

Detention Pond Maintenance and  
Easement Agreement

Document Number

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RONALD A. VOIGT  
OZAUKEE COUNTY  
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Recording Area

Name and Return Address

Christopher S. Frommell  
Lakeside Development Company  
10033 N. Port Washington Rd.  
Mequon, WI 53092

\$27/PA

15-019-01-002.00 \*

Parcel Identification Number (PIN)

This information must be completed by submitter: document title, name & return address, and PIN (if required). Other information such as the granting clause, legal description, etc., may be placed on this first page of the document or may be placed on additional pages of the document. Note: Use of this cover page adds one page to your document and \$2.00 to the recording fee. Wisconsin Statutes, 59.43(2m). WRDA HB Rev. 1/8/2004

## DETENTION POND MAINTENANCE AND EASEMENT AGREEMENT

This Detention Pond Maintenance and Easement Agreement and related covenants (hereinafter "Agreement"), is made and entered into as of October 21, 2005, by and between Lakeside Development Co. (1986), ("Developer"), a Wisconsin corporation, and the City of Mequon ("City").

WHEREAS, Developer owns certain real property situated in the City of Mequon, Ozaukee County, Wisconsin, described in Exhibit B attached hereto and incorporated hereby by reference (The Preserve at Glen Oaks Property, or the "Property"); and

WHEREAS, Developer has subdivided the Property and desires to establish for the benefit of itself and the owners of the lots in the Property certain nonexclusive easements in, to, over, and across portions of the Property for two detention ponds and related facilities and a perpetual easement for the maintenance of the detention ponds and their related facilities; and

WHEREAS, the City has, pursuant to its land division and zoning ordinances, and engineering standards regulating land development and design and performance standards associated therewith, imposed certain conditions upon plat and other approvals, and the parties have entered into a Development Agreement to insure, in part, compliance with such requirements; and

WHEREAS, Developer desires to make certain other covenants and agreements as hereinafter are more specifically set forth, in order to provide for compliance with such requirements now and in the future.

NOW THEREFORE, in consideration of the foregoing, and the covenants and declarations as hereinafter set forth, IT IS DECLARED as follows:

1. Declaration of a Perpetual Easement. Developer hereby declares and reserves for itself, its successors, and assigns, forever, a non-exclusive easement, for the benefit of the owners of the lots in the Property, located generally on and over portions of Lots 15, 16 and 17 and outlot 1, and depicted on sheet 2 of the Plat which is attached hereto as Exhibit A and incorporated herein by reference (the "Easement Area"), including the right and authority to construct, use, operate, maintain and repair (including reconstruction) two detention ponds and associated facilities, including but not limited to culverts, storm sewers, drainage ditches, other drainage facilities, tributary connections ("Stormwater Facilities"), and landscaping ("Landscaping") installed pursuant to the landscape plan approved by the City of Mequon dated March 10, 2005 ("Landscape Plan") in the Easement Area. Developer, its successors and assigns, agrees to maintain, at its sole expense, the detention ponds and associated facilities constructed in the Easement Area, such maintenance to include, but not be limited to, providing normal, usual and customary cleaning and maintenance which may include weed and algae control, bank stabilization, outlet structure (including trash rack), dredging, biological

control and maintenance of the Landscaping. Developer, its successors and assigns, shall be permitted to use such reasonable area outside of the Easement Area as is necessary for access to the easement area and maintenance of the Stormwater Facilities and the Landscaping. The City of Mequon is additionally granted the right of access to Outlot 1 and the Easement Area in order to inspect for compliance with maintenance of the Stormwater Facilities and maintenance or replacement of Landscaping, and in the event Developer, its successors or assigns fails to maintain the Stormwater Facilities or the Landscaping as required, the City of Mequon shall have the right, but not the responsibility, to enter the Easement Area, in a reasonable manner and at reasonable times, for the purpose of maintaining the Stormwater Facilities or the Landscaping. If the City of Mequon shall undertake to do such work, it shall then charge the same to all of the low owners/members of the Homeowners Association pursuant to §66.0627, Stats., including such charge as a lien and special tax on the property.

