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DECLARATION OF RESTRICTIONS,  
CONDITIONS AND COVENANTS  
(Including Right of First Refusal)

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Heron Bay Subdivision  
Bloomfield Township, Oakland County, Michigan  
Adopted: Effective As Of: October 15, 1985

Plat recorded in Liber 186 page 27, 28, 29, 30, 31 & 32 of O.C.R.  
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THIS DECLARATION CONTAINS A RIGHT OF FIRST REFUSAL FOR THE BENEFIT OF THE DEVELOPER, AS WELL AS PROVIDES FOR: THE ESTABLISHMENT AND FUNDING OF A HOMEOWNERS ASSOCIATION; CERTAIN RESTRICTIONS OR REQUIREMENTS RELATIVE TO THE SUBDIVISION AND ANY CONSTRUCTION OF A STRUCTURE THEREIN; AND RIGHTS AND RESPONSIBILITIES RELATIVE TO THE SUBDIVISION AND THE NATURE RESERVE AREA. FURTHERMORE, THIS DECLARATION DEFINES AND SETS FORTH CERTAIN RIGHTS AND OBLIGATIONS OF LOT OWNERS OR THE HOMEOWNERS ASSOCIATION RELATIVE TO THE ROAD SERVICING THE SUBDIVISION, THE GATEHOUSE FOR THE SUBDIVISION, LANDSCAPING OF THE ROAD AND THE SUBDIVISION ENTRANCEWAY, GARBAGE REMOVAL AND OTHER MATTERS. EACH PROSPECTIVE PURCHASER OF A LOT IN THE SUBDIVISION IS URGED TO REVIEW THIS DECLARATION CAREFULLY WITH HIS OR HER ATTORNEY.

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THIS DECLARATION is made on the date above set forth by VICTOR INTERNATIONAL CORPORATION, a Michigan corporation ("Victor"), doing business at 31000 Lahser Road, Birmingham, Michigan 48010, DAVID V. JOHNSON ("Johnson"), a single man, whose address is 31000 Lahser Road, Birmingham, Michigan 48010, and COHEN DEVELOPMENT CORPORATION, INC., a Michigan corporation doing business at Suite 427, 27700 Northwestern Highway, Box 667, Southfield, Michigan 48037-0667. In addition thereto, Maurice Cohen, whose address is 2600 Turtle Lake Road, Bloomfield Hills, Michigan 48013 and MICHIGAN NATIONAL BANK OAKLAND, a national banking association, are joining in this Declaration, but only for the purpose of subordinating any mortgage or security interest either or both of them may have in all or any part of the Subdivision to the restrictions, conditions, easements and covenants set forth in this Declaration, to the same extent as if this Declaration had been executed and recorded prior to the execution or recording of either or both of their mortgages or security interests.

W I T N E S S E T H:

WHEREAS, among them the Declarants own the real property located in Bloomfield Township, Oakland County, Michigan which currently is being platted under the Michigan Subdivision Control Act, MCLA 560.101 et seq., as Heron Bay Subdivision (the "Subdivision"). The legal description of the Subdivision is attached as Exhibit A.

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WHEREAS, the Declarants desire to impose upon the Subdivision and to the extent applicable the Road (but not any other property outside of the Subdivision, whether or not adjacent thereto and/or owned by any Declarant or other signatory hereto) with restrictions, conditions and covenants in order to insure the Subdivision's most beneficial development as a luxury residential area; to prevent any use thereof which might tend to diminish its valuable or pleasurable enjoyment; to assure the harmony, attractiveness and utility thereof; to provide for the establishment of a Homeowners Association; to provide for the Homeowners Association or lot owners in the Subdivision to bear certain expenses and meet certain obligations more particularly described below; and to establish and define certain rights relative to the Subdivision and/or the Nature Reserve Area.

NOW THEREFORE, the Declarants hereby declare that the Subdivision and all existing or future lots therein shall be held, sold and conveyed subject to the following restrictions, conditions and covenants, which shall run with the Subdivision and each lot therein and shall be binding upon and inure to the benefit of all parties having any right, title or interest in the Subdivision or any part thereof, their heirs, successors and assigns.

## ARTICLE I

DEFINITIONS

As used in this Declaration the following terms shall have the meanings specified below:

The "Declarants" means Victor, Johnson Development Corporation, Inc.

The "Developer" means Victor.

The "Subdivision" means the real property described in attached Exhibit A.

"Lot" means a lot in the Subdivision.

"Lot owner" means the beneficial owner(s) of a Lot (i.e., the holder of fee simple title or, if a Lot is sold on land contract, the vendee(s) under the land contract). Unless the context expressly requires, none of the Declarants shall be deemed to be a Lot owner for the purposes of Article II except to the extent that a Declarant erects a dwelling on a Lot for occupancy by the Declarant.

The "Nature Reserve Area" means those sections of Lots 19 through 29, inclusive, which are shown on the plat of the Subdivision as being within the flood plain.

"Heron Ridge Drive" or the "Road" means the road (including Heron Ridge Court) shown on the plat of the Subdivision as being within the Subdivision, as well as any part of a private road (as constituted, relocated or changed in

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length from time to time) connecting the road within the Subdivision to the nearest public road. The initial private road contemplated for the Subdivision is depicted on the plat of the Subdivision.

"Structure" means any home, building, garage, driveway, parking area, dock, boat house, docking facility, docking device, gazebo, shed, fence, wall or any other improvement or structure of a permanent or substantial nature.

The "Lake" means Upper Long Lake.

The "Association" or the "Homeowners Association" means the homeowners association described in Article V below.

The "Township" means the Township of Bloomfield, Michigan, or its successors.

## ARTICLE II

### RESTRICTIONS AND REQUIREMENTS

No Structure shall be erected, constructed or permitted to remain on any Lot unless the Structure has been approved by the Developer in accordance with Section A of this Article and also complies with the remaining restrictions and requirements of this Article, unless any non-compliance has been waived pursuant to Section F of this Article. Furthermore, any construction or maintenance activities for or on any Structure or Lot shall be performed strictly in accordance with the rules, restrictions, regulations or requirements of this Article.

#### A. Review Procedure; Submission Requirements.

1. The Declarants intend that all Structures on any Lot or otherwise within the Subdivision shall be designed, developed and constructed so as to be harmonious, complimentary and dignified, all to the end that the Subdivision as developed and improved constitutes and provides a refined and exclusive environment of the highest architectural, construction and aesthetic standards. In order to accomplish such end, the Declarants hereby reserve to the Developer the right to approve, disapprove and otherwise pass upon the design, appearance, construction or other attributes of any Structure proposed to be erected or maintained on a Lot, and no Structure shall be permitted or allowed with respect to a Lot unless the same has received in writing the approval of the Developer pursuant to the terms and conditions of this Article.

2. There shall be a three step submittal process for obtaining the approval of the Developer for any Structure to be erected, constructed or maintained on any Lot or in other part of the Subdivision. If appropriate, the Developer may waive the procedure in order to expedite the review procedure, although in no event shall the Developer be obligated to waive the procedure.

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(a) The first step shall be the submission of concept materials to the Developer. The concept materials shall include materials sufficient to permit the Developer in its judgment to ascertain the general concept of the Structure, which in the case of a residence shall include front and rear elevation drawings showing the residence (including the color and type of exterior materials), a proposed site plan showing the location of the residence and other Structures on the Lot, and a preliminary floor plan showing the interior layout of the residence and any other Structures.

(b) Once the Developer has approved the concept submissions, the owner of a Lot or his or her representative may apply to the Developer for approval of preliminary submissions. Preliminary submissions shall include a preliminary landscaping plan, samples of exterior colors and materials (including a detailed finish schedule for all exterior materials, products and finishes, with actual brick, stain and shingle samples), detailed elevation drawings showing all elevations, a dimensioned floor plan prepared by a licensed architect or professional engineer, a topographical survey of the Lot, and a site plan showing the residence and all other Structures. The topographical survey and site plan must be certified by a licensed engineer.

(c) Once the Developer has approved the preliminary submissions, the owner of a Lot or his or her representative may apply to the Developer for final approval. The submissions to obtain final approval shall include the resubmission of the certified topographical survey and site plan and the submission of (i) a floor plan which is both dimensioned and certified by an architect or licensed engineer, (ii) sealed engineering drawings for all elements of the Structure, (iii) a final landscape plan prepared and certified by a registered landscape architect, (iv) a topographical survey certified by a registered professional engineer showing existing and proposed grades, the location of all trees in excess of three (3) inches in diameter at ground level and the proposed location of all structures, (v) a construction schedule specifying the contemplated commencement and completion dates for the Structure, as well as the dates upon which specified elements or components of the structure are to be completed, and (vi) such other matters as the Developer may require in order to verify the appropriateness of the Structure or any aspect thereof.

