



## **PROVIDENCE LAKE**

### **PHASE I**

#### **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

KNOW ALL MEN BY THESE PRESENTS, that MACLIND DEVELOPMENT, LLC, a Michigan limited liability company, whose address is 7330 Burlingame Ave. SW, Byron Center, Michigan 49315, (the "Developer"), being the owner of all of the property contained within the development known as Providence Lake (the "Development"), located in Byron Township, Kent County, Michigan, and described as:

Lots 1 through 39, inclusive, Providence Lake Park North, Providence Lake Park South, Providence Lake, Section 11, T5N, R12W, Byron Township, Kent County, Michigan, as recorded in Instrument No. 20060619-0069130,

hereby makes the following declarations as to the use of property in the Development and certain other matters.

MACATAWA BANK, a Michigan banking corporation, whose address is 10753 Macatawa Drive, Holland, Michigan 49423, mortgagee of the property (the "Mortgagee"), executes this Declaration for the purpose of expressing its agreement to honor the following declarations even if it forecloses on any property covered by this Declaration.

The declarations contained herein are based upon the following factual recitals:

A. It is appropriate for an association of co-owners to control and manage all Common Areas (as defined below in Section 1.6) in the Development.

B. To maintain a high standard of quality, it is necessary to impose certain covenants, conditions and restrictions upon the use of the property that constitutes the Development.

C. Developer is willing to sell lots in the Development, but all buyers and subsequent owners must accept such lots subject to the declarations, covenants, restrictions and conditions set forth herein.

NOW, THEREFORE, Developer hereby declares that all lots in the Development shall be held, sold, and conveyed subject to the following:

Section 1. Definitions. As used herein, the terms set forth below shall have the following meanings:

1.1 "Articles of Incorporation" shall mean the Articles of Incorporation filed with the State of Michigan for the establishment of the Association.

1.2 "Assessments" shall mean the payments provided for in Section 9 below.

1.3 "Association" shall mean Providence Lake Association, a Michigan not-for-profit corporation.

1.4 "Board of Directors" or "Board" shall mean the board of directors of the Association.

1.5 "Bylaws" shall mean the bylaws of the Association, which are incorporated by reference and adopted in their entirety as a part of this Declaration.

1.6 "Common Areas" shall mean the areas as shown on the recorded Plat and all other areas within the Development reserved for the common use and enjoyment of all Lot Owners, such as parks, lakes, ponds, and such other areas or facilities, including any later-added recreational facilities as may be designated by the Developer (so long as the Developer owns at least one Lot) or a majority in number of the Lot Owners as Common Areas in a designation recorded in the office of the Kent County Register of Deeds; provided, that the pond and the land immediately surrounding the pond in the northwest corner of the Development, as indicated on the Plat, shall be limited to the exclusive use and enjoyment by the Pond Lots, except that the Association may use the pond to draw a reasonable quantity of water for irrigation of common areas and such other reasonable uses by the Association.

1.7 "Developer" shall mean Maclind Development, a Michigan limited liability company, the proprietor of the land within the development, or its successors or any person or entity to whom or to which it may, in a document recorded with the Register of Deeds of Kent County, Michigan, expressly assign one or more of its rights hereunder or delegate all or any of its authority hereunder.

1.8 "Expense of Administration" shall mean all costs incurred by the Association to satisfy any liability arising within, or caused by or in connection with the Common Areas, or caused by or in connection with the administration of the Development or the Association shall be Expenses of Administration

1.9 "Frontage Area" shall mean the area abutting the boundary of a Lot and the paved portion of the road Rights-of-Way for the public roads in the Development.

1.10 "Improvement" shall mean any building, wall, swimming pool, other structure, driveway, or sidewalk placed within a Lot, Frontage Area, and/or Common Area.

1.11 "Lakefront" Lots shall mean Lots 20 through 39 and, when and if created in any of the future phases of the Development, any other Lots designated as such in any future phases of the Development.

1.12 "Lot Owner" shall mean any person or other entity owning legal or equitable title to or purchasing a Lot, or any person having a right of occupancy to any dwelling constructed on a Lot.

1.13 "Lot" shall mean any one of the lots within the Development. "Lots" shall mean all such lots unless reference is made to specific numbered lots or to lots in a specific phase of the Development.

1.14 "Plat" shall mean the recorded Plat of Providence Lake.

1.15 "Pond" Lots shall mean Lots 7 through 12 and, when and if created in any of the future phases of the Development, any other Lots designated as such in any future phases of the Development.

1.16 "Rights-of-Way" shall mean the road rights-of-way for the public roads in the Development.

## Section 2. Building and Use Restrictions.

2.1 Developer's Rights and Responsibilities. Developer may assign, in whole or in part, permanently or temporarily, its rights and responsibilities under this Declaration to the Association, and when the last Lot in the Development has been conveyed by the Developer, this assignment shall occur automatically. Such rights and responsibilities shall include, without limitation, the Developer's approvals, consents, and all other discretionary decisions provided under this Section 2.

2.2 Establishment of Restrictions. In order to provide for congenial occupancy of the Development, and for the protection of the value of the Lots, the use of Development property shall be subject to the following limitations:

(a) Residential Use. No Lot shall be used for other than single-family residential purposes, and the common elements shall be used only for purposes consistent with the use of single-family residences. "Single family" shall be given the definition ascribed to it by applicable law. No more than one (1) residential structure may exist within any Lot. No business, commercial, manufacturing, service, or rental enterprise shall be conducted within the Development, but Lot Owners may maintain a business or professional library and make and receive business or professional telephone calls within their Lots. No garage, recreational vehicle, basement, tent, shack, storage barn, or similar type structure shall be used at any time as a residence, temporarily or permanently. No temporary structure may be placed on any unimproved Lot, and an unimproved Lot may not be used for storage of any items of any type. No shed, storage building, or other accessory building shall be placed in a Lakefront Lot. Any shed, storage building, or other accessory building placed in a non-Lakefront Lot shall be subject to all provisions of this Declaration, including this Subsection 2.2. No previously used building or structure shall be moved onto any Lot, and no used building materials shall be used in the construction of any residence or accessory building on any Lot.

(b) Home Occupations. Although all Lots are to be used only for single-family residential purposes, nonetheless home occupations will be considered part of a single-family residential use if, and only if, the home occupation is conducted entirely within the residence and participated in solely by members of the immediate family residing in the residence, which use is clearly incidental and secondary to the use of the residence for dwelling purposes and does not change the character thereof. To qualify as a home occupation, there must be (i) no sign or display that indicates from the exterior that the residence is being utilized in whole or in part for any purpose other than that of a dwelling; (ii) no commodities sold within the Lot; (iii) no person employed other than a member of the immediate family residing within the Lot; and (iv) no mechanical or electrical equipment used, other than personal computers and other office-type equipment.

(c) Animals. Except for household dogs and/or cats as provided below in this paragraph (c), and small caged birds, and fish, an owner may not keep, raise, or breed animals, livestock, or poultry of any kind in any Lot. All pets shall be leashed when outside of a Lot. Pit bull dogs and other dangerous animals are not permitted in the Development. No pets may be kept, raised, or bred on any Lot for commercial purposes. No animals shall be kept in the front yard of any Lot. Subject to the limitations provided above in this paragraph (c), up to two (2) dogs, and two (2) cats, or one (1) dog and three (3) cats, will be allowed (but not three (3) dogs and one (1) cat).

