

**DECLARATION OF RESTRICTIONS
FOR
SHEPHERDS' PASS SUBDIVISION**

KNOW ALL PERSONS BY THESE PRESENTS; that Delafield Property Group, LLC is duly organized and existing under and by virtue of the laws of the State of Wisconsin, located at W289 N520 Elmhurst Road, Waukesha, Wisconsin 53188 (herein referred to as the "Declarant," which term shall also include any duly authorized agent of the Declarant, including, but not limited to, the Developer, as defined below). The Declarant is the owner of certain real estate located in the Town of Delafield, Waukesha County, State of Wisconsin, as more particularly described on Exhibit A attached hereto, and hereafter referred to as "SHEPHERDS' PASS". The Declarant desires to develop SHEPHERDS' PASS as a planned residential development with the potential for single-family dwellings. As provided herein, the Declarant desires and intends to establish a general plan for the use, occupancy and enjoyment of SHEPHERDS' PASS, and therefore do hereby declare for the mutual benefit of present and future owners of lots or other lands in SHEPHERDS' PASS (the Owners), including, but not limited to, any future stages of development added to SHEPHERDS' PASS as provided in Article C herein, that SHEPHERDS' PASS shall be and hereby is subject to the following restrictions, declarations and covenants:

ARTICLE A

BUILDING AND USE RESTRICTIONS.

1. SHEPHERDS' PASS is zoned R-2 PUD Residential District (PUD) with a Conditional Use Permit limiting the number of lots to 34 and a cluster design subdivision by the Town of Delafield and A-3 Suburban Estate with a Conditional Use for a single family cluster subdivision (Residential PUD) by the County of Waukesha. Single-family dwellings are permitted in a PUD. For the purposed hereof, the term Lot shall mean any Single-Family Residence Lot within SHEPHERDS' PASS. The Declarant reserves the right to rezone lot 33 of SHEPHERDS' PASS to A-2 Rural Home District and said lot shall be governed by the Town of Delafield zoning ordinance restriction for A-2 zoning plus any additional restriction imposed by the Declarant.

2. All Single-Family Residence Lots in SHEPHERDS' PASS as designated by the Declarant are hereby restricted to allow the erection of only one (1) single family residence (hereafter referred to as a "Single-Family Residence"). Such Single-Family Residences shall be limited to one story Single-Family Residences, story and one-half Single-Family Residences, two story Single-Family Residences, tri-level Single-Family Residences or split level Single-Family Residences. Each Single Family Residence shall have an attached garage that shall be of sufficient size to accommodate a minimum of two cars.

3. In order to maintain the integrity and aesthetics of SHEPHERDS' PASS, all building plans for any Single-Family Residences or other permitted improvements, including, but not limited to, the exterior design and color of each building to be constructed, and all yard grades and stake out surveys showing erosion control measures shall be submitted to the Declarant and the Declarant shall

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have approved the same in writing prior to an Owner (or its agents or contractors) submitting an application for a building permit. In addition, landscape plans and basic site features such as fences, decks, in ground swimming pools, additions and other temporary or permanent structures or elements contributing significantly to the total environmental and aesthetic effect of SHEPHERDS' PASS are subject to the prior written approval of the Declarant. The Declarant's approval of building design, square footage requirements, building location, and any other restriction influencing the integrity and aesthetics of SHEPHERDS' PASS shall be based upon the building and use restrictions contained in this Article A and such guidelines as may be adopted from time-to-time by the Declarant, at Declarant's reasonable discretion. The Declarant shall have the right to withhold exterior design, exterior material, and square footage requirements approval if the design and square footage requirements are too similar in appearance or does not aesthetically conform with the other buildings in close proximity. It is the intent of the Declarant to maintain diversity in appearance and quality of design in SHEPHERDS' PASS.

