may grant or withhold in its sole discretion, and any approvals and permits as may be required by any governmental authority. The Board shall be governed by and be required to comply with the terms of the Forestry Plan in making its determination and the Board shall obtain the advice of the Consulting Arborist in making its determination. In the event any portion of the Common Area Woodlands is removed, replaced, trimmed or otherwise altered by any Lot Owner or its agents, employees, contractors or invitees in violation of this Section 1.08(g), the Board shall have the right to replace such tree or repair such tree or replace or repair such vegetation at the cost of the Lot Owner who removed, replaced, trimmed, or otherwise altered the tree or vegetation or whose agents, employees, contractors or invitees removed, replaced, trimmed or otherwise altered the tree or the vegetation (and, if such removal, replacement, trimming or other alteration occurs within Outlot 3 and provided further that Outlot 3 is subject to a conservation easement at such time, then the Conservation Easement Holder shall have the right to replace or repair such tree or vegetation at the full cost of cure at the expense of such Lot Owner). An irrevocable right and permanent easement is hereby granted by each Lot Owner for the benefit of the Developer, the Association and, if applicable, the Conservation Easement Holder upon, over, across and through each Lot and the Common Areas for the purpose of replacing, trimming, removing or repairing any part of the Common Area Woodlands and for the purpose of exercising the rights granted to Developer, the Board, the Association and, if applicable, the Conservation Easement Holder in this Section 1.08(g). The costs and expenses

incurred by the Association and/or the Conservation Easement Holder, if applicable, as a result of a violation of this Section 1.08(g) by a Lot Owner or its agents, employees, contractors or invitees shall be levied as a Special Assessment pursuant to Section 3.10, by the Association against the Lot owned by the Lot Owner removing, replacing, trimming or otherwise altering such Common Area Woodlands or whose agents, employees, contractors or invitees removed, replaced, trimmed or otherwise altered such Common Area Woodlands. In addition to reimbursement for the Board's, the Association's and the Conservation Easement Holder's (if applicable) costs and expenses, any Lot Owner or other person or entity violating the provisions of this Section 1.08(g) shall be fined such amounts as are set forth in the Forestry Plan for such violations. The amount of the fine shall be levied as a Special Assessment pursuant to Section 3.10, by the Association against the Lot owned by the Lot Owner who violated the provisions of this Section 1.08(g) or whose agents, employees, contractors or invitees violated this Section 1.08(g) [and if such violation occurred within Outlot 3 and Outlot 3 was subject to a conservation easement at such time, then the fine shall be deposited in the land management or similar account maintained by the Conservation Easement Holder]. The Board shall have the right, but not the obligation, to remove dead, dying or damaged trees in the Common Areas (however, if such damaged, dead or dying tree is located within Outlot 3 and provided further that Outlot 3 is subject to a conservation easement at such time, then the prior written consent of the Conservation Easement Holder must first be obtained by the Board) and in the Woodland Buffer Zone and the Primary Environmental Corridor, as long as such removal complies with the terms of the Forestry Plan and as long as the Board first obtains the advice of the Consulting Arborist in making its determination. The costs and expenses incurred in connection with any such removal of dead, dying or damaged trees in the Common Areas and in the Woodland Buffer Zone and the Primary Environmental Corridor shall be levied as a General Assessment against all Lots in the Subdivision. An individual Lot Owner shall have the right to request that any damaged, dead or dying tree be removed from the Common Areas or within the Woodland Buffer Zone or the Primary Environmental Corridor. The Board shall grant or deny such request; provided, however, the Board shall obtain the advice of the Consulting Arborist in making any such decision and if such damaged, dead or dying tree is located within Outlot 3 and Outlot 3 is subject to a conservation easement at such time, then the prior written consent of the Conservation Easement Holder must first be obtained by the Board. The Board's decision to remove any such dead, dying or damaged trees at the request of an individual Lot Owner must be in compliance with the terms of the Forestry Plan. The costs and expenses incurred in connection with the removal of any tree based on a request from an individual Lot Owner, including without limitation, the expenses incurred by the Board, the fees of the Consulting Arborist and the Conservation Easement Holder, if applicable, and the cost of removal of the tree, shall be paid by the individual Lot Owner making the request. The cost shall be levied as a Special Assessment pursuant to Section 3.10 against the Lot owned by the Lot Owner. A Lot Owner shall have the right to request that the Board do selective limbing or pruning in the Common Areas (except for Outlot 3). The Board may grant or deny such request; provided, however, the Board's granting of any such request must comply with the terms of the Forestry

- Plan. In making its determination, the Board shall obtain the advice of the Consulting Arborist. Any vegetation manipulation by any Lot Owner or its employees, agents, or invitees, resulting in changes in light, plant shape or appearance which may include impacts from cutting, work out of season, soil compaction and the like, without first obtaining the consents required in this paragraph 1.08(g) shall be a violation of this paragraph 1.08(g).
- h) Trees and Vegetation on Lots. The removal, trimming, replacement and alteration of trees, plants and other vegetation located outside the boundaries of the Woodland Buffer Zone and the Primary Environmental Corridor on each Lot shall be approved by the Board as part of the approval of the landscape plans for such Lot as described in Section 2.04 below. Additionally, the Landscape Plans set forth in Exhibit C attached hereto shall govern the care and placement of trees within such areas (i.e., the areas outside the boundaries of the Woodland Buffer Zone and the Primary Environmental Corridor on each Lot).
- i) Lake Stairway; Lake Michigan Bluff Access. The stairway access to Lake Michigan from the bluff of the Subdivision is to be used only for pedestrian access to Lake Michigan and the beachfront by the Lot Owners, their families, guests and invitees and, if applicable, the Conservation Easement Holder and its authorized representatives. The stairway shall be maintained in good condition and repair by the Association, in a condition consistent with the original design and condition of the stairway and as may be required by any governmental authority. An irrevocable right and permanent easement is hereby granted by each Lot Owner for the benefit of the Developer, the Association, and if applicable, the Conservation Easement Holder, upon, over, across and through each Lot and the Common Areas for the purpose of maintaining and making repairs to and replacements of the stairway and for the purpose of exercising the rights granted to Developer, the Association and, if applicable, Conservation Easement Holder in this Section 1.08(i). If Developer has granted a conservation easement upon, over, across and through Outlot 3 to a Conservation Easement Holder, any repairs, replacement or modifications to be made to the stairway shall be subject to the prior written approval of the Conservation Easement Holder. In connection therewith, the Conservation Easement Holder shall have review and denial rights regarding proposed changes to the original design and intent of the stairway. The costs and expenses of maintenance, repair and replacement of the stairway shall be levied by the Association equally against all Lots as a General Assessment pursuant to Section 3.10 hereof.
- j) Land Near Water/Beach. That portion of the Land from the top of the Subdivision bluff to the high water mark of Lake Michigan and all right, title and interest of Developer and/or the Association, if any, to use the Lake Michigan beach or land area contiguous to the Developer's Land between the ordinary high water mark of Lake Michigan and the waters actual edge are Common Areas (with the understanding that all of such lands are within Outlot 3. In the event Developer grants a conservation easement upon, across, over and through Outlot 3 for the benefit of a Conservation Easement Holder, then the use and management of said lands shall be subject to the rules, policies and procedures established by the Conservation Easement Holder

pursuant to Sections 1.08(b) and 1.08(l) herein). Said Land up to the ordinary high water mark and the beach and/or land area between the ordinary high water mark and the water's actual edge shall be used only by the Lot Owners, their families, guests and invitees together with the Conservation Easement Holder and its authorized representative, if applicable, unless at any time, the provision of any law permits the beach or land area between the ordinary high water mark and the water's edge to be used by the public. Any costs and expenses incurred by the Association in connection with the land and beach and maintenance of the land and beach shall be levied by the Association equally against all Lots as a General Assessment pursuant to Section 3.10 hereof. It is understood that the Developer's and the Association's right, title and interest in the beach or land area between the ordinary high water mark and the water's edge is governed by law and the Association shall have only those rights in such area granted by law from time to time, if any (and, if Developer grants a conservation easement upon, over, across and through Outlot 3 to a Conservation Easement Holder, the Association shall also be subject to the rules, policies and procedures of the Conservation Easement Holder). It is further understood that the existence and extent of the Land from the top of the Subdivision bluff to the high water mark of Lake Michigan and the beach or land area contiguous to the Developer's Land between the ordinary high water mark and the water's actual edge are controlled by the forces of nature and shall at all times be subject to the forces of nature.

