

DECLARATION OF RESTRICTIONS FOR GRACE PARC SUBDIVISION

WHEREAS, the undersigned, PATRICK BISMACK, a married man, of 2742 Powderhorn Ridge, Rochester Hills, MI 48309 ("Developer"), hereinafter referred to as "Declarant", being the owner in fee simple of the lands hereinafter described, which lands are hereinafter referred to as "The Subdivision", desires to create a planned community for the benefit of all residents of The Subdivision. The Subdivision is located in the City of Rochester Hills, Oakland County, Michigan and is more particularly described as: Lots 1 through 14 inclusive, of GRACE PARC SUBDIVISION, of part of the Southeast ¼ of Section 34, T.3 N., R.11 E., City of Rochester Hills, Oakland County, Michigan according to the Plat thereof as recorded in Liber ____, Pages ____ through _____ of Plats, Oakland County Records; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values and amenities in The Subdivision and to this end desires to subject The Subdivision to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of The Subdivision and each owner of a lot therein; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in The Subdivision, to create a legal entity to own, maintain and administer the Storm Detention Site, facilities and structures that may be located or constructed thereon, the subdivision entrances, fixtures, personal property and other property under the control of the Association, if any, and to collect and disburse the assessments and charges herein provided for and to promote the recreation, health, safety and welfare of the residents of The Subdivision.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the undersigned, its successors and assigns, and all intending purchasers and future owners of the various lots comprising The Subdivision, the undersigned Declarant for itself, its successors and assigns does hereby publish, declare and make known to all intending purchasers and future owners of the various lots comprising The Subdivision, that the same will and shall be used, held, and/or sold expressly subject to the following conditions, restrictions, covenants and agreements which shall be incorporated by reference in all deeds of conveyance and contracts for the sale of said lots and shall run with the land and be binding upon all grantees of individual lots in The Subdivision and on their respective heirs, personal representatives, successors and assigns.

**ARTICLE I
DEFINITIONS**

Section 1. "Association" shall mean and refer to the HOMEOWNERS ASSOCIATION OF GRACE PARC SUBDIVISION, a Michigan Non-Profit Corporation, its successors and assigns.

Section 2. "City" shall mean and refer to the City of Rochester Hills, Michigan.

Section 3. "Common Area" shall mean those areas of land within The Subdivision (including the improvements thereto) now or hereafter owned or maintained by the Association for the common use and enjoyment of the Owners. The Common Area includes the drainage and retention areas and other land within The Subdivision that is not part of a lot or dedicated to the general public. Without limitation, the Common Area to be owned by the Association at the time of the conveyance of the first lot within The Subdivision is shown on the Plat of The Subdivision as "Storm Detention Site".

Section 4. "Lot" shall mean and refer to any numbered lot shown on the recorded plat of The Subdivision and any future subdivisions hereafter annexed.

Section 5. "Declarant" shall mean and refer to Patrick Bismack, a married man, and his successors and assigns.

Section 6. "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.

Section 7. "Member" shall mean and refer to those persons entitled to membership in the Association, as provided in this Declaration.

Section 8. "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 hereinafter annexed, or the land contract purchaser thereof, but excluding those having any interest merely as security for the performance of an obligation.

Section 9. "Builder/Purchaser" shall mean and refer to those persons or entities that purchase more than one (1) lot from Declarant for the purpose of construction and sale of a house upon said lots.

**ARTICLE II
ESTABLISHMENT AND DEDICATION**

Section 1. Establishment of Non-Profit Corporation

There is hereby established an association of Owners of Lots 1 through 14 inclusive, of GRACE PARC SUBDIVISION, to be known as the HOMEOWNERS ASSOCIATION OF GRACE PARC SUBDIVISION. Such Association shall be organized within thirty (30) days after the date of the plat of GRACE PARC SUBDIVISION has been recorded with the Oakland County Register of Deeds. 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.

Section 2. Dedication of Common Area

Declarant hereby dedicates and conveys to each Owner of a Lot in The Subdivision a right and easement of enjoyment in and to the Common Area and hereby covenants that it will convey the Common Area to the Association via Warranty Deed within ninety (90) days after the date the plat of The Subdivision has been recorded. Title to the Common Area 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.

