

**RESTATED AND REVISED  
DECLARATION OF RESTRICTIONS  
FOR BEACH FOREST SUBDIVISION**

These Revised and Amended Declaration of Restrictions are made this 22nd day of October, 1991, by the STEPHEN GRAND REVOCABLE INTER VIVOS TRUST (hereinafter referred to as "Declarant") of 4850 Coolidge Highway, Royal Oak, Michigan 48073.

R.1. On the 15th day of January, 1988, Grandevco, Inc. executed Declaration of Restrictions for Beach Forest Subdivision, which Restrictions were recorded in Liber 10286, Pages 156 through 166, Oakland County Records, on January 27, 1988 (hereinafter the "Restrictions").

R.2. Grandevco, Inc. assigned all of its rights and powers, titles, easements and estates reserved it in the Restrictions to Declarant.

R.3. Declarant, on July 19, 1988, executed an Amendment to the Declaration of Restrictions for Beach Forest Subdivision, which was recorded in Liber 11021, Pages 499 through 504 of Oakland County Records.

R.4. Pursuant to the Restrictions, Declarant has the right, by written instrument, signed, acknowledged and recorded with the Oakland County Register of Deeds to amend and modify the provisions of the Restrictions.

R.5. Declarant desires to consolidate the Restrictions and the Amendment to the Restrictions and to make certain modifications and changes in the Restrictions.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the undersigned, its successors and assigns, and the present and future owners of various Lots comprising Beach Forest Subdivision and Beach Forest Subdivision No. 2, the undersigned, Declarant, for itself, successors and assigns, does hereby restate, amend, modify and change the Declaration of Restrictions for Beach Forest Subdivision by restating them in their entirety. The Lots in Beach Forest Subdivision and Beach Forest Subdivision No. 2 shall be used, held, and/or sold expressly subject to the Restrictions as restated by this document, and the Restrictions, as restated hereby, shall run with the land and be binding upon all grantees of individual Lots and on their respective heirs, personal representatives, successors, and assigns:

**ARTICLE 1  
DEFINITIONS**

- A. "Association" shall mean and refer to the Beach Forest Subdivision Association, a Michigan Non-Profit Corporation, its successors and assigns.
- B. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Subdivision and any future subdivisions hereafter annexed, or the land contract purchaser thereof, but excluding those having any interest merely as security for the performance of an obligation.
- C. "Common Area" or "Common Areas" shall mean those areas of land within the

Subdivision (including the improvements thereto) now or hereafter designated on the plat, as it now exists or as it may, from time to time, be modified or extended, as parks or park areas together with street islands and cul de sac island areas which now or, at any time, are located within the Subdivision.

- D. "Lot" shall mean and refer to any numbered lot shown on the recorded plat of the Subdivision and any future subdivisions hereafter annexed.
- E. "Declarant" shall mean the individual or entity executing these Deed restrictions and any successor or assign.
- F. "Declaration" shall mean and refer to this Declaration of Restrictions, as recorded in the office of the Oakland County Register of Deeds, State of Michigan.
- G. "Member" shall mean and refer to those persons entitled to membership in the Association, as provided in this Declaration.
- H. "Committee" shall mean the architectural control committee appointed and maintained in accordance with Article II hereof.

## **ARTICLE II**

### **ARCHITECTURAL CONTROL**

No house, building, fence, wall, deck, swimming pool, outbuilding or other structure, landscaping or exterior improvement shall be commenced, erected or maintained on any Lot, nor shall any exterior addition to or change or alteration therein or change in the exterior appearance thereof or change in landscaping be made until the plans and specifications showing the nature, kind, size, shape, height, colors, materials, topography and location of the same on the Lot shall have been submitted to and approved in writing by the Architectural Control Committee (the "Committee") composed of up to three (3) persons appointed by the Board of Directors. At least two (2) members of the Committee shall be current members of the Board of Directors. Each member of the Committee shall serve for a period of one (1) year, or until replaced by a subsequent appointee.

Declarant, upon appeal by any Lot Owner or applicant from a Committee decision or finding, and pursuant to the time constraints in subparagraph F hereof, shall have the right to review all Committee decisions and Declarant, in Declarant's sole discretion, may reverse or modify any Committee decision or finding, in whole or in part.

