

LOT #88 OF THE HEIGHTS AT ELKOW FARMS  
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THE  
CONDOMINIUM  
BUYERS  
HANDBOOK

Down-to-earth answers to your questions about the condominium concept in Michigan.

## **Do You Know...**

- Your rights and responsibilities as a co-owner?
- The developer's background and financial references?
- What's planned for future development in the project?
- The developer's rental policy?
- When the recreation facilities will be completed?
- Who will control the recreation facilities?
- What's included as standard equipment in your unit?
- What's under warranty?
- What costs are included in the monthly assessment?
- When the co-owners will be permitted to vote for directors of the condominium's Association?
- How condominium living differs from other types of residential living?
- The difference between a Preliminary Reservation Agreement and a Purchase Agreement?

**You Should Know The Answers To These Questions Before Buying A Condominium.**

# Introduction

The first edition of this booklet was published by the Corporation and Securities Bureau, Michigan Department of Commerce in 1975. Since then, there have been changes in both the condominium industry and the law governing the development of condominiums. On March 14, 1978, a new condominium act, designed in part to provide condominium purchasers more protection than the previous Horizontal Real Property Act of 1963, was signed into law and the handbook was revised to reflect the changes.

On January 17, 1983, an amendment to the Condominium Act (1978, PA 59) became effective. This amendment, P.A. 538 of 1982, changed the law so that condominium developers will no longer file applications with the Department of Commerce for approval of their project before marketing units or establishing the project by recording the condominium documents with the county register of deeds. This latest edition updates the information to include 1982 PA 538 and subsequent amendments.

While the condominium concept has expanded in recent years to include commercial and industrial projects, the information presented in this booklet is directed primarily toward the prospective buyer of a residential condominium. Read this booklet and all documents relating to the particular project carefully so you may make an informed decision.

Keep in mind that most developers have well-earned reputations for honesty, integrity and competence. If a negative factor is encountered in a particular project, it does not necessarily mean the project is unsound or that the developer is unscrupulous. It may be due to an oversight or lack of understanding which can be easily corrected.

In all cases, we recommend that you seek professional assistance from a lawyer or other business advisor before buying a condominium.

## What Is a Condominium?

You've heard about condominiums, read newspaper ads, or perhaps have a friend or relative who is living in one. Now you are considering the purchase of a condominium unit for yourself.

What, actually, is a condominium?

The word *condominium* comes from a Latin word meaning common ownership or control. Ordinarily it means individual ownership of all the space inside the inner walls of an apartment or house and common ownership of the structures and land. This division between exclusive and common ownership exists regardless of the form or design of the project. The project may take the form of a high-rise, duplex, townhouse, or single family dwelling. In other forms of condominium

projects such as mobile homes, campground, or marina, the exclusive ownership may be merely a cube of airspace within which a mobile home, recreational vehicle, or boat is parked or anchored. The common ownership would be the land and improvements such as concrete pads and piers and the utility systems.

The inner space, which you own, is yours to decorate, to maintain, to live in. Usually, everything else in the condominium development – the exterior walls, the land, the common hallways, the recreation facilities – is the common property of everyone who owns a unit and is termed *common elements*.

### ***Limited or General Common Elements***

Some of this commonly-owned property, such as your patio or balcony or carport space, is called *limited common elements* and is restricted to use by your family only. In the case of stairways or laundry facilities it may be limited to other families who live in your building, but it remains the common property of all the co-owners in the development. The rest of the common elements – roads, green areas, recreation facilities – are termed *general common elements* and are available for use by everyone in the development. You must read your legal documents carefully to understand which parts of your condominium are designated as limited, or general, common elements.

The co-owners of a condominium are legally organized into an association, which is responsible for governing and maintaining the common elements of the condominium. Each co-owner pays a monthly fee or assessment for these services.

### ***Condo Advantages***

Condominiums account for an increasing share of the housing market. There are several reasons for this:

- Condominiums, like single-family homes, offer owners certain tax deductions, appreciate in equity value and (unlike rentals) offer assurance of long-term occupancy.
- Condominiums often are more convenient to shopping and business facilities due to land use patterns, and demand less individual maintenance than single-family homes.
- Condominium projects may contain more recreational facilities (such as swimming pools and tennis courts) than an individual homeowner could reasonably afford.
- Condominiums are an economical and environmentally sound use of land compared to a subdivision containing the same number of living units.

## *How They Began*

Condominiums are not a new concept in housing. The Romans used them and they were popular in the walled cities of the Middle Ages in what is now Western Europe. In the first half of the 20<sup>th</sup> century other European countries enacted statutes permitting condominiums.

A few condominiums existed in the United States as early as 1947, but they were not legally established in this country until 1961.

The concept of condominium housing was first incorporated into Michigan law with the passage of the Horizontal Real Property Act in 1963. Fifteen years later this law proved inadequate to meet the needs of the fast-growing condominium industry and in 1978, a new Michigan condominium law was enacted, PA 59 of 1978. This law, administered by the Corporation and Securities Bureau of the Michigan Department of Commerce, is important to buyers and developers of condominiums in Michigan because it provides safeguards for both parties and outlines the rights and responsibilities of each.

For condominium purchasers it establishes the legal basis for two relationships: (1) between the buyer and the developer of the condominium, and (2) between the owner of a condominium unit and the association of co-owners.

## **The Buyer and the Developer**

Section 21 of the Michigan Condominium Act provides in part that: "A condominium unit located within this state may not be offered for its initial sale in this state unless the offering is made in accordance with this Act or the offering is exempt by rule of the administrator."

P.A. 538 of 1982, effective January 17, 1983, changed the law, in that the developer is no longer required to have a Permit To Take Reservations or Permit To Sell prior to offering condominium units to the public. In addition, developers and associations will no longer be required to obtain approval of amendments to project documents, even though the documents may indicate approval is required.

Under the amended Condominium Act, the developer will be required, unless exempt, to meet a more stringent escrow requirement. The developer is required to create a series of escrow accounts to assure completion of the construction of a phase of a project once sales have started. A licensed architect or engineer would determine if the project was substantially complete or would set the amount of escrow necessary to ensure the developer's ability to complete those portions of the project that must be built.

## Advertising and Sales

There are some prohibitions on the content of the developer's advertising, including newspaper ads, radio and television announcements, brochures, material in the sales office, sales presentations, and the housing models themselves.

The developer or salesman cannot advertise or tell you orally

- that your unit will automatically increase in value if you wish to sell in the future;
- that you must act quickly to purchase a unit because of limited availability or because the price will increase, unless this is actually the case;
- that you will receive a discount or savings, or that you will receive "free" goods or services for purchasing a unit, unless this is actually the case.

In a model of the unit, the developer must tell you which items are not standard equipment, such as special flooring, carpeting, ceiling beams, moldings, light fixtures, patios, fences, or other features.

Persons selling condominiums in Michigan are also subject to the rules of the Michigan Department of Licensing and Regulation and are usually required to hold a real estate broker's or salesperson's license.

## Preliminary Reservation Agreements and Purchase Agreements

Once you've made up your mind which condominium you want, you will be asked to sign one of the following agreements:

**Preliminary Reservation Agreement.** This agreement will never become a binding sales document. It is not binding on either you or the developer. It simply gives a prospective purchaser the first opportunity to buy a specific unit once the developer has established the project. Many developers use this method to test the market for their project. Since the Preliminary Reservation Agreement can never become a binding sales document, you must then enter into a Purchase Agreement with the developer, if you decide to buy. However, should you cancel, the developer must refund your money within three business days.

**Purchase Agreement.** This agreement may be the first agreement you sign with the developer or it may follow the use of a Preliminary Reservation Agreement. In either case, this agreement is not binding until nine business days after the developer has delivered the condominium documents to you, as the prospective purchaser. The condominium documents that must be delivered would include:

- the recorded master deed, which would include as attachments the condominium bylaws and condominium subdivision plans
- a copy of the purchase and escrow agreements
- Condominium Buyers Handbook
- Disclosure Statement
- If the project is a conversion, the developer must disclose known information regarding the condition of the building, any building code or other regulation violations, and the year(s) of construction of the building

If you decide not to buy during the nine business day “cooling off” period, you may still request and receive your deposit in full, within three business days of cancellation notification.

If you decide to withdraw after the cooling off period, your deposit may be forfeited. A provision in a purchase agreement for liquidated damages in case of default is limited by the Condominium Act to a reasonable percentage of the purchase price of the condominium unit. The provision does not prevent the developer from recovering actual damages.

If you want to close the transaction immediately without waiting for the nine business day “cooling off” period, you can do so by signing a written waiver. The sale of the unit could then be concluded when the certificate of occupancy is issued to the developer, and other requirements in the purchase agreement are completed.

The agreements and other documents used for the offer and sale of a condominium are different from those used for the offer and sale of conventional real estate. It is important that you seek professional advice or assistance when reviewing the package of documents received before signing a preliminary reservation agreement or purchase agreement. You may also find it necessary to modify an agreement or contract to meet your particular needs or circumstances. You may be subject to a binding purchase agreement before construction begins or is completed.

## **The Master Deed, Condominium Bylaws and the Disclosure Statement**

The condominium documents mentioned in the preceding section – the master deed, condominium bylaws and disclosure statement – contain important information about the project in which you're interested.

The master deed and condominium bylaws, along with the condominium subdivision plans, are the basic documents establishing and describing your condominium and the future operation of the project. These documents must be recorded with the Register of Deeds in the county where the condominium is located.

The disclosure statement contains a summary of important information about the developer's previous experience.

### ***What Percent of the Project Do You Own?***

The master deed will designate the percentage of ownership each condominium unit has in the total project. This percentage of value will determine your obligation for payment of assessments and may determine your voting percentage at association meetings. In some instances, the master deed may state that all votes and obligations to pay assessments will be equal. The percentage of value in that case only describes what your percentage of ownership in the total property will be. Read your master deed carefully to determine which method is used. This can be a controversial matter if not fully understood from the beginning.

### ***Read the Fine Print!***

Read all these documents carefully. You should be aware of restrictions or covenants which govern the use of your condominium and the surrounding land. Check the master deed and your preliminary reservation agreement or purchase agreement to learn what, if anything, the developer reserves the right to change or modify in the future. The most common reservation is the right to expand or contract the project. Make sure you understand just how the developer plans to do this. Many developers build a small number of units at a time, holding sections of nearby land for other phases or future parts of the condominium. The right to do this is reserved in the master deed. It is important to know what will be built in the vicinity of your condominium.

Other usual reservations are the right to correct survey errors, the right to make changes in the documents that do not materially diminish the rights of the co-owners or mortgagees, the right



to assign specific garage or parking space locations at a later date and the right to rent units that are not sold.

You should also inquire about any unusual conditions that might affect the project. If the roads are private, for example, how much will it cost for maintenance? Is there a private water or sewage system? Are there any easements other than public utility easements which might affect the condominium project or your unit?

If your project contains recreational facilities, find out what the developer's financial obligations are for these facilities and the responsibilities of the co-owners for the financing and management of the facilities. Find out if third parties will be using the facilities and when the facilities will be turned over to the association.

### ***Warranties***

Most buyers also are interested in the kind of warranty that comes with their condominium. The answer usually is found in the purchase agreement. The developer normally warrants the project against building defects in materials or workmanship for one year. Be sure to find out when the warranty begins and whether it covers building structures, recreational facilities, roads, sidewalks and shrubbery. Remember that warranties generally cover only new construction. There may be no warranty if you are buying a unit in a conversion project.