(d) Trash. No trash, garbage, or rubbish of any kind shall be placed within any Lot, except in sanitary containers for removal which shall be kept inside garages or other fully enclosed and inconspicuous areas, except for short periods of time as may be reasonably necessary to permit periodic collection, not less often than once per week. No incinerators or other equipment for the disposal of waste are permitted in the Development. The Developer shall contract with one trash hauling company to serve all of the Lots, and each Lot Owner will be billed directly by the hauler.

(e) Time for Construction; Approval of Construction.

(i) Construction of a residential dwelling in the Lot consistent with the limitations set forth in this Declaration shall commence within twenty-four (24) months from the date title to the Lot is first transferred from the Developer to the Lot Owner, and construction shall be completed and an occupancy permit shall be obtained within twelve (12) months from the date construction is commenced. Accordingly, a residence shall be constructed and an occupancy permit shall be obtained within a maximum period of thirty-six (36) months from the date title to a Lot is first transferred from the Developer ("**Construction Period**"). In addition, basic landscaping (seeding, hydro-seeding, sod) shall be completed within 180 days after the occupancy permit has been issued; provided, that exceptions may be made on this requirement for winter occupancy. Subsequent transfers of a Lot by a Lot Owner prior to completion of construction of the residence will not alter the Construction Period, which will continue to run from the date of the initial transfer of the Lot from the Developer. ***If construction of a residential dwelling in accordance with this subparagraph (i) is not completed or an occupancy permit is not granted on or before the expiration of the Construction Period, the Developer shall have the option to purchase the Lot from the Lot Owner for 80% of the appraised value of the Lot at the time the Developer exercises its option, including any improvements therein.*** For purposes of this subparagraph, fair market value shall be determined by a licensed appraiser

selected by Developer. Developer may exercise its option to repurchase the Lot under this subparagraph at any time after the expiration of the Construction Period by giving written notice of its exercise to the Lot Owner. The Developer's option under this subparagraph, if not exercised, shall terminate automatically upon the issuance of an occupancy permit for a residence within the Lot. The Developer shall not be obligated to exercise its option under this subparagraph.

(ii) The Developer wishes to insure that the construction site within each of the Lots should be located so as to preserve the existing trees and contours where practicable and that the architecture of the residence located within any Lot should be compatible with the criteria as established by this Declaration and also should be compatible and harmonious to the external design and general quality of other dwellings constructed and to be constructed within the Development. Consequently, the Developer reserves the power to control the design and construction of the Improvements placed within each Lot, as well as to make such exceptions to these restrictions as the Developer may deem necessary and proper. No Improvement will be placed within a Lot or Frontage Area appurtenant to a Lot unless and until the builder or contractor and the plans and specifications therefor have been expressly approved in writing by the Developer. The plans and specifications shall measure 8½" x 11" and show, at a minimum, the location of all improvements as per survey markers, setbacks, dimensions, square footage on all levels, and the nature, kind, shape, height, exterior colors, and materials of all improvements. In addition, a front elevation of the residence to be built in the Lot shall show, at a minimum, color and the amount of stone or brick on the exterior side of the structure facing the road Rights-of-Way in the Development. No changes in or deviations from such builder or contractor and plans and specifications as approved will be made without the prior written consent of the Developer. Two (2) sets of complete plans and specifications must be submitted; one (1) will be retained by the Developer and one (1) will be returned to the applicant. In addition, each Lot shall be surveyed and staked, at the Lot Owner's expense, by a licensed, professional, surveying/engineering company and the Lot Owner shall provide a copy of the survey to the Developer.

Each Lot Owner hereby agrees that any violation of the requirements of this Subsection (e) is likely to cause the Developer and all other Lot Owners irreparable harm or damages that are impossible to ascertain. Each Lot Owner therefore agrees that the Developer shall be entitled to an injunction issued by any court of competent jurisdiction pertaining to any violations of this Subsection (e) by such Lot Owner. Each Lot Owner further agrees that, by seeking injunctive relief, the Developer is not prohibited from pursuing any other available remedies for any threatened or actual breach of this Subsection (e), including, but not limited to, an action against the defaulting Lot Owner for damages.

Each Improvement will be placed within a Lot or Frontage Area only in accordance with the plans and specifications and plot plan as approved by the Developer. No modular homes or mobile homes shall be placed within any Lot. Refusal to approve a builder or contractor or plans and specifications by the Developer may be based on any grounds, including purely aesthetic grounds, which in the sole and uncontrolled discretion of the Developer seems sufficient. No alteration in the exterior appearance of any Improvements constructed with such approval will be made without like approval of the Developer. Approval of

plans and specifications for reasonable modifications to provide handicap access pursuant to state or federal law shall not be unreasonably withheld. If the Developer fails to approve or disapprove any builder or contractor or plans and specifications within thirty (30) days after written request therefor, then such approval will not be required; provided that any builder or contractor is properly licensed by the State of Michigan and that any Improvement will be erected entirely within the boundaries of a Lot and does not violate any of the covenants, restrictions, or conditions set forth herein or adopted by the Association. The Developer will not be responsible for any negligence or misconduct of the builder or contractor or for any defects in any plans or specifications or in any building or structure erected by such builder or contractor according to such plans and specifications or in any changes in drainage resulting from such construction.

All construction of buildings and structures will be done only by residential home builders licensed by the State of Michigan and approved in writing by the Developer, provided the Developer may waive this restriction for an owner who wishes to act as his own general contractor if the owner demonstrates to the Developer the owner's ability to construct a residence of a quality consistent with the other residences in the Development within a normal construction schedule. The Association shall succeed to the Developer's rights under this paragraph once the Developer leaves the Development.

(f) Exterior Construction. All residences, including garages, sheds, storage buildings, or other accessory buildings, must have exteriors approved by the Developer. Such right of approval shall include color and all other aesthetic matters. The exterior shall be made of materials of comparable grade and quality consistent with those customarily used for comparable homes in the area, and at least twenty percent (20%) of the exterior side of the structure facing the road Rights-of-Way in the Development shall be stone or brick.

(g) Size and Setback Requirements. All residences must conform to the following size requirements:

(i) Area Minimums. Excluding any garage, no one-story residence will be constructed with a fully enclosed main floor living area of less than one thousand six hundred fifty (1,650) square feet, and no 2-story residence will be constructed containing a fully enclosed floor living area of less than two thousand (2,000) square feet. No bi-level or tri-level houses may be constructed.

(ii) General. All square footage determinations will exclude basements (including walk-out basements), garages, carports, and open porches. The Developer may specify the number of levels that residences within specific Lots will be permitted to have to preserve the view from other Lots or to maintain a harmonious pattern of development in the construction of residences within the Lots. The height of any building will be not more than permitted by the applicable zoning ordinance. If any portion of a level or floor within a residence is below grade, all of the level or floor will be considered a basement level.

(iii) Garages. Garages, which will be for use only by the occupants of the residence to which they are appurtenant, must be attached to the residences and constructed in accordance with the approved plans. Each residence must have one single story garage capable of garaging at least two (2) but not more

than three (3) standard size automobiles. In addition, walkout Lots (as indicated on the Plat) may have an additional level below-grade capable of garaging not more than two (2) standard size automobiles. There may only be one garage within each Lot. No garage will be placed, erected, or maintained within any Lot except for use in connection with a residence within that Lot or within an adjoining Lot under common ownership that will contain a residence. No carports, parking slabs, or any other kind of unenclosed parking area shall be allowed within any Lot. All Lot Owners shall limit parking on the road Rights-of-Way in the Development to social events at the Lot Owner's residence or other short-term occasions of less than six (6) hours; provided, that parking on the road Rights-of-Way after a snowfall is discouraged so that plowing of the road Rights-of-Way is not obstructed.