- A. Plans and specifications for final approval by the Committee shall include the following:
  - 1. Complete plans and specifications sufficient to secure a building permit in the City of Troy, including a dimensioned plot plan showing Lot and placement of residence, garage, outbuildings and fences (if any).
  - 2. Front elevation, side elevations and rear elevation of building, plus elevations of walls and fences (if any).
  - 3. A perspective drawing if deemed necessary by the Committee to interpret adequately the exterior design.
  - 4. Data as to size, materials, colors and texture of all exteriors including roof coverings, fences (if any) and walls.
  - 5. One set of blueprints shall be left with the Committee until construction is completed.

B. Preliminary plans may first be submitted for preliminary approval.

C. No approval by the Committee shall be valid if the structure or improvement violates any of the restrictions set forth in Article III and IV of this Declaration, except in cases where waivers have been granted as provided for in the said Articles.

D. The Committee may disapprove plans because of noncompliance with any of the restrictions set forth in Articles III and IV of this Declaration, or because of reasonable dissatisfaction with the grading and drainage plan, the location of the structure on the Lot, the materials used, the color scheme, the finish, design, proportions, shape, height, style, or appropriateness of the proposed improvement or alteration or because of any matter or thing, which in the reasonable judgment of the Committee, would render the proposed improvement or alteration inharmonious or out of keeping with the objectives of the Committee or with improvements erected on other Lots in the Subdivision. All Owners, by accepting ownership of their Lot, acknowledge that the primary purpose for providing for architectural control is to insure the proper and harmonious development of the Subdivision in order to maximize the aesthetic beauty of the Subdivision and its blending with the surrounding area. To this end, Declarant or the architectural control Committee, as the case may be, shall be deemed to have broad discretion in terms of determining what dwellings, fences, walls, hedges, structures or improvements will be permitted and are in keeping with *the* aesthetic beauty and desirability of the Subdivision and are otherwise consistent with the purposes of these Restrictions.

E. In the event the Committee fails to approve or disapprove plans for new homes within ten (10) days and plan modifications to existing homes within fourteen (14) days after submission, then such approval will not be required, but all other limitations, conditions and restrictions set forth in this Declaration shall apply and remain in force as to such plans.

F. Committee approval shall be deemed given if the plans, and specifications submitted for approval are marked or stamped as having been finally approved by the Committee, and are dated and signed by two (2) members of the Committee who were validly serving on the Committee on the date of such approval.

G. In no event shall either Declarant or the Committee have any liability whatsoever to anyone for their 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 Declarant nor the 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, specifications, structures or the like which arguably are in conformity with the provisions hereof. In addition, the Committee shall not be required to pass upon any technical aspects of construction or whether construction meets zoning, building code or safety requirements. Committee's approval shall merely mean that the plans are in compliance with the intent and purpose of these Restrictions and shall not be construed as to imply that the Committee has passed upon any other aspects of the plans.

H. At the time that plans are submitted for approval, the party submitting the plans shall pay Association the sum of Two Hundred Fifty (\$250.00) Dollars to defray the costs of architectural control activities. This fee may be waived or reduced at the discretion of the Committee.

I. At such time as all of the Lots in the Subdivision are sold by Declarant and dwellings are erected thereon, or at such earlier time as Declarant may, in its sole discretion, elect, Declarant may assign, transfer and delegate full and complete architectural control responsibilities to the Association. At that time, the Association shall become solely responsible for the appeal and review rights and procedures (if any) provided to Lot Owners or applicants.

### **ARTICLE III BUILDING AND USE RESTRICTIONS**

#### FOR THE SUBDIVISION

A. Use of Lots. All Lots shall be used for single family residence purposes only, and no building of any kind whatsoever shall be erected, re-erected, moved or maintained thereon except one single family dwelling house and appurtenant buildings on each Lots, as hereinafter provided. Such dwelling house shall be designed and erected for occupation by a single private family. A private attached garage for the sole use of the respective Owner or occupant of the Lot upon which said garage is erected may also be erected and maintained.

B. Character and Size of Buildings. No plan for any dwelling will be approved unless the proposed dwelling has a minimum square footage required from time to time by the City of Troy. In addition, the dwelling must have a minimum of the following square footages (unless otherwise approved by Declarant): for a one story dwelling (e.g. ranch) - a minimum living main floor area of 2,400 square feet; for a two story dwelling - a minimum livable floor area of 1,700 square feet on the first floor and a total minimum livable floor area of 3,400 square feet; and for a tri-level dwelling (one in which there are two stories adjacent to one another) - a minimum livable floor area on the main or ground floor of 2,200 square feet and a total minimum livable floor area of 3,400 square feet. All computations of livable floor are for determination of the permissibility of erection of a residence shall be exclusive of garage, porches, or terraces. All garages must be attached or architecturally related to the dwelling. Garage doors shall not face the street on which the residence fronts. No garage shall provide space for less than two (2) automobiles. Carports are specifically prohibited.