- k) Prohibitions. No Common Area shall be used in whole or in part for conducting any unlawful activity or for any unlawful purpose. The Common Areas shall at all time be kept free from noxious odors and loud noises. No activity shall be permitted or engaged in in a Common Area which constitutes a public or private nuisance, or which creates loud noises or unreasonably disturbs Lot Owners.
- l) Rules and Regulations. The Association shall have the right to establish rules and regulations for the use of the Common Areas; however, in the event Developer grants a conservation easement upon, over, across and through Outlot 3 to a Conservation Easement Holder, Outlot 3 shall be subject solely to the rules, policies and procedures established by the Conservation Easement Holder. The Lot Owner(s) and their employees, agents, guests, invitees and contractors shall abide by the rules and regulations so established by the Association and, if applicable, the Conservation Easement Holder (with respect to Outlot 3).
- m) Binding Effect. All easements and rights described herein are easements appurtenant to each Lot and the Common Area and are easements running with the land. All easements and rights described herein (except for, if granted by Developer, the conservation easement on, over, across and through Outlot 3 for the benefit of a Conservation Easement Holder, which easement shall inure solely to the benefit of the Conservation Easement Holder) are granted and reserved to, and shall inure to the benefit of the Developer, the Association, and the Lot Owners and shall be binding on, the Lot Owners, purchasers, mortgagees, lessees and occupants and their heirs, personal representatives, successors and assigns.

- n) Primary Environmental Corridor. Except for Lot 8, there shall be no Improvements of any kind constructed in any portion of the primary environmental corridor located on any Lot. With respect to Lot 8, Improvements can be constructed within the primary environmental corridor on Lot 8 only to the extent shown on Exhibit D attached hereto.

### **Construction of Improvements**

#### 2.01 Minimum Living Area and Height Requirements; Garages

- a) Each Home shall have a minimum living area (exclusive of basement, attic, garage, porches, patios, and storage areas) of not less than 3,000 square feet and a maximum living area of not greater than 7,000 square feet.

The Board shall have the exclusive right to determine whether such requirements will be satisfied and any decision of the Board shall be final and conclusive.

- b) No Home shall exceed two and one-half stories (excluding the basement). A third-story tower or attic for the purpose of providing a view may be permitted on a Home if deemed appropriate by the Board.
- c) An attached enclosed garage shall be constructed on each Lot at the time of construction of the Home on such Lot and all exterior portions of such garage shall be completed prior to occupancy of the Home. Only one garage shall be located on a Lot. The garage located on any Lot shall not face the roadway unless approved by the Board, which approval the Board may grant or withhold, in the Board's sole discretion.

#### 2.02 Location and Setback

- a) No Home or garage shall be located on any Lot within any setback area. The setback areas are the greater of (i) the setback areas prescribed in any applicable law, rule regulation or ordinance for each of the following locations, or (ii) the following:
- 75 feet from the bluff of Lake Michigan at any point;
  - 75 feet from the boundary of any wetland at any point;
  - 50 feet from the front lot line of any Lot at any point;
  - 50 feet from the rear lot line of any Lot at any point;
  - 20 feet from the side lot line of any Lot, which side lot line adjoins a Common Area at any point; and
  - 20 feet from the side lot line of any Lot, which side lot line adjoins another Lot or street at any point.

The determination of which of the Lot lines for each corner Lot is the rear Lot line, the side Lot line, the front Lot line and the side street Lot line shall be made by the Board based on the proposed orientation of the Home and other

improvements on each corner Lot. Each corner Lot shall have only one rear Lot line, one side Lot line, one front Lot line and one side street Lot line.

All measurements made for the purposes of this Section 2.02(a) shall be taken from the foundation of the Home and garage.

- b) Approval by the common council or the plan commission or building inspector of the Town with respect to setbacks or other matters shall not be binding on the Board in any respect.
- c) Notwithstanding the setback requirements specified above, the orientation and precise location of each Home and garage on a Lot, as well as all other improvements on the Lot, must be approved in writing by the Board prior to any construction, it being intended that the Board may, in its discretion, impose greater or lesser setback requirements than those specified above in order to achieve or maintain the aesthetic appearance of the Subdivision or any portions thereof which the Board deems advisable. In an effort to maintain maximum views by limiting the building area of adjacent Lots, the Developer has restricted buildable areas for the Lots as shown on Exhibit D.
- d) The Board may permit Improvements (other than the Home and garage) to be constructed, installed and located within the setback areas described above; provided, such permission must be in writing to be effective and can only be granted after notice to all adjoining and adjacent Lot Owners advising them of the proposed Improvement and affording them an opportunity to be heard with respect to the proposed Improvement. No Improvement shall be constructed, installed or located within the setback areas described above unless such permission has been granted by the Board. The Improvements for which permission must be obtained include without limitation the following: garden sheds, gazebos, playsets, fences, steps, overhangs, attached porches, patios, dog runs and eaves.
- e) It is intended that all construction activities in the Subdivision, including construction activities on any Lot, must comply with the terms of the Forestry Plan. Notwithstanding anything to the contrary contained in this Declaration, it is intended that the Board may, in its discretion, impose greater or lesser requirements than those specified in this Declaration in order to achieve or maintain compliance with the standards set forth in the Forestry Plan.

### 2.03 Approval of Board Required For All Improvements.

- a) No Home, garage or other Structure or Improvement of any kind shall be installed, erected, constructed or placed on any Lot (or altered or changed with respect to layout, location or exterior design, appearance, color or material composition) without: (1) prior submission of detailed plans to the Board appropriate for its review and approval; and (2) acquisition of prior written approval by the Board. Plans, to be considered appropriate for review by the Board, must include the following (unless the Board advises a Lot Owner in writing to the contrary): construction drawings,

plans and specifications (prepared by a qualified home designer or architect if the Improvement involves construction of a Home, garage or addition or change to either) showing dimensions, composition and color of exterior materials, together with paint color samples and brick/stone color samples, and equipment, if any; a plot plan showing the location of the Improvement with respect to setbacks from all Lot lines and other buildings and Improvements; finished grade elevations and topography; driveways; existing plantings; a landscape plan prepared by a landscape architect or designer; and such other data pertinent to such review by the Board as it may reasonably request. The Board shall consider the following factors and may deny or withhold approval of any proposed Improvement if, in its sole judgment, any one or more of the general purposes specified in Section 1.02 will not be satisfied: material composition and quality; exterior design, appearance and color; coordination with other existing or contemplated Improvements; location with respect to topography and existing surroundings; unnecessary retaining walls; setbacks; finished grade elevations; access; drainage; plantings; and general aesthetics. ANY LOT OWNER WHO CAUSES OR ALLOWS ANY IMPROVEMENTS TO BE CONSTRUCTED, INSTALLED, PLACED OR ALTERED ON ANY LOT WITHOUT PRIOR WRITTEN APPROVAL OF THE BOARD MAY BE REQUIRED TO REMOVE SUCH IMPROVEMENT IN ITS ENTIRETY AT THE LOT OWNER'S EXPENSE. Without intending to limit the generality of the foregoing, it is intended that the exterior color of any portion of a Home, garage or other Improvement may not be changed in any significant respect without the prior written approval of the Board, which approval the Board may grant or withhold, in its sole discretion.

