

**DECLARATION OF RESTRICTIONS,  
COVENANTS AND EASEMENTS  
FOR  
CERTIFIED SURVEY MAP # \_\_\_\_\_**

Revised 12/5/08

# DECLARATION OF RESTRICTIONS, COVENANTS AND EASEMENTS

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## DECLARATION OF RESTRICTIONS, COVENANTS AND EASEMENTS

FOR

CERTIFIED SURVEY MAP # \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS; that THREE SIBLINGS, LLC is a limited liability company duly organized and existing under and by virtue of the laws of the State of Wisconsin, located at Waukesha, Wisconsin (herein referred to as the "Developer,") which term shall also include the duly authorized agent of Developer). Developer is the owner of CERTIFIED SURVEY MAP # \_\_\_\_\_ being a redivision of lots 1 and 2, Plat of Breck's Subdivision and being part of Government Lots 2, 3 and 4, Section 12, Town 7 North, Range 17 East, City of Delafield, Waukesha County, Wisconsin, (herein referred to as "The Subdivision"). Developer intends to establish a general plan for the use, occupancy and enjoyment of The Subdivision, and in furtherance of the general purpose set forth in Section I, below, does hereby declare for the mutual benefit of present and future owners of lands in The Subdivision (herein referred to individually as "Owner" and collectively as "Owners"), that The Subdivision shall be subject to the following restrictions and covenants.

### **I. GENERAL PURPOSE**

1.1. The general purpose of this Declaration of Restrictions, Covenants and Easements for The Subdivision (herein referred to as the "Declaration") is (a) to promote the harmonious development of The Subdivision into a residential community of high quality while protecting the natural beauty and quality of the environment; (b) to help insure that The Subdivision will become and remain an attractive community; (c) to preserve the open space within The Subdivision; (d) to guard against the erection of poorly designed or proportioned structures; (e) to require harmonious use of materials; (f) to promote the highest and best residential development of The Subdivision; (g) to require the erection of attractive homes in appropriate locations on building sites; (h) to require proper setbacks from streets and Upper Nashotah Lake

and adequate free spaces between structures; (i) to protect the shoreline of Upper Nashotah Lake and (j) in general, by such actions to maintain and enhance the value of investments made by purchasers of properties in The Subdivision.

## **II. BUILDING RESTRICTIONS**

2.1. All lots in The Subdivision are restricted to the erection of a single one story, story and one-half, or two story single-family residence building with a minimum square footage of living space (excluding basement level areas) of three thousand three (3,000) square feet and a maximum living space of ten thousand (10,000) square feet.

2.2. Each single-family residence in The Subdivision must have a garage that accommodates at least 3 cars, that is attached to the residence directly or by breezeway or is located in the basement of the residence, and that is constructed at the same time as the residence; or an attached garage that accommodates at least 2 cars and a detached garage which will also accommodate at least 2 cars and that is constructed at the same time as the Building (such single-family residence and attached garage together shall be referred to herein as the "Building"). The maximum size of garages shall conform to City of Delafield (hereinafter referred to as the "City") ordinances.

2.3. The exterior walls and fascia of the Building and any Permitted Improvements (as defined in Section 4.1, below) must be constructed of brick, stone, stucco, solid wood siding, Hardiplank siding, or its equivalent. Siding materials such as aluminum, vinyl, steel, pressed board, Masonite or plywood will not be permitted on the exterior of the Building or any Permitted Improvements, except on soffits. Soffits (but not fascia) may be made of aluminum, vinyl or the siding materials permitted above for exterior walls. Fascia may only be made of the siding materials permitted above for exterior walls (not aluminum or vinyl). Any exposed basement or foundation wall must be covered with full-sized brick, natural stone or stucco.

2.4. All two story and story and one-half Building roofs shall have a minimum pitch of eight feet in height for each twelve feet in length (8/12), except for a porch roof, a shed-style roof or rear dormers on story and one-half Buildings. All one-story Building roofs shall have a minimum pitch of ten feet in height for each twelve feet in length (10/12). All roofs shall be covered with either wood shakes, wood shingles or dimensional 40 year fiberglass shingles of the type and quality of GAF Elk Prestique, Landmark 40 or their equivalents; provided however

Developer shall have the right to approve other roofing materials if they are of comparable quality or better suited to the approved building design.

2.5. The exposed exterior portion of all chimneys below the level of the first floor shall be covered with full-sized brick, natural stone or stucco.