### ***Conversions-How Good?***

Many conversion projects are offered "as is" to the buyer. Although local authorities may inspect the building's heating, plumbing, and electrical systems, roofing and structure, the developer will not guarantee the project if it is offered "as is." You may want to personally inspect the building for these items.

It is important to be aware when local authorities inspect the building it is to be sure it conforms to construction codes in effect at the time the structure was originally erected or remodeled. This may or may not be up to the current code for new construction depending on the age of the building. Any extensive remodeling done at the time of conversion, however, would have to meet current construction standards.

## **Pitfalls and Safeguards**

Since a condominium is a large investment of your money, ranging from about \$20,000 to more than \$150,000, it is important that you be fully informed before you buy. And, beyond being

fully informed about the condominium itself, the single most important step you can take before you buy is to *know your developer* before entering into a binding agreement. The two things you should be looking for in a developer are competence and integrity. Ask about the developer's previous experience. The disclosure statement will list the names and addresses of projects with which the developer has been associated. Visit those projects and talk to the people who live in them. If people are already living in the condominium project you are considering, discuss the project and the developer with them.

The "pitfalls" mentioned here represent problems a person could conceivably encounter in the purchase of a condominium. The "safeguards" describe steps one can take to avoid them.

1. *Pitfall* Yielding to a high pressure sales pitch by signing contracts or agreements which you do not fully understand.

*Safeguard* Do not take a chance on losing your investment. Carefully review all documents and seek professional assistance.

2. *Pitfall* Falling for a sales pitch which emphasizes the advantages of equity buildup and maintenance-free living, but does not point out the responsibilities of owning a condominium.

*Safeguard* Do not be gullible; get all the facts and weigh them. Owning a condominium is not the same as renting an apartment where you can rely on the landlord to maintain your building. You and other co-owners are your own landlords and will be collectively responsible for arranging for the upkeep of your project.

3. *Pitfall* Entering into a binding purchase agreement which does not depend on your being able to obtain a mortgage commitment or acceptable financing.

*Safeguard* Do not sign a binding purchase agreement until you have arranged your financing or unless the agreement specifies that it is dependent upon your ability to obtain a mortgage commitment for the condominium you wish to buy. Otherwise you could lose your deposit as liquidated damages if you are unable to obtain financing.

4. *Pitfall* Assuming that you will have to pay only the purchase price before moving into your condominium.

*Safeguard* Determine in advance the total amount due at the time you complete the deal. In addition to the purchase price, you may have to pay settlement or closing costs. Some developers also charge advance assessments which are due at closing. Find out if your developer does this and determine how the advance assessments will be used.

5. Pitfall Relying on verbal promises regarding such matters as when your unit will be ready for occupancy, warranties, stability of monthly assessments and items the developer will install.

Safeguard Do not rely on verbal promises. If you are promised something, insist that it be put in writing and signed by the person who made the promise. If you have been given a date when your condominium will be ready, find out if the date has been given on a firm commitment basis (that it will be ready on that date no matter what), or if the date is subject to change under certain conditions (strikes, material shortages or other reasons). If you are shown a model unit, find out what items will be included in your unit and be sure they are written into the purchase agreement.

6. Pitfall Assuming that you will not be able to hear your neighbor because your condominium has been “sound conditioned.”

Safeguard Sound conditioning is not the same as sound proofing. Sound conditioning merely means that the developer has taken some steps to reduce the transmission of sound between units – not to eliminate it.

7. Pitfall Deciding to purchase a unit in a “conversion” condominium project because “they don’t make ‘em like they used to and the price is right.”

Safeguard Purchase price savings can be quickly used up through high assessments. When buying a condominium in a structure which has been converted from an existing building, keep in mind that you will not only become the owner of a unit, but also a joint owner of the furnace, roof, pipes, wires and other common elements. Ask for a copy of an architect or engineer’s report on the condition of all building components and their expected useful life. Ask to see copies of the building maintenance records for preceding years. Find out what improvements the developer has made. Do not be misled by a fresh coat of paint and new carpeting. Find out what, if any, warranties remain.

## **The Buyer and the Association**

When you take title to your unit, you automatically become a co-owner and a voting member of the co-owners’ association formed to administer the affairs of the condominium. The association is usually a non-profit corporation. The value of each vote is normally determined by the percentage of value given to each living unit and is stated in the master deed. However, voting and the obligation to pay assessments may not necessarily be equal, and this fact also must be stated in the master deed and condominium bylaws.

## ***Who's in Charge?***

The association is governed by a board of directors appointed by the developer until the first annual meeting. This initial meeting of the co-owners to elect members to the board of directors may take place one year or more after the master deed is recorded. The provisions for holding the annual meeting and designating the voting procedures are included in the condominium bylaws, along with other information about the operation of the association. The condominium bylaws are attached to and incorporated by reference in the master deed you receive when you buy a condominium. The bylaws should be read carefully as they may contain complete provisions outlining your rights as an owner as well as the scope of activities permitted co-owners of the project during the transition.

Before the first annual meeting of the association, the developer may have the ability to amend the condominium bylaws so long as the amendment does not materially affect the rights of the co-owners. If units are still being sold after the first association meeting, the developer votes and pays assessments as any other co-owner.

## ***Associations Have Bylaws, Too!***

The association also operates under its own bylaws, in addition to the condominium bylaws. Association bylaws provide for the operation of the association as a non-profit corporation including details regarding officers, directors, meetings, order of business, and so forth.

# **Responsibilities and Rights**

## **The Association**

The association usually is responsible for maintenance of the outside of the condominium units, such as hallways, lobby, building exterior, lawn care, snow removal, trash pick-up, street maintenance (if the roads are private), and operation of the common elements, including the recreation facilities, heating plant, water or electric systems. These jobs are done through a management firm or manager hired by the association, by employees hired directly by the association, or, in some cases, by co-owners themselves.

The association sets fees for the maintenance of those common elements which fall under its responsibility as stated in the master deed or other condominium documents and may increase the charges. Special assessments may be made by the board of directors to cover capital improvements, but generally any substantial increase in the monthly assessment must first be approved by a vote of the co-owners. The condominium bylaws often set the dollar limit on what may be approved by the board of directors without a vote of the co-owners.

The condominium bylaws also provide methods for settling disputes concerning interpretation or application of the master deed, bylaws, management agreement or between co-owners, between co-owners and the association, or between the association and the management firm.

## **The Co-owners**

While the association is responsible for maintaining the common elements of the condominium, you are responsible for the maintenance and upkeep of your unit interior.

There may be restrictions on your use of your unit that can be enforced by the association. They include such things as: restrictions on pets; selling or renting your unit to someone of your choice; willing it to another person. Check for these in the condominium bylaws.

The association also sets rules for use of the recreational facilities and other common elements. It may require approval of repairs or structural modifications you wish to make in your unit. If you mortgage your unit, you must notify the association of the name of the lender who is holding the mortgage, and the association may inform the mortgage holder of unpaid assessments due from you for your unit. Late charges and other penalties for non-payment of assessments are also common provisions found in the condominium bylaws.

All condominium associations created and operating under the Condominium Act must make provisions for a reserve fund to be used for major repairs and replacement of common elements. Ultimately, the co-owners must determine whether the amount kept in the reserve account is adequate for their project.

### **and More Questions...**

Some additional questions often asked by prospective buyers are:

- What does the monthly assessment include?
- If I don't use all the facilities, why do I have to pay for them?
- What happens regarding unpaid monthly assessments if a co-owner defaults?

The monthly assessment varies from one development to another, but generally includes repairs and maintenance costs, insurance, reserve funds, management costs and upkeep for recreation

facilities. You should receive a disclosure statement itemizing the budget at the time you are given the master deed.

If the project is a conversion – that is, converted from rental housing to condominium ownership – the developer should report actual past costs of maintenance and repairs and taxes from previous years and how they compare with the proposed budget. Remember, however, that the project may be assessed differently for tax purposes when it is converted, which could mean a tax increase.

The monthly assessment is considered as a lien on the condominium and you cannot exempt yourself from paying it, whether you use all the facilities provided or not.

If a co-owner loses a condominium unit through foreclosure to a lender, the lender is not liable for assessments charged to the unit and still owing. The unpaid assessments will be allocated among all of the units, including the foreclosed unit.

## **What To Do If You Have A Complaint**

A reputable developer is interested in dealing with you fairly if you have problems with your condominium. It is in the developer's best interest to create satisfied owners, and, therefore, the majority of your questions and complaints usually can be handled by direct communication and negotiation between the two of you.

Ask your developer for the name, address and telephone number of the person within its organization to contact when you have a complaint.

If your project was established after the Condominium Act amendments took effect in 1983, your purchase agreement should contain wording that explains your right to take any claims against the developer, which involve \$2,500.00 or less, before the American Arbitration Association.

There are procedures to follow if you are not satisfied with the construction of the development, or you think you have been misinformed by a condominium sales representative, or you are in disagreement with the practices of the co-owners' association, or if some other problem does arise.

If your difficulty is with the developer, first contact the developer by letter. If no response is received within 15 days after the developer receives a certified, return receipt requested letter, contact:

1. For Construction Defects:

- A. Your local building inspector
  - B. Michigan Department of Commerce  
Bureau of Commercial Services, Enforcement Division  
P.O. Box 30018, Ottawa Building North  
Lansing, Michigan 48909  
Telephone: 517/373-9153
2. For Sales Misrepresentations of licensed residential builders, salespeople or real estate brokers:

Michigan Department of Commerce  
Bureau of Commercial Services, Enforcement Division  
P.O. Box 30018, Ottawa Building North  
Lansing, Michigan 48909  
Telephone: 517/373-9153

3. Actions Regarding Purchase Agreement or Master Deed:

Corporation and Securities Bureau  
Michigan Department of Commerce  
P.O. Box 30222  
Lansing, Michigan 48909  
Telephone: 517/334-6203

If you have a complaint with the association at the time it is controlled by the co-owners or with other co-owners, check the condominium bylaws to find out what recourse you have. Neither the Corporation and Securities Bureau nor other state agencies generally have jurisdiction over complaints between these parties.

The Condominium Act now provides in Section 145 that upon receipt of an oral or written complaint with respect to a developer of a condominium project, the Corporation and Securities Bureau shall forward a copy of the complaint to the affected developer, and shall mail a notice of the available remedies to the complainant. At the end of this handbook is a section entitled, "Available Remedies Under the Condominium Act."

The jurisdiction of certain agencies such as the Michigan Department of Licensing and Regulation may be limited to complaints filed within a specific period of time after construction or sale. For this reason it is important that you pursue any complaints quickly and be able to back up any claims.

# Remember:

The best protection in buying a condominium is your own common sense. Follow these steps and you should enjoy condominium ownership:

1. **Know Your Developer.**
2. **Read and Know the Contents of Your Condominium Documents.**
3. **Get Sales Promises in Writing.**
4. **Don't Submit to High Pressure Sales Tactics.**
5. **Get the Answers to the Questions in This Book.**

## *What the Words Mean*

### **Assessment (Operating)**

Proportionate share of the budgeted annual cost which is paid as a monthly charge to maintain the common areas and elements of a condominium and to maintain a sufficient reserve fund to assure financial stability.

### **Assessment (Special)**

An assessment made for some special purpose or because of inadequate budgeting of operating expenses.