(iv) Setbacks. Building setbacks for each Lot shall comply with the minimum setback requirements provided by applicable ordinance or the Developer, whichever is more restrictive. The Developer reserves the right to require greater building setbacks as part of the approval process set forth in Subsection (e) above.

(h) Driveways and Mailboxes. All driveways must be a minimum of eight (8) feet wide and be constructed of concrete at least four (4) inches thick. The driveways shall connect to the road Rights-of-Way in the Development and no other street. All mailboxes shall be Rubbermaid brand in the color stone gray, unless otherwise expressly approved in writing by the Developer.

(i) Swimming Pools. No above-ground swimming pool, whether temporary or permanent, shall be allowed within any Lot. Inground swimming pools shall be allowed in the back yard within the Lot and set back at least ten (10) feet from each lot boundary and may not project with their coping more than two feet above the established grade; provided, that no swimming pools of any type shall be allowed within any Lakefront Lot.

(j) Tree Removal. No tree three (3) inches in diameter or larger at chest height shall be trimmed or removed from any Lot without the prior written approval of the Developer unless:

(i) The tree is within twenty feet of a building within a Lot; or

(ii) It is an imminent hazard to human health or a building within a Lot because it is diseased, dead, infested, or otherwise impaired; or

(iii) It is no longer standing.

(k) Playground Equipment. All playground equipment, such as swing sets, slides, jungle gyms, and the like, shall be kept within a Lot only in an area behind the residence in the Lot and not closer to any side boundary than the extremities of the residence within that Lot, and not on any beach area within a Lot.

(l) Lawns. Each owner shall properly maintain all lawn areas within his or her Lot and unpaved portion of the Frontage Area(s) appurtenant to his or her Lot and shall install and maintain an underground sprinkling system to service all areas of the lawn. All lawns shall be kept free from weeds, underbrush, and other unsightly growths. All landscaping plans must be approved in writing by the Developer; provided, that a

minimum of two (2) decorative trees (selected by the Lot Owner from a list provided by the Developer) for every ninety (90) feet of frontage on the road Rights-of-Way in the Development.

(m) Recreational and Commercial Vehicles. No trailer, motor home, mobile home, camper trailer, snowmobile trailer, snowmobile, motorcycle, boat, boat trailer, or any kind of type of recreational vehicle or motor vehicle may be stored, parked or placed outside of a garage with the door completely closed for more than fourteen (14) days total during any calendar year or for more than two consecutive weeks in consecutive calendar years. No inoperable or unlicensed vehicles of any type may be brought or stored within the Development, either temporarily or permanently, unless within a garage with the door completely closed. Commercial vehicles shall not be parked within the Development (unless fully inside a garage with the door completely closed) except while making deliveries or pick-ups in the normal course of business or for construction purposes. No commercial vehicles of any nature will be parked overnight within the Development, except in a completely closed garage, without the prior written consent of the Developer. Any truck over 3/4-ton and any vehicle with a company name or other advertising or commercial designation will be considered a commercial vehicle. No vehicle may be parked overnight on any road or on any Frontage Area, except as permitted by the Association in accordance with any rules or regulations adopted by the Association.

(n) Fences. Fences are not permitted on Lakefront Lots, and will be permitted on non-Lakefront Lots only with the prior written approval of the size, type, and material of the fence by the Developer; provided, that fences on non-Lakefront Lots may not exceed six (6) feet in height and may not be constructed of metal or wood.

(o) Antennae. An owner may install within the owner's Lot a television satellite dish that is less than one meter (39.37 inches) in diameter, an antenna to receive local television broadcast signals, or a wireless cable antenna, so long as the satellite dish or antenna does not encroach in, on, or over any Common Area. Each Lot Owner shall make reasonable efforts to mitigate the appearance of any antenna on such Lot Owner's Lot by, if possible, locating the antenna so it is not visible from the road Rights-of-Way and, wherever possible and practical, utilizing shrubbery or other landscaping to disguise the antenna and blend it into the landscape; provided, that no owner may install or allow or cause to be installed within the owner's Lot any antenna used for AM/FM radio, amateur ("ham") radio, Citizen's Band ("CB") radio, Digital Audio Radio Services ("DARS"), or any other type of antenna or satellite dish not specified in the first sentence of this Subsection (o), without the prior written approval of the Developer.

(p) Hunting. No hunting in any form shall be permitted anywhere within the Development.

(q) Furniture; Equipment. No item of equipment, furniture, or any other large movable item shall be kept within any Lot outside a building, except lawn furniture or picnic tables, provided the same are kept in neat and good condition. All other items, such as lawn mowers, snowmobiles, and dune buggies, shall be stored in a garage.

(r) Nuisances. No owner of any Lot will do or permit to be done any act or condition within his or her Lot or Frontage Area(s) appurtenant to his or her Lot which may be or is or may become a nuisance. No Lot or Frontage Area will be used in whole or in part for the storage of rubbish of any character whatsoever (except normal

household trash until the next trash collection day), nor for the storage of any property or thing that will cause the Lot or Frontage Area to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor will any substance, thing, or material be kept within any Lot or Frontage Area that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort, or serenity of the occupants of the surrounding Lots. No unsightly objects will be allowed to be placed or suffered to remain anywhere within a Lot or Frontage Area. If any owner of any Lot fails or refuses to keep his or her Lot or Frontage Area(s) appurtenant to such Lot free from refuse piles or other unsightly objects, then the Developer or the Association may enter the Lot or Frontage Area and remove the same and such entry will not be a trespass. The owner of the Lot will reimburse the Developer or Association for all costs of such removal.

(s) Lighting. A Lot Owner shall not install and/or operate any type of lighting (whether temporary or permanent) within such Lot Owner's Lot that, due to the brightness and/or direction of such lighting, constitutes a nuisance for the occupants of other Lots. Normal home security lighting and decorative holiday lighting shall not constitute a nuisance under this paragraph (s).

(t) Stabilization of Soil. During construction, the soil within such Lot, and the Frontage Area(s) appurtenant to such Lot, must be stabilized by grading and seeding of a lawn or other ground cover growth so as to prevent any soil blow area or soil erosion; provided that this provision shall neither prevent nor prohibit any owner from maintaining open areas for the planting of trees, shrubbery, or a flower garden, but any such open area shall be controlled so as to prevent blowing or erosion of soil therefrom.

The design of the dwelling placed within any Lot shall incorporate measures and practices to minimize the extent of increased storm water runoff from the Lot and resulting soil erosion and sedimentation, both during and after completion of construction. These measures and practices shall include the following:

(i) The area of the Lot which is disturbed by excavation shall be kept to a minimum.

(ii) Measures shall be taken to re-establish vegetation on disturbed soils as soon as practicable following completion of excavation.

(iii) Soil erosion and the conveyance of sediment from the site to adjacent streams, lakes, ponds and wetlands during construction shall be controlled through use of such measures and practices as silt fences, sediment basins, vegetative buffer strips, seeding, sodding and mulching, as described in the publication entitled *Guidebook of Best Management Practices for Michigan Watersheds*, published by the Michigan Department of Environmental Quality, Surface Water Quality Division ("DEQ"). More specifically, construction on Lots adjacent to Providence Lake, or the pond or any common area in the Development shall require a silt fence.

(iv) Measures shall be taken to minimize the discharge of concentrated volumes of runoff from roofs and paved surfaces onto steep slopes, by directing roof drain outlets and pavement drainage outlets to areas of moderate slope or to subsurface infiltration basins.