2.6. The minimum setback and offsets shall conform to the building envelopes depicted on the certified survey map of The Subdivision as recorded in the office of the Register of Deeds for Waukesha County.

2.7. Each Owner must obtain Approval of the plans and specifications outlined in Section 2.7.2, below (referred to hereinafter as "Design/Layout Plan"), prior to application for a building permit. For purposes of this Declaration, the term "Approval" shall mean the prior written approval of Developer.

2.7.1. Before submitting Final Design/Layout Plans each Owner must submit at least one preliminary plan for review by Developer.

2.7.2. Each Owner must submit to Developer in connection with its application for Approval of the Design/Layout Plan three complete sets of the following final plans which shall incorporate the plan changes, if any, required by Developer as noted in its review of the preliminary plans:

- (a) Exterior elevations drawn to scale (1/4" = 1' minimum)
- (b) Floor plans drawn to scale (1/4" = 1' minimum)
- (c) Identification of all exterior building materials;
- (d) Stake-out survey showing the proposed location of the Building, existing and proposed yard grades and location of silt fences.
- (e) The square footage of living area by floor.
- (f) Other things that may be required from time to time as set forth in the Requirements and Guidelines.

2.7.3. Approval of the Design/Layout Plan shall be based upon the building and use restrictions contained herein and the **Requirements and Guidelines for Building Construction and Improvements for The Subdivision** (herein referred to as the "**Requirements and Guidelines**"), as may be adopted

from time to time by Developer. **Owner shall obtain and review the Requirements and Guidelines from Developer prior to applying for Design/Layout Plan Approval.**

2.7.4. Design/Layout Plan Approval may be withheld if the design is too similar in appearance to other Buildings in close proximity.

2.7.5 If in the opinion of Developer the submitted plans do not comply with Requirements and Guidelines and this Declaration, Developer may, at its option, but only with Owner's consent, refer the plans to a professional home designer for redesign so that the plans will comply with the Requirements and Guidelines and Declaration. The Owner will be responsible for the payment of any fees charged by such professional.

### **III. CONSTRUCTION**

3.1. The Building must be constructed in accordance with the Design/Layout Plan which has received Approval and must be completed within twelve (12) months of the date the building permit is issued by the City. Developer may, in its sole discretion, grant an extension of said period of time of not more than twelve (12) months. A sodded or seeded lawn and a driveway paved with concrete, stamped concrete, asphalt or brick must be installed within six (6) months of the date that the occupancy permit is issued by the City.

3.2. Developer and/or the City and/or their agents, employees or independent contractors shall have the right to enter upon any lot, at any time, for the purpose of inspection, maintenance and correction of any drainage condition, and the Owner is responsible for cost of the same. Each Owner, at the time of construction of the Building, shall also be responsible for grading its lot so as to direct drainage toward the street, rain garden or drainageway and to prevent an increase in drainage onto neighboring property or into Upper Nashotah Lake. This shall be accomplished by creating swales along common lot lines wherever practical. Drainage ways shall be kept free of any obstructions. No plantings other than grass shall be permitted within 3 feet of side or rear lot lines without Approval. Each Owner must consult with the adjacent lot Owner to agree upon compatible grading of their common lot lines. Due to the varying terrain and drainage conditions on each lot following construction, neither Developer nor

the City shall be responsible for establishing lot line grades. The services of a professional engineer may be required to design a proper grading plan for any lot, the cost of which shall be paid by the lot Owner(s). Final grading of the lot shall be completed within two months after the date that an occupancy permit has been issued for the Building (subject to delays caused by adverse weather conditions).

3.3. Electric transformers, cable TV and telephone equipment boxes have been placed by Developer to serve each lot. Any subsequent relocation, either horizontally or vertically, or modification of these equipment boxes shall require written authorization from the appropriate utility company or service provider and Approval. The lot Owner shall pay all costs of such relocation or modification.

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

3.5. All construction-related activity shall be confined to the Owner's lot unless the adjoining Owners have given permission to use their respective lots. In the event that landscaping on adjacent lots is disturbed during construction or grading, all disturbed areas shall be immediately restored with vegetation of like kind. In the event that eroded material is

deposited onto a street or neighboring property, the Owner of the lot from which the material came shall be responsible for removing the material and restoring the street or neighboring property to its original condition.