4. The following minimum sizes for a Single-Family Residence in SHEPHERDS' PASS shall be based solely on living area within the Single-Family Residence. For the purpose of computing the square footage of living area within a Single-Family Residence, the basement level or garage area of a Single-Family Residence shall not be included in the square footage. The Declarant, in all instances, shall have the final determination in determining the minimum square footage required for a Single-Family Residence to be built upon a Lot provided that these minimums are not less than the R-2 PUD Conditional Use zoning requirements of the Town of Delafield and the A-3 Suburban Estates and Conditional Use (Residential PUD) of Waukesha County. The Declarant, in all

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instances, shall have the final determination as to the classification of the Single-Family Residence for the purpose of determining the minimum square footage (i.e. single story, two story, tri-level or split level). All Single-Family Residences in SHEPHERDS' PASS shall have the following minimum living areas:

- A. A single story Single-Family Residence shall have a minimum of 2,400 square feet of living area on the first floor of the Single-Family Residence.
- B. A story and one-half Single-Family Residence shall have a minimum of 2,800 square feet of living area, with a minimum of 2,000 square feet of living area on the first floor of the Single-Family Residence.
- C. A two story Single-Family Residence shall have a combined minimum of 2,800 square feet of living area on the first and second floors of the Single-Family Residence.
- D. A split level Single-Family Residence shall have a combined minimum of 2,800 square feet of living area on the first and second floors of the Single-Family Residence.
- E. A tri-level Single-Family Residence shall have a combined minimum of 2,800 square feet of living area on the three floors of the Single-Family Residence.

All improvements to the site must comply with the Town of Delafield's open space requirements (80 % ratio for R-2 zoning) as specified in their ordinances, calculated by adding the total surface area of the buildings, driveways, sidewalks, patios, decks, swimming pools, etc., dividing that total by the area of the lot, and subtracting that number from 100%. Improvements to the site must also comply with Waukesha County's 25% F.A.R. (floor area ratio), limiting square footage of the home, garage, (and outbuildings,) including a livable second story of any of these,

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to 25% of the lot size.

5. The exterior wall of a Single-Family Residence and attached garage must be constructed of structural or thin-cut face brick, stucco, dryvit, stone, wood, Hardiplank Cedarmill, Hardiplank Colonial Roughsawn (similar Cement Fiber Materials) or other natural materials. Any exterior product that is similar to any of the accepted exterior materials in the preceding list will be reviewed separately by the Declarant to be approved at its discretion; however, the Declarant must approve in writing the exterior material in a letter that is separate from the architectural plan approval. The Declarant may, at its discretion, approve in writing the use of manufactured siding materials such as pressed board, masonite, plywood, vinyl, Hardipanel, aluminum or steel on DESIGNATED PORTIONS of the home where deemed appropriate. Staccato board is acceptable if no seams are exposed on certain areas of the home but the materials must be approved by the Declarant in writing. Exterior chimneys must be constructed of brick or stone. All exterior chimneys and first floor wall extensions or popouts MUST rest on a footing. All doors and patio doors MUST have an exterior stoop.

6. Declarant may require brick lines, brick wainscot, or brick accents on the Single-Family Residence as an exterior material at the sole discretion of the Declarant.

7. Front and side elevation windows on Single-Family Residences must be trimmed out using casing, shutters or any other trim approved in writing by the Declarant. Front and side elevation windows on exterior walls veneered with brick may be exempted from being trimmed out at the Declarant's discretion and with written approval from the Declarant.

8. All roof areas shall have an appropriate pitch of six feet in height for each twelve feet

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in length (6/12) on two story Single-Family Residences and eight feet in height for each twelve feet in length (8/12) on one story Single-Family Residences , except for rear dormers on story and one-half Single-Family Residences and other special circumstances if the same are approved in writing by the Declarant. All roof areas shall be covered with wood shakes, 40 year dimensional fiberglass or asphalt shingles, or other roofing material, provided, however, the Declarant shall have the right to approve other roofing materials if they are of comparable or superior quality and are better suited to the approved building design of the Single-Family Residence.

9. All garages shall be attached to the Single-Family Residence, directly or by enclosed breezeway, or built into the basement of the Single-Family Residence, and all garages shall be constructed at the same time the Single-Family Residence is constructed. All garage entrances shall be side entry, although front entry garages may be allowed at the sole discretion of the Declarant in cases where the Declarant determines, due to aesthetics, size of lot, lot frontage, topography, or other similar reasons, that a front entry garage would be appropriate. In all cases, the Declarant shall have the final determination of architectural design, including the location of the garage entrance. All driveways shall be paved (either with asphalt, cement or brick), except lots 10 and 33 can stop the pavement after 50 feet.

