

GRANT OF CONSERVATION EASEMENT

This Grant of Conservation Easement (“Conservation Easement”) is made between and among **ALTAMOUNT DEVELOPMENT, LLC**, and its successors and assigns (“Subdivider”), **THOMAS A. DREMEL REVOCABLE TRUST DATED JANUARY 25, 2002** and Constance Dremel as to any marital property rights, (“Lot 1 Owners”), **KENOSHA/RACINE LAND TRUST, INC.**, a non-profit, charitable corporation (the “Land Trust”), **TRI CITY NATIONAL BANK**, a national banking corporation (“Mortgagee”), and the **TOWN OF YORKVILLE**, a municipal corporation in Racine County, Wisconsin, and its successors and/or assigns (“the Town”).

RECITALS

A. The Subdivider is the developer of a subdivision project known as the Woodland Waters Subdivision located in the Town of Yorkville, Racine County, Wisconsin, (hereinafter referred to as the “Subdivision”). A copy of the Subdivision plat is attached hereto as Exhibit “A”.

B. The Subdivider is a fee simple title owner of Outlots 1, 2, 3, 4, 5, and 6 of the Subdivision as identified on the recorded plat (the “Outlots”). Lot 1 Owners own a 1/24th fee simple title interest in Outlots 1, 2, 3, 4, 5 and 6 and hold a mortgage interest in the lands located within the plat including the Outlots. Outlots 1, 2, 3, 4, 5, and 6 will be owned individually by the owners of Lots 1 through 24 (the “Lot Owners”) so that each Lot Owner owns an undivided 1/24th interest in all outlots with all other Lot Owners. The ownership interest of each Lot Owner in the outlots shall not be separated from the

lot to which such undivided interest is appurtenant and shall be deemed to be conveyed and encumbered with such lot even though such undivided interest is not expressly mentioned or described in the conveyance or other instrument. Outlots 1 through 6 of the Subdivision shall be managed and maintained in accordance with the Stewardship Plan by the Woodland Waters Lake and Homeowner's Association, Inc. (the "Owner's Association"), of which the Lot Owners will be members, as created by the Restrictive Covenants of the Subdivision (the "Restrictive Covenants"). A copy of the Restrictive Covenants is attached hereto as Exhibit "B".

C. Outlots 1, 2, 3, 4, 5, and 6 are the subjects of this easement and are referenced in the recorded Subdivision plat ("Easement Area").

D. The Mortgagee holds a mortgage interest in the lands located within the plat and will subordinate its interest in the Easement Area to the rights of the Land Trust and the Town.

E. The Town has recognized that the loss of open space within the Town is a great and immediate threat to preserving the rural character of the Town.

F. The Town adopted a conservation subdivision ordinance that requires a Subdivider to preserve 64% of the gross area of the land to be developed as open space. The Easement Area represents the required open space for this Subdivision.

G. The property possesses natural, scenic, open space, passive recreational and educational values of great importance to the Town and its residents and the people of Racine County.

H. The Subdivider is willing to grant this Conservation Easement to the Land Trust to protect environmentally sensitive areas located within the Easement Area. Such area is documented in an inventory of relevant features of the Easement Area that is contained in a stewardship plan entitled “Conservation Subdivision Stewardship Plan for Woodland Waters,” dated April 7, 2006 and prepared by Thompson and Associates Wetland Services, LLC and as approved by the Land Trust and Subdivider, which is incorporated herein by reference (“Stewardship Plan”). The original Stewardship Plan is on file with the Town.

I. The Land Trust is qualified to be a “holder” (as that term is defined in Section 700.40(1)(b) of the Wisconsin Statutes) of conservation easements pursuant to Section 700.40(2) of the Wisconsin Statutes.

J. The Common Law and the Uniform Conservation Easement Act, Section 700.40 of the Wisconsin Statutes, provide for the creation and conveyance of conservation easements which impose restrictions or affirmative obligations on the owner of lands.