3.6. No tree that is in excess of four inches in diameter and that is located outside of the footprint of an Approved Building or Approved Permitted Improvement on any lot of The Subdivision may be cut down or removed without Approval. The Developer may amend the Requirements and Guidelines to establish specific parameters for such approval.

3.7. There shall be no development activity that significantly alters the presently existing natural vegetation outside of the building envelopes depicted on the recorded certified survey map of The Subdivision, including, but not limited to, the removal of presently existing native grasses, flowers, shrubs or trees (of greater than four (4) inches in diameter) or natural aquatic vegetation near the water's edge. The foregoing notwithstanding, each Owner shall have the right to (a) erect one (1) pier per lot at the lakeshore, including the clearing of a reasonable access path to such pier and the removal of aquatic vegetation within a limited area near the pier for swimming and/or boat docking, (b) construct one (1) boathouse and one (1) gazebo per lot, including the clearing of a reasonable area near the same, (c) selectively remove non-native plants, (d) remove trees of four (4) inches or less in diameter, and (e) remove trees of any diameter within a view corridor that extends between the residence and the lakeshore and that shall be limited to a width of thirty (30) feet and (f) construct one driveway per lot.

3.8. As part of the development of each lot, the Owner shall be required to incorporate into each lot a rain garden or infiltration system, defined as a system designed to absorb rain water and slow storm water runoff flowing from rooftop(s) during rain events (hereinafter "Rain Garden"). The Rain Garden shall be designed by a qualified landscape architect and sized appropriately to detain and absorb rain water from the rooftop on the parcel for a 2-year storm event, and shall be subject to Approval. Where topography allows, rooftop runoff water shall be directed to the Rain Garden via either a drainage swale (preferably vegetated) or a pipe, as appropriate, with a minimum slope of 1 percent. The Rain Garden normally consists of a landscaped area planted with native vegetation, containing a depression that will fill with several inches of water during storm events, thus allowing the water to slowly filter into the ground. Where slopes are too steep to allow for the design and locating of a depression-type Rain

Garden, an infiltration system shall be designed consisting of a downspout pipe routing rainwater runoff directly from the rooftop into a piping system (typically, polyvinyl chloride (PVC) pipe cut in half lengthwise and placed face down in a trench or a series of trenches; buried several inches beneath the ground surface on a bed of gravel; and oriented parallel to the natural contours of the land (or an equivalent design). Preferably, one or more pipes are connected to the piping system, in order to outlet water to the surface in the event that the volume of rainfall exceeds a 2-year storm event. The best location for the system will be determined by an on-site soil assessment by the landscape architect. The location of the Rain Garden will be chosen based on natural characteristics of each lot, utilizing a naturally occurring depression, if possible, or if that is not possible, giving preference to a location near to the building envelope. Each Owner shall construct and perpetually maintain the Rain Garden, at its sole expense.

3.9. The use on any lot of any commercial fertilizer composition that contains phosphates is prohibited.

#### **IV. IMPROVEMENTS/OWNER MAINTENANCE**

4.1. No buildings, outbuildings or other structures will be permitted on the Property except the Building, and except the following exclusive list of permitted improvements (“Permitted Improvements”), which are subject to the **Requirements and Guidelines** and require Approval:

4.1.1. Fences of a decorative style. Chain link fences, privacy fences or fences which enclose an entire yard will not be allowed.

4.1.2. Deck structures constructed of wood or certain artificial wood products.

4.1.3. Gazebos.

4.1.4. Pool houses, not to exceed 200 square feet in area.

4.1.5. In-ground swimming pools. Above-ground swimming pools are not permitted. All swimming pool related pump, heater, filter and other equipment must be concealed in an enclosure located next to the Building to minimize the noise and visibility to neighboring properties. A different location

for such pool equipment (with proper screening) may be allowed in special circumstances with Approval.

4.1.6. Retaining walls constructed of natural stone, wood timbers or certain artificial stone products.

4.1.7. Berms.

4.1.8. Detached garages in accordance with Section 2.2, above

4.1.9. Boathouses. The maximum size of the boathouse shall be as permitted by City ordinance.

4.1.10. The enclosed portion of any children's outdoor playground equipment and play structures. Playground equipment and play structures without enclosures do not require Approval.

4.2. There shall be no outside parking or storage of boats, trailers, buses, commercial trucks, recreational vehicles or other vehicles or items deemed to be unsightly by Developer.

4.3. The design and location of each mailbox/newspaper box shall be uniform throughout The Subdivision and installed in the location designated by the postmaster.