C. Minimum Yard Requirements. No building on any Lot shall be erected nearer than:

1. Forty (40) feet from the front Lot line; nor
2. Forty-five (45) feet from the rear Lot line; nor
3. Forty (40) feet from the exterior side Lot line on corner streets.
4. Side lot set back requirements shall be in strict accordance with the requirements of the City of Troy Zoning Ordinances.

Approval of a variance by both the Committee and the City of Troy Board of Appeals permitting front, rear or side yards smaller than the above minimums shall be deemed a valid waiver of this Restriction. In the event that the City of Troy shall, at any time, require yard areas larger than those above specified, then in such event all dwellings shall comply with the requirements of the City of Troy.

D. Minimum Width. The minimum dwelling width shall be subject to the discretion of the Committee, which shall attempt to maintain uniform standards throughout the Subdivision.

E. Animals. No farm animals, livestock or wild animals shall be kept, bred or harbored on any Lot, nor shall any animals be kept or bred for commercial purposes. Domestic animals commonly deemed to be household pets may be kept by the Owner and members of his household so long as such pets shall have such care so as not to be objectionable or offensive to others.

Any dog kept by a resident on his premises shall be kept either on a leash or in a dog run or pen, and shall not be allowed to run loose or unattended. No dog runs or pens shall be permitted to be erected or maintained unless located within the rear yard (only) adjacent to a wall of the main dwelling or garage and facing the rear or the interior of the Lot, nor shall such runs or pens extend beyond the end of the dwelling or garage into the side yard.

F. Fences, Walls, Hedges, Etc. No fence, wall, or hedge of any kind shall be erected or maintained on any Lot unless required by City ordinance and approved by the Committee. No fence, wall or hedge shall be maintained or erected which blocks or hinders vision at street intersections. No chain link or stockade style fences shall be permitted. No fence, wall or hedge shall be erected, grown or maintained in front of or along the front building line of a Lot.

G. Easements.

1. Easements for the installation and maintenance of utilities, underground television cable, sewer lines, water mains, drainage lines, surface drainage swales, or any other improvements which would serve the residents of the Subdivision, are reserved to Declarant, its successors and assigns, as shown on the recorded plat, and also in, on, under and over a strip of land six (6) feet in width on each side of and along the rear of each Lot. The use of all or a part of such easements may at any time or times hereafter be granted or assigned by Declarant, its successors or assigns, to any person, firm, corporation, governmental unit or agency which furnishes such services or utilities. No buildings may be constructed or maintained over or on any easements; however, after the aforementioned utilities have been installed, planting, fencing (where permitted), or other Lot line improvements shall be allowed, so long as they do not violate the provisions of this Article and do not interfere with, obstruct, hinder, or impair the drainage plan of the Subdivision and so long as access be granted, without charge or liability for damages, for the installation and/or maintenance of the utilities, drainage lines and/or additional facilities.
2. Private easements for public utilities have been granted and reserved on the plat of the Subdivision.
3. The Association shall have an easement for maintenance of the entranceway signs, walls, fences (including rock or ornamental fences), and the surrounding or abutting landscaping (as well as any irrigation system in support thereof) upon the Lots where the Subdivision entranceway signs, fences, walls, landscaping and irrigation system is located. The Association shall have the right to enter upon the Lots in question to maintain the signs, walls, fencing, landscaping, irrigation systems, and any utilities (including but not limited to electric and water) which service the same. Maintenance shall include any act which is reasonably necessary for the maintenance, repair, reconstruction, replanting or rejuvenation of the sign, wall, fence, landscaping and irrigation system adjacent to the sign, fence, and wall as they are or as they were originally constructed by Declarant. The Association shall restore any area which it disturbs.

H. Wells. No well shall be dug, installed or constructed on any Lot.

1. Temporary Structures, Trailers, tents, shacks, sheds, barns, or any temporary buildings of any description whatsoever, are expressly prohibited and no temporary occupancy shall be permitted in unfinished residential buildings. However, the erection of a temporary storage building for materials and supplies to be used in the construction of a dwelling, and which shall be removed from the premises upon completion of the building is permitted.

J. Sales Agency and/or Business Office. Notwithstanding anything to the contrary elsewhere set forth herein, Declarant and/or any builders which it may designate, may construct and maintain a sales agency and a business office of any Lots which they may select, or may use a model house for such purposes, and Declarant and such designated builders may continue to do so until such time as all of the Lots in which Declarant or such designated builders have an interest are sold by them.