### **Association of Co-Owners**

All of the co-owners acting as a group in accordance with the master deed and bylaws for the administration of the project. The co-owner can exercise voting rights in the association.



## **Condominium Bylaws**

The operation of the property is governed by a set of bylaws which are recorded with the master deed. The bylaws impose certain duties and obligations on the co-owners and the association such as timing of meetings, record keeping, and determination and collection of assessments.

## **Association Bylaws**

The association bylaws set forth the operating procedures for the association.

## **Common Interest**

The percentage of undivided interest in the common elements apportioned to each unit as expressed in the master deed.

## **Co-Owner**

A person who buys a unit in a condominium project becomes a co-owner. A co-owner owns a divided interest in the unit purchased, which may be a fee simple interest or a land contract vendee's interest, and has an undivided co-interest in all the common property in the condominium project.

## **Default**

The failure to meet certain contractual obligations, such as monthly payments or maintenance of the property.

## **Easement**

An easement in a condominium refers to the right of use under, across or over the land and improvements in the condominium, such as the sewer pipe or utility easement running beneath the surface of the land, the right to walk over a parking area or over the lobby area and stairways, and the right to have the utility lines running through the walls of a building.

### **Escrow Funds**

Subscription deposits or downpayments required to be held unused, until the condominium project is recorded and titles are conveyed to each buyer.

### **Liability and Hazard Insurance (Association)**

Insurance to protect against negligent actions of the co-owners association and damages caused to property by fire, windstorm, and other common hazards. This policy differs from the homeowner's personal insurance on the unit and furnishings.

### **Lien**

A claim recorded against a property as security for payment of a just debt.

### **Limited Common Element**

Those common elements designated in the Master Deed and reserved for the use of a certain unit to the exclusion of other units, such as hallways on a given floor reserved for the use of the apartment owners on that floor, carports, patios, or balconies.

### **Master Deed**

The basic document used in the creation of a condominium, describes the division of the project into units and common elements.

### **Mortgage Commitment**

The written notice from the bank or other lender saying that it will advance the mortgage funds in a specified amount to enable one to buy the unit.

### **Reserve Funds (Replacement)**

Funds which are set aside usually in escrow from monthly association assessments to replace common elements, such as roofs, at some future date.

## **Taxes**

Local real estate taxes are levied on the individual units and not on the condominium association.

## **Undivided Interest**

In condominium law, the joint ownership of common areas in which the individual percentages are known but not applied to separate the areas physically. This situation is similar to the joint ownership of an automobile or home by husband and wife.

# **Available Remedies Under The Condominium Act**

Section 145 of the Act provides that at a minimum, a purchaser would have the following remedies available to resolve a complaint:

1. The right to bring an action under Section 115 of the Act.

Section 115 provides a person or association of co-owners adversely affected by a violation of, or a failure to comply with, the Act, Rules promulgated under the Act, or any provision of an agreement or a Master Deed, may bring an action for relief in a court of competent jurisdiction. This section provides that the court may award costs to the prevailing party. The section also provides that under certain circumstances, the court may award damages to the purchaser because of the developer's actions.

A purchaser or association of co-owners considering this remedy should consult with their legal advisor.

2. The right to arbitration under Section 144 of the Act, Section 144 provides:

“(1) A contract to settle by arbitration may be executed by the developer and any claimant with respect to any claim against the developer that might be the subject of a civil action.

(2) At the exclusive option of the purchaser, co-owner or person occupying a restricted unit under section 104b, a contract to settle by arbitration shall be executed by the developer with respect to any claim that might be the subject of a civil action against

the developer, which claim involves an amount less than \$2,500.00 and arises out of or relates to a purchase agreement, condominium unit, or project.

- (3) At the exclusive option of the association of co-owners, a contract to settle by arbitration shall be executed by the developer with respect to any claim that might be the subject of a civil action against the developer, which claim arises out of or related to the common elements of a condominium project, if the amount of the claim is \$10,000.00 or less.
- (4) The period of limitations prescribed by law for the bringing of a civil action shall apply equally to the execution of a contract to settle by arbitration under this section.
- (5) All costs of arbitration under this section shall be allocated in the manner provided by the arbitration association.
- (6) A contract to settle by arbitration under this section shall specify that the arbitration association shall conduct the arbitration.
- (7) The method of appointment of the arbitrator or arbitrators shall be pursuant to reasonable rules of the arbitration association.
- (8) Arbitration under this act shall proceed according to sections 5001 to 5065 of Act No. 236 of the Public Acts of 1961, being sections 600.5001 to 600.5065 of the Michigan Compiled Laws, which may be supplemented by reasonable rules of the arbitration association.
- (9) An arbitration award shall be binding on the parties to the arbitration.”

A purchaser or association of co-owners considering this remedy should consult with their legal advisor.

3. The right to lodge a complaint pursuant to Article 5 of the Occupational Code (Section 501 to 522 of 1980 P.A. 299).

A condominium developer may be required to be a licensed residential builder under the Occupational Code. Complaints concerning construction would be filed with the Department of Licensing and Regulation, Complaint Division, P.O. Box 30018, Lansing, Michigan 48909.

4. The right to initiate an investigation or bring an action under the Michigan Consumer Protection Act, 1976 P.A. 331.

This is an Act to prohibit certain methods, acts, and practices in trade or commerce; to prescribe certain powers and duties; to provide for certain remedies, damages, and penalties; to provide for the promulgation of rules; to provide for certain investigations; and to prescribe penalties.

Complaints may be filed with the Department of Attorney General, Consumer Protection Division, 525 West Ottawa, Lansing, Michigan 48913. Complaints may also be filed with the Prosecuting Attorney in the county in which the condominium project is located.

A purchaser or association of co-owners considering this remedy may wish to consult with their legal advisor.

5. The right to notify the appropriate enforcing agency of an alleged violation of the State Construction Code, other applicable building code, or construction regulations. The term “enforcing agency” is defined in the State Construction Code, 1972 P.A. 230, as the local building official.

*This handbook is published as a general guide for people who are considering buying a condominium. It is not intended as a substitute for the Michigan Condominium Act (1978 P.A. 59), or for the rules of the Corporation and Securities Bureau that pertain to condominiums, or for the specific condominium documents of any development.*

## THE HEIGHTS AT ELKOW FARMS

### ESCROW AGREEMENT

THIS AGREEMENT is entered into this 13<sup>th</sup> day of November, 2012, between **PAUL ELKOW BUILDING COMPANY LLC**, a Michigan limited liability company (the "Builder"), and **MINNESOTA TITLE AGENCY, INC.**, a Michigan corporation (the "Escrow Agent"), as agent for **OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**.

WHEREAS, Elkow Family, L.L.C., a Michigan limited liability company, of 26293 S. Hill Road, New Hudson, Michigan 48165, is the Successor Developer of The Heights at Elkow Farms, a residential building site condominium project established under applicable Michigan law; and

WHEREAS, the Builder is selling units in The Heights at Elkow Farms and is entering into Purchase Agreements with Purchasers for such units in substantially the form attached hereto, and each Purchase Agreement requires that some deposits made under such Agreement be held in an escrow account with an escrow agent; and

WHEREAS, the parties hereto desire to enter into an Escrow Agreement to establish such an escrow account for the benefit of the Builder and for the benefit of each Purchaser (hereinafter called the "Purchaser") who makes deposits under a Purchase Agreement; and

WHEREAS, the Escrow Agent is acting as an independent party hereunder pursuant to the provisions of this Agreement and the Michigan Condominium Act (Act No. 59, Public Acts of 1978, as amended, hereinafter the "Act") for the benefit of the Builder and all Purchasers and not as the agent of any one or less than all of such parties;

NOW, THEREFORE, it is agreed as follows:

1. Initial Deposit of Funds. The Builder shall, promptly after receipt, transmit to the Escrow Agent all sums deposited with it under a Purchase Agreement, together with a fully executed copy of such Agreement and a receipt signed by the Purchaser for the recorded Master Deed, Condominium Buyer's Handbook and Disclosure Statement.

2. Release of Funds. The sums paid to the Escrow Agent under the terms of any Purchase Agreement shall be held and released to the Builder or the Purchaser only upon the conditions hereinafter set forth:

a. Upon Withdrawal by Purchaser. The escrowed funds shall be released to the Purchaser under the following circumstances:

(1) If the Purchase Agreement is contingent upon the Purchaser obtaining a mortgage and Purchaser fails to do so as provided therein and duly withdraws from the Purchase Agreement as a result thereof, the Escrow Agent shall release to the Purchaser all sums held by it pursuant to said Agreement.

(2) In the event that the Purchaser duly withdraws from the Purchase Agreement prior to the time that said Agreement becomes binding under paragraph 6 of the General Provisions thereof, the Escrow Agent shall, within three (3) business days from the date of receipt of notice of such withdrawal, release to the Purchaser all of the Purchaser's deposits held thereunder.

b. Upon Default by Purchaser. In the event that the Purchaser under the Purchase Agreement defaults in making any payments required by said Agreement or in fulfilling any other obligations thereunder for a period of ten (10) days after written notice by the Builder to the Purchaser, the Escrow Agent shall release sums held pursuant to the Purchase Agreement to the Builder in accordance with the terms of said Agreement.

c. Upon Conveyance of Title to Purchaser. Upon conveyance of title to a unit from the Builder to the Purchaser (or upon execution of a land contract between the Builder and the Purchaser in fulfillment of the Purchase Agreement) the Escrow Agent shall release to the Builder all sums held in escrow under such Agreement.

d. Release of Interest Earned Upon Escrowed Funds. The Escrow Agent shall be under no obligation to earn interest upon the escrowed sums held pursuant hereto. In the event that interest upon such sums is earned, however, all such interest

shall be separately accounted for by the Escrow Agent and shall be held in escrow and released as and when principal deposits are released hereunder; provided, however, that all interest earned on deposits refunded to the Purchaser upon the occasion of Purchaser's withdrawal from the Purchase Agreement shall be paid to the Builder.

e. Other Adequate Security. If the Builder requests that all of the escrowed funds held hereunder or any part thereof be delivered to it prior to the time it otherwise becomes entitled to receive the same, the Escrow Agent may release all such sums to the Builder if the Builder has placed with the Escrow Agent an irrevocable letter of credit drawn in favor of the Escrow Agent in form and substance satisfactory to the Escrow Agent and securing full repayment of said sums or has placed with the Escrow Agent such other substitute security as may be permitted by law and approved by the Escrow Agent.

3. Limited Liability of Escrow Agent. Upon making delivery of the funds deposited with the Escrow Agent pursuant to the Purchase Agreement and performance of the obligations and services stated therein and herein, the Escrow Agent shall be released from any further liability thereunder and hereunder, it being expressly understood that liability is limited by the terms and provisions set forth in such Agreements and in this Agreement and that by acceptance of this Agreement the Escrow Agent is acting in the capacity of a depository and is not, as such, responsible or liable for the sufficiency, correctness, genuineness, or validity of the instruments submitted to it or the marketability of title to any unit sold under any other Agreement. The Escrow Agent is not responsible for the failure of any bank used by it as an escrow depository for funds received by it under this Agreement.