K. The Land Trust agrees, by accepting this Conservation Easement, to honor the intentions of the Subdivider and Town as stated herein and to preserve and protect in perpetuity the conservation values of the Easement Area for the benefit of this generation and the generations to come.

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby made a part of this Conservation Easement, and the mutual covenants, terms, conditions and restrictions contained herein, and other good and valuable consideration,

the receipt and sufficiency of which by each of the parties is hereby acknowledged, and pursuant to the laws of the State of Wisconsin, including Section 700.40 of the Wisconsin Statutes, the parties hereto grant and agree as follows:

1. **Grant of Conservation Easement.** The Subdivider and Lot 1 Owners do hereby freely give, grant, assign, convey and confirm to the Land Trust, a perpetual conservation easement over the Easement Area pursuant to Section 700.40 of the Wisconsin Statutes of the nature and character and to the extent set forth herein. It is hereby acknowledged that this Conservation Easement constitutes a servitude upon the land and runs with the land. The development rights conveyed by this Conservation Easement shall include all development rights, except those specifically reserved herein and those reasonably required to carry out the permitted uses of the Easement Area as herein described. The Conservation Easement and restrictions hereby conveyed consist of covenants on the part of the Subdivider and its successors and assigns. The Land Trust accepts this Conservation Easement in perpetuity over the Easement Area of the nature and character and to the extent set forth herein.

2. **Purposes.** The purposes of this Conservation Easement are to retain and protect the natural scenic and open space values of the real property, assuring the availability of real property for forest, recreational and open space use, for protecting natural resources, maintaining and enhancing air or water quality, and preserving the historical, architectural, archaeological or cultural aspects of real property now and in the future for the benefit of present and future generations and to prevent any use of the Easement Area that will significantly impair or interfere with these purposes. The

Easement Area shall be used only as expressly provided in this Conservation Easement, with management of the Easement Area to be in accordance with the Stewardship Plan. The Stewardship Plan is to be strictly followed by the individual Lot Owners and the Owner's Association for the management and maintenance of the Easement Area. The parties to this Conservation Easement recognize the need to protect natural, scenic and open space values of the real property and share the common purpose of conserving these values by this Conservation Easement to prevent the use or development of the Easement Area for any purpose or in any manner which would conflict with the maintenance of these values. Each of the parties accepts such conservation restrictions and development rights in order to conserve these values for present and future generations.

3. **Prohibited Uses.** Any activity on or use of the Easement Area inconsistent with the purposes of this Conservation Easement is prohibited. No commercial, industrial, or mining activities shall be permitted, and no building, structure, or appurtenant facility or improvement shall be constructed, created, installed, erected or moved onto the Easement Area, except as specifically permitted under this Conservation Easement or the Stewardship Plan. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

a. The division of the Easement Area into smaller parcels, whether through legal or *de facto* subdivision, including divisions through the creation of subdivisions, condominiums, site leases, lot line adjustments or other means. It is the intent of this paragraph to require that the entire Easement Area remain as platted for

the purposes of this Conservation Easement and to prohibit a conveyance that further divides any portion of the Easement Area.

b. Use of the Easement Area for commercial or industrial purposes, including use by easement or other right of access or passage across or upon the Easement Area in conjunction with commercial activity.

c. The placement and construction of any buildings, structures, or other improvements of any kind (including, without limitation, roads and parking lots) other than those improvements shown on the plat and the placement and maintenance of any Town approved community sanitary sewerage systems, or other improvements that are consistent with the Stewardship Plan.

d. Any alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock or peat, except as may be required in the course of implementing and managing the Easement Area in accordance with the Stewardship Plan, the construction and maintenance of any storm water drainage system, the construction and management of a path system all in accordance with the Stewardship Plan, or the installment of any other utility including gas, electric, cable and telephone, or as otherwise permitted pursuant to the Stewardship Plan. In no case shall mining of oil, gas, or other minerals be permitted.

e. Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.