**ARTICLE III
PROPERTY RIGHTS**

Section 1. Owners' Easements of Enjoyment.

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:

- a. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- b. The right of the Association to suspend the voting rights and right to use the Common Area by an Owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- c. The right of the Association to levy assessments, as set forth in Article V, below.

Section 2. Delegation of Use.

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.

**ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS**

Section 1. Mandatory Member

Each Owner of a lot in The Subdivision shall be a mandatory Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2. Classes of Membership

The association shall have two classes of voting membership:

Class A. The Class A members shall be all Owners, with the exception of Declarant and its Builder/Purchasers. Class A members shall have no voting rights until the first to occur of the following:

- (a) The Class A members having attained at least Ninety Percent (90%) or more of the number of votes of the original Class B members as hereinafter defined; or
- (b) Such earlier time as may be elected by Declarant.

Upon the happening of the first to occur of said events, the Class A members shall be entitled to one vote for each lot owned. When more than one person holds an interest in a lot, all such persons shall be Members. The vote for such lot shall be exercised as they among themselves shall determine, but in no event shall more than one vote be cast with respect to any one lot.

Class B. The Class B members shall be the Declarant and/or its Builder/Purchasers. Class B members shall be entitled to one vote for each lot owned.

**ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments.

Each Owner of a lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual general assessments or charges, and (2) special assessments for capital improvements. Such assessments shall be established and collected as hereinafter provided. The general and special assessments, together with interest thereon and costs of collection thereof, including reasonable attorney's fees, shall be a charge on the lot and shall be a continuing lien upon the lot against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, including reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such lot at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Assessments shall be levied by the Association against each Owner who is not the Declarant or a Builder/Purchaser, which parties are specifically excluded from any such assessments.

Section 2. Purpose of Assessments.

The 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 hereafter annexed, and in particular for 1) the construction, reconstruction, repair, replacement, maintenance and preservation of the Common Area now or hereafter owned by the Association, the lawn areas and walkways within Common Area and the rights-of-ways of The Subdivision streets (except within rights-of-way directly abutting a lot, in which case such obligation shall be that of the abutting lot Owner), retaining walls, fixtures, personal property and other property under the control of the Association, and the facilities and structures located thereon, if any; 2) planting and/or maintenance of, as applicable, trees, shrubs and grass located within the aforesaid areas; 3) caring for vacant lots when necessary; 4) providing community services; or 5) for the protection of the Owners.

Section 3. Maximum Annual Assessment.

The basis of the annual assessments, and the maximum amounts thereof, shall be as follows:

a. Until January 1 of the year immediately following the conveyance of the first lot to an Owner other than Declarant, the maximum annual assessment shall be Fifty (\$50.00) Dollars per lot.

b. From and after January 1 of the year immediately following the conveyance of the first lot to an Owner other than Declarant, the maximum annual assessment may be increased by the Board to an amount not exceeding Three Hundred Fifty (\$350.00) Dollars per lot, without a vote of the Owners.

c. Thereafter, the maximum annual assessment may be increased by the Board not more than ten percent (10%) above the maximum assessment for the prior year without a vote of the Owners, and the maximum annual assessment may be increased by more than ten percent (10%) above the maximum assessment for the prior year upon an affirmative vote of two-thirds (2/3rds) of the Owners voting in person, or by proxy, at a meeting duly called for that purpose.

d. The Board may after consideration of the current fiscal needs of the Association, fix the actual annual assessment for any year at an amount less than the maximum herein otherwise permitted.

Section 4. 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, replacement and preservation of any improvement upon the Common Area and other areas now or hereafter under the control of the Association and facilities and structures thereon, fixtures and personal property under the control of the Association, if any, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of Owners who are voting in person or by proxy at a meeting duly called for that purpose.

Section 5. Notice and Quorum for Actions Authorized Under Section 3 and 4.

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all Members not less than 15 days nor more than 45 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast ten (10%) percent of the votes shall constitute a quorum. If the required quorum is not met, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Rate of Assessment.

Both the general and the special assessments shall be set by the Board of Directors at the uniform rate for the Owners of all lots and may be collected on a monthly or an annual basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates.