Further, the Escrow Agent is not a guarantor of performance by the Builder under the Project documents or any Purchase Agreement, and the Escrow Agent undertakes no responsibilities whatever with respect to the nature, extent or quality of such performance thereunder or with regard to the conformity of such performance to the terms of such documents, to the plans and specifications for the project, to local or state laws, or in any other particular. So long as the Escrow Agent relies in good faith upon any certificate, cost estimate or determination of the type described in Section 3, the Escrow Agent shall have no liability whatever to the Builder, the Purchaser, any owner, or any other party for any error in such certificate, cost estimate or determination or for any act or omission by the Escrow Agent in reliance thereon.

Except in instances of gross negligence or willful misconduct, the Escrow Agent's liability hereunder shall in all events be limited to the return to the party or parties entitled thereto of the funds retained in escrow (or which were replaced by security). The Builder hereby agrees to indemnify and hold harmless the Escrow Agent for any loss or damage sustained by the Escrow Agent, including, but not limited to, attorney fees resulting from any litigation arising from the performance of the Escrow Agent's obligation and services, provided such litigation is not a result of the Escrow Agent's wrongful act or negligence.

4. Notices. All notices required or permitted hereunder and all notices of change of address shall be deemed sufficient if personally delivered or sent by ordinary first class mail or by registered or certified mail, postage prepaid and return receipt requested, addressed to the recipient party at the address show below such party's signature to this Agreement or upon the pertinent Purchase Agreement. For purposes of calculating time periods under the provisions of this Agreement, notice shall be deemed effective upon mailing or personal delivery, whichever is applicable.

Paul Elkow Building Company, LLC, Builder

Minnesota Title Agency, Inc., Escrow Agent

By:

\_\_\_\_\_  
Paul Elkow, Member  
28701 Wintergreen  
Farmington, Michigan 48331  
pelkow@twmi.rr.com  
248/891-6220

By:

\_\_\_\_\_  
Michael A. Cuschieri, Authorized Agent  
32500 Schoolcraft Road  
Livonia, Michigan 48150-4399  
michaalc@minnesotatitle.com  
734/421-4000

## **DISCLOSURE STATEMENT**

### **The Heights at Elkow Farms**

**The Heights at Elkow Farms is a Two Hundred Eight Unit residential site condominium, which may not be further expanded in size, located in the Township of Lyon, Oakland County, Michigan**

**The Original Developer of The Heights at Elkow Farms (Units 1-85) was:**

**HITECH BUILDING, LLC  
2683 Lakeridge Avenue  
Wixom, Michigan 48393**

**The Successor Developer of The Heights at Elkow Farms (Units 86-208) is:**

**ELKOW FAMILY, LLC  
26293 South Hill Road  
New Hudson, Michigan 48165**

**THIS DISCLOSURE STATEMENT IS NOT A SUBSTITUTE FOR THE MASTER DEED, THE CONDOMINIUM BUYERS HANDBOOK OR OTHER APPLICABLE LEGAL DOCUMENTS AND BUYERS SHOULD READ ALL SUCH DOCUMENTS TO FULLY ACQUAINT THEMSELVES WITH THE PROJECT AND THEIR RIGHTS AND RESPONSIBILITIES RELATING THERETO.**



**The Heights at Elkow Farms  
DISCLOSURE STATEMENT  
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## **The Heights at Elkow Farms DISCLOSURE STATEMENT**

### **I. Introduction.**

Condominium development in Michigan is governed largely by Act 59 of the Michigan Public Acts of 1978, as amended (the Condominium Act), and by rules adopted by the Michigan Department of Consumer and Industry Services. Under the Condominium Act, the developer of a condominium project must disclose to purchasers of units in the project certain characteristics of the project.

This Disclosure Statement, together with copies of the legal documents required for the creation and operation of the Project, are furnished each purchaser pursuant to the requirement of Michigan law that the Developer of a project disclose to prospective purchasers the characteristics of the units that are offered for sale. This Disclosure Statement contains information about the developer, the management, warranties, expenses, and other information about the project.

This Disclosure Statement is not a substitute for a thorough review of the Master Deed of The Heights at Elkow Farms and all of the other documents pertaining to the creation and operation of The Heights at Elkow Farms. Any purchaser having any questions regarding this Disclosure Statement or any of The Heights at Elkow Farms documents referenced concerning this Project should consult a lawyer.

### **II. The Condominium Concept.**

Condominium is a method of subdividing, describing, and owning real property. A condominium unit has the same legal attributes as any other form of real property under Michigan law and may be sold, mortgaged, or leased, subject only to such restrictions as are contained in the condominium documents and as otherwise may be applicable to the property. A project is established by recording a master deed in the Office of the Register of Deeds in the county where the project is located.

Upon the purchase of a unit, each owner receives a deed to his individual condominium unit. Each owner owns, in addition to his unit, an undivided interest in the other components of the project known as "common elements." Title to the common elements is included as part of, and is inseparable from, title to the individual units. Each owner's proportionate share of the common elements is determined by the percentage of value assigned to his unit as described in Article IV of the Master Deed and as set forth in Section VI of this Disclosure Statement.

All portions of the project not included within the units constitute the common elements. "Limited Common Elements" are those Common Elements that are set aside for use by less than all unit owners. "General Common Elements" are all Common Elements other than Limited Common Elements.

The units and the General and Limited Common Elements are described in the Master Deed. Individual unit boundaries are shown on the Condominium Subdivision Plan, attached as exhibit B to the Master Deed.

The project is administered and managed by a non-profit corporation (the "Association") of which all owners are members (the "Owners"). A board of directors manages the Association. The board of directors is obligated to enforce the provisions of the condominium documents, including restrictions on the use of the units and common elements on behalf of all owners of units in the project. The board of directors is responsible

for the collection of assessments from unit Owners for the management, administration, and operation of the project. Under Michigan Law, unpaid assessments constitute a lien against the unit and in the event the lien remains unpaid the Association may cause the lien to be foreclosed. The board of directors is also given the power to enforce the provisions of the condominium documents, including the right to sue co-owners for money damages and injunctive relief.

Except for the year in which the project is established, or, in the case of units added to a project by subsequent amendment to the Master Deed, the year in which such amendment is recorded; real property taxes and assessments are levied individually against each unit in the project. The separate taxes and assessments cover the unit and its proportionate share of the Common Elements. No taxes or assessments are levied independently against the Common Elements. In the year in which the project is established or in which an amendment adding units is recorded, the taxes and assessments for the units covered by the Master Deed or amendment usually are billed to the Association and are paid by the owners of such units in proportion to the percentages of value assigned to the units owned by them.

Although the foregoing is generally accurate as applied to most site condominium developments, the details of each development may vary substantially. Accordingly, each purchaser is urged to review carefully all of the documents contained in The Heights at Elkow Farms Purchaser Information Booklet as well as any other documents that the Developer has delivered to the purchaser in connection with this development.

ANY PURCHASER HAVING QUESTIONS PERTAINING TO THE LEGAL ASPECTS OF THE HEIGHTS AT ELKOW FARMS IS ADVISED TO CONSULT HIS OWN LAWYER OR OTHER PROFESSIONAL ADVISOR.

### **III. Description of the Project.**

#### **A. Size, Scope and Physical Characteristics of the Project.**

The Heights at Elkow Farms consists of two hundred eight (208) Units located in Lyon Township, Michigan. Each Unit has its own entrance from and exit to public property or to a Common Element of the Project.

The Heights at Elkow Farms is different from what many people associate with the concept of a condominium. A condominium unit in a traditional condominium project consists of only the air space that is enclosed within the building envelope of the units located in the condominium project. The exterior structural components located outside of the unit in a traditional condominium would be part of the general common elements of the project and the association would be responsible for maintenance and upkeep. The Heights at Elkow Farms is a "site" condominium project.

A "site" condominium consists of all of the property located within the boundaries of each Unit, as the boundaries are depicted on the Condominium Subdivision Plan. Any buildings constructed or other improvements made within the boundaries of the unit are part of that Unit and are not common elements. Each Owner of a "site" condominium unit is responsible (at the cost and expense of the Owner) to maintain, repair, and replace the unit, including any dwelling or other improvements located on the unit. This means that each Owner is responsible for landscaping and exterior maintenance, unless otherwise provided for in the condominium documents. The specific obligations of each Owner to maintain each unit owned is more particularly described in the Bylaws.

The Heights at Elkow Farms consists of 208 "site" condominium units on which it is anticipated that separate residential structures will be constructed. Each Unit can only be used for residential purposes as provided in the condominium documents.

Hitech Building, L.L.C., and Elkow Family, L.L.C., have constructed the Condominium Units and Common Elements in The Heights at Elkow Farms, including any improvements for common use by the Owners of the Units.

THE LANDSCAPING AND OTHER ELEMENTS DEPICTED ON DRAWINGS, BROCHURES, AND/OR REDUCED SITE MODELS, IF ANY, ARE CONCEPTUAL RENDERINGS ONLY AND MAY BE MODIFIED OR ELIMINATED BY THE DEVELOPER AT THE DEVELOPER'S DISCRETION.

**B. Utilities.**

The Heights at Elkow Farms is served by the public water system and the public sanitary sewer system. Owners in The Heights at Elkow Farms will be charged individually or through the Association for usage of these systems. The on-site storm water system is private, and, after expiration of the Developer's warranty, any costs for maintenance and repair are the responsibility of the Association or the individual unit Owners, if the Oakland County Drain Commissioner undertakes any work within The Heights at Elkow Farms Drainage District. Repair costs may include: removal and replacement of failed pipe or structures; removal of silt or trash from detention basins and their outlet structures; and maintaining landscaping around detention facilities. Other utilities will be furnished by the respective utility company. Gas is furnished by Consumers Energy and is individually metered to each unit for individual service for payment by the Owner. Electricity is furnished by DTE Energy and is individually metered to each unit for individual service for payment by the Owner.

**C. Roads.**

The roads within The Heights at Elkow Farms are private and will be maintained by The Heights at Elkow Farms Association until such time as the roads are accepted for dedication to the public, at which time the roads will become public and maintained by the Oakland County Road Commission, and which will not be before the wearing course is placed. The wearing course of asphalt will not be placed until substantially all of the houses are constructed in a particular section.

**D. Rights of Developer.**

**1. Contraction, Consolidation and Other Modifications.**

The Developer has reserved the right to modify the size, location, design or elevation of the Units and Common Elements as need arises so long as such modifications do not unreasonably impair or diminish the appearance of the Project or the view, privacy or other significant attribute or amenity of any Unit.

**2. Conduct of Commercial Activities.**

The Developer has reserved the right for the Builder(s), until all of the Units in the Project have been sold, to maintain within the Project a sales office, a business office, model units, storage areas, and such access to, from and over the Project as may be reasonable to enable development and sale of the entire Project. The Developer or Builder is obligated to restore the areas so utilized to habitable status upon termination of use.

**3. Right to Amend.**

The Developer has reserved the right to amend the Master Deed without approval from Owners and mortgagees for the purpose of correcting errors and for any other purpose. Any such amendment that would materially alter the rights of any Owner or mortgagee may be made only with

the approval of 66-2/3% of the owners and first mortgagees. Further, certain provisions of the Master Deed cannot be amended without the Developer's approval.

#### **4. Easements.**

Among others, the Developer has reserved for itself the following easements in the Master Deed:

(a) Easement for Maintenance, Repair and Replacement. The Developer has reserved such easements over the Project (including all units and Common Elements) as may be required to perform any of the Developer's maintenance, repair, decoration or replacement obligations which it may be required or permitted to perform under the condominium documents or by law.

