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KIRKLANDS AT OAKLANDS

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OAKLAND TOWNSHIP, OAKLAND COUNTY, MICHIGAN

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as the "Declaration"), is made this 7 day of MAR, 2001, by Kirklands/Adams Development L.L.C., a Michigan limited liability company (hereinafter referred to as the "Declarant"), whose address is 3005 University Drive, Suite 100, Auburn Hills, Michigan 48326.

WITNESSETH:

 WHEREAS, Declarant is the owner of certain real property located in Oakland Township, Oakland County, State of Michigan, as legally described on Exhibit A, which real property has been platted and is now known as **KIRKLANDS** in accordance with the Plat recorded in Liber 218, Pages 8 THRU 12, Oakland County Records (the "Subdivision"); and

WHEREAS, Declarant desires to impose upon the Subdivision (but not any property outside of the Subdivision, whether or not owned by Declarant) covenants, conditions, restrictions, easements, charges and liens in order to insure the most beneficial development of the Subdivision as a single family residential area, to prevent any use thereof which might tend to diminish its valuable or pleasurable enjoyment, and to assure the harmony, attractiveness and utility thereof, to provide for Lot Owners in the Subdivision to bear certain expenses, to impose other rights and obligations as set forth below, to provide for the preservation of certain services and facilities for the Subdivision and the permanent maintenance of such facilities by an Association comprised of Lot Owners in the Subdivision, to establish an Association to which shall be delegated the powers and responsibility to maintain and administer the facilities and certain Common Areas, which Association shall also be empowered to administer and enforce

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the covenants, conditions, restrictions, easements, charges and liens as set forth in this Declaration and to collect and disburse the assessments and charges hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that the Subdivision and each and every Lot therein shall be held, sold, transferred and conveyed subject to the following covenants, conditions, restrictions, easements, charges and liens which shall run with the Subdivision and each and every Lot therein and shall be binding upon and inure to the benefit of all parties having any right, title or interest in the Subdivision or any part thereof, their heirs, successors and assigns.

ARTICLE I

DEFINITIONS

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

A. **Architectural Control Committee.** "Architectural Control Committee" shall mean the Committee appointed in accordance with the provisions of Article VIII below.

B. **Association.** "Association" shall mean the **KIRKLANDS** Homeowners Association, a Michigan nonprofit corporation to be organized for a perpetual term by the Declarant and in which all Lot Owners shall be Members.

C. **Common Areas.** "Common Areas" shall mean and refer to East Kirklands Park, North Kirklands Park and South Kirklands Park and all areas of land, if any, denoted as "Private Parks" on the recorded Plat of the Subdivision. **KIRKLANDS** is a component of a Planned Unit Development known as **THE OAKLANDS**. "Common Areas" do not include the sidewalks which the Lot Owners are individually responsible for as provided in Article VII, paragraph L. of this Declaration. Declarant may, from time to time, transfer any portion of the Subdivision to the Association. Such transfer shall be effective to convey all or any portion of the interest of Declarant to the Association, which shall be deemed to have accepted such conveyance and which shall maintain the property conveyed as provided herein or in the instrument of conveyance.

D. **Dwelling.** "Dwelling" shall mean a single family residential dwelling.

E. **Landscaping and Signage Areas.** "Landscaping and Signage Areas" shall mean the Landscape and Signage easement areas shown on the Plat.

F. **Lot.** "Lot" shall mean any Lot within the Subdivision, as such Lots are set forth in the Plat of the Subdivision.

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N. **Subdivision.** "Subdivision" shall mean the real property described in Exhibit "A" attached hereto and made a part hereof, according to the Plat thereof.

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O. **Township.** "Township" shall mean and refer to the TOWNSHIP OF OAKLAND, Oakland County, Michigan.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

The real property which is subject to and shall be held, transferred, sold, conveyed and occupied pursuant to this Declaration is more particularly described in Exhibit A attached hereto and made a part hereof, and includes forty-nine (49) Lots plus the Common Areas.

ARTICLE III

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

A. **Membership.** Every Lot Owner shall be a Member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment hereunder. Optionees or land contract vendees of Declarant shall not be Members of the Association, but shall be fully responsible for all assessments and charges imposed hereunder against the Lots purchased. No Lot Owner, whether one or more persons, shall have more than one (1) membership per Lot owned. In the event a Lot Owner is more than one person or entity, votes and rights of use and enjoyment shall be as provided herein.

B. **Voting Rights.** Each Member shall be entitled to one (1) vote for each Lot owned. When more than one person or entity holds an interest in any Lot ("multiple ownership"), all such persons shall be Members but in no event shall there be more than one vote cast with respect to any such Lot. When more than one person or entity holds an interest in any Lot, such vote shall be exercised as the holders of such interests may, among themselves, agree and they shall so notify the Association in writing prior to any vote. Where a Lot is subject to multiple ownership, and the Lot Owners fail or refuse to notify the Association of the manner in which the multiple owners shall exercise their single vote within fifteen (15) days of the date set for the meeting, then and in such event the Lot Owner whose name first appears on record title shall be deemed the Member authorized to vote on behalf of all the multiple Lot Owners and any vote cast in person or by proxy by said Lot Owner or the failure of said Lot Owner to vote shall be binding and conclusive on all such multiple Lot Owners.

Notwithstanding the foregoing, no Member, other than Declarant, shall have the right to vote on Association matters, and the Declarant shall have the exclusive right to establish bylaws for the Association, to appoint the Board of Directors of the Association, and to amend this Declaration, all in Declarant's sole and absolute discretion, until the earlier to occur of: (a) such

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time as Declarant has sold, closed and conveyed title to not less than one hundred percent (100%) of the Lots in the Subdivision and the lots in any other subdivision combined with or annexed to the Subdivision pursuant to Article II; and (b) such time as Declarant shall execute and deliver to the Association a written instrument executed by Declarant specifically relinquishing such exclusive voting rights but not less than two-thirds (2/3) of lots conveyed. From and after the earlier of such dates, the Board of Directors shall be elected by the Members, and the Declarant shall have no further responsibilities with respect to the Association except for its responsibilities as a Member of the Association so long as it remains a Lot Owner.

ARTICLE IV

EASEMENTS AND PROPERTY RIGHTS IN THE COMMON AREAS

- A. **Lot Owner's Easement of Enjoyment.** Subject to the Covenants, Conditions and Restrictions of this Declaration, as the same may be amended as provided herein, every Lot Owner shall have a right and easement to use the Common Areas for their intended purposes, and such easement shall be appurtenant to and shall pass with title to every Lot. Declarant reserves the right (but not the obligation), in its sole and absolute discretion, to create recreational facilities for the benefit of all Lot Owners. Declarant expressly reserves the right to establish separate Associations to own, maintain, repair, and replace recreational facilities that are limited in use to less than all of the Members.
- B. **Title to the Common Areas.** Prior to the conveyance by deed of the last Lot in the Subdivision to a Member of the Association, Declarant shall convey the Common Areas to the Association, free and clear of all liens and encumbrances, except easements and right-of-ways of record, and subject to the Covenants, Conditions and Restrictions of this Declaration.
- C. **Association's Rights in the Common Areas.** The Association shall have the right to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Lot Owners who have the right to use such Common Areas; provided, however, that any dedication, transfer, or determination as to the conditions thereof shall be effective only upon execution of an instrument signed by Declarant or, upon the closing of Declarant's sale of not less than one hundred percent (100%) of the Lots in the Subdivision and the lots in any other subdivision combined with or annexed to the Subdivision pursuant to Article II, by the holders of two-thirds (2/3) of all Members of the Association granted the right to use such Common Areas pursuant to this Declaration and which is recorded and confirms or approves such dedication, transfer or determination; and further provided, however, that any dedication, transfer or determination as to the conditions thereof shall be effective only upon the prior consent thereto being received from the Township. The Association shall comply with all applicable laws in connection with any such dedication, including but not limited to any applicable provisions of the Land Division Act

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MCL 560.101-560.293, as amended (the "Land Division Act"). Anything contained herein to the contrary notwithstanding, Declarant shall have the exclusive right, subject to compliance with all applicable laws, including but not limited to any applicable provisions of the Land Division Act, to grant public or private easements or rights-of-way to public or private utilities or governmental bodies in, over or upon the Common Areas prior to conveyance to the Association and the Association shall receive the same subject thereto. Declarant shall also have the right to create recreational amenities within the Common Areas as may be approved by the Township prior to conveyance to the Association, such as pools, tennis courts, gazebos and related amenities. Any such recreational facilities may be limited in use to less than all of the Lot Owners, as provided in paragraph A. of this Article IV.

D. **THE KIRKLANDS Drainage District.** As provided in the Planned Unit Development Documents, the Storm Drainage Facilities in the entire property included in **THE KIRKLANDS** has been established as a county drain by agreement between the Declarant and the Oakland County Drain Commissioner (acting for and on behalf of **THE KIRKLANDS** Drainage District). The entire property included in **THE KIRKLANDS** shall be assessed and treated as a single special assessment district on a coordinated and unified basis to finance all costs and expenses for and relating to the entire **THE KIRKLANDS** Drainage District. Certain of the Common Areas are subject to permanent easements shown on the Plat for surface water drainage and Storm Drainage Facilities as part of **THE KIRKLANDS** County Drain. The costs of inspection, maintenance, repair and replacement of **THE KIRKLANDS** County Drain will be paid by the Lot Owners, as provided in the Agreement between Declarant and the Oakland County Drain Commissioner to be recorded in Oakland County Records. The Ponds are storm water detention areas that are part of the Storm Drainage Facilities for the Subdivision. The Ponds are Common Areas that will be maintained by the Association for the benefit of all members of the Association.