No approval shall be effective unless given by the Developer in writing. If a Structure or any aspect or feature thereof is not in strict conformity with the requirements or restrictions set forth in this Article, any such nonconformity shall be permitted only if it is specifically mentioned as such in the submissions to the Developer, and the Developer specifically approves or waives the same in writing.

3. No alteration, modification, substitution or other variance from the designs, plans, specifications and other submission matters which have been approved by the Developer shall be permitted or suffered on any Lot unless the owner thereof obtains the Developer's written approval for such variation. So long as any such variance is minimal, the owner

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need not go through the entire submittal process described in paragraph 2 above, but in any event the owner must submit sufficient information (including material samples and the like) as the Developer determines in its sole discretion is required to permit the Developer to decide whether or not to approve the variance. The Developer's approval of any variance must be obtained irrespective of the fact that the need for the variance arises for reasons beyond the owner's control (e.g., material shortages or the like).

4. In making any of the submissions contemplated in this Article, the owner shall cause four (4) copies thereof to be submitted to the Developer. Two copies shall be returned to the owner after the Developer has approved or disapproved the submission, and the other two copies shall be retained by the Developer for its files.

5. As of the effective date of this Declaration it is contemplated that David V. Johnson, the Chairman of the Board and President of the Developer, shall be the agent and employee of the Developer who evaluates and renders decisions on behalf of the Developer with respect to matters submitted to the Developer pursuant to this Declaration. No owner may rely upon any approval or other statement rendered or made by any agent or employee of the Developer other than Mr. Johnson, unless Mr. Johnson designates in writing on behalf of the Developer another agent or employee who has the authority so to act. No agent, employee, consultant, attorney or other representative or adviser of or to the Developer shall have any liability with respect to decisions made, actions taken or opinions rendered relative to matters submitted to the Developer under this Declaration.

6. The Developer reserves the right to assign, delegate or otherwise transfer its rights and powers of approval as provided in this Declaration, including without limitation an assignment of such rights and powers to the Architectural Control Committee described in Article IV below, to one or more of the other Declarants or to any mortgagee.

#### B. Restrictions and Requirements.

The following rules, regulations, restrictions and requirements shall apply to each and every Lot in the Subdivision, and no Structure shall be erected, constructed or maintained on any Lot which is in contravention of such rules, regulations, restrictions and requirements, except to the extent any non-conformity has been waived by the Developer pursuant to Section F of this Article:

1. Each dwelling must have a minimum livable floor area of three thousand (3,000) square feet. For the purposes of this paragraph, garages, patios, decks, open porches, entrance porches, terraces, basements, lower levels, storage sheds and like areas shall be excluded in determining the livable floor area, whether or not they are attached to the main dwelling. Enclosed porches shall be included in determining the livable floor area only if the roof of the porch forms an integral part of the roofline of the main dwelling.

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2. The minimum dwelling width, including attached garage, shall be seventy-two (72) feet.
3. No Structure shall be placed, erected, altered or located on any Lot nearer to the front, side or rear lot line than is permitted by the ordinances of the Township at the time the same is erected. Furthermore, all dwellings or buildings also shall meet the following setback requirements:
  - a) The front yard set back shall be at least fifty-five (55) feet from the front of the Lot for Lots 2, 4, 5, 20, 21 and 22; at least sixty (60) feet for Lots 1, 11, 12, 13, 14, 15, 16, 23, 24 and 30; and at least seventy (70) feet for Lots 6, 7, 8, 9, 10, 17, 18, 19, 25, 26, 27, 28 and 29. The front yard set back for Lot 3 shall be at least thirty (30) feet from the lot line between Lots 2 and 3.
  - b) The sideyard setback shall be at least twenty (20) feet per side, and at least an aggregate forty (40) feet on both sides.
  - c) The rear yard setback shall be at least sixty-five (65) feet.

The Developer shall have the right (but not any obligation) to permit setbacks less than those established above if in its sole discretion the grade, soil or other physical conditions pertaining to a Lot justify such a variance.

4. The exterior of all buildings must be primarily brick or stone (but no yellow, green or white brick shall be allowed). No aluminum or vinyl siding or metal windows may be used in any dwelling, building or other Structure. No Texture 1-11 may be used on the exterior of any structure.

5. All driveways shall be paved with asphalt, and shall be completed prior to occupancy. No front or rear entrance garages shall be erected or maintained, and all garages shall be attached to the main dwelling. The Developer shall have the sole and conclusive authority to determine what constitutes a front or rear entrance garage.

6. Each Lot must be landscaped within the time limits set forth in paragraph 4 of Section C of this Article. The reasonable value of the landscaping in the front yard of a residence, as reflected in the landscaping plan to be approved by the Developer pursuant to Section A of this Article, shall be not less than ten thousand (\$10,000) dollars. The Developer shall have the right to determine the reasonable value of the landscaping.

7. No above ground swimming pools shall be erected or maintained on any Lot. The size, configuration, location and exterior appearance of any in-ground swimming pool shall be subject to the Developer's prior written approval.

8. No fence, wall or hedge of any kind shall be erected or maintained on any Lot without the prior written

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approval of the Developer. No fence, wall or hedge shall be located nearer to any front lot line than is permitted for dwellings under paragraph 3 above. No fence, wall or hedge shall be maintained or erected which blocks or hinders vision at street intersections. No chain link fences shall be permitted on any Lot.

9. All chimneys (whether intended for live fires or furnaces) shall have flues lined through the entire height with standard clay lining or other fire resistant material. No prefabricated chimneys shall be installed or maintained for any purpose, including without limitation for fireplaces, furnaces, heaters or stoves. The Developer contemplates that the chimney for each dwelling in the Subdivision shall be different.

10. No outside radio, television aerial, antenna, satellite dish or other reception or transmission device shall be placed, constructed, altered or maintained on any Lot without the prior written consent of the Developer, which the Developer may withhold in its sole discretion.

11. Dog kennels or runs or other enclosed shelters for permitted animals must be an integral part of the approved dwelling and must be approved by the Developer and the Township relative to the location and design of fencing or other Structures. Any such kennel or run must be kept in a clean and sanitary condition at all times.

12. No dock, boat well, boat house or other Structure extending into the Lake shall be located closer than twenty (20') feet to the side lot line of a Lot, as extended into the water. No dock or other Structure extending into the water from Lots 2 through 11, inclusive, shall have an aggregate length of more than sixty (60) feet, and no dock or other Structure extending into the water from Lots 12 through 19, inclusive, shall have an aggregate length of more than thirty (30) feet, unless such restrictions are waived in writing by the Developer. The Developer may withhold such a waiver in its sole discretion.

13. No driveway for a Lot shall be located within ten (10) feet of a side lot line of the Lot from the point at which the driveway intersects the Road to a point thirty (30) feet into the Lot.

14. The Developer may permit bathhouses, gazebos or other outbuildings to be erected toward the rear of Lots abutting the Lake, but the Developer shall not be obligated to permit the same and in any event such must comply with any applicable rules, regulations or ordinances of the Township. Any such Structures so permitted shall have a residential character and shall be architecturally harmonious with the main residence. In no event shall any such Structure be used as a garage or for storage purposes.

15. No single-level flat roofs shall be permitted on the entire main body of any dwelling, building or other Structure, including outbuildings. Flat roofs may be installed over Florida rooms, porches or patios, and tasteful flat roofs may be installed on multiple levels of a dwelling, but only if

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the same are approved by the Developer. The minimum pitch of any roof shall be 6/12 (vertical/horizontal). No white roofs shall be permitted.

16. Each Lot shall be maintained in its natural condition (subject to the placement of a driveway, lights and other improvements approved by the Developer) in the following locations:

(a) Twenty (20) feet from each side lot line of the Lot from the road frontage of the Lot to the front of the dwelling located on the Lot; and

(b) Thirty (30) feet from each side lot line of the Lot from the rear of the dwelling located on the Lot to the rear lot line of the Lot.

17. Basketball hoops or backboards may be permitted only in the back or side of a dwelling or garage, and then only if appropriately screened by landscaping or otherwise so as not to be visible from the Road or the Lake.

18. No signs, including "for rent," "for sale," architect, builder, contractor, landscaper, landscape architect or other signs shall be erected or maintained on any Lot except as follows:

(a) During the construction of a dwelling a sign may be erected so as to identify the lot number of the Lot and the name of the builder, but only if the Developer provides written authority for the erection of the sign. The Developer may withhold such authority in its sole discretion. The size, location, color and content of any sign permitted by the Developer shall be as specified by the Developer, and may include the Developer's logo.