(b) Easement for Use of Utilities. The Developer has reserved the right to grant easements for utilities to appropriate governmental agencies and public utilities. The Developer has also reserved an easement for itself, its successors and assigns to utilize, tap, or tie into, extend or enlarge any water, gas, storm and sanitary sewers and any other utility located upon the Project.

(c) Easement for Driveways and Walkways. The Developer has reserved an easement for itself, its successors and assigns, and all future owners of the land to the use of road, drives, walkways, etc. for ingress and egress over the property or any adjacent property owned by the Developer. In addition, the Developer has reserved the right to dedicate to the public any and all of the roads and driveways, etc. shown on the Condominium Subdivision Plan as General Common Elements.

#### **5. General.**

In the condominium documents and in the Condominium Act, certain rights and powers are granted or reserved to the Developer to facilitate the development and sale of the Project as a Condominium, including the power to approve or disapprove a variety of proposed acts and uses and the power to secure representation on the Board of Directors of the Association.

### **IV. Legal Documentation.**

#### **A. General.**

The Heights at Elkow Farms was established as a Condominium Project pursuant to the Master Deed recorded in the Oakland County Records. A copy of the Master Deed and its exhibits are contained in The Heights at Elkow Farms Purchaser Information Booklet. The Master Deed includes the Bylaws as Exhibit "A", and the Condominium Subdivision Plan as Exhibit "B".

#### **B. Master Deed.**

"Master Deed" means the Master Deed, as amended, that was recorded with the Oakland County Register of Deeds to establish The Heights at Elkow Farms as a site condominium Project. The Master Deed contains the definitions of certain terms used in the condominium documents, the percentage of value assigned to each Unit in the Project, a general description of the Units and Common Elements included in the Project, and a statement regarding the relative responsibilities for maintaining the Common Elements. Article I contains definitions utilized in the Master Deed, Bylaws, Planned Development Agreement and Condominium Subdivision Plan. Articles II and III describe the Title and Nature of the Project. Article IV describes the Common Elements of the Project and the respective responsibilities for maintenance, repair, and replacement. Article V describes the Unit and associated percentage of value assigned to each Unit. Article VI describes the rights of mortgagees.

Article VII describes the course of action in the event of damage to the Project. Article VIII contains a listing of the easements in the Project. Article IX provides for expansion of the Project. Article X contains reservations of access easements. Article XI contains a reservation of utility easements. Article XII provides for future access and utility easements. Article XIII gives the Association the power to grant future easements, licenses and rights-of-way. Article XIV describes access easements. Article XV describes the Right to Farm Act. Article XVI describes the owner's responsibility for special assessment for public drain, pathway, road, sewer and water improvements. Article XVII contains provisions on a special assessment storm water drainage district. Article XVIII provides for amendments and termination. Article XIX provides for assignment of the Developer's rights and powers.

**C. Bylaws.**

"Bylaws" mean the Bylaws of The Heights at Elkow Farms (which are also the Bylaws of The Heights at Elkow Farms Association of Owners) that are attached to the Master Deed as Exhibit "A". The Bylaws contain provisions relating to the operation, management, and fiscal affairs of the condominium and, in particular, set forth the provisions relating to assessments of Association members for the costs of operating the Project. Article I sets forth the governance of the Project by an Association of Owners. Article II provides for assessment for all expenses arising out of the management, administration and operation of the Project. Article III contains provisions regarding arbitration of certain disputes. Articles IV and V govern insurance, reconstruction and repair in and of the Project. Article VI contains certain restrictions upon the ownership, occupancy, and use of the Project, including use and occupancy of the Unit, alterations, activities, pets, aesthetics, vehicles, advertising, landscaping, antennas, maintenance, etc. Article VI also contains provisions regarding the architectural review committee. At the present time no rules and regulations have been adopted other than the restrictions provided in the Master Deed and Bylaws. Article VII contains provisions relating to mortgages on the Units. Articles VIII through XV contain provisions concerning administration of the Association. Article XVI governs amendments to the Bylaws. Article XVII describes compliance with the Act. Article XVIII describes the appropriate definitions. Article XIX contains remedies for default. Article XX sets forth certain rights reserved to the Developer. Article XXI contains provisions for severability.

**D. Condominium Subdivision Plan.**

"Condominium Subdivision Plan" means the Condominium Subdivision Plan of The Heights at Elkow Farms, prepared by David P. Smith & Associates, Inc., 8615 Richardson Road, Suite 100, Walled Lake, Michigan 48390 that is attached to the Master Deed as Exhibit "B", and Replat No.1 thereof prepared by Warner, Cantrell & Padnos, Inc., 27300 Haggerty Road, suite F2, Farmington Hills, Michigan 48331. The Condominium Subdivision Plan is a three dimensional survey depicting the physical location and boundaries of each of the Units and all of the Common Elements in the Project.

**E. Purchase Agreement.**

The "Purchase Agreement" means the agreement between the Builder and the purchaser. The Purchase Agreement contains specific conditions governing the purchase and sale of Unit in The Heights at Elkow Farms, including specific conditions under which the Purchase Agreement may be terminated. Pursuant to the Michigan Condominium Act, a purchaser is provided the right to withdraw from the purchase of a condominium within 9 days, with or without cause and without penalty, following the making of the Purchase Agreement and receipt of the condominium documents (MCL559.184). In addition, the Purchase Agreement includes specific conditions under which the Purchase Agreement may be terminated by the Builder. Accordingly, each purchaser is urged to

review carefully the Purchase Agreement as well as any other documents that the Builder and Developer has delivered to the purchaser in connection with this Project. Any purchaser having questions pertaining to the Purchase Agreement or any legal aspects of the Project is advised to consult his or her own lawyer or other professional advisor.

THIS DISCLOSURE STATEMENT IS NOT A SUBSTITUTE FOR THE HEIGHTS AT ELKOW FARMS MASTER DEED. EACH PURCHASER SHOULD CAREFULLY AND COMPLETELY REVIEW THE CONDOMINIUM DOCUMENTS IN CONNECTION WITH HIS OR HER DECISION TO PURCHASE A UNIT IN THE HEIGHTS AT ELKOW FARMS.

**V. The Developer and Other Service Organizations.**

**A. Developer's Background and Experience.**

The original Developer of The Heights at Elkow Farms was Hitech Building, L.L.C., a Michigan limited liability company. The Developer has not developed other residential condominiums. The infrastructure for the first phase (Units 1-85) of the project, including roads and underground, was built by Hitech Building, LLC. The Successor Developer of the Heights at Elkow Farms is Elkow Family, L.L.C., a Michigan limited liability company. The Successor Developer has not developed other residential communities. The infrastructure for the second phase (Units 86-208) of the project, including roads and underground will be built by the Elkow Family, L.L.C.

**B. Builder.**

The individual homes in the Project have or will be built by NVR, d/b/a Ryan Homes of Michigan, a Michigan corporation, Michigan residential builders license number 2102179060, R. Cook Enterprises, Inc., a Michigan corporation, Michigan residential builders license number 2102154207, and Paul Elkow Building Company L.L.C., a Michigan limited liability company, Michigan residential builders license number 2102198880.

**C. Sales.**

The sales of units in the project will be conducted by the residential builders, under and pursuant to their builder's license.

**D. Legal Proceedings Involving the Project or the Developer.**

The Developer is not aware of any pending judicial or administrative proceedings involving the Project or the Developer.

**VI. Operation and Management of the Project.**

**A. The Homeowners Association.**

The responsibility for management and maintenance of the Project is vested in The Heights at Elkow Farms Association, which has been incorporated as a non-profit corporation under Michigan law. The Articles of Incorporation of the Association are contained in the Purchaser Information Booklet. The Bylaws include provisions that govern the procedural operations of the Association.

Each Owner (including the Developer) is a member of the Association and is entitled to vote at meetings of the Association in accordance with the provisions of the condominium documents. The Board of Directors of the Association, the initial members of which are designees of the Developer, are



empowered to serve pursuant to the provisions of the Bylaws until other directors are elected.

The condominium documents provide that the Board of Directors has the necessary powers and duties required for the administration of the affairs of the Association and the Project. Except as provided by the condominium documents, the Board of Directors may do all such acts and things that are not specifically required to be done by the Members (Owners) and may otherwise act in all instances on behalf of the Association. The specific powers and duties of the Board of Directors are set out in The Heights at Elkow Farms Bylaws.

The Bylaws provide that within 120 days after closing the sales of 1/3 of the Units or one year from the date of the first conveyance, whichever first occurs, the Developer must establish an advisory committee to serve as liaison between the non-developer owners and the Developer.

Within 120 days after closing the sales of 25% of the Units, one of the directors will be selected by the non-developer Owners; within 120 days after closing the sales of 50% of the Units, 1/3 of the directors shall be selected by the non-developer Owners; and within 120 days after closing the sales of 75% of the Units, the non-developer Owners will elect all of the directors, except that the Developer will have the right to designate a least one director as long as it owns at least 10% of the Units in the Project. Regardless of the number of Units conveyed, 54 months after the first conveyance, non-developer Owners may elect directors in proportion to the number of Units that they own.

The first annual meeting may be held any time after 50% of the Units that may be created have been sold and must be held on or before the expiration of 120 days after 75% of the Units that may be created have been sold or within 54 months after conveyance of the first Unit, whichever first occurs. At the first annual meeting, the members of the Association will elect the number of directors allowed by the Bylaws and the directors in turn will elect officers for the Association. The Developer may retain a seat on the board so long as it owns 10% of the Units to be created in the Project.

The Developer's voting rights are set forth in Article VIII of the Bylaws.

**B. Percentages of Value.**

The Developer has assigned equal percentages of value for Units in The Heights at Elkow Farms based on several factors, including, market value, and the use and location of Common Elements and services. The percentage of value assigned to each Unit determines each owner's share of the Common Elements, the value of votes at meetings of the Association, and the owner's proportionate share of regular and special Association assessments and of the proceeds of administration of the Project.

**C. Project Finances.**

**1. Budget.**

Article II of the Bylaws requires the Board of Directors establish an annual budget for the operation of the Project including a reasonable amount for contingencies and reserves. The current budget of the Project is intended to provide for the normal and reasonably predictable expenses of administration of the Project, and includes a reserve for major repairs to and replacement of Common Elements. Inasmuch as the budget must necessarily be prepared in advance, it reflects estimates of expenses made by the Association. To the extent that estimates prove inaccurate during actual operation and to the extent that the goods and

services necessary to service the Project change in cost in the future, the budget and the expenses of the Association also will require revision. The current budget of the Association has been included as Appendix I to this Disclosure Statement.

THE CURRENT BUDGET IS ONLY AN ESTIMATE OF THE EXPENSES THAT MAY BE INCURRED IN ADMINISTERING THE PROJECT AS PREPARED BY THE ASSOCIATION. THE ACTUAL EXPENSES OF ADMINISTRATION MAY BE SUBSTANTIALLY DIFFERENT AND MAY RESULT IN INCREASED ASSESSMENTS FOR THE OWNERS. THE DEVELOPER DOES NOT REPRESENT OR WARRANT THE ACCURACY OF THE CURRENT BUDGET AND NO REPRESENTATIONS OR WARRANTIES ARE TO BE CONSTRUED FROM ANY PORTION OF THE CURRENT BUDGET.