E. **Landscaping and Signage Areas.** The Landscaping and Signage Easement Areas shown on the Plat have been established by Declarant for the benefit of all Lot Owners and are subject to use by the Association for landscaping and signage purposes. During the period that Declarant is in control of the Association pursuant to Article III, paragraph B, Declarant reserves the right to use all Landscaping and Signage Areas to promote the sale of Lots and homes in the Subdivision. The Owners of Lots in the Subdivision and the land contract and option purchasers of Lots from Declarant are obligated to pay their pro rata share of the cost of maintaining the landscaping, berming and other improvements including, but not limited to, signage for the Subdivision installed by Declarant in the Landscaping and Signage Areas.

F. **Open Space Agreement.** The open space (e.g., private parks) shown on the Plat are subject to a Conservation Easement - Open Space recorded with the Oakland County Register of Deeds in Liber 19218, Page 374 (as amended), such that all such open space areas shall be preserved in perpetuity by the Association in a natural, undisturbed condition (subject to exceptions therein provided).

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G. **Wetland Preservation.** The wetland areas in the Subdivision, as shown on the Plat, are subject to a Conservation Easement – Wetlands recorded with the Oakland County Register of Deeds in Liber 21153, Page 851, such that all such wetland areas shall be preserved in perpetuity by the Association in a natural, undisturbed condition (subject to the exceptions therein provided).

H. **Scenic Easement.** As shown on the Plat, and provided in the Planned Unit Development Documents, a scenic easement has been dedicated to the Lot Owners, their guests and invitees, for the unrestricted use of safety paths to be built by Declarant in the scenic easements along the public rights of way adjacent to the Subdivision and shown on the Plat.

I. **Gallagher Creek.** *The Oaklands PUD* encompasses Gallagher Creek, a most sensitive natural resource. The Planned Unit Development Documents obligate the Association to undertake significant measures to protect Gallagher Creek. The Association shall employ Best Management Practices, designs and methods, in maintaining, repairing and replacing the stormwater drainage system located in the Subdivision in order to cause and maintain that any discharges into areas within the Gallagher Creek watershed and other sensitive areas consist of cold water at an agricultural rate.

ARTICLE V

MAINTENANCE AND ASSESSMENT COVENANT

A. **Association Responsibilities.** Except as hereinafter provided, the Association shall have the duty and responsibility to maintain the Common Areas for the benefit of the Subdivision. The Association shall also maintain any other areas in or adjacent to the Subdivision, such as any common landscaped areas, bicycle and safety paths, sidewalks in Common Areas, boulevard medians, green belts along roads, walkway easements, cul-de-sac islands, the Storm Drainage Facilities, surface drainage and detention areas, if any, all recreational amenities, and all areas of the Subdivision not privately owned or which may be transferred to the Association from time to time.

B. **Lien and Personal Obligation for Assessments and Charges.** Declarant, for and on behalf of each and every Lot owned within the Subdivision, does hereby covenant and agree and each Lot Owner by acceptance of a deed therefor whether or not it shall be set forth therein, is deemed to covenant and agree to pay to the Association: (a) all annual assessments or charges when due; (b) special assessments, if any, for capital improvements to be established and collected as hereinafter set forth; (c) special assessments against the Lot Owner for the cost of replacing any dead street trees on such Owner's Lot pursuant to the procedure established in Article VII, paragraph Q below; (d) charges assessed by the Township against the Subdivision or the Declarant that are direct or indirectly attributable to the construction of a home on the Lot as described in paragraph G of this Article V and paragraph I of Article VII, and each Lot Owner

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does covenant, agree and accept all of the terms, conditions, covenants and agreements hereof in accordance herewith; and (e) charges imposed by the **CLAREMONT AT OAKLANDS ASSOCIATION** for maintenance, repair and replacement of **THE OAKLANDS** entry located at the Southeast corner of Adams and Silverbell Roads and associated monuments, bicycle paths, brick pavers, park benches, landscaping, irrigation and all other improvements located at that corner, which charges shall be assessed equally to all dwelling units in **THE OAKLANDS** development. As provided in Article I above, the optionee or land contract vendee of any Lot shall be responsible for the payment of all assessments and charges imposed pursuant to this Declaration.

C. **Purpose of General Assessments.** The purpose of the general assessments levied by the Association shall be for the repair, maintenance, operation, management and improvement of the Common Areas, including but not limited to the payment of all taxes and insurance thereon, the repair and replacement thereof, the operation thereof, additions thereto and improvements thereon, and for the cost of labor, equipment, materials, management and supervision for and in conjunction therewith. Notwithstanding anything contained herein to the contrary, in the event the Association fails or refuses to provide the necessary repairs, maintenance, operation, management and improvement of the Common Areas, then and in such event the Township shall have the right but not the obligation to assess all costs for the same under and pursuant to this Declaration and each Lot Owner consents to such assessment and agrees that such assessment shall be payable on demand to the Township. In addition to other methods of collection, the Township shall have the right to place such assessment on the Township tax rolls of the assessed property.

D. **Annual Assessments.** Until January 1 of the year immediately following the first conveyance by Declarant of a Lot to a Lot Owner who is a Member of the Association, the maximum annual assessment shall be One Thousand Dollars (\$1,000.00) per Lot.

1. From and after January 1 of the year immediately following the first conveyance by Declarant of a Lot to a Lot Owner who is a Member of the Association, the maximum annual assessment may be increased or decreased annually as may be determined by Declarant or, after conveyance of one hundred percent (100%) of the Lots in the Subdivision and the lots in any other subdivision combined with or annexed to the Subdivision pursuant to Article II, by a vote of two-thirds (2/3) of each of the Members of the Association who are voting in person or by proxy, at a meeting duly called for this purpose, as needed to pay all costs, expenses and charges to carry out its purposes hereunder. Notwithstanding the foregoing, in no event shall the annual assessment be increased during any calendar year by more than twenty-five percent (25%) of the annual assessment levied in the preceding calendar year.

2. In the event the membership does not or cannot agree on any change from and after January 1 of the year immediately following the first conveyance of a Lot to a Lot Owner who is a Member of the Association, then and in such event the annual assessment shall

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continue at the rate of One Thousand Dollars (\$1000.00) per Lot or such other annual rate hereafter established by Declarant pursuant to paragraph D.1. of this Article V; provided, however, that in the event of any annual deficit, the Board of Directors of the Association shall assess each Lot pro rata annually to pay any such deficits.

E. **Special Assessments.** In addition to the annual assessments provided for herein, the Association may levy special assessments applicable to an assessment year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement to a Common Area, provided, however, that any such special assessment shall first be approved by two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose and who have the right to use the Common Area as provided elsewhere herein.

F. **Uniform Assessment Rate.** All annual, special and deficiency assessments shall be fixed and established at the same rate for all Lots except to the extent the Declarant establishes Limited Common Areas, the costs and expenses of which shall be assessed only to the Lot Owners having use rights in the Limited Common Areas.

G. **Charges for Compliance with Ordinances, Laws, Rules or Regulations and Street Cleaning.** Each Lot, during and immediately after construction of any Structure on the Lot, is subject to such charges as are necessary to defray the cost of street cleaning and to pay any other costs imposed by the Township or any other governmental entity on the Declarant or the Subdivision that are directly or indirectly related to construction activities on Lots in the Subdivision. Any cost imposed by the Township or any other governmental entity on the Declarant or the Subdivision that directly or indirectly relates to the construction activities on one or more Lots shall be assessed against, and shall be payable by, the Owners (or land contract or option purchasers from Declarant) of the Lots to which the costs are attributable.

H. **Notice and Quorum.** Written notice of any membership meeting called for any purpose hereunder shall be sent by first class mail to all Members at least twenty (20) days in advance of such meeting, and shall set forth the purposes thereof. At the first meeting of the Association, the presence of Members or of proxies entitled to cast thirty-five percent (35%) of all votes of the Members shall constitute a quorum. In the event the required quorum is not present at such meeting, another meeting may be called, upon notice as set forth herein, and the required quorum at such subsequent meeting shall be fifty percent (50%) of the required quorum at the preceding meeting.

I. **Commencement Date of Annual Assessments.** The first annual assessment shall commence and be due for each Lot from the Owner on the date legal or equitable title is acquired from the Declarant. In the event of land contract or option sales by Declarant, the land contract vendee or optionee shall be responsible for all assessments for the Lot sold on land contract or option from the date of the land contract or option. The amount of the annual assessment which shall be due for the first annual assessment shall be an amount which bears the

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same proportion to the annual assessment specified in paragraph D of this Article V as the remaining number of months in that year bears to twelve (12). The annual assessments for any year, after the first assessment year, shall become due and payable on the first day of January of each year; provided, however, that the Board of Directors, in its discretion may establish an installment program for payment of the annual, special or deficit assessments and may charge interest in connection therewith, but each such assessment shall be and become a lien on each Lot on January 1 of each year after the initial year.

J. **Board of Directors' Duties.** Subject to the foregoing provisions, the Board of Directors of the Association, which shall consist of at least three (3) and not more than fifteen (15) persons, shall fix the amount of the assessments against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall prepare a roster of the Lots and the assessments applicable thereto to be maintained in the office of the Association and which shall be open to inspection by any Owner at all reasonable times. Written notice of the assessment shall thereupon be sent to every Owner subject thereto and the Association shall, upon demand and payment of a reasonable charge, furnish to any Owner liable for such assessment a certificate in writing signed by an officer of the Association, which states whether such assessment has been paid and the amount of any due but unpaid assessments.