10. The Declarant shall approve all setbacks. The minimum setback for a Single Family Residence from any abutting street right-of-way on Lots shall be 50 feet, the minimum side yard setback on Lots shall be 20 feet, and the minimum rear yard setback on Lots shall be 50 feet. Driveways shall be permitted within the minimum 20-foot side yard setback, but not less than 5 feet from the side lot line in accordance with the requirements of the Town of

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Delafield.

11. During construction of a Single-Family Residence or any other permitted improvements, all Owners, and all contractors and subcontractors, shall comply with the erosion control plan requirements required by the Town. These requirements are set forth in the attached Exhibit B. Note that Exhibit B states that you must sod, seed and/or mulch the Lot within 60 days after the occupancy permit is issued.

12. Any Single-Family Residence, attached garage, landscaping and/or paved driveway shall be completed within 18 months from the start of construction. If the work is not completed, the Declarant or Homeowner Association can complete the landscaping and driveway after the 18-month time period and charge and/or file a lien against the Lot owner for all costs incurred to complete the work.

13. All Lots shall be graded immediately upon completion of construction of a Single-Family Residence and the grade shall thereafter be maintained to strictly comply with the comprehensive grading plan and erosion control standards for SHEPHERDS' PASS approved by the Town of Delafield. Each lot owner must strictly adhere to and finish grade its lot in accordance with the Master Lot Grading Plan or any amendment thereto approved by the Town Engineer on file in the office of the Town Clerk. The Developer 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, correction of any drainage condition, and the property owner is responsible for cost of the same. Strict compliance with such grading plan shall be enforced so as to prevent the discharge or redirection of storm water onto any adjacent Lots. The lot owner shall not change the grade within

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five feet of the side yard unless to improve the drain from his lot to adjacent lot. Any changes must be approved by the Declarant. No construction of any wall (stone, ties, brick, earth berm or any other materials) shall be allowed closer than 5 ft. from the property line unless approved by the Planning Commission following a public hearing as per section 17.03 7.E .2.

14. No soil shall be removed from any lot in the Subdivision without the prior consent of the Declarant or its duly appointed agent. Any excess soil resulting from excavations shall be transported, at the lot buyer's expense, to such other places in the Subdivision or on other property as may be designated by the Declarant. If the Declarant, after notification from the lot owner, fails or neglects within forty-eight (48) hours to notify the Lot Owner of the place to which excess soil is to be delivered, the Owner may dispose of said fill at the Owner's own discretion, but not within any part of the subdivision. Failure to comply with this paragraph shall render the Lot Owner liable for damages equal to the cost of acquiring the same amount and quality of fill improperly disposed of, plus the cost of delivering the same from its source to the parcel designated.

15. At the time of construction of a Single-Family Residence, the Owner of such Single-Family Residence shall install, at the Owner's expense, one (1) outdoor electric lamppost (the design and quality of which shall be specified by the Declarant), with an unswitched photo-electric cell, at a location on the Lot deemed appropriate to the subdivision, at the Declarant's discretion. The Owner, at the Owner's expense, shall maintain the lamppost in a proper operating manner. If the Owner fails to maintain the lamppost in proper operating order, maintenance of the lamppost may, fifteen (15) days after written notice to the Owner, be performed by the Declarant and the cost of such maintenance shall be a Special Assessment against the Owner, payable according to the terms and

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conditions contained in Article B hereof.