- b) Notwithstanding the foregoing provisions and limitations of Section 2.03(a), each Home shall include the following minimum specifications: (1) exteriors of all natural building materials, such as stone, brick or wood, but aluminum or vinyl clad windows, doors and garage doors, high quality composite shutters, acrylic stucco and engineered siding and trim may be used if approved as appropriate by the Board; (2) full masonry chimney with brick or stone exterior veneer, as applicable, with chimney caps of clay or a clay look-alike product or a chimney cap as may be otherwise approved by the Board; (3) finish roof construction of cedar shake shingles, tiles, cement tiles or other materials approved by the Board; and (4) mandatory front yard lamp post (with photoelectric cell) and mailbox in locations approved as part of the approval of Plans.
- c) Upon approval by the Board of the plans for the proposed Improvement and upon receipt of any necessary Town and other governmental approvals or permits or licenses, construction or installation of the Improvement may commence. Construction of the Home must commence within 12 months following the date of the purchase or other transfer of a Lot to the Lot Owner. Construction of the Home and garage and all other Improvements must be completed within 18 months following the date of issuance of the building permit for the Home. The Home, garage and all other Improvements shall be deemed to have been completed when the Town issues its final occupancy permit for the Home, garage and all other

Improvements. In the event construction of the Home is not timely commenced or in the event the Home, garage and all other Improvements are not timely completed, Developer at its option and in its sole discretion, shall have the right to repurchase the Lot and all Improvements located thereon, at a purchase price equal to the net purchase price paid by the Lot Owner for such Lot. The Lot Owner shall be required to pay all of the Developer's costs and expenses associated with the repurchase of the Lot, including without limitation, all title policy costs. The Lot Owner shall convey the Lot to the Developer by warranty deed, free and clear of all liens and encumbrances other than those liens and encumbrances which were of record at the time of the conveyance of the Lot by Developer to the first owner of such Lot. Closing of the repurchase shall take place on or before 30 days following the date of notice from the Developer to the Lot Owner of the exercise by the Developer of its repurchase rights. The Developer shall have the right to assign its repurchase rights to any other person or entity. In the event the Lot Owner fails to commence construction of the Home within 12 months following the date of purchase or other transfer of the Lot or fails to complete construction of the Home, the garage and all other Improvements within 18 months following the date of issuance of the building permit, the Developer and/or the Board may, in their respective discretions and in addition to all other remedies, assess a fine of \$100 per day for each day such failure continues. The Developer and/or the Board shall have the right to extend the commencement of construction date and/or the completion of construction date set forth herein, at their options and in their sole discretions, in the event the delay has been caused primarily by factors beyond the control of the Lot Owner and his/her contractors.

- d) The Board may impose rules and regulations in addition to those contained in this Declaration with respect to required submissions to the Board and approvals of the Board from time to time as it deems fit and in addition, the Board may, by rule and regulation, impose fees on the Lot Owners for Board review and approval of plans.
- e) Any approval or permission of the Board under this Section, to be binding or effective, must be in writing signed by the President or Secretary of the Association. No oral statements, representations or approvals of the Board or any of its members or agents shall be binding on the Board under any circumstances, regardless of any reliance thereon by any Lot Owner.
- f) Within 90 days following construction or installation of any Improvement, the Lot Owner shall furnish an as-built survey showing the location of the Improvement, if requested by the Board.
- g) Unless otherwise approved by the Board, in its discretion, once the Board has approved a Lot Owner's plan, the Lot Owner must construct all Improvements shown on such plan and must construct all such Improvements in accordance with the Board-approved plan.

## 2.04 Landscaping & Drainage

- a) At the time plans for a Home are submitted for review by the Board, a complete landscaping plan for the entire Lot shall be submitted to the Board for its approval under Section 2.03 above. At its discretion, the Board may reject or modify the landscaping plans for overall compatibility with the other improvements in the Subdivision, the Developer Landscaping described in Section 1.08 above, the Forestry Plan and the Landscape Plan. It is understood that each Lot Owner must comply with the terms of the Forestry Plan as it affects the Woodland Buffer Zone on his/her Lot and/or any portion of the Primary Environmental Corridor located on his/her Lot. All landscaping within a Lot, including landscape grading and bed installation but excepting the planting of sensitive trees, shall be completed (in accordance with the plan approved by the Board) within 6 months following the issuance of the final occupancy permit for the Home. Trees must be planted within 18 months following the issuance of said permit. In the event the Lot Owner fails to complete the landscaping within the six-month period, in addition to all other remedies, the Board, at its discretion, may access a fine of \$250 per month for each month or portion thereof following the expiration of the six-month period until the landscaping is complete; provided, however, it is recognized that some plants must be dug in season and some plant materials are added or removed as the landscape matures. In the event a Lot Owner fails to maintain its landscaping at any time in accordance with the landscaping plan approved by the Board, in addition to all other remedies, the Board may access a fine of \$250 per month for each month or portion thereof during which the landscaping is not properly maintained. There shall be no changes in the landscaping on any Lot from the landscaping approved by the Board without the prior written consent of the Board which may be granted or withheld in the Board's sole discretion.
- b) Each landscaping plan shall include a landscape plan for the septic system.
- c) To avoid a substantial increase in surface water drainage onto adjoining Lots, the landscaping plan for each Lot shall provide for adequate drainage of clean storm and surface water toward adjoining streets and away from adjoining Lots if natural drainage on the Lot is to be or has been altered by grading, installation of impermeable surfaces, or landscaping by the Lot Owner.
- d) No fence, wall, hedge, or screen planting shall be installed unless in accordance with landscaping or other plans approved in advance by the Board under Section 2.03 and this Section.
- e) Each Lot Owner shall comply with the Master Grading Plan as established by the Town of Grafton. Each Lot Owner shall cause his/her contractors, builders, agents and subsequent transferees to comply with the Master Grading Plan, including without limitation, in the siting of the Home, garage and other Improvements, and in rough and fine grading of the building pad. It is understood by each Lot Owner that

the Master Grading Plan will be used, among other things, by the Town, the Developer and the Association to monitor grading and building pad compliance.

- f) Neither the Developer nor the Association shall be liable or responsible for removal of topsoil or soils from any Lot or the provision of soil or topsoil to any Lot or Lot Owner. The Lot Owner, at its expense, shall be liable and responsible for removal of topsoil or soils from his/her Lot and the provision of soil and topsoil to his/her Lot. The Lot Owner, at its expense, shall be liable and responsible for the removal of weed seed imported in topsoil provided to the Lot Owner's Lot.

#### 2.05 Driveway

Each Lot shall be improved by the Lot Owner with a predominantly asphalt or concrete driveway extending from the street to the garage. Notwithstanding the foregoing, a Lot Owner may use other materials such as stamped concrete or paving stone or brick for decorative purposes on the driveway, if approved in advance by the Board. The driveway shall be completed within six months following issuance of a final occupancy permit for the Home. In the event the Lot Owner fails to complete the driveway within the six-month period, the Board, at its discretion, may assess a fine of \$250 per month for each month or portion thereof following the expiration of the six-month period until the driveway is complete. At the time plans for a Home are submitted for review by the Board, a plot plan showing the location of the driveway shall be submitted to the Board for its prior approval under Section 2.03 above.

#### 2.06 Construction Materials; Storage

No building or construction materials shall be stored on any Lot outside of the Home or garage, other than during periods of actual construction or remodeling and then only for so long as may be necessary. Excess excavated material shall not be stored on any Lot during or after construction without the prior approval of the Board, unless required for back filling, finish grading, or landscaping. Each Lot Owner shall be responsible for maintaining his/her Lot in a neat and orderly condition during construction, including cleanup of construction debris on his/her Lot and neighboring Lots and Common Areas. The Board reserves the right to undertake any cleanup it deems necessary and to assess the Lot Owner and his/her Lot for the costs associated with the cleanup.