K. **Effect of Non-Payment of Assessments or Charges, Personal Obligation of the Owner and Liens and Remedies of the Association.** In the event any assessment or charge is not paid on the due date then such assessment or charge shall become delinquent and a lien therefor shall thereupon arise and shall, together with interest thereon and costs of collection therefor (as hereinafter provided), be and become a continuing lien on such Lot until paid in full, and such lien shall be binding upon the Lot, the Owner thereof and his or her heirs, personal representatives, successors and assigns. Such assessments and charges shall also be a personal obligation and debt of each Lot Owner and shall be binding upon each Lot Owner and remain the Lot Owner's obligation and debt for the statutory period. Any successor or assign in or to title may obtain from the Association a written statement as to any unpaid assessments and charges on such Lot and such statement shall be binding upon the Association. In the event the assessment is not paid in full within thirty (30) days after delinquency, the assessment shall bear interest from the date of delinquency at the rate of seven (7%) percent per annum and the Association may bring an action at law against the Lot Owner personally obligated to pay the same or foreclose the lien against the Lot, and the costs of preparing and filing the complaint in such action and/or in connection with foreclosure shall be added to the amount of such assessment(s) and interest, and, in the event a judgment is obtained, the judgment shall include interest on the assessment(s) as above provided and reasonable attorneys' fees together with all costs and expenses of the action.

L. **Subordination of the Assessment Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and any sale or transfer of any Lot shall not affect the assessment lien; provided, however, that the sale or transfer of any Lot in connection with a mortgage foreclosure preceding or any proceeding in

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lieu thereof, shall extinguish the lien of the assessments, interest and charges due prior to such sale or transfer, but in no event shall the prior Owner thereof be relieved of any liability whatsoever for such obligation and debt. No subsequent sale or transfer shall relieve such Lot from liability for any assessments, interest or charges which thereafter become due or from any lien therefor.

M. **Exemptions and Modification of Assessments.**

1. The Common Areas shall be exempt from any regular assessments, special assessments or deficiency assessments and from and against any liens or encumbrances therefor.
2. All Lots owned by Declarant shall be exempt from ninety (90%) percent of the annual assessments, special assessments and deficiency assessments. After conveyance of title to any Lot by Declarant to a Member or after Declarant's sale of a Lot on land contract or option, this exemption for each Lot shall thereupon cease and such Lot shall then be liable for the prorated balance of that year's established annual assessment (and special assessment, if any); provided, however, that any Lots owned by Declarant shall not be exempt from assessments by the Township for real property taxes and other charges.
3. The initial cost of development of the Common Areas for the purpose set forth on the Plat shall be borne and paid for by Declarant, and Declarant shall have no other obligation to construct improvements upon or develop any of the other Common Areas.

ARTICLE VI

ARCHITECTURAL CONTROL

A. No Structure may be commenced, erected, installed, placed, or maintained upon any Lot unless or until the Lot Owner of such Lot has submitted the following documentation to the Architectural Control Committee (which shall be initially controlled by Declarant as provided in Article VIII) and the Architectural Control Committee has approved all of such documentation in writing:

1. A topographic survey of the Lot prepared and certified by a licensed engineer or architect showing existing and proposed grades, the proposed location of each Structure located or to be located on the Lot, the location of all trees proposed for removal during construction, the plan for preserving trees to remain, and the soil erosion control plan for construction.
2. Construction and architectural plans prepared and certified by a licensed engineer or architect including dimensioned floor plans, typical sections and all elevations for the Structure to be constructed upon or in the Lot.

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3. Specifications for each Structure prepared by a licensed architect or engineer setting forth the type and quality of all materials and workmanship and including a detailed finish schedule for all exterior materials, products and finishes, with actual samples of all exterior materials, including stain and brick color.

4. A construction schedule specifying the commencement and completion dates of construction of the Structures, as well as such other dates as the Architectural Control Committee may specify for completion of stages of the Structures.

5. A driveway plan, which shall be reviewed to ensure the location of all driveways in the Subdivision comply with Declarant's master driveway location guide. Declarant has sole and absolute discretion to establish, maintain, and amend the master driveway location guide and to approve the driveway location on every Lot in the Subdivision.

B. A Lot Owner (including land contract and option purchasers of Lots from Declarant) shall submit two copies of the aforescribed documents to the Architectural Control Committee, and the Architectural Control Committee shall retain one copy of each document for its records.

C. Declarant intends and desires that all Structures within the Subdivision be architecturally harmonious and architecturally pleasing and that the design and location of such Structures take into account the preservation of trees and the natural environment of the Subdivision. In order to insure that such goals are accomplished, the Architectural Control Committee shall, in its sole discretion, have the right to approve or disapprove the appearance (including, but not limited to, the color of stain and brick), construction, materials, proposed location, design, specifications or any other attribute of any Structure.

D. A Lot Owner may only construct, install or place upon a Lot those Structures and landscaping materials that have been approved in writing by the Architectural Control Committee in the manner set forth herein. Before construction of any Dwelling or making any exterior improvement, change, or elevation change upon any Lot, an Owner shall receive the written approval of the Architectural Control Committee. No application for a building permit or application for any other governmental approval or construction shall be filed until written approval of the Committee is received. No Structure shall be erected by anyone other than a licensed residential builder. The Architectural Control Committee shall approve in advance the licensed residential builder engaged by the Owner to construct a Dwelling and any other improvements on the Owner's Lot. The Architectural Control Committee may require that such builder or Owner furnish to the Association adequate security, in the Architectural Control Committee's sole and absolute discretion, to protect the Association against costs and expenses which it might incur in connection with the failure to complete construction in a timely and diligent manner in accordance with the approved plans and specifications for the Dwelling and other improvements.

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E. The following additional requirements, restrictions and regulations shall apply to all construction activities on Lots in the Subdivision unless waived in writing by the Architectural Control Committee:

1. The Architectural Control Committee shall have the right to establish and enforce such rules and regulations relative to the performance of construction activities within the Subdivision (whether or not in connection with the construction, repair or maintenance of a Dwelling or other Structure) as the Architectural Control Committee determines to be appropriate in order to maintain the tranquility, appearance and desirability of the Subdivision.
2. All construction activities must be started within two (2) months of the time specified in the construction schedule submitted to and approved by the Architectural Control Committee. Prior to commencement of construction, the Owner must obtain all permits or approvals required by the Township.
3. Prior to the commencement of any construction activities relative to the building of a Dwelling on a Lot, the Owner of the Lot (or the land contract or option purchaser of the Lot from Declarant) shall post with the Declarant a Five Hundred Dollar (\$500) deposit to ensure that manholes on the Lot or in the public right-of-way adjacent to the Lot are at grade at completion of construction and to further ensure that during and after construction the road on which the Lot is located is maintained in a good and clean condition and free of any dirt, mud or other debris and free from damage arising from construction activities (including, but not limited to, damage to curbs). The instructions for disposition of the deposit shall give the Declarant the sole and absolute discretion to determine whether the Owner of the Lot (or land contract or option purchaser of the Lot from Declarant) has complied with this paragraph.
4. No approval by the Architectural Control Committee shall be valid if the Structure or improvement violates any of the restrictions or requirements set forth in this Declaration, except in cases where waivers or variances have been granted as provided for in this Declaration.
5. The Architectural Control Committee may disapprove plans because of noncompliance with any of the restrictions or requirements set forth in Articles VI and VII of this Declaration, or because of reasonable dissatisfaction with: (a) the value of the proposed landscaping improvements; (b) the grading and drainage plan; (c) the location of the Structure on the Lot; (d) the materials used; (e) the color scheme; (f) the finish, design, proportions, shape, height, style or appropriateness of the proposed improvement or alteration; or (g) because of any matter or thing which, in the reasonable judgment of the Committee, would render the proposed improvement or alteration inharmonious or out of keeping with the objectives of the Committee or with Structures erected on other Lots in the Subdivision.

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F. The Architectural Control Committee shall have ten (10) days after the receipt of all required plans and specifications to issue a written approval or denial. If the Architectural Control Committee fails to issue a written approval or denial of the plans and specifications within the ten (10) day period, then written approval will not be required and the plans and specifications submitted shall be deemed to comply with this Article and Declaration.

G. The Committee may charge a review fee, not to exceed Two Hundred Fifty Dollars (\$250), in connection with the review of plans and specifications for any Structure or combination of Structures on any Lot, or in regard to the substantial alteration of any Structure. The fee may not be utilized for the purpose of paying any salary to any Member of the Committee, but shall be used exclusively for the purpose of reimbursing the actual expenses of the Committee, including, without limitation, the professional fees of independent consultants to the Committee.

ARTICLE VII

BUILDING, USE AND OTHER RESTRICTIONS AND EASEMENTS

A. **Residential Lots.** No Lot subject hereto shall be used except for residential purposes. No Lot in the Subdivision shall be used or shall have any improvement made to it or erected upon it in violation of the ordinances or requirements of Township or such other governmental entity as may have jurisdiction thereover. No Structure shall be erected, altered, placed or permitted to remain on any Lot subject hereto other than one (1) detached Dwelling which shall include an attached private garage (which shall not exceed thirty-five (35) feet in height) for not more than five (5) cars for the sole use of the Owner or occupant of the Lot upon which such Dwelling and garage shall have been erected; provided, that each Dwelling constructed upon any Lot shall have at least a two (2) car garage attached thereto, constructed at the time of and in conjunction with construction of such Dwelling; and subject, further, to the additional Covenants, Conditions and Restrictions hereinafter set forth and imposed upon and against the Lots, or any portions thereof.