f. Any use or activity, not expressly permitted, that causes or is likely to cause significant degradation of any woodlands, wetlands, streams, springs, lakes,

ponds, marshes, sloughs, swales, swamps, or potholes now existing or hereinafter occurring.

g. No portion of the Easement Area shall be used for dumps, landfills, or the storage or deposit of waste materials of any kind except for any use related to the community sanitary sewer systems installed within the Common Open Space. Disposal of any waste materials generated by activities permitted under this Conservation Easement shall be in accordance with applicable state law and with the approval of the Land Trust and/or the Town.

h. The placement, use or parking of mobile homes, trailers, trucks, automobiles, or any other motorized vehicle except as necessary for the construction or management of a path with prior approval of the Land Trust.

i. No use shall be made of the Easement Area, and no activity thereon shall be permitted, which, in the reasonable opinion of the Land Trust, is or is likely to become inconsistent with the purposes of this Easement Area as stated above, or as set forth in the Stewardship Plan.

j. The 9-acre lake shall contain no new private docks. Public access to the lake shall be from the end of Walden Drive, as depicted on the recorded plat of the Subdivision. Minimal clearing of the lake edge shall be allowed within the public access area. The lake can be used by small motor-less craft including canoe, kayak, or paddleboat. No gas powered motors are allowed including personal watercrafts (e.g., jet skis). Clearing shall be allowed on the lake edge on residential lots to a maximum of 30% of each lot's frontage by county ordinance.

4. **Reserved Rights.** The Subdivider reserves to itself and its successors and assigns, all rights accruing from any ownership or interest it has in the Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Easement Area that are not prohibited herein and are not inconsistent with the purposes of this Conservation Easement or the Stewardship Plan, while recognizing that the Easement Area is private property and owned individually by each Lot Owner.

5. **Implementation and Management of Easement Area.** The Subdivider, its successors and assigns, shall be responsible for implementation of the Stewardship Plan and management of the Easement Area in accordance with the Stewardship Plan, which has been prepared by a consultant with expertise in rendering professional ecological services. However, Subdivider shall ensure that the Stewardship Plan has been implemented prior to turning control of the Subdivision over to the Lot Owners and Owner's Association pursuant to the Restrictive Covenants. Subdivider shall fund the implementation of the Stewardship Plan and management of the Easement Area for the first five (5) years as detailed in the Stewardship Plan. A copy of the estimate of the costs for the first five (5) years is attached as Exhibit C. The Easement Area shall be managed in accordance with all applicable Town and County ordinances with specific attention given to the Town's ordinances regulating weeds (Section 22-113(6)) and those sections regulating maintenance of drainage easements. The Restrictive Covenants shall contain a provision for an ecological service company to update the Stewardship Plan every five (5) years unless the Owner's Association and Land Trust both agree to an earlier update; and the Owner's Association and Land Trust shall

jointly approve the updated plan. However, the Subdivider shall pay for the first five (5) year update to the Stewardship Plan.

a. *Assessment.* Commencing one year after execution of the Conservation Easement, the Land Trust ecologist, if one is on staff, or other qualified ecological consultant hired by the Land Trust, shall conduct an annual assessment of the Easement Area to ensure compliance with the Conservation Easement and Stewardship Plan. During the buildout phase of the Subdivision, the Town may ask the Land Trust to conduct additional assessments to evaluate compliance. A written summary of any assessment shall be provided by the ecological consultant to the Town, Land Trust and Subdivider, its successors and assigns. The Owner's Association shall provide the Land Trust with a list of new owners at the time of the annual assessment. The Land Trust and ecological consultant shall meet with the Subdivider, its successors and assigns, to review findings and develop plans for corrective action if needed.

b. *Education Component.* Pursuant to the Sec. 28-125(f)(8) of the Town's Code of Ordinances, the Land Trust shall hold an education meeting with the Lot Owners at least annually after the annual assessment is conducted. The Land Trust shall offer two sessions to facilitate attendance. Prior to the first session, the Land Trust shall mail each new Lot Owner a summary of the Conservation Easement restrictions and the Stewardship Plan. The education shall be tailored to this Subdivision and include, but not be limited to, the following:

- Review of long term goals of the Stewardship Plan, progress over the past year, and plans for the coming year;

- General explanation of prohibited and allowed activities under the Conservation Easement; and
- Review of Conservation Easement violations over the past year and corrective action.

c. *Cost.* The cost for the assessments and education performed, as well as any reasonable administrative costs incurred by the Land Trust shall be borne by the Subdivider, or its successors and assigns. The Land Trust shall provide an itemized invoice, including ecological consultant fees, if any, at cost, specific presentation materials at cost, and Land Trust ecologist and administrative time charged at rates in effect at the time of assessment. The charge in effect for the year 2006 will be \$70.00 per hour. The charge per hour will be inclusive of all Land Trust overhead expenses needed to accomplish the work. The charged rate will increase from time-to-time based on average fee inflation for comparable work done by at least two (2) ecological service companies in Wisconsin.

d. *Land Trust Management Fee and Legal Defense Fee.* The Subdivider shall pay a land trust management fee to the Land Trust payable within thirty (30) days after execution of this Conservation Easement, the total sum being Four Thousand Five Hundred Dollars and NO/100(\$4,500.00) and also payable within said thirty (30) day period, a legal defense fee in the amount of Two Thousand Five Hundred Dollars and NO/100 (2,500.00). The legal defense fee shall be further increased by the sum of One Hundred and Fifty Dollars (\$150.00) per lot which is due and payable upon the conveyance of the lot(s) from the Subdivider to the individual purchaser. The Land

Trust shall provide Subdivider with a statement of fee due in the form attached as Exhibit D for Subdivider to include with each lot conveyance. The statement shall include the name of the Subdivision, the amount of the fee due, and the remittance address. In addition, Subdivider shall insert the name and address of the individual buyer. Remittance shall be made within five (5) days of closing.

e. *Failure to pay.* In case of failure to pay any of the costs as provided under this Conservation Easement, the Town may extend such costs and fees upon the tax roll as a special tax pursuant to Section 66.0627, Wis. Stats., or pursuant to any other applicable section of the statutes. The Subdivider, its successors and assigns including the individual Lot Owners of the Subdivision, waive right to notice and hearing. In addition, the Land Trust or Town may commence legal action for the recovery of any such amounts owing to it hereunder.

6. **Additional Rights of Land Trust.** To accomplish the purpose of this Conservation Easement, the following additional rights are conveyed to the Land Trust and Town by this Conservation Easement:

a. To enter upon the Easement Area at reasonable times in order to monitor the Subdivider's compliance with and otherwise enforce the terms of this Conservation Easement and Stewardship Plan; provided that such entry shall be upon prior reasonable notice to the Subdivider and shall not unreasonably interfere with Subdivider's use and quiet enjoyment of the Easement Area; and

b. To prevent any activity on or use of the Easement Area that is inconsistent with the purpose of this Conservation Easement and to require, at the

Subdivider's expense, the restoration of such areas or features of the Easement Area that may be damaged by any inconsistent activity or use.

7. **Approval.** Where the approval of the Land Trust and/or Town is required, such approval, or denial, shall be given in writing within forty-five (45) days of receipt of written request therefore. Such request shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Land Trust and/or Town to make an informed judgment as to its consistency with the purpose of this Conservation Easement and Stewardship Plan. Such approval may be withheld only upon a reasonable determination that the action as proposed would be inconsistent with the purpose of or would otherwise violate any provision of this Conservation Easement or Stewardship Plan.