(b) A street address sign shall be erected in connection with the construction of a dwelling on a Lot. The size, content, location and color of the sign shall be specified by the Developer.

19. In the course of constructing a dwelling on a Lot, the owner shall erect and thereafter maintain at his or her own cost a street light or lamp post to provide lighting for the Road in front of the Lot. The size, color, location, configuration, style, illuminative power and power source of the street light or lamp post shall be specified by the Developer in order to insure consistency and uniformity within the Subdivision. After initial construction, the owner shall maintain such street light or lamp post in good working order and of excellent appearance, which obligation shall include the cost of any utilities attendant to the street light or lamp post. Such street light or lamp shall remain lit between the hours of dusk and dawn.

20. The Developer is installing or causing to be installed cables and wiring for a common alarm system for each dwelling in the Subdivision, as well as for the gatehouse referred to in Article VI below. Each dwelling in the Subdivision must have a fire and burglar electronic security

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system which meets requirements to be established by the Developer and also must have the alarm system connected, installed and serviced by a security company approved by the Developer. The owner of the Lot shall bear all costs or charges in connection therewith. Each owner of a Lot shall be responsible maintaining in good and workable order the fire and burglar electronic security system and the adequacy of the connection with the common alarm system. Any user or service fees or charges made by the company servicing or monitoring the common alarm system shall be apportioned among the owners of Lots to the extent feasible, or alternatively shall be paid by the Homeowners Association included in the dues or fees paid by individual Lot owners to the Association. The Developer reserves the right to enter into on behalf of the Association, or to have the Association assume, service or maintenance contracts for the common alarm system with a security company to be selected by the Developer.

21. The size, color, style, location and other attributes of the mailbox for any residence shall be as specified by the Developer, in order to ensure consistency and uniformity.

22. No external air conditioning unit shall be placed in or attached to a window or wall of any Structure. No compressor or other component of an air conditioning system, heat pump or similar system shall be visible from the Road or the Lake. To the extent reasonably possible external components of an air conditioning system, heat pump or like system shall be located so as to minimize any disruption or negative impact thereof on adjoining Lots in terms of noise or view. The Developer shall have conclusive authority to determine whether a system complies with the foregoing requirements.

23. To the extent deemed appropriate by the Developer in its sole discretion, the requirements and restrictions set forth herein relative to the front of any Lot shall be deemed to apply to the rear of any Lot which abuts the Lake, so that no unsightly or inappropriate condition or structure may be seen from the Lake.

C. Requirements, Restrictions and Regulations  
Relative to Construction Activities.

The Declarants hereby reserve to the Developer the right to establish and enforce such rules and regulations relative to the performance of construction activities within the Subdivision (whether or not in connection with the construction, repair or maintenance of a residence or other Structure) as the Developer determines to be appropriate in order to maintain the tranquility, appearance and desirability of the Subdivision. Unless waived by the Developer in writing, the following rules, regulations, restrictions and requirements shall apply to any construction activities within the Subdivision:

1. All construction activities must be started within one (1) month of the time specified in the construction schedule submitted to and approved by the Developer pursuant to Section A of this Article. Prior to commencement of construction the owner must obtain all permits or approvals required by the Township.

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2. Once commenced, all construction activity shall be prosecuted and carried out with all reasonable diligence, and the exterior of all dwellings and other Structures must be completed as soon as practical after construction commences and in any event within twelve (12) months after such commencement, except where such completion is impossible or would result in exceptional hardship due to strikes, fires, national emergencies or natural calamities.

3. Except in case of an emergency involving the risk of human life, physical injury or substantial property damage, no construction activities shall be carried on within the Subdivision between the hours of 6:00 p.m. and 8:00 a.m. on any day, nor at any time on a Sunday or legal holiday, whether or not done indoors. Construction activities shall be deemed to exclude general repair work performed solely by the owner of a Lot.

4. All landscaping must be completed within ninety (90) days after initial occupancy of the dwelling or, in the case of speculative or unsold homes, within ninety (90) days after the exterior of the dwelling has been (or with due diligence should have been) substantially completed.

5. Prior to the commencement of any construction activities relative to the building of a dwelling, the owner or the contractor shall post with the Developer a five hundred (\$500) dollar deposit to ensure that during and after construction the Road is maintained in a good and clean condition and free of any dirt, mud or other debris arising from the construction activities. The instructions for disposition of the deposit shall afford the Developer with the discretion to determine whether or not the owner or contractor has complied with this paragraph.

6. No trees measuring three (3) inches or more in diameter at ground level may be removed without the prior written approval of the Developer. Prior to commencement of construction, each lot owner shall submit to the Developer for its written approval, a plan for the preservation of trees in connection with the construction process. Any trees measuring three (3) inches or more in diameter at ground level which are removed or destroyed in the construction process, either intentionally or accidentally, shall be replaced with trees of the same sort and size unless the Developer waives such requirement in its sole discretion. It shall be the responsibility of each owner of a Lot to maintain and preserve all such trees on the Lot, which responsibility shall include welling trees, if necessary.

7. No Structure may be constructed in the Subdivision unless prior to the date construction thereof commences the general contractor or builder thereof enters into an agreement in form and substance acceptable to the Developer whereby the contractor or builder agrees to (i) maintain a dumpster on the Lot during the course of construction; (ii) to deposit all trash, garbage, scraps and other disposable items therein; (iii) to keep the Lot in a sightly and clean appearance during the course of construction; and (iv) to remove the dumpster and all trash, garbage, scraps or other debris from the Lot. The

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agreement shall require the contractor or builder to post as security for its obligations hereunder a deposit in the amount of one thousand (\$1,000) dollars. The location of the dumpster shall be reflected on the final site plan submitted pursuant to Section A of this Article, and shall be subject to the Developer's approval. The Developer intends to approve only locations which render the dumpster as unobtrusive as reasonably possible.

D. Additional Restrictions and Regulations;  
Reservation of Easement.

In addition to the other restrictions or regulations specified above, the following restrictions and regulations shall apply to each Lot in the Subdivision and any owner or occupant thereof:

1. Upon sale or conveyance to individual purchasers, all Lots in the Subdivision shall be used only for single family residential purposes. Except as specifically permitted herein, no Structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family dwelling not to exceed two and a half (2-1/2) stories in height, which shall include an attached garage, and such outbuilding, dock or other accessory Structure as the Developer may approve in writing. No part of any dwelling or other Structure shall be used for any activity normally conducted as a business, trade or profession; provided, however, this prohibition shall not apply to (a) maintaining a professional library in a dwelling (b) keeping personal records or transacting personal business in a dwelling, or (c) participating in personal, business or professional telephone calls or correspondence in a dwelling.

2. No Structure of a temporary character shall be placed upon any Lot at any time; provided, however, that this prohibition shall not apply to shelters approved by the Developer and used by a contractor during the construction of Subdivision improvements or a dwelling, although no such temporary shelter shall be used at any time as a residence or be permitted to remain on a Lot after substantial completion of construction.

3. No mobile home, trailer, house or camping trailer, tent, shack, tool storage shed, barn, tree house or other similar Structure shall be placed on any Lot at any time, either temporarily or permanently.

4. No trailers, trucks, pick-up trucks, boat trailers, aircraft, commercial vehicles, campers or other recreational vehicles, passenger vans or other vehicles except passenger cars, shall be parked or maintained on any Lot unless in a suitable private garage which is built in accordance with the restrictions set forth herein. No boat, canoe, kayak, raft, jet ski or other vessel shall be docked or maintained on any Lot unless in a suitable docking or storage facility approved by the Developer. No motorcycles, snowmobiles or vehicles designed primarily for off-road use shall be used, maintained or operated in the Subdivision or on the Road.

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5. Each owner shall maintain his or her Lot and lawn, garden, landscaping or Structure thereon in good and attractive condition to the end that such presents an excellent appearance from the Road, the Lake and other Lots. All lawn, driveway, landscaping or gardening maintenance activities, including without limitation lawn cutting, gardening, hedge trimming, edging, tree removal, tree trimming, snow removal or leaf pickup, shall be performed only by the owners of Lots within the Subdivision or their immediate family members, or by a landscaping company or service approved in advance by the Developer. The Developer intends to approve only two to five such companies or services, from which each Lot owner must select as his or her landscape maintenance service. Each owner of a Lot shall prevent the development of any unclean, unsightly or unkept conditions of buildings or grounds on such Lot which might negatively affect the beauty or attractiveness of the neighborhood as a whole or the specific area. Such obligation shall apply whether or not the owner has constructed a dwelling on the Lot. As soon as practical after purchasing a Lot from any of the Declarants, a Lot owner shall remove all dead or seriously diseased trees from the Lot. Each Lot owner shall promptly remove any trees that die or become seriously diseased thereafter.