B. **Square Footage and Type of Construction.** The Declarant intends and desires that all Dwellings in the Subdivision be architecturally harmonious and architecturally pleasing and that the design and location of such Dwellings take into account the preservation of trees and the natural environment of the Subdivision. All Dwellings within the Subdivision shall contain the following minimum square footage requirements:

1. Single story: 2,200 square feet;
2. One and one-half story: 2,500 square feet, with at least 1,700 square feet on the first floor; and

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3. Two story, bilevel or multilevel: 2,850 square feet, with at least 1,800 square feet on the first floor.

The square footage areas of any garage or basement shall not be included in computing whether the foregoing minimum square footage requirements have been met. The square footage area of any two-story rooms shall be limited to the useable floor area of the room (i.e., the floor area of two-story rooms will not be doubled in determining the square footage of a Dwelling). Not less than seventy-five percent (75%) of each of the first floor exterior walls of all Dwellings shall be covered with brick or stone. The remaining twenty-five percent (25%) of the first floor exterior walls and all of the exterior walls on all other floors shall be of brick, stone and/or wood. Aluminum siding or asbestos or asphalt shingles shall not be used on the exterior walls of any floor of any dwelling. No construction contrary to the provisions of this Article VII., Subparagraph B. shall be permitted unless prior written approval for same shall first have been obtained from Declarant or the Architectural Committee.

C. **Lot Size.** No Lot shall be divided and/or reduced in size by the conveyance of a part thereof, or by the use and/or addition of a part thereof in conjunction with or as part of any adjacent Lot to constitute a building site other than precisely as indicated within the recorded Plat of the Subdivision; provided, however, that if any of the Lots shall be altered and reduced in total area by the taking, use or purchase of a portion thereof for a public purpose by a public agency, this provision shall not apply to prohibit the construction of a Dwelling upon such Lot as reduced in size.

D. **Building Lines.** No Dwelling shall be placed, erected, installed or located on any Lot nearer to the front, side or rear Lot line than permitted by the ordinances of the Township in effect at the time of installation of such Dwelling.

1. The front yard setback line shall be forty (40) feet.
2. The rear yard setback line shall be at least thirty-five (35) feet.
3. The side yard setback line shall be at least five (5) feet per side, and the combined total width of the two (2) side yards on any Lot shall not be less than thirty (30) feet; provided, however, where a side yard is on the road or street side of a Lot, such side yard setback line shall be not less than twenty-five (25) feet.

Front, rear and side yards smaller than this shall only be permitted if a variance from the setback or setbacks is granted by the Architectural Control Committee in order to allow different home styles on a particular Lot (subject to Township variance approval). Approval of a variance by the Architectural Control Committee of setbacks less than those established above will be permitted if the configuration of the proposed home or the grade, soil or other physical conditions pertaining to a Lot justify such a variance.

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E. **Trees.** All Lot Owners (and land contract and option purchasers of any Lot from Declarant) shall comply with the Township's woodlands ordinance then in effect, if any, in connection with any proposed tree removal.

F. **Nuisances.** No noxious or offensive activity shall be carried on or upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the other Lots or Lot Owners.

G. **Restrictions on the Use of Common Areas.**

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

2. **Structures.** No wall, building or Structure may be constructed nor any development or improvement done in the Common Areas without the prior written consent and approval of the Architectural Control Committee and all government agencies having jurisdiction.

3. **Refuse and Storage.** The Common Areas shall not be used as a dumping ground for storage or disposed of rubbish, trash, garbage or other materials.

4. **Pets.** No Owner shall allow the Owner's dog or any other pet to run loose in the Common Areas.

5. **Use of the Common Areas.** The Common Areas shall be used only for passive recreation and for no other purpose. Golfing and all other active sports are prohibited. Activities in the Common Areas shall be carried on in such a manner as to avoid disturbing or otherwise offending other Owners. No firearms, air rifles, pellet or B-B guns, bows and arrows, sling shots or other weapons are allowed in the Common Areas.

6. **Wild Life.** No Owner shall permit or suffer the molestation or destruction of wild ducks, geese, birds or other harmless wild life in the Common Areas.

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

8. **Rules and Regulations.** The Architectural Control Committee shall have the right to publish from time to time reasonable rules and regulations consistent herewith governing the use of the Common Areas as well as other matters relating thereto.

H. **Reservation of Rights.** Declarant reserves for itself and for the Association and their respective agents the right to enter upon any Lot for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, that in the opinion of Declarant or the Association detracts from the overall beauty, setting and safety of the Subdivision. Such entrance for the purpose of mowing, cutting, clearing or pruning shall not be deemed a trespass. Declarant and the Association and their respective agents may likewise enter upon any Lot to remove any trash which has collected on the Lot without such entrance and removal being deemed a trespass. The provisions of this paragraph shall not be construed as an obligation on the part of Declarant or the Association to mow, clear, cut, or prune any Lot nor to provide garbage or trash removal services.

I. **Street Cleaning.** The Declarant shall have the right from time to time to cause the streets in the Subdivision to be cleaned and to assess all Lot Owners engaged in construction on or within thirty (30) days prior to the cleaning for a pro rata share of the last of the street cleaning. In the event the Township or any other governmental authority issues the warning or ticket for a violation of ordinance or law on any Lot, Declarant shall have the right to remediate the item for which a warning or ticket is issued and assess the Owner of the Lot (or the land contract or option purchaser of the Lot from Declarant) on which the work was done for the cost of the same. Any such cost assessed shall be a lien on the Lot assessed as provided in Article V of this Declaration. Declarant may utilize the deposit posted by the Lot Owner pursuant to Article VI, Paragraph E.3, to satisfy any costs assessed for street cleaning resulting from the Lot Owner's activities.

J. **Unsightly Conditions.** It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unsightly or unkempt conditions of buildings or ground on the Owner's Lot that tend to substantially decrease the beauty of the Subdivision as a whole or any specific area thereof. No lawn ornaments, sculptures or statues shall be placed or permitted to remain on any Lot.

K. **Driveways and Garages.** The location of all driveways shall be approved by the Architectural Control Committee prior to construction. All driveways shall be hard surface paved and shall be completed prior to occupancy of the Dwelling to be served by such driveway, except to the extent delayed or prohibited by strikes or adverse weather conditions, in which event such paving shall be completed within sixty (60) days after the termination of such strike or adverse weather conditions. No front entry garages shall be erected or maintained. The Architectural Control Committee shall have sole and absolute discretion to determine whether a proposed garage is front or side entry.

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L. **Sidewalks.** Each Lot in the Subdivision that has a front yard on Addison Circle North shall at the time of construction of a Dwelling thereon also have constructed and installed thereon a 4" thick concrete sidewalk, 5'0" in width, located 1'0" 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 sidewalk on a Lot shall tie in with the sidewalk existing or to be built on the adjacent Lot(s), if any. Notwithstanding anything to the contrary, all sidewalks shall be constructed and installed in accordance with the requirements of the Board of Oakland County Road Commissioners and the Township. Sidewalks located in the public right-of-way immediately adjacent to a Lot shall be maintained, repaired and replaced by the Lot Owner of the Lot to which the sidewalk is adjacent, not by the Association or any governmental entity. In order to provide for flexibility in maintaining, repairing and replacing the sidewalks in the Subdivision, the Association, acting through its Board of Directors and after the affirmative vote of more than two-thirds (2/3) of the Lot Owners, may accept responsibility to maintain, repair and/or replace sidewalks in the Subdivision. Nothing herein contained, however, shall compel the Association to undertake such responsibility. Any such responsibilities undertaken by the Association shall be charged to the Owners on a reasonably uniform basis as determined by the Board of Directors and collected in accordance with the assessment procedures established under Article V of this Declaration.

M. **Temporary Structures.** Trailers, tents, shacks, tool sheds, barns or any temporary buildings of any design whatsoever are expressly prohibited within this Subdivision and no temporary Dwelling shall be permitted in an unfinished residential building. This shall not prevent the erection of a temporary storage building for materials and supplies to be used in the construction of a Dwelling, and which shall be removed from the premises on completion of the Structure, and shall not prevent use by any builder or contractor of trailers for material storage or model offices during the period of construction in the Subdivision, provided the same shall be removed at the completion of such construction.

N. **Signs.** No signs of any kind shall be displayed to the public view on any Lot except one (1) professional sign of not more than five (5) square feet advertising the property for sale or rent, which shall have a black, bronze or royal purple background, with silver, white or gold lettering. Such signs as are allowed must be maintained in good condition at all times and removed on the termination of their use.

O. **Livestock and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except dogs, cats or other household pets which may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

P. **Refuse and Stored Materials.** No Lot shall be used or maintained as a dumping ground or for outside storage for rubbish, trash, garbage or other materials. Other waste shall be kept in a sanitary container, properly concealed from public view.