8. **Enforcement of the Restrictions.**

a. *Generally.* If the Land Trust, and/or the Town determines that any party is in violation of the terms of this Conservation Easement or Stewardship Plan, or that a violation is threatened, written notice of such violation or threatened violation shall be given to the alleged violating party advising such party of the nature and extent of the violation or threatened violation and demanding corrective action sufficient to cure the violation and, where the violation involves injury to the Easement Area resulting from any use or activity inconsistent with the purpose of this Conservation Easement, to restore the portion of the Easement Area so injured. If the alleged violating party fails to cure the violation within forty-five (45) days after receipt of such notice, or under circumstances where the violation cannot reasonably be cured within a

forty-five (45) day period, fails to begin curing such violation within the forty-five (45) day period, or fails to continue diligently to cure such violation until finally cured, the affected party may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation by temporary or permanent injunction, ex parte if necessary, to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement, or injury to any conservation values protected by this Conservation Easement, including damages for the loss of natural or scenic resources and/or water quality and/or environmental values, and to require the restoration of the Easement Area to the condition that existed prior to any such injury. Any damages recovered shall be applied to the cost of undertaking any corrective action on the Easement Area. The parties agree that remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the Land Trust and the Town shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which it may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy or otherwise available legal remedies. If the Land Trust and/or Town determine that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Easement Area, the Land Trust and/or Town may pursue remedies under this Section without prior notice to the Subdivider or without waiting for the period provided for cure to expire.

b. *Third Party Enforcement Rights.* The Town has third-party enforcement rights with respect to this Conservation Easement. In such capacity, the Town may, but is not obligated to, enforce the restrictions of this Conservation Easement.

c. *Costs of Enforcement.* Any costs incurred by the Land Trust and the Town in enforcing the terms of this Conservation Easement including, without limitation, costs of litigation and actual attorneys' fees, and any costs of restoration necessitated by any violation of the terms of this Conservation Easement shall be borne by the Subdivider, or its successors and assigns, if the final determination is in favor of the Land Trust and/or Town.

d. *Enforcement Discretion.* Enforcement of the terms of this Conservation Easement shall be at the discretion of the Land Trust and/or the Town, and any forbearance by it to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of any subsequent breach of the same or any other terms of this Conservation Easement or of any rights under this Conservation Easement. No delay or omission by the Land Trust and/or the Town in the exercise of any right or remedy upon any breach by any party to this Conservation Easement shall impair such right or remedy or be construed as a waiver.

e. *Acts Beyond Subdivider's Control.* Nothing contained in this Conservation Easement shall be construed to entitle the Land Trust and/or the Town to bring any action against the Subdivider, its successors and assigns, for any injury to or

change in the Easement Area resulting from causes beyond the Subdivider's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by the Subdivider under emergency conditions to prevent, abate or mitigate significant injury to the Easement Area resulting from such causes. In the event of acts beyond Subdivider's control, the area that is destroyed shall, to the extent practical, be restored pursuant to the Stewardship Plan at the cost of the Subdivider or its successors and assigns, or with the written consent of the Town and the Land Trust (which consent will not be unreasonably withheld), the altered area may be managed for its remaining natural ecological value pursuant to a revised stewardship plan that reflects the altered condition of the land.

f. *Waiver of Certain Defenses.* The Subdivider hereby waives any defense of laches, estoppel or prescription.

g. *Appeal from Determination of Land Trust.* The Subdivider shall have the right to seek a review by the Town of any determination made by the Land Trust. Such review shall proceed in accordance with Section 2-391 et. seq. of the Code of Ordinances for the Town of Yorkville, governing administrative determinations reviews.

h. *Land Trust Default.* In the event the Land Trust fails to timely perform any one or more of its obligations under this Conservation Easement, the Owner's Association shall provide written notice to the Land Trust of the default, with a copy of the notice being provided to the Town. If the Land Trust fails to cure the default after receiving written notice by the Owner's Association or in the event the Owner's

Association fails to act, the Town shall have the right to provide notice to the Land Trust of the action or omission constituting the basis for the Land Trust's default. Any notice under this section shall provide the Land Trust at least forty-five (45) days from the date of notice to cure any alleged default or provide written notice to the Town of any circumstances not warranting the default notice. This forty-five (45) day period may be extended to the period of time reasonably necessary to cure the default if the Land Trust promptly commences activities to cure the default and in good faith diligently pursues such activities to fully cure the default, but in no event shall the period of time to cure the default exceed one-hundred and eighty (120) days from the date of the notice. In the event a Land Trust default is not fully and timely cured by the Land Trust, the Owner's Association and Town shall have all of the rights and remedies available at law and in equity. In addition, the Town shall have the right to assign the Land Trust's easement, including its rights and obligations under this Conservation Easement, to another organization that is qualified and authorized to acquire and hold conservation easements under Sec. 700.40, Wis. Stats., or any successor statute then applicable. Any review of an administrative determination made under this paragraph shall proceed in accordance with Chapter 68 of the Wisconsin Statutes.

