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June 29, 2022

Via Email kenswider07@gmail.com

Mr. Kenneth Swider
Aurora Park Subdivision Homeowners Association

Mr. Swider:

In your capacity as a board member of the Aurora Park Subdivision Homeowners Association (the "Association"), you reached out to me requesting a response to questions pertaining to certain portions of the Restated Declaration of Covenants and Restrictions dated August 20, 1999 (the "Declaration") and recorded at Liber 9166, Page 142, of Plats, Macomb County Records, and the Aurora Park Subdivision Homeowners Association Bylaws (the "Bylaws") as currently posted at www.aurorapark.net. A copy of the Declaration and Bylaws I reviewed are attached.

I have included your questions below and prior to my responses.

Question 1.a. - Bylaws, page 2, Article II, Section 4. "In order to hold a meeting or vote on anything, a quorum of 30% must be met. We have 87 homes in our neighborhood, so does this mean that 26.1 homes must be present at the meeting in order for the meeting to take place? Does this also mean that 26.1 homes must be present at the meeting in order to vote on any issues?"

Response:

The answer to both of your questions is "yes," but with an exception for voting and the continuation of a meeting.

Section 4 requires "The presence in person or by proxy of thirty (30%) percent of the Owners qualified to vote shall constitute a quorum for holding a meeting of the members of the Association." An "Owner" is/are the record owner(s) of the fee simple title to any lot which is part of the Association. With 87 lots in the Association, 26.1 is thirty percent which means Owners representing 27 different lots must be present in person or by proxy to establish a quorum.

All of the owners of a lot may attend a meeting but together they only constitute one Owner for the quorum determination and may cast only one vote that must be by agreement of all of those owners.

Once a quorum is established at a meeting and so long as a meeting is not adjourned, the meeting may continue and votes taken even if some Owners leave and there is less than 26.1 owners present during the continuation of the meeting. For example, the meeting starts with 30 Owners present, a quorum is established. If any time after the quorum is established and the meeting started, several Owners either state an intention to withdraw from the meeting (even if they stay to see what happens) or simply leave and there are now only 26 or less Owners remaining, the meeting can continue and votes taken. Any such votes then require a majority of the remaining Owners at the meeting to pass. MCL 450.2415 controls and proscribes the foregoing.

Question 1.b. - Bylaws, page 2, Article II, Section 5. "Votes can be in person or in writing on a ballot (sent in ahead of time)? Also, cumulative voting shall not be permitted – does this just mean that written ballots cannot be counted and tallied until all of the votes are in and the day/time for voting has passed? Basically, we cannot review ballots as they come in – rather we have to wait until the voting period has ended and then count the votes all at once?"

Response:

First, cumulative voting is not related to the counting or tallying of the ballots. Cumulative voting is a method, typically used relating to the election of board members, that allows aggregating votes for one individual even though several individuals are up for election. The best way to explain this is by example. Assume there are four directors up for election. Each owner has one vote. One method of voting would allow an owner to cast one vote choosing the one director for which the owner wishes to vote. Cumulative voting would grant the owner the same number of votes as there are directors, in this case four votes, and the owner could use all four votes for one director. The foregoing can effectively be ignored as cumulative voting is not allowed pursuant to the Bylaws, Article II, Section 5.

To the extent votes are cast in writing, it is generally good form that they will not be counted or tallied until all votes are in. However, there is nothing prohibiting the counting of votes earlier.

Question 1.c. - Bylaws, page 2, Article II, Section 6. "The issue being voted on passes if >50% of the votes collected is a yes? It would fail if >50% collected are no? A quorum of 30% must be met in order for the election to be valid?"

Response:

The questions above are all answered, yes.

Question 1.b. - Bylaws, page 4, Article III, Section 8. "We understand this as we can send out ballots on an issue to homeowner's without having a meeting. Quorum is 30% and simple majority wins, correct?"

Response:

Section 8 allows for voting without a meeting. Ballots must be sent to all of the Owners in the Association. A quorum must be met, meaning you must receive back signed and valid ballots representing at least 30% of all of the Owners (27 Owners) and a simple majority (greater than 50% of ballots received) constitutes the action under the ballot. MCL 450.2408 also provides that the time to return ballots cannot be sooner than twenty days or more than ninety days from when the ballots are provided to the Owners.