2. Repair and Maintenance.

2.1. Until responsibility for the perpetual maintenance, repair and recertification of the Storm Water Facilities shall have been transferred to an entity created or to be created by Developer as hereinafter described, Developer, its successors, and assigns, shall be responsible for repair, maintenance and recertification of the Stormwater Facilities.

2.2. Developer shall create or cause to be created an entity ("The Preserve at Glen Oaks Homeowners Association") with a perpetual existence pursuant to Chapter 181 of the Statutes of the State of Wisconsin, for the express purpose, inter alia, of assuming all responsibility for the perpetual maintenance, repair and recertification of the Storm Water Facilities according to the same performance standards to which they were constructed, such that they accommodate the maximum potential volumes of flow through and within the subdivision development, and meet applicable performance standards for storage and release.

2.3. If, in the opinion of the City Engineer of the City of Mequon, the Developer, its successors or assigns, including The Preserve at Glen Oaks Homeowners Association, fails to repair, maintain or recertify such Stormwater Facilities accordingly, the City may give the Developer, its successors or assigns written notice requiring that the failure be cured within thirty (30) days or such longer period of time as may be reasonably required or appropriate. If the Developer or its successors or assigns fails to comply with the demands of the notice, the City shall have the right to provide the required repair, maintenance or recertification, and to charge the cost thereof, including administrative charges, to all of the lots and outlots in The Preserve at Glen Oaks Subdivision (as the same may be replatted), a proportionate share of such charges, pursuant to Section 66.0627, Wisconsin Statutes.

3. Right to Assign.

Developer hereby reserves the right to assign to The Preserve at Glen Oaks Homeowner's Association, forever, the Agreement, including but not limited to the perpetual right to enter upon the real estate hereinafter described at any time that it may see fit, and construct, maintain, use and repair and recertify all Stormwater Facilities, and the further right to remove trees, bushes, undergrowth and other obstructions interfering with the location, construction, use and maintenance of said surface water drainage and/or underground pipe lines and mains. Notwithstanding its assignment of all its rights hereunder to The Preserve at Glen Oaks Homeowner's Association, in order to assure compliance with the covenants contained herein and the Development Agreement entered into between Developer and the City of Mequon, and plans approved by the City of Mequon, the Developer reserves, for itself, the right to enter the Easement Area to do all things necessary to repair, maintain and recertify the Stormwater Facilities.

4. Developer Reservations. Notwithstanding its assignment of all its rights hereunder to The Preserve at Glen Oaks Homeowner's Association, Developer hereby reserves for itself the right to tie into, and use any detention pond system as may be installed by Developer on Easement Area. Developer hereby represents, agrees, and warrants that the detention pond it installs, if any, shall be constructed, reconstructed, maintained, repaired, used and operated in accordance with all applicable laws, statutes, codes, ordinances, rules and regulations and that all inspections necessary for the completion of such installations will be undertaken as required. No Easement Area owner shall be entitled to compensation for such connection or use provided, however, that the cost of the installation, maintenance, and repair of said connection shall be born solely by Developer.

5. Easement Area Use. Developer hereby reserves to itself the right to make such use of the land included within the Easement Area (including without limitation, parking of vehicles on the surface thereof), subject to all governmental rules and regulations, as will not unreasonably disturb or interfere with such detention pond, storm sewer runoff or prevent ingress and egress thereto for the purposes of construction, operation, use, maintenance and repair (including reconstruction) thereof. Subject to all governmental rules and regulations, Developer reserves the right to cross and re-cross the Easement Area with other utility lines, pipes, wires and easements, parking and access easements, and may install paving, curb and gutter, landscaping, and signs on the Easement Area which are not inconsistent with the grant of the easement herein contained.

6. Liens. In the event any liens are filed against Easement Area, or any part thereof, in connection with any work performed by or on behalf of Developer or in connection with any act or omission of developer pursuant to this Agreement, Developer shall have the liens immediately discharged of record.