16. The Owners of the Lots in SHEPHERDS' PASS shall, at the time such Lots are landscaped pursuant to the requirements of the Declaration, plant two (2) trees, with a minimum two and one-half inch (2 1/2") trunk diameter at grade, 40 feet apart along the front lot line of such Lots in such locations as are specified by the Declarant on the stakeout survey that must be approved prior to construction. The trees species shall be Oak Maple, Ash, and Linden etc. and must be approved by the Declarant. The owner of a corner lot may plant (substitute) three (3) 8 ft. to 10 ft. evergreen trees on the corner of his lot, if approved by the Declarant. If not installed within 18 months of the initial building permit, the Declarant or the Homeowner Association can install the street trees and charge and/or file a lien for all costs incurred to purchase and plant the street trees. The Lot Owner is prohibited from cutting or removing any trees from the property without the approval of the Declarant. The tree lines on the back property line of lots 29, 31, 32, 33, and outlot 5 may only be cut with the approval of the Declarant and the Owner of the lots 1, 2, and 3 of CSM # 4676

17. The design (including materials) and location of each mailbox/newspaper box shall be subject to the approval of the Declarant, at Declarant's discretion. The Declarant may designate a specific mailbox design for all lots.

18. Plans showing exact locations and construction details of fences, walls, hedges or mass screening plantings shall be submitted to the Developer and be approved in writing before they may be constructed or planted. Fence approvals are at the Declarant's discretion and will depend on such items as landscape screening, functionality, location, and/or materials. No fences erected on any Lot affected by these declarations shall be higher than six (6) feet from the graded surface of the

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ground on which said fence is erected. No perimeter Lot fencing shall be permitted except on lot 33. In the event the fence restrictions and ordinances of the Town or Delafield are more restrictive from time to time than the restrictions contained herein, the Town of Delafield restrictions and ordinances shall control and supersede the terms and conditions contained herein.

19. There shall be no outbuildings, above ground swimming pools, or satellite dish antennas (having a diameter in excess of twenty-four (24) inches). No antenna or permitted satellite dish shall be visible from any roadway or neighboring Lot.

20. There shall be no outside storage of cars, motorcycles, snowmobiles, jet skis, boats, trailers, buses, trucks or campers, or any other vehicles or items deemed to be unsightly by the Declarant or the Association. The outside storage or parking of commercial vehicles is expressly prohibited, and any type of commercial vehicle must be parked inside the garage. There shall no storage of materials (other than during the construction of a Single-Family Residence or any other permitted improvements) of any character whatsoever, nor shall any Lot be used for the storage of any property, item or material that shall cause such Lot to appear in an unclean or untidy condition or that will be obnoxious or offensive to the eye in the opinion of the Declarant. Trash, garbage, refuse, debris or other waste kept on any Lot in preparation for removal from such Lot shall be kept in sanitary covered containers, which are stored out of sight of the street and adjacent property. The Lot Owner and his Builder shall be responsible for keeping the roads clear of mud, dirt, stone, and debris during construction. Construction will be stopped and the Owner will be assessed for clean up if the mud tracked on the roads from the lot is not immediately cleaned by the Owner and/or his Builder.

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21. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become a nuisance to the neighborhood.

22. No exterior detached dog kennel or house detached from the main structure shall be constructed or maintained on any Lot. No lot Owner shall keep any pet or pets that create a nuisance. The maximum number of household pets shall be in accordance with the Town of Delafield ordinances covering such pets. All farm animals, poultry, horses, etc., and all animals kept for commercial purposes shall be prohibited under any circumstances. All animals shall be confined to the owner's property. Small animals will be allowed in the outlots if they are accompanied by their owner and are on a leash. The owner must pick up the animal's feces. Large animals (horses etc) shall be prohibited in the outlots.

23. The storm water retention ponds located on Outlots 2 and 5 (as shown on the Plat of SHEPHERDS' PASS) have been created as required by the Town of Delafield to assist in the removal and detention of storm water from SHEPHERDS' PASS. The storm water retention ponds are not intended to be used for swimming or recreational facilities, and any use of the storm water retention ponds for such use is strictly prohibited. Any persons entering into or using the storm water retention ponds either intentionally or accidentally do so at their own risk. By purchase of a Lot in SHEPHERDS' PASS, each Owner and its respective successors, assigns, heirs and personal representatives thereby waives, to the fullest extent permitted by law, any and all claims for liability against the Declarant, the Developer, SHEPHERDS' PASS of Delafield Homeowners Association, and their respective agents, contractors, employees, officers, directors and shareholders, for injury or damage to person or property sustained in or about or resulting from the use or existence of the storm

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water retention ponds. In addition, each Owner (and its successors, assigns, heirs and personal representatives) agrees to indemnify, defend and hold harmless the Declarant, the Developer, SHEPHERDS' PASS of Delafield Homeowners Association, and their respective agents, contractors, employees, officers, directors and shareholders, from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature (including attorneys' fees), including those arising from any injury or damage to any person (including death) or property sustained in or about or resulting from the use or existence of the storm water retention ponds.