#### 2.07 Water Supply

Each Home shall be serviced by an individual well to be constructed on each Lot by the Lot Owner and at the Lot Owner's cost and expense. The well on each Lot shall be located as approved by the Board. At the time plans for a Home are submitted for review by the Board, the construction plans for each well shall be submitted to and approved by the Board in accordance with Section 2.03 above.

## 2.08 Sewage Disposal

Each Home shall be serviced by an approved on-site waste/sewage disposal system to be constructed on each Lot by the Lot Owner and at the Lot Owner's cost and expense. The on-site waste/sewage disposal system on each Lot shall be located as shown on Exhibit D attached hereto or as otherwise approved in writing by the Board, with the consent of a qualified septic engineer and the Town of Grafton. At the time plans for a Home are submitted for review by the Board, the construction plans for each on-site waste/sewage disposal system shall be submitted to and approved by the Board in accordance with Section 2.03 above.

## 2.09 Garbage Disposal

Each Home shall be equipped with a garbage disposal connected to the sewage disposal system located on each Lot. No incinerator or incineration system for burning garbage or debris shall be used or permitted in the Subdivision.

## 2.10 Wires and Antenna

- a) All utility lines and wiring for gas, electric, telephone, and cable television service to a Home, garage or other Improvement shall be installed underground, unless otherwise permitted by the Board prior to installation. There shall be no overhead lines of any kind constructed, used or installed in the Subdivision.
- b) No roof-top, tower-mounted or other external antenna or satellite dish for television, cellular or radio reception or for other electronic transmission or reception and no towers of any kind shall be erected or used in the Subdivision without the prior written approval of the Board, which approval the Board may grant or withhold in its sole discretion.

## 2.11 Signs, Mailboxes and Lamp Posts

- a) No sign or banner of any kind shall be placed or displayed on any Lot, except: (1) one sign of not more than six square feet advertising the Property for sale; (2) one standard sign (showing the Lot Owner's name) as may be approved by the Board for uniform use in terms of size, design, appearance and location for each Lot in the Subdivision; (3) such signs as the Developer or Board may approve for the purpose of advertising Woodland Shores; and (4) such entrance signs or monuments designating the Subdivision as Woodland Shores as may be approved by the Developer or the Board.
- b) There shall be only one mailbox and one lamp post on each Lot and the mailboxes and lamp posts located on the Lots shall be identical to each other. The mailboxes and lamp posts shall be installed by the first Lot Owner of each Lot and the costs of such installation shall be paid for as a Special Assessment against each Lot at the closing of the sale of each Lot by Developer or in the alternative, at Developer's

option, the Lot Owner shall at the closing of the sale of each Lot, provide evidence satisfactory to the Developer that the costs and expenses associated with the installation of the mailbox, lamp post and utilities shall be paid for by the Lot Owner as part of its construction of its Home on the Lot. The cost of installation of utility service to the lamp post shall also be paid for by the Lot Owner as a Special Assessment at the closing of the initial sale of the Lot by Developer to the Lot Owner or in the alternative, at Developer's option, the Lot Owner shall at the closing of the sale of each Lot, provide evidence satisfactory to the Developer that the costs and expenses associated with the installation of utility service to the lamp post shall be paid for by the Lot Owner as part of its construction of its Home on the Lot.. Each mailbox and lamp post on a Lot shall be maintained, repaired and replaced by a Lot Owner from time to time so that the mailbox and lamp post are maintained in substantially the same condition they were in as of the date of installation of the mailbox and lamp post. There shall be no modifications or changes to any mailbox or lamp post without the consent of the Association, which may be granted or withheld in the Association's sole discretion.

### **The Association**

#### 3.01 Creation of the Association

- a) The Developer hereby creates and establishes a non-profit, non-stock incorporated homeowner's association to be known as "Woodland Shores Homeowners Association" with all rights, powers, privileges and obligations as provided in this Declaration and in its articles of incorporation and by-laws.
- b) The Association shall exist during the term(s) of this Declaration and shall automatically terminate upon termination of this Declaration.

#### 3.02 Membership

- a) There shall be one membership in the Association for each Lot and 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. Membership in the Association is mandatory and cannot be severed from any Lot.
- b) Association membership shall be appurtenant to each Lot.
- c) Notwithstanding any provision in this Declaration to the contrary, the Developer shall have one membership in the Association for each Lot owned by the Developer.

#### 3.03 Voting

- a) Each Lot, including Lots owned by Developer, shall have one vote in matters requiring the vote of the members of the Association. Said one vote is appurtenant to each Lot and cannot be severed from any Lot.

- b) The vote, appurtenant to each Lot, shall be cast as a whole (in person or by proxy) by the Lot Owner and any Co-Owner. Fractional votes are not allowed. If Co-Owners of a Lot do not agree on how the vote appurtenant to a Lot shall be cast or if a fractional vote is attempted, the right of the Lot Owner(s) for such Lot to vote on the matter in question shall be forfeited by such Lot Owners. The Association may treat any Co-Owner of a Lot or the proxy of any Co-Owner of Lot as duly authorized to vote for all Co-Owners of that Lot.
- c) A Lot Owner shall not be entitled to vote on a matter if a lien exists for any General or Special Assessment against the Lot Owner's Lot or if there are any other amounts due from the Lot Owner.

### 3.04 Membership List; Notices

- a) The Association shall maintain a current Membership List. Each Lot Owner shall furnish the information necessary for the Association to maintain such Membership List.
- b) All notices required to be given to a Lot Owner shall be deemed to have been duly given: at the time of personal delivery to the Lot Owner or the Home of the Lot Owner; or 48 hours after mailing within the State of Wisconsin by regular or certified mail to the Lot Owner's mailing address shown in the Membership List or to the Lot Owner's Lot; or 24 hours after deposit with an overnight delivery service addressed to the Lot Owner at his/her mailing address shown in the Membership List or to the Lot Owner's Lot; or upon receipt by a Lot Owner by any other method of delivery. Notice to one Co-Owner of a Lot shall be deemed effective notice to all other Co-Owners of such Lot. A Lot Owner may change the address to which notice is to be given by giving notice of such change of address to the Association in accordance with the terms of this Section 3.04(b). All notices required to be given to the Developer or the Association shall be deemed to have been duly given: at the time of personal delivery to the Developer at 946 Lake Shore Road, Grafton, Wisconsin 53024 (the "Developer's Address"); or 48 hours after mailing within the State of Wisconsin by regular or certified mail to the Developer's Address; or 24 hours after deposit with an overnight delivery service addressed to the Developer at the Developer's Address; or upon receipt by Developer by any other method of delivery. The Developer may change the Developer Address and may change the person or entity to receive notices by giving notice of such change in writing to each Lot Owner at the address for such Lot Owner shown in the Membership List.

### 3.05 Association Meetings

- a) Written notice of all meetings of the Association stating the time, place, and purpose for which the meeting is called shall be given by the President or Secretary to each Lot Owner not less than five nor more than 30 days prior to the date of such meeting; provided, however, that notice of any meeting may be waived in writing before or after the meeting.

