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MACOMB COUNTY, MI  
CARMELLA SABAUGH, REGISTER OF DEEDS

**AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS FOR THE BLUFFS OF BEAUFAIT FARMS SUBDIVISION**

This Amended and Restated Declaration of Covenants and Restrictions for The Bluffs of Beaufait Farms Subdivision ("Declaration"), made this 6th day of September, 2003, by BEAUFAIT FARMS, L.L.C., a Michigan limited liability company, whose address is P.O. Box 381018, Clinton Township, Michigan 48036 ("Declarant"), is based upon the following:

A. Declarant is the owner of and has developed a certain parcel of land located in the Township of Macomb, Macomb County, Michigan as a single-family residential development, being more particularly described as:

Lots 1 through 99, both inclusive, The Bluffs of Beaufait Farms Subdivision, according to the Plat thereof as recorded in Liber 155, Pages 52, <sup>THRU</sup> and 63, of Plats, Macomb County Records (the "Subdivision").

B. Declarant has previously developed certain parcels of land located in the Township of Macomb, Macomb County, Michigan near or adjacent to the Subdivision, as a single-family residential development known as Beaufait Farms development comprised of two hundred and five lots, Lots 1-70 in the Beaufait Farms Subdivision, the Plat of which was recorded in Liber 132, Pages 13-19, both inclusive, Macomb County Records, Lots 71 through 133, both inclusive, Macomb County Records in the Beaufait Farms Subdivision No. 2, the Plat of which was recorded in Liber 144, Pages 13 - 20, both inclusive, Macomb County Records, and Lots 134 through 205 in the Beaufait Farms Subdivision No. 3, the Plat of which was recorded in Liber 150, pages 25-31, both inclusive Macomb County Records, all of which may be collectively referred to as the "Beaufait Farms Subdivisions" or the "Subdivisions".

C. Declarant imposed certain covenants and restrictions on the use of Lots within the Beaufait Farms Subdivision, Beaufait Farms Subdivision No. 2 and Beaufait Farms Subdivision No. 3 in accordance with a declaration of use restrictions entitled "Declaration of Covenants and Restrictions for Beaufait Farms Subdivision", which was recorded in Liber 08374, Pages 553-582, both inclusive, Macomb County Records, the Declaration of Covenants and Restrictions for Beaufait Farms Subdivision No. 2, recorded in Liber 9488, Pages 848 - 878, both inclusive, Macomb County Records and the Declaration of Covenants and Restrictions for Beaufait Farms Subdivision No. 3 recorded in Liber 10362, Pages 251-284 both inclusive, Macomb County Records (collectively the "Beaufait Farms Declarations").

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D. Under Article X, Section 4 of the Declarations, Declarant reserved the right to amend the prior Declarations for Beaufait Farms Subdivisions to subject additional parcels of land developed and platted by Declarant ("Future Subdivisions") to the covenants, easements and restrictions.

E. The Beaufait Farms Subdivision includes a certain entryway located upon the Landscape Easement as shown on the Plat of the Beaufait Farms Subdivision for the common use, benefit, and enjoyment of all of the owners and residents of the Beaufait Farms Subdivisions, including this Subdivision and any Future Subdivision developed by Declarant which is subjected to the covenants and restrictions substantially the same as those set forth in the Beaufait Farms Declarations.

F. Beaufait Farms Subdivision, Beaufait Farms Subdivision No. 2, and Beaufait Farms Subdivision No. 3 are subject to a certain special assessment district relating to the sedimentation basin as defined in the Beaufait Farms Declarations (the "Prior SAD") pursuant to certain resolutions adopted by the Township on March 12, 1998 and October 27, 1999.

G. The Subdivision is subject to a certain special assessment district (the "SAD") created by the Township of Macomb (the "Township") relating to a sedimentation area that will serve all of the lots in Phase 1 of the Subdivision (Lots 1-99), and some of the lots that may be developed in Phase 2, pursuant to certain resolutions adopted by the Township on May 28, 2003 and June 25, 2003.

H. Declarant desires to impose and subject the Subdivision to certain covenants, restrictions, easements, obligations, charges, and liens, all as more particularly hereinafter set forth, each and all of which are for the benefit of the Subdivision and each owner, as herein defined, of a lot, as herein defined, in order to (i) provide for compliance with the requirements of the Township with respect to the SAD, (ii) preserve and enhance property values and amenities in the Subdivision, (iii) insure the most beneficial development of the Subdivision as a single-family residential area, (iv) prevent any use within the Subdivision which might tend to diminish the valuable or pleasurable enjoyment thereof, (v) assure the harmony, attractiveness, and utility of the Subdivision, (vi) regulate the use of the Subdivision, and (vii) establish and define certain rights relative to the Subdivision.

I. Declarant has previously created an association for the efficient preservation of the values and amenities in the Beaufait Farms Subdivision, Beaufait Farms Subdivision No. 2, Beaufait Farms Subdivision No. 3, Subdivision, as herein defined, as a legal entity to (i) own, maintain, preserve, and administer the common areas in Beaufait Farms Subdivision, Beaufait Farms Subdivision No. 2, Beaufait Farms Subdivision No. 3, this Subdivision and every Future Subdivision that is subjected to the Declaration (or one containing substantially the same terms) as provided in Section 4 of Article X, and any other areas now or hereafter owned or administered by the association, and such storm water detention areas serving the Subdivision, Subdivision entrances, landscaping, facilities, and amenities that may be constructed thereon or used therein, (ii) collect and disburse the assessments and charges hereinafter created, and (iii) promote the recreation, health, safety, and welfare of the residents in the Subdivisions.

J. Declarant may, at some future time, plat certain additional land adjacent to the Subdivision as an additional Subdivision(s), and subject the lots and any common areas therein to the covenants, conditions, restrictions, easements, agreements, obligations, charges, and liens set forth herein by amendments made to this Declaration, or one with substantially the same terms as provided in Section 4 of Article X.

K. It is the purpose and intention of this Declaration that all of the lots shall be conveyed by Declarant subject to (i) the provisions of the SAD and the Prior SAD, and (ii) the covenants, restrictions, obligations, easements, charges, and liens set forth in this Declaration in order to (a) establish a general plan of uniform restrictions with respect to the Subdivision, (b) insure the purchasers of lots the use of their lots for attractive residential purposes, (c) secure to the owner of each lot the full benefit and enjoyment of his residence, and (d) preserve the general character of the neighborhood within the Subdivision.

L. Declarant has recorded a Declaration Of Covenants and Restrictions for The Bluffs of Beaufait Farms which was recorded with the Macomb County Register of Deeds, which Declarant now wishes to amend by these Amended and Restated Declaration of Covenants and Restrictions in order to meet the review requirements of the reviewing agencies of the State of Michigan.

Now, therefore, Declarant hereby publishes, declares, and makes known to all intending purchasers and future owners of the lots within the Subdivision, that the Subdivision, and all of the lots therein, will and shall be used, held, occupied, sold, and conveyed expressly subject to the following covenants, conditions, restrictions, easements, agreements, obligations, charges, and liens as set forth in this Amended and Restated Declaration, which shall be incorporated by reference in all deeds of conveyance and contracts for the sale of any of the lots, and which shall run with the land (the Subdivision and all of the lots therein) and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in the Subdivision, or any part thereof, and their heirs, personal representatives, successors, and assigns, and on all grantees of all individual lots in the Subdivision and on their respective heirs, representatives, successors, and assigns for the time and in the manner specified herein.

## ARTICLE I.

### DEFINITIONS

The following terms have the following respective meanings when used in this Declaration, and the singular shall include the plural and vice versa, unless the context requires otherwise:

1. "Association" means Beaufait Farms Subdivision Association, a Michigan nonprofit corporation, its successors and assigns.

