

DECLARATION OF RESTRICTIONS  
FOR CALIBURN MANOR SUBDIVISION NO. 2

WHEREAS, the undersigned, Caliburn Development Limited Partnership, a Michigan limited partnership, of 2025 W. Long Lake Road, Suite 104, Troy, Michigan 48098, hereinafter referred to as "Declarant", being the owner in fee simple of the lands hereinafter described, and hereinafter referred to as "The Subdivision", desires to create a planned community which is located in the City of Livonia, Wayne County, Michigan, and more particularly described as:

Lots 45 through 115, both inclusive, of Caliburn Manor Subdivision No. 2, of part of the Northeast 1/4 of Section 7, T.1S., R.9E., City of Livonia, Wayne County, Michigan, according to the plat thereof as recorded in Liber 109 of Plats, Pages 21 through 25, both inclusive, Wayne County Records; and

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

WHEREAS, the undersigned Builders (hereinafter defined) have deemed it desirable, for the efficient preservation of the values and amenities in The Subdivision, to create a legal entity to own, maintain, preserve and administer the Common Area (as hereafter defined) and other areas now or hereafter owned or administered by the Association (as hereinafter defined), and landscaping, facilities and amenities that may be constructed thereon or used therein, and to collect and disburse the assessments and charges hereinafter created, and to promote the recreation, health, safety and welfare of the residents; and

WHEREAS, Declarant may, at some future time, plat additional subdivisions of land in Section 7 of the City of Livonia, Michigan, and subject the lots and common area so platted or developed to the covenants, restrictions, easements, charges and liens set forth herein by amendments made to this Declaration.

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

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to the Livonia/Caliburn Subdivision No. 2 and No. 3 Homeowners Association, a Michigan Non-Profit Corporation, its successors and assigns, if and when the Association is formed. There is no assurance that the Association will be formed.

Section 2. "Builders" shall mean and refer collectively to Heritage Building, L.L.C., 6024 W. Maple Road, Suite 106, West Bloomfield, MI 48322, Gilbert Homes, Inc., 5645 Silver Pond Drive, West Bloomfield, MI 48322, and Biltmore Building Co. Limited Partnership, 2025 West Long Lake Road, Suite 104, Troy, MI 48098.

Section 3. "Committee" shall mean and refer to the Architectural Control Committee established under the provisions of this Declaration, or the Association, as the context may require.

Section 4. "Common Area" shall mean those areas of land, if any, (including the improvements thereto) now or hereafter owned by the Association within Section 7 of the City of Livonia for the common use, benefit and enjoyment of the Owners. As used throughout this Declaration, any and all references to Common Area shall be applicable if and when Common Area exists. No Common Area currently exists and there is no expectation that any will exist in the future.

Section 5. "Declarant" shall mean and refer to Caliburn Development Limited Partnership, a Michigan limited partnership, its successors and assigns.

Section 6. "Declaration" shall mean and refer to this Declaration of Restrictions, as recorded in the office of the Wayne County Register of Deeds, State of Michigan.

Section 7. "Improvement" shall mean and refer to every building of any kind, garage, shed, gazebo, fence, wall or gate, pool, tennis court, or other structure or recreational facility which may be erected or placed on any lot, including, without limitation, any driveway, parking area, landscaping, planted material, sign, statue, ornament, drainage system and/or utility connection thereon or therein.

Section 8. "lot" shall mean and refer to any numbered lot shown on the recorded plat of The Subdivision and any future subdivisions hereafter annexed, to any building site resulting from the combination of lots and to any building site resulting from a proper lot split of any lot.

Section 9. "Member" shall mean and refer to those persons entitled to membership in the Association, as provided in this Declaration.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of The Subdivision and any future subdivisions hereafter annexed. In the event, however, that interest in a lot is sold by land contract the Owner shall instead be the land contract purchaser thereof, but excluding those having any interest merely as security for the performance of an obligation. Furthermore, in the event that such a land contract purchaser terminates its ownership interest in a lot and Declarant becomes its fee simple owner, Declarant will be deemed to be an Owner under the terms of this Declaration.

## ARTICLE II

### CALIBURN ESTATES SUBDIVISION NO. 2 HOMEOWNERS ASSOCIATION

#### Section 1. Establishment of Non-Profit Corporation.

Builders have requested that this Declaration accommodate the formation, funding and administration of the Association, and Builders hereby accept full obligation and responsibility for the legal formation, continued existence, and administration of the Association. Declarant shall have no affiliation with the Association and shall not be subject to any obligations, duties and/or liabilities in connection with its establishment, existence, or administration. Furthermore, Builders agree to indemnify, defend, and hold Declarant harmless from any and all claims of any party or parties arising directly or indirectly as a result of the formation, operation or actions of the Association, or the existence, use, administration or maintenance of the Common Area (if any). This indemnification shall include any attorneys fees, costs, liabilities, judgments, and damages resulting from such claims.

Accordingly, Builders shall be permitted to at any time establish the Association. If established, such Association shall be organized

as a Non-Profit Corporation for a perpetual term under the laws of the State of Michigan and shall have such powers as are enumerated in this Declaration as well as those set forth in the corporate By-Laws for the Association.