24. The use of Etter Lake will be limited to small boats, canoes, paddleboats and rubber rafts. Gas motorboats will NOT be allowed on the lake. The storage of personal boats will NOT be allowed at the dock or in the lake area. The Homeowners Association will be allowed to store up to four boats at the dock or in the lake area. The homeowners will have any rights to use the lake as granted to them by the state law except as provided above. The Homeowners Association has the option of installing a pier at the shore the Etter Lake. The pier is limited to a length of 50 ft. from the water's edge and 6 feet wide.

25. Outlot #4 must be sold to or acquired by the owner of an adjacent property. The lot will be maintained by the owner and the lot will be deed- restricted to prevent the construction of any building on the lot.

26. The Declarant shall have the right to enforce all of the terms, conditions and restrictions contained herein. Any Owner violating the terms, conditions or restrictions contained herein shall be personally liable for and shall reimburse the Declarant for all costs and expenses, including attorneys' fees, incurred by the Declarant in enforcing the terms, conditions and restrictions

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contained in this Declaration. Any Owner who causes or allows any improvement or improvements to be constructed, installed, placed, or altered on that Owner's Lot without first obtaining the prior written approval of the Declarant shall, at the Declarant's discretion, be required to remove such improvement or improvements in their entirety at the Lot Owners' expense. The foregoing shall be in addition to any other rights or remedies that may be available to the Declarant.

27. The Owners, by the purchase of their Lots, agree that the Declarant shall not be held liable for any good faith decision or decisions made by the Declarant in enforcing the terms, conditions and restriction contained herein and in preserving the integrity and the natural beauty of the SHEPHERDS' PASS. At such time the Declarant determines, in its discretion, the Declarant shall delegate or assign the authority and responsibilities of the Declarant contained herein to the SHEPHERDS' PASS of Delafield Homeowners Association established according to Article B herein.

ARTICLE B

SHEPHERDS' PASS OF DELAFIELD HOMEOWNERS ASSOCIATION

1. An unincorporated association (herein referred to as the "Association") of the Owners of land in SHEPHERDS' PASS (and all future stages of development as provided in Article C herein), is hereby created for purposes of: (a) managing and controlling the common affairs of SHEPHERDS' PASS, (b) owning, managing, controlling and maintaining any Common Areas in SHEPHERDS' PASS (as defined below), and, (c) performing other duties as set forth herein for the common benefit of the Owners. The Association shall be known as the "SHEPHERDS' PASS of Delafield Homeowners Association."

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2. The term "Common Areas" shall include the following areas of SHEPHERDS' PASS, and any areas designated as Common Areas in any future stages of development of SHEPHERDS' PASS added to this Declaration in accordance with Article C (hereafter referred to as "Future Stages of Development"):

A. All outlots, except outlot Four (4), conservancy areas and common areas of SHEPHERDS' PASS, as shown on the Plat of SHEPHERDS' PASS, now or hereafter owned by the Declarant and or the Association.

B. Any area of easements granted to the Association by Declarant as indicated on the final Plat of SHEPHERDS' PASS over portions of the lands subject to this Declaration or all future stages of development as provided in Section C herein.

C. The grass area and any fencing and landscaping contained within the public rights-of-way of any public roadway adjacent to or included with the lands subject to this Declaration.