6. No mowing, sweeping, leave gathering, gardening, fertilizing or other lawn maintenance activities shall be performed or permitted on Sundays. The watering of a lawn or garden by sprinkler system or typical garden hose shall not be deemed to be lawn maintenance activities for the purposes of this paragraph. In no event shall fertilizer or other lawn nutrient be spread within one hundred (100) feet of the Lake.

7. No animals or fowl (except household pets) shall be kept or maintained on any Lot, and household pets shall be confined to the Lot. Pets causing a nuisance or destruction shall be restrained or removed from the Subdivision.

8. No lawn ornaments, sculptures or statues shall be placed or permitted to remain on any Lot without the prior written approval of the Developer.

9. No noxious or offensive activity shall be conducted on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. This restriction shall include without limitation the burning of trash, leaves or other debris on a Lot. There shall not be maintained any animals or device or thing of any sort whose normal or customary activities or existence is in any way noxious, noisy, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the reasonable enjoyment of other property in the neighborhood.

10. The Declarants reserve to the Developer the right to enter (or have designees enter) upon any Lot for the purpose of mowing, removing, clearing, cutting or pruning any underbrush, weeds or other unsightly growth which in the sole discretion of Developer detracts from the overall beauty, setting or safety of the Subdivision. Such entrance or other action as aforesaid shall not be deemed a trespass. The Developer and its designees likewise may enter upon a Lot to

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remove any trash or debris which has collected or accumulated on such Lot without such entrance and removal being deemed a trespass. The provisions of this paragraph shall not be construed as imposing any obligation on the Developer to mow, clear, cut or prune any Lot, or to provide garbage or trash removal services.

11. The Declarants hereby grant and reserve unto the Developer a perpetual, alienable and releasable easement and right on, over and under the ground to erect, maintain, repair, replace and use electric, telephone and television poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone, television, gas, sewer, water, alarm systems or other public conveniences or utilities on, in or over the front ten (10) feet of each Lot and ten (10) feet along one (1) side of each Lot, and at all locations as shown on the final plat. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, to make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. Such rights may be exercised by any licensee or designee of the Developer, but this reservation shall not impose or imply any obligation on the part of the Developer to provide or maintain any such utility or service.

12. No Lot shall be subdivided, or its boundary lines changed, except with the written consent of the Developer. However, the Declarants hereby reserve to the Developer (and Johnson, with respect to Lot 11) the right to replat any two (2) or more Lots shown on the plat or preliminary plat of the Subdivision in order to create a modified building Lot or Lots and to take such other steps as are reasonably necessary to make such replatted Lots suitable and fit as a building site to include, but not be limited to, the relocation of easements, walkways and rights of way to conform to the new boundaries of said replatted Lots. The Declarants further reserve to Johnson the right to split, subdivide or replat Lot 11 into three (3) separate Lots.

E. Standard for Developer's Approvals; Exculpation from Liability.

In reviewing and passing upon the plans, drawings, specifications, submissions and other matters to be approved or waived by the Developer under this Article, the Developer intends to ensure that the Structures and other features embodied or reflected therein meet the requirements set forth in this Article; however, the Developer reserves the right to waive or modify such restrictions or requirements pursuant to Section F of this Article. In addition to ensuring that all Structures comply with the requirements and restrictions of Section B, the Developer (or the Architectural Control Committee, to the extent approval powers are assigned to it by the Developer pursuant to Article IV below) shall have the right to base its approval or disapproval of any plans, designs, specifications, submissions or other matters on such other factors, including completely aesthetic considerations, as the Developer (or the Architectural Control Committee) in

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its sole discretion may determine appropriate or pertinent. The Developer currently intends to take into account the preservation of trees and of the natural setting of the Subdivision in passing upon plans, designs, drawings, specifications and other submissions. Except as otherwise expressly provided herein, the Developer or the Architectural Control Committee, as the case may be, shall be deemed to have the broadest discretion in determining what dwellings, fences, walls, hedges or other Structures will enhance the aesthetic beauty and desirability of the Subdivision, or otherwise further or be consistent with the purposes for any restrictions. In no event shall either the Developer (or the agents, officers, employees or consultants thereof), any other Declarant or any member of the Architectural Control Committee have any liability whatsoever to anyone for any act or omission contemplated herein, including without limitation the approval or disapproval of plans, drawings, specifications, elevations or the dwellings, fences, walls, hedges or other Structures subject thereto, whether such alleged liability is based on negligence, tort, express or implied contract, fiduciary duty or otherwise. By way of example, neither the Developer nor any other Declarant nor any member of the Architectural Control Committee shall have liability to anyone for approval of plans, specifications, structures or the like which are not in conformity with the provisions of this Declaration, or for disapproving plans, specification, structures or the like which arguably are in conformity with the provisions hereof. In no event shall any party have the right to impose liability on, or otherwise contest judicially, the Developer or any other person for any decision of the Developer (or alleged failure of the Developer to make a decision) relative to the approval or disapproval of a Structure or any aspect or other matter as to which the Developer reserves the right to approve or waive under this Declaration. The approval of the Developer (or the Architectural Control Committee, as the case may be) of a Structure or other matter shall not be construed as a representation or warranty that the structure or matter is in conformity with the ordinances or other requirements of the Township or any other governmental authority. Any obligation or duty to ascertain any such non-conformities, or to advise the owner or any other person of the same (even if know), is hereby disclaimed.

F. Developer's Right to Waive or Amend Restrictions and Regulations.

Notwithstanding anything herein to the contrary, the Declarants reserve to the Developer the right to approve any Structure or activities otherwise proscribed or prohibited hereunder, or to waive any rule, regulation, restriction or requirement provided for in this Declaration, if in the Developer's sole discretion such is appropriate in order to maintain the atmosphere, architectural harmony, appearance and value of the Subdivision and the Lots therein, or to relieve the owner of a Lot or a contractor from any undue hardship or expense. In no event, however, shall the Developer be deemed to have waived or be estopped from asserting its right to require strict and full compliance with all the rules, regulations, restrictions and requirements set forth herein, unless the Developer indicates its intent and agreement to do so in writing and, in the case of an approval of nonconforming Structures, the requirements of paragraph 2 of Section A of this Article are met.

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## ARTICLE III

CERTAIN RIGHTS AND RESTRICTIONS APPLICABLE TO  
LOTS 18 AND 19 AND THE NATURE RESERVE AREA

1. In addition to the other rights, restrictions, regulations and requirements set forth in this Declaration, the following rights, restrictions and requirements shall apply to Lots 18 and 19 of the Subdivision, as the context requires:

(a) Attached as Exhibit B is a depiction of Lots 18 and 19, which includes shaded areas (which shaded areas shall hereinafter be referred to as the "Restricted Areas"). In no event may any dwelling, garage, gazebo or other Structure be maintained or erected on or upon the Restricted Areas, it being the intent of the Developer that the Restricted Areas shall remain in a natural condition; provided, that a driveway and attendant landscaping may be installed and maintained within the Restricted Areas if approved by the Developer.

(b) Lot 19 includes a strip of property from approximately ten (10) feet to twenty five (25) feet in width along the eastern border of Lot 18. The strip is located across the road from the main part of Lot 19, and hereinafter shall be referred to as the "Lake Access."

(c) The Lake Access may be used by the owner from time to time of Lot 19 and his or her family, guests and invitees for the purposes of ingress and egress from the main body of Lot 19 to the Lake, and also for purposes normally associated with lake front or beach activities. However, in no event shall any shed, gazebo, poolhouse, outbuilding or other Structure be maintained on the Lake Access, although a dock (with boating facilities) may be erected and maintained with the Developer's prior written approval. The Lake Access generally shall be maintained in its natural condition, particularly along the sides of the Lake Access. Tables and chairs of a portable nature (e.g., beach furniture) may be located temporarily on the Lake Access, but only at such times as the owner of Lot 19 and/or his family, guests or invitees are actively using the Lake Access.

(d) No vehicles, including cars, trucks, motorcycles, snowmobiles, all-terrain vehicles and off-the-road vehicles, shall be parked or maintained on the Lake Access, and such shall be driven on the Lake Access only in connection with the construction of an approved dock or dockside storage, maintenance activities or the launching or removal of a boat or other vessel into the Lake. In no event shall any vehicle used in launching a boat or other vessel be parked on the Lake Access while such boat or vessel is being used.