Section 2. Dedication of Common Area.

Title to any Common Area shall vest in the Association subject to the rights and easement of enjoyment in and to such Common Area by the Owners. Said easement of enjoyment shall not be personal, but shall be considered to be appurtenant to the lots and shall pass with the title to the lots whether or not specifically set forth in the deeds of conveyance of the lots.

**ARTICLE III**  
**PROPERTY RIGHTS**

Section 1. Owner's Easements of Enjoyment.

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

a. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

b. The right of the Association to suspend the voting rights and right to use the Common Area by an Owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days per infraction for any infraction of its published rules and regulations;

c. The right of the Association to levy assessments, as set forth in Article V, below.

Section 2. Delegation of Use.

Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or purchasers who reside on his lot.

Section 3. Easement for Maintenance of Berm and Irrigation System.

Declarant, the Association and/or Builders shall be permitted at any time or times to enter upon those portions of lots 59 and 60 shown on the Plat of The Subdivision as "30' Private Easement For Greenbelt" as may be necessary for watering, cutting and maintaining the berm, landscaping and/or irrigation system which may be located within such Easement. No Owner shall be permitted to remove or alter such berm, landscaping and/or irrigation system without the prior approval of the Association.

**ARTICLE IV**  
**MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership.

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

Section 2. Voting Rights.

Each Owner of a lot shall be a member and shall be entitled to vote on a one vote per lot basis (regardless of the number of Owners of any such lot).

ARTICLE V  
COVENANT FOR MAINTENANCE ASSESSMENTS

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

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

Section 2. Purpose of Assessments.

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in The Subdivision and future annexed subdivisions and in particular for watering, cutting, and maintaining the berm, any landscaping, and the irrigation system located within those portions of Lots 59 and 60 shown on the plat of the Subdivision as "30' Private Easement for Greenbelt" and other areas under the jurisdiction or control of Declarant, the Builders or the Association located along Newburgh Road adjacent to Caliburn Drive, and for the improvement and maintenance of the Common Area, if any, and other areas now or hereafter owned or administered by the Association, and any landscaping, facilities or amenities constructed thereon or used therein, greenbelts (and berms, landscaping and irrigation systems located within greenbelts, including those located adjacent to Seven Mile Road on lots 59 and 60 or along Newburgh Road adjacent to Caliburn Drive); landscaped traffic islands and cul-de-sacs, if any, located within The Subdivision streets or within Caliburn Drive near Newburgh Road, and subdivision entrance areas at Seven Mile Road or near the intersection of Caliburn Drive and Newburgh Road (including, without limitation, entrance monuments, entrance monument lighting, signs, landscaping and irrigation systems, if any); for the payment of water and electric bills associated with the foregoing; for planting and maintenance of trees, shrubs and grass; for construction, operation and maintenance of recreational facilities, if any; for providing community services; for acquiring liability insurance for the benefit of Declarant, the Owners and/or the Association, and for the protection of the Owners.

Section 3. Maximum Annual Assessment.

Until January 1 of the year of the legal formation of the Association, the maximum annual assessment shall be One Hundred Eighty (\$180.00) Dollars per lot owned by an Owner.

a. From and after January 1 of the year of the legal formation of the Association, the maximum annual assessment may be increased as necessary each year to an amount which is not more than ten percent (10%) greater than the greater of 1) the prior year's assessment or 2) One Hundred Eighty (\$180.00) Dollars.

b. From and after January 1 of the year of the legal formation of the Association, the maximum annual assessment may be increased above the ten percent (10%) increase permitted by subsection a. by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy, at a meeting duly called for that purpose.

Section 4. Special Assessments.

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

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

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 of this Article shall be sent to all Members not less than 15 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast thirty (30%) percent of the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Rate of Assessment.

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

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

The annual assessments provided for herein shall commence as to all lots in The Subdivision on the first day of the month following the legal formation of the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall endeavor to fix the amount of the annual assessment against each lot and to establish the assessment due date at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment and the due date shall be sent to every Owner subject thereto at least thirty (30) days prior to the assessment due date. Failure by the Association to send such written notice shall not permit any Owner to avoid paying the assessment, but shall delay such Owner's assessment due date until thirty (30) days following the date that such notice of assessment is eventually sent. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot shall be binding upon the Association as of the date of its issuance.

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

Any assessment not paid in full within thirty (30) days following its due date shall bear interest from the due date at the rate of ten (10%) percent per annum and shall be subject to a late payment fee equal to fifteen (15%) percent of the amount of the assessment to cover the cost of collection by the Association. In the event that the cost of collection, including attorneys fees, exceeds fifteen (15%) percent of the amount of the assessment, the Association shall be entitled to

collect the deficiency. The aggregate amount of the unpaid assessment, interest, late payment fee and deficiency shall be a lien against the lot corresponding to the unpaid assessment. The Association may bring an action at law against the Owner personally obligated to pay the assessment, interest, late payment fee and deficiency, and may foreclose the lien against the lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Section 9. Exempt Property.

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

Section 10. Subordination of the Lien to Mortgages.

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

Section 11. Management Agent.