The annual assessments provided for herein shall commence as to all lots effective on the first day of the month following the conveyance of the first lot to an Owner. A conveyance to a Builder/Purchaser shall not be deemed to be a conveyance to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least twenty (20) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall be increased by a late fee equal to ten (10%) percent of the initial amount of the assessment. The increased assessment shall thereafter bear interest from the due date at the rate of eleven (11%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the assessment, late fee and interest, or foreclose the lien against the lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Section 9. Exempt Property.

All Common Area and all other property exempt from taxation by state or local governments and dedicated for public use shall be exempt from any assessment, charge and lien created herein.

Section 10. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien, but not the obligation for payment, of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments becoming due after such sale or from the lien thereof.

**ARTICLE VI
ARCHITECTURAL CONTROL**

No building, fence, wall, retaining wall, outbuilding or other structure of a permanent nature shall be commenced, erected or maintained on any lot, nor shall any exterior addition to or change or alteration therein be made, until plans and specifications showing the nature, kind, size, shape, height, colors, materials, proposed grading, existing topography and location of the same on the lot shall have been submitted to and approved in writing by an architectural control committee composed of three (3) persons appointed by the Declarant (who are not required to be Members of the Association), hereinafter called the "Committee". Each member of the Committee shall serve for a period of one (1) year, or until replaced by a subsequent appointee. The Declarant reserves the right at any time in the future to delegate or assign its power of appointment of Committee members to the Association. In any event, Declarant shall in no way be liable for the failure of Declarant or of the Association to enforce some or all of the requirements of this Article VI, or any other requirements set forth in this Declaration.

Section 1. Plans and specifications for final approval by the Committee shall include the following:

- a. Complete plans and specifications sufficient to secure a building permit in the City of Rochester Hills, as well as a dimensioned plot plan showing the lot, proposed grades, and placement of the proposed residence, garage, outbuildings, fences, retaining walls, porches, driveways, sidewalks and other improvements.
- b. Front elevation, side elevations and rear elevation of building, plus elevations of walls and fences (if any).
- c. A perspective drawing if deemed necessary by the Committee to interpret adequately the exterior design.
- d. Data as to size, materials, colors and texture of all exteriors including roof coverings, fences (if any) and walls.
- e. One set of blueprints shall be left with the Committee until construction is completed.

Section 2. Preliminary plans may first be submitted to the Committee for preliminary approval.

Section 3. No approval by the Committee shall be valid if the structure or improvement violates any of the restrictions set forth in Article VII of this Declaration, except in cases where waivers have been granted as provided for in the said Article.

Section 4. The Committee may disapprove plans because of noncompliance with any of the restrictions set forth in Article VII 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 objective of the Committee or with improvements erected on other lots in The Subdivision.

Section 5. In the event the Committee fails to approve or disapprove plans within fifteen (15) 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.

Section 6. 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 any member of the Committee who was validly serving on the Committee on the date of such approval.

**ARTICLE VII
BUILDING AND USE RESTRICTIONS FOR THE SUBDIVISION**

Section 1. 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 lot, 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 shall also be erected and maintained.

Section 2. Character and Size of Buildings.

No dwelling having a living area of less than one thousand four hundred (1,400) square feet in the case of a one-story home, and one thousand six hundred (1,600) square feet in the case of any other type of home, shall be permitted on any lot. All computations of square footage for determination of the permissibility of erection of a residence shall be exclusive of garages, porches, or terraces. All garages must be attached or architecturally related to the dwelling. All garages shall comply with the requirements of the City of Rochester Hills. No garage shall provide space for less than two (2) automobiles. Carports are specifically prohibited.

Section 3. Minimum Yard Requirements.

No building on any lot shall be erected nearer than:

- (1) Twenty-Five (25') feet from the front lot line; nor
- (2) Thirty-five (35') feet from the rear lot line; nor
- (3) Ten (10') feet from one side lot line, with a minimum total side yard setback in the case of interior lots of Twenty (20') feet, provided further that principal buildings on adjoining lots shall be located not less than twenty (20) feet apart; nor
- (4) In the case of corner lots, Twenty-Five (25') feet from the side lot line abutting a street with a minimum total side yard setback in the case of corner lots of Thirty-Five (35') feet for both the interior and the exterior side yard.