(e) The owner of Lot 19 and his or her family, guests and invitees may use boats, sailboats, canoes, kayaks, rafts, jet skis and other similar vessels in connection with their use of the Lake Access. In no event shall any boat, sailboat, raft, jet ski or other vessel of any sort or manner be stored or maintained on the Lake Access except for one canoe or kayak (which may be stored on the shore of the Lake) and one boat or other vessel (which must be docked at a dock approved by the Developer).

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(F) As with the other restrictions and regulations set forth in this Declaration, the restrictions and regulations set forth in this paragraph 1 shall be deemed to be real covenants which shall run with Lots 18 and 19 (as applicable) and shall bind upon and shall inure to the benefit of all parties having any right, title or interest in the Subdivision or any part thereof, their heirs, successors and assigns. In addition thereto, the restrictions and regulations set forth in this paragraph 1 shall be deemed to be for the benefit of and enforceable by the person(s) who from time to time own lot 19 of Indianwood Subdivision according to the plat thereof as recorded in Liber 80 of Plats, page 24, et seq., Oakland County Records. The parties acknowledge that Lot 19 of Indianwood Subdivision is directly adjacent to the Lake Access. The owner(s) of Lot 19 of Indianwood Subdivision may enforce the restrictions and regulations set forth in this paragraph 1 without regard to the numerosity requirement for owners of Lots in the Subdivision to enforce the same which is set forth in Article VII below.

2. The Nature Reserve Area, which constitutes those portions of Lots 19 through 29 which are within the flood plain according to the final plat of the Subdivision, shall be subject to the following restrictions and requirements:

(a) No Structures of any sort or kind, whether temporary or permanent, shall be erected or permitted to remain on any part of the Nature Reserve Area.

(b) Each owner of Lots 19 through 29, inclusive, shall be responsible for maintaining the Nature Reserve Area in its natural condition insofar as it lies within or upon his or her Lot. No cleaning, trimming or cutting of trees, plants or other forms of vegetation shall be permitted, except in connection with the removal of plants or trees which are diseased or dead from causes beyond the control of the owner.

(c) No hunting, fishing, boating, trapping, camping, swimming or like activities shall be permitted within the Nature Reserve Area. Hiking shall be permitted, provided that such hiking is done with the permission of the owners of the applicable Lots and further provided that no trails or pathways are created or cut which detract from the natural setting as determined by the Developer in its sole discretion.

(d) No fires, including campfires, shall be permitted within the Nature Reserve Area.

(e) People who enter the Nature Reserve Area do so at their own risk. Parents of small children shall restrain them from entering the Nature Reserve Area unless properly supervised by an adult. In no event shall any of the Declarants or the Association have any duty, obligation or liability to maintain the Nature Reserve Area or any part thereof in any condition other than a natural condition.

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## ARTICLE IV

ARCHITECTURAL CONTROL COMMITTEE

1. At such time as all of the Lots in the Subdivision are sold by the Declarants and dwellings are erected thereon, or at such earlier time as the Developer in its sole discretion may elect, the Developer may assign, transfer and delegate to an Architectural Control Committee all or any of the Developer's rights to approve, waive or refuse to approve plans, specifications, drawings, elevations, submissions or other matters with respect to the construction or location of any Structure on any Lot or any other matter which the Developer may approve or waive as provided in Article II above. Any such assignment, transfer or delegation must be in writing. Thereafter, the Architectural Control Committee shall exercise all of the authority and discretion granted to the Developer in Article II above relative to approving, waiving or disapproving such matters, to the extent assigned, transferred or delegated by the Developer, and the Developer shall have no further responsibilities with respect to such matters. The Architectural Control Committee shall be comprised of up to three (3) members to be appointed by the Developer. The Developer also may transfer its right to designate the members of the Architectural Control Committee to the Homeowners Association for the Subdivision. Until such event, the Developer reserves the right to appoint and remove members of the Architectural Control Committee in its sole discretion. If the Developer is dissolved prior to a delegation to the Homeowners Association of its right to appoint and remove the members of the Architectural Control Committee, such right shall devolve upon Johnson or the personal representative(s) of Johnson's estate.

2. At the closing for each Lot purchased from any Declarant, the purchaser shall pay the Developer the sum of three hundred and fifty dollars (\$350.00), which the Developer shall retain as a fee for the costs of architectural control activities.

## ARTICLE V

HOMEOWNERS ASSOCIATION; LIEN RIGHTS;  
OBLIGATION TO IMPOSE DUES

1. The Declarants intend (and hereby reserve the right) to incorporate a Michigan nonprofit membership corporation to serve as the Association for the Subdivision (the "Association" or "Homeowners Association"). The Homeowners Association shall be subject to such provisions as may be established in the Bylaws or Articles of Incorporation of the Association, which the Developer reserves the right to prepare and to amend or modify until the time specified in paragraph 4 below. Any sale or purchase of a Lot in the Subdivision shall be subject to the Bylaws and Articles of Incorporation for the Homeowners Association, and by acquiring a Lot each Lot owner agrees to abide by and observe such Bylaws and Articles, as such may be created or modified by the Developer pursuant to the provisions of this Article.

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2. By virtue of acquiring a beneficial ownership interest in a Lot, whether by deed, land contract or otherwise, a person shall be deemed automatically to become a member of the Association. Any person transferring all of his or her beneficial ownership interest in a Lot(s), by deed, land contract sale or otherwise, automatically shall be terminated as a member of the Association. Membership in the Association shall be deemed to be an incident to a beneficial ownership interest in a Lot, and in no event may the membership or any rights or privileges thereof be severed or separated from the beneficial ownership interest of a Lot. Notwithstanding the foregoing, the termination of a person's beneficial ownership interest in a Lot, and the consequent termination of his or her membership in the Association, shall not be deemed to relieve such person from any debt or obligation which accrued or arose during the period in which the person was a member of the Association.

3. The Articles of Incorporation and Bylaws of the Association shall provide that there shall be two or more classes of membership in the Association, as determined by the Developer. Class A membership shall be voting, and the Developer shall be the only Class A member. Class B membership shall be non-voting until the time specified in paragraph 4 below. Except as provided below each owner of a Lot shall be a Class B member, and voting therein shall be on a one vote per Lot basis (i.e., each Lot is entitled to one vote, irrespective of how many people own the Lot and hence are members of the Association). The Articles of Incorporation and Bylaws of the Association also may call for a Class C membership in the Association, whereby any member who does not occupy a dwelling at the time the Class B membership acquires voting rights (i.e., at the time specified in paragraph 4 below) is transferred from Class B membership to Class C membership. Class C members shall have no voting rights. A Class C member shall become a Class B member upon occupying a dwelling on a Lot.

4. The only voting class of membership in the Association shall be Class A (i.e., the Developer shall have the sole vote in the Association, and the consequent right to appoint the Board of Directors), until such time as twenty-five (25) Lots have occupied dwellings on them or at such earlier time as is designated in writing by the Developer. When twenty-five (25) Lots in the Subdivision have occupied dwellings on them, or at such earlier time as the Developer may specify in writing, Class B members of the Association shall have the voting rights specified in paragraph 3 above. Thereafter, the Board of Directors of the Association shall be elected by the combined vote of Class A and Class B members; however, voting as to all other matters shall be by class, and for the Association to take any other action it will be necessary for each voting class to approve the same by the applicable majority or super-majority requirements established in the Articles of Incorporation and Bylaws of the Association.

5. The Articles or Bylaws of the Association may be amended at any time after the time specified in paragraph 4 above, provided that the amendment receives the affirmative vote of eighty-two (82%) percent of each class of the Association members entitled to vote, and further provided that no such amendment may:

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(a) Eliminate the eligibility of any Lot owner to vote, or change the basis for voting;

(b) Purport to have any retroactive effect;

(c) Change the super-majority (i.e., 82%) voting requirement, or the restrictions on amendments, which are contained in this paragraph;

(d) Affect or diminish any obligation, responsibility or liability of the Association which is established in this Declaration, as such may be amended, or in any contract or agreement contemplated by this Declaration, as amended (including without limitation contracts for the maintenance of the Road, the gatehouse and other items contemplated in Article VI below).