4.4. Satellite dish antennas may not exceed 6 square feet in area. No antenna or satellite dish shall be mounted or installed on any roof. Any antenna or satellite dish should, if possible without interfering with reception, be placed and screened so as to minimize its visibility from roadways and neighboring lots.

4.5. Each Owner shall perform such periodic maintenance of the Owner's lot as may be necessary to keep the lot neat and clean in appearance, including, without limitation, the mowing of grass and removal of weeds and debris. This requirement applies to vacant lots as well as to lots where Buildings have been constructed.

## **V. DRIVEWAY EASEMENT**

5.1. Developer does hereby establish and reserve for the benefit of Lots 1 and 2 in The Subdivision, a limited permanent easement upon, over, within and across the land described in Exhibits A and B attached hereto (hereinafter the "Driveway Easement Area"), being a part of Lot 3 in The Subdivision.

5.2. The easement established herein is for the purpose of permitting and maintaining within the Easement Area a common driveway for the joint and exclusive use of the Owners of Lots 1, 2 and 3 in The Subdivision and their successors, assigns, licensees, invitees, tenants and agents, subject to the following conditions:

5.2.1. Use of the Driveway Easement Area shall be limited to vehicular and pedestrian travel and access.

5.2.2 The Owners of Lots 1, 2 and 3 in The Subdivision shall share equally in maintaining the Driveway Easement Area, and in repairing or replacing the paved driveway constructed within the Driveway Easement Area, and in the costs associated therewith, from the point of its intersection with Valley Road to the point of its intersection with the northeasterly line of the driveway on Lot 1. The Owners of Lots 2 and 3 in The Subdivision shall also share equally in maintaining the Driveway Easement Area and in repairing and replacing the paved driveway constructed within the Driveway Easement Area, and in the costs associated therewith, from the point of its intersection with the northeasterly line of the driveway on Lot 1 to the point of its intersection with the northeasterly line of the driveway on Lot 2. The Owner of Lot 3 in The Subdivision shall be solely responsible for constructing, maintaining, repairing and replacing the portion of the driveway which is outside of the Driveway Easement Area and which serves only Lot 3. Notwithstanding the foregoing, should any lot Owner or their licensee, invitee, tenant or agent cause damage to the Driveway Easement Area or the paved driveway in excess of normal wear, that Owner shall be solely responsible for the cost of repairing such damage.

5.2.3. If any lot Owner shall fail to pay their share of the cost of maintaining, repairing or replacing the Driveway Easement Area and another lot Owner is compelled to pay the full cost thereof, the Owner making payment shall be entitled to reimbursement from the non-paying Owner for the full amount of its share, plus interest on the amount owed at the rate of 12% per year until paid. Any lot Owner shall be entitled to recover reasonable attorney fees and court

costs incurred as the prevailing party in any legal action commenced to enforce its rights under this Easement.

5.2.4. Repairs shall only be undertaken upon the agreement of all of the Owners who share in the responsibility for the maintenance of the portion of the Driveway Easement Area which is in need of repair.

5.2.5. There shall be no parking or storage of vehicles or other property within the Driveway Easement Area.

5.2.6. No Owner shall obstruct or in any way interfere with another Owner's lawful use of the Driveway Easement Area.

5.2.7. This easement does not create any rights of the public except as may be specifically set forth herein and shall not be construed as creating any right of public use of the Driveway Easement Area, including that of street or throughway purposes.

5.2.8. Each of the Owners of lots 1, 2 and 3 in The Subdivision shall be obligated for their full share of the maintenance, repair and replacement costs regardless of whether or not such Owners have constructed any improvements on their lot(s).

5.2.9. This Easement shall be perpetual and shall not be subject to termination or expiration under Section 8.8 of this Declaration.

## **VI. PIERS AND SWIMMING RAFTS**

6.1. All piers must conform with the laws of the State of Wisconsin.

6.2. A single swimming raft is permitted for each lot, as long as it is properly anchored and is in conformance with the laws of the State of Wisconsin. The color of the swimming raft may only be a natural earth-tone color, unless a different color is approved in writing by Developer.

## **VII. VIOLATION**

7.1 Any Owner violating the restrictions contained in this Declaration shall be personally liable for and shall reimburse Developer and its successors for all costs and expenses,

including attorneys' fees, incurred by Developer or its successors in enforcing this Declaration. The foregoing shall be in addition to any other rights or remedies that may be available to Developer and its successors.