## **2. Assessments.**

The only source of revenue for the Association to fund the Budget is through the assessment of its members. The annual assessment must be paid to the Association by each Owner in an annual payment. Each Owner of a Unit, excluding the Developer for so long as the Developer owns any Unit in the Project as provided in the condominium documents, must contribute to the Association to defray expenses of administration. Assessments are based upon the percentages of value assigned to the Units and so each Unit in The Heights at Elkow Farms will share equally in the costs and expenses of administration. In addition, it may be necessary to levy special assessments in accordance with the provisions of Article II, Section 2(b) of the Bylaws.

The Developer is not required to pay assessments. The Developer must contribute only its proportionate share of the Association's expenses actually incurred, as described in Article II, Section 7 of the Bylaws. The Developer is required to maintain all units it owns at its own expense.

It is also possible the Owner may become obligated to pay a percentage share of assessment delinquencies incurred by other Owners. This may occur if an Owner defaults on a first mortgage and the mortgage is foreclosed. In such case, the delinquent assessment becomes a common expense as provided in section 58 of the Michigan Condominium Act.

At closing, each first time purchaser of a Unit in the Project will also be responsible for the payment of a sum equal to two (2) monthly assessments to establish an initial working capital account for the Association, which shall be nonrefundable.

Because the day-to-day operation of the Project is dependent upon the availability of funds, it is important that each Owner pay his/her assessment in a timely manner. In addition, each Owner must also pay other charges in connection with his/her ownership of a Unit in the Project. For example, each Owner is responsible for paying real estate taxes levied on his/her Unit and his/her undivided interest in the Common Elements. The amount of real estate taxes will be determined by the Township of Lyon tax assessor.

## **3. Foreclosure of Lien.**

The Association has a lien on each Unit to secure payment of Association assessments. The Bylaws provide that the Association may foreclose its lien in the same fashion that mortgages may be foreclosed by action or by advertisement under Michigan law. By closing on the purchase of a Unit, each purchaser will be deemed to have waived notice of any proceedings brought by the Association to foreclose its lien by advertisement and notice

of a hearing prior to the sale of his Unit.

**4. Other Possible Liabilities.**

Each purchaser is advised of the possible liability of each Co-owner under Section 58 of the Condominium Act:

**If the mortgagee of a first mortgage of record or other purchaser of a condominium unit obtains title to the condominium unit as a result of foreclosure of the first mortgage, the mortgagee or purchaser and his or her successors and assigns are not liable for the assessments by the administering body chargeable to the unit that became due prior to the acquisition of title to the unit by that mortgagee or purchaser and his or her successors and assigns.**

**D. Association Management Contract.**

The Project may employ a professional management agent or agents to perform such of the services, duties or responsibilities as may be more conveniently or efficiently performed by someone other than by the Association. At the present time the Developer has not engaged the services of a professional management agent.

**E. Insurance.**

**1. Title Insurance.**

The Purchase Agreement provides that the Developer shall furnish each purchaser a commitment for an owner's title insurance policy issued by Minnesota Title Agency, Inc., a Michigan corporations of 32500 Schoolcraft, Livonia, Michigan 48150, as agent for Old Republic Title Insurance Company, at or prior to closing, and that the policy itself shall be provided within a reasonable time after closing. The cost of the commitment and policy is to be borne by Developer. Each purchaser should review the title insurance commitment with a qualified advisor of his or her choice prior to closing to make certain that it conforms to the requirements of the Purchase Agreement. Each Builder may provide its purchaser with a title commitment issue by a different title company.

**2. Other Insurance.**

The condominium documents require that the Association carry fire and extended coverage for vandalism and malicious mischief and liability insurance and workers' compensation insurance, if applicable, with respect to all of the Common Elements of the Project. The Association is responsible for losses to the extent that the insurance policies have deductible clauses or for amounts not otherwise covered by insurance. The Board of Directors is responsible for obtaining insurance coverage for the Association. Each Owner's pro rata share of the annual Association insurance premiums is included in the annual assessment. The Association insurance policies are available for inspection during normal working hours.

A copy of the certificate of insurance with respect to the Project will be furnished to each Owner upon request.

Each Owner is responsible for obtaining personal property, liability and other individual insurance coverage with respect to his Unit to the extent indicated in Article IV of the Bylaws. The Association should periodically review all insurance coverage to be assured of

its continued adequacy and owners should each do the same with respect to their personal insurance.

EACH OWNER IS RESPONSIBLE FOR OBTAINING, AND SHALL OBTAIN, INSURANCE COVERAGE WITH RESPECT TO THE INTERIOR AND EXTERIOR OF HIS/HER UNIT TO THE EXTENT INDICATED IN ARTICLE IV OF THE BYLAWS, AND FOR LIABILITY FOR INJURY WITHIN HIS/HER UNIT AND UPON THE COMMON ELEMENTS, IF ANY, ASSIGNED TO HIS/HER UNIT.

**F. Restrictions on Ownership, Occupancy and Use.**

Owners of Units are bound by various restrictions applying to the use of Units and Common Elements. Article VI of the Bylaws sets forth restrictions on the ownership, occupancy and use of individual Units and Common Elements in the Project. It is impossible to paraphrase these restrictions without risking the omission of some provision that may be of significance to a purchaser. Consequently, each purchaser should examine the restrictions with care to be sure that they do not infringe upon an important intended use. The following is a list some of the more significant restrictions:

**1. Single-Family.**

Units are to be used only for single-family residential purposes.

**2. Rental / Lease of Units.**

Owners may lease their Unit subject to the prior approval of the Association.

**3. Architectural Control.**

There are substantial limitations upon physical changes that may be made to the Common Elements and to the Units in the Project, and upon the uses to which the Common Elements and Units may be put. Certain changes and modifications are prohibited while others may be subject to the review and approval of the Developer and or the Association or an architectural review committee. The Developer has retained architectural control over the construction and alteration of all building and other improvements in the Project. Construction plans must be approved prior to commencement of construction, and construction must comply with established guidelines.

**4. Activities.**

No immoral, improper, unlawful, or offensive activity is permitted to be carried on in any Unit or upon the Common Elements, nor shall anything be done which may be or becomes an annoyance or a nuisance to the Owners of the Project. Activities involving the use of firearms, air rifles, pellet guns, B-B guns, bows and arrows and other similar dangerous weapons, projectiles are prohibited.

**5. Pets.**

Pets may be kept by Owners within their Unit subject to the restrictions and limitations set forth in Article VI, Section 30, of the Bylaws.

**6. Aesthetics.**

The Common Elements shall not be used for storage of materials or property except as expressly provided by the Association. No Unit shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Garbage and trash shall not be put out for collection earlier than the morning of pickup.

**7. Vehicles.**

Only vehicles used for general household transportation are to be used and stored upon the Project. No house trailers, commercial vehicles, boat trailers, boats, camping trailers, motorcycles, all terrain vehicles, snowmobiles, snowmobile trailers, other than automobiles or vehicles used primarily for general personal transportation purposes, may be parked or stored upon the Project. Parking of any motorized vehicle on a non-driveway portion of a Unit is prohibited.

**8. Rules and Regulations.**

Reasonable regulations may be adopted by the Board of Directors of the Association concerning the use of Common Elements. None of the restrictions apply to the commercial activities or signs of the Developer.

**9. Lights, Aerials, Antennas, Cable Television Dishes.**

Lights, aerials, direct broadcast satellite antennas, television broadcast antennas and multi-point distribution service antennas may be installed within the Unit with the prior approval of the architectural review committee.

**10. Miscellaneous Other Restrictions.**

Purchasers should be aware of the inclusion of numerous other restrictions contained in the Bylaws including but not limited to Common Element maintenance and Owner's obligations for maintenance, repair and upkeep of individual Units. Specific details pertaining to use and occupancy restrictions and enforcement can be found in Article VI of The Heights at Elkow Farms Bylaws.

**11. Assent.**

All present or future Owners, their families, present or future tenants, and their guests and invitees, and any other person using the facilities of the Project in any manner are subject to the condominium documents, including the Bylaws and any rules adopted by the Association.

THIS SUMMARY OF RESTRICTONS IS A SUMMARY ONLY AND IS NOT A SUBSTITUTE FOR THE COMPLETE RESTRICTONS CONTAINED IN THE CONDOMINIUM DOCUMENTS. PURCHASERS ARE ADVISED TO EXAMINE THE CONDOMINIUM DOCUMENTS (INCLUDING ARTICLE VI OF THE BYLAWS REGARDING RESTRICTIONS) WITH CARE PRIOR TO AGREEING TO PURCHASE A UNIT.

**VII. Rights and Obligations as Between Developer and Owners.**

**A. Before Closing.**

The respective obligations of the Developer and the purchaser of a Unit in the Project prior to closing are set forth in the Purchase Agreement and the accompanying Escrow Agreement, if any. Those documents should be closely examined by all purchasers in order to ascertain the disposition at closing of earnest money deposits advanced by the purchaser, anticipated closing adjustments, and other important matters. The Escrow Agreement provides, pursuant to Section 103b of the Condominium Act, that the escrow agent shall maintain sufficient funds or other security to complete those improvements shown as "must be built" on the Condominium Subdivision Plan until such improvements are substantially complete. This provision does not pertain to any dwelling or other appurtenances to be constructed on the Unit, but only relates to the improvements (such as utilities and roadways) requisite to placing each Unit in a condition suitable for issuance of a building permit. No escrow agreement or escrow is required for the construction of a dwelling, or the cost of construction of the dwelling. If any escrow funds are retained in escrow they are not to be released until issuance of a certificate of occupancy, if applicable, conveyance to a purchaser of title to a Unit and confirmation by the escrow agent that all improvements labeled "must be built" are substantially complete, unless the Escrow Agent has been furnished other adequate security.

**B. At Closing.**

Each purchaser will receive by warranty deed fee simple title to his Unit subject to no liens or encumbrances other than the condominium documents and those other easements and restrictions that are specifically set forth in the condominium documents and title insurance commitment.

**C. After Closing.**

**1. General.**

Subsequent to the purchase of the Unit, relations between the Developer and the Owner are governed by the Master Deed and the Condominium Act, except to the extent that any contractual provisions of the Purchase Agreement are intended to survive the closing.

**2. Project Limited Warranties.**

The Developer warrants that the purchaser will, upon payment of normal fees, be entitled to the issuance of a building permit with respect to the unit, subject to all applicable laws, ordinances, regulations, and requirements. Developer also warrants for one (1) year against defects in workmanship and materials covering the general common elements, effective from the date the first Unit is conveyed or completion, whichever is later.

Except as provided in the Limited Warranty, the Developer makes, and will not make, and you agree that you are not relying upon and will not commence any action or proceeding to enforce, any warranty of any kind whatsoever, express or implied. Developer makes no other warranties with respect to the Unit.

THERE ARE NO ADDITIONAL EXPRESS WARRANTIES AND NO IMPLIED WARRANTIES OF ANY KIND AND/OR FOR THE BENEFIT OF ANY PERSON, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, HABITABILITY, CONFORMANCE WITH PLANS AND SPECIFICATIONS AND FITNESS FOR A PARTICULAR PURPOSE, REGARDLESS OF WHETHER WE DISCHARGE ANY OR ALL OF OUR RESPECTIVE RESPONSIBILITIES TO YOU UNDER THE LIMITED WARRANTY.