6. The Association shall have the right and the obligation to assess and collect dues, fees or other charges to every Lot owner in the Subdivision, except as provided below. The dues, fees or other charges shall be in amounts reasonably sufficient to permit the Association to discharge its responsibilities, liabilities or prerogatives as provided in Article VI below and this Article. It is contemplated that such dues, fees or charges generally shall be levied on a monthly basis, although the Association periodically may levy special assessments to fund extraordinary expenses or to make up for shortfalls in the monthly dues, fees or other charges. Furthermore, at the sale of any Lot the Declarants may collect on behalf of the Association an amount equal to the projected dues for the first full year during which the Association is to discharge all of its obligations or responsibilities hereunder (or the year following closing, if the sale occurs after the commencement of such first year), as such amount is projected by the Declarants. All dues, fees and charges shall constitute a lien on any Lot(s) owned by any person responsible for the payment of the same, and the Developer, the Declarants or the Association, as the case may be, may enforce the lien by recording appropriate instruments confirming the existence of the lien and/or by foreclosing the lien by appropriate legal action. In such legal action a court of competent jurisdiction shall be empowered to order a sale of any Lot(s) subject to the lien in order to satisfy the lien. Notwithstanding the foregoing, the lien shall be subordinate and junior to the lien of any first mortgage securing a loan for the acquisition or improvement of any Lot.

7. The Association shall charge the same dues to each Lot, irrespective of the size of the Lot and irrespective of whether or not the Lot has or doesn't have lake frontage or lake access. The dues shall be payable by the Lot owner whether or not the Lot owner resides in the Subdivision or has constructed a dwelling on his or her Lot. Notwithstanding the foregoing, at such time as two-thirds (2/3rds) of the aggregate number of Lots in the Subdivision have been sold by the Declarants or any of them, no dues, fees or other charges shall be payable to the Association with respect to any Lots owned by the Declarants or any of them. Instead, the financial needs of the Association shall be met by the dues, fees or other charges assessed on the remaining Lots. Notwithstanding

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the foregoing, at such time as the Declarants or any of them (or Johnson) sells or otherwise transfers a Lot to an unrelated third party, the Association may levy fees with respect to such Lot.

8. When a Lot is sold or otherwise transferred, unless the parties agree to the contrary the dues, fees or other charges payable for the month of closing shall be prorated on an even basis (i.e., based on the number of days during the month for which the transferor owned the Lot).

9. In the event that the Association fails to observe or perform any of its obligations or responsibilities provided for in this Declaration, as such may be amended, the Developer or its designee may (but shall not be under any obligation to) perform such obligation or responsibility or take other appropriate corrective action, and all costs or expenses incurred in doing so or associated therewith, including legal fees and other litigation costs, shall be promptly reimbursed by the Association. Furthermore, the Developer shall be subrogated to the rights of the Association to collect, assess or levy dues, fees or other charges against Lot owners with respect to such costs or expenses, including the right to impose a lien on lots with respect to such costs and expenses and the right to foreclose or otherwise enforce such a lien. The Developer shall be entitled to legal fees and other actual costs incurred in obtaining reimbursement from the Association or in collecting dues or fees against Lot owners pursuant to this paragraph. Furthermore, the Developer may (but shall not be obligated to) loan funds to the Association in order to permit the Association to discharge its responsibilities or fulfill its objectives. Such loans may bear interest, but not in excess of the rate such loans could have been obtained from third party institutional lenders.

10. Either before or after the time specified in paragraph 4 above the Association may enter into a management contract with the Developer or any third party, whereunder the Developer or the third party may perform all or any of the services or obligations which the Association is obligated provide relative to the Subdivision or the Road (e.g., sweeping, plowing or clearing the road, maintaining or manning the gatehouse), or to provide administrative services relative to the Association's affairs (e.g., collecting and disbursing dues, fees or other charges). If the management contract is with the Developer or an entity controlled by the Developer, the compensation to be received thereunder shall not exceed one hundred and fifteen (115%) percent of the costs and expenses of providing the services rendered thereunder, including labor, subcontract, office, overhead and other direct or indirect costs or expenses.

#### ARTICLE VI

##### RESPONSIBILITIES OF ASSOCIATION AND/OR LOT OWNERS RELATIVE TO MAINTAINING ROAD, GATEHOUSE, LANDSCAPING, ETC.

1. The Road leading into the Subdivision off of Club Drive (i.e., the Road) currently is a private road (i.e., the Road has not been dedicated as a public road and has not been

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accepted by any governmental authority). The use of the Road by Lot owners, residents or others involved in the Subdivision is pursuant to the terms and conditions one or more easement agreements, which provide Lot owners in the Subdivision and their family members, guests and other invitees with the nonexclusive right to use the applicable easement for roadway purposes. The Declarants and/or others have reserved the right: (a) to make other uses of the Road and the gatehouse described in paragraph 2 of this Article (including making the same available to other subdivisions or developments and to certain adjacent property currently owned by Maurice Cohen); (b) to dedicate all or part of the Road to the public and have the same accepted by the applicable governmental authorities, to the extent that the Road extends in an easterly direction beyond the gatehouse for the Subdivision described in paragraph 2 of this Article, and/or (c) to change the location of the Road to the extent that the Road extends in an easterly direction beyond the gatehouse, although in any event the Road, as relocated, must provide access from a public road to the Subdivision. The Association shall be obligated to plow, sweep, salt and otherwise keep clear the Road to such point as it becomes or extends into a public road, and furthermore shall be obligated to repair, maintain, repave or replace the Road, all to the end that the Road is maintained in an attractive and reasonably good condition. The Developer may cause the Association to enter into a separate agreement wherein the Association agrees to maintain and repair the Road as aforesaid. In the event that other subdivisions or developments use the Road, the Declarants reserve the right (but shall have no obligation) to have the owners of such subdivisions or developments (or owners' association or like organization of such) share in decisions with respect to such obligations and maintenance and bear such proportion of the cost thereof as the Declarants may deem appropriate in their sole discretion. The Declarants shall have the right (but not any obligation) to establish maintenance standards and requirements for the Road beyond those specified herein, with which the Association must comply. The Association shall obtain liability insurance with respect to the Road in such amounts as the Board of Directors thereof determines to be appropriate, but in no event less than five million (\$5,000,000) dollars per occurrence. The Developer and the other Declarants shall be named insureds under such liability insurance. No alleged breach by the Association of any contractual obligation to maintain or repair the Road established under this paragraph shall be the basis for any recovery for property loss or damage or personal injury (including death), and in any litigation or proceeding seeking to recover for property loss or damage or personal injury (including death) the Association's duty or standard of care, if any, with respect to maintaining or repairing the Road shall be that which would apply in the absence of any obligation established under this paragraph.

2. The Subdivision is to have a gatehouse, which may also service other subdivisions and developments (and/or certain adjacent property currently owned by Maurice Cohen) as provided for in paragraph 1 of this Article. The gatehouse may be located either within or external to the Subdivision. The Association shall retain or employ guards or a guard service to man the gatehouse continuously on a twenty-four (24)

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hour per day, three hundred sixty-five (365) day per year basis. Prior to the time when Class B members of the Association acquire voting rights pursuant to Article V above, the Developer may cause the Association to enter into a security contract with a guard or security service in order to procure the aforementioned services, provided that the guard or security service is not owned by the Developer. The term of such security contract may extend beyond the time when Class B members of the Association acquire voting rights. The Association shall be responsible for maintaining, repairing and ultimately replacing the gatehouse, all to the end that the gatehouse is maintained in an attractive and orderly fashion and provides suitable facilities for the guards to be stationed there. The guards or guard services retained by the Association and the maintenance, repair and replacement of the gatehouse shall be subject to the approval of the Declarants, which shall not be unreasonably withheld.

3. The Declarants reserve the right to landscape the Subdivision entranceway (i.e., in the vicinity of the gatehouse) and at other locations around or within the vicinity of the Road going into the Subdivision, and furthermore reserve the right to construct a fence along the north side of the Road from the gatehouse to the boundaries of the Subdivision. The Association shall be obligated to maintain, repair and (when necessary) replace the fence, and furthermore shall be obligated to fertilize, seed, weed, spray, garden and otherwise maintain the landscaping, all to the end that such are maintained so as to be attractive and in a reasonably proper condition.

4. The Association shall engage, at its own expense, the services of a reputable trash removal service to pick up trash, garbage and other refuse from Lots in the Subdivision. The trash service shall be subject to the Developer's approval, which shall not be unreasonably withheld.

5. The responsibilities and obligations of the Association to maintain, repair, man, improve and/or replace the Road, gatehouse, landscaping or fence pursuant to this Article shall become effective as of September 15, 1985, although it is acknowledged that the Road, gatehouse, fencing and landscaping may not be installed until after such time, and that the Association's obligation shall not apply until substantial completion of the relevant improvement.