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

ARTICLE VI  
BUILDING AND USE RESTRICTIONS FOR THE SUBDIVISION

Section 1. Use of lots.

All lots shall be used for single family residence purposes only, and no building of any kind whatsoever shall be erected, re-erected, moved or maintained thereon except one single family dwelling house and permitted appurtenant structures, if any, on each lot, as hereinafter provided. Such dwelling house shall be designed and erected for occupation by a single private family. A private attached garage, for the sole use of the Owner or occupant of the lot upon which said garage is erected, may also be erected and maintained, provided that said garage is in compliance with the requirements of Section 2 of this Article.

Section 2. Character and Size of Buildings.

No dwelling shall be permitted on any lot unless the living area thereof shall be not less than 1,400 square feet in the case of a one-story dwelling, and not less than 1,700 square feet in the case of any other dwelling. All computations of square footage shall be determined exclusive of basements (whether or not of the "walk-out" variety), garages, porches, terraces, breezeways and other unenclosed or unheated areas. All garages must be attached or architecturally related to the dwelling. No garage shall provide space for less than two (2) automobiles. Carports are specifically prohibited.

Section 3. Minimum Setback and Yard Requirements.

Without a variance granted by the City of Livonia Zoning Board of Appeals and approved by the Committee, no Dwelling or other structure shall be located on any lot nearer than thirty-five feet (35') to the front lot line, or nearer than thirty feet (30') to the rear lot line,

or nearer than twenty-five feet (25') to the side lot line abutting a street in the case of a corner lot where the rear yard of the lot directly abuts the side yard of an adjacent lot, or nearer than nineteen feet (19') to the side lot line abutting a street in the case of corner lot where the rear yard of the lot does not directly abut the side yard of an adjacent lot. Except as above and hereinafter set forth, each Dwelling, or other structure, shall be so located and erected upon the lot as to provide a minimum side yard on one side of not less than eight feet (8'), and the combined total of the two side yards on such lot shall not be less than eighteen feet (18'). No Dwelling or other structure on any lot shall be located less than eighteen feet (18') from each Dwelling or other structure located on any adjacent lot.

#### Section 4. Minimum lot Size.

In the event that one or more lots or parts of lots are developed for use as a site for a single residence, all restrictions set forth herein shall apply to such resulting site. In any event, no dwelling shall be erected, altered, placed on or permitted to remain on any lot in The Subdivision unless such lot or site has a width at the front building setback line of at least eighty feet (80') in the case of an interior lot, and ninety feet (90') in the case of a corner lot, and an area of at least ten thousand square feet (10,000).

#### Section 5. Animals.

a. No farm animals, livestock, poultry or wild animals shall be kept, bred or harbored on any lot, nor shall any animals be kept or bred for commercial purposes. Not more than three (3) domesticated animals commonly deemed to be household pets may be kept on any lot by the Owner and members of his household so long as such pets shall have such care so as not to be objectionable or offensive to others due to noise, odor or unsanitary conditions.

b. Any dog kept on a lot shall be kept either on a leash or in a dog run or pen, and shall not be allowed to run loose or unattended. No dog runs or pens shall be permitted to be erected or maintained unless they are solely located within the rear yard adjacent to a wall of the main dwelling or garage and facing the rear or the interior of the lot, nor shall such runs or pens extend beyond the end of the dwelling or garage into the side yard. All pens shall be made of wood, decorative block or approved fencing materials, or any combination thereof, and may not exceed three hundred (300) square feet in area or four (4) feet in height. The exterior sides of a pen shall be landscaped with plantings to screen the view thereof from adjacent lots, and such pen shall be kept and maintained in a clean and sanitary condition.

c. No Owner shall cause, nor shall he permit or suffer any occupant of any lot which he owns, or his or their invitees or guests, to cause the molestation, harm or destruction of wild fowl or other wildlife on, in or over any portion of his lot. No Owner of a lot shall use, nor shall he permit or suffer any occupant of any lot which he owns, or his or their invitees or guests, to use any B-B guns, firearms, air rifles or pellet guns on his lot.

#### Section 6. Wells.

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

#### Section 7. Sight Distance at Intersections.

No fence, wall, shrubbery, sign or other obstruction to vision which obstructs sight lines at elevations above thirty (30") inches from the established street grades shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25') feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. No tree shall be permitted to remain within such

distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 8. Easements.

a. Easements are reserved to Declarant, the Builders, and their successors and assigns as shown on the plat of The Subdivision and also in, on, under and over a strip of land six feet (6') in width on each side of and along the rear of each lot. The use of all or a part of such easements may at any time or times hereafter be granted or assigned by Declarant, its successors or assigns, to any person, firm, corporation, governmental unit or agency which furnishes services or utilities for use in The Subdivision.

No buildings may be constructed or maintained over or on any easements; however, planting, fencing (where permitted), or other lot line improvements shall be allowed, so long as they do not violate the provisions of this Article and do not interfere with, obstruct, hinder, or impair the master drainage plan of The Subdivision and so long as access be granted, without charge or liability for damages, for the installation and/or maintenance of utilities, drainage lines and/or additional facilities.

b. Private easements for public utilities and greenbelts have been granted and reserved on the plat of The Subdivision.