9. **Public Access.** No right of access by the general public to any portion of the Easement Area is conveyed by this Conservation Easement.

10. **Costs, Legal Requirements, and Liabilities.** Subdivider, its successors and assigns, retains all responsibilities and shall bear all costs and liabilities of any kind related to any ownership interests, operation, upkeep, and maintenance of the Easement

Area, including the maintenance of adequate liability insurance coverage. Subdivider remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Conservation Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Subdivider shall keep the Easement Area free of any liens arising out of any work performed for materials furnished to, or obligations incurred by Subdivider.

11. **Taxes.** Notwithstanding this Conservation Easement, the obligation to pay taxes on the land over which the Conservation Easement runs shall remain with the individual Lot Owners of the Subdivision or with the Subdivider to the extent applicable, its successors and assigns. Subdivider, its successors and assigns, shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Easement Area by competent authority (collectively “taxes”), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish the Land Trust and/or Town with satisfactory evidence of payment upon request.

12. **Representations and Warranties.** Subdivider represents and warrants that to the best of its actual knowledge:

a. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated,

treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Easement Area;

b. There are not now any underground storage tanks located on the Easement Area, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Easement Area in a manner not in compliance with applicable federal, state and local laws, regulations, and requirements;

c. The Easement Area is in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Easement Area and its use;

d. There is no pending or threatened litigation in any way affecting, involving, or relating to the Easement Area; and

e. No civil or criminal proceedings or investigations have been instigated or are now pending or have occurred during the time of Subdivider's ownership, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Easement Area or its use, nor do there exist any facts or circumstances that Subdivider might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

13. **Remediation.** If, at any time, there occurs, or has occurred, a release in, on or about the Easement Area of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water,

or soil, or in any way harmful or threatening to human health or the environment, Subdivider agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by the Land Trust and/or the Town, in which case the Land Trust and/or the Town shall be responsible therefor.

14. **Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in the Land Trust and/or the Town to exercise physical or managerial control over the day-to-day operations of the Easement Area, or any of Subdivider's activities on the Easement Area, or otherwise to become an operator with respect to the Easement Area within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), or under state law.

15. **Hold Harmless.** Subdivider hereby releases and agrees to hold harmless, indemnify, and defend the Land Trust and/or Town and their members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, regardless of cause, unless due to the

negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Easement Area; (3) the presence or release in, on, from, or about the Easement Area, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and (4) the obligations, covenants, representations, and warranties of sections 10 through 14.

16. Subsequent Transfers.

a. *Reference.* The Subdivider agrees to incorporate the terms of this Conservation Easement by specific reference to the recording data hereof in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Easement Area.

b. *Transfer to Owner's Associations.* Further, at the time the Subdivider turns over control of the Subdivision to the Owner's Association, Subdivider shall be released from any continuing obligations hereunder and the Owner's Association shall assume all benefits and burdens assigned to Subdivider under this Conservation Easement, except that prior to the turn over of control, Subdivider shall have implemented the Stewardship Plan. The Town and the Land Trust acknowledge

that at the completion of this subdivision project, the Owner's Association will be responsible for the management and maintenance of the Easement Area in accordance with the Stewardship Plan and Conservation Easement. However, Subdivider shall have provided funding for the first five (5) years of the implementation and management of the Stewardship Plan. Should the Owner's Association ever cease to exist, the individual Lot Owners of the Subdivision will be responsible for the management and maintenance of the Easement Area in accordance with this Conservation Easement and will assume all benefits and burdens assigned to Subdivider under this Conservation Easement.

c. *Notice of Transfer Required.* In signing the Conservation Easement, the Land Trust assumes perpetual responsibility for ensuring that the residents of the Subdivision abide by its restrictions and that the Easement Area is managed according to the Stewardship Plan. Therefore, written notice of all transfers shall be provided by seller to the Land Trust upon transfer of title of each lot within the Subdivision. Such notice shall include the buyer's name, address and telephone number and date of transfer of title.