7. Indemnity. Developer, with respect to its activities performed until such time as responsibility for the maintenance, repair and recertification of the Storm Water Facilities shall have been transferred to the Preserve at Glen Oaks Homeowners Association pursuant to paragraphs 2.1 and 2.2 hereinabove, and thereafter, its successors

and/or assigns, with respect to its or their activities performed hereunder, shall defend, indemnify and save harmless the Easement Area owner(s), their officers, agents and employees, and any Easement Area mortgagee, against all suits, demands, causes of actions, liabilities or claims thereof for injury or damages of whatever nature, including death, or damage to property: (i) directly arising out of or proximately resulting from the activities of Developer, its agents, employees, licensees or contractors, their agents or employees; or (ii) directly arising out of any defaults hereunder; or (iii) directly arising out of or proximately resulting from the construction, maintenance, or repair of the Easement Area by Developer, or thereafter, by its assign, the Preserve at Glen Oaks Homeowners Association.

8. Notices. Notices in demand required or permitted to be given hereunder shall be given by certified mail, return receipt requested, or by a national express service such as FedEx, in the case of Developer, addressed to it at 10033 North Port Washington Road, Suite 300, Mequon, Wisconsin 53092 or at such other address as specified in writing by Developer, its successors, or assigns.

9. Exhibits. All exhibits referred to herein and attached hereto shall be deemed part of the Agreement.

10. Recording. The Agreement shall be recorded in the records of Ozaukee County, Wisconsin.

11. Governing Laws. The laws of the State of Wisconsin shall apply to the Agreement.

12. Severability. If any term, provision or condition contained in the Agreement shall, to any extent, be invalid or unenforceable, the remainder of the Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. Binding on Future Parties. The perpetual easement and all covenants and easements herein shall run with the land and shall inure to the benefit of and be binding upon the parties, their successors and assigns.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this 20 day of October, 2005.

Lakeside Development Co. (1986)

By: T. Zabjek  
Thomas A. Zabjek, President

CITY OF MEQUON

By: Christine Nuernberg  
Christine Nuernberg, Mayor

By: Lee Szymborski  
Lee Szymborski, Clerk

STATE OF WISCONSIN )  
  )  
OZAUKEE COUNTY        )

Personally came before me this 20 day of October, 2005, the above-named Thomas A. Zabjek, , President of Lakeside Development Co. (1986), to me known to be the person who executed the foregoing instrument and acknowledged the same.

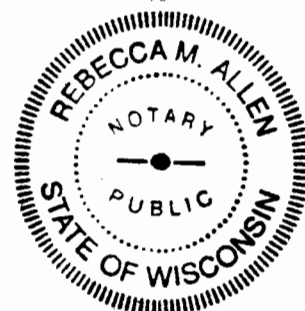
Maria E. Kaup  
Notary Public, Ozaukee County, Wisconsin  
My commission (expires) ~~(is)~~ 2-17-08.

STATE OF WISCONSIN )  
  )  
OZAUKEE COUNTY        )

Personally came before me this 21 day of October, 2005, the above-named Christine Nuernberg and Lee Szymborski, Mayor and Clerk of the City of Mequon respectively, to me known to be such officers and acknowledge that they executed the foregoing instrument in such capacity.

Rebecca Allen  
Notary Public, Ozaukee County, Wisconsin  
My commission (expires) (is) 4-27-08

DRAFTED BY:



John M. Filachek  
Chernov, Stern & Krings, SC  
330 E. Kilbourn Ave., Suite 1275  
Milwaukee, WI 53202  
Phone: (414) 276-4080



**EXHIBIT B**  
**Description of the Property**

The Preserve at Glen Oaks, being a redivision of Lot 2 of Certified Survey Map No. 3487 being a part of the northeast 1/4 of the northeast 1/4 of section 19, Township 9 North, Range 22 East, in the City of Mequon, Ozaukee County, Wisconsin.