THE WARRANTY ALSO EXCLUDES ANY CONDITION WHICH MAY BE DEEMED A VIOLATION OF ENVIRONMENTAL LAWS, RULES, POLICIES, OR REGULATIONS, AND ANY CONDITION RESULTING IN THE PROPERTY NOT BEING HABITABLE OR CAUSING OR CREATING A HEALTH RISK DUE TO RADON, MOLD, FORMALDEHYDE, CARCINOGENIC MATERIAL, ELECTROMAGNETIC FIELDS, POLLUTION, ANY OTHER SOLID, LIQUID, OR GASEOUS CONTAMINANT OR TOXIN. YOU MAY BE REQUIRED TO PAY SUBSTANTIAL SUMS FOR THE REPAIR OF DEFECTS WHICH MAY OCCUR AND WHICH ARE NOT COVERED BY THIS LIMITED WARRANTY.

BY EXECUTING THE PURCHASE AGREEMENT, YOU ALSO ACKNOWLEDGE THAT WE HAVE ADVISED YOU, AND YOU AGREE, THAT THE SALES REPRESENTATIVES ARE NOT AUTHORIZED TO MAKE ANY REPRESENTATION, WARRANTY OR PROMISE, NOR ANY MODIFICATION OR ADDITION TO THE PURCHASE AGREEMENT, WHICH IS BINDING UPON US, UNLESS THE REPRESENTATION, WARRANTY, PROMISE, MODIFICATION OR ADDITION IS CONTAINED IN A SEPARATE WRITTEN DOCUMENT SIGNED BY OUR PRESIDENT. NO SALES REPRESENTATIVE IS AUTHORIZED TO WAIVE OR DIMINISH THIS PROVISION.

The Builders may have limited warranties with the purchasers of individual homes. That Limited Warranty is extended only by the Builder to the first purchaser of each dwelling and is not transferable. The Limited Warranty does not cover consequential or incidental damages. It is recommended that you examine the Limited Warranty contained in the Purchase Agreement and review it with advisors of your choice prior to the execution of the Purchase Agreement.

### **3. Radon Gas.**

Radon is a naturally-occurring, colorless and odorless radioactive gas formed by the breakdown of uranium and radium deposits in the soil. Radon can escape from the soil and enter buildings. Preliminary studies by the United States Environmental Protection Agency (EPA) suggest that prolonged exposure to radon may result in adverse health consequences.

The extent to which an area or Unit may be exposed to radon depends upon a number of factors, including natural geologic conditions, prior land use, groundwater, construction materials and techniques, ventilation and air-conditioning systems, and homeowner maintenance. Because of the multitude of factors involved, it is difficult to predict whether a specific residence may be subject to high radon levels unless specific tests are conducted by experts in the area.

The Developer neither has nor claims any expertise in radon, and it does not provide advice to homeowners about the acceptable levels or possible health hazards of radon. It is

possible that tests or studies might disclose information which a purchaser might consider significant in deciding whether to purchase a Unit in The Heights at Elkow Farms. Hitech Building, LLC, assumes no responsibility to make any tests or studies.

The EPA, as well as state and local regulatory authorities, are best equipped to render advice regarding the risks which may exist in a particular area, the risks associated with radon exposure, the methods available to detect and measure radon levels, and whether remedial measures may be advisable in particular circumstances to reduce the risk of radon exposure. The EPA has published two guides which are available to interested persons: "A Citizen's Guide to Radon: What It Is and What To Do About It" and "Radon Reduction Methods: A Homeowner's Guide."

#### **4. Mold.**

Residential home construction is not, and cannot be, designed to exclude mold spores. The presence of mold spores in the air and on building materials is beyond the control of the Developer.

Mold is a type of fungus. It occurs naturally in the environment, and it is necessary for the natural decomposition of plant and other organic material. It spreads by means of microscopic spores borne on the wind, and is found everywhere life can be supported.

If the growing conditions are right, mold can grow in your home. Most homeowners are familiar with mold growth in the form of bread mold, and mold that may grow on bathroom tile. In order for mold to grow, mold requires a food source. This might be supplied by items found in the home, such as fabric, carpet or even wallpaper, or by building materials, such as drywall, wood and insulation, to name a few. Also, mold growth requires a temperate climate. The best growth occurs at temperatures between 40° F and 100° F. Finally, mold growth requires moisture. Moisture is the only mold growth factor that can be controlled in a residential setting. By minimizing moisture, a homeowner can reduce or eliminate mold growth.

Moisture in the home can have many causes. Spills, leaks, overflows, condensation, and high humidity are common sources of home moisture. Good housekeeping and home maintenance practices are essential in the effort to prevent or eliminate mold growth. If moisture is allowed to remain on the growth medium, mold can develop within 24 to 48 hours.

Not all types of mold are necessarily harmful, but certain strains of mold have been shown to have adverse health effects in susceptible persons. The most common effects are allergic reactions, including skin irritation, watery eyes, runny nose, coughing, sneezing, congestion, sore throat, and headache. Individuals with suppressed immune systems may risk infections. Some experts contend that mold causes serious symptoms and diseases which may even be life threatening. However, experts disagree about the level of mold exposure that may cause health problems, and about the exact nature and extent of the health problems that may be caused by mold. The Center for Disease Control states that a causal link between the presence of toxic mold and serious health conditions has not been proven.

As a homeowner you can take certain positive steps to reduce or eliminate the occurrence of mold growth in the home, and thereby minimize any possible adverse effects that may be caused by mold. These steps include the following:



- a. Before bringing items into the home, check for signs of mold. Potted plants (roots and soil), furnishings, or stored clothing and bedding material, as well as many other household goods, could already contain mold growth.
- b. Regular vacuuming and cleaning will help reduce mold levels. Mild bleach solutions and most tile cleaners are effective in eliminating or preventing mold growth.
- c. Keep the humidity in the home low. Vent clothes dryers to the outdoors. Ventilate kitchens and bathrooms by opening the windows, by using exhaust fans, by running the air conditioning, or by running a dehumidifier to remove excess moisture in the air, and to facilitate evaporation of water from wet surfaces.
- d. Promptly clean up spills, condensation, and other sources of moisture. Thoroughly dry any wet surfaces or material. Do not let water pool or stand in your home. Promptly replace any materials that cannot be thoroughly dried, such as drywall or insulation.
- e. Inspect for leaks on a regular basis. Look for discolorations or wet spots. Repair any leaks promptly. Inspect condensation pans (refrigerators and air conditioners) for mold growth. Take notice of musty odors, and any visible signs of mold.
- f. If mold develops, thoroughly clean the affected area with a mild solution of bleach. First, test to see if the affected material or surface is color safe. Porous materials, such as fabric, upholstery, or carpet should be discarded. If the mold growth be severe, call on the services of a qualified professional cleaner.

**5. Mold Disclaimer.**

Whether or not your Unit experiences mold growth depends largely on how you manage and maintain your home. Our responsibility is limited to things that we can control. The Developer has no expertise in mold and makes no representation or warranty regarding the presence of mold. As explained in the Builder's written Limited Warranty, provided by separate instrument, the Builder will repair or replace defects in their construction (defects defined as a failure to comply with reasonable standards of residential construction) for a period of one (1) year from the date of closing. **THE PRESENCE OR ABSENCE OF MOLD IS NOT A DEFECT IN CONSTRUCTION. THE DEVELOPER IS NOT RESPONSIBLE FOR ANY DAMAGES CAUSED BY MOLD, OR ANY OTHER AGENT, THAT MAY BE ASSOCIATED WITH CONSTRUCTION, INCLUDING BUT NOT LIMITED TO PROPERTY DAMAGE, PERSONAL INJURY, LOSS OF INCOME, EMOTIONAL DISTRESS, DEATH, LOSS OF USE, LOSS OF VALUE, ALTERNATE LIVING EXPENSES, ADVERSE HEALTH EFFECTS, OR ANY OTHER EFFECT CAUSED BY MOLD OR ANY OTHER AGENT. ANY IMPLIED WARRANTIES, INCLUDING AN IMPLIED WARRANTY OF WORKMANLIKE CONSTRUCTION, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, ARE WAIVED AND DISCLAIMED.**

This notice, disclosure, and disclaimer agreement is hereby appended to and made a part of the Purchase Agreement. The consideration for this agreement shall be the same consideration as stated in the contract of sale. Should a court of competent jurisdiction rule any term or provision of this agreement invalid or unenforceable, the remainder of this agreement shall nonetheless stand in full force and effect?

**VIII. Purpose of Disclosure Statement.**

Hitech Building, LLC, and Elkow Family, L.L.C., have prepared this Disclosure Statement in good faith, in reliance upon sources of information believed to be accurate and in an effort to disclose material facts about the Project. Each purchaser is urged to engage a competent lawyer or other advisor in connection with deciding whether to purchase a Unit. In accepting title to a Unit, each purchaser shall be deemed to have waived any claim or right arising out of or relating to any immaterial defect, omission or misstatement in this Disclosure Statement. The terms used herein are defined in the Condominium Act.

The Michigan Department of Commerce prepared the text of the Condominium Buyers Handbook that the Developer has delivered to you. The Developer assumes no obligation, liability, or responsibility as to the statements contained therein or omitted from The Condominium Buyers Handbook.

The descriptions of the Master Deed and other instruments contained herein are summary only and may or may not completely and adequately express the content of the various condominium documents. Each purchaser is referred to the original Master Deed and other original instruments as contained in the Purchaser Information Booklet. In accordance with the rules of the Michigan Department of Commerce, legal phraseology, technical terms and terms of art have been minimized and brevity has been the objective to the extent consistent with the purposes of the Disclosure Statement and rules of the Michigan Department of Commerce.

**Appendix I**

**THE HEIGHTS AT ELKOW FARMS ASSOCIATION**

**APPROVED YEAR ENDING 12-31-12 BUDGET & 12-31-11 APPROVED BUDGET**

**# OF HOMEOWNERS:**

**80**

		<b>Approved Budget Year ending 12/31/2011</b>	<b>Approved Budget Year ending 12/21/2012</b>	<b>Per Homeowner Per Year</b>
	<b>Annual Income:</b>			
	Assessments	\$ 24,000.00	\$ 32,000.00	\$ 400.00
	Late Fees	\$ 0.00	\$ 0.00	\$ 0.00
	Interest Income	\$ 0.00	\$ 0.00	\$ 0.00
	Legal Recovery	\$ 0.00	\$ 0.00	\$ 0.00
	Initial Contribution	\$ 0.00	\$ 0.00	\$ 0.00
	<b>Total</b>	<b>\$ 24,000.00</b>	<b>\$ 32,000.00</b>	<b>\$ 400.00</b>
	<b>Operating Expenses:</b>			
<b>Administrative</b>	Administration	\$ 250.00	\$ 750.00	\$ 9.38
	Legal	\$ 500.00	\$ 750.00	\$ 9.38
	Accounting/Audit	\$ 250.00	\$ 250.00	\$ 3.13
	Management	\$ 5,040.50	\$ 6,270.00	\$ 78.38
	License/Permits	\$ 20.00	\$ 20.00	\$ .25
<b>Utilities</b>	Electric	\$ 2,500.00	\$ 2,500.00	\$ 31.25
	Water	\$ 2,000.00	\$ 1,500.00	\$ 18.75
<b>Insurance</b>	P&L, D&O	\$ 1,480.00	\$ 1,500.00	\$ 18.75
<b>Snow Service</b>	Snow Removal	\$ 1,000.00	\$ 1,500.00	\$ 18.75
	Salt/Chemical Ice Melt	\$ 0.00	\$ 500.00	\$ 6.25
<b>Landscaping</b>	Lawn Maintenance	\$ 9,200.00	\$ 7,000.00	\$ 87.50
	Flower/Beds	\$ 200.00	\$ 200.00	\$ 2.50
	Landscaping	\$ 500.00	\$ 4,200.00	\$ 52.50
	Fertilization	\$ 0.00	\$ 750.00	\$ 9.38
	Sprinklers	\$ 500.00	\$ 500.00	\$ 6.25
	Pest Control	\$ 0.00	\$ 400.00	\$ 5.00
	Holiday Lighting	\$ 0.00	\$ 1,000.00	\$ 12.50
<b>Maintenance</b>	Electrical Repairs	\$ 250.00	\$ 750.00	\$ 9.38
	General Maintenance & Repairs	\$ 0.00	\$ 500.00	\$ 6.25
<b>Reserve</b>	Reserve Savings	\$ 0.00	\$ 1,160.00	\$ 14.50
<b>Total Expense</b>		<b>\$ 23,690.00</b>	<b>\$ 32,000.00</b>	<b>\$ 400.00</b>
<b>Excess Revenue / Expense</b>		<b>\$ (310.00)</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>