K. Lease Restrictions. No Owners of any Lot shall lease and/or sublet less than the whole of any dwelling on any Lot,

L. Exterior Surface of Dwellings. The visible exterior walls of all dwelling structures shall be made of wood, brick, brick veneer and/or stone in any combination. Stucco, aluminum and/or ledge rock may also be used, so long as any of these materials alone or in combination do not exceed fifty (50%) percent of the total of all visible exterior walls. The use of cement block, slag, cinder block, imitation brick, asphalt and/or any type of commercial siding is expressly prohibited. Windows and doors shall not be included in calculating the total area of visible exterior walls. The Committee may grant such exceptions to this restriction as it deems suitable.

M. Signs. No sign or billboard shall be placed, erected, or maintained on any Lot, except one sign advertising the Lot, or the house and Lot for sale or lease, which said sign shall have a surface of not more than five (5) square feet, and the top of which shall be not more than three (3) feet above the ground; provided, however, that such sign shall have been constructed and installed in a professional manner. Any such sign all be kept clean and in good repair during the period of its maintenance on the said Lot, and shall in no event be placed and maintained nearer than twenty-five (25) feet from the front Lot line. The provisions of this paragraph shall not apply to such signs as may be installed or erected on any Lot by Declarant, or any builder which it may designate during the initial period of construction of houses, or during such periods as any residence is used as a model or for display purposes.

N. Destruction of Building by Fire, etc. Any debris resulting from the destruction in whole or in part of any dwelling or building on any Lot shall be removed with all reasonable dispatch from such Lot in order to prevent an unsightly condition.

O. Landscaping. Upon the completion of a resident on any of the Lots, the Owner thereof (and the word "owner", as used in this connection, is intended to mean the party who purchases a residence from the builder thereof, and each subsequent purchaser), shall cause the Lot owned by him to be finish-graded and seeded or sodded and suitably landscaped as soon after the completion of construction as weather permits, not to exceed twelve (12) months from the date of certificate of occupancy or temporary certificate of occupancy. The Lot and the drainage ditch, if any, contiguous to each Lot shall be kept free of weeds by the Owner thereof. All landscaping and lawns shall be well-maintained at all times. Failure to comply with these Restrictions may result in a fine or penalty as determined by the Board of Directors.

P. Driveways. All driveways shall be constructed of concrete or concrete with paving brick unless the Committee shall approve an alternate paving material. The initial plans, submitted to the Committee in accordance with Article II hereof, shall designate the location of the driveway and the building materials to be used for approval by the Committee.

Q. Chimneys and Exhaust Flues. No prefabricated metal chimney flues for furnace or hot water heaters shall be visible from the front of any house. Prefabricated fire place flues shall not be used regardless of visibility.

R. General Conditions.

1. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste, and the same shall not be kept except in sanitary containers properly concealed from public view. Garbage containers shall not be left at the road for more than twenty-four (24) hours in any one week. Garbage may not be placed on the road any sooner than dusk the night prior to pickup.
2. No housetrailer, commercial vehicles, boat trailers, boats, camping vehicles or camping trailers may be parked on or stored on any Lot, unless stored fully enclosed within an attached garage. Commercial vehicles and trucks shall not be parked in the Subdivision, or on any Lot therein, except while making normal deliveries or pickups in the normal course of business. However, a construction trailer may be maintained by each builder offering new houses for sale, only during the period when new houses are under construction in the Subdivision by that builder.
3. No laundry shall be hung for drying in such a way as to be visible from the street on which the dwelling fronts, and in the case of corner Lots, such laundry shall not be hung so that it will be visible from the streets on which the dwelling fronts and sides.
4. All homes shall be equipped with electric garbage disposal units in the kitchen.
5. The grade of any Lot or Lots in the Subdivision may not be changed without the written consent of the Committee. This restriction is intended to prevent interference with the master drainage plans for the Subdivision.
6. No "through the wall" air conditioners may be installed on the front wall or in any front window of any building.
7. Whenever possible, outside compressors for central air conditioning units will be located in the rear yard. In cases where the compressor must be located on the side of the house, appropriate landscaping must be installed so as to create no nuisance to the residents of adjacent dwellings.
8. No swimming pool may be built which is higher than one (1) Foot above the existing Lot grade. No above ground swimming pools shall be erected or maintained on any Lot.
9. No basketball backboards or hoops may be installed on any house directly, but rather must be installed on a pole. Backboards are limited to one (1) per house and must be installed behind the front line of the house. Residents who install basketball backboards are required to maintain them so that they do not become unsightly or a nuisance to other nearby residents.
10. All Lots in the Subdivision shall be used exclusively 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) single family dwelling not to exceed two and one-half (2-1/2) stories in height, which may include an attached garage.
11. No part of any dwelling or other structure shall be used for any activity normally conducted as a business.