Question 2. Bylaws, Article IX, Section 3. What does this mean? Does it mean that we need 75% of the homeowner's to vote Yes to amend the bylaws? Or does this mean that we need at least 75% of the homeowner's to participate (or vote) and then a simple majority wins assuming you reached 75% participation?

Response:

A vote of at least 75% of the Owners in favor of amending the Declarations are necessary to make a change. That means 66 Owners must approve any amendment ($87 \times 0.75 = 65.25$).

Question 3. Covenants & Restrictions, page 7, Article II, Section 8a – What is the definition of a commercial vehicle? Is it a vehicle weighing in excess of 2.5 tons? If not the weight, how do we define a commercial vehicle from this section?

Response:

The Declaration does not define a commercial vehicle. You will need to go to general definitions of "commercial." "Commercial" here was used in reference to a business vehicle. Merriam-Webster online defines "commercial" as "occupied with or engage in commerce or work intended for commerce."

The reference to "trucks weighing in excess of two and one-half ($2 \frac{1}{2}$) tons" is a separate category of prohibited vehicles.

Question 4. Covenants & Restrictions, page 13, Article IV, Section 1 – Near the bottom of the page it states that dues, fees and assessments cannot exceed \$200 per calendar year unless the amount in excess is voted upon and approved by the Association members representing at least seventy-five percent (75%) of the lots in the subdivision which have been sold to and occupied by residential homeowners and provided such amount in excess has also What does this mean exactly? Do we need 75% of the homeowner's to vote yes in order to exceed \$200/year or does this mean that we need at least 75% of the homeowner's participating in the election and then the simple majority wins?

Response:

At least 75% of the Owners must participate in the vote and the majority decision of those voting will control for any "fees, dues or assessments" in excess of \$200 per calendar year. You can separately assess up to fifty dollars per Lot per calendar year for snow removal from the Association streets.

Question 5. 5.Covenants & Restrictions, page 14, Article IV, Section 3 - About $\frac{3}{4}$ of the way down starting with "When the subdivision is governed by an Association..." Does this sentence mean that we need 75% of the homeowner's to vote yes to amend the bylaws or does this mean that we need at least 75% of the homeowner's to participate in an election and the simple majority wins? Also the statement at the end, "but such amendment or modification shall not have retroactive effect, and so long as ..." What does this mean?

Response:

This is same language as Bylaws, Article IX, Section 3 and your question 2.

A vote of at least 75% of the Owners in favor of amending the Declarations are necessary to make a change. That means 66 Owners must approve any amendment ($87 \times 0.75 = 65.25$).

"Retroactive effect" refers to an amendment or modification which can apply backwards and prior to the date of the amendment or modification. Here the statement that any such "amendment or modification shall not have retroactive effect" means that you cannot apply any change earlier than the date such change was made.

Question 6. Covenants & Restrictions, page 17, Article VI, Section 3 - Amending the covenants & restrictions requires the signatures of at least 70% of the homeowner's, correct? This seems very straight forward but is written differently in other sections of the bylaws and C&Rs. This is why it is somewhat confusing as the language changes slightly from section to section on how business is conducted and what is required.

Response:

A vote (and signature on any such amendment) of at least 70% of the Owners in favor of amending the Declarations are necessary to make a change. That means 61 Owners must approve any amendment ($87 \times 0.70 = 60.9$).

Additional Questions.

1. If this issue didn't involve extra funds for the year which exceeded \$200, would we have only needed 30% of the homes to cast a vote for the election to be valid? And then a simple majority wins?

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2. Since the street lights were going to cost each home \$156/year in addition to our \$200 annual dues we would be exceeding the \$200/year maximum. Because we had >75% of the homes participate, would this be a valid election had we included points A & B from section 8 (Action without a meeting) on the ballot? Or do we need 75% of the homeowner's to vote YES?