Section 9. Temporary Structures.

No structure of a temporary character, trailer, commercial vehicle, recreation vehicle, shack, garage, barn, storage shed, tent, or other similar outbuilding may be used or occupied at any time, on any lot, either temporarily or permanently, except that (i) tents for entertainment purposes may be erected on any lot for periods not to exceed forty-eight (48) hours; (ii) an appurtenant swimming pool bathhouse may be maintained on any lot; and (iii) a temporary storage building for the storage of materials and supplies to be used in connection with the construction of a dwelling on any lot may be kept and maintained on such lot during the period of such construction.

Section 10. General Conditions.

a. No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste, and the same shall not be kept except in sanitary containers properly concealed from public view. Garbage containers shall not be left at the road for more than twenty-four (24) hours in any one week.

b. No house trailers, commercial vehicles or trucks weighing in excess of two and one-half (2-1/2) tons empty, boats, boat trailers, camping vehicles or camping trailers may be parked on or stored on any lot, unless stored fully enclosed within an attached garage. Commercial vehicles and trucks shall not be parked in The Subdivision, or on any lot therein, except while making normal deliveries or pickups in the normal course of business. However, construction vehicles may be parked and a construction trailer or temporary sales trailer may be maintained by each builder offering new houses for sale, only during the period when new houses are under construction in The Subdivision by that builder.

c. No laundry other than blankets or comforters shall be hung for drying on any lot so as to be visible from outside of the dwelling constructed on the lot. Blankets or comforters may be hung outside for drying or "airing out" if kept within fifteen (15') feet of the house.

d. All homes in The Subdivision shall be equipped with electric garbage disposal units in the kitchen.

e. The grade of any lot or lots in The Subdivision may not be changed without the written consent of the Association. This



restriction is intended to prevent interference with the master drainage plan for The Subdivision.

f. No "through the wall" air conditioners may be installed in the Subdivision.

g. No outside compressors for central air conditioning units may be installed or maintained in such a manner so as to create a nuisance to the residents of adjacent dwellings.

h. No swimming pool may be built or maintained which is higher than one (1') foot above the existing lot grade.

i. Each lot and its surrounding street pavements shall be kept clean and free from garbage, refuse, soil runoff and other materials and debris. The restriction of this subparagraph i. shall apply both to builders during the period of house construction and to subsequent owners of each lot.

j. No exterior television or radio antennas or "satellite dish" antennas shall be installed on any lot in the Subdivision without the prior written approval of the Architectural Control Committee.

**Section 11. Sales Agency and/or Business Office.**

Notwithstanding anything to the contrary elsewhere set forth herein, Declarant and/or any builders which it may designate may construct and maintain on any lot or lots which they may select, a sales agency and a business office for the sale of any lots and/or dwellings in The Subdivision, or in other lands owned by the Declarant, or may use said lot or lots for the construction of a model house or houses for such purposes, and Declarant and such designated builders may continue to do so until such time as all of the lots in which Declarant or such designated builders have an interest are sold by them.

**Section 12. Lease Restrictions.**

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

**Section 13. Exterior Surface of Dwellings.**

The visible exterior walls of all dwelling structures shall be made of wood, brick, brick veneer and/or stone in any combination. Stucco, and/or narrow gauge horizontal aluminum or vinyl siding may also be used, so long as any of these materials alone or in combination do not exceed fifty (50%) percent of the total of all visible exterior walls. The use of cement block, slag, cinder block, imitation brick and/or asphalt siding is expressly prohibited. Windows and doors shall not be included in calculating the total area of visible exterior walls.

**Section 14. Fences.**

a. No fence, wall or solid hedge may be erected, grown or maintained in front of or along the front building line of any lot; provided, however, that low ornamental fencing may be erected along the front lot line in architectural harmony with the design of the house. The side lot line of each corner lot which faces a street shall be deemed to be a second front building lot line and shall be subject to the same restrictions as to the erection, growth or maintenance of fences, walls or hedges as is hereinbefore provided for front building lines.

b. No fence or wall may be erected or maintained on or along the side lines of any lot, and/or on or along the rear line of any lot, except that fences which are required by local ordinance to enclose swimming pools, and fences used for dog runs or pens which comply with the requirements of Section 5(b) of this Article, shall be permitted.

It is the intent of this Section to prohibit fences from surrounding the majority of the side or rear yard of a lot.

Section 15. Signs.

No sign or billboard shall be placed, erected or maintained on any lot unless such sign shall have been constructed and installed in a professional manner and shall comply with all ordinances of the City of Livonia. Any such sign shall be kept clean and in good repair during the period of its maintenance on the said lot.

Section 16. Destruction of Building by Fire, etc.

Any debris resulting from the destruction, by fire or otherwise, in whole or in part of any dwelling or building on any lot shall be removed with all reasonable dispatch from such lot in order to prevent an unsightly condition. Each Owner shall prevent such Owner's lot, and any dwelling, appurtenant structure or other improvement thereon from becoming unsightly or unkempt, or from falling into a state of disrepair.