## **VIII. MISCELLANEOUS**

8.1. **Amendment of Declaration.** Except for the provisions of the Driveway Easement set forth in Section V., above, any of the provisions of this Declaration may be annulled, waived, changed, modified or amended at any time by written document setting forth such annulment, waiver, change, modification or amendment, executed by the Owners of at least sixty-six percent (66%) of the lots which are subject to this Declaration; provided, however, that any such action must also be approved in writing by the Developer (for so long as Developer is in existence). Any annulment, waiver, change, modification or amendment of the provisions of the Driveway Easement shall only be effective if approved in writing by the Owners of all of the lots which are subject to this Declaration. This Declaration and all amendments shall be executed as required by law so as to entitle them to be recorded and shall be effective as to parties without actual notice upon recording in the office of the Register of Deeds for Waukesha County.

8.2. **Variances.** Developer, and no other, shall have the right and authority to permit variances from the application of the Declaration, if such modification or variance is consistent and compatible with the overall scheme of development of The Subdivision, provided that no such modification shall be in violation of applicable laws or ordinances, or have the effect of revoking an Approval previously granted in writing hereunder. Notwithstanding the foregoing, any such modifications or variances shall be at the sole and absolute discretion, aesthetic interpretation and business judgment of Developer and this paragraph and any modifications or variances granted hereunder shall not in any way be interpreted (i) as thereafter preventing or excusing strict compliance with the Declaration, or (ii) as entitling any other person to such modification or variance.

8.3. **Reservation of Right to Grant Easements.** Developer reserves the right to grant and convey easements to the City and/or to any public or private utility company or service provider, upon, over, through or across those portions of any lot within 10 feet of any lot line for purposes of allowing the City, utility company or service provider to furnish gas, electric, water,

sewer, cable television or other utility service to any lot. Developer reserves the right to grant and create easements through any portions of The Subdivision for purposes of facilitating drainage of storm or surface water within or through The Subdivision. Developer may grant such easements without the consent or approval of any lot Owner, so long as Developer or a successor developer to Developer owns any lots in The Subdivision.

8.4. **Noxious Conditions Prohibited.** No noxious or offensive odor, activities or conditions shall be permitted to exist in, on or about any Building or lot, which may be, or may become, an annoyance or nuisance. No building or construction material or commercial or maintenance equipment shall be stored on any lot outside of a garage, other than during periods of actual construction or remodeling and then only for as long as may be reasonably necessary.

8.5. **Signs.** No sign of any kind shall be placed or displayed to the public view on any lot, except one sign of not more than six square feet advertising the residence as for sale. This provision shall not apply to the initial marketing of The Subdivision by Developer. Signs indicating the address of a residence shall be placed only in accordance with City ordinances.

8.6. **Animals and Pets.** No animals, livestock or poultry of any kind shall be raised or kept on any lot, except that no more than (2) dogs and/or two (2) cats may be kept so long as the same are not kept, bred or maintained for any commercial purpose or permitted to run free or act in any other unreasonable manner. Animals and pets shall be housed only in the interior of the Building, and no exterior kennels, pens or other animal housing shall be maintained on the exterior of any Building.

8.7. **Severability.** The invalidity or unenforceability of any term, provision or condition of this Declaration for any reason shall not affect the validity or enforceability of any other term, provision, or condition hereof, all of which shall remain in full force and effect for the term of this Declaration.

8.8. **Duration of Restrictions.** Except as provided in Section V., above, this Declaration and any amendments hereof shall be in force for a term of thirty (30) years from the date this Declaration is recorded, and upon the expiration of such initial 30 year term or any extended term as provided herein, this Declaration shall be automatically extended for successive terms of 10 years each, unless prior to the end of the then-current term a notice of termination is executed by the Owners of at least sixty-six percent (66%) of all lots subject to this Declaration



Consent of Mortgage

Nashotah House as mortgage of a present mortgage on the lands subject to the foregoing Declaration of Restrictions, Covenants and Easements hereby consents to, and agrees that its mortgage shall be subject to, the foregoing Declaration of Restrictions, Covenants and Easements.

NASHOTAH HOUSE

By: \_\_\_\_\_

STATE OF WISCONSIN )

) SS

WAUKESHA COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2008, the above-named \_\_\_\_\_, to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, Waukesha County, State of Wisconsin

My Commission: \_\_\_\_\_

Revised 12/5/08