Response:

1. If the issue voted on did not involve extra funds or increasing the annual assessments/dues over \$200.00, a quorum of 30% of Owners (27) is necessary, and then a majority vote of those present will control.
2. To increase the assessment/dues \$156.00 per year in addition to \$200.00 per year, for a total of \$360.00 per year, at least 75% of the Owners must participate in the vote and a majority of those voting will control. If you complied with Article IV, Section 8 of the Bylaws and MCL 450.2408 and included all of those requirements, then a vote would be valid

The foregoing presents our responses to the questions posed as applied to the Declaration and Bylaws and under the law of the State of Michigan, as interpreted by us. Please be aware that the Declarations and Bylaws are subject to differing interpretations and application by a court. The responses expressed in this letter are solely for your information and may not be relied upon, in whole or in part, by you, for any other purpose or relied upon by any other person or entity for any purpose, without our prior written consent. The responses expressed in this letter are rendered as of the date hereof and we express no opinion as to circumstances or events that may occur subsequent to such date.

Very truly yours,



Robert A. Shaya
Shaya Law Firm

Attachments

RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS

AURORA PARK SUBDIVISION

This Restated Declaration of Covenants and Restrictions ("Declaration") made as of AUGUST 20., 1999 by AURORA LAND DEVELOPMENT L.L.C., a Michigan limited liability company ("Declarant"), whose address is 30500 Northwestern Hwy., Suite 200, Farmington Hills, Michigan 48334-3177, is based upon the following:

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

Lots 1 through 39 of Aurora Park Subdivision No. 1, according to the Plat thereof as recorded in Liber 126, Pages 5 through 8, of Plats, Macomb County Records (the "Plat of Phase I") and Lots 40 through 87 of Aurora Park Subdivision No. 2, according to the Plat thereof as recorded in Liber 140, Pages 28 through 31 of Plats, Macomb County Records (the "Plat of Phase II")(Lots 1 through 39 and Lots 40 through 87 collectively the "Subdivision").

B. Declarant desires to impose and subject the Subdivision to certain covenants, conditions, restrictions, easements and obligations, all as more particularly set forth herein, each and all of which are for the benefit of the Subdivision and each Owner of a Lot in order to (i) preserve and enhance property values in the Subdivision, (ii) insure the most beneficial development of the Subdivision as a single-family residential area, (iii) prevent any use within the Subdivision which might tend to diminish the valuable or pleasurable enjoyment thereof, (iv) assure the harmony, attractiveness and utility of the Subdivision, (v) regulate the use of the Subdivision, and (vi) establish and define certain rights and obligations relative to the Subdivision.

C. Declarant previously filed a Declaration of Covenants and Restrictions for Lots 1 through 39 of Aurora Park Subdivision, which Declaration of Covenants and Restrictions is recorded in Liber 07837, Pages 98 through 116, of Plats, Macomb County Records. It is the intention of Declarant in accordance with the previously recorded declaration to amend and restate the previously recorded declaration to include additional land as part of the Aurora Park

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Subdivision and subject to the terms and restrictions of the previously recorded Declaration of Covenants and Restrictions and this Restated Declaration of Covenants and Restrictions.

D. Declarant may, concurrently or at some future time, plat certain additional land adjacent to the Subdivision as an additional subdivision(s), and subject the Lots and any common areas therein to the covenants, conditions, restrictions, easements and obligations set forth herein by amendments made to this Declaration.

E. It is the purpose and intention of this Declaration that all of the Lots shall be conveyed by Declarant subject to the covenants, conditions, restrictions, easements and obligations set forth in this Declaration in order to (i) establish a general plan of uniform restrictions with respect to the Subdivision, (ii) insure the purchasers of Lots the use of their Lots for attractive residential purposes, (iii) secure to each Lot owner the full benefit and enjoyment of his residence, and (iv) preserve the general character of the neighborhood within the Subdivision.

Declarant hereby declares and makes known to all intending purchasers and future owners of the Lots within the Subdivision, that the Subdivision, and all of the Lots therein, will and shall be used, held, occupied, sold and conveyed expressly subject to the following covenants, conditions, easements and obligations, and which shall run with the land (the Subdivision and each and all of the Lots therein) and shall be binding upon and inure to the benefit of all parties having any right, title or interest in the Subdivision or any part thereof, and their heirs, personal representatives, successors and assigns, and on all grantees of all individual Lots in the Subdivision and on their respective heirs, personal representatives, successors and assigns for the time and in the manner specified herein.

ARTICLE I

DEFINITIONS

Terms defined elsewhere in this Declaration shall have the meaning ascribed to them and the following terms have the meanings indicated when used in this Declaration, the singular shall include the plural as the context requires:

1. "Declaration" means this Restated Declaration of Covenants and Restrictions for Aurora Park Subdivision, as recorded at the Office of the Register of Deeds for Macomb County, Michigan, and as hereinafter amended.