Section 17. Landscaping.

a. Each Owner of a lot, including any Owner who is a builder-purchaser from Declarant, shall at all times comply with all erosion control measures imposed by Declarant, the City of Livonia, or the State of Michigan, including without limitation all regulations and requirements imposed by the State of Michigan Department of Natural Resources "NPDES" regulations in order to keep the streets and sewers in The Subdivision free of silt, dirt and debris. Compliance with such erosion control measures shall be required by the Owners at all times during their ownership of a lot, whether prior to, during or following construction of a residence on the lot and landscaping of the lot.

b. Upon the completion of a residence on any of the lots the owner thereof (and the word "owner", as used in this connection, is intended to mean the party who purchases a residence from the builder thereof, and each subsequent purchaser) shall cause all portions of the lot owned by him to be finish-graded and sodded and suitably landscaped within sixty (60) days following completion of construction (as evidenced by the issuance of a Certificate of Occupancy). In the event the completion of construction occurs after November 1 of a given year but prior to April 15 of the following year, then the fulfillment of such obligations may be deferred to not later than June 15 of such following year. Subject to the limitations imposed below by Article VIII, the lot and the drainage ditch, if any, contiguous to each lot shall be kept free of weeds by the Owner thereof. Each owner shall keep the landscaping and lawns (including the berm areas located on lots 59 and 60, if not maintained by the Association) on his lot well-maintained at all times.

c. Should any Owner fail to maintain the lawns, trees, berms or shrubbery on his lot in good order and repair in accordance with "good property management", then the Association may serve written notice upon the Owner setting forth the manner in which the Owner has so failed. In the event that the deficiency of maintenance, repair or replacement stated in such notice is not cured within fifteen (15) days following the date of such notice, the Association shall be authorized and permitted to enter the lot for the purpose of curing the deficiency. If, following the cure of the deficiency, the deficiency reoccurs and persists, the Association shall be authorized and permitted to enter the lot as often as is reasonably required for the purpose of continually maintaining in good order and repair the lawns, trees, berms and shrubbery on the lot, which right of the Association shall continue until such time as the Association reasonably shall determine that the Owner of the deficient lot is willing and able to reassume the maintenance responsibility.

The cost incurred by the Association for such maintenance, repair and replacement, plus an administrative fee equal to twenty (20%) percent of such cost, shall be payable by the Owner to the

Association within ten (10) days following such date as the Association sends the Owner a bill therefor. If the amount billed is not paid within such ten (10) day period, the unpaid amount shall be a charge on the lot, shall be a continuing lien upon the lot, and shall be treated as an additional assessment against the lot subject to treatment in accordance with the provisions of this Declaration controlling and affecting such assessments, including without limitation those stated in Article V of this Declaration.

**Section 18. Sidewalks.**

Each lot in The Subdivision shall at the time of construction of a residence 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 corner lot shall have two intersecting sidewalks constructed and installed on it in accordance with the specifications of the previous sentence, with one sidewalk running parallel with the adjoining street at the front of the lot and the other sidewalk running parallel with the adjoining street at the side of the lot. Each sidewalk on a lot shall tie in with the sidewalk existing or to be built on the adjacent lot(s) or Common Areas, if any, and in the case of corner lots shall also connect into the adjoining street perpendicular to the sidewalk. Notwithstanding anything to the contrary, all sidewalks shall be constructed, installed and maintained by the Owner in accordance with the requirements of the City of Livonia.

**Section 19. Driveways.**

At the time of construction of a residence thereon and, weather permitting, prior to the residence being occupied, each lot shall have constructed on it a concrete driveway, which driveway shall at all times be maintained and kept in good repair.

**Section 20. Basketball Hoops.**

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 35 feet from the closest point of the curb of the road(s) adjacent to the lot.
- (b) The ground mounted post for the basketball hoop shall be located at least 8 feet from the closest side line of the lot and the backboard shall be perpendicular to the curb of the road on which the lot fronts.
- (c) No fluorescent 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.

**ARTICLE VII  
ARCHITECTURAL CONTROL COMMITTEE**

**Section 1.** Architectural Review Committee. No improvement shall be erected, placed, installed, constructed, reconstructed or maintained on any lot, nor shall any exterior addition to, or change in, or alteration of the exterior appearance of any improvement, or any change in landscaping, be made until plans and specifications showing the kind, size, shape, height, colors, materials, topography and location of each improvement on the lot shall have been submitted to and approved in writing by the Committee.

The Committee shall be composed of three (3) Persons. Initially, the Builders shall comprise the Committee. Following such time as all of the lots shall have been sold to Owners other than Declarant and Builders (as evidenced by the delivery by Declarant of deeds for all of

the Lots), the Committee members shall be appointed by the Association. Neither Builders, Declarant, nor any member of the Committee shall have any liability whatsoever to any Person in connection with the approval, disapproval or failure to review any plans or specifications in regard to any improvement. Notwithstanding the foregoing, at all times, both prior to and after delivery by Declarant of deeds for all of the lots, Declarant reserves the right at any time or times to replace and appoint any and all Committee members.