2. "Bluffs Park" shall mean the sedimentation area referred to on the Plat of the Subdivision as "Bluffs Park (Private) for Storm Water Sedimentation, Flood Plain, and Nature Preservation", which may be used for storm water sedimentation and passive recreation for the owners of lots within all of the Beaufait Farms Subdivisions.
3. "Common Area" shall mean those areas of land within or outside of the Subdivision, Beaufait Farms Subdivision, Beaufait Farms Subdivision No. 2, Beaufait Farms Subdivision No. 3, and any other Future Subdivision developed by Declarant to this Declaration (or one containing substantially the same terms) as provided in Section 4 of Article X (including the improvements thereto) now or hereafter owned or administered by the Association for the common use, benefit, and enjoyment of the owners, and shall include all land conveyed to the Association whether or not such land is shown on the recorded plat of the Subdivision. The initial Common Areas that were established in the Declaration for Beaufait Farms Subdivision, Beaufait Farms Subdivision No. 2 and Beaufait Farms Subdivision No. 3 which are being administered by the Association are (a) the Landscape Easement as shown on the recorded plat of Beaufait Farms Subdivision, (b) the Detention Basin, as shown on the Plat of the Beaufait Farms Subdivision No. 2, and (c) the Park, as shown on the Plat of the Beaufait Farms Subdivision No. 2. The Common Area that is established in Phase 1 of the Subdivision is "Bluffs Park".
4. "Declarant" means Beaufait Farms, L.L.C., a Michigan limited liability company, its successors and assigns.
5. "Declaration" means this Declaration of Covenants and Restrictions for The Bluffs of Beaufait Farms Subdivision No. 3, as recorded in the Office of the Register of Deeds for Macomb County, Michigan.
6. "Sedimentation Basin" or "Sedimentation Basin Easement" means the Sedimentation Basin referred to on the Plat of the Beaufait Farms Subdivision No. 2.
7. "Lot" means (a) any numbered Lot shown on the recorded plats of the Beaufait Farms Subdivisions, including this Subdivision or and any Future Subdivisions subjected to this Declaration, or a declaration with substantially the same terms (b) any building site resulting from the combination of Lots, and (c) any building site resulting from a proper and approved split of any Lot(s).
8. "Member" means those persons entitled to membership in the Association, as provided in this Declaration or any of the other Beaufait Farms Declarations, or a declaration with substantially the same terms applicable relating to a platted Subdivision upon adjacent land developed by Declarant, provided, however, that for the purposes of voting in Association matters there shall be deemed to be only one (1) Member for each Lot.
9. "Owner" means the record Owner, whether one or more persons or entities, of the fee simple title to any Lot, or the land contract purchaser thereof, but excluding those having any interest merely as security for the performance of an obligation.

10. "Park" or "Park Easement", means the Park shown on and referred to on the Plat of the Beaufait Farms Subdivision No. 2 as "Beaufait Farms Commons" and the Park shown and referred to on the Plat of The Bluffs of Beaufait Farms known as "Bluffs Park".

11. "Prior SAD" means the special assessment district created by the Township pursuant to certain resolutions adopted by the Township on March 12, 1998 and October 27, 1999.

12. "SAD" means the special assessment district created by the Township pursuant to certain resolutions adopted by the Township on May 28, 2003 and June 25, 2003.

## ARTICLE II.

### ESTABLISHMENT AND DEDICATION

1. Establishment of Non-Profit Corporation. Declarant has previously created an Association of Owners of Lots in Beaufait Farms Subdivisions that is known as the Beaufait Farms Subdivision Association. The Declarations for such Subdivisions provide that additional Subdivisions that were developed by Declarant and subject to similar covenants and restrictions may be added with Lot Owners becoming Members of the Association. Declarant is developing this Subdivision subject to this Declaration and all Lot Owners within the Subdivision (including Phase 2 of the Subdivision and Future Subdivisions developed by Declarant, or its successors or assigns, on adjacent land which are subjected to this Declaration or a declaration with substantially the same terms) shall be Members of the Association with the same rights and obligations as Lot Owners and Members of the Beaufait Farms Subdivisions. The Association has been 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 Articles of Incorporation and corporate Bylaws for the Association.

2. Dedication of Common Area. Declarant previously agreed to dedicate and convey to each Owner of a Lot in the Beaufait Farms Subdivisions a right and easement of enjoyment in and to the Common Area, and further agreed that it would convey the Common Area to the Association free and clear of all liens and encumbrances, except for such encumbrances and easements as are set forth (a) in the Beaufait Farms Declarations, and (b) pursuant to the Prior SAD. Title to the Common Areas vested in the Association subject to the rights and easement of enjoyment in and to such Common Area by the Owners. Said easement of enjoyment of in and to such Common Area by the Owners are not personal, but are 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. The Common Areas are for the use and benefit of Owners of Lots in the Beaufait Farms Subdivisions, the Beaufait Farms Subdivision No. 2, including this Subdivision, and any Future Subdivisions developed by Declarant or its successors or assigns on adjacent parcels of land pursuant to the terms of a declaration with substantially the same terms as the Beaufait Farms Declarations.

3. Additional Responsibilities of the Association. In addition to the Common Area, the Association shall also be responsible for the maintenance, repair, and replacement of the street lighting system installed by Detroit Edison for the Subdivision. At the request of Declarant, the Association will enter into a contract with Detroit Edison with respect to the street lighting system for the Subdivision.

### ARTICLE III.

#### PROPERTY RIGHTS

1. Owner's 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 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 per infraction for any infraction of its published rules and regulations;
- (b) the right of the Association to impose such conditions as may be agreed to by the Members; and
- (c) the right of the Association to levy assessments, as set forth in Article V hereof.

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.

3. Reservation of Right to Reduce Common Area Size. Declarant reserves the right, without the consent of the Association or any of its Members, to reduce the size of the Common Area, provided same is done in accordance with the Land Division Act.

4. Declaration of Common Areas. If any Common Area is conveyed to the Association which is not shown on the recorded plat of the Subdivision, the Association shall, at the request of Declarant, execute and sign any plat or other document which is necessary to establish such property as a part of the Subdivision in accordance with the provisions of Public Act No. 288 of 1967, as amended ("Land Division Act").

5. Special Assessment District. The rights and obligations of each Owner of a Lot shall be subject to the Prior SAD and the SAD defined above.

ARTICLE IV.

MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every Owner of a Lot shall be a mandatory Member of the Association. Membership in the Association is, and shall be, appurtenant to, and may not be separated from, ownership of any Lot. Notwithstanding the foregoing, the termination of any person's ownership interest in any Lot, and the consequent termination of such person's membership in the Association, shall not relieve such person from any debt or obligation attributable to such Lot which accrued or arose during the period such person was an Owner of such Lot.

2. Voting Rights. The Association shall be two (2) classes of membership, being Class A and Class B, as follows:

- (a) Class A membership shall be voting, and Declarant shall be the only Class A Member.
- (b) Each Owner of a Lot other than the Declarant shall be a Class B Member.
- (c) Class B membership shall be non-voting until the Transfer Date set forth in Subsection 2(d) below, at which time all Owners (including Declarant) shall be entitled to vote on a one vote per Lot basis (regardless of the number of Owners of any Lot).
- (d) Declarant shall have the sole vote in the Association, and the consequent right to appoint the Board of Directors of the Association (the "Board"), until such date (the "Transfer Date") as shall be the earlier to occur of (i) ninety percent (90%) of the Lots in (A) the Subdivision, and (B) every Subdivision or additional parcel of land which in the future is subjected by Declarant to this Declaration (or one containing substantially the same terms) in accordance with Section 4 of Article X hereof, shall have been sold (as evidenced by delivery and recordation of a deed for such Lots to the Lot purchaser) to Owners other than builders purchasing for resale in the ordinary course of their business, (ii) four (4) years after the date of recording of the plat of the Subdivision at the Office of the Register of Deeds for Macomb County, Michigan, or (iii) such earlier date as may hereafter be designated in writing by Declarant.
- (e) From and after the Transfer Date described in Subsection 2(d) above, Class B Members of the Association shall have the voting rights described in Subsection 2(c) above, and thereafter, the Board shall be elected by the combined vote of the Class A and Class B Members (in each case, voting on a one vote per Lot basis).

ARTICLE V.

COVENANT FOR MAINTENANCE ASSESSMENTS

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: (a) annual general assessments or charges, and (b) special assessments, all which assessments (general and special) shall be established and collected as herein provided. The general and special assessments, together with interest thereon, late payment fees, and collection costs, including reasonable attorneys' 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, late payment fees, and costs of collection thereof, including reasonable attorneys' fees, shall also be the personal obligation of the person(s) who was(were) the Owner of such Lot at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to the obligated party's successors in title unless expressly assumed in writing by them. Notwithstanding the foregoing, the obligation of Declarant and each builder who purchases one or more Lots for construction of residences thereon for sale to Owners in the ordinary course of their business is separately set forth in Section 7 of this Article V.