- b) The annual meeting of the Association shall be held in November of each year for the purpose of electing officers and transacting any other business authorized to be transacted by the Association. The Board shall select the specific date, time and place of the annual meeting for a given year and shall furnish written notice to each Lot Owner in accordance with Section 3.05(a). The calendar year shall be the fiscal year of the Association.
- c) Special meetings of the Association shall be held whenever called by the President or two officers; provided, however, the President is required to call a special meeting upon receipt by the President of a written request signed by Owners with one-third or more of all votes entitled to be cast.
- d) A quorum for meetings necessary to conduct Association business shall consist of Lot Owners, present in person or by proxy, representing 70% of all votes entitled to be cast, rounded upward to the nearest whole number. Except as otherwise set forth in this Declaration, no action may be taken or decision made by the Association on which a vote of the members is required, unless a quorum for voting purposes is present in person or by proxy at the meeting at which the action is to be taken or the decision is to be made. A quorum for voting purposes shall consist of Lot Owners, present in person or by proxy, representing seventy percent (70%) or more of all votes entitled to be cast, rounded upward to the nearest whole number.
- e) All decisions and actions of the Association on which a vote of the members is required shall be by a majority of the votes present (either in person or by proxy) and entitled to be cast at any meeting at which a quorum for voting purposes is present (either in person or by proxy), unless a greater percentage is required under this Declaration. All decisions and actions of the Association on which a vote of the members is required may be made without a meeting by unanimous written consent of all Lot Owners whose votes are entitled to be cast.
- f) If a quorum for meetings is not present in person or by proxy at a meeting, no business of the Association shall be transacted; however, the majority of votes present (in person or by proxy) and entitled to be cast may adjourn the meeting from time to time without further notice if such adjourned meeting at which a quorum for meetings is present (either in person or by proxy) is held within 15 days of the meeting originally noticed. If a quorum for meetings is present (either in person or by proxy) at such an adjourned meeting, any business may be transacted which might have been transacted at the meeting as originally noticed.
- g) Proxies shall be valid only for the particular meeting or time period designated in the proxy, unless sooner revoked, and must be filed with the Secretary at or before the appointed time of the meeting.

### 3.06 Powers of the Association

- a) Without limitation, the Association shall have the powers granted by law and the following powers in addition to any others which may be necessary or incidental to performance of all duties or powers of the Association specified in this Declaration or by law:
- 1) To levy and enforce payment of General and Special Assessments on Lots and against Lot Owners;
  - 2) To enforce this Declaration;
  - 3) To purchase, sell and convey Lots (including the Improvements thereon) incident to foreclosure of a lien for any assessments and to acquire real estate as additional Common Areas;
  - 4) To enter and execute contracts and other documents which relate to any Common Area or Improvements therefor or thereon;
  - 5) To enter and execute deeds, notes and mortgages which relate to any Common Area or Improvements therefor or thereon;
  - 6) To incur indebtedness and to execute drafts and other negotiable instruments;
  - 7) To employ the services of any person, firm, or corporation to maintain the Common Areas, or to construct, install, repair or rebuild Improvements thereon;
  - 8) To acquire, sell, transfer or exchange goods, equipment and other personal property or fixtures in the name of the Association for the operation of the Association;
  - 9) To commence, prosecute, defend or be a party to any suit, hearing or proceeding (whether administrative, legislative or judicial) involving the enforcement of this Declaration or otherwise involving the exercise of any powers, duties or obligations of the Association;
  - 10) To adopt Rules and Regulations for the management, operation, use and enjoyment of the Common Areas, including fines or penalties which may be enforceable by Special Assessment against any Lot Owner or his/her family, guests, contractors, agents or invitees violating such Rules or Regulations;
  - 11) To own the Common Areas;

- 12) To exercise all other powers necessary to maintain the Common Areas, administer the Forestry Plan and the Landscape Plan and operate the Association for the mutual use and enjoyment of all Lot Owners; and
  - 13) To purchase insurance as determined by the Board for the Common Areas and to pay all real estate taxes levied and assessments assessed against the Common Areas.
- b) The President, together with one other officer of the Association, is empowered to negotiate, execute and enter into contracts, agreements and other undertakings or documents of any kind on behalf of the Association necessary or incidental to the exercise of any powers or obligations of the Association or of the Board under this Declaration if such contracts, agreements or other undertakings or documents have been approved by the Association or the Board, as described in Section 3.06(c) below.
  - c) The powers enumerated in this Section 3.06(a) (2), (3), (5), (6), (9) and (11) shall be exercised by the Association in any specific instance only after approval by vote of the members of the Association; provided, however, the Association shall not be permitted to refuse the acceptance of the conveyance from the Developer of the Common Areas. The powers enumerated in this Section 3.06 (1), (4), (7), (8), (10), (12), and (13) and unless otherwise specifically requiring a vote of the members of the Association, all other powers and rights of the Association in this Declaration, are hereby delegated to the Board, to be exercised by the Board without need of any approval or vote of the Association.
  - d) In the event of a conflict between any of the above-enumerated powers and any powers granted by law, the above-enumerated powers shall control.

### 3.07 The Board

- a) All officers of the Association then in office shall be the members of the Board and no other person may be a member of the Board. Each officer then in office shall serve as a member of the Board until a successor is elected or appointed to such officer's office.
- b) The Association and its business, activities, and affairs shall be managed by the Board. The Board shall exercise and perform, in addition to the powers, duties and obligations specified in this Declaration for the Board, all powers, duties and obligations of the Association, except to the extent this Declaration may otherwise expressly require the prior vote of the Association on a particular matter.
- c) Until the Conveyance Event has occurred, the Board shall consist of three persons: The Developer, as President, and one other person appointed by Developer. Until a Conveyance Event has occurred, at least one member of the Board shall be from Lakeside and shall be chosen by Lakeside. The Developer shall designate the office held by each member. The initial members of the Board shall hold office until

successors are appointed by Developer or following the Conveyance Event, elected by the Association. Except for Developer, Lakeside and persons appointed by Developer, a person must be a Lot Owner or Co-Owner of a Lot in order to be eligible to serve as an officer of the Association and member of the Board.

- d) Any officer of the Association and member of the Board (other than Developer and Lakeside and a member appointed by Developer prior to the occurrence of the Conveyance Event) may be removed from office with or without cause at any regular or special meeting of the Association if a quorum for voting purposes is present (either in person or by proxy) at such meeting, by a majority of the votes present (either in person or by proxy) and entitled to be cast, and a successor may then be elected at that meeting to fill the vacancy thus created or at a special meeting thereafter called for that purpose. Developer may remove any officer appointed by Developer at any time and Developer may then appoint a successor.
- e) Vacancies in a Board position filled by Developer prior to the Conveyance Event shall be filled by the Developer. Vacancies in a Board position filled by Lakeside prior to the Conveyance Event shall be filled by Lakeside. Following the Conveyance Event, vacancies in any officer position and on the Board (caused other than by removal under Section 3.07 (d) above) and newly-created officer positions resulting from an increase in the number of officers shall be filled by a majority vote of the officers then in office and each person so elected shall serve until a successor is elected at the next annual meeting of the Association.
- f) An annual meeting of the Board shall be held immediately after the annual meeting of the Association. No notice to the Association of the annual meeting of the Board shall be required.
- g) Regular meetings of the Board shall be held at such times and places as the Board determines by resolution to be appropriate and no notice of regular meetings thereafter shall be required.
- h) Special meetings of the Board may be called by any officer on three (3) days prior notice to each officer, given orally or in writing.
- i) Before, at, or after any meeting of the Board, any officer may (in writing) waive notice of such meeting, if notice was required, and such waiver shall be deemed equivalent to the giving of notice.
- j) For all meetings of the Board, a quorum necessary to transact business shall consist of a majority of the officers and the act of the entire majority shall be the act of the Board. If there is less than a quorum present at any meeting of the Board, no business shall be transacted; however, the majority of those present may adjourn the meeting from time to time without further notice if such adjourned meeting at which a quorum is present is held within 15 days of the meeting originally scheduled. If a quorum is

present at an adjourned meeting, any business may be transacted which might have been transacted at the meeting as originally scheduled.

- k) Any action of the Board authorized under this Declaration may be taken without a meeting but if such action is taken without a meeting, then such action may be taken by the Board only upon the unanimous written consent of all officers.
- l) The Board may require that some or all officers and/or employees of the Association handling or responsible for Association funds furnish adequate fidelity bonds, the premiums for which shall be paid for by the Association as a common expense.
- m) The Board may appoint committees consisting of one or more Lot Owners to make recommendations to the Board or the Association on any matter.
- n) No person shall receive any payment for services rendered as an officer of the Association or as a Board member or member of any committee unless specifically authorized by prior resolution of the Association. The Board may reimburse out-of-pocket expenses incurred by an officer or Board member or committee member in the performance of his/her duties.