2. "Lot" means (a) any numbered Lot shown on the recorded plat of the Subdivision or and any future subdivision subjected to this Declaration including but not limited to Lots 1 through 39 of Aurora Park Subdivision No. 1 ("Phase I"), according to the Plat thereof as recorded in Liber 126, Pages 5 through 8 of Plats, Macomb County Records and Lots 40 through 87 of Aurora Park Subdivision No.2 ("Phase II") according to the Plat thereof as recorded in Liber, Pages _____ through _____ of Plats, Macomb County Records, (b) any building site resulting from the combination of Lots, and (c) any building site resulting from a proper and approved Lot split of any Lot.

3. "Owner" means the record owner of the fee simple title to any Lot or the land contract purchaser thereof, but excluding those having any interest merely as security for the performance of an obligation.

4. "Plat" means the plat of Phase I and Phase II of the Subdivision as recorded at the Office of the Register of Deeds for Macomb County, Michigan.

ARTICLE II

BUILDING AND USE RESTRICTIONS FOR THE SUBDIVISION

1. Use of Lots.

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

2. Improvement of Lots.

- a. No building or other structure shall be constructed, erected or maintained on any Lot, nor shall any additions, changes or alterations to any building or structure be made on any Lot (except interior alterations) unless and until the plans and specifications therefor shall have been submitted to and approved in writing by Declarant in the manner set forth in Paragraph 2.d. of this Article II.
- b. No deck, patio, swimming pool, fence, outbuilding, pool enclosure or similar other devices and/or structures, whether or not attached to any dwelling, shall be constructed, erected or maintained on any Lot unless and until the plans and specifications therefor shall have been submitted to and approved in writing by Declarant in the manner set forth in Paragraph 2.d. of this Article II. In no event

may any above ground pool and/or cyclone and/or chain link fence be constructed, erected or maintained on any Lot.

- c. Any and all construction, erection or maintenance of the buildings, structures, and other items set forth in Paragraphs 2.a. and 2.b. of this Article II (collectively "Improvements") shall be diligently completed in accordance with the plans and specifications which have been approved by Declarant. Copies of all plans and specifications, as finally approved, shall be delivered to Declarant for its permanent file.
- d. Any and all plans and specifications required pursuant to Paragraphs 2.a. and 2.b. of this Article II, or otherwise as provided in this Declaration, shall be prepared by a competent architect, and shall show the nature, kind, shape, height, materials, color scheme, and location of the Improvements to be constructed upon the subject Lot. Declarant shall have the right to refuse to approve any such plans or specifications which it determines, in its sole discretion exercised for any or no reason, would not be suitable or desirable for aesthetic or other reasons or for no reason. In passing upon such plans and specifications, Declarant shall have the right to take into consideration the suitability of the proposed Improvements on the Lot upon which they are proposed to be erected, the harmony as planned in view of the appearance from adjacent or neighboring properties and any other basis Declarant deems appropriate. Declarant shall also have the right to specify the materials to be used in the construction of any Improvements on the Lots, and may require suitable screening of Improvements with adequate shrubs, landscape materials and other modifications. It is understood and agreed that the purpose of this Paragraph 2.d. is to cause the Subdivision to develop into a beautiful, harmonious, private, residential area, and if any disagreement arises with respect to the provisions or applications of this Paragraph 2.d., the decision of Declarant shall control and be binding and conclusive upon all parties. Declarant's review and/or approval of plans and specifications in accordance with this paragraph shall not be a representation and/or warranty of any nature that the plans and specifications comply with any applicable law and/or are fit for their intended purpose nor shall Declarant incur any liability of any nature whatsoever to any person based upon such review and/or approval and all plans and specifications shall independently conform to the restrictions set forth in this Declaration and all applicable statutes, laws, ordinances and regulations, including zoning laws.
- e. In the event Declarant fails to approve, conditionally approve or disapprove any plans and specifications required to be submitted to Declarant pursuant to this Declaration within thirty (30) days from the date on which the same have been received by Declarant, then such approval will not be required as a condition precedent to construction of the Improvements set forth therein, provided the plans and specifications (and all construction based upon such plans and specifications) (i) conform to the restrictions set forth in this Declaration and all applicable statutes, laws, ordinances and regulations, including zoning laws, and

(ii) are otherwise in harmony with the existing improvements constructed in the Lots.