All Common Areas and related facilities shall be used for the common benefit of the Owners of Lots in SHEPHERDS' PASS. Such Common areas shall not be used for recreational or other activities by any Lot Owner unless in accordance with the terms, conditions and restrictions contained herein or as are hereafter adopted or otherwise approved by the Association. The use of any and all motorized vehicles on any of the common areas is expressly forbidden, except those used exclusively for maintenance of those spaces. The Declarant shall have the right to erect signs in the outlots and common areas to promote the sale of lots in the subdivision. Any signs, monuments, structures or other common facilities constructed by the Declarant or the Association on any Common Areas shall

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be operated and properly maintained and repaired by the Declarant or the Association (as the case may be) so as to be neat and attractive in appearance. The Association shall properly maintain the Common Areas so that they are neat and attractive in appearance (including, without limitation, proper care and cutting of grass and other vegetation). The Association shall maintain all storm water drainage facilities (retention ponds) so as to ensure that they function properly. The obligation to maintain the storm water retention ponds includes, but is not limited to, the obligation to clean and dredge such facilities as necessary. Any plantings or signs placed in the SHEPHERDS' PASS by the Declarant or the Association at any of the entry locations to the subdivision shall also be considered Common Areas, and shall be cared for and maintained in the same manners as described above. Any portion of the Common Area within the public street right-of-way may only be improved or altered with the consent of the appropriate public authorities.

3. The Association shall be governed by a three member Committee, hereinafter referred to as the "Committee," which shall be solely responsible for the activities of the Association. The Declarant will appoint the initial members of the Committee.

4. To qualify as a member of the Committee, a person must be an Owner or a duly designated officer, agent or representative of an Owner.

5. The term of office of the initial members of the Committee (which have been appointed by the Declarant) shall commence upon the date of recording of this Declaration and shall continue until two calendar years after the year in which Declarant no longer owns seventy-five (75%) of the Lots then subject to this Declaration (provided, however, in the event the Declarant, during such two (2) year period, adds Future Stages of Development to this Declaration pursuant to

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Article C herein which results in Declarant again owning twenty-five percent (25%) or more of the Lots subject to the Declaration, then the initial term of the Committee shall continue in full force and effect until two (2) years after such time as Declarant no longer owns seventy-five percent (75%) of the Lots then subject to this Declaration). During such initial term, Declarant shall have the right to appoint, remove or replace all three members of the Committee. Declarant may relinquish or reassert all or any part of the rights provided to the Committee or the Association at any time or times during such initial term.

6. Subject to the rights of Declarant as provided in Article B, Section 5 above, each Owner shall be entitled to vote in person or by proxy in elections for selecting members of the Committee. The Owners of a Lot (whether the Lot is owned singularly or collectively) shall have one (1) vote in the affairs of the Association for each Lot owned.

7. After the initial term as provided in Article B, Section 5 above, the term of office of members of the Committee shall be for two (2) calendar years. If any member of the Committee shall die, resign, be unable to act or cease to be qualified to be a member, the unexpired term of such member shall be filled by special election of the Association.

8. All meetings of the Committee shall be open to all Owners, and shall be held upon not less than three (3) days prior written notice to all of the Owners. Two (2) members of the Committee shall constitute a quorum. Actions of the Committee shall be taken by majority vote of the members. The Committee shall call a meeting of all of the Owners of the Association no less than one (1) time per calendar year starting in the first year in which the Declarant no longer owns seventy-five percent of the lots.

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9. The Committee shall have the following duties:

- A. To provide for the maintenance of improvements in the Common Area;
- B. To establish dates and procedures for the election of members to the Committee;
- C. To promulgate operating procedures for the conduct of the Association's and the Committee's affairs;
- D. To enforce the terms, conditions and restrictions contained in this Declaration according to the terms thereof; and
- E. Establish an Architectural Review Board (as hereinafter defined) if so delegated by the Declarant pursuant to Article A, Section 27 herein. Declarant has the right to retain this power infinitely. Such Architectural Review Board shall consist of three (3) persons appointed by the Committee. No Owner of a vacant Lot (except for the Declarant) shall have the right to serve on the Architectural Review Board. Upon the delegation of the Declarant's authority under this Declaration to the Architectural Review Board, the Architectural Review Board shall have all of the rights and obligations of the Declarant pursuant to Article A herein.

10. The Committee shall have the following powers:

- A. To take such action as may be necessary to cause the Common Areas to be maintained, repaired, landscaped (where appropriate) and kept in good, clean and attractive condition;
- B. To enter into contracts and to employ agents, attorneys or others for purposes

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of discharging its duties and responsibilities hereunder;

C. To levy and collect assessments in accordance with the provisions of Section 11 of this Article B; and

D. To do any thing or take any other action that is incidental to or necessary for the Committee to perform its duties and discharge its obligations under this Declaration.