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 of the Beaufait Farms Subdivisions, including this Subdivision, and any Future Subdivisions or additional parcels of land subjected to this Declaration or a declaration with substantially the same terms, and in particular for (a) the improvement and maintenance of any Common Area, and the landscaping, facilities, or amenities constructed thereon or used therein, including, without limitation, the storm water retention areas and facilities, landscaped traffic islands and cul-de-sacs located within the Beaufait Farms Subdivisions, if any, Subdivision entrance areas, if any (including, without limitation, entrance monuments, entrance monument lighting, signs, landscaping, water features, irrigation systems, and fountains, if any), fencing, access roads, walkways, Parks, and any other property under the control of the Association, (b) operation of the street lighting system installed by Detroit Edison for the Subdivision, (c) the payment of water and electric bills associated with the foregoing, (d) planting and maintenance of trees, shrubs and grass, (e) construction, operation, and maintenance of recreational facilities, if any, (f) providing community services, and (g) the protection of the Owners.

3. Working Capital Contribution. The initial purchaser of each Lot (except for a builder purchasing a Lot for resale in the ordinary course of his business, in which case the initial purchaser from such builder), shall pay to the Association simultaneously with its acquisition the sum of Two Hundred Dollars (\$ 200.00) as a nonrefundable contribution to the working capital of the Association.

4. Maximum Annual Assessment. Subject to the limitations set forth in Section 7 of this Article V, until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Two Hundred Dollars (\$200.00) per Lot owned by an Owner.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by Declarant until the Transfer Date, and thereafter by the Board of Directors of the Association, as necessary each year to an amount which is not more than ten percent (10%) greater than the maximum assessment which was permissible to be assessed hereunder for the previous year without a vote of the Members.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the ten percent (10%) increase permitted by Subsection 4(a) by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy, at a meeting duly called for that purpose.

5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy against each Owner 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, or maintenance of any improvement upon or within the Common Area and other areas, facilities, and amenities which now or hereafter may be under the control of the Association, including, without limitation, those listed above in Section 2 of this Article V, or for any other legal purpose desired by the Association, provided that any such special assessment shall have the approval of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for that purpose.

6. Notice and Quorum for Actions Authorized Under Article V. Written notice of any meeting called for the purpose of taking any action authorized under this Article V shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. At such meeting as called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7. Rate of Assessment. Both the general and the special assessments shall be set by Declarant or the Board of Directors, as the applicable case may be, at a uniform rate for the Owners of all Lots and may be collected on a monthly or an annual basis; provided, however, that anything contained in this Declaration to the contrary notwithstanding, no assessments whatsoever shall be due with respect to any Lot(s) which is(are) owned by Declarant or any builder purchasing or owning for resale in the ordinary course of their business.

8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots in the Subdivision on the first day of the month following the conveyance of the first Lot within the Subdivision to an Owner, but in any event, shall commence within one (1) year after the recording of the plat of the Subdivision at the Office of the Register of Deeds for Macomb County, Michigan. A conveyance to a builder who has purchased a Lot for the intended purpose of constructing a residence thereon for sale to an Owner shall not be deemed a conveyance to an Owner. The first annual assessment shall be prorated and 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 and establish the assessment due date at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment and the due date shall be sent to every Owner subject thereto at least thirty (30) days prior to the assessment due date. Failure by the Association to send such written notice shall not permit any Owner to avoid paying the assessment, but shall delay such Owner's assessment due date until thirty (30) days following the date that such notice of assessment is eventually sent. 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 shall be binding upon the Association as of the date of its issuance.

9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid in full within thirty (30) days following its due date shall bear interest from the due date at a rate of seven percent (7%) per annum and shall be subject to a late payment fee equal to fifteen percent (15%) of the amount of the assessment to cover the cost of collection by the Association. In the event that the cost of collection, including attorneys' fees, exceeds fifteen percent (15%) of the amount of the assessment, the Association shall be entitled to collect the deficiency. The aggregate amount of the unpaid assessment, interest, late payment fee, and deficiency shall be a lien against the Lot corresponding to the unpaid assessment. The Association may bring an action at law against the Owner personally obligated to pay the assessment, interest, late payment fee, and deficiency, and may foreclose the lien against the Lot in the same manner that real estate mortgages may be foreclosed by action under Michigan law. 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.

10. Exempt Property. All Common Areas and all other property exempt from taxation by state or local governments and dedicated for public use shall be exempt from the assessments, charges, and liens created herein.

11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein on any Lot shall be subordinate to the lien of any first mortgage covering the Lot. Sale or transfer of any Lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of the assessments, but shall not extinguish the Owner's personal obligation for payment of assessments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment becoming due after such sale or from the lien thereof.

12. Management Agent. The Board shall be permitted to retain the services of a management agent to aid them in administering and carrying out the purposes of the Association, and may utilize a portion of the Association assessments to pay such management agent a fee deemed reasonable by the Board.

13. Failure of Association to Perform Certain Maintenance Obligations. In the event the Association shall at any time fail to maintain any portion of the property which is the subject matter of the SAD in reasonable order and condition and in accordance with the normal requirements of the Township, the Township may avail itself of the rights and remedies available to the Township pursuant to the SAD.

## ARTICLE VI.

### BUILDING AND USE RESTRICTIONS FOR THE SUBDIVISION

1. Use of Lots.

- (a) All Lots shall be used for single-family residence proposes only, and no building of any kind whatsoever shall be erected, re-erected, moved, or maintained thereon except one private single-family residential dwelling house and permitted appurtenant structures, if any, on each Lot, as herein provided, which dwelling shall not exceed two (2) stories in height. Such dwelling house shall be designed and erected for occupation by a single private family. A private architecturally related attached garage, for the sole use of the Owner or occupant of the Lot upon which said garage is erected, shall also be erected and maintained, provided that said garage is in compliance with the requirements of Section 2 of this Article VI.
- (b) Notwithstanding the limitations on uses set forth in Subsection 1 (a) above, Declarant hereby reserves the right for itself, its agents or sales representatives, and/or any builder or builders designated by Declarant, to occupy and use any house or temporary building built on or moved onto any Lot as a sales office for the sale of Lots and/or houses within the Subdivision.

2. Improvement of Lots.

- (a) No building or other structure shall be constructed, erected, or maintained on any Lot, nor shall any additions, changes, or alterations to any building or structure be made on any Lot (except interior alterations) unless and until the plans and specifications therefor shall have been submitted to and approved in writing by Declarant in the manner set forth in Paragraph 2(d) hereof.

- (b) No landscaping, deck, patio, swimming pool, fence, outbuilding, pool enclosure, or similar other devices and/or structures, whether or not attached to any dwelling, shall be constructed, erected, or maintained on any Lot unless and until the plans and specifications therefor shall have been submitted to and approved in writing by Declarant in the manner set forth in Paragraph 2(d) hereof.
- (c) Any and all construction of the buildings, structures, and other items set forth in Paragraphs 2(a) and 2(b) hereof (collectively, the "Improvements") shall be diligently completed in accordance with the plans and specifications which are ultimately approved by Declarant. Copies of all plans and specifications, as finally approved, shall be delivered to Declarant for its permanent file.
- (d) Any and all plans and specifications required pursuant to Paragraphs 2(a) and 2(b) hereof, or otherwise as provided in this Declaration, shall be prepared by a competent architect, and shall show the nature, kind, shape, height, materials, color scheme, and location of the Improvements to be constructed upon the subject Lot. Declarant shall have the right to refuse to approve any such plans or specifications which it determines, in its sole discretion, would not be suitable or desirable for aesthetic or other reasons or for no reason; and in so passing upon such plans and specifications, Declarant shall have the right to take into consideration the suitability of the proposed Improvements on the Lot upon which they are proposed to be erected, and the harmony as planned in view of the appearance from adjacent or neighboring properties. Declarant shall also have the right to specify the materials to be used in the construction of any Improvements on the Lots, and may require suitable screening of Improvements with adequate shrubs, landscape materials, and other modifications. It is understood and agreed that the purpose of this Paragraph 2(d) is to cause the Subdivision to develop into a beautiful, harmonious, private, residential area, and if any disagreement arises with respect to the provisions or applications of this Paragraph 2(d), the decision of Declarant shall control and be conclusive upon all parties.
- (e) In the event Declarant fails to approve, conditionally approve, or disapprove any plans and specifications required to be submitted to Declarant pursuant to this Declaration within thirty (30) days from the date on which the same have been received by Declarant, then such approval will not be required as a condition precedent to construction of the Improvements set forth therein, provided that the plans and specifications (and all construction based upon such plans and specifications) (i) conform to the restrictions set forth in this Declaration and all applicable statutes, laws, ordinances, and regulations, including zoning laws, and (ii) are otherwise in harmony with the existing Improvements constructed on the other Lots.