3. Size and Character of Buildings. In addition to the requirements below in paragraphs 3.a.-f., the character of buildings shall be subject to Paragraph 17 of this Article II and Article III.

- a. No dwelling shall be permitted on any Lot unless the living area thereof shall be not less than two thousand one hundred (2,100) square feet in the case of a one (1) story dwelling, and not less than two thousand four hundred (2,400) square feet in the case of any other dwelling with at least one thousand two hundred (1,200) square feet of living area on the first floor level. All computations of square footage shall include the actual area within the outer surfaces of the exterior walls of the dwelling and shall be determined exclusive of basements (whether or not of the "walk-out" type), garages, porches, terraces, breezeways and other unenclosed or unheated areas.
- b. All dwellings constructed on the Lots shall include a private garage which shall be directly attached and architecturally related to the dwelling. Every garage shall provide space for at least two (2) and not more than three (3) automobiles. Carports are specifically prohibited in the Subdivision.
- c. No old or existing buildings may be moved onto any Lot, and no used materials (except reclaimed brick) may be used in the construction of any improvements in the Subdivision.
- d. All dwellings shall have finished exteriors of brick, stone or other masonry materials, drivet (stucco appearing) or any combination on at least one-hundred percent (100%) of each side of the first floor level and brick, stone, wood, stucco, aluminum or vinyl siding or any combination above the first floor level. The use of cement block, cinder block, clay, asbestos siding, concrete or imitation brick (other than face brick) are expressly prohibited. Declarant shall have the right to modify any or all provisions of this paragraph at its discretion.
- e. All driveways, aprons and parking areas must be paved with asphalt, brick pavers or concrete.
- f. Declarant, by appropriate instrument in writing may designate a person, firm or corporation to perform such of its duties and obligations hereunder as it shall specify, which designation shall be revocable at the will, for any or no reason, of Declarant.

4. Minimum Setback and Sideyard Requirements. No building shall be constructed, erected, altered, located or maintained on any Lot nearer to any front, side or rear Lot line than is allowed by applicable zoning ordinances, except as (i) modified by any variance already obtained

by Declarant prior to the date hereof with respect to the Subdivision, (ii) otherwise specifically provided herein, or (iii) duly approved by the Township as a variance.

5. Lot Splits and Combinations. No Lot may be divided, subdivided or otherwise split or combined with any other Lot except with the prior written consent of Declarant, and if so approved by Declarant only in compliance with the requirements of (i) Section 263 of the Michigan Land Division Act (MCLA § 560.101, et seq), as amended or any replacement or successor statute thereto, and (ii) all applicable ordinances of the Charter Township of Shelby (the "Township") and all other governmental authorities having jurisdiction. In the event that one or more Lots or parts of Lots are developed for use as a site for a single residence, all restrictions set forth herein shall apply to such resulting site.

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

7. Easements.

- a. Easements are reserved as shown on the plat of the Subdivision. All private easements intended for use of public utilities shall not be deemed to be dedicated to the public but shall be private easements for public utilities and shall be equitably shared among such utilities.
- b. No structure(s) of any kind or nature whatsoever shall be constructed, erected, maintained or placed within any drainage, sedimentation or storm water detention area.
- c. No structure(s) of any kind or nature whatsoever shall be constructed, erected, maintained or placed over or on any utility easement(s); provided, however, that after the utilities have been installed, the areas over such utility easement(s) may be seeded or sodded. All other planting or other improvements of any type over or on any easements shall be allowed only as long as they do not interfere with, obstruct, hinder or impair the drainage plan of or utilities in, the Subdivision, and so long as access be granted, without charge or liability for damages, for the maintenance of the utilities, underground drainage lines, underground facilities, and surface drainage swales, and/or for the installation of additional facilities.
- d. No structure(s) of any kind or nature whatsoever or fence shall be constructed, erected, maintained or placed over the Lawson Drain easement.