11. The Committee shall levy and collect assessments in accordance with the following:

A. The Owner of each Lot shall be subject to a general annual charge or Assessment ("General Assessment") equal to its pro rata share of the costs incurred or anticipated to be incurred by the Association in performing its duties and discharging its obligations hereunder. The pro rata share of an Owner of a Lot shall be a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Lots subject to this Declaration (including Future Stages of Development) at the time of the assessment. Said costs shall include, but not be limited to: taxes; insurance; repair, replacement and additions to the improvements made to the Common Areas; equipment; materials; labor, management and supervision thereof; and, all costs for the Association reasonably incurred in conducting its affairs and enforcing the terms, conditions and restrictions contained in this Declaration. The Committee shall also have the power to levy a special assessment ("Special Assessment") against any individual Lot Owner for the failure of such Lot Owner to: maintain said Owner's Lot in accordance with the reasonable standard of the subdivision; install the seeding, sodding, and/or mulching of the Lots; maintain the lamppost required under Article A, Section 15 herein; install street trees and landscaping

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required under Article A, Section 16 herein; and/or, failure of said Owner to comply with the terms, conditions and restrictions contained in this Declaration. Herein General Assessments and Special Assessment are sometimes collectively referred to as "Assessments."

B. Declarant shall not be required to pay any assessment on any Lots owned by the Declarant.

C. Assessments shall be approved at a duly convened meeting of the Committee;

D. Written notice of an Assessment shall be personally delivered to each Owner subject to the assessment or delivered by regular mail addressed to the last known address of such Owner;

E. Assessments shall be due and payable on or before thirty (30) days after the mailing or personal delivery of the notice, as the case may be.

F. Assessments not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the date due until paid, and such unpaid Assessments and the interest thereon shall constitute a continuing lien on the real estate against which it was assessed until they have been paid in full. The Assessments and interest thereon shall also be the personal obligation of any current or subsequent Owner of the Lot against which the Assessment was made.

G. The Committee may record a document with the Register of Deeds in Waukesha County, Wisconsin, giving notice of a lien for any such unpaid Assessment and upon payment or satisfaction of the amount due, record a document canceling or releasing any such lien. The failure to file any such notice shall not impair the validity of the lien. All

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recording and attorney fees relating to any such document or the collection of an Assessment shall be borne by the affected Owner.

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

I. Any lien for Assessments may be foreclosed by a suit brought by the Committee, acting on behalf of the Association, in a like manner as the foreclosure of a mortgage on real property. The affected Owner shall be responsible for all of the Association's costs in collecting the Assessment, including, but not limited to, attorneys' fees.

12. During the initial term of the Committee, the Committee shall not have the power to make improvements to the Common Area in addition to those then in existence (herein referred to as "Additional Improvements") without the written approval of the Declarant. After the initial term, the Committee shall not have the power to make Additional Improvements having a cost in excess of Two Thousand Dollars (\$2,000.00) without the consent of ninety percent (90%) of the then current Owners.

13. Members of the Committee shall not be liable for any action taken by them in good

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faith in discharging their duties hereunder, even if such action involved a mistaken judgment or negligence by the member or agents or employees of the Committee. The Association shall indemnify and hold the members of the Committee harmless from and against any and all costs or expenses, including reasonable attorney's fees, in connection with any suit or other action relating to the performance of their duties hereunder.

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

ARTICLE C

FUTURE STAGES OF DEVELOPMENT OF SHEPHERDS' PASS

The Declarant, its successors and assigns shall have the right, after the effective date hereof, to add Future Stages of the Development to the real estate subject to this Declaration, provided such Future Stages of Development are or become adjacent to the real estate which is or becomes subject to this Declaration or any supplemental declaration. The Future Stages of Development authorized under this Article C shall be added by recording a Supplemental Declaration of Restrictions with respect to such Future Stages of Development that shall extend the provisions of this Declaration to such Future Stages of Development, and shall indicate any provisions that differ from the provisions of this Declaration or any prior Supplemental Declaration. Except with respect to increasing the number of Lots and adding to the Common Areas, and all amendments and modifications incidental thereto, such Supplemental Declarations shall not otherwise revoke, modify, amend or add to the

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covenants established by this Declaration or any prior Supplemental Declaration.