- (f) No Lot may be divided, subdivided, or otherwise split or combined with any other Lot except with the prior written consent of Declarant, and if so approved by Declarant only in compliance with the requirements of (i) Section 263 of the Land Division Act, Public Act No. 288 of 1967, as amended (M.C.L.A. § 560.101, et seq.), as the same may hereafter be amended, or any replacement or successor statute thereto, and (ii) all applicable ordinances of the City and all other governmental authorities having jurisdiction with respect thereto. In the event that one or more Lots or parts of Lots are properly combined and developed for use as a site for a single residence, all restrictions and provisions set forth in this Declaration shall apply to such resulting site as if it were an individual Lot.

3. Size and Character of Buildings.

- (a) No dwelling shall be permitted on any Lot unless the living area thereof shall be not less than (i) one thousand four hundred fifty (1,450) square feet in the case of a one (1) story dwelling, (ii) one thousand seven hundred (1,700) square feet in the case of a one and one-half story dwelling, and (iii) one thousand seven hundred (1,700) square feet in the case of a two (2) story dwelling. All computations of square footage shall include the actual area within the outer surfaces of the exterior walls of the dwelling and shall be determined exclusive of basements (whether or not of the "walk-out" variety), garages, porches, terraces, breezeways, and any unenclosed or unheated areas.
- (b) All dwellings constructed on the Lots shall include a private garage which shall be directly attached and architecturally related to the dwelling. Every garage shall provide space for at least two (2) and not more than three (3) automobiles. Carports are specifically prohibited in the Subdivision.
- (c) No old or existing buildings may be moved onto any Lot, and no used materials (except reclaimed brick) may be used in the construction of any improvements in the Subdivision.
- (d) All dwellings shall have finished exteriors of brick, stone, or other masonry materials, or any combination thereof on at least fifty percent (50%) of each side of the first floor level and brick, stone, wood, stucco, or any combination thereof above the first floor level. The use of cement block, clay, cinder block, aluminum siding, asbestos siding, concrete, or imitation brick (other than face brick) is expressly prohibited. All driveways must be hard surfaced with concrete or brick. There shall be a minimum roof slope on any residence of five (5) to twelve (12). All shingles shall be asphalt shingles or better. The construction of any dwelling must be completed within twelve (12) months after the date upon which construction began.

- (e) The design, material, color, and construction of all mailboxes, newspaper holders, and their stands must be approved by Declarant (and the United States Postal Service with respect to mailboxes) prior to their erection. They must also be properly maintained and kept of sightly appearance.
- (f) Grantor, by appropriate instrument in writing may designate a person, firm, or corporation to perform such of its duties and obligations hereunder as it shall specify, which designation shall be revocable at the will, whim, or caprice of Declarant.

4. Minimum Setback and Yard Requirements. No building shall be constructed, erected, or maintained on any Lot nearer to any front, side, or rear Lot line than is allowed by applicable ordinances of the Township, except as (a) modified by any variance already obtained by Declarant prior to the date hereof with respect to the Subdivision, or (b) duly approved by Declarant and the Township as a variance.

5. Sight Distance at Intersections. No fence, wall, shrubbery, sign, or other obstruction to vision which obstructs sight lines at elevations above three feet (3') from the established street grades 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 feet (25') 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.

6. Easements.

- (a) Easements are reserved as shown on the recorded plat of the Subdivision for the installation, maintenance, repair, and replacement of utilities, water lines, storm sewers, sanitary sewers, surface drainage, electricity, gas service, telephone service, cable television service, and any facilities or structures related to any of the foregoing, or for any other improvements which would serve the residents of the Subdivision.
- (b) Private easements for public utilities and landscaping have been granted and reserved on the recorded plat of the Subdivision.
- (c) Easements for a Detention Basin, Storm Sewer and a Park have been granted and reserved on the recorded Plat of the Subdivision for the benefit of the Lot Owners in Beaufait Farms Subdivision, Beaufait Farms Subdivision No. 2, Beaufait Farms Subdivision No. 3, the Subdivision as defined above, and every Future Subdivision or additional parcel of land which in the future is subjected to this Declaration (or one containing substantially the same terms) as provided in Section 4 of Article X which easements were previously granted in the Easement Agreement. There are additional storm sewer easements which were created pursuant to the Easement Agreement which have not to date been not incorporated into the plats of the Beaufait Farms Subdivision, Beaufait Farms Subdivision No. 2, Beaufait Farms Subdivision

No. 3, or the Subdivision, which storm sewer easements shall remain in effect pursuant to the Easement Agreement until such time that they have been incorporated into a plat of a Subdivision developed by the Declarant or its successor or assigns upon adjacent land. The Detention Basin, Storm Sewer Easements and the Park shall be for the benefit of and shall impose obligations upon the Lot Owners of the Beaufait Farms Subdivision, Beaufait Farms Subdivision No. 2, Beaufait Farms Subdivision No. 3, the Subdivision as defined above and Future Subdivisions developed by Declarant or adjacent land which are subjected to this Declaration or a declaration with substantially the same terms.

- (d) No structure(s) of any kind or nature whatsoever shall be constructed, erected, maintained, or placed within any drainage, sedimentation, or storm water detention area.
- (e) No structure(s) of any kind or nature whatsoever shall be constructed, erected, maintained, or placed over or on any utility easement(s); provided, however, that after the utilities have been installed, the areas over such utility easement(s) may be seeded or sodded. All other planting or Lot line Improvements of any type over or on any easements shall be allowed only so long as they do not interfere with, obstruct, hinder, or impair the drainage plan of, or utilities in, the Subdivision, and so long as access be granted, without charge or liability for damages, for the maintenance of the utilities, underground drainage lines, underground facilities, and surface drainage sales, and/or for the installation of additional facilities.
- (f) The Association shall be permitted to enter upon those portions of the Plat of the Subdivision as may be necessary to install, repair, replace, and maintain signs, walls, lighting, sprinkling systems, and plantings, if any (the "Landscape Easement") as shown on the Plat of the Subdivision, in accordance with the landscaping plan approved by the Township.

In the event the Association shall, at any time, fail to maintain the Landscape Easement in accordance with the approved landscape plan, then the Township is authorized to enter the Landscape Easement to maintain the same. The Township shall serve notice by first class mail to the Owner(s), appearing on the Township tax rolls, of each Lot in the Beaufait Farms Subdivision, Beaufait Farms Subdivision No. 2, Beaufait Farms Subdivision No. 3, and the Subdivision. The notice shall include a demand that deficiencies in the maintenance be cured within thirty (30) days thereof and notify the Owners of the date, time, and place of a public hearing before the Township Board of Trustees or such other boards or body of officials to whom the Township may delegate such responsibility. The hearing shall be held within fifteen (15) days of the notice. At the hearing, the Township may modify the terms of the original notice of deficiencies in maintenance and may grant an extension of time within which the deficiencies shall be cured. If the deficiencies, set forth in the original notice or in the modification thereof, are not cured within thirty (30) days or any extensions of time granted at the hearing, the Township, in order to eliminate and cure the deficiencies in the operation and maintenance of the Landscape Easement, may enter upon the Landscape Easement and maintain the

Landscape Easement for a period of up to one (1) year. Maintenance of the Landscape Easement by the Township shall not constitute a taking of the Landscape Easement nor vest in the public any additional right to use the same.

Within sixty (60) days prior to the expiration of the aforesaid one (1) year period, that the Landscape Easement is under the control and jurisdiction of the Township, a majority of the Owners or the Association may request another public hearing be held, or the Township may call another public hearing upon notice in the same manner as set forth above. At the hearing the Association or Owners shall show cause why maintenance by the Township shall not continue for a succeeding one (1) year period. If the Township shall reasonably determine that the Association and/or Owners are ready, willing, and able to maintain the Landscape Easement, the Township shall cease to operate and maintain the Landscape Easement at the end of said year. If the Township shall reasonably determine that the Association or Owners are not ready, willing, and able to maintain the Landscape Easement during the next succeeding year, then subject to a similar public hearing and determination in each successive year thereafter, the Township may continue to enter upon and maintain the Landscape Easement.