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Q. **Street Trees and Landscaping.** Each Lot Owner (including land contract and option purchasers of Lots from Declarant) shall plant three (3) street trees on the Lot owned (or purchased on land contract or option from Declarant), and the additional landscaping required by Exhibit C. All such street trees shall be Norway Maples (summer shade or superform) or other deciduous trees approved in advance by Declarant, and shall be of the minimum size necessary to meet the Township's street tree requirement for the Lot. All street trees shall be placed in locations approved by Declarant in its sole discretion. When planted, each street tree shall be equidistant from the other street trees on the Lot and the street trees located (or to be located) on the Lot(s) adjacent to the Lot on which the trees are planted, with the result being that the trees will be roughly 25-30 feet apart. Landscaping in accordance with the approved landscaping plan, including finish grading and sodding, must be completed within ninety (90) days after the closing of the sale of a newly-constructed Dwelling, or occupancy, whichever is sooner. If, however, such closing or occupancy occurs after September 1 of any year, then the Lot shall be sodded and appropriately landscaped in accordance with the approved landscaping plan by June 1 of the following year. Each Lot Owner shall be responsible to maintain and replace the approved landscaping on the Lot and the three (3) street trees planted in the street right of way adjacent to the Owner's Lot as provided in this paragraph Q. In the event any street tree dies, the Owner of the Lot immediately adjacent to the right-of-way in which the street tree is planted shall replace the dead tree with a Norway Maple (summer shade or superform) or other deciduous trees approved in advance by Declarant, in the minimum size required by the Township, at the Lot Owner's sole cost and expense. If the Lot Owner fails to make such a replacement within thirty (30) days after written request to do so from the Association, the Association may replace the tree and assess the Lot Owner with the cost of replacing the dead tree. Any such special assessment shall be a lien on the Owner's Lot as provided in Article V of this Declaration. The Association shall not be obligated to replace dead trees pursuant to this paragraph Q, any rights exercised hereunder being entirely at the discretion of the Association. At the closing of Lot sales by Declarant, each Lot Owner will post a bond acceptable to the Architectural Control Committee sufficient to cover the Lot Owner's obligations for landscaping and street trees.

R. **General Conditions:**

1. No trailers, boats, boat trailers, campers, RV's, junk cars, motorcycles, motor homes, commercial vehicles (other than those present temporarily on business for a period not to exceed eight (8) hours), ATVs, snowmobiles, jet skis, other recreational vehicles of any kind, or any trailer used for any type or kind of vehicle may be parked in the Subdivision except within a private attached garage.
2. No clothes lines or outside drying of laundry shall be permitted.
3. All mail boxes shall be of uniform size, color and same design in compliance with the standards to be set forth by Declarant. All mail boxes shall be located uniformly with reference to the Dwellings in accordance with post office requirements.

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4. No solar panel, solar collector or similar device shall be placed, constructed, altered, or maintained on any Lot or placed, constructed, altered, or maintained on any Dwelling or Structure.
5. No exterior antennae, receiving devices, or satellite dishes, of any kind or nature whether freestanding or mounted upon any Dwelling or other Structure shall be permitted, except that the Architectural Control Committee, in the exercise of its sole and absolute discretion, may allow a Lot Owner to install a so-called "mini-dish" (not to exceed 18 inches in diameter) which shall be located on the Lot in a location that is fully-screened from view and approved by the Architectural Control Committee. The Architectural Control Committee has the further reserved power to make reasonable modifications to the restrictions of this paragraph to accommodate the use of technological innovations in the telecommunications field so long as it determines that the changes benefit the Subdivision.
6. Inground swimming pools shall be permitted, subject to the prior review and written approval of the Architectural Control Committee. Swimming pools which rise more than one (1) foot above ground level shall not be permitted. All swimming pool areas shall be landscaped to minimize the visual impact upon adjacent residences and shall not be visible from the road. All swimming pool mechanical equipment will be located in rear yard of the Dwelling, will not extend past the side of the Dwelling, and will be fully concealed.
7. No external air conditioning unit shall be placed in or attached to a window or wall of any Dwelling or Structure. No compressor or other component of a central air conditioning system (or similar system, such as a heat pump) shall be so located on any Lot so as to be visible from the public street on which the Lot fronts, and, to the extent reasonably possible, all such external equipment shall be so located on any Lot so as to minimize the negative impact thereof on any adjoining Lot, in the terms of noise and appearance. In general, such equipment shall be located at least twelve and one-half (12-1/2) feet from any Lot boundary line and shall be completely screened by an evergreen landscape screening unless an exception is approved by the Architectural Control Committee.
8. No substantially similar front elevation (in both style and color) of any Dwelling shall be duplicated on any Lot less than three hundred (300) feet away along the front Lot lines, unless approved by the Architectural Control Committee. Different colors, building material patterns, offsets, roof lines, porches, windows, doors, and ornamental trim shall be used for Dwellings on adjacent Lots to avoid the appearance of repetition.
9. Basketball hoops and play areas are permitted subject to strict compliance with the following restrictions:
 - (a) All basketball hoops shall be on ground mounted posts located at least thirty (30) feet from the curb of the road(s) adjacent to the Lot.

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(b) The ground mounted post for the basketball hoop shall be located at least five (5) feet from the side line of the Lot.

(c) No florescent or bright colors shall be permitted for either the post or the backboard. The ground mounted post shall be painted black and the backboard of the basketball hoop shall be clear or smoked.

(d) Any lighting of basketball hoops and play areas shall be designed to shield direct light away from homes on other Lots.

S. **Fences and Walls; Dog Runs.** Except as expressly provided in this Paragraph, no fences or walls shall be permitted. The Association may install decorative fencing in the Common Areas, including such fencing as is reasonably required around tennis courts, swimming pools and any other common amenities provided by the Association. Wrought iron and other decorative fencing (but not fencing of the wire type commonly known as "Cyclone Fencing") may be used on any Lot for the purpose of enclosing a permitted swimming pool, in locations approved by the Architectural Control Committee. Any such approved and permitted fencing shall have a vertical balustrade pattern and no additional ornamentation. All fences are subject to approval by and permitting requirements of the Township and shall not exceed the minimum height permitted by the Township. Dog kennels or runs or other enclosed shelters for permitted animals are expressly prohibited.

T. **Sight Distance at Intersection.** No fence, wall, hedge, or shrub planting greater than three (3) feet in height above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points thirty (30) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of a street property line extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at least ten (10) feet above the ground, or such greater height as is necessary to prevent obstructions of such sight lines.

U. **Utility Easements; Reciprocal Grading Easements.** Easements for the construction, installation and maintenance of public utilities, and for drainage facilities, are reserved as shown on the recorded Plat. Within all of the foregoing easements, unless the necessary approvals are obtained from the Township and any other appropriate municipal authority, no Structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of such service facilities and utilities, including underground electrical and telephone local distribution systems, or which may change, obstruct or retard the flow or direction of water in and through drainage in the easements, nor shall any change, which may obstruct or retard the flow of surface water or be

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detrimental to the property of others, be made by the occupant in the finished grade of any Lot once established by the builder upon completion of construction of the Dwelling thereon. The easement area of each Lot and all improvements in the easement area shall be maintained (in a presentable condition continuously) by the Lot Owner, except for those improvements for which a public authority or utility company is responsible, and the Lot Owner shall be liable for damage to service facilities and utilities thereon, including damage to electric, gas, and telephone distribution lines and facilities therein. Except as may be otherwise provided herein, each Lot Owner shall maintain the surface area of easements within his property, to keep weeds out, to keep the area free of trash and debris, and to take such action as may be necessary to eliminate or minimize surface erosion.

Until such time as homes are built and all adjoining Lots, every Lot in the Subdivision is subject to a reciprocal grading easement, five (5) feet in width, that runs along the Lot's boundary with other Lots in the Subdivision, which easement is to the benefit of such adjacent Lots. The purpose of this temporary grading easement is to allow reciprocal use of Lots to facilitate site grading and home construction on each Lot during the home build out period. Any Lot areas disturbed in the exercise of easement rights under this paragraph will be restored to their condition immediately prior to the disturbance without cost or expense to the owner of the Lot on which the disturbance occurred.

V. **Easement for THE KIRKLANDS County Drain.** As shown on the Plat of the Subdivision, certain Lots are subject to a perpetual and permanent easement for **THE KIRKLANDS County Drain**, which easement shall be in favor of the Oakland County Drain Commissioner, **THE KIRKLANDS** Drainage District and the County of Oakland and their respective successors, assigns and transferees (collectively referred to as the "drainage authorities"). The easement for **THE KIRKLANDS** Drain shown on the Plat may not be amended or revoked except with the written approval of the drainage authorities, and further includes the following terms and conditions and grants the following rights:

1. The easement shall be for the purposes of developing, establishing, constructing, repairing, maintaining, deepening, cleaning, widening, and performing any associated construction activities and grading in connection with, any type of drainage facilities or storm drains, in any size, form, shape or capacity.
2. The drainage authorities, and any of them, shall have the right to sell, assign, transfer or convey this easement to any other governmental unit.
3. No owner in the Subdivision shall build or convey to others any permission to build any permanent structures in or on the easement areas for **THE KIRKLANDS County Drain**, as shown on the Plat.
4. No owner in the Subdivision shall build or plant in or on the area covered by the easement any type of structure, fixture or object, or engage in any activity or take any action, or

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convey any property interest or right, that would in any way either actually or threaten to impair, obstruct, or adversely affect the rights of the drainage authorities under the easement.

5. The drainage authorities and their agents, contractors and designated representatives shall have right to entry on, and to gain access to, the easement property.

6. All owners in the Subdivision release the drainage authorities from any and all claims to damages in any way arising from or incident to the construction and maintenance of a drain or sewer or otherwise rising from or incident to the exercise by the drainage authorities of their rights under said easement, and all owners covenant not to sue the drainage authorities for any such damages.

The rights granted to the drainage authorities under this Article VII, paragraph V may not be amended without the express written consent of the drainage authorities. Any purported amendment or modification of the rights granted hereunder to the drainage authorities shall be void and without legal effect unless agreed to in writing by the drainage authorities, their successors or assigns.