12. No Lot shall be subdivided, or its boundary lines changed, except with the written consent of Declarant or its assigns.
13. No outside television antenna or other antenna or aerial, saucer or similar device shall be placed or constructed on any Lot.
14. It shall be the responsibility of each Lot Owner to present the development of any unclean, unsightly, or unkept condition of buildings or grounds on each Owner's Lot. No lawn ornaments, sculptures or statues shall be placed or permitted to remain on any Lot.
15. No noxious or offensive activities shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighbor.
16. No Lot shall be subdivided, or its boundary lines changed, except with the written consent of the Committee or Declarant. However, Declarant hereby expressly reserves 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 or fit as building sites to include, but not be limited to, the relocation of easements, walk-ways and right-of-ways to conform to the new boundaries of said replatted lot.
17. No Owner shall disturb, modify or alter the Subdivision entranceway sign or the fence or landscaping adjacent thereto.
18. Declarant hereby expressly reserves to itself the right to re-plate any two (2) or more Lots shown on the plat or any 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, walk-ways, and right-of- ways to conform to new boundaries of said replatted Lot.

Anything contained herein to the contrary notwithstanding, no building and use restriction contained in this Article shall be deemed to limit the authority, control, and power of the Committee with respect to its right to approve plans for construction on Owners' Lots.

#### **ARTICLE IV** **TREE PRESERVATION AREA**

The restrictions and limitations of this Article shall apply to all Lots in the Subdivision.

A. Areas Defined. All of that portion of the Lot lying between a line one hundred twenty (120) feet from and parallel to the front Lot line of each of the Lots in the Subdivision and the rear Lot line of each of said Lots is and shall be deemed to be "tree preservation areas".

B. Tree Protection. No standing, living deciduous or evergreen tree within the tree preservation areas shall be removed or deliberately damaged or destroyed, nor shall any person do any act or fail to do any act the result of which could reasonably be expected to cause damage to or destruction of any of said trees.

C. Development. No building, outbuilding, addition, deck, patio, swimming or wading pool, tennis court or other improvement or development of any kind shall be permitted within the tree preservation areas if that improvement would require the removal or destruction of any such tree, or if such improvement could reasonably cause injury to or destruction of or inhibit the continued natural growth of any such tree.

D. Maintenance. Nothing contained in this Article shall be construed to limit or prohibit within the tree preservation areas the removal of brush and scrub growth, the regular trimming, pruning and maintenance of the trees, the removal of diseased or dying trees or the trimming or removal of trees which could or might reasonably be expected to cause injury to persons or property.

E. Waiver. The restrictions and limitations of this Article may be waived in whole or in part by the Committee in appropriate cases, in the sole judgment of the Committee, so long as the granting of such waiver does not substantially change the character of the tree preservation areas.  
Removal of Trees in Non-Tree Preservation Area

F. Anything contained herein to the contrary notwithstanding, no trees measuring six (6) inches or more in diameter at ground level may be removed (even if such a tree is located outside of the tree preservation area) without the written approval of the Committee. Prior to commencement of construction, each Lot Owner shall submit to the Committee, as part of its plans to be approved by the Committee, a plan for preservation of trees in connection with the construction progress. It shall be the responsibility of each Lot Owner to maintain and preserve all large trees on the Owner's Lot, which responsibility includes welling trees, if necessary. Provided, however, no permission shall be necessary for the removal of trees which fall within the area being used by construction of a home whose plans have been approved by the Committee. The area used for construction of a home shall include all area within ten (10) feet of the outer walls of a home and the area within a driveway, utility easement or right-of-way.

## **ARTICLE V**

### **HOMEOWNERS ASSOCIATION RIGHTS AND RESPONSIBILITIES**

A. Establishment of Non-Profit Corporation. There is hereby established an association of Owners to be known as the BEACH FOREST SUBDIVISION ASSOCIATION. Such Association shall be organized as soon as practicable after the recording of these Deed Restrictions. The Association shall be organized as a non-profit corporation for a perpetual term under the laws of the State of Michigan and shall have such powers as are enumerated in this Declaration as well as those set forth in the corporate By-Laws for the Association.