Should deficiencies in the maintenance of the Landscape Easement be determined by the Township to constitute an impending danger to health, safety, and welfare of the public, or a public, or private nuisance, the Township shall have the right to take immediate correction action and summarily abate such danger or nuisance.

The Association and/or the Owners shall hold harmless, defend, and indemnify the Township from any and all claims, demands, costs, expenses, including attorney fees, and judgments, whatsoever, which may arise from the Township's maintenance of the Landscape Easement.

The actual costs and expenditures, including administration expenses and attorney fees, incurred by the Township as a result of its maintenance of the Landscape Easement or the immediate abatement of an impending danger or nuisance in relation thereto, shall be at the expense of the Association or the Owners and such costs and expenditures shall be assessed against the Lots and become due, collected, and returned for non-payment in the same manner and at the same time as *ad valorem* property tax levies of the Township.

The Township, at its option, shall be surrogate to any rights the Association may have in this Declaration for the imposition of assessments and the collection thereof in relation to the Landscape Easement.

The maintenance provisions contained in this Article or Section shall not be amended in any way without the prior written consent of the Macomb Township Board of Trustees.

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

8. Animals.

- (a) No farm animals, livestock, poultry, or wild animals shall be kept, bred, or harbored on any Lot, nor shall any animals be kept or bred for commercial purposes. Not more than two (2) domesticated animals commonly deemed to be household pets may be kept on any Lot by the Owner and Members of his household, provided that (i) the rear of such Lot is completely enclosed with a fence installed in accordance with the requirements of Section 13 of this Article VI, and (ii) such pets shall have such care so as not to be objectionable or offensive to others due to noise, odor, or unsanitary conditions. A greater number of household pets may specifically be approved in writing by the Association, in its sole discretion, which approval, if given by the Association, shall be revocable by the Association at any time for any infraction of the rules with respect to animals.
- (b) Any animal shall be kept either on a leash or in a 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 they are solely located within the rear yard 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. All pens shall be made of wood, decorative block, or approved fencing materials, or any combination thereof, and must be approved prior to the construction thereof in accordance with Section 2 of this Article VI. Pens may not exceed three hundred (300) square feet in area or four feet (4') in height. The exterior sides of a pen shall be landscaped with plants to screen the view thereof from adjacent Lots, and such pen shall be kept and maintained in a clean and sanitary condition.
- (c) No savage or dangerous animal shall be kept on any Lot, and any Owner who causes any animal to be brought or kept upon any Lot shall indemnify and hold harmless the Association and all other Owners for any loss, damage, or liability which the Association or any other Owner(s) may sustain as a result of the presence of such animal within the Subdivision whether or not the Association has given its permission therefor. No dog whose barks can be heard on any frequent or continuing basis shall be kept on any Lot.
- (d) No Owner shall cause, nor shall he permit or suffer any occupant of any Lot which he owns, or his or their invites or guests, to cause the molestation, harm or destruction of wild fowl or other wildlife on, in, or over any portion of his Lot. 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 invites or guests, to use any B-B guns, firearms, air rifles, pellet guns, bows and arrows, sling shots, or any other weapons on his Lot.

9. Prohibited Vehicles and Structures.

- (a) No house trailers, motor homes, recreational vehicles, commercial vehicles, trailers, cars under repair or restoration, boats, boat trailers, camping vehicles, pickup campers, camping trailers, trucks weighing in excess of two and one-half (2-1/2) tons empty, or any portion thereof, may be parked on or stored on any street in the Subdivision or any Lot, unless stored fully enclosed at all times within an attached garage. Commercial vehicles and trucks shall not be parked or stored in the Subdivision, or on any Lot therein, except while making normal deliveries or pickups in the normal course of business.
- (b) Trailers, tents, shacks, barns, and other out buildings of any kind or nature whatsoever, whether permanent or temporary, are expressly prohibited within the Subdivision, and no temporary occupancy or residence shall be permitted in unfinished residential dwellings; provided, however, that (i) temporary tents for parties shall be permitted to be erected for periods of not more than forty-eight (48) hours, and (ii) permanent gazebo type structures and appurtenant swimming pool bathhouses may be constructed and maintained if approved in advance by Declarant in accordance with Section 2 of this Article VI. Notwithstanding the foregoing, permanent sheds on foundations shall be allowed if approved in advance by Declarant in accordance with Section 2 of this Article VI.
- (c) Antennae of any kind and satellite reception equipment (including, without limitation, so-called "ham radio towers" and "satellite dishes") which are visible from the exterior of any dwelling or located on any Lot are expressly prohibited in the Subdivision, except that satellite dishes of twenty-four inches (24") or less in diameter which are attached to the house may be permitted with the prior written approval of Declarant in its sole discretion.
- (d) The provisions of this Section 9 shall not apply to Declarant or any builder which it may designate, during the construction period or during such periods as any dwelling may be used for model or display purposes.

10. General Conditions.

- (a) No Lot shall be used or maintained nor permitted to be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste, and the same shall not be kept on any Lot 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) No laundry other than blankets or comforters shall be hung for drying on any Lot so as to be visible from the street on which the dwelling fronts, and in the case of corner Lots, fronts and sides. Blankets or comforters may be hung outside for drying or "airing out" if kept within fifteen feet (15') of the house.

- (c) All homes in the Subdivision shall be equipped with electric garbage disposal units in the kitchen.
- (d) The grade, slope, and/or contour of any Lot shall not be changed without the prior written consent of Declarant, the Township, and all other governmental authorities having jurisdiction with respect thereto. This restriction is intended to prevent interference with the master drainage plan for the Subdivision.
- (e) No "through the wall" or "through window" air conditioners may be installed on any wall of any building in the Subdivision.
- (f) All outside compressors for central air conditioning units shall be landscaped in such a manner so they are not visible from the street on which the dwelling fronts, installed and maintained in such a manner so as not to create a nuisance to the residents of adjacent dwellings.
- (g) No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done on or around any Lot which may become an annoyance or nuisance to the neighborhood or the Owners of any of the Lots in the Subdivision.
- (h) All basketball backboards or hoops shall be freestanding and not attached to any dwelling and shall be installed in a suitable location as approved by Declarant or the Architectural Control Committee on black poles and shall have transparent acrylic backboards.
- (i) Any debris resulting from the construction and/or the destruction by fire or otherwise, in whole or in part, of any dwelling or Improvements on any Lot shall be promptly removed [within forty-eight (48) hours of issuance of temporary or final certificate of occupancy, or final acceptance of any permit therefor by the appropriate governmental authority(ies), or the occurrence of such destruction, whichever occurs first] from such Lot in order to preserve the sightly condition of the Subdivision. Each Owner shall prevent their Lot(s), and any dwelling(s), structure(s), or other improvement(s) thereon from becoming unsightly or unkempt, or from falling into a state of disrepair.
- (j) No Owner shall make any exterior alterations, modifications, or changes, including, without limitation, the erection of antennas, satellite dishes, awnings, lights, flag poles, or other exterior attachments or modifications without the express written approval of Declarant or the Architectural Control Committee.

11. Sales Agency and/or Business Office. Anything contained herein to the contrary notwithstanding, Declarant and/or any builder(s) which it may designate may construct and maintain on any Lot(s) which they may select, and use such Lot(s) for a model house or other structure to be used as a sales agency and a business office for the sale of any Lot(s) and/or dwelling(s) in the Subdivision, and/or as a model house, and Declarant and such designated builder(s) may continue to do so until such time as all of the Lots in which Declarant or such designated builder(s) has/have an interest are sold by them.

12. Lease Restrictions. No Owner of any Lot shall lease and/or sublet less than the whole of any dwelling on any Lot. Any lease of an entire dwelling shall be subject to all of the terms, covenants, provisions, and requirements hereof.

13. Fences.

- (a) No fence, wall, or hedge may be erected, grown, or maintained in front of or along the front building line of any Lot. The side Lot line of each corner Lot line 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 set forth herein 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, and/or anywhere on any Lot, without the prior written approval of Declarant as to the location, materials, design, and style thereof in accordance with the provisions of Section 2 of this Article VI, and if so approved by Declarant only in compliance with the requirements of the Township and all other governmental authorities having jurisdiction with respect thereto.
- (c) Only conventional chain link cyclone fences or decorative wrought iron or aluminum fences shall be permitted on any Lot. Cyclone fences must be black, brown, or green in color. The design of all fences must be approved by Declarant prior to installation.
- (d) No fence, wall, or hedge shall be greater in height than the minimum required by any governmental authorities having jurisdiction with respect thereto, nor, without the prior written approval of Declarant, extended beyond the front building line.
- (e) If a particular condition arises in which fencing beyond four feet (4') in height, or of a material other than those herein specified is desirable, a request for approval by Declarant pursuant to Section 2 of this Article VI, and Declarant shall have the right to grant such permission if, in its sole opinion, a variance from the provisions of this Section 13 is desirable.