Approval of a variance by both the Architectural Control Committee and the City of Rochester Hills Board of Appeals permitting front or rear yards smaller than the above minimums shall be deemed a valid waiver of this restriction.

Section 4. 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 due to noise, odor or unsanitary condition.

a. Any dog kept by a resident on his premises shall be kept either on a leash or in a fenced area approved by the Committee, and shall not be allowed to run loose or unattended. No fences for dog runs or pens shall be permitted to be erected or maintained without the approval of the Committee.

b. No owner of a lot shall use, nor shall he permit or suffer any occupant of any lot which he owns, or his or their invitees or guests, to use any B-B guns, firearms, air rifles or pellet guns. No owner or occupant of any lot shall permit or suffer his or their invitees or guests to harm or kill any wild fowl in The Subdivision, including the Common Area, except for Michigan Department of Natural Resources approved waterfowl population control measures.

Section 5. Wells.

No well shall be dug, installed or constructed on any lot.

Section 6. Sight Distance at Intersections.

No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between three (3) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25') feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 7. Easements.

a. Private easements for the use of public utilities, as defined in the Land Division Act, MCLA Section 560.101 et seq., for the installation and maintenance of utilities, underground cable, sewer lines, water mains, drainage lines, surface drainage swales, landscaping, signage or any other improvements which would serve the residents of The Subdivision are as shown on the recorded plat of The Subdivision.

No permanent structures may be constructed or maintained over or on any easements; however, and subject to the other requirements of this Section 7, after the aforementioned utilities, landscaping and signage have been installed, planting, fencing (where permitted) and other non-permanent structures along lot lines within such public utility easements 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 is granted, without charge or liability for damages, for the installation and/or maintenance of the utilities, drainage lines and/or additional facilities. Private easements for public utilities, landscaping, greenbelts and entrance signs, as applicable, have been granted and reserved on the plat of The Subdivision. Without limiting the use of these easements by other permitted parties and utilities, the DTE Energy Company, and its successors and assigns, are specifically granted the right of access to and from these easements reserved for public utilities for the purpose of constructing, reconstructing, modifying, adding to, operating and maintaining utility line facilities consisting of poles, guys, anchors, wires, manholes, conduits, pipes, cables, transformers and accessories. Accordingly, no buildings or other permanent structures shall be placed in the easement areas without the prior written consent of DTE Energy Company, its successors and assigns, and all municipalities and governmental authorities having jurisdiction. DTE Energy Company, and its successors and assigns, shall be permitted to trim, cut down, remove or otherwise control any trees, bushes, branches and roots within the easement (or that could grow into the easement) and remove structures and fences in the easement area which DTE Energy Company, or its successors and assigns, believes could interfere with the safe and reliable construction, operation and maintenance of its facility. No trees, plant life, structures and fences shall be planted, grown, or installed within eight (8') feet of the front door and within two (2') feet of the other sides of transformers and switching cabinet enclosures. DTE Energy Company, and its successors and assigns, shall not be responsible for damages to or removal of trees, plant life, structures and fences placed in front of transformer doors within such required clearance areas. Prior to the installation by DTE Energy Company, or its successors and assigns, of its subdivision utility facilities, Declarant shall grade the easement area to within four (4") inches of the final grade shown on the approved Subdivision Master Grading Plan. Following grading by the Declarant, each owner shall, to the extent the easement is located on his lot, maintain this grading elevation. Each owner shall be responsible to reimburse DTE Energy Company, or its successors and assigns, for any repairs required as a result of damage caused to their utility facilities by the Owner or by the Owner's agents, contractors or invitees.

Section 8. Temporary Structures.

Trailers, tents, shacks, 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.

Section 9. General Conditions.

a. 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.

b. Each lot and its surrounding street pavements and common areas shall be kept clean and free from garbage, refuse, soil runoff and other materials and debris.