6. In addition to the foregoing, the Association may perform such other acts or accomplish such other purposes as may be reasonably necessary to improve the appearance, atmosphere or pleasantness of the Subdivision as a first-class luxury single-family subdivision, or as are set forth in the Articles of Incorporation or Bylaws of the Association.

## ARTICLE VII

### OPERATION AND ENFORCEMENT

1. The provisions hereof shall run with and bind the land within the Subdivision for a period of twenty (20) years

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from the date hereof, after which time they shall be extended automatically for successive periods of ten (10) years unless eighty two (82%) per cent of the Lot owners in the Subdivision vote to limit or remove the restrictions set forth herein. Notwithstanding anything herein to the contrary, the provisions of Articles V and VI above and Article X below shall run with and bind the land within the Subdivision in perpetuity, and may not be modified, amended or removed.

2. In addition to any other remedy provided for herein or under applicable law, the Declarants (or any of them), the Homeowners Association or the owners of eight (8) Lots in the Subdivision shall have the right at any time or times during the term on this Declaration to proceed at law or in equity against any person violating or attempting to violate any provision contained herein, to prevent or abate such violations, to compel compliance with the terms hereof, to enter upon any land within the Subdivision and correct any condition, and remove any building, improvement or other structure erected, installed or maintained in violation of the terms hereof at the Lot owner's expense, and to recover damages or other compensation for any violation. Any such entry shall not constitute a trespass. The Declarants (or any of them) may recover against a Lot owner violating the provisions of this Declaration all reasonable costs incurred in enforcing such provisions in any of the foregoing ways, including the cost of removing offending structures and actual attorneys fees and other litigation costs.

3. The failure to enforce any provision contained herein in any particular instance shall not be deemed a waiver of the right to do so as to any continuing, subsequent or other violation.

#### ARTICLE VIII

##### NO EFFECT ON OTHER PROPERTY

1. The parties acknowledge that the covenants, conditions and restrictions set forth herein shall not be binding upon or affect in any way any property outside of the Subdivision except the Road, gatehouse, landscaping and fence referred to in Article VI above. With the exception of such Road, gatehouse, landscaping and fence, these restrictions shall not apply to or constitute a burden or encumbrance on any property adjacent to the Subdivision or the Road, including any adjacent property owned by any of the Declarants or by Maurice Cohen.

2. The Declarants reserve the right to create one or more subdivisions or other developments from the property adjacent to the Subdivision or the Road, or to otherwise develop all or any of such property. Such subdivisions or developments may be the subject of no restrictions or of restrictions which are more or less stringent than those set forth herein.

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## ARTICLE IX

RIGHT OF FIRST REFUSAL

Until such time as an occupancy permit has been issued with respect to a dwelling on a Lot, the Developer shall have a right of first refusal to purchase any Lot on the same terms and conditions as the Lot owner is offering to any other prospective purchaser. Prior to selling a Lot, a Lot owner shall provide the Developer with written notice of the proposed sale, including all terms and conditions thereof. The Developer shall have twenty (20) days thereafter to advise the Lot owner in writing as to whether or not it intends to exercise his right of first refusal. If it fails or declines to exercise its right of first refusal, the Lot owner may proceed to sell the Lot on the same terms and conditions as were stated in the notice. Any change in the terms and conditions of a proposed sale shall require that the Lot owner give new notice to the Developer of the proposed sale. In any event, any purchaser shall acquire the Lot subject to the Developer's right of first refusal with respect to any future sale. If the Developer indicates its intention to exercise its right of first refusal, the Lot owner shall promptly provide the Developer with an appropriate title insurance commitment in the amount of the proposed purchase price for the Lot, confirming that the Lot owner can grant the Developer good and marketable title. Closing shall occur within twenty (20) days of the date the Developer and the Lot owner receive a satisfactory title commitment. The right of first refusal granted herein shall not apply to the sale of a Lot by a builder who has commenced construction of a home on such Lot.

## ARTICLE X

FLOOD PLAIN

The flood plain elevation is 913.8 USGS datum as established by the Michigan Department of Natural Resources. Any building site requiring filling or any building used or capable of being used for residential purposes and occupancy within or affected by the flood plain shall:

- a) Be approved by the Department of Natural Resources before any filling or construction occurs.
- b) Have lower floors, excluding basements, not lower than the elevation of the contour defining the flood plain limits.
- c) Have openings into the basement not lower than the elevation of the contour defining the flood plain limits.
- d) Have basement walls and floors, below the elevation of the contour defining the flood plain limits, watertight and designed to withstand hydrostatic pressure from a water level equal to the elevation of the contour defining the flood

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plain limits following methods and procedures outlined in Chapter 5, type A construction and Chapter 6 for class 1 loads found in "Flood Proofing Regulations" EP 1165 2 314 prepared by the office of the Chief of Engineers, U.S. Army, Washington D.C., June 1972. Figure 5, Page 14.5 of the regulations shows typical foundations, drainage and water-proofing details. This document is available, at no cost, from the Department of Natural Resources Hydrological Survey Division, Stevens T. Mason Building, Lansing, Michigan 48926, or Department of the Army, Corps of Engineers, Publications Depot, 980 S. Pickett, Alexandria, Virginia 22304.

- e) Be equipped with a positive means of preventing sewer backup from sewer lines and drains which serve the building.
- f) Be properly anchored to prevent flotation.

Notwithstanding anything herein to the contrary, the term of the provisions of this Article X shall be perpetual, and such provisions may not be amended or modified.

## ARTICLE XI

AMENDMENT

The Declarants reserve the right by written instrument, signed, acknowledged and recorded with the Oakland County Register of Deeds, to modify, amend, restate, waive or repeal any or all of the provisions herein contained with respect to all or any particular Lot within the Subdivision, except the provisions of Article X above, which may not be modified, amended, repeated or otherwise changed. Any such modification, amendment, restatement, waiver or repeal may be retroactive to May 1, 1985.

## ARTICLE XII

SEVERABILITY

The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision hereof.

IN WITNESS WHEREOF, the Declarants have duly executed this Declaration of Restrictions, Conditions and Covenants on this 15th day of October, 1985.

In the presence of:

VICTOR INTERNATIONAL CORPORATION,  
a Michigan corporation

*Manny Krizhynsky*  
Manny Krizhynsky  
*Suzanne G. Knorr*  
Suzanne G. Knorr

By: *David V. Johnson*  
David V. Johnson  
Its: Chairman of the Board

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Manny Kriakhycky  
Manny Kriakhycky  
Suzanne G. Knorr  
Suzanne G. Knorr

David V. Johnson  
David V. Johnson

Judith A. Sovo  
JUDITH A. SOVA  
Karen J. Rupp  
KAREN J. RUPP

COHEN DEVELOPMENT CORPORATION,  
INC., a Michigan corporation

By: Maurice Cohen  
Maurice Cohen  
Its: President

STATE OF MICHIGAN )  
COUNTY OF OAKLAND ) ss.

The foregoing instrument was acknowledged before me  
this 15th day of October, 1985 by David V. Johnson, the  
Chairman of the Board of Victor International Corporation, on  
behalf of such corporation.

Suzanne G. Knorr  
Notary Public, Oakland County  
State of Michigan  
My Commission Expires: SUZANNE G. KNORR  
Notary Public, Oakland County, MI  
My Commission Expires Aug. 6, 1988

STATE OF MICHIGAN )  
COUNTY OF OAKLAND ) ss.

The foregoing instrument was acknowledged before me  
this 15th day of October, 1985 by David V. Johnson, a  
single man.

Suzanne G. Knorr  
Notary Public, Oakland County  
State of Michigan  
My Commission Expires: SUZANNE G. KNORR  
Notary Public, Oakland County, MI  
My Commission Expires Aug. 6, 1988

STATE OF MICHIGAN )  
COUNTY OF OAKLAND ) ss.

The foregoing instrument was acknowledged before me  
this 15th day of October, 1985 by Maurice Cohen, the  
President of Cohen Development Corporation, Inc., on behalf of  
such corporation.

Karen J. Rupp  
Notary Public, Oakland County  
State of Michigan  
My Commission Expires: 26

KAREN J. RUPP  
Notary Public, Livingston County, Michigan  
Acting in Oakland County, Michigan  
My Commission Expires March 26, 1988

NOV.