17. **Assignment.** This Easement is transferable, but the Land Trust may assign its rights and obligations under this Easement only to an organization that is authorized to acquire and hold conservation easements under Sec. 700.40, Wis. Stats., (or any successor provision then applicable) and only with the approval of the Town. As a condition of such transfer, the Land Trust shall require that the conservation purposes that this grant is intended to advance continue to be carried out. The Land

Trust agrees to give written notice to Subdivider of an assignment at least twenty (20) days prior to the date of such assignment. The failure of the Land Trust to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way. Assignment by the Town of its interest in this Conservation Easement will occur automatically to any successor entity or entities, including any municipality or municipalities established under Wisconsin law with jurisdiction over part or all of the area now occupied by the Town.

18. **Notices.** Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to another party shall be in writing and either served personally or sent by certified-mail, return receipt requested, addressed as set forth below or to such other address as any party from time to time shall designate by written notice to the others:

Town Clerk/Treasurer
Town of Yorkville
P.O. Box 15
720 Main Street
Union Grove, WI 53182

Kenosha/Racine Land Trust, Inc.
c/o Board and Conservation Easement Coordinator
P.O. Box 085153
Racine, WI 53408-5153

Altamount Development, LLC
Raymond C. Leffler, Member
6949 Mariner Drive.
Racine, WI 53406
Fax: 262-898-1341

Unless otherwise indicated, any notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to allow the other party to make an informed judgment as to its consistency with the purposes of this Conservation Easement.

19. **Recordation.** This Conservation Easement shall be recorded in the office of the Register of Deeds for Racine County. Any party may re-record it at any time.

20. **Extinguishment.** If circumstances arise in the future such as to render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement and the easements granted herein can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. In the event this Easement is extinguished by eminent domain or other legal proceedings, the Land Trust shall be entitled to any proceeds which pertain to the extinguishment of the Land Trust's rights and interests in this Conservation Easement.

21. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the agreement to effect the purpose of this Conservation Easement and the policy and purposes of Section 700.40 of the Wisconsin Statutes. If any provision in this Conservation Easement is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

23. **Binding Effect.** This Conservation Easement shall run with the land and shall be binding on and shall inure to the benefit of the parties hereto, their heirs, successors, or assigns. It is hereby acknowledged that the covenants contained herein shall constitute a servitude upon the Easement Area and shall run with the land in perpetuity.

24. **Amendment and Modification.** This Conservation Easement and the Stewardship Plan incorporated herein by reference may be amended, modified and supplemented only by written agreement of the parties hereto or their successors or assigns, provided that any such amendment shall not diminish the goals or purposes of the Conservation Easement or affect its perpetual duration.

25. **Entire Agreement.** This Conservation Easement sets forth the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officers, employee or representative of any party hereto.

26. **Third Parties.** Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or corporation or entity, other than the

parties hereto and their successors and assigns, any rights or remedies under or by reason of this Conservation Easement. There are no third party beneficiaries to this Conservation Easement.

27. **Acceptance of Holder's Interest.** The Land Trust by execution of this Conservation Easement hereby accepts the holder's interest in this Conservation Easement.

28. **Subordination.** The Mortgagee joins in this Grant of Conservation Easement to subordinate its interests to the rights of the Land Trust and Town hereunder. Similarly, Lot 1 Owners agrees to subordinate their mortgagee interests in the Easement Area to the right of the Land Trust and Town hereunder.