- c. No commercial vehicles, boats, travel trailers, mobile homes, campers, snowmobiles or trailers used to store or transport any of these vehicles shall be permitted to be parked or stored on the driveway, or in the front, side or rear yard of any house or on any vacant lot in The Subdivision, for in excess of twenty four (24) hours, unless parked or stored within a garage which conforms to the garage requirements set forth above, except for commercial vehicles and trucks making normal deliveries or pickups in the normal course of business. However, a construction trailer and construction vehicles may be maintained by each Builder/Purchaser offering new houses for sale, but only during the period when new houses are under construction in The Subdivision by that Builder/Purchaser.
- d. No laundry shall be hung for drying on any lot outside of the dwelling on the lot.
- e. All homes shall be equipped with electric garbage disposal units in the kitchen.
- f. The grade of any lot or lots in The Subdivision may not be changed without the written consent of the City of Rochester Hills and the Architectural Control Committee. This restriction is intended to prevent interference with the master drainage plans for The Subdivision.
- g. No "through the wall" air conditioners may be installed on the front wall or in any front window of any building.
- h. No outside compressors for central air conditioning units may be located other than in the rear yard and must be installed and maintained in such a manner so as to create no nuisance to the residents of adjacent dwellings.
- i. Any swimming pool on any lot shall comply with the requirements of the City of Rochester Hills.

Section 10. Sales Agency and/or Business Office.

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

Section 11. Lease Restrictions.

No owners of any lot shall lease and/or sublet less than the whole of any dwelling on any lot.

Section 12. Exterior Surface Dwellings.

The visible exterior walls of all dwelling structures shall be made of wood, brick, brick veneer, vinyl and/or stone in any combination. Other materials acceptable to the Architectural Control Committee 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 or aluminum siding is expressly prohibited. Windows and doors shall not be included in calculating the total area of visible exterior walls. The Architectural Control Committee may grant such exceptions to this restriction as it deems suitable.

Section 13. Fences.

- a. No fence, wall or solid hedge may be erected, grown or maintained in front of the front building line of any lot. The side lot line of each corner lot which faces a street shall be deemed to be a second front building lot line and shall be subject to the same restrictions as to the erection, growth or maintenance of fences, walls or hedges as is hereinbefore provided for front building lines.
- b. No fence or wall may be erected or maintained on or along the side lines of any lot and/or on or along the rear line of any lot, except that fences which are required by local ordinance to enclose swimming pools and fences used for dog runs or pens-which comply with the requirements of Article VII, Section 4(a) of this Declaration shall be permitted and fences must be made out of decorative aluminum or wrought iron.

Section 14. Signs.

No sign or billboard shall be placed, erected or maintained on any lot, except for 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 shall 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 Fifteen (15') feet from the front lot line. The preceding provisions of this paragraph shall not apply to such signs as may be installed or erected on any lot by Declarant, or by any Builder/Purchaser which Declarant 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.

Section 15. Destruction of Building by Fire.

Any debris resulting from the destruction in whole or in part of any dwelling or building on any lot shall be removed from such lot with all reasonable dispatch in order to prevent an unsightly condition.

Section 16. Landscaping.

Upon the completion of a residence on any of the lots the owner thereof, (and the word "owner", as used in this condition, is intended to mean the party who purchases a residence from the Builder/Purchaser 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. 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.

Section 17. Driveways.

At the time of construction of a residence thereon and, weather permitting, prior to the residence being occupied, each lot shall have constructed on it a concrete driveway located not less than two (2') feet from the side lot line, which driveway shall at all times be maintained and kept in good repair. Declarant reserves the right at any time to require that the location of all such driveways comply with a driveway location plan that it may choose to create.

Section 18. Exterior Antennas.

No exterior television or radio antennas or "satellite dish" antennas in excess of fourteen (14) inches in diameter shall be installed on any lot in The Subdivision without the prior written approval of the Architectural Control Committee.

Section 19. Erosion Control.

Each owner of a lot shall ensure that all reasonable erosion prevention measures are implemented and maintained in order to ensure that soil and other debris does not enter wetlands, sewer lines, manholes, catch basins, and retention basins serving or located within The Subdivision (collectively, the "Storm Sewer Improvements"), and shall install soil erosion control fencing (including, without limitation, soil erosion control fencing around the perimeter of the lot from the time that construction or grading commences on the lot until such time as grass has grown in sufficiently on the lot to end the threat of soil erosion) on such lot in order to keep sediment and other runoff out of the streets in The Subdivision. In the event that Declarant or the Association is notified by a governmental agency having jurisdiction over the Storm Sewer Improvements that the Storm Sewer Improvements need to be cleaned or serviced due to a buildup of sediment or other debris, Declarant or the Association may contract for such cleaning or servicing and charge each owner of a lot in The Subdivision a pro-rata share of the cost of the same, in common with other owners of lots in The Subdivision, such that the owners of lots in The Subdivision in common shall be required to pay the full cost incurred by Declarant or the Association for such cleaning and servicing.