W. **Public Utilities.** All public utilities such as water mains, sanitary sewers, storm sewers, gas mains, electric and telephone local subdivision distribution lines, and all connections to same, either private or otherwise, shall be installed underground; provided, however, that the above ground transformers, pedestals, cable and/or other feeder pole lines, and other above ground electric and telephone utility equipment associated with or deemed necessary by The Detroit Edison Company and the Michigan Bell Telephone Company, or the Declarant, for underground utility installations and distribution systems, and surface and offsite open drainage channels and facilities, as well as street lighting stanchions, shall be permitted. In addition, the Subdivision and each Lot therein is subject to the terms of an Agreement and to the terms of an Easement Grant and Declaration of Restrictions, in each case between the Declarant and The Detroit Edison Company and the Michigan Bell Telephone Company, which instruments may now be or will hereafter be recorded in the Oakland County Records, and in each case relating to the installation and maintenance of underground electric and communication service and facilities, and which instruments are, by this reference, incorporated herein. Notwithstanding the foregoing, the provisions and requirements of this paragraph W of Article VII shall not apply to utility poles and lines existing as of the date hereof.

X. **Special Provisions as to Wetland Protection, Natural Feature Setback Areas, Wetland Mitigation Areas, and Protective Hedges; Association Responsibilities.** As shown on the Plats, as described in Article IV.G. above, the Subdivision includes wetland areas in the Common Areas and on certain Lots, all of which wetland areas are subject to the Conservation Easement - Wetlands recorded with the Oakland County Register of Deeds. As depicted on Exhibit D to this Declaration, the wetlands about a Natural Features Setback area, which is contiguous to the wetland area, has a variable width between five (5) and twenty-five (25) feet, and which is identified by signage every thirty (30) feet, and posts every ten (10) feet. In the

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portions of the Natural Features Setback area that measure less than 25 feet in width, and additional wetland buffer has been planted in the form of a natural feature protective hedge (in the manner and locations shown on Exhibit D). Such signage, posts and protective hedges shall be permanently preserved, maintained, repaired and replaced by the Association, and there shall be no removal, change of location or interference of any kind with such posts, signage and protective hedges by the Lot Owners or any other person or entity, except as necessary for purposes of the maintenance and replacement required herein. The Association shall be responsible for ongoing inspections of the posts, signage and hedges to ensure that they remain in place and in good condition at all times. The Wetlands, Natural Features Setback areas and hedges are, to varying degrees, located within the boundaries of Lots 48 and 49 (as shown on Exhibit D). The Natural Feature Setback area is subject to the same Conservation Easement - Wetlands described in Article IV.G. above, and also the same use restrictions and development prohibitions as the wetland areas described in Article IV.G. above. The Declarant has also created new wetland areas in the retention/detention basins for the Subdivision, which shall be permanently maintained as wetlands by the Association and shall be subject to the same use restrictions and development prohibitions as the wetland areas described in Article IV.G. above. In the event any person or persons shall fail to maintain protective measures and/or preserve the Wetlands or Natural Feature Setback areas as required in this Declaration, or in the event the posts, signage or protective hedges are in any way disturbed, removed, modified or not maintained, the Township shall be authorized to send a written notice to the Association specifying the corrective action required in the Township's reasonable discretion and specifying a reasonable time within which such corrective action must be completed. If the corrective action specified in the notice has not been completed on a timely basis, following notice and an opportunity for the Association to be heard, the Township, or an agent or contractor of the Township, may enter upon the Subdivision property and undertake the appropriate corrective, restoration, maintenance and preservation action. All costs and expenses incurred by the Township in taking any such action, or causing such action to be taken, plus an administrative fee equal to 25% of all such costs and expenses, shall be paid by the Association, and if not paid within 30 days following a billing to the Association, such amount shall become a lien on all Lots in the Subdivision, to be allocated equally to each Lot. The Township may require the payment of such monies prior to the commencement of work. If such costs, expenses and fees have not been paid within 30 days of a billing to the Association, all unpaid amounts may be placed on the delinquent tax rolls of the Township, against all Lots in the Subdivision, allocated equally to each Lot, and shall accrue interest and penalties, and shall be collected as, and shall be deemed delinquent real property taxes, according to the laws made and provided for the collection of delinquent property taxes. In the discretion of the Township, such costs, expenses and fees may be collected by suit initiated against the Association and/or Lot Owners, in which case the Association and/or the Lot Owners named as parties in such suit shall pay all court costs and reasonable attorneys fees incurred by the Township in connection with such suit.

Y. **Declarant's Rights in Furtherance of Development and Sales.** None of the restrictions contained in this Article VII shall apply to the commercial activities or signs or billboards of the Declarant with respect to unsold Lots owned by Declarant. Anything herein

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contained to the contrary notwithstanding, the Declarant, its successors and assigns, its or their agents, employees and sales representatives may use and occupy any Lot or Dwelling built in the Subdivision as a sales office for the handling of sales of Lots and/or Dwellings in said Subdivision or other lands in the Township owned by the Declarant, until all of the Lots and/or Dwellings to be built on said lands shall have been sold, and further, may construct fences otherwise in violation of paragraph S of Article VII, above in front of, or along side of, model or display houses during such sales period; provided, however, that at such time as such model or display house is sold, any such fence or portion thereof otherwise in violation of paragraph S of Article VII, above shall be removed by the builder of such model or display house. Declarant further reserves the right, until Declarant has sold and closed title on the conveyance of one hundred percent (100%) of the Lots in the Subdivision and the lots in any other subdivisions combined with or annexed to the Subdivision pursuant to Article II, to install signage promoting Declarant's unsold Lots and homes.

Z. **Easement for Water Main and Water Supply.** As shown on the Plat of the Subdivision, certain Lots are subject to a perpetual and permanent easement in favor of the County of Oakland (collectively the "grantee") and its respective successors, assigns and transferees, in, over and under the property designated as "water main easement" on the Plat, which easement may not be amended or revoked except with the written approval of the grantee, and further includes the following terms and conditions and grants the following rights:

1. The easement shall be for the purposes of developing, establishing, constructing, repairing, and maintaining a water supply system and related appurtenances in any size, form, shape or capacity.
2. The grantee shall have the right to sell, assign, transfer or convey this easement to any other governmental unit.
3. No owner in the Subdivision shall build or convey to others any permission to build any permanent structures in or on said easement areas.
4. No owner in the Subdivision shall build or plant in or on the area covered by the easement any type of structure, fixture or object, or engage in any activity or take any action, or convey any property interest or right, that would in any way either actually or threaten to impair, obstruct, or adversely affect the rights of the grantee under the easement.
5. The grantee and its agents, contractors and designated representatives shall have right to entry on, and to gain access to, the easement property.

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6. All owners in the Subdivision release the grantee from any and all claims to damages in any way arising from or incident to the construction and maintenance of a drain or sewer or otherwise rising from or incident to the exercise by the grantee of their rights under said easement, and all owners covenant not to sue the grantee for any such damages.

The rights granted to the grantee under this Article VII, paragraph Z may not be amended without the express written consent of the grantee. Any purported amendment or modification of the rights granted hereunder to the grantee shall be void and without legal effect unless agreed to in writing by the grantee, their successors or assigns.

ARTICLE VIII

ARCHITECTURAL CONTROL COMMITTEE

Except as otherwise expressly provided herein, the Architectural Control Committee shall have exclusive jurisdiction over the rights of approval and enforcement set forth in this Declaration. The Declarant shall have the exclusive right to appoint and remove all Members of the Architectural Control Committee in its sole discretion until such time as certificates of occupancy have been issued for Dwellings on one hundred percent (100%) of the Lots in the Subdivision. There shall be no surrender of this right prior to the issuance of certificates of occupancy for Dwellings in one hundred percent (100%) of the Lots in the Subdivision, except in a written instrument in recordable form executed by Declarant and specifically assigning to the Association the power to appoint and remove the Members of the Architectural Control Committee. From and after the date of such assignment or later expiration of Declarant's exclusive power of appointment and removal, the Architectural Control Committee shall be appointed by the Board of Directors of the Association, and Declarant shall have no further responsibilities with respect to any matters of approval or enforcement set forth herein. The Architectural Control Committee shall consist of at least one but no more than three persons. Neither Declarant nor any Member of the Architectural Control Committee shall be compensated from assessments collected from the Members of the Association for the time expended in architectural control activities.

ARTICLE IX

EXCULPATION FROM LIABILITY

In no event shall any party have the right to impose liability on the Declarant or the Association, or otherwise contest judicially any decision of the Declarant or the Association (or alleged failure of the Declarant or the Association to make a decision) relative to the approval or disapproval of a Structure or any aspect or other matter as to which Declarant reserves the right to approve or waive under this Declaration. The approval of the Declarant of a Structure or other

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matter shall not be construed as a representation or warranty that the Structure or matter is in conformity with the ordinances or other requirements of the Township or any other governmental authority. Any obligation or duty to ascertain any such nonconformities, or to advise the Lot Owner or any other person of the same (even if known), is hereby disclaimed.

ARTICLE X

GENERAL PROVISIONS

A. **Duration.** The Declaration and the Covenants, Conditions and Restrictions herein created shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said Covenants, Conditions and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed and agreed to by the then Owners of two-thirds (2/3) of the Lots has been recorded, changing said Covenants, Conditions and Restrictions in whole or in part; provided, however, that no such agreement and instrument of change shall be effective unless made and recorded at least six (6) months in advance of the effective date of such change, and unless written notice of proposed agreement and instrument of change is sent to every Owner at least ninety (90) days in advance of any action taken.

B. **Amendment by Declarant.** As provided in Article III, paragraph B, Declarant has reserved the right in the exercise of its sole and absolute discretion to amend this Declaration at any time and from time to time until the earlier to occur of (a) such time as title to not less than one hundred percent (100%) of the Lots in the Subdivision and the lots in any other subdivision combined with or annexed to the Subdivision pursuant to Article II have been conveyed by Declarant's delivery of deeds thereto; and (b) such time as Declarant shall execute and deliver to the Association a written instrument executed by Declarant specifically relinquishing Declarant's exclusive voting rights pursuant to Article III, paragraph B of this Declaration.