B. Dedication of Common Area. Declarant agrees to dedicate and convey to the Association for the benefit of each Owner of a Lot in the Subdivision a right and easement of enjoyment in and to any Common Area (in the event that a Common Area is established) when the same shall be so designated and hereby covenants that it will convey the Common Area to the Association free and clear of all liens and encumbrances within ninety (90) days of the recording of any plat which shows a designated Common Area. Title to the Common Area (if and when established) shall vest in the Association subject to the rights and easement of enjoyment in and to such Common Area by the Owners. Said easement of

enjoyment shall not be personal, but shall be considered to be appurtenant to the Lots and shall pass with the title to the Lots whether or not specifically set forth in the deeds of conveyance of the Lots.

Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or purchasers who reside on his Lot. Declarant may, with the consent of the Association, increase or reduce the size of the Common Area or to grant easements through it for the purpose of causing the installation of any utility lines, television cable, drainage facilities or any other improvements which would serve the residents of the Subdivision. Provided, however, Declarant reserves unto itself the right to add and designate Common Areas (if any) in any future Subdivisions hereinafter annexed.

C. Association Property Rights – Common Area. The right and easement of enjoyment of each Owner in and to the Common Area shall be subject to the following prior rights of the Association:

1. The rights of the Association to grant easements, dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication, grant or transfer shall be effective unless an instrument agreeing to such dedication, grant or transfer signed by two-thirds (2/3rds) of the members has been recorded.
2. The right of the Association to levy assessments, as set forth in Section E hereof.

D. Membership and Voting Rights. Every Owner of one (1) or more Lots shall be a mandatory member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot. All members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in a Lot, all such persons shall be members, the vote for such Lot may be exercised as they, among themselves, shall determine, but in no event shall more than one (1) vote be cast with respect to any one (1) Lot.

E. Membership Fees and Purpose. In order to pay the cost of carrying out its responsibilities hereunder, the Association shall levy fees, dues or assessments on each Lot in the Subdivision, whether or not the Lot Owner is an active member of the Association, except Lots owned by Declarant or by a builder prior to occupancy. In no event shall Declarant or such a builder be obligated to pay fees, dues or assessments to the Association. All such fees, dues or assessments shall be charged equally to each Lot, and may be enforced through the lien provided for in Section G of this Article or by any other lawful means of collecting debts.

The fees, dues or assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Subdivision and future subdivisions or lots hereafter annexed or added, and in particular for the improvement and maintenance of the Common Area(s) or Subdivision entrance-ways now or hereafter owned by the Association, and facilities thereon, and other property under the control of the Association, for planting and maintenance of trees, shrubs and grass; for construction, operation and maintenance of recreational facilities; for providing community services; and for the protection of the Owners.

Anything contained herein to the contrary notwithstanding, there shall be no membership fee due for any Lot until a home is constructed on the Lot and the home is first occupied by a purchaser.

F. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy against each Owner, in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any improvement upon the Common Area and other areas under the control of the Association, including subdivision entrances, retention ponds, fixtures and personal property, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of members who are voting in person or by proxy at a meeting duly called for that purpose.

G. Lien. Any fees, fines, dues or assessments established by the Association, and any amounts or expenses incurred in enforcing these restrictions which are reimbursable under Article VI below, shall constitute a lien on the Lot of each Lot Owner responsible for such fees or expenses. Declarant or the Association, as the case may be, may enforce the lien by recording appropriate instruments confirming the existence of the lien and foreclosing the lien by appropriate legal action. In existence of the lien and foreclosing the lien by appropriate legal action. In such legal action, a court of competent jurisdiction shall be empowered to order a sale of the Lot subject to the lien in order to satisfy the lien. 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 in the Subdivision.

H. Association By-Laws. Any sale or purchase of a Lot in the Subdivision shall be subject to such by-laws for the Association as Declarant may hereafter establish, and each Lot Owner agrees to abide by and observe such by-laws. The Association may amend or modify the by-laws upon the affirmative vote of three-fourths (3/4ths) of the Lot Owners, but such amendment or modification shall not have retroactive affect.