### 3.08 Officers

- a) The Officers of the Association shall be:
  - 1) A President, who shall: be the chief executive officer of the Association and a member of the Board; be responsible for the proper execution of the business and affairs of the Association (subject to the control of the Board); preside at all meetings of the Association and the Board; have the authority to appoint various committees; have all the general powers and duties usually vested in the office of President, as well as such other powers and duties as may be prescribed from time to time by resolution of the Association.
  - 2) A Secretary, who shall: be a member of the Board; keep the minutes of all meetings of the Board and of the Association; have charge of all the Association's books and records; maintain the Membership List and keep it current; have charge of delivering all notices and approvals on behalf of the Board and the Association; and, in general, perform all duties incident to the office of Secretary, together with such other powers and duties as may be prescribed from time to time by resolution of the Association.
  - 3) A Treasurer, who shall: be a member of the Board; be responsible for the Association's funds and assets; keep complete and accurate accounts of all receipts and disbursements, financial records, and books of accounts; deposit all monies in the name and to the credit of the Association in depositories as may from time to time be designated by the Board; assess

and collect all General and Special Assessments made by the Board; and exercise such other powers and duties as may be prescribed from time to time by resolution of the Association.

- 4) If the number of persons on the Board is ever increased beyond three persons, then one or more Vice Presidents (not to exceed two at any one time), the number of which shall be determined by resolution of the Association; however, it is not required that the Association have one or more Vice Presidents. A Vice President, in addition to serving on the Board, shall have such other powers, duties and responsibilities as may be prescribed from time to time by resolution of the Association.
- b) Following the Conveyance Event, all officers shall be elected annually by the Association if not subject to appointment by Developer. Following the Conveyance Event, each officer shall hold office until a successor is duly elected or until death, resignation, or removal, whichever first occurs. No person may hold two or more offices at any one time, except that officers appointed by Developer may hold any number of offices.

### 3.09 Liability of the Board

- a) No member of any board or committee or officer of the Association shall be liable to any Lot Owner or to any other party including the Association for any loss or damage suffered or claimed on account of any act, omission, error or negligence of such Board or committee member or officer, provided such person acted in good faith, without willful or intentional misconduct.
- b) All decisions of the Board on any matter (including, without limitation, decisions under Sections 2.01, 2.02, 2.03 and 2.04) shall be enforceable against any Lot Owner if made in the good faith exercise of the judgment or discretion of its members so long as such decision is not clearly in conflict with the express provisions of this Declaration. Any Lot Owner or other person seeking to avoid, set aside or challenge any such decision of the Board shall have the burden of proof to establish that such standards were not met at the time the decision was made.

### 3.10 Common Expenses and Assessments Against Lots and Lot Owners

- a) The Board shall pay or arrange for payment for all costs, expenses and liabilities incurred by the Association out of the proceeds of assessments, which shall be made against each Lot. The Board may, at any time, levy assessments for such purposes against each Lot.
- b) "Special Assessments" may be made and levied by the Board against a particular Lot (other than the Lots owned by Developer), without levying against other Lots, for:

- 1) Costs and expenses (anticipated or incurred) for cleanup or repair of damage to Common Areas caused by or at the direction of the Lot Owner, the Lot Owner's builder, landscape contractor, agents, employees, invitees, family or guests;
  - 2) Costs, expenses and actual attorneys fees incurred in, or in anticipation of, any suit, action or other proceeding to enforce this Declaration against the Lot Owner and/or his/her Lot;
  - 3) Interest due on General or Special Assessments;
  - 4) A one-time Special Assessment equal to the cost of installation of the mail box and lamp post for a Lot and the cost of installation of the utility service to the lamp post shall be due at the closing of the sale of each Lot by Developer or in the alternative, at Developer's option, the Lot Owner shall at the closing of the sale of each Lot, provide evidence satisfactory to the Developer that the costs and expenses associated with the installation of the mailbox, lamp post and utilities shall be paid for by the Lot Owner as part of its construction of its Home on the Lot; and
  - 5) All other costs and expenses anticipated or incurred by the Association, which are subject to Special Assessments as provided under this Declaration.
- c) "General Assessments" may be made and levied by the Board equally against each Lot for the following "common expenses" which may be anticipated, incurred or paid by the Association for:
- 1) Maintenance, repairs, upkeep, replacements, management and operation of the Developer Landscaping, Common Areas, matters covered by the Forestry Plan, matters covered by the Landscape Plan, tree preservation areas, detention ponds, walking trails and other walkways, bluff access and stairways, and any additional Common Areas (such as any contiguous real estate) as may be acquired by the Association;
  - 2) Any insurance maintained by the Association;
  - 3) Taxes, assessments and charges of any kind made or levied by any governmental authority against the Association or upon any property of the Association;
  - 4) All costs and expenses for the operation and administration of the Association, including legal, accounting and management fees and other costs incident to the exercise of any of its powers or obligations;

- 5) Costs and expenses for additional improvements to Common Areas beyond those installed by Developer;
- 6) All items subject to Special Assessment which have not been collected from a Lot Owner at the time payment of such item is due, provided that upon collection of the Special Assessment from that Lot Owner, all other Lot Owners shall receive an appropriate adjustment, reimbursement or credit on future General Assessments, as the Board may determine, for payments made by the Lot Owners under this paragraph 3.10(c)(6);
- 7) All damages, costs, expenses and attorney fees incurred in, or in anticipation of, any suit or proceeding (whether administrative, legislative or judicial) which are not otherwise collected by Special Assessment;
- 8) Costs and expenses of services, if any, made available to all Lots and/or for any Common Areas;
- 9) All claims made against and paid by the Association;
- 10) Costs and expenses incurred by the Conservation Easement Holder related to or in connection with the conservation easement upon, over, across and through Outlot 3, if applicable (as further described in Section 3.11(d) below); and
- 11) All other costs and expenses declared to be common expenses under this Declaration.

The total amount of the General Assessments for all common expenses shall be levied equally against each Lot.

- d) The Association shall maintain separate books and records for General and Special Assessment accounts of the Lot Owners, as may be necessary, provided that all funds received from either assessment may be commingled and thereafter disbursed to pay any costs or expenses incurred by the Association which would be subject to General or Special Assessment.
- e) The Board shall determine the estimated expenses of the Association and prepare an annual operating budget in order to determine the amount of the annual General Assessments necessary to meet the estimated common expenses of the Association for the ensuing year and shall furnish a copy to each Lot Owner or one of the Co-Owners of the Lot. At the end of each year, if the annual General Assessment is not sufficient to pay the actual expenses of the Association, the Association shall notify the Lot Owners of the additional amount due and payable from each Lot Owner for the year. If the amount of the General Assessment is greater than the actual expenses of the Association, then the excess shall be held by the Association in its general account to pay for unanticipated future costs and expenses of the Association.