ARTICLE D

AMENDMENT PROVISIONS

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

ARTICLE E

ROADS

Certain roads in SHEPHERDS' PASS and Future Stages of Development terminate or may terminate at the then current boundaries of the subdivision. Owners are hereby put on notice that said roads (or any other roads which may be located over outlots owned by the Declarant) may be connected with or extended to other roads in Future Stages of Development or in lands owned by others if such extension or connection is approved by the Town, Waukesha County or other public entities having jurisdiction. No Owner shall have the right to object to any such road extension or connection, nor

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shall any Owner have the right to claim that it has incurred a loss or damage as a result thereof.

ARTICLE F

TERM AND BINDING EFFECT

This Declaration and any amendments shall be in force for a term of 30 years from the date the Declaration is recorded. Upon the expiration date of such initial 30-year term or any extended term as provided herein, this Declaration shall be automatically extended for a successive term of 10 years, unless prior to the end of the then-current term a Notice of Termination is executed by the Owners of at least seventy-five percent (75%) of all Lots and their mortgagees, is consented to by the Town of Delafield, and is thereafter recorded in the Office of the Register of Deeds of Waukesha County. This Declaration shall be binding upon all Owners and any other person claiming under or through the Declarant.

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IN WITNESS WHEREOF, the undersigned has executed this Declaration of Restrictions this 12 day of Nov., 2001.

DELAFIELD PROPERTY GROUP, LLC,

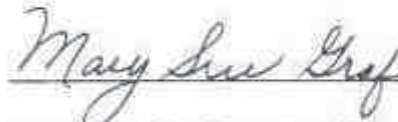
By:  MEMBER
Lloyd Williams, Member

Attest: _____

STATE OF WISCONSIN

COUNTY OF WAUKESHA

Personally came before me this 12 day of November, 2001, the above-named Lloyd Williams, Member, to me known to be the person(s) who executed the foregoing instrument and acknowledged the same in such capacity.



Notary Public, County of Waukesha
State of Wisconsin

My Commission expires on: 2/9/03

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EXHIBIT A

Legal Description of SHEPHERDS' PASS

Delafield Property Group, LLC, is the "Declarant" of SHEPHERDS' PASS, being a subdivision, being all that part of the SE $\frac{1}{4}$, the SW $\frac{1}{4}$, the NE $\frac{1}{4}$, and the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 25, Township 7 North, Range 18 East, The Town of Delafield, Waukesha County, Wisconsin.

EXHIBIT B

Erosion Control Standards

To protect the retention ponds and the storm sewer system in SHEPHERDS' PASS, the purchaser shall prevent soil erosion and sedimentation by:

1. Installing and maintaining a gravel entrance (6 inches of 2 to 3 inch aggregate, 7 feet wide and 50 feet long or the distance from the road to the construction area, whichever is less); requiring all vehicles to use that entrance;
2. At the end of each workday, cleaning up any soil tracked onto the road;
3. Locating all soil piles at least 25 feet from any downslope road, ditch or drainageway; immediately placing silt fence on the down slope side of all soil piles;
4. As soon as gutters are installed, placing extenders on all downspouts to route roof water to a stabilized area; continuing use of the extenders until vegetation is established; and
3. Sodding, seeding and/or mulching of the Lot within 60 days after the occupancy permit is issued; maintaining the sod or seed by watering and any necessary replanting. (For homes with occupancy permits issued between September 1 and April 30, the Lot shall be covered with mulch within 30 days after the occupancy permit is issued and the mulch shall be maintained until the Lot is sodded or seeded. For these Lots, sodding or seeding shall be completed by June 1).

All erosion control measures shall be installed and maintained according to the best standards and specifications set forth in the Wisconsin Construction Site Best Management Practice Handbook, the Wisconsin Soil Conservation Service Field Technical Guide, or adopted by the Waukesha County Land Conservation Department.

SHEPHERDS' PASS