I. Subdivision Lighting. The Association shall maintain any lighting which may be installed in common areas and/or utility and/or city or easement right-of-ways. Maintenance shall include all upkeep and other expenses necessary to maintain and replace the lighting and all components of the lighting system including, but not limited to, all facilities and fixtures installed in connection with said system. Maintenance, as used in this provision, shall be liberally interpreted in its broadest sense. In addition, the Association shall pay all energy expenses attributable to the street lighting system. The cost of maintaining lighting (maintenance) together with the cost of all energy used and consumed in connection with the lighting shall be assessed to each Lot Owner on a pro rata basis as an annual assessment, in accordance with subparagraph E of these deed restrictions. Pro rata, as used herein, shall mean that each Lot Owner shall be responsible equally for one equal share of the total maintenance and energy expense. The assessment may be billed as part of the Lot Owner's annual assessment or separately. Failure to pay the assessment shall grant the Association the right to a lien pursuant to subparagraph G of these deed restrictions and said lien may be enforced in accordance with subparagraph G of these deed restrictions.

Anything contained herein to the contrary notwithstanding, the City of Troy shall have the option to bill and assess each Lot Owner separately for that Lot Owner's pro rata share (as determined above) of the maintenance and energy expense. In the event that the City of Troy elects, in its sole option, to independently bill and assess the Lot Owners for their pro rata share of said expense, failure to pay such assessment shall constitute a lien on the Lot of the Lot Owner failing to pay the assessment, in accordance with subparagraph G of these deed restriction, and said lien may be enforced in accordance with subparagraph G of these deed restrictions.

J. Berm Maintenance. The Association shall maintain that portion of the Berm which lies outside of the portion of the Berm which is to be maintained by each Lot Owner as specified in Article XI hereof. Maintenance shall include, but not be limited to, maintaining the configuration and topography of the Berm, keeping the Berm free from debris, maintaining any landscaping or vegetation within the Berm area, and where required cutting grass and removing unsightly vegetation should the Homeowners Association deem that the same is desirable or should the same be required by any municipal authority.

## **ENFORCEMENT**

The provisions hereof shall run with and bind the land within the Subdivision for a period of fifty (50) years from the date hereof, after which time they shall be extended automatically for successive periods of ten (10) years unless seventy-five (75%) percent of the Lot Owners in the Subdivision vote to limit or remove the restrictions set forth herein. Declarant, or the Association, shall have the right at any time or times during the said periods 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 in and remove any building, structure or improvement erected, installed or maintained in violation of the terms hereof at the Lot Owner's expense, and to recover damages or other dues for any violation. Any such entry shall not constitute a trespass. Declarant or the Association may recover against a Lot Owner violating the provisions of this Declaration all reasonable costs incurred by him in enforcing such provisions in any of the foregoing ways, including the cost of removing offending structures and reasonable attorneys fees and other litigation costs.

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 VII AMENDMENT**

Declarant reserves 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. Any such modification, amendment, restatement, waiver or repeal may be retroactive to the date hereof.

## **ARTICLE VIII LANDS AFFECTED**

A. The covenants, conditions and restrictions set forth herein shall not be binding upon or affect in any way any property other than the Subdivision. Specifically, these restrictions shall not apply to or constitute a burden or encumbrance on any adjacent property, including any adjacent property owned by Declarant.

B. Declarant reserves the right to create one or more subdivisions from the property adjacent to the Subdivision 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.

**ARTICLE IX**  
**ANNEXATION OF ADDITIONAL LOTS AND/OR COMMON AREA**

Declarant reserves the right at any time or times in the future to amend this Declaration to add to it one or more lots or one or more additional subdivisions of land in the east one-half (1/2) of Section 7, of the City of Troy, hereafter developed and platted by Declarant or its assigns. Such additional lots and/or subdivisions may or may not contain additional common areas. Any such amendment(s) to this Declaration shall provide that the owners of all of the residential lots added to the Subdivision or in additional subdivisions shall be required to be members of the Association and shall be subject to the covenants, restrictions, easements, charges and liens set forth herein. Such amendment(s) shall also provide that the common area contained within the Subdivision and all common areas later added to the Subdivision or future subdivisions shall be for the benefit and use of all Owners of all Lots in the Subdivision and all subdivisions added hereto. Additional lots and common areas may be annexed to the Association by Declarant without the consent or approval of the Association or of its members or any Owner. Any common area so added shall be owned and maintained by the Association in accordance with the terms of these Deed Restrictions. Annexation by action of the Association shall require the consent of two-thirds (2/3rds) of its members.

**ARTICLE X**  
**ASSIGNMENT**

A. Declarant hereby reserves the unequivocal right to assign to the Association in whole or in part, from time to time, any or all of the rights and powers, titles, easements and estates hereby reserved or given to Declarant herein, including the right and power to approve or disapprove any use, act, proposed action, or any other matter or thing. Any such assignment or transfer shall be made by appropriate instrument, in writing, and such assignee shall thereupon have the same rights and powers, and be subject to the same obligations and duties as herein given and reserved to and assumed by Declarant in connection with the rights, powers, and easements so assigned, and such instrument, when executed by such assignee shall without further act, release said Declarant from all obligation, duties and liability in connection therewith.