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LIBER 9180 PAGE 566

In the presence of:

MICHIGAN NATIONAL BANK-OAKLAND

Ellen Sobczak  
Ellen Sobczak

Nancy J. Caruso  
Nancy J. Caruso

Judith A. Sova  
JUDITH A. SOVA

Karen J. Rupp  
KAREN J. RUPP

STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF OAKLAND )

By:

Patricia J. Grey  
PATRICIA J. GREY  
Its: ASSISTANT VICE PRESIDENT  
Only for the purposes  
specified in the preamble

Maurice Cohen  
Maurice Cohen, only for the  
purposes specified in the preamble

The foregoing instrument was acknowledged before me  
this 16th day of October, 1985 by PATRICIA J. GREY, the  
ASSISTANT VICE PRESIDENT of Michigan National Bank Oakland, a national  
banking association, on behalf of such association.

Nancy J. Caruso  
NANCY J. CARUSO  
Notary Public, Wayne County, MI  
Acting in Oakland County, MI  
My Commission Expires May 20, 1988

Notary Public, Oakland County  
State of Michigan  
My Commission Expires: \_\_\_\_\_

STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF OAKLAND )

The foregoing instrument was acknowledged before me  
this 15th day of October, 1985 by Maurice Cohen.

Karen J. Rupp  
Notary Public, Oakland County  
State of Michigan  
My Commission Expires: \_\_\_\_\_

Drafted by and when  
recorded return to:

CAMERON H. PIGGOTT, ESQ.  
Dykema, Gossett, Spencer, Goodnow  
& Trigg  
37th Floor - 400 Renaissance Center  
Detroit, Michigan 48243

Karen J. Rupp  
Notary Public, Livingston County, MI  
Acting in Oakland County, Michigan  
My Commission Expires March 28, 1988

NOV. 13

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# Giffels-Webster Engineers, Inc.

CONSULTING ENGINEERS, LAND SURVEYORS AND PLANNERS

EXHIBIT A

LIBER 9180 PAGE 567

2731 Adams Road

Farmington, Michigan 48037

Phone: 313/882-3100 or 313/358-2296

REFERENCE: #0694

OCTOBER 9, 1985

## LEGAL DESCRIPTION

CHARLES BROWN, P.E., R.L.S.  
PresidentEDWARD A. SALTER, P.E.  
Vice-President & TreasurerDAVID PAWLACZYK, R.L.S.  
Vice-President / Land SurveyingROBERT W. RAYMOND, P.E.  
Vice-PresidentESTOL L. SWEN, P.E.  
Secretary

PROPOSED "HERON BAY SUBDIVISION", A PART OF SECTION 7, T-2-N., R-10-E., BLOCHFIELD TOWNSHIP, OAKLAND COUNTY, MICHIGAN, MORE PARTICULARLY DESCRIBED AS: COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 7; THENCE S. 89° 34' 18" E., 20.00 FEET ALONG SQUARE LAKE ROAD AND FOLLOWING THE NORTH LINE OF SECTION 8; THENCE S. 00° 43' 12" W., 1,845.10 FEET; THENCE S. 64° 24' 16" W., 31.87 FEET; THENCE ALONG A CURVE TO THE RIGHT 78.59 FEET, SAID CURVE HAVING A RADIUS OF 171.11 FEET, CENTRAL ANGLE OF 26° 18' 56" AND LONG CHORD BEARING OF S. 77° 33' 44" W., 77.90 FEET TO A POINT OF COMPOUND CURVATURE; THENCE ALONG A CURVE TO THE RIGHT 154.75 FEET, SAID CURVE HAVING A RADIUS OF 498.65 FEET, CENTRAL ANGLE OF 17° 46' 50" AND LONG CHORD BEARING OF N. 80° 23' 23" W., 154.13 FEET; THENCE N. 71° 29' 58" W., 98.84 FEET; THENCE ALONG A CURVE TO THE LEFT 134.85 FEET, SAID CURVE HAVING A RADIUS OF 117.20 FEET, CENTRAL ANGLE OF 65° 55' 29" AND LONG CHORD BEARING OF S. 75° 32' 17" W., 127.53 FEET; THENCE S. 42° 34' 33" W., 279.80 FEET; THENCE ALONG A CURVE TO THE RIGHT 232.11 FEET, SAID CURVE HAVING A RADIUS OF 276.17 FEET, CENTRAL ANGLE OF 48° 09' 15" AND LONG CHORD BEARING OF S. 66° 39' 10" W., 225.34 FEET TO A POINT OF COMPOUND CURVATURE; THENCE ALONG A CURVE TO THE RIGHT 103.59 FEET, SAID CURVE HAVING A RADIUS OF 294.94 FEET, CENTRAL ANGLE OF 20° 07' 29" AND LONG CHORD BEARING OF N. 79° 12' 28" W., 103.06 FEET; THENCE N. 69° 08' 44" W., 35.35 FEET; THENCE ALONG A CURVE TO THE LEFT 57.80 FEET, SAID CURVE HAVING A RADIUS OF 792.58 FEET, CENTRAL ANGLE OF 04° 10' 39" AND LONG CHORD BEARING OF N. 71° 14' 03" W., 57.77 FEET; THENCE N. 73° 19' 23" W., 379.81 FEET; THENCE ALONG A CURVE TO THE LEFT 114.64 FEET, SAID CURVE HAVING A RADIUS OF 97.46 FEET, CENTRAL ANGLE OF 67° 23' 45" AND LONG CHORD BEARING OF S. 72° 58' 45" W., 108.15 FEET; THENCE S. 39° 16' 52" W., 289.63 FEET; THENCE ALONG A CURVE TO THE RIGHT 241.40 FEET, SAID CURVE HAVING A RADIUS OF 276.96 FEET, CENTRAL ANGLE OF 49° 56' 23" AND LONG CHORD BEARING OF S. 64° 15' 04" W., 233.83 FEET; THENCE S. 89° 13' 15" W., 152.03 FEET; THENCE ALONG A CURVE TO THE LEFT 128.24 FEET, SAID CURVE HAVING A RADIUS OF 205.00 FEET, CENTRAL ANGLE OF 35° 50' 32" AND LONG CHORD BEARING OF S. 71° 17' 59" W., 126.16 FEET TO THE POINT OF BEGINNING FOR "HERON BAY SUBDIVISION"; THENCE S. 36° 37' 17" E., 141.32 FEET; THENCE S. 00° 13' 27" E., 141.11 FEET TO A POINT ON THE EAST/WEST 1/4 LINE OF SECTION 7; THENCE N. 89° 46' 33" E., 740.00 FEET ALONG SAID LINE; THENCE S. 01° 08' 50" E., 317.44 FEET TO THE NORTHWEST CORNER OF

### ASSOCIATES

WHITNEY CARNAHAN, P.E., R.L.S.

WALTER HAINER

ROBERT D. KORN, R.L.S.

KEITH B. MAYER, P.E.

### AFFILIATED OFFICES

ENGLEWOOD, FLORIDA

HOUSTON, TEXAS

NOV.

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## EXHIBIT A

LEGAL DESCRIPTION  
PAGE -2-  
JOB #8694

LIBER 9180 PAGE 568

"INDIANWOOD" AS RECORDED IN LIBER 80, PAGE 24, 25 AND 26 OF PLATS, OAKLAND COUNTY RECORDS; THENCE ALONG THE WEST LINE OF SAID "INDIANWOOD" S. 01° 08' 50" E., 872.08 FEET TO A POINT "A"; THENCE CONTINUING S. 01° 08' 50" E., 73 FEET TO A POINT ON THE WATERS EDGE OF UPPER LONG LAKE; THENCE WESTERLY AND NORTHERLY ALONG SAID WATERS EDGE 3,380 FEET MORE OR LESS; THENCE S. 73° 32' 03" E., 40 FEET TO A POINT "B", THE SHORE OF SAID LAKE BEING TRAVERSED BY A LINE DESCRIBED AS BEGINNING AT POINT "A"; THENCE N. 70° 25' 16" W., 720.37 FEET; THENCE S. 82° 14' 31" W., 425.94 FEET; THENCE N. 37° 43' 31" W., 510.00 FEET; THENCE N. 00° 53' 04" E., 607.80 FEET; THENCE N. 10° 44' 39" W., 617.99 FEET; THENCE N. 27° 46' 33" E., 50.99 FEET; TO POINT "B" BEING THE ENDING OF SAID TRAVERSE LINE; THENCE S. 73° 32' 03" E., 459.95 FEET; THENCE S. 36° 37' 17" E., 343.88 FEET TO THE POINT OF BEGINNING AND CONTAINING 43.34 ACRES MORE OR LESS, WHICH INCLUDES 4.10 ACRES MORE OR LESS BETWEEN THE TRAVERSE LINE AS DESCRIBED AND THE WATERS EDGE OF UPPER LONG LAKE.

  
DAVID PAWLACZYK, R.L.S.

#17632

DP/SAM

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EXHIBIT B