14. Signs. No signs, billboards, or other advertising devices of any kind or nature whatsoever shall be placed, erected, maintained, or displayed on any Lot, except for one (1) professional quality sign of not more than six (6) square feet in size and not more than three feet (3') in height for the sole purpose of advertising the Lot and the dwelling on the Lot for sale or rent.

All permitted signs must also be in compliance with the ordinances and regulations of the Township and all other governmental authorities having jurisdiction with respect thereto. Such sign shall be constructed and installed in a professional manner and shall comply with all ordinances of the Township. All permitted signs shall be kept clean and in good repair during the period of its placement and maintenance on any Lot. The provisions of this Section 14 shall not apply to (a) such signs as may be installed or erected on any Lot by Declarant, or any builder(s) which it may designate, during the construction period or during such periods as any dwelling on any Lot may be used as a model or for display purposes, or (b) any Subdivision entrance sign(s).

During the construction of a dwelling on any Lot, a sign may be erected so as to identify the Lot number and the name of the builder, but only if Declarant or the Architectural Control Committee provides written authority therefor prior to the erection of the sign. The Declarant or Architectural Control Committee may withhold such authority in their sole discretion. The size, location, color, and content of any sign permitted by Declarant or the Architectural Control Committee shall be as specified by the Architectural Control Committee, as the respective case may be.

15. Destruction 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.

16. Landscaping.

- (a) Each Owner of a Lot, including any Owner who is a builder-purchaser from Declarant, shall at all times comply with all erosion control measures imposed by the Township, the Macomb County Drain Commission, or Declarant in order to protect the sedimentation and storm water basins, and to keep the streets and sewers in the Subdivision free of silt, dirt, and debris. Compliance with such erosion control measures shall be required by the Owners at all times during their ownership of a Lot, whether prior to, during, or following construction of a residence on the Lot and landscaping of the Lot.
- (b) Upon the completion of a residence on each 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 thereof) shall cause all portions of the Lot to be finish-graded, seeded or sodded, and suitably landscaped on or before six (6) months after the completion of the dwelling, or by the next July 1 if the residence is completed between September 1 and May 1 of any year. All

lawns and landscaping in the Subdivision (including any berm and landscaping areas) shall be of an aesthetically pleasing nature and shall be continuously and properly well maintained at all times. No statues may be placed in the front yard of any dwelling. It is the purpose of this Section 16 to cause the Subdivision to develop into a beautiful, harmonious, private residential area. Each Lot and any drainage ditch contiguous to or within each Lot shall be kept free of weeds by the Owner of such Lot.

- (c) Should any Owner fail to maintain the lawns, trees, terms, shrubbery, or other landscaping on his Lot in good order and repair in accordance with "good property management", then Declarant or the Association may serve written notice upon the Owner setting forth the manner in which the Owner has so failed. In the event that the deficiency of maintenance, repair, or replacement stated in such notice is not cured within thirty (30) days following the date of such notice, Declarant or the Association, as the case may be, shall be authorized and permitted to enter the Lot for the purpose of curing the deficiency. If, following the cure of the deficiency, the deficiency reoccurs and persists, Declarant or the Association, as the case may be, shall be authorized and permitted to enter the Lot as often as is reasonably required for the purpose of continually maintaining in good order and repair the lawns, trees, terms, shrubbery, and other landscaping on the Lot, which right of Declarant or the Association shall continue until such time as Declarant or the Association reasonably shall determine that the Owner of the deficient Lot is willing and able to reassume the maintenance responsibility
- (d) The cost incurred by Declarant or the Association for such maintenance, repair, and replacement, plus an administrative fee equal to twenty percent (20%) of such cost, shall be due and payable by the Owner of such Lot to Declarant or the Association, as the case may be, within ten (10) days following such date as Declarant or the Association sends the Owner a bill therefor. If the amount billed is not paid within such ten (10) day period, the unpaid amount shall be a charge on the Lot, shall be a continuing lien upon the Lot, and shall be treated as an additional assessment against the Lot subject to treatment in accordance with the provisions of this Declaration controlling and affecting such assessments, including, without limitation, those stated in Article V of this Declaration.

17. Sidewalks. Each Lot in the Subdivision shall at the time of construction of a residence thereon also have constructed and installed thereon a four inch (4") thick concrete sidewalk, five feet (5') in width, located one foot (1') from the front property line of the Lot and running within the public right-of-way parallel to the adjoining street at the front of the Lot. Each corner Lot shall have two (2) intersecting sidewalks constructed and installed on it in accordance with the specifications of the previous sentence, with one (1) sidewalk running parallel with the adjoining street at the front of the Lot and the other sidewalk running parallel with the adjoining street at the side of the Lot. Each sidewalk on a Lot shall tie in with the sidewalk existing or to be built on the adjacent Lot(s) or Common

Areas, if any, and in the case of corner Lots shall also connect into the adjoining street perpendicular to the sidewalk. Notwithstanding anything to the contrary, all sidewalks shall be constructed and installed in accordance with the requirements of the Township and the Macomb County Road Commission.

18. Mailboxes. Mailboxes in the Subdivision shall be located only in accordance with the plan approved by Declarant and the United States Postal Service.

19. Architectural Control Committee.

- (a) Declarant may, in its sole discretion, at any time prior to the date on which all of the Lots in the Subdivision have been sold and conveyed by Declarant to third parties, assign, transfer, and delegate to an architectural control committee (the "Architectural Control Committee") all of Declarant's rights to approve or refuse to approve and plans, specifications, drawings, elevations, or other matters with respect to the construction or location of any dwelling or Improvement on any Lot in the Subdivision. Thereafter, the Architectural Control Committee shall exercise all of the authority and discretion granted to Declarant in Section 2 of this Article VI relative to approving or disapproving such matters, and Declarant shall have no further responsibilities with respect to such matters. The Architectural Control Committee shall be comprised of up to three (3) Members to be appointed by Declarant. Each Member of the Architectural Control Committee shall serve for a period of one (1) year, unless sooner replaced by a subsequent appointee. Upon the Transfer Date, Declarant shall transfer its right to appoint the Members of the Architectural Control Committee to the Association. Until such transfer, Declarant reserves the right to appoint and remove Members of the Architectural Control Committee in its sole discretion.
- (b) Any submission(s) to Declarant or the Architectural Control Committee for any approval provided for under this Declaration shall be in writing, and shall conform to the requirements of Section 2 of this Article VI. The primary purpose for providing architectural control is to ensure 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 determining what dwellings or Improvements will enhance the aesthetic beauty and desirability of the Subdivision, or otherwise further or be consistent with the purposes of this Declaration. No approval by Declarant or the Architectural Control Committee shall be valid if the structure or improvement violates any of the restrictions set forth in this Declaration, except in cases where waivers have been granted as provided for in this Declaration. Approvals and/or waivers may be granted, denied, or conditioned for any reason or for no reason. In no event shall either Declarant or the Architectural Control Committee have any liability whatsoever to anyone for their approval or disapproval of any plans, drawings, specifications, or elevations, or the dwellings or improvements built or to be built pursuant 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 Architectural Control Committee shall have liability to anyone for the approval of any plans, specifications, elevations, or the like which are not in conformity with the provisions of this Declaration, or for the disapproval of any plans, specifications, elevations, or the like which arguably are in conformity with the provisions hereof.

20. Flood Plain.

Buildings Upon Lots Within or Affected by the Flood Plain.