C. **Notices.** Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Oakland County, Michigan Register of Deeds Office at the time of such mailing.

D. **Enforcement.** Enforcement of these covenants and restrictions shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

*Kirklands
Declaration/CCRs*

E. **Severability.** Invalidation of any one or more of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

F. **Township Consent Required to Certain Amendments.** Notwithstanding anything to the contrary in this Declaration, no amendment shall be made to any of the following provisions of this Declaration, nor shall any amendment be made affecting the Township's rights under such provisions, without the prior written consent of the Township:

1. Definition of Common Areas (Article I.C.)
2. Definition of Planned Unit Development Documents (Article I.J.)
3. Any Provision of this Declaration dealing with *THE KIRKLANDS* Drainage District (Article IV.D.; Article VII.V.)
4. Landscaping and Signage Areas (Article IV.E.)
5. Open Space Agreement (Article IV.F.)
6. Wetland Preservation (Article IV.G.)
7. Scenic Easement (Article IV.H.)
8. Gallagher Creek (Article IV.I.)
9. Special Provisions as to Wetland Protection, Natural Feature Setback Areas and Protective Hedges; Association Responsibilities (Article VII.X)
10. Notice of *THE OAKLAND*'s Planned Unit Development Approval (Article XI)
11. This Article X.F., Requiring Township Consent to Certain Amendments.

ARTICLE XINOTICE OF THE OAKLANDS PLANNED UNIT DEVELOPMENT APPROVAL

The Subdivision is part of *THE OAKLANDS* Planned Unit Development, which also includes the Additional Property, all of which is established subject to the Planned Unit Development Documents, which impose certain affirmative obligations on all persons having an interest in the Subdivision and the Additional Property. Copies of the Planned Unit Development Documents are available from the Township and are also maintained on file with the Association. All on-going expenses and obligations imposed on the Subdivision property pursuant to the Planned Unit Development Documents (i.e., obligations and expenses that deal with the operation of the Subdivision and its use as a residential community rather than the development of the Subdivision) shall be assessed to the Lot Owners as provided in Article IV of this Declaration. Such expenses include, but are not limited to, the Association's obligation to maintain the Common Areas.

As provided in the Planned Unit Development Documents, in the event the Association fails to adequately maintain, repair and/or preserve the Common Areas, the Township may, but shall not be required to serve written notice upon the Association setting forth the deficiencies in maintenance, repair and/or preservation of such areas. The notice shall also set forth a demand that the deficiencies be cured within a stated reasonable time period, and the date, time and place of a hearing before the Township Board, or such other board, body or official delegated by the Township Board, for the purpose of allowing the Association to be heard as to why the Township should not proceed with the maintenance, repairs and /or preservation which has not been undertaken. At the hearing, the time for curing the deficiencies, and the hearing itself may be extended and/or continued to a date certain. If following the hearing, the Township Board or the other Board, body or official designated to conduct the hearing, shall determine that the maintenance, repairs and/or preservation has not been completed within the time specified in the notice, the Township shall thereupon have the power and authority, but not the obligation, to enter upon the Subdivision, or cause its agents or contractors to enter upon the Subdivision, and perform such maintenance, repairs and/or preservations as reasonably found by the Township to be appropriate. The cost and expense of making and financing such maintenance, repairs and/or preservation, including the cost of notices by the Township and reasonable legal fees incurred by the Township, plus an administrative fee in the amount of twenty-five percent (25%) of the total of all costs and expenses incurred, shall be paid by the Association, and such amount shall constitute a lien on all Lots in the Subdivision, to be allocated equally to each Lot. The Township may require the payment of such monies prior to the commencement of work. If such costs and expenses have not been paid within thirty (30) days of a billing to the Association, all unpaid amounts may be placed on the delinquent tax rolls of the Township, as against all Lots in the Subdivision, allocated equally to each Lot, and shall accrue interest and penalties, and shall be collected as, and shall be deemed delinquent real property taxes, according to the laws made and provided for the collection of delinquent real property taxes in the discretion of the

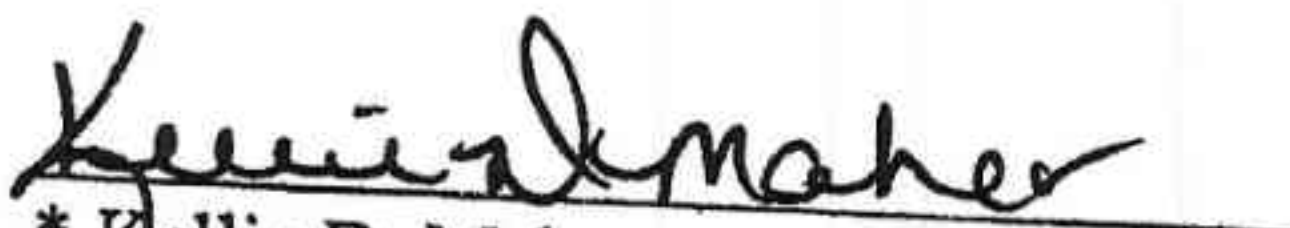
Kirklands
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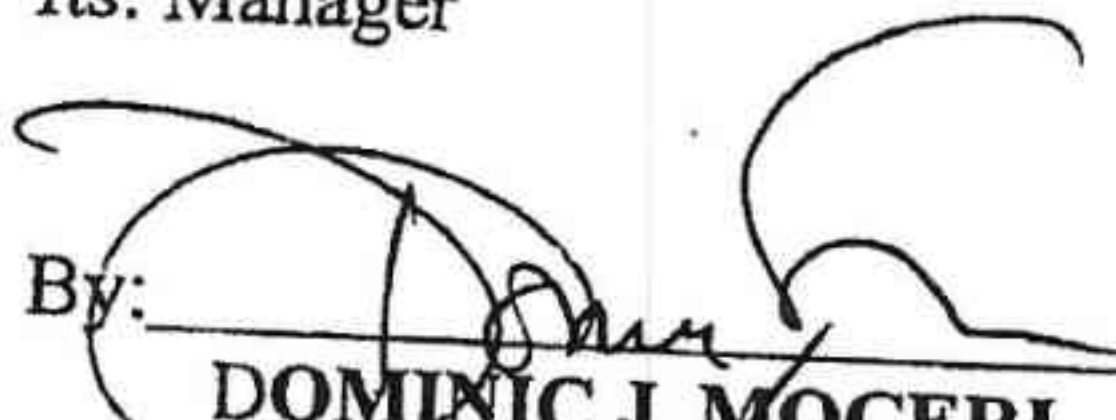
Township, such costs and expenses may be collected by suit initiated against the Association and/or the Lot Owners, shall pay all court costs and reasonable attorneys' fees incurred by the Township in connection with such suit.


WITNESSES:

KIRKLANDS/ADAMS DEVELOPMENT L.L.C.,
a Michigan liability company

By: **MOCERI MANAGEMENT COMPANY**
a Michigan corporation
Its: Manager

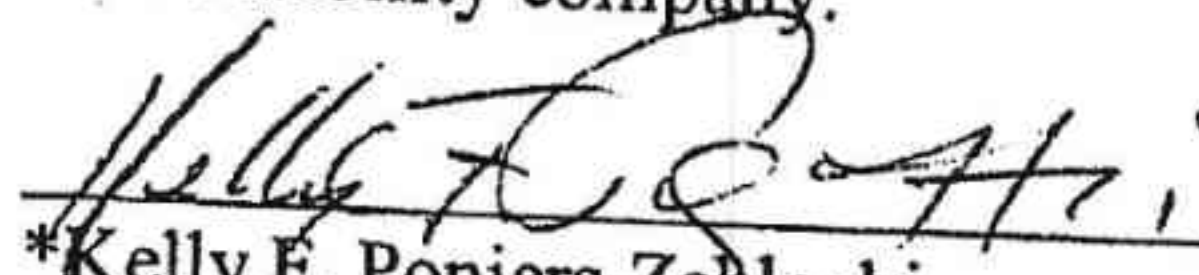

* Kellie D. Maher

By: 
DOMINIC J. MOCERI
Its: Vice President


* Kelly F. Poniers-Zablocki

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

On this 7th day of March, 2001, before me, a Notary Public in and for said County, appeared **Dominic J. Mocer, Vice President of Mocer Management Company**, the Manager of the Kirklands/Adams Development L.L.C. , a Michigan limited liability company, who signed the foregoing Declaration on behalf of the limited liability company.


* Kelly F. Poniers-Zablocki
Notary Public Oakland County, Michigan
My commission expires: 12-26-2004

*Kirklands
Declaration/CCRs*

**CONSENT TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR KIRKLANDS**

Background

A. Kirklands/Adams Development L.L.C., a Michigan limited liability company ("Kirklands/Adams"), as mortgagor, gave a mortgage to Comerica Bank ("Mortgagee"), as mortgagee, with respect to a certain parcel of land in The Oaklands development located in the Township of Oakland, Oakland County, Michigan, which land is being developed into a single-family residential subdivision to be known as Kirklands, which property is more particularly described on Exhibit A attached hereto (the "Property"). The Property will be governed by the foregoing Declaration of Covenants, Conditions and Restrictions (the "Declaration").

B. Kirklands/Adams Development L.L.C., as mortgagor, has entered into a mortgage loan transaction with the Mortgagee, which will be secured in part by a mortgage on the Property.

Consent

Mortgagee consents to the recordation of the foregoing Declaration and subordinates its interest in the Property to the terms, provisions and conditions of the Declaration.