Any retaining wall located on a lot must be properly maintained, repaired or replaced by the lot Owner as necessary in order to ensure that erosion is minimized and controlled.

Section 20. Storm Drainage Easement.

Certain areas (the "Easement Areas") shown on the Plat of The Subdivision are labeled "Private Easement for Storm Sewer," "Private Easement for Storm Sewer and Surface Drainage," and "Detention Area". All such Easement Areas shall be conveyed to the Association by the Declarant, to be held for the benefit of the Owners. The Owners shall have an easement to utilize the Easement Areas for storm water subject to the following terms and conditions:

- (1) The Easement Areas shall be for the purposes of developing, establishing, constructing, repairing, maintaining, deepening,

cleaning, widening and performing any associated construction activities and grading in connection with any type of drainage facilities or storm drains, in any reasonable size, form, shape or capacity required by the City of Rochester Hills, or its successors, assigns or transferees;

- (2) The Association shall have no right to sell, assign, transfer or convey the Easement Areas;
- (3) No Owner shall build or convey to others any permission to build any permanent structures on the Easement Areas;
- (4) No Owner shall build or place on the Easement Areas any type of structure, fixture or object, or engage in any activity or take any action, or convey any property interest or right, that would in any way either actually, or threaten to, impair, obstruct, or adversely affect the rights of other Owners or the Association with respect to the Easement Areas;
- (5) The Association and its agents, contractors and designated representatives shall have right of entry on, and to gain access to, the Easement Areas;
- (6) All Owners release the Association and its successors, assigns or transferees from any and all claims to damages in any way arising from or incident to the construction and maintenance of a drain or sewer or otherwise arising from or incident to the exercise by the Association of its rights on the Easement Areas, and all Owners covenant not to sue the Association for any such damages.
- (7) The rights granted herein to the Association may not be amended without the express written consent of the Association. Any purported amendment or modification of such rights shall be void and without legal effect unless agreed to in writing by the Association, its successors or assigns.

**ARTICLE VIII
RESTRICTIONS ON THE USE OF COMMON AREA**

Section 1. Motor Vehicles.

All vehicles propelled by a motor, other than those used for maintenance purposes, including but not limited to snowmobiles, all-terrain vehicles, motorcycles, mopeds, motor boats, automobiles, trucks and vans, are expressly prohibited from operation or storage in the Common Area.

Section 2. Structures.

No wall, building or structure may be constructed nor any development or improvement done in the Common Area without the prior written consent and approval of the Architectural Control Committee and all governmental agencies having jurisdiction.

Section 3. Pollution.

No Owner shall throw trash, refuse, or rubbish of any kind in the Common Area.

Section 4. Dogs.

No Owner shall allow his dog to run loose in the Common Area.

Section 5. Use of the Common Area.

The Common Area shall be used only for storm water detention. Golfing and all active sports are prohibited. No Owner shall permit or suffer the use of the Common Area for any commercial purpose. No activities in the Common Area shall be carried on in such a manner as to be disturbing or offensive to other Owners. No firearm, air rifle, pellet or B-B gun, bow and arrow, sling shot or other weapon shall be used on or in the Common Area.

Section 6. Wild Life.

No Owner shall permit or suffer the molestation or destruction of wild ducks, geese, birds or other harmless wild life in the Common Area, except for Michigan Department of Natural Resources approved waterfowl population control measures.

Section 7. Insurance.

The Association shall maintain liability insurance in sufficient amounts for the purpose of protecting itself as well as the Owners, the Declarant and Builder/Purchasers from the burden of liability resulting from accidents which may cause death or injury to anyone while in the Common Area, or on property under the jurisdiction, maintenance or control of the Association.

Section 8. Published Rules.

The Declarant reserves the right to publish from time to time reasonable rules and regulations consistent herewith governing the use of the Common Area as well as other matters relating thereto.