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

Section 3. Final Approval. Plans and specifications for final approval by the Committee shall include the following:

(a) a topographic survey and dimensioned plot plan of the lot, showing existing and proposed grades, the location of all trees in excess of three inches (3") in diameter, and the location of all proposed improvements on the lot;

(b) construction and architectural plans, sufficient in detail to secure a building permit in the Township, including, without limitation, dimensioned floor plans, typical sections, and all elevations (front, both sides and rear) of the main dwelling structure and garage, fences, walls and any proposed outbuildings;

(c) detailed elevations setting forth the type, quality, color and texture of all materials to be employed in all improvements, including, at the Committee's request, a detailed finish schedule for all exterior materials, products and finishes, with actual brick, stain and shingle samples;

(d) a perspective drawing if deemed necessary by the Committee to interpret adequately the exterior design;

(e) one set of blueprints shall be let with the Committee until construction is completed; and

(f) any other data, drawings or specifications which the Committee deems necessary to fulfill its function.

Section 4. Mailboxes. Each mailbox in the Subdivision shall be coordinated with and aesthetically similar to all other mailboxes in the Subdivision, and shall be designed and constructed in accordance with specifications established or approved by the Committee.

Section 5. Signs and Billboard. Each sign or billboard in the Subdivision offering a lot or a house and lot for sale shall be coordinated with and aesthetically similar to all other signs and billboards in the Subdivision, and shall be designed and constructed in accordance with specifications established or approved by the Committee.

Section 6. Variance Required. No approval of the Committee shall be valid if any improvement violates any restriction set forth in this Declaration, or any provision of the City of Livonia's zoning ordinance, except in cases where an appropriate waiver or variance in regard to such improvement has been granted by the City of Livonia and/or Committee, as provided in this Declaration.

Section 7. Approval and Disapproval. The Committee may disapprove plans for any improvement or alteration for non-compliance with any restriction contained in this Declaration, or because of dissatisfaction with the grading and drainage plans, the location of any improvement on the lot, the proposed materials, the proposed color scheme, the proposed finish, design, proportion, shape, height, style or appropriateness of the proposed improvement or alteration, or because of any matter or thing, which, in the judgment and discretion

of the Committee, would cause the proposed improvement or alteration to be inconsistent with the objectives of the Committee, or with improvements erected or to be erected on other lots, including purely aesthetic considerations. No material change may be made in any approved plan or specification, including, without limitation, any approved exterior material, stain, color, or roof material, or in the approved landscaping plan, without the prior written consent of the Committee. One complete set of the approved plans and specifications in regard to each lot, including any and all approved amendments thereto, shall be provided to the Committee.

Section 8. Failure to Act. In the event the Committee shall have failed to approve or disapprove plans and specifications within thirty (30) days after the full, proper and complete submission thereof, the need for such approval by the Committee shall be deemed to have been waived, but all other restrictions, limitations and conditions set forth in this Declaration shall apply and remain in full force and effect as to such plans and specifications. The Committee shall not be liable in any way for a failure on its part to review, approve or disapprove plans and/or specifications, or for its failure to pursue the cessation, or alteration, of any improvements installed in the Subdivision without Committee approval.

Section 9. Form of Approval. Committee approval shall be deemed given if the plans and specifications submitted for approval are marked or stamped as having been finally approved by the Committee, and are signed and dated by a member of the Committee validly serving on the date of such approval.

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

No Common Area now exists or in the future is expected to exist. If, however, Common Area does exist in the future, the following provisions shall apply:

Section 1. Motor Vehicles.

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

Section 2. Prohibited Structures.

No wall, platform, building or structure may be constructed in the Common Area without the prior written consent and approval of the Committee and all governmental agencies having jurisdiction.

Section 3. Pollution.

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

Section 4. Dogs.

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

Section 5. Use of Common Area.

The Common Area shall be used only for passive recreation, or such additional uses as may be established if approved in writing by not less than fifty-one (51%) percent of the Members and thereafter ratified by the City Council of the City of Livonia. Golfing and all active sports are prohibited. No Owner shall permit or suffer the use of the Common Area for any commercial purposes. All activities in the

Common Area shall be carried on in such a manner as not to be disturbing or offensive to other Owners.

Section 6. Wildlife.

No Owner shall cause, nor shall he permit or suffer any occupant of any lot which he owns, or his or their invitees or guests, to cause the molestation, harm or destruction of wild ducks, geese, birds or other wildlife on, in or over the Common Area. No Owner of a lot shall use, nor shall he permit or suffer any occupant of any lot which he owns, or his or their licensees, invitees or guests, to use any B-B guns, bow and arrow, sling shots, firearms, air rifles, pellet guns or other weapons within the Common Area.

Section 7. Liability.

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

Section 8. Published Rules.

The Declarant reserves the right to publish from time to time reasonable rules and regulations consistent herewith governing the use of the Common Area. If the Declarant does not object, the Association and/or the Builders shall also be permitted to publish such reasonable rules and regulations as shall contribute to the overall safety and well being of The Subdivision residents.

ARTICLE IX  
ASSESSMENT OF FINES

Section 1. General.

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

Section 2. Procedures.