WITNESSES:

Julie Tidmarsh
Julie Tidmarsh
Marjorie A. Wetzel
MARJORIE A. WETZEL

MORTGAGEE:

COMERICA BANK,
a Michigan banking corporation

By:

Lesa Nash
Lesa Nash

Its: Vice President

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me on March 7th, 2001, by Lesa Nash, the Vice President of Comerica Bank, a Michigan corporation, on behalf of the Bank.

Julie Tidmarsh
Notary Public

_____ County, _____

My Commission Expires: _____

*Print or type name in black ink beneath signature.

JULIE TIDMARSH
Notary Public - Oakland County, Mich.
Acting in Wasele Co., MI
My Commission Expires 02-28-2002

THIS INSTRUMENT PREPARED BY AND WHEN RECORDED RETURN TO:

Kevin Kohls, Esq.
Wasinger Kickham and Kohls
26862 Woodward Avenue, Suite 100
Royal Oak, Michigan 48067
(248) 414-9930

EXHIBIT A

DESCRIPTION

KIRKLANDS

PART OF THE S.W. 1/4 AND PART OF THE N.W. 1/4 OF SECTION 32, T. 4 N., R. 11 E., OAKLAND TOWNSHIP, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS BEGINNING AT A POINT, SAID POINT BEING THE WEST 1/4 CORNER OF SAID SECTION 32; THENCE FROM SAID POINT OF BEGINNING N. 00°20'05" W., 617.16 FEET ALONG THE WEST LINE OF SAID SECTION 32 SAID LINE ALSO BEING IN PART, THE EASTERLY LINE OF KINGSRIDGE NO. 1; THENCE N. 88°35'55" E., 289.00 FEET; THENCE N. 00°20'05" W., 240.00 FEET; THENCE S. 64°40'45" E., 77.10 FEET; THENCE N. 44°45'54" E., 193.38 FEET; THENCE S. 81°34'56" E., 204.48 FEET; THENCE S. 22°19'27" E., 201.24 FEET; THENCE S. 85°26'07" E., 143.98 FEET; THENCE N. 50°00'31" E., 64.42 FEET; THENCE N. 39°01'57" E., 126.69 FEET; THENCE N. 53°35'49" E., 106.84 FEET; THENCE N. 88°29'14" E., 105.70 FEET; THENCE S. 70°53'08" E., 155.65 FEET; THENCE S. 02°04'58" E., 451.95 FEET; THENCE S. 02°21'54" E., 539.84 FEET; THENCE N. 86°10'07" W., 206.10 FEET ALONG THE EAST AND WEST 1/4 LINE OF SAID SECTION 32; THENCE 62.63 FEET ALONG AN ARC OF A CURVE TO THE RIGHT, RADIUS 264.54 FEET; CENTRAL ANGLE 13°33'55", CHORD LENGTH 62.49 FEET AND A CHORD BEARING OF N. 19°55'14" W.; THENCE S. 64°10'10" W., 239.72 FEET; THENCE N. 15°17'05" W., 31.34 FEET; THENCE S. 79°13'17" W., 429.71 FEET; THENCE S. 86°35'09" W., 539.52 FEET; THENCE N. 01°53'48" W., 209.31 FEET ALONG SAID WEST SECTION LINE AND SAID EASTERLY LINE OF KINGSRIDGE NO. 1 TO THE POINT OF BEGINNING AND CONTAINING 31.11 ACRES.

10-32-100-009 pt

10-32-300-003 pt

EXHIBIT B

[INTENTIONALLY DELETED]

*Exhibit C***LANDSCAPE REQUIREMENTS FOR KIRKLANDS****I. Street**

As part of the architectural control committee landscape approval process, it is a mandatory requirement for the homeowner to install a minimum of two four inch caliper Norway Maple Trees, 40 feet on center, approximately 5 feet from the front curb, on their lot. (A minimum of four trees on corner lots.) These trees shall be installed simultaneously with the other landscaping pertaining to the lot. All costs shall be born by the homeowner.

Note, the Street trees may be installed on the lot by the Developer during site improvements. Any replacement of a tree is the responsibility of the homeowner, regardless of whether the tree was planted by the Developer.

II. Lot**A. Type**Evergreen Trees

To be a minimum 12' tall and a minimum 12' from walks & buildings include:

Austrian pine/White pine
Norway Spruce
Colorado Spruce
White Spruce
Douglas or Concolor Fir

Shade Trees:

-minimum 4" caliper
-minimum 8' from walks or buildings

Columnar Shade Trees

-minimum 5' from walks or buildings

Ornamental Trees

-minimum 2 1/2" cal.
includes: Flowering Crabs
Flowering Pear
Flowering Cherry
Dogwood

Shrubs including:

Forsythia/Lilac/Honey suckle/Viburnum, etc.

-minimum 3' tall

-maximum 4' on center

Small Shrubs:

Juniper/Cottoneaster/Spiral/Potentilla/yews, etc.

-minimum 18/24"

LANDSCAPE REQUIREMENTS FOR KIRKLANDS
*page 2***B. Location****1. Front yard:**

Front yard shall include a minimum of 5 Trees including:

- a) Minimum of two 4" Emerald Queen Norway Maples along the street for street trees
- b) Minimum of three additional ornamental trees (additional Shade or Evergreen may replace 1 ornamental)

*No limestone or colored rock can be used as mulch

*No lawn ornaments

*All lawns shall be sodded, Seeding is not permitted

2. Backyard:

Back yard shall include a minimum of Six trees including:

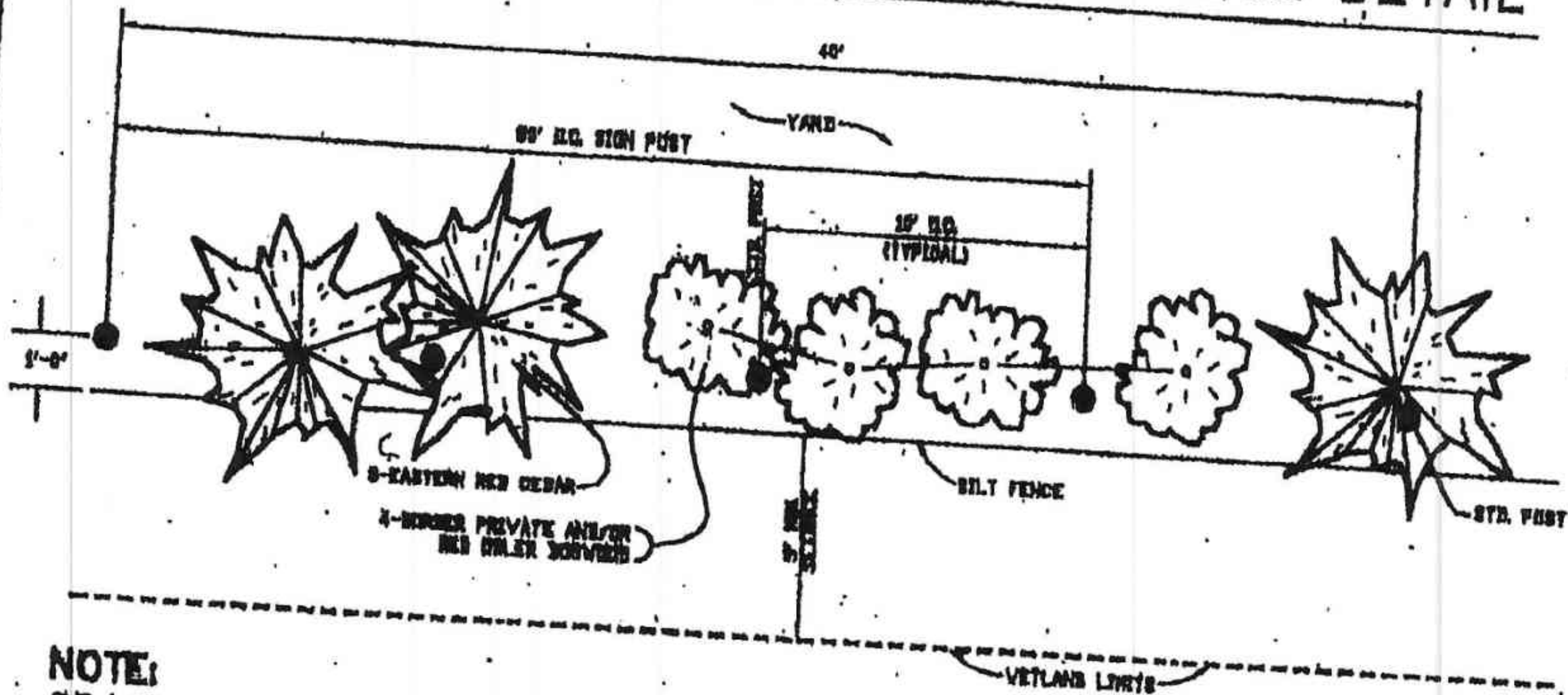
- a) Minimum 3 Evergreen or Shade trees
- b) Minimum 3 ornamental trees (each ornamental tree, maximum of 2, may be replaced with an Evergreen or Shade Tree)

III. General Notes:

- 1. Landscaping shall be installed within ninety (90) days of closing or occupancy, whichever comes first. If such closing or occupancies occur after October 15th of any year, then landscaping (including sod) shall be installed by June 15th of the following year.
- 2. All landscape plans shall be reviewed and approved by the architectural control committee prior to implementation.
- 3. All landscaping shall be installed at the homeowners expense.

EXHIBIT D

NATURAL FEATURES PROTECTIVE HEDGE DETAIL



NOTE:
SPACE 7 PLANTINGS PER 40 FEET.
EXACT SPACING TO BE DETERMINED
BY THE EXISTING TOPOGRAPHY