(v) If a Lot Owner fails to follow the measures provided in this Article VII, the Developer or the Association may perform such measures on behalf of the Lot Owner upon ten (10) days' written notice to the Lot Owner. The Lot Owner shall pay for the expenses incurred by the Association or Developer for such work.

(u) Signs. No sign of any kind shall be displayed to the public view within any Lot, except a sign of not more than four square feet advertising a Lot for sale, or a sign used by a builder to advertise the construction or subsequent sale of a residence. No sign other than Developer's will be allowed at any entrance to the Development.

(v) Private Beach Areas. If kept on the beach areas at the rear of a Lakefront Lot, non-motorized watercraft and other recreational equipment and personal property shall not be allowed to cause excessive and unsightly clutter. No swimming docks, or lifts, boathouses, or anything utilized for storing watercraft are allowed on such beach areas. Bonfires on such beach areas must be contained in a fire pit not exceeding forty-eight (48) inches in circumference. All fishing in Providence Lake shall be in accordance with applicable law.

(w) General Provisions.

(i) Zoning. All applicable restrictions imposed by the Byron Township Code shall apply to all Lots and shall govern in the event of any inconsistency with this Declaration; provided, however, that if the Developer or the Association or this Declaration impose more stringent restrictions, those restrictions shall apply.

(ii) No Gift or Dedication. Nothing herein contained will be deemed to be a gift or dedication of any portion of the Lots or other areas in the Development to the general public or for any public purposes whatsoever, it being the intention of the Developer that these restrictions will be strictly limited to the purposes herein specifically expressed.

(iii) No Third-Party Beneficiaries. No third party, except grantees, heirs, representatives, successors, and assigns of the Developer, as provided herein, will be a beneficiary of any provision set forth herein.

(x) Sidewalks.

(i) Any portion of a sidewalk shown on the Plat as being in the Frontage Area adjacent to a Lot shall be constructed and maintained by, and at the direction and expense of, the Lot Owner of such adjacent Lot within six (6) months from the date an occupancy permit is issued for the residence constructed in that Lot. If the Lot Owner fails to construct the sidewalk within this time period, the Developer may cause the sidewalk to be constructed and levy any cost incurred upon such Lot Owner as if such costs were an assessment against the Lot Owner's Lot, including, without limitation, the use of any enforcement mechanism available with regard to assessments hereunder.

(ii) Any portion of a sidewalk adjacent to a Common Area and not adjacent to a Lot, and the portion of the sidewalk joining the Common Open Space to the road Rights-of-Way in the Development, each as shown in the Plat,

shall be constructed by, and at the direction and expense of, the Developer. These common sidewalks shall be maintained by, and at the expense of, the Association.

(iii) All sidewalks constructed under this paragraph (y) shall comply with all applicable local ordinances regarding such construction.

(y) Waiver by Developer. The Developer shall be entitled to waive or modify any of the applicable use and occupancy restrictions, if in its sole judgment, such a waiver would be appropriate. No such waiver shall affect the validity or enforceability of any of the restrictions against other Lots.

### 2.3 Drainage District.

(a) An Agreement establishing the Providence Lake Drain Drainage District pursuant to Section 433 of Act No. 40 of the Public Acts of 1956, as amended, including a maintenance provision outlining the maintenance responsibilities of the Association for the Drain, has been recorded in the Kent County Register of Deeds.

(b) There shall be easements over all Lots and Common Areas for purposes of construction, maintenance and improvement of storm water drainage and retention or detention as designated on the Plat. The easements are granted in favor of the Providence Lake Drain Drainage District. The Drainage District shall have the right to sell, assign transfer or convey this easement to any other governmental unit. The Kent County Drain Commissioner, and his/her agents, contractors and designated representatives shall have the right of entry on, and to gain access to, the easement property.

(c) No Lot Owner shall disturb the grade or otherwise modify the areas within the easements in any way inconsistent with the Drain. No Lot Owner shall install, maintain, repair or replace landscaping materials located within the Drain easement areas lying within such Lot Owner's area in any way inconsistent with the use by the Drainage District. All Lot Owners shall release the Drainage District and its successors, assigns or transferees from any and all claims to damages in any way arising from or incidental to the construction and maintenance of the Drain, or otherwise arising from or incidental to the exercise by the Drainage District of its rights under said easements, and all Lot Owners covenant not to sue the Drainage District for any such damages.

(d) Maintenance of the storm drainage shall be performed as provided in the Maintenance Agreement. All costs incurred by the Drain Commissioner relating to the maintenance and improvement of the Providence Lake Drain shall be borne by the Drainage District and assessed to the Lot Owners pursuant to Act No. 40 of the Public Acts of 1956, as amended.

2.4 Persons Subject to Restrictions. All present and future Lot Owners and any other persons or occupants using the facilities of the Development in any manner are subject to and shall comply with this Declaration and the Association's Articles of Incorporation and rules and regulations. However, none of the use restrictions contained in this Article shall apply to the commercial activities or signs, if any, of the Developer during the development and sales period as defined in this Declaration, or of the Association in furtherance of its powers and purposes set forth in this Declaration and in its Articles of Incorporation and Bylaws as the same may be amended from time to time. For the

purposes of this Subsection, the development and sales period shall be deemed to continue so long as Developer owns any Lot which Developer offers for sale or so long as any Lot may be created. Until all Lots have been sold by Developer, Developer shall have the right to maintain model Lots and a sales office, a business office and storage areas. During the development and sales period, Developer and Developer's agents, employees, successors, assigns, contractors, subcontractors, brokers, licensees and invitees shall be entitled to (i) have access, ingress and egress to and from the Development and common elements and use such portion of the Development and common elements as may be necessary or desirable in connection with such marketing and sales of Lots or performance of work, (ii) use or show one or more unsold and unconveyed Lots or portion or portions of the common elements as a model Lot or Lots or for such other purposes deemed necessary or desirable in connection with such administration, marketing, or sales of Lots or performing work in or about the Development, and (iii) post and maintain such signs, banners and flags, or other advertising material in, on or about the Development and common elements in such form as deemed desirable by Developer, and as may be deemed necessary or desirable in connection with the marketing, sales or management of Lots or performing work in or about the Development or in connection with (i) and (ii) above, and (iv) complete or correct construction of, or make alterations of an additions and improvements to, the Lots or the common elements in connection with any of the Developer's activities in connection with the promotion, marketing or sales of the Lots or performing work in or about the Development.

### Section 3. Maintenance and Costs.

3.1 Association. The Association shall be the owner of, and shall maintain and repair, the Common Areas in the plat. The Association shall keep and maintain the Common Areas in a good, clean and serviceable condition and in accordance with this Declaration. The Association shall also be responsible for supervising the construction, maintenance, repair, and reconstruction of any Improvements that may from time to time be placed upon the Common Areas. The costs thereof shall be charged to all of the Lot Owners as a common expense, provided that: (i) the costs of maintenance and repair of the pond and the land immediately surrounding the pond in the northwest corner of the Development (as shown on the Plat) shall be allocated equally among the owners of the Pond Lots; and (ii) such costs described in this Section 3 that result from the negligence<sup>16</sup>, misuse or neglect of a Lot Owner shall be charged to that Lot Owner. The Association may establish reasonable rules and regulations concerning the use and enjoyment of the Common Areas.

3.2 Lot Owners. Each Lot Owner shall bear the burden and cost of installing, maintaining and replacing: (a) landscaping within the Frontage Areas adjacent to their Lot; (b) the portion of the driveway built upon a Frontage Area adjacent to their Lot; (c) any mailbox in a Frontage Area; and (d) any portion of a sidewalk within the Frontage Areas adjacent to their Lot (pursuant to Subsection 2.2(y) above).