B. Declarant hereby reserves the unequivocal right to assign to others in whole or in part, at any time and from time to time, any or all of the rights and powers, titles, easements and estates hereby reserved or given to Declarant herein, including the right and power to approve or disapprove any use, act, proposed action, or any other matter or thing. Any such assignment or transfer shall be made by appropriate instrument in writing and such assignee shall thereupon have the same rights and powers, and be subject to the same obligations and duties as herein given and reserved to and assumed by Declarant in connection with the rights, powers, and easements so assigned, and such instrument, when executed by such assignee shall without further act, release said Declarant from all obligations, duties and liability in connection therewith.

## BERMS

As part of the improvements, Declarant shall cause to be constructed berms which shall be located in part on Lots 110, 111, 112, 113, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, and 134, Beach Forest Subdivision No. 2. The berms are intended to act as a sound and sight barrier for the benefit of all Lot Owners in the Subdivision. No Owner of any Lot shall change or modify the berm or the configuration of the berm in any manner including, but not limited to, changing the topography of the berm, excavating or moving or disrupting any portion of the berm.

In addition, each Lot Owner who owns a Lot upon which a portion of the berm is constructed shall maintain that portion of the Berm which lies between the front Lot line of that Owner's Lot and the line which is the center of the top of the Berm. The Homeowners Association shall maintain that portion of the Berm which lies between the top of the Berm and the Owner's rear Lot line (the backside of the Berm). Maintenance shall include, but not be limited to, maintaining the configuration and topography of the berm, keeping the berm free from debris, maintaining any landscaping or vegetation within the Berm area, and where required cutting grass and removing unsightly vegetation, should the Homeowners Association deem that the same is desirable or should the same be required by any municipal authority.

## **ARTICLE XII SPECIAL RESTRICTIONS; LOTS 86 THROUGH 95 BEACH FOREST SUBDIVISION NO. 2**

The following restrictions are imposed on Lots 86 through 95, inclusive, of Beach Forest Subdivision No. 2 (the "Restricted Lots"):

A. No fence or wall shall be erected on or within twenty (20) feet of the rear property line of any of the Restricted Lots.

B. No house constructed on any Restricted Lot shall have a front yard setback, as defined by the Troy Zoning Ordinance, in excess of forty (40) feet or the front yard setback required by the Troy Zoning Ordinance, whichever is greater.

C. No trees in the rear yard of any Restricted Lot which exist at time of completion of construction on any such lot may be removed, except for removal due to serious disease or damage.

These restrictions may be waived, modified or terminated as to any of the Restricted Lots by the written consent of the owners of at least eleven (11) of the Benefitted Lots (being those lots in Chelsea Village Subdivision No. 2 and Chelsea Village Subdivision No. 3 which abut the Restricted Lots, i.e., lots 225 through 235, inclusive, of Chelsea Village Subdivision No. 2 and lots 240 through 244, inclusive, of Chelsea Village Subdivision No. 3), which shall include the owners of any Benefitted Lots whose rear lot lines abut the rear lot line of any such Restricted Lot; provided, however, that:

- (i). any waiver, modification, or termination as to any of the Restricted Lots shall not be, nor shall it be a basis for, the waiver, modification or termination as to any Restricted Lot not specified in the waiver, modification or termination; and
- (ii) any waiver shall be limited to its berms, and shall not be a basis for any additional or future waiver.

**ARTICLE XIII**  
**RESTRICTED PARCEL**

Declarant is the owner of adjoining real estate more fully described in Exhibit A attached hereto. Declarant agrees that the single family residential zoning classification of the land described in Exhibit A is a reasonable classification. Declarant agrees that Declarant will never seek a change or challenge, before the City of Troy, or in any court, or in any other tribunal of the single family residential zoning classification of the land described in Exhibit A. The land described in Exhibit A shall never be used for any purpose other than single family residential use. This restriction shall be binding upon Declarant and Declarant's successors and assigns and shall run with the land. This restriction is intended to benefit all of the present and future lot owners whose lots are now or at any time in the future covered by these restrictions including Beach Forest Subdivision, Beach Forest Subdivision No. 2 and any additional lots which may be subsequently added to and covered by the restrictions.