The 100-year flood plain elevation of the North Branch of the Clinton River, within Lots 33, 34, 42-46 both inclusive, and 75 varies from 598.5 to 599.0 N.G.V. datum as established by the Michigan Department of Environmental Quality. No filling or occupation of the flood plain area at or below these elevations shall take place without prior written approval by the MDEQ, any building used or capable of being used for residential purposes and occupancy within or affected by the floodplain shall comply with all of the following requirements:

- (a) Have lower floors, excluding basements, not lower than the elevation defining the flood plain limits.
- (b) Have openings into the basement not lower than the elevation defining the flood plain limits.
- (c) Have basement walls and floors, if below the elevation defining the flood plain limits, that are watertight and designed to withstand hydrostatic pressures from a water level equal to the elevation of the contour defining the flood plain limits following methods and procedures outlined in Chapter 5 for type A construction and Chapter 6 for Class 1 loads found in the publication entitled "Flood Proofing Regulations," EP 1165 2 314, prepared by the office of the Chief of Engineers, United States Army, Washington, D.C. March 1992. Figure 6 on page 14-5 of the regulations shows typical foundation drainage and waterproofing details. This document is adopted by reference in these rules and is available, at no cost, from the Department of Environmental Quality, Geological and Land Management Division, P. O. Box 30458, Lansing, Michigan 48909-7958, or the Department of the Army, Corps of Engineers, Publication Depot, 890 S. Pickett, Alexandria, Virginia 22304.
- (d) Be equipped with a positive means of preventing sewer backup from sewer lines and drains that serve the building.
- (e) Be properly anchored or weighted to prevent flotation.

Lots Filled to Establish Elevations Above the Flood Plain

Part of Lot 92 has been filled pursuant to Michigan Department of Environmental Quality Permit No. 01-50-0251-P to create buildable area above the 100-year flood plain of the North Branch of the Clinton River which elevation is 598.1 N.G.V. datum. The terms and conditions of MDEQ Permit No. 01-50-0251-P provide that no basement of a residential structure shall be constructed upon Lot 92, and that any residential structure built on Lot 92 must have the lowest floor, including the basement, elevated above the 100-year flood plain unless one of the two alternatives set forth immediately below in subparagraphs (a) and (b) are followed under Section 3108 found in Part 31, Water Resources Protection of the National Resources and Environmental Protection Act, 1994 PA 451, as amended:

- (a) A licensed professional engineer, schooled in the science of soil mechanics, certifies that the building site has been filled with soil of a type and in a manner that hydrostatic pressures are not exerted upon the basement walls or floor while the water course is at or below the 100-year flood plain elevation, that the placement of fill will prevent settling of the building or buckling of the floors or walls, and that the building is equipped with a positive means of preventing sewer backup from sewer lines and drains that serve the building. Basements to be constructed using this option shall be built in accordance with the conditions outlined in the hydrogeological study prepared by McDowell and Associates dated August 20, 2003 and MDEQ Permit No. 01-50-0251-P.
- (b) A licensed professional engineer or architect certifies that the basement walls and floors are designed to be water-tight and to withstand hydrostatic pressure from a water level equal to the 100-year flood elevation and that the building is properly anchored or weighted to prevent flotation and is equipped with a positive means of preventing sewer backup from sewer lines and drains that serve the building.

A backup power source or water-powered pump shall be installed on all sump pump systems in the event of a power outage during a flooding situation.

Developer has filed an application to modify MDEQ Permit No. . 01-50-0251-P to permit the construction of a basement of a residential structure upon Lot 92 at or below the 100 year flood plain elevation, which application is currently pending with the DEQ. If the DEQ approves the modification of Permit No. 01-50-0251-P, the prohibition upon construction of a basement for a residence upon Lot 92 shall be terminated, provided Developer records a notice of modification of DEQ Permit restriction relating to basement construction upon Lot 92 with the Macomb County Register of Deeds, and all construction at or below the 100-year flood plain elevation complies with subsections (a) or (b) of this Section, and the terms and conditions of the modified DEQ Permit issued by the DEQ.

The above restrictions in their entirety are included in this Declaration of Covenants and Restrictions as required by the Michigan Department of Environmental Quality under Subdivision Rule R560.304. Except as otherwise provided above or in Article X, the restrictions set forth in this Section 20 of Article VI are to be observed in perpetuity, and shall not be subject to any time limitations.

## ARTICLE VII.

### RESTRICTIONS ON THE USE OF COMMON AREA

1. Motor Vehicles. All vehicles propelled by a motor, whether electric, gas, or otherwise, other than those used for maintenance purposes, including but not limited to snowmobiles, all-terrain vehicles, motorcycles, dirt bikes, mopeds, automobiles, trucks, and vans, are expressly prohibited from operation or storage in the Common Area, except for those vehicles used in connection with the maintenance of the Common Area.

2. Prohibited Structures. No wall, platform, building, or structure may be constructed, nor any development or improvement be done or performed, in or on the Common Area without the prior written consent and approval of Declarant, the Architectural Control Committee, and all governmental authorities having jurisdiction with respect thereto.

3. Pedestrian Pathway. The Association shall maintain in good order and condition any pedestrian pathway located within the Common Area, or located within the publicly dedicated roadways located within the Subdivision, wherever such pathway system is located.

4. Pollution; Water Pumping. No Owner shall throw or deposit trash, refuse, or rubbish of any kind in the Common Area.

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

6. Use of Common Area. The Common Area established as the Detention Easement and as the Storm Sewer Easement shall be used only for storm water retention, and such additional uses as may be established if approved in writing by not less than fifty-one percent (51%) of the Members and thereafter ratified by the Township. Neither the Association nor any Owner shall permit or suffer the use of the Common Area for any commercial or political purposes. All activities in the Common Area shall be carried on in such a manner as not to be disturbing or offensive to other Owners. The Common Area established as a Park shall be used only for passive recreational activities of Owners unless approved in writing by not less than fifty-one percent (51%) of the Members and thereafter ratified by the Township.

7. Wildlife. No Owner shall cause, permit, or suffer the molestation, harm, or destruction of wild ducks, geese, birds, or other harmless wildlife on, in, or over the Common Area. No Owner of a Lot shall use, permit, or suffer any B-B guns, bow and arrow, sling shots, firearms, air rifles, pellet guns, or other weapons to be used in or on the Common Area or any Lot.

8. Liability. The Association shall maintain liability insurance in sufficient amounts for the purpose of protecting itself as well as the Owners, the Declarant, and builders from the burden of liability resulting from accidents which may cause death, injury, or damage to anyone while in the Common Area or other property under the jurisdiction, ownership, or control of the Association.

9. 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. If the Declarant does not object, the Association shall also be permitted to publish such reasonable rules and regulations as shall contribute to the overall safety and well being of the Subdivision residents.

10. Creation, Use, and Maintenance of Detention Basin, Storm Sewer and Park Easements.

- (a) The Sedimentation Basin, Storm Sewer, and Park Easements that were previously established pursuant to an Easement Agreement in favor of the Declarant. Such Common Areas shall be for the benefit of Lot Owners of Beaufait Farms Subdivisions, including this Subdivision and any Future Subdivision which is made subject to the terms of this Declaration, or a declaration with substantially the same terms as set forth in Section 4 of Article X.
- (b) All expenses of maintenance, repair and replacement of the Detention Basin shall be paid by the Association of Lot Owners which shall allocate an equal share of such expenses to each Lot Owner of a Lot which is developed in the Beaufait Farms Subdivisions, and any Future Subdivisions developed by Declarant or its successors or assigns on adjacent parcels of land pursuant to the terms of this Declaration and as set forth in Article X, Section 4 of the Declaration of Covenants for Beaufait Farms Subdivisions after the Lots have been developed as evidenced by recording of a plat of the Subdivision.
- (c) All expenses related to the operation, maintenance, repair and replacement of the Storm Sewer Easement Area, including, without limitation, any and all Storm Sewer Improvements located within the Storm Sewer Easement Area, as well as for the repair, maintenance, and replacement of any and all paved or graded surfaces, driveways, access roads, landscaping or other improvements leading to and from or located within the Storm Sewer Easement Area which may be affected by the construction, operation, maintenance, repair, and/or replacement of the Storm Sewer and Storm Sewer Improvements shall be paid by the Association of Lot Owners which shall allocate an equal share of such expenses to each Lot Owner of a Lot

which is developed in the Beaufait Farms Subdivisions, including this Subdivision and any Future Subdivision developed by Declarant or its successors or assigns on adjacent parcels of land pursuant to the terms of this Declaration and as set forth in Article X, Section 4 of the Beaufait Farms Declarations after the Lots have been developed as evidenced by recording of a plat of the added Subdivision.