3.3 Association Access. The Association or its agent shall have access to each Lot, except any residence constructed on the Lot, from time to time during reasonable working hours, upon notice to the occupant thereof, for the purpose of maintenance, repair or replacement of any of the Common Areas accessible from such Lot. The Association or its agent shall also have access to each Lot, except any residence constructed in the Lot, at all times without notice for making emergency repairs necessary to prevent damage to other Lots, the Common Areas, or both. Unless otherwise provided herein, damage to a Lot or its contents caused by the repair or maintenance activities of the Association shall be repaired at the expense of the Association.

Section 4. Subdivision; Other Easements. No Lot may be subdivided except with the prior express written consent of the Developer (which consent may be granted or withheld at the Developer's sole

discretion) so long as the Developer owns a Lot. No Lot Owner shall be permitted to grant any right-of-way or easement across his lot to any person or to benefit any parcel of property except another Lot governed hereby. This restriction shall not include the usual utility easements. The Developer has and hereby reserves all easements for utilities or drainage shown on the Plat and full rights of ingress and egress for the Developer and Developer's agents, employees, and assigns over the Lots for the purpose of installing and servicing the utilities and drains for which the easements are reserved. No structures will be erected upon any Lot which will interfere with the rights of ingress and egress provided in this Section 4. Any fences, paving or plantings which interfere with the rights of ingress and egress provided in this Section 4 may be removed as necessary when installing or servicing the utilities and drains and neither Developer nor Developer's agents will have liability for such removal.

In addition to all other rights reserved to it under this Declaration, the Developer reserves for the benefit of itself, and its agents, employees, guests, invitees, independent contractors, successors, and assigns, a perpetual easement for the unrestricted use of any Common Areas now or hereafter located in the Development for the purpose of (a) ingress to and egress from all or any portion of the Development and any other land in the vicinity of the Development now owned or hereafter acquired by the Developer; (b) complying with any governmental regulation, or installing and servicing roads, utilities, or drains to such other land; or (c) for any other lawful purpose. This easement shall burden the Development and benefit the Developer and any other land in the vicinity of the Development now owned or hereafter acquired by Developer (and as such land may from time to time be subdivided) in perpetuity.

Section 5. Care and Appearance of Premises. Each Lot Owner shall maintain his or her Lot and any Common Areas appurtenant thereto for which he or she has maintenance responsibility in a safe, clean and sanitary condition, and shall install and maintain landscaping on Frontage Areas adjacent to his or her Lot. Each Lot Owner shall also use due care to avoid damaging any of the Common Areas, including, but not limited to, the telephone, water, gas, plumbing, electrical or other utility conduits and systems and any other elements in any Lot which are appurtenant to or which may affect any other Lot. Each Lot Owner shall be responsible for damages or costs to the Association resulting from negligent damage to or misuse of any of the Common Areas by him or her, his or her family, invited or uninvited guests, agents or invitees, unless such damages or costs are actually reimbursed from insurance carried by or for the benefit of the Association, in which case there shall be no such responsibility (if reimbursement to the Association is excluded by virtue of a deductible provision, the responsible Lot Owner shall bear the expense to the extent of the deductible amount, anything else in this Declaration to the contrary notwithstanding). Any costs or damages to the Association that are herein assigned to the individual Lot Owner may be assessed to and shall be payable immediately by the responsible Lot Owner. Such amounts may be collected in the manner provided for in this Declaration.

Section 6. Providence Lake Association.

6.1 Governance. The development will be governed by the Association, which will be responsible for the duties given it herein, and in the Bylaws and the Articles of Incorporation, and for the general management, maintenance, operation, and administration of the affairs of the development. All such duties shall be carried out as the Board of Directors of the Association shall from time to time determine.

6.2 Membership. Membership in the Association shall be compulsory for all Lot Owners and shall be governed by the terms of this Declaration, and the Bylaws and the Articles of Incorporation. No other person or entity shall be entitled to membership, except lot owners in future phases of the Development if, and only if, the Developer chooses to submit such property and any Common Areas

therein to the jurisdiction of the Association. The Developer may do so on one or more occasions in a written declaration recorded in the office of the Kent County Register of Deeds. The terms of membership for any other persons shall be identical to those set forth herein, and in the Bylaws and the Articles of Incorporation, and upon the recording of such a declaration those portions of this Declaration that both (i) pertain to the Association and (ii) refer to Lots, or Lot Owners, shall be deemed to have been modified to refer to all property owner members. Such other developments need not be subject to covenants, conditions and restrictions identical to those set forth herein, but must be improved with distinct living Lots that are capable of individual ownership.

6.3 Voting; Meetings; Records. The members' voting rights, annual and special meetings, and record keeping requirements of the Association shall be as provided in this Declaration, and in the Bylaws and Articles of Incorporation.

6.4 Board of Directors. The affairs of the Association shall be governed by a Board of Directors, all of whom shall serve without compensation and who must be members of the Association. The number, terms of office, manner of election, removal and replacement, meetings, quorum and other voting requirements, and other duties or provisions of or relating to directors shall be provided by the Bylaws. The Board of Directors shall have all powers and duties necessary for the administration of the affairs of the Association as provided in the Bylaws and the Articles of Incorporation.

## Section 7. Insurance.

7.1 Coverage. Except as otherwise provided in paragraph (c) of this Subsection 7.1, the Association shall, to the extent appropriate given the nature of the Common Areas, carry vandalism and malicious mischief and liability insurance (including, without limitation, director's and officer's coverage), worker's compensation insurance, if applicable, and such other insurance coverage as the Board may determine to be appropriate with respect to the ownership, use and maintenance of the Common Areas of the Development and the administration of Association affairs. Such insurance shall be carried and administered in accordance with the following provisions:

(a) Subject to paragraph (e) of this Subsection 7.1, all such insurance shall be purchased by the Association for the benefit of the Association, the members and their mortgagees, as their interests may appear, and provision shall be made for the issuance of certificates of insurance with mortgagee endorsements to the mortgagees of members' Lots.

(b) Each member shall obtain fire and extended coverage and vandalism and malicious mischief insurance with respect to his or her residence and all other improvements constructed or to be constructed, and for his or her personal property located, within the boundaries of his or her Lot or elsewhere in the Development, including but not limited to the Frontage Area adjoining his or her Lot. All such insurance will be carried by each member in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, and evidenced to the Association in a manner acceptable to the Association. In the event of the failure of a member to obtain such insurance, the Association may, but need not, obtain such insurance on behalf of such member and the premiums therefor will constitute a lien against the member's Lot which may be collected from the member in the same manner that Association assessments are collected in accordance with Article V. Each member also will be obligated to obtain insurance coverage for his or her personal liability for occurrences within the boundaries of his or her Lot (including within the residence located thereon), the Limited Common Areas appurtenant to his or her Lot, or on the

Frontage Area(s) appurtenant to his or her Lot and also for alternative living expense in the event of fire. The Association will under no circumstances have any obligation to obtain any of the insurance coverage described in this paragraph (b) or any liability to any person for failure to do so.