**ARTICLE IX
GENERAL PROVISIONS**

Section 1. Enforcement.

The Association, or any Owner, shall have the right to enforce, by any proceeding at law, all restrictions, conditions, covenants, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no ways affect any of the other covenants, restrictions or provisions hereof, which shall remain in full force and effect.

Section 2. Duration and Amendment.

Except as otherwise provided below, the covenants, restrictions and provisions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. Subject to the foregoing, this Declaration may be amended during the first twenty (20) year period by an instrument signed *solely by the Declarant or by an instrument signed* by not less than eighty (80%) percent of the Owners of lots in The Subdivision and thereafter by an instrument signed by not less than seventy (70%) percent of such Owners. Amendments made by Declarant *in the first twenty (20) years* shall not require the vote, signature or approval of any Owners, the Association or any Members thereof. Any amendment must be recorded with the Oakland County Register of Deeds.

Section 3. Annexation of Additional Lots and/or Common Area.

Declarant reserves the right at any time or times in the future to amend this Declaration by adding to it one or more additional tracts of land in Section 31 of the City of Rochester Hills which may be owned or controlled by Declarant or its assigns. Such additional land may or may not contain Common Area. Any such amendment(s) to this Declaration shall provide that the Owners of all lots or building sites in such future added land 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 such future annexed lands shall be for the use and benefit of all Owners of lots in The Subdivision and all such future annexed land. Additional land, lots, building sites and/or Common Area may be annexed to the Association by Declarant without the consent or approval of the Association or any of its Members or any Owner. Annexation by action of the Association shall require the consent of two-thirds (2/3rds) of its Members.

Section 4. Assignment or Transfer of Rights and Powers.

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 in writing by appropriate instrument, 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. Such instrument, when executed by such assignee, shall without further act release Declarant from all obligation, duty and liability in connection therewith.

Section 5. Deviations by Agreement with Developer.

Declarant hereby reserves the right to enter into agreements with the owner of any lot or lots in The Subdivision, without the consent of owners of other lots or adjoining or adjacent property, to deviate from any or all of the covenants set forth in this Declaration, provided it appears to Declarant that practical difficulties or particular hardships are faced by the lot owner. Any such deviation (which shall be manifested by an agreement in writing) shall not constitute a waiver of any such covenant as to the remaining lots in The Subdivision. These deviations shall only be permitted by Declarant in its sole discretion.

Section 6. Transition of Control of the Association.

In the event that as of the date the Class A members acquire voting rights (the "Transition Date"), the Class A members are unwilling or unable to elect a Board of Directors who desire to serve as Directors, the Declarant reserves the right to grant to the Management Agent of the Association or to such other designee chosen by Declarant the right to appoint a Board of Directors composed of either Owners or non-Owners, or some combination thereof. The fee charged by the Management Agent or other designee and by the Directors shall be paid directly by the Association. The right of the Management Agent or other designee to appoint the Board of Directors shall continue until the first annual meeting at which the Owners are willing and able to elect a Board of Directors of Owners who desire to serve as Directors.

Section 7. Liability of Board Members.

Neither any Member of the Board of Directors nor Declarant shall be personally liable to any Owner, Member or other party, for the damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board of Directors, the Declarant or any other representatives or employees of the Declarant, the Board of Directors or the Association.

Section 8. Ordinances of the City of Rochester Hills.

No lot in The Subdivision shall be used or shall have any improvement made to it or erected upon it in violation of the ordinances or requirements of the City of Rochester Hills or such other governmental entity as may have jurisdiction there over.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed on this ____ day of _____, 2013.

In the presence of:

Patrick Bismack
a married man

By: _____
Patrick Bismack

STATE OF MICHIGAN)
)SS
COUNTY OF MACOMB)

On this _____ day of _____, 2013, the foregoing instrument was acknowledged before me by Patrick Bismack, a married man.

Notary Public, _____ County
My Commission Expires:

THIS INSTRUMENT DRAFTED BY
Carol P. Thurber, PE
Fazal Khan & Associates, Inc.
43279 Schoenherr
Sterling Heights, MI 48313

AFTER RECORDING RETURN TO:
Clerk
City of Rochester Hills
1000 Rochester Hills Drive]
Rochester Hills, MI 48309