- (d) The Park Easement granted to Declarant by the recorded Easement Agreement and shown on the plat of the Beaufait Farms Subdivision No. 2, was for purposes of constructing the Park around the perimeter of the Detention Basin. Declarant, its successors and assigns were granted the right to use the Park subject to rules and regulations established by Declarant, which easement was incorporated into the plat of the Beaufait Farms Subdivision No. 2 and the Declarations for Beaufait Farms Subdivision No. 3 for the benefit of the Lot Owners in the Beaufait Farms Subdivisions, including this Subdivision, and any Future Subdivision developed by Declarant or its successors and assigns on adjacent property which is subjected to covenants and restrictions substantially the same as those set forth in the Beaufait Farms Declarations.
- (e) Declarant shall have the right, in Declarant's discretion, to construct improvements within the Park, including, without limitation, landscaping, shrubs, berms, an asphalt running path, an irrigation system and related amenities, which shall benefit the Owners of Lots within the Beaufait Farms Subdivisions, including this Subdivision, and any Owners of Lots in any Future Subdivision developed by Declarant or its successors and assigns on adjacent property which is subjected to covenants and restrictions substantially the same as those set forth in the Beaufait Farms Declarations (the "Park Improvements"). The cost of maintenance and repair of the Park Improvements shall be shall be paid by the Association of Lot Owners, which shall allocate an equal share of such expenses to each Lot Owner of a Lot which is developed in the Beaufait Farms Subdivisions, including the Subdivision, (and any Future Subdivisions developed by Declarant or its successors or assigns on adjacent parcels of land pursuant to the terms of the Beaufait Farms Declarations after the Lots have been developed as evidenced by recording of a plat of the added Subdivision).

ARTICLE VIII.

ASSESSMENT OF FINES

1. General. The Association, acting through its Board, shall be permitted to assess monetary fines against any Owner in the event that the Owner or his tenants, guests, family, or invitees shall violate any of the provisions of this Declaration or any of the rules and regulations duly established by the Association. Such Owner shall be deemed responsible for such violations whether they occur as a result of his personal actions or the actions of his family, guests, tenants, or invitees.

2. Procedures. Upon any such violation being alleged by the Board, the following procedures shall be followed:

- (a) Notice. Notice of the violation, including the provision of this Declaration or the rules or regulations violated, together with a description of the factual nature of the alleged offense shall be sent by first class mail, postage prepaid, or shall be personally delivered to the Owner.
- (b) Opportunity to Defend. The offending Owner shall have an opportunity to appear before the Board and offer evidence in defense of the alleged violation. The appearance before the Board shall be at its next scheduled meeting or a special meeting called to hear the evidence, but in no event shall the Owner be required to appear less than ten (10) days from the date of the notice.
- (c) Default. Failure to respond to the notice of violation shall constitute a default by the Owner.
- (d) Hearing and Decision. Upon appearance by the Owner before the Board and presentation of evidence of defense, or, in the event of the Owner's default, the Board shall, by majority vote of a quorum of the Board, decide whether a violation has occurred. The Board's decision shall be final.

3. Amounts. Upon a finding by the Board that a violation has occurred, the following fines shall be levied against the offending Owner:

- (a) First Violation. No fine shall be levied.
- (b) Second Violation. A Twenty-Five Dollar (\$25.00) fine shall be levied.
- (c) Third Violation. A Fifty Dollar (\$ 50.00) fine shall be levied.
- (d) Fourth Violation and Subsequent Violations. A One Hundred Dollar (\$100.00) fine shall be levied.

In addition to such fines, the Owner, at the option of the Board, shall be subject to the suspension of his voting rights in the Association and of his right to use the Common Areas for a period in each case not to exceed sixty (60) days per violation.

4. Collection. The fines levied pursuant to Section 3 above shall be assessed against the Owner in the same manner as the annual Association assessments and shall be due and payable to the Association on the first day of the next following month. Failure to pay the fine when due shall subject the offending Owner and his Lot(s) to all of the liabilities set forth in Article V hereof.

## ARTICLE IX.

### SPECIAL PROVISIONS

1. Sidewalk on Twenty-One Mile Road. As of the date hereof, the Township has temporarily waived the requirement to construct a sidewalk along Twenty-One Mile Road adjacent to the Beaufait Farms Subdivision No. 2. In the event the Township requires the installation of such sidewalk, or any portion thereof, at any time after the date hereof, the Association shall be solely responsible for satisfying the requirements of the Township and for the installation of such sidewalk at the sole cost and expense of the Association. In the event the Association fails to install such sidewalk on a timely basis after request therefor by the Township, the Township shall be authorized to install such sidewalk. In connection therewith, the Township shall follow the same procedures as are set forth in Section 6 of Article VI hereof in the event the Association fails to maintain the Landscape Easement.

## ARTICLE X.

### GENERAL PROVISIONS

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

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

3. Amendment. The covenants and restrictions 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 each. Except for the provisions of Sections 6 and 20 of Article VI hereof, this Declaration may be amended after the Transfer Date during the first twenty (20) year period by a recorded instrument signed by not less than seventy percent (70%) of the Owners and thereafter by an instrument signed by not less than sixty percent (60%) of the Owners. Prior to the Transfer Date, Declarant, without the consent, vote, signature, or approval of any Owner, the Association or any Members thereof, may, prospectively or retroactively, by instrument recorded at the Office of the Register of Deeds for Macomb County, Michigan, modify, restate, waive, repeal, amend, change, or replace this Declaration, or any or all of the provisions hereof, other than the provisions of Sections 6 of Article VI hereof, with respect to any thing or any particular Lot(s) located within the Subdivision as Declarant in its sole discretion deems necessary or desirable, including, without limitation, for the purpose of adding additional residential Lots and/or Common Area and making this Declaration and/or other restrictions apply to such Lots and/or Common Area. Anything contained herein to the contrary notwithstanding, the provisions of Section 6 of Article VI relating to the maintenance of the Landscape Easement or the Detention Basin hereof may not be modified, restated, waived, repealed, amended, changed, or replaced without the prior written approval of the Township Board of Trustees. The provisions of Section 20 of Article VI hereof shall be observed in perpetuity and shall not be amended.

Declarant's right to amend, change, or replace this Declaration shall be permitted at any time prior to the Transfer Date, notwithstanding an assignment of Declarant's rights and powers pursuant to Section 5 of this Article X.

4. Annexation of Additional Lots and/or Common Area. Declarant reserves the right at any time in the future to subject one or more additional adjacent parcels of land hereafter developed and platted by Declarant or its successors or assigns to this Declaration (or one containing substantially the same terms) by amendment of this Declaration or by making new declarations with substantially the same terms. Such additional Subdivisions may or may not contain any Common Area. Any such amendment(s) to this Declaration or new declaration shall provide that the Owners of all residential Lots located in such future added Subdivisions shall be required to be Members of the Association and shall be subject to the covenants, restrictions, obligations, 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 Subdivisions shall be for the use and benefit of all Owners of Lots in the Beaufait Farms Subdivisions. Additional Lots and 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.

5. Assignment or Transfer of Rights and Powers. Declarant hereby reserves the unequivocal right to assign to the Association or any other party, in whole or in part, from time to time, any or all of the rights, 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, provided same is done in accordance with the Land Division Act or other applicable laws, except that Declarant's right to amend, change, or replace this Declaration without the consent of the Owners as provided in Section 3 of this Article IX may not be assigned. Any such permitted 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, titles, easements, and estates 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.

6. Deviations by Agreement with Developer. Declarant hereby reserves the right at any time prior to the Transfer Date to enter into agreements with the Owner of any Lot or Lots, 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 there are practical difficulties or particular hardships evidenced by such Owner. Following the Transfer Date, such power vested in Declarant shall be transferred to the Association. 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.

7. Transition of Association Board of Directors. The Association Bylaws shall provide that the Members of the Board may, at the Declarant's option, be appointed by the Declarant until the Transfer Date, and thereafter, shall be elected by the Owners. In the event that Declarant no longer desires to appoint the Members of the Board and the Owners are unwilling or unable to elect a Board 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 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 shall continue until the first annual meeting at which the Owners are willing and able to elect a Board of Owners who desire to serve as Directors.

This Amended and Restated Declaration of Covenants and Restrictions for The Bluffs of Beaufait Farms Subdivision supersede the Declaration of Covenants and Restrictions for The Bluffs of Beaufait Farms Subdivision recorded in Liber 155, Page 134,  
Macomb County Records. 166

Declarant has executed this Amended and Restated Declaration of Covenants and Restrictions for The Bluffs of Beaufait Farms Subdivision on the date set forth above.