(c) notwithstanding anything to the contrary in this Subsection 7.1, ***each of the owners of Pond Lots shall, at their own cost and expense and for the mutual benefit of the Association and such insuring owner, maintain comprehensive general liability insurance against claims and liabilities for bodily injury, personal injury, death or property damage occurring in or about the pond and the land immediately surrounding the pond in the Northwest corner of the Development (the "Pond Area", as shown on the Plat). Such insurance shall have a combined single limit of not less than One Million Dollars (\$1,000,000.00) and shall name the Association and Developer as additional insureds.*** Such liability insurance shall be primary and not contributing to any insurance available to the Association or the Developer, and the Association's and the Developer's insurance (if any) shall be in excess thereto. The Association and the Developer shall not have any obligation or liability to insure the Pond Area. If, in the opinion of the Association's or the Developer's respective lenders, the amount of public liability and property damage insurance coverage provided by an insuring Lot owner at that time is not adequate, such insuring Lot owner shall increase the insurance coverage as required by either the Association's or the Developer's respective lenders. A certificate of such insurance acceptable to the Association and the Developer shall be provided to the Association and the Developer, respectively. The certificate shall identify all exclusions or reductions in coverage. The insurance certificate furnished to the Association and the Developer shall provide that the insurance shall not be terminated, modified, or allowed to expire without 30 days' prior written notice to the Association and the Developer.

(d) The Association and all members shall use their best efforts to see that all property and liability insurance carried by or for the benefit of the Association or any member shall contain appropriate provisions whereby the insurer waives its right of subrogation as to any claims against any member or the Association, and, subject to the provisions of Subsection 3.1 hereof, the Association and each member hereby waive, each as to the other, any right of recovery for losses covered by insurance. The liability of carriers issuing insurance obtained by or for the benefit of the Association shall not, unless otherwise required by law, be affected or diminished on account of any additional insurance carried by any member, and vice versa. All insurance shall also provide that it is not prejudiced by any act or neglect of individual Lot owners.

(e) Comprehensive public liability insurance shall be carried in such limits as the Board may from time to time determine to be appropriate, and shall cover the Association, each member, director and officer thereof and the professional management agent. If possible, the Developer shall be named as an additional insured party on the Association's liability insurance. Notwithstanding the foregoing, or anything to the contrary in this Declaration, the Board and the Lot Owners hereby agree to take all collective and individual actions reasonably necessary to implement such alternative public liability insurance programs for the Common Areas as are approved by a majority vote of the Lot Owners; provided, that such alternative insurance programs burden and benefit all of the Lot Owners equally, either directly or by way of assessment and/or compensation by the Association.

(f) All premiums upon insurance policies purchased by or for the benefit of the Association pursuant to this Declaration shall be Expenses of Administration, except as otherwise provided in paragraph (b) above.

(g) If required by law or deemed desirable by the Board, the Association shall maintain adequate fidelity coverage to protect against dishonest acts by its officers, directors, trustees and employees and all others who are responsible for handling the Association's funds. The premium on such bonds shall be an Expense of Administration.

(h) Proceeds of all insurance policies owned by or for the benefit of the Association shall be received by the Association, held in a separate account, and distributed to the Association, the members and their mortgagees as their interests may appear. Hazard insurance proceeds shall never be used for any purpose other than for repair, replacement or reconstruction of the Development, except as otherwise provided herein.

(i) All insurance carried by or for the benefit of the Association shall, to the extent possible, provide (i) for cross-coverage of claims by one insured against another and (ii) that such policies may not be canceled or non-renewed or substantially modified (whether or not requested by the Board) without at least thirty (30) days' prior written notice to the Board and all mortgagees and (iii) a standard mortgage clause or equivalent endorsement.

7.2 Appointment of Association. Each member, by accepting ownership of a Lot in the Development, shall be deemed to appoint the Association as his or her true and lawful attorney-in-fact to act in connection with all matters concerning insurance pertinent to the Development, his or her Lot and the Common Areas appurtenant thereto. Without limitation on the generality of the foregoing, the Association as said attorney shall have full power and authority to purchase and maintain such insurance, to collect and remit premiums therefor, to collect proceeds and to distribute the same to the Association, the members and respective mortgagees, as their interests may appear (subject always to this Declaration and the Bylaws and Articles of Incorporation), to execute releases of liability and to execute all documents and to do all things on behalf of such members and the Development as shall be necessary or convenient to accomplish the foregoing.

7.3 Mortgagees. Nothing contained in this Declaration shall be construed to give a Lot owner, or any other party, priority over any rights of their mortgagees for purposes of the adjustment, settlement and distribution of insurance proceeds or condemnation awards for damage to or a taking of any part of any Lot or Common Area. Mortgagees shall be entitled to receive notification of (i) any condemnation or casualty loss which affects a material portion of the Development or any mortgaged Lot and (ii) any lapse, cancellation, or material modification of insurance coverage.

## Section 8. Default.

8.1 Remedies. A breach of any provision of this Declaration shall constitute a default under this Declaration and may be enforced pursuant to the terms of this Declaration. Any default by a member shall entitle the Association or another member or members to the following relief:

(a) Failure to comply with any of the terms or conditions of this Declaration shall be grounds for relief, which may include, without limitation, an action to recover sums due for damages, for injunctive relief, for foreclosure of lien (if in default in payment

of an assessment) or any combination thereof, and such relief may be sought by the Association, or, if appropriate, by an aggrieved Lot Owner or Lot Owners.

(b) The Association's costs of exercising its rights and administering its responsibilities under this Declaration shall be Expenses of Administration; provided, that in any proceeding arising because of an alleged default by any member, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees through all appellate and enforcement proceedings (not limited to statutory fees), as may be determined by the Court, but in no event shall any member be entitled to recover such attorneys' fees.

(c) Such other reasonable remedies as provided in the rules and regulations promulgated by the Board of Directors, including, without limitation, the levying of the following fines against members for noncompliance with their obligations under this Declaration: (i) \$10/day for first offenses; (ii) \$20/day for second and subsequent offenses; and (iii) in the case of failure to keep the vegetation on an unimproved Lot mowed below six (6) inches in height, the Association shall mow the Lot and charge the Lot Owner \$100 for each mowing; provided, that the Lot Owner of an unimproved Lot may contract in advance for the Association to mow such Lot for a lesser amount.

(d) The violation of any of the provisions of this Declaration shall also give the Association or its duly authorized agents the right, in addition to the rights set forth above, to enter, where reasonably necessary, upon the Common Areas, or into any Lot, and summarily remove and abate, at the expense of the violating member, any structure, thing or condition existing or maintained contrary to the provisions of this Declaration.

8.2 Failure to Enforce. The failure of the Association or of any member to enforce any right, provision, covenant or condition which may be granted by this Declaration shall not constitute a waiver of the right of the Association or of any such member to enforce such right, provision, covenant or condition in the future.

8.3 Rights Cumulative. All rights, remedies and privileges granted to the Association, any member or members, or to Developer's first mortgagee, pursuant to any terms, provisions, covenants or conditions of this Declaration shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

8.4 Hearing. Prior to the imposition of any fine or other penalty hereunder, the offending member shall be given a reasonable opportunity to appear before the Board and be heard. Following any such hearing, the Board shall prepare a written decision and place it in the permanent records of the Association.