Upon any such violation being alleged by the Association Board of Directors, the following procedures shall be followed:

(a) **Notice.** Notice of the violation, including the provision of this Declaration or the rules or regulations violated, together with a description of the factual nature of the alleged offense shall be sent by first class mail, postage prepaid, or shall be personally delivered to the Owner.

(b) **Opportunity to Defend.** The offending Owner shall have an opportunity to appear before the Board and offer evidence in defense of the alleged violation. The appearance before the Board shall be at its next scheduled meeting or a special meeting called to hear the evidence, but in no event shall the Owner be required to appear less than ten (10) days from the date of the notice.

(c) **Default.** Failure to respond to the notice of violation constitutes a default.

(d) **Hearing and Decision.** Upon appearance by the Owner before the Board and presentation of evidence of defense, or, in the event of the Owner's default, the Board shall, by majority vote of a quorum of

the Board, decide whether a violation has occurred. The Board's decision shall be final.

Section 3. Amounts.

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

- (a) **First Violation.** No fine shall be levied.
- (b) **Second Violation.** A Ten Dollar (\$10.00) fine shall be levied.
- (c) **Third Violation.** A Twenty-Five Dollar (\$25.00) fine shall be levied.
- (d) **Fourth Violation and Subsequent Violations.** A Fifty Dollar (\$50.00) fine shall be levied.

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

Section 4. Collection.

The fines levied pursuant to Section 3 above shall be assessed against the Owner similar to the annual Association assessments and shall be due and payable to the Association on the first day of the next following month. Failure to pay the fine when due shall subject the offending Owner and his lot(s) to all of the liabilities set forth above in Article V, Section 8.

**ARTICLE X**  
**GENERAL PROVISIONS**

Section 1. Enforcement.

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

Section 2. Severability.

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

Section 3. Amendment.

The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by a recorded instrument signed by not less than seventy (70%) percent of the Owners (as defined in this paragraph "Owners" shall mean only those individuals or entities who own fee simple title to a lot) and thereafter by an instrument signed by not less than sixty (60%) percent of the Owners. Declarant, without the consent, vote, signature or approval of any Owner, the Association or any Members thereof, may, prospectively or retroactively, by instrument recorded with the Wayne County Register of Deeds, modify, restate, waive, repeal, amend, change or replace this Declaration, or any or all of the provisions hereof, with respect to any thing or any particular lot or lots located within The Subdivision or located within any future annexed subdivisions, as Declarant in its sole discretion deems necessary or desirable,

including without limitation for the purpose of adding residential lots and/or Common Area to the Association and making this Declaration and/or other restrictions apply to such lots and/or Common Area. Any amendment of this Declaration shall require the approval of the City of Livonia or its successor.

In furtherance of the foregoing, and without limitation, Declarant reserves the right, but not the obligation, at any time to amend this Declaration by adding to it the acreage described in Exhibit "B" attached hereto and made a part hereof, once added, such property shall be deemed to be Common Area according to the definition thereof set forth in Section 4. of Article I.

Declarant's right to amend, change or replace this Declaration shall be permitted in perpetuity, notwithstanding an assignment of Declarant's rights and powers pursuant to Section 5 of this Article and notwithstanding the transition of control over the Association or its Board of Directors from Declarant to the Owners.

**Section 4. Annexation of Additional Lots and/or Common Area.**

Declarant reserves the right at any time or times in the future to amend this Declaration by adding to it Common Area and/or one or more additional subdivisions of land located in Section 7 of the City of Livonia, Michigan, hereafter developed and platted by Declarant or its assigns. Such additional subdivisions may or may not themselves contain Common Area. Any such amendment(s) to this Declaration shall provide that the owners of all residential lots located in such future added subdivisions shall be required to be Members of the Association and shall be subject to the covenants, restrictions, easements, charges and liens set forth herein. Such amendment(s) shall also provide that the Common Area contained within The Subdivision and all such future added subdivisions shall be for the use and benefit of all owners of lots in The Subdivision and all such future added subdivisions. Additional lots and Common Area may be annexed to the Association by Declarant without the consent or approval of the Association or any of its Members or any Owner. Annexation by action of the Association shall require the consent of two-thirds (2/3rds) of its Members.

**Section 5. Assignment or Transfer of Rights and Powers.**

Declarant hereby reserves the unequivocal right to assign to the Association or other party, in whole or in part, from time to time, any or all of the rights and powers, titles, easements and estates hereby reserved or given to Declarant herein, including the right and power to approve or disapprove any use, act, proposed action, or any other matter or thing, except that Declarant's right to amend, change or replace this Declaration without the consent of the Owners as provided in Section 3 of this Article may not be assigned. Any such permitted assignment or transfer shall be made by appropriate instrument, in writing, and such assignee shall thereupon have the same rights and powers, and be subject to the same obligations and duties as herein given and reserved to and assumed by Declarant in connection with the rights, powers, and easements so assigned, and such instrument, when executed by such assignee, shall without further act release said Declarant from all obligation, duties and liability in connection therewith.