### 3.11 Payment of Assessments

- a) Each Lot Owner shall promptly pay, when due, all General and Special Assessments levied by the Board against such Owner and his, her or their Lot, together with all costs, expenses and reasonable attorney fees incurred by the Association in collection of any delinquent assessment(s). All assessments shall become due and payable as the Board may determine appropriate (in a lump sum or in installments with or without interest). Time is of the essence with respect to all payments.
- b) All Co-Owners of a Lot shall be jointly and severally liable for all General and Special Assessments levied against the Lot, regardless of the type of tenancy, estate or interest in the Lot (whether as joint tenants, tenants-in-common, land contract purchaser(s) or seller(s), or otherwise).
- c) Notwithstanding any other contrary provisions of this Declaration, in addition to all other General Assessments, a General Assessment equal to \$1,200 for each Lot (other than Lots owned by Developer) shall be due and payable yearly, on January 1 of each year, by each Lot Owner, other than the Developer, prorated from the date following acquisition of a Lot by the Lot Owner. A late fee of \$25.00 shall be assessed against each Lot Owner and his/her Lot for each month or part of a month such Lot Owner shall be delinquent in the payment of the annual payment. The amount of the General Assessment, as well as the due date for payment thereof may be adjusted from time to time as determined by the Board, but shall not be adjusted until all of the Lots of the Subdivision have been sold by the Developer. In addition to all other General Assessments, a one-time General Assessment of \$1,000 is due at each closing upon any sale or other transfer of a Lot, to fund operating expenses of the Association.
- d) In addition to the General Assessment under subsection (c) above, in the event Developer grants a conservation easement upon, over, across and through Outlot 3 pursuant to Section 5.12 hereof, an additional yearly General Assessment shall be levied against each Lot Owner in the amount of \$1,000.00 to reimburse the Conservation Easement Holder for any and all costs related to the conservation easement, including, without limitation, the enforcement and monitoring of the conservation easement (the "Annual Conservation Assessment"). Such Annual Conservation Assessment shall be deposited into a stewardship or similar fund established by and as directed by such Conservation Easement Holder. Commencing on the fifth (5th) anniversary of the date hereof and every fifth (5th) anniversary thereafter throughout the remainder of the Term of this Declaration, the Annual Conservation Assessment set forth herein shall be increased by the percentage increase in the Consumer Price Index occurring between January, 2005 and December of the year immediately following the year of adjustment. As used herein, Consumer Price Index shall mean the index published by the Bureau of Labor Statistics, United States Department of Labor entitled "Consumer Price Index, All Urban Consumers, All Items, All Cities Average (1982-1984=100).

### 3.12 Delinquent Assessments; Interest; Liens; Collection

- a) All General and Special Assessments which are not paid when due: shall bear interest at 12 percent per annum or at such other maximum rate as may then be permitted by law until the assessment is paid in full; shall constitute a lien on the Lot; and shall be collectible and enforceable by the Board (in its own name or the name of the Association) by suit against the Lot Owner, by foreclosure of the lien, and/or in any other manner or method provided under this Declaration or at law or in equity. The lien granted hereunder shall also cover and include all interest accruing on delinquent assessments, plus costs, expenses and attorney's fees.
- b) The Association (through the Board) shall have the exclusive right and power to collect or enforce collection of all General and Special Assessments levied by the Board and shall further have the exclusive right to bring any and all actions and proceedings for the collection thereof and/or the enforcement of liens arising therefrom. The Association may bring an action at law or in equity against any Lot Owner personally to collect such assessments and/or to foreclose the lien for such assessments against the Lot (in the same manner and method as an action to foreclose a real estate mortgage). The Board shall have the right at any time to notify all Lot Owners within the Subdivision of the delinquency of any Lot Owner.
- c) Each Lot Owner shall be personally, jointly and severally liable for the payment of any assessment levied against or a lien upon his/her Lot pursuant to this Declaration and for any amounts owed by said Lot Owner pursuant to the terms of this Declaration.

### 3.13 Rules and Regulations

- a) The Association may from time to time adopt or change rules or regulations (hereafter "Rules or Regulations") governing the operation, maintenance and use of the Common Areas by the Lot Owners and their families, guests and invitees. Such Rules or Regulations shall be designed to facilitate and encourage the peaceful use and enjoyment of the Common Areas by the Lot Owners and their families, guests and invitees, without unduly interfering with the peaceful use and enjoyment of the surrounding Lots and the Common Areas by others. All Lot Owners, lessees, licensees, invitees, other occupants, and guests of any Lot in the Subdivision shall abide by all such Rules and Regulations. Such Rules and Regulations must not conflict with the provisions of this Declaration applicable to the Common Areas.
- b) A violation of any Rule or Regulation shall be a violation of this Declaration and may be enforced in the same manner as any other term or provision of the Declaration or as otherwise may be designated in the Rule or Regulation, including without limitation the imposition of forfeitures, penalties, or other charges against the Lot Owner, which shall be collectible by Special Assessment against the Lot and Lot Owner.

3.14 Lot Owner's Lack of Authority to Bind Association

No Lot Owner (other than the officers of the Association) shall have any authority to act for the Association or the other Lot Owners, as agent or otherwise, nor to bind the Association or the other Lot Owners to contracts, negotiable instruments or other obligations or undertakings of any kind.

3.15 Service of Process

Service of process upon the Association for all matters shall be made upon the President of the Association or such legal counsel as the Association may designate to receive service of process by recording such designation with the Register of Deeds for Ozaukee County, Wisconsin.

3.16 Enforcement of Declaration; No Reversion of Title

- a) The Association (through the Board) shall have the exclusive right to enforce, by proceedings at law or in equity, all the terms, conditions, and provisions of this Declaration and any Rules or Regulations adopted by the Association, except that any Lot Owner may proceed, at such Owner's expense, to enforce any such terms, conditions or provisions (other than for collection of assessments against Owners of other Lots) if the Association fails to take such action within 120 days following a written request by such Lot Owner for the Association to do so. Any Lot Owner violating any of the terms, conditions or provisions of this Declaration or any Rules or Regulations shall pay all costs, expenses and actual attorney's fees incurred by the Association or by a prosecuting Lot Owner. Neither the Association nor the Board shall be subject to any suit or claim by any Lot Owner for failure of the Association or the Board to take any action requested by such Lot Owner against another Lot Owner.
- b) Each remedy set forth in this Declaration and/or in the Rules or Regulations shall be in addition to all other rights and remedies available at law and/or in equity. In addition, the Association and Lot Owners shall have the right to specific performance of each and every obligation set forth in this Declaration. All such remedies shall be cumulative and the election of one shall not constitute a waiver of any other. Any forbearance or failure of the Association or the Board to exercise any such right or remedy for any violation shall not be a waiver of such right or remedy under any circumstances unless a written waiver is obtained from the Board.
- c) Under no circumstances shall any violation of this Declaration or of any Rule or Regulation result in any reverted or reversion of title to any Lot.
- d) The parties to any dispute arising under this Declaration may, by mutual consent of all parties to such dispute, elect to have the dispute settled by mediation or arbitration, on terms and conditions determined by the parties. If the parties elect to have the

dispute settled by mediation or arbitration, then the mediator's or arbitrator's decision shall be final and conclusive on the parties.

### **Expansion Option**

#### 4.01 Expansion Option

Developer expressly reserves the option and right, for itself and any Successor Developer to expand the Subdivision by adding all or any portion of the Additional Property and improvements thereon to the Subdivision and subjecting and submitting all or any portion of the Additional Property to the terms of this Declaration. Except as contained in this Section 4.01, there are no limitations upon this option to expand. Neither Developer nor any Successor Developer shall be under an obligation to expand the Subdivision or to add all or any portion of the Additional Property to the Subdivision.

- a) The Additional Property, if added to the Subdivision, shall be subject to all of the terms, conditions and provisions of this Declaration.
- b) If the option to expand is exercised, each lot added to the Subdivision by an amendment to this Declaration, shall become a Lot for all purposes of this Declaration, including without limitation, for the purpose of payment of General Assessments, Special Assessments and other Common Area expenses. In addition, each lot added to the Subdivision shall have one membership in the Association appurtenant to such lot and shall have one vote in Association matters appurtenant to such Lot, all as described in Sections 3.02 and 3.03 above.

### **Miscellaneous**

#### 5.01 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 company upon, over, through and across those portions of any Lot in the Subdivision within 20 feet of any lot line for purposes of allowing the Town or utility company to furnish gas, electric, water, sewer, cable television or other utility service to any Lot(s). Developer hereby reserves an easement for Developer and the Association and reserves the right to grant and convey easements to the Town and/or to any public or private utility company upon, over, through and across each Lot and the Common Areas of the Subdivision for the purpose of facilitating drainage of storm or surface water within or through the Lot(s) and/or Subdivision. Developer hereby reserves the right to grant and convey easements to the Town and/or to any public or private utility company upon, over, through and across the Common Areas of the Subdivision for purposes of allowing the Town or utility company to furnish gas, electric, water, sewer, cable television or other utility service to the Subdivision. Such easements may be granted by Developer, 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 the Subdivision to persons other than a Successor Developer.