## Section 9. Assessments.

9.1 Regular Assessments. The Board of Directors shall establish an annual budget in advance for each fiscal year for the Development to be approved by the members at their annual meeting. If a majority of the members do not approve the budget, the Board shall revise it and call a special meeting of the members to adopt the revised budget. The Board shall follow this procedure as may times as is necessary until a budget for each year is approved by a majority of the members. The budget shall contain the Board's estimate of the funds required to defray the Expenses of

Administration for the forthcoming year, which shall include all common expenses. Unless specifically provided otherwise in this Declaration, the budget shall allocate and assess all Expenses of Administration against all Lot Owners equally. The costs to be allocated and assessed include, among other things, such amounts as the Board may deem proper for the operation, management and maintenance of the Development to the extent of the powers and duties delegated to it hereunder, and in the Bylaws and Articles of Incorporation, funds to be set aside for working capital of the Association, the cost of fulfilling the Association's maintenance, repair and replacement responsibilities, management wages, fees and salaries, common area utilities, refuse collection, lawn and landscaping maintenance and replacement, common area cleaning, supplies, licenses and permits, banking, legal and accounting fees, insurance, and creation and maintenance of an appropriate reserve fund if desired. The Board shall advise each member in writing of the amount payable by him or her and shall furnish copies of each budget on which such common charges are based to all members, although failure to deliver a copy of the budget to each member shall not affect any member's liability for any existing or future assessments. **All assessments levied in accordance with the foregoing provisions of this Subsection 9.1 shall be payable by Lot Owners annually on March 15<sup>th</sup>, commencing with acquisition of legal or equitable title to a Lot by any means.** Should the Board of Directors at any time determine, in its sole discretion, that the assessments levied are or may prove to be insufficient (a) to pay the operation and management costs of the Development, (b) to provide for the maintenance, repair or replacement of existing Common Areas, (c) to provide additions to the Common Areas not exceeding \$3,000 annually, or (d) to provide for emergencies, the Board may increase the general assessments or levy such additional assessment or assessments, and apportion them, as it deems necessary. Such assessments shall be payable when and as the Board shall determine.

9.2 Special Assessments. Special assessments, in addition to those provided in Subsection 9.1 above, may be levied by the Board of Directors from time to time, following approval by the members as hereinafter provided, to meet other needs, requirements or desires of the Association, including, but not limited to: (a) assessments for capital improvements or additions to the Common Areas at a cost exceeding \$3,000 per year; (b) assessments to purchase a Lot upon foreclosure of a lien for assessments, as described in Subsection 9.3 below; or (c) assessments for any other appropriate purpose not elsewhere herein described. Special assessments referred to in this Subsection 9.2 (but not including those assessments referred to in Subsection 9.1 above, which shall be levied in the sole discretion of the Board of Directors) shall not be levied without the prior approval of more than two-thirds (2/3) of all Lots, which approval shall be granted only by a vote of the members entitled to vote taken at a meeting of the members called in accordance with the provisions of Bylaws of the Association.

9.3 Collection of Assessments.

(a) (i) When used in this Subsection 9.3, and wherever else appropriate in this Declaration, the term "assessment" shall include all regular and special assessments referred to in Subsections 9.1 and 9.2 above and, in addition, all other charges whatsoever levied by the Association against any Lot Owner, including any fines for noncompliance with this Declaration. This Subsection 9.3 is designed to provide the Association with a vehicle for collection. Each member, whether one or more persons, shall be and shall remain personally obligated for the payment of all assessments levied with regard to his or her Lot during the time that he or she is the owner thereof, and no member may exempt himself or herself from liability for his or her contribution toward the Expenses of Administration by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his or her Lot.

(ii) If any member defaults in paying the assessed common charges, interest at eighteen percent (18%) or at the maximum legal rate, whichever is lower, shall be charged on such assessment from the due date thereof and further penalties or proceedings may be instituted by the Board of Directors in its discretion. ***In addition, if any member defaults in paying the assessed common charges, such member shall be charged a late payment fee of five percent (5%) per month that such assessed common charges remain unpaid.*** If such assessment, or any part thereof, is not paid on or before the due date established by the Board of Directors for such payment, then such payment shall be in default. The Board of Directors may, but need not, immediately report such a default to any mortgagee of record. Any mortgagee of a Lot may consider a default in the payment of any assessment a default in the payment of its mortgage.

(iii) Unpaid assessments and other charges due to the Association shall constitute a lien upon the Lot prior to all other liens except tax liens and sums unpaid on a first mortgage of record.

(iv) The Association may enforce collection of delinquent assessments by a suit at law for a money judgment or by foreclosure of the lien that secures payment of assessments. Each member, and every other person, except a first mortgagee, who from time to time has any interest in the Development, shall be deemed to have granted to the Association the unqualified right to elect to foreclose such lien either by judicial action or by advertisement (in accordance with the provisions of Chapter 32 of the Michigan Revised Judicature Act, as amended). The provisions of Michigan law pertaining to foreclosure of mortgages by judicial action and by advertisement, as the same may be amended from time to time, are incorporated herein by reference for the purposes of establishing the alternative procedures to be followed in lien foreclosure actions and the rights and obligations of the parties to such actions. The Association is hereby granted what is commonly known as a "power of sale." Each member and every other person, except a first mortgagee, who from time to time has any interest in the Development, shall be deemed to have authorized and empowered the Association to sell or to cause to be sold at public auction the Lot with respect to which the assessment is delinquent and to receive, hold and distribute the proceeds of such sale in accordance with the priorities established by applicable law. Each member acknowledges that, when he or she acquired title to his or her Lot, he or she was notified of the provisions of this Section and that he or she voluntarily, intelligently and knowingly waived notice of any proceedings brought by the Association to foreclose by advertisement the lien for nonpayment of assessments and a hearing on the same prior to the sale of the subject Lot.

(v) Notwithstanding the foregoing, neither a judicial foreclosure action nor a suit at law for a money judgment shall be commenced, nor shall any notice of foreclosure by advertisement be published, until ten (10) days have expired after the mailing, by certified mail, return receipt requested and postage prepaid, addressed to the delinquent member at his or her last known address, of a written notice that an assessment, or any part thereof, levied against his or her Lot is delinquent and that the Association may invoke any of its remedies hereunder if the default is not cured within ten (10) days after the date of mailing. A written affidavit of an authorized representative of the Association that sets forth (a) the affiant's capacity to make the affidavit, (b) the statutory and other authority for the

lien, (c) the amount outstanding (exclusive of interest, costs, attorney fees and future assessments), (d) the legal description of the subject Lot, and (e) the name of the member of record, shall accompany such written notice. Such affidavit shall be recorded in the office of the Register of Deeds for the County in which the Development is located prior to the commencement of any foreclosure proceeding, but it need not have been recorded as of the date of mailing the notice. If the delinquency is not cured within the ten (10) day period, the Association may take such remedial action as may be available to it hereunder or under Michigan law.

(vi) In the event the Association elects to foreclose the lien by advertisement, the Association shall so notify the representative of the delinquent member, and shall inform such representative that he or she may request a judicial hearing by bringing suit against the Association.

(vii) The expenses incurred in collecting unpaid assessments, including interest, costs, reasonable attorney's fees through all appellate and enforcement proceedings (not limited to statutory fees) and advances for taxes or other liens paid by the Association to protect its lien, shall be chargeable to the member in default and shall be secured by the lien on his or her Lot.

(viii) If any member defaults in the payment of any installment of the annual assessment levied against his or her Lot, the Association shall have the right to declare all unpaid installments of the annual assessment for the pertinent fiscal year immediately due and payable.

(b) If the holder of a first mortgage on a Lot obtains title to the Lot by foreclosing the mortgage, accepting a deed in lieu of foreclosure or similar remedy, or any other remedy provided in the mortgage, such person, and its successors and assigns, or other purchaser at a foreclosure sale, shall not be liable for unpaid assessments chargeable to the Lot which became due prior to the acquisition of title to the Lot by such person; provided, however, that such unpaid assessments shall be deemed to be common expenses collectible from all of the members, including such person, his or her successors and assigns and that all assessments chargeable to the Lot subsequent to the acquisition of title shall be the responsibility of such person as hereinbefore provided with respect to all members.