See Notes to Budget

## NOTES TO BUDGET

1. The information set forth in the budget is based upon actual costs and estimates. All values are subject to change.
2. Insurance premiums have been included as there are general common elements to insure in this project.
3. Utilities are individually metered and each owner will pay his own utility costs. Real estate taxes will be separately assessed against each unit and are the responsibility of each owner.
4. The reserve standard for major repairs and replacements has been estimated at approximately three and 6/10 percent (3.6%), less than the recommended ten percent (10%) standard due to the fact that the private roads are turned over to the Road Commission for Oakland County after they have been installed by the Developer.
5. There are no fees, payments, or services which are paid or furnished, directly or indirectly, by the Developer which will later become an expense which must be borne by the owners.
6. Each owner will pay an equal annual assessment. Assessments will be due on a date established by the Board of Directors of the Association. If assessments are not paid when due, they will bear interest at the highest legal rate permitted under Michigan law. Past due assessments will be secured by a lien on the defaulting owner's unit. A purchaser will be required to pay an annual assessment prorated to the month in which he purchases his unit. The Developer is not liable for Association assessments. The Developer will pay a proportionate share of the Association's current maintenance expenses actually incurred based upon the number of improved units owned by the Developer at the time the expense is incurred to the total number of improved units in the project.

## **IX. BUILDER'S SUPPLEMENT TO DISCLOSURE STATEMENT**

### **A. The Builder's Background and Experience.**

The Builder, Paul Elkow Building Company L.L.C., a Michigan limited liability company, of 28701 Wintergreen, Farmington Hills, Michigan 48331, is a licensed residential builder. The Builder has substantial home building experience, including home building on scattered lots in Oakland County,, The Crossings at Milford site condominium, in Milford Township, Oakland County, Michigan, the Villas at Crystal Creek II, site condominium in Lyon Township, Oakland County, Michigan, in Hidden Lake site condominium in Green Oak Township, Livingston County, Michigan, and the Northwinds at Osborn Lake site condominium in Brighton Township, Livingston County, Michigan.

### **B. Rights and Obligations Between the Builder and Owners**

1. **Before Closing.** The respective obligations of the Builder and the purchaser of a building site in The Heights at Elkow Farms prior to closing are set forth in the Purchase Agreement and the accompanying Escrow Agreement. Those documents contain, among other provisions, the accompanying Escrow Agreement. Those documents contain, among other provisions, the provisions relating to the disposition of earnest money deposits advanced by the purchaser prior to closing and the anticipated closing adjustments, and should be closely examined by all purchasers. The Escrow Agreement provides that all deposits made under Purchase Agreements be placed in escrow. The Escrow Agreement provides for the release of an escrow deposit to any purchaser who withdraws from a Purchase Agreement in accordance with the Purchase Agreement. Such a withdrawal is permitted by each Purchase Agreement if it takes place within nine (9) business days after the purchaser has received all of the condominium documents or if the condominium documents are changed in a way that materially reduces the purchaser's rights. The Escrow Agreement also provides that a deposit will be released to the Builder if the purchaser defaults in any obligation under the Purchase Agreement after the Purchase Agreement has become binding upon the purchaser. Each purchaser of a site will receive a copy of the Escrow Agreement.

2. **At Closing.** Each purchaser will receive, by warranty deed fee simple title to the purchaser's site subject to the condominium documents and easements and restrictions of record. The Purchase Agreement provides that the Builder will give each purchaser a commitment for an owner's title insurance policy at or prior to closing, and that the policy itself shall be ordered at closing. The cost of the owner's commitment and policy is to be borne by the Builder. The Purchase Agreement provides that at the closing purchaser will pay all mortgage costs.

#### **3. After Closing.**

a. **General.** Subsequent to the purchase of the site, the legal relationship between the Builder and the Purchaser are governed by the Master Deed, except to the extent that any provisions of the Purchase Agreement are intended to survive the closing.

b. **Limited Warranty.** Express warranties are not provided unless specifically stated in the Purchase Agreement. The only warranty provided by the Builder is the limited warranty provided to the purchaser with the Purchase Agreement. Among other things, the limited warranty does not apply to defects or damages which are the result of normal expansion or contraction or the result of other normal characteristics of building materials. Prior to closing the purchaser must carefully inspect the home built by the Builder on the site. In the event any defects in material or workmanship exist which are covered by the limited warranty, a written list of such defects must be made and presented to the Builder prior to closing. The Builder shall not be required to correct defects which are covered by the limited warranty prior to closing but shall do so as promptly as possible after the closing, the Builder's obligation to correct defects in the home shall be strictly limited to those defects which are covered by the limited warranty and which are latent and could not have been discovered by the purchaser prior to closing. The Builder's limited warranty applies only to the home purchased, not to any common elements of The Heights at Elkow Farms, such as roads, detention basins or utilities. Written notice of any defect in the home or in the common elements must be given to the Builder within the applicable one-year period in order to be covered by the limited warranty. The Builder's obligations under the warranty are limited to repair and replacement. As to items not of Builder's manufacture, such as any air conditioner, water heater, refrigerator, range, dishwasher or other appliances, the Builder will assign to purchaser the manufacturer's warranty, without recourse. The Builder makes no warranty on such items. THE LIMITED WARRANTY DESCRIBED HEREIN IS THE ONLY WARRANTY APPLICABLE. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER ARISING UNDER STATE LAW OR THE MAGNUSON-MOSS WARRANTY ACT, INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF FITNESS, MERCHANTABILITY OR HABITABILITY, ARE DISCLAIMED AND EXCLUDED.

c. **Limitation of the Builder's Liability.** The Purchase Agreement strictly limits the builder's liability whether in contract, tort, under any warranty, in negligence or otherwise, to the obligations provided in the Builder's limited warranty. The Builder is not liable to purchaser for or responsible to compensate or indemnify purchaser for any damages, claim, demand, loss, cost, or expense resulting from an alleged claim of breach of warranty, whether relating to injury to persons, property, or otherwise, or relating to the presence of any toxic or hazardous waste, substance or contaminant, including without limitation radon gas, in on, or under the purchaser's site and home, The Heights at Elkow Farms development, or the real estate adjacent to or in close proximity with The Heights at Elkow Farms development. The Purchase Agreement further provides that the builder shall in no circumstances be liable for any consequential, incidental, special or secondary damages, even if the Builder has been advised of the possibility of such damages. All of purchaser's rights relating to the Purchase Agreement, the limited warranty, the site and appurtenant common elements may be asserted only by purchaser and not by any association or class representative. The Builder makes no representations or warranties (other than the limited warranty described above) in the Purchase Agreement or otherwise concerning the building site, The Heights at Elkow Farms,

the value or resale value of the building site, the real estate adjacent to or in close proximity with The Heights at Elkow Farms or the condition of the air, the soils, surface waters, and groundwater in, on or under the site, The Heights at Elkow Farms or such adjacent or proximate real estate. Purchaser should make its own investigation prior to executing the Purchase Agreement with respect to each of the foregoing. Without purchaser's agreement to and acknowledgement of the provisions of the Purchase Agreement and limited warranty described above, the Builder would not agree to sell the purchaser's site to purchaser.

**C. Radon Gas.**

Radon is a naturally-occurring, colorless and odorless radioactive gas formed by the breakdown of uranium and radium deposits in the soil. Radon can escape from the soil and enter building. Preliminary studies by the United States Environmental Protection Agency (EPA) suggest that prolonged exposure to radon may result in adverse health consequences. The extent to which an area of site may be exposed to radon depends upon a number of factors, including natural geologic conditions, prior land use, groundwater, construction materials and techniques, ventilation and air-conditioning systems, and homeowner maintenance. Because of the multitude of factors involved, it is difficult to predict whether a specific residence may be subject to high radon levels unless specific tests are conducted by experts in the area.

The Builder neither has nor claims any expertise in radon, and it does not provide advice to homeowners about the acceptable levels or possible health hazards of radon. It is possible that tests or studies might disclose information which a purchaser might consider significant in deciding whether to purchase a building site in The Heights at Elkow Farms from the Builder. The Builder assumes no responsibility to make any tests or studies.

The EPA, as well as state and local regulatory authorities, are best equipped to render advice regarding the risks which may exist in a particular area, the risks associated with radon exposure, the methods available to detect and measure radon levels, and whether remedial measures may be advisable in particular circumstances to reduce the risk of radon exposure. The EPA has published two guides which are available to interested persons: "A Citizen's Guide to Radon: What It Is and What To Do About It" and "Radon Reduction Methods: A Homeowner's Guide."

**D. Purpose of the Builder's Supplement to Disclosure Statement.**

This Builder's Supplement to Disclosure Statement paraphrases various provisions of the Purchase Agreement, Escrow Agreement, Limited Warranty and other documents required by law. It is not a complete statement of all the provisions of those documents which may be important to purchasers. In an attempt to be more readable, this Builder's Supplement omits most legal phrases, definitions and detailed provisions of the other documents. Certain of the terms used herein are defined in the Michigan Condominium Act, as amended. This Builder's Supplement is not a substitute for the legal documents which it draws information from, and the rights of purchasers and other parties will be controlled by the other legal documents and not by this Builder's Supplement to Disclosure Statement.

The Builder has prepared this Builder's Supplement to Disclosure Statement in good faith, in reliance: upon sources of information believed to be accurate and in an effort to disclose material facts about this transaction. The Builder disclaims liability to any purchaser for misstatements in this Builder's Supplement to Disclosure Statement (or for omissions which make statements herein appear misleading) if such, misstatements were made by the Builder in good faith, or were immaterial in nature, or were not relied upon by the purchaser, or did not result in any damages to the purchaser.

Each purchaser is urged to engage a competent lawyer or other advisor in connection with the purchaser's decision to purchase a site. In accepting title to a building site in The Heights at Elkow Farms, each purchaser shall be deemed to have waived any claim or right arising out of or relating to any immaterial defect, omission or misstatement in this Builder's Supplement to Disclosure Statement. In preparing this Builder's Supplement to Disclosure Statement, and the other condominium documents, the Builder's counsel has not undertaken professional responsibility to the association or to any owners or mortgagees for the completeness, accuracy, or validity of the condominium documents.

The Michigan Department of Commerce publishes The Condominium Buyers Handbook which the Builder has delivered to you. The Builder assumes no obligation, liability, or responsibility as to the statements contained therein or omitted from The Condominium Buyers Handbook.