5.02 Severability

The invalidity or unenforceability of any term, condition or provision of this Declaration shall in no way affect the validity or enforceability of any other term, condition, or provision of this Declaration, all of which shall remain in full force and effect.

5.03 Covenants Run With The Land

All terms, conditions and provisions of this Declaration, as they may be modified or amended from time to time, are covenants running with the Land.

5.04 Amendments To Declaration

This Declaration may be amended by recording in the office of the Register of Deeds for Ozaukee County, Wisconsin, a document to that effect executed by the Lot Owners of at least 80% percent of all Lots in the Subdivision, and their mortgagees, with all signatures duly notarized; provided, however, this Declaration shall not be amended to terminate the Declaration or to alter the term of this Declaration, it being understood that this Declaration is perpetual. Such amendment shall become effective only upon recording. Notwithstanding the foregoing provisions of this Section 5.04, Developer may amend this Declaration without the consent of any of the Lot Owners, at Developer's option and in Developer's sole discretion, to affect an expansion of Woodland Shores Subdivision to include the Additional Property. Any amendment to the Declaration shall automatically, without need of any further document or instrument, amend the provisions of the By-Laws of the Association in order to make the By-Laws consistent with such amendment. No amendment of this Declaration shall alter or abrogate the rights of Developer as contained in this Declaration. Notwithstanding the foregoing, this Declaration cannot be amended to reduce the rights of the Conservation Easement Holder so long as the conservation easement upon, over, across and through Outlot 3 is in place.

5.05 Term of Declaration

This Declaration, as amended from time to time, shall be perpetual and shall be binding upon and shall inure to the benefit of the Developer, the Lot Owners, the Association, and their respective heirs, personal representatives, successors, assigns, transferees, mortgagees, licensees, lessees, employees, agents and invitees and any other user of the Subdivision, and shall be conditions, restrictions, covenants, reservations and easements running with the Land, including without limitation each Lot and Outlot and all Common Areas.

5.06 Disclaimer

Notwithstanding any other provision(s) of this Declaration, Developer is under no obligation to any Lot Owner or any other person or entity to develop or plat at any time any portion(s) of the Subdivision not already platted as of the date of recording this Declaration.

5.07 Interpretation

This Declaration shall be construed and interpreted in favor of restricting the use of each Lot consistent with the purposes hereof and any ambiguity shall be resolved against any Lot Owner who installs any Structure or engages in any activity not clearly authorized under this Declaration or approved in writing by the Board. In the event of a conflict between the provisions of any applicable law, rule, regulation and ordinance and this Declaration, the applicable law, rule, regulation and ordinance shall control and neither the Board nor the Association shall be required to consent to or approve any construction of improvements or any other matter to the extent the construction or other matter is inconsistent with applicable laws, rules, regulations and ordinances.

5.08 Easements

- a) The Developer, the Association and the Conservation Easement Holder, if applicable, shall have a permanent, non-exclusive easement upon, over, across and through each Lot and the Common Areas for the purpose of exercising all rights granted to either of them in this Declaration.
- b) Nothing contained in this Declaration does or is intended to create any easements or rights in favor of the public in or to any portion of the Lots or the Common Areas, it being understood that the public shall have no rights, benefits, or easements or rights to use any portions of the Subdivision, including without limitation, the Common Areas. In addition, the public shall have no rights of access upon, over, across or through any portion of the Subdivision, including without limitation the Common Areas, to the bluff, beach or shores of Lake Michigan or otherwise.

5.09 Town of Grafton Development Agreement. Developer has entered into the Development Agreement setting forth certain undertakings and obligations with respect to the Subdivision. The Lot Owners understand and agree that the Town of Grafton has certain rights under the terms and conditions of the Development Agreement and the Lot Owners shall take title to their Lots subject to those rights of the Town. The Lot Owners shall comply with all terms and conditions of the Development Agreement applicable to the Lot Owners.

5.10 Exclusive Right to Build.

Developer has granted Lakeside the exclusive right to be the builder of Homes in the Subdivision. In connection with the construction of any Home in the Subdivision, Lakeside is required to abide by the terms of the Declaration and any other restrictions governing the Subdivision and is required to obtain the approval of the Board of any Improvements to be constructed in accordance with the terms of Section 2.03. Any Home in the Subdivision must be constructed by Lakeside, at the Lot Owner's cost and expense. It is understood that Lakeside is not an agent or employee of or joint venturer with the Developer. Each Lot Owner should enter into such contracts and agreements with Lakeside as such Lot Owner deems necessary and desirable. Further, the Developer

shall have no liability or obligation of any kind whatsoever with respect to the performance by Lakeside of its duties and obligations to any Lot Owner and each Lot Owner hereby releases Developer from any and all claims, damages, liabilities, costs or expenses that may arise in any way out of Lakeside's construction of any Improvements on any Lot or which may arise out of any negotiation or agreement between Lakeside and said Lot Owner.

Lakeside's right to be the exclusive builder in the Subdivision may expire or the Developer may terminate such right under certain circumstances. Developer shall record notice on the public record at such time as Lakeside's right to be the exclusive builder expires or is terminated. Upon recording of said notice, Lakeside's right to be the exclusive builder of Homes in the Subdivision shall be of no further force or effect, without need of any further document or instrument and without need of an amendment to this Declaration.

#### 5.11 Forestry Plan/Landscape Plan.

The Forestry Plan is intended to govern the Common Areas, the Woodland Buffer Zones and the Primary Environmental Corridor and it is intended that with respect to those areas, the Lot Owners and the Association and the Board shall comply with the Forestry Plan and that compliance with the Forestry Plan is mandatory. Compliance with the Landscape Standards with respect to areas of Lots other than the Woodland Buffer Zones and the Primary Environmental Corridor is mandatory. No species described as prohibited in the Landscape Standards shall be planted on any portion of any Lot. The Landscape Guidelines and Designer Advisory is intended to provide the Association, Board and the Lot Owners with guidance and recommendations concerning the care and maintenance of the forest, woodlands, vegetation and landscaping located on any portion of a Lot other than the Woodland Buffer Zones and the Primary Environmental Corridor.

#### 5.12 Conservation Easement.

The Developer, at its option and in its sole discretion, shall have and reserves the right to grant a conservation easement upon, over, across and through Outlot 3 for the benefit of a land trust or other conservation easement holder selected by Developer. The conservation easement, among other things, will require that Outlot 3 be used and maintained as described in this Declaration and the Forestry Plan and the Landscape Plan and will grant to the land trust or other easement holder the right to enforce any violation of this Declaration and the conservation easement against the Association, the Board, and/or any individual Lot Owner(s). The conservation easement will be recorded with the office of the Register of Deeds of Ozaukee County, Wisconsin, and it will be an easement running with the land described therein and it will bind the Association, the Board and all Lot Owners and their successors and assigns. By purchasing a Lot, each Lot owner hereby consents, without need of any further document or instrument, to the grant of the conservation easement to the land trust or other easement holder and agrees that such Lot Owner takes title to his or her Lot with the understanding that Outlot 3 may be subjected to the terms of such conservation easement. Each Lot Owner hereby appoints the Developer as his/her attorney-in-fact to sign on behalf of the Lot Owner, any

consent to the conservation easement as may be required by any person or entity and upon the request of the Developer, each Lot Owner agrees to execute a written consent to such conservation easement.

Throughout the Forestry Plan, there are references to the conservation easement and the conservation easement holder. If for any reason the Developer does not grant a conservation easement to a land trust or other conservation easement holder, then the references in the Forestry Plan to the conservation easement holder shall be deemed to mean the Board, with the advice of the Consulting Arborist.



**Exhibit A**

Legal Description

**Exhibit B**

Forestry Plan

**Exhibit C**

Landscape Plan

**Exhibit D**

(Plot Plan Showing Buildable Areas and Septic Location)