**Section 6. Deviations by Agreement with Developer.**

Declarant hereby reserves the right to enter into agreements with the Owner of any lot or lots, without the consent of Owners of other lots or adjoining or adjacent property, to deviate from any or all of the covenants set forth in this Declaration provided there are in Declarant's opinion practical difficulties or particular hardships evidenced by the lot Owner. Deviations shall also be permitted by Declarant in his sole discretion to improve or maintain the quality and well being of the Subdivision and any future added subdivisions. Any deviation made pursuant to this Section (which shall be manifested by an agreement in writing) shall not constitute a waiver of any such covenant as to the remaining lots.



Section 7. Transition of Association Board of Directors.

If the Association is formed, its By-Laws shall provide that the Board of Directors of the Association may be appointed by the Builders until such time (the "Transfer Date") as a) one hundred (100%) percent of the lots in the Subdivision and any future annexed subdivisions have been sold to Owners, or b) such earlier time as may be elected by Builders, and thereafter shall be elected by the Owners. In the event that as of the Transfer Date the Owners are unwilling or unable to elect a Board of Directors who desire to serve as Directors, the Builders shall have the right to grant to the Management Agent of the Association or to such other designee chosen by the Builders the right to appoint a Board of Directors composed of either Owners or non-Owners, or some combination thereof. The fee charged by the Management Agent or other designee and by the Directors shall be paid directly by the Association. The right of the Management Agent or other designee to appoint the Board of Directors shall continue until the first annual meeting at which the Owners are willing and able to elect a Board of Directors of Owners who desire to serve as Directors.

Section 8. Liability of Declarant.

Except as may be agreed to in writing to the contrary, Declarant, the Builders and the Board of Directors of the Association shall not be liable to any Owner, Builder, Member or other party, for the damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, its Board of Directors, the Declarant, the Builders or any representative or employee of the Declarant, the Association, its Board of Directors, or the Builders.

IN WITNESS WHEREOF, the undersigned, being all of the parties with an ownership interest in the lots in The Subdivision have caused these presents to be executed on this 15th day of JANUARY, 1996.

IN THE PRESENCE OF:

Joyce E. Kuhn  
Joyce E. Kuhn

Theresa D. Pate  
Theresa D. Pate

CALIBURN DEVELOPMENT LIMITED PARTNERSHIP  
a Michigan limited partnership  
BY: BILTMORE PROPERTIES CORPORATION  
a Michigan corporation

By: Andrew M. Coden  
Andrew M. Coden  
Its: Vice-President  
L.L.C.

HERITAGE BUILDING ~~CORPORATION~~  
a Michigan corporation

By: Barry A. Nosanchuk  
Barry A. Nosanchuk  
Its: ~~President~~  
MEMBER

Joyce E. Kuhn  
Joyce E. Kuhn

Theresa D. Pate  
Theresa D. Pate

GILBERT HOMES, INC.  
a Michigan corporation

By: Bruce Gilbert  
Bruce Gilbert  
Its: President

Joyce E. Kuhn  
Joyce E. Kuhn

Theresa D. Pate  
Theresa D. Pate

BILTMORE BUILDING CO. LIMITED PARTNERSHIP  
a Michigan limited partnership

BY: CRS/MAPLE, INC.  
a Michigan corporation  
General Partner

By: Lorne Zalesin  
Lorne Zalesin  
Its: Vice President

Joyce E. Kuhn  
Joyce E. Kuhn

Theresa D. Pate  
Theresa D. Pate

STATE OF MICHIGAN)  
 ) SS  
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 15th day of January, 1996, by Andrew M. Coden, Vice President of Biltmore Properties Corporation, a Michigan corporation, on behalf of the corporation.

My Commission expires:  
March 26, 1997

Joyce E. Kuhn  
Joyce E. Kuhn, Notary Public  
Oakland County, Michigan

STATE OF MICHIGAN)  
 ) SS  
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 15th day of January, 1996, by Barry A. Nosanchuk, ~~President~~ <sup>MEMBER</sup> of Heritage Building ~~Corporation~~, a Michigan corporation, on behalf of the corporation. L.L.C.

My Commission expires:  
March 26, 1997

Joyce E. Kuhn  
Joyce E. Kuhn, Notary Public  
Oakland County, Michigan

STATE OF MICHIGAN)  
 ) SS  
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 15th day of January, 1996, by Bruce Gilbert, President of Gilbert Homes, Inc., a Michigan corporation, on behalf of the corporation.

My Commission expires:  
March 26, 1997

Joyce E. Kuhn  
Joyce E. Kuhn, Notary Public  
Oakland County, Michigan

STATE OF MICHIGAN)  
 ) SS  
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 15th day of January, 1996, by Lorne Zalesin, Vice President of CRS/Maple, Inc., a Michigan corporation, General Partner of Biltmore Building Co. Limited Partnership, a Michigan limited partnership, on behalf of the limited partnership.

My Commission expires:  
March 26, 1997

Joyce E. Kuhn  
Joyce E. Kuhn, Notary Public  
Oakland County, Michigan

THIS INSTRUMENT DRAFTED BY AND  
WHEN RECORDED RETURN TO:

Andrew M. Coden, Esq.  
2025 West Long Lake, Suite 104  
Troy, Michigan 48098

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(01/31/96)