(c) The Association may purchase a Lot at any foreclosure sale hereunder.

9.4 Obligations of the Developer. The Developer, although a member of the Association, will not be responsible at any time for payment of any regular or special assessment, except with respect to Lots owned by Developer on which a completed residence is located. A "completed residence" is a residence with respect to which a certificate of occupancy has been issued. Notwithstanding the foregoing, Developer will at all times pay all expenses of maintaining the Lots that it owns. In no case, however, shall the Developer be responsible for paying any assessments levied in whole or in part to finance any litigation or other claims against the Developer, any cost of investigating and preparing such claim, or any similar or related cost.

Section 10. Leasing. No leasing of any Lot or any portion of any Lot or residence on a Lot shall be permitted.

Section 11. Assignment of Rights. All rights hereunder granted to a Lot Owner shall not be further assignable by such owner except as an appurtenance to and in conjunction with a sale of a Lot.

Section 12. Duration; Amendment.

12.1 (a) Except as otherwise expressed herein, these covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of ten years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by sixty (60) percent of the then-owners has been recorded, agreeing to change said covenants in whole or in part.

(b) Except as otherwise expressed herein, these restrictions may be amended by the affirmative written action of the Developer and not less than sixty (60) percent of the owners of all lots not owned by the Developer. So long as the Developer owns any Lot, this instrument may not be amended at any time without the consent of the Developer. Any amendments shall become effective ten days after notice of adoption of the amendment, together with a copy of the recorded amendment, is mailed to all Lot Owners. Notwithstanding the foregoing provisions of this Subsection 12.1, the easements reserved and granted in this instrument shall be binding perpetually, and no amendment shall modify or terminate such easements.

12.2 Severability. The invalidation of any one or more of the provisions set forth herein by any court of competent jurisdiction in no way shall affect any of the other reservations and restrictions, but they shall remain in full force and effect.

12.3 Common Plan. If the Developer at any time owns real property adjacent to the Development such property may be developed by the Developer, but not necessarily in accordance with a common plan or scheme. Accordingly, the covenants, conditions and restrictions set forth herein are intended to apply only to the Development and do not in any way burden or restrict the development of any other property owned by the Developer, unless the other property is specifically made subject to this Declaration by an instrument executed by the Developer and recorded in the office of the Kent County Register of Deeds.

Section 13. Recognition of Declaration by Mortgagee. Mortgagee agrees to recognize the covenants, conditions and restrictions contained in this Declaration and agrees to honor them even if Mortgagee forecloses upon any of the property covered by this Declaration.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Developer and Mortgagee have executed this Declaration of Covenants, Conditions and Restrictions as of the dates below.

MACLIND DEVELOPMENT, LLC

By \_\_\_\_\_  
\_\_\_\_\_, Member

STATE OF MICHIGAN     )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The forgoing instrument was acknowledged before me on \_\_\_\_\_, 2006,  
by \_\_\_\_\_, as \_\_\_\_\_ of Maclind Development, LLC, a Michigan  
limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ County, Michigan  
My commission expires: \_\_\_\_\_  
Acting in \_\_\_\_\_ County

MACATAWA BANK

By: \_\_\_\_\_  
Chad Holstege, Vice President

STATE OF MICHIGAN     )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The forgoing instrument was acknowledged before me on \_\_\_\_\_, 2006,  
by Chad Holstege, as Vice President of Macatawa Bank, a Michigan corporation, on behalf of the  
corporation.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ County, Michigan  
My commission expires: \_\_\_\_\_  
Acting in \_\_\_\_\_ County

PREPARED BY AND RETURN TO:  
Kurt S. Bauer  
Buckman MacDonald & Bauer PC  
44 East 8<sup>th</sup> Street, Suite 215  
Holland, Michigan 49423  
Telephone: (616) 394-4276

**FIRST AMENDMENT TO PROVIDENCE LAKE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

The undersigned hereby amend that certain Declaration of Covenants, Conditions and Restrictions recorded on June 21, 2006, in the office of the Kent County, Michigan, Register of Deeds as document #20060621-0070751, pages 1 through 23 inclusive (the "Declaration"), pursuant to Section 12.1(b) of the Declaration, with respect to the residential development known as Providence Lake (the "Development"), located in Byron Township, Kent County, Michigan, and described as:

Phase I:

Lots 1 through 39, inclusive, Providence Lake Park North, Providence Lake Park South, Providence Lake, Section 11, T5N, R12W, Byron Township, Kent County, Michigan, as recorded in Instrument No. 20060619-0069130,

AND

Phase II:

Lots 40 through 57 inclusive, Providence Lake Park North No. 2, Providence Lake No. 2, Section 11, T5N, R12W, Byron Township, Kent County, Michigan, according to the recorded plat thereof

The Declaration is amended as follows:

1. Subsection 2.2(h) of the Declaration is hereby amended in its entirety to read as follows:

"(h) Driveways and Mailboxes. All driveways must be a minimum of eight (8) feet wide and be constructed of concrete at least four (4) inches thick. The driveways shall connect to the road Rights-of-Way in the Development and no other street. All mailboxes shall be mounted on a black Mayne Dover model mailbox post, which shall be made available to each Lot Owner by the Association, and for which each Lot Owner shall reimburse the Association at its cost."

2. Subsection 2.2(f) of the Declaration is hereby amended in its entirety to read as follows:

"(f) Exterior Construction. All residences, including garages, sheds, storage buildings, or other accessory buildings, must have exteriors approved by the Developer. Such right of approval shall include color and all other aesthetic matters. The exterior shall be made of materials of comparable grade and quality consistent with those customarily used for comparable homes in the area, and at least twenty percent (20%) of the exterior side of the structure facing the road Rights-of-Way in the Development shall be stone or brick. All roofs on residences and garages shall have a minimum pitch ratio of 8:12."

3. Subsection 9.3(a)(ii) of the Declaration is hereby amended in its entirety to read as follows:

“(ii) If any member defaults in paying the assessed common charges, interest at seven percent (7%) shall be charged on such assessment from the due date thereof, and further penalties or proceedings may be instituted by the Board of Directors in its discretion. If such assessment, or any part thereof, is not paid on or before the due date established by the Board of Directors for such payment, then such payment shall be in default. The Board of Directors may, but need not, immediately report such a default to any mortgagee of record. Any mortgagee of a Lot may consider a default in the payment of any assessment a default in the payment of its mortgage.”

In all other respects, except as specifically modified in this First Amendment, the Declaration, as previously modified, is hereby ratified and confirmed.

The foregoing First Amendment to the Declaration has been approved by the Developer, and by the requisite number of Lot Owners, as required under Subsection 12.1(b) of the Declaration, and is being executed on behalf of the Lot Owners by the PROVIDENCE LAKE ASSOCIATION.

MACLIND DEVELOPMENT, LLC

By \_\_\_\_\_  
James R. Ogg, Member

STATE OF MICHIGAN        )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The forgoing instrument was acknowledged before me on \_\_\_\_\_, 2010, by James R. Ogg, as the Member of Maclind Development, LLC, a Michigan limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ County, Michigan  
My commission expires: \_\_\_\_\_  
Acting in \_\_\_\_\_ County

PROVIDENCE LAKE ASSOCIATION

By: \_\_\_\_\_  
\_\_\_\_\_, President

STATE OF MICHIGAN        )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2010, by \_\_\_\_\_, as President of the PROVIDENCE LAKE ASSOCIATION, a Michigan nonprofit corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public, Allegan County, Michigan  
My Commission Expires: \_\_\_\_\_

Prepared by and Return to:  
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