8. Prohibited Vehicles and Structures.

- a. No housetrailers, motor homes, commercial vehicles, trailers, cars under repair or restoration, boats, boat trailers, camping vehicles, pickup campers, camping trailers, trucks weighing in excess of two and one-half (2 1/2) tons empty or any portion thereof, may be parked on or stored on any street in the Subdivision or any Lot, unless stored fully enclosed at all times within an attached garage. Commercial vehicles and trucks shall not be parked or stored in the Subdivision or on any Lot therein, except while making normal deliveries or pickups in the normal course of business.
- b. Trailers, tents, shacks, barns, sheds, and other out buildings of any kind or nature whatsoever, whether permanent or temporary, are expressly prohibited within the Subdivision, and no temporary occupancy or residence shall be permitted in unfinished residential dwellings, except that (i) temporary tents for parties shall be permitted to be erected for periods of not more than forty-eight (48) hours, and (ii) permanent gazebo-type structures and appurtenant swimming pool bathhouses may be constructed and maintained if approved in advance by Declarant in accordance with Paragraph 2.d. of this Article II.
- c. Except for saucer shaped devices no more than eighteen (18) inches in diameter, antennae of any kind and satellite reception equipment (including without limitation "ham radio towers" and "satellite dishes") which are visible from the exterior of any dwelling or located on any Lot are expressly prohibited in the Subdivision.
- d. The provisions of this Paragraph 8 shall not apply to Declarant or any builder(s) which it may designate, during the construction period or during such periods as any dwelling may be used for model or display purposes.

9. Animals.

- a. No farm animals, livestock, poultry or wild animals shall be kept, bred or harbored on any Lot, nor shall any animals be kept or bred for commercial purposes. No more than three (3) domesticated animals commonly deemed to be household pets may be kept on any Lot by the Owner and members of Owner's household so long as such pets shall have such care so as not to be objectionable or offensive to others due to noise, odor or unsanitary conditions.
- b. Any dog kept on a Lot shall be kept either on a leash or in a dog run or pen or in a fenced yard, and shall not be allowed to run loose or unattended. No dog runs or pens shall be permitted to be erected or maintained unless they are solely located within the rear yard adjacent to a wall of the main dwelling or garage and facing the rear or the interior of the Lot, nor shall such runs or pens extend beyond the end of the dwelling or garage into the side yard. All pens shall be made of wood,

decorative block or approved fencing materials or any combination thereof, and must be approved prior to the construction thereof, and must be approved prior to the construction thereof in accordance with Paragraph 2.d. of this Article II. Pens may not exceed three hundred (300) square feet in area or four feet (4') in height. The exterior sides of a pen shall be landscaped with plantings to screen the view thereof from adjacent Lots, and such pen shall be kept and maintained in a clean and sanitary condition.

- c. No Owner shall cause, nor shall he permit or suffer any occupant of any Lot which he owns or his or their invitees or guests, to cause the molestation, harm or destruction of wild fowl or other wildlife on, in or over any portion of his Lot.

10. General Conditions.

- a. No Owner of a Lot shall use, nor shall he permit or suffer any occupant of any Lot which he owns or his or their invitees or guests, to use any B-B guns, firearms, air rifles, pellet guns, bows and arrows, sling shots or any other weapons on his Lot.
- b. No Lot shall be used or maintained nor permitted to be used or maintained as a dumping ground for rubbish, trash, garbage or other waste, and the same shall not be kept on any Lot except in sanitary containers properly concealed from public view. Garbage containers shall not be left at the road for more than twenty-four (24) hours in any one week.
- c. No laundry other than blankets or comforters shall be hung for drying or "airing out" on any Lot so as to be visible from outside of the dwelling constructed on the Lot.
- d. All homes in the Subdivision shall be equipped with electric garbage disposal units in the kitchen.
- e. The grade, slope and/or contour of any Lot shall not be changed without the prior written consent of Declarant, Township and all other governmental authorities having jurisdiction. This restriction is intended to prevent interference with the master drainage plan for the Subdivision.
- f. No "through the wall" or "through window" air conditioners may be installed on any wall of any building in the Subdivision.
- g. No outside compressors for central air conditioning units may be installed or maintained in such a manner so as to create a nuisance to the residents of adjacent dwellings and shall be enclosed by a structure attached to the dwelling to prohibit viewing from the street.

- h. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done on or around any Lot which may become an annoyance, nuisance, embarrassment or discomfort to the neighborhood or the Owners of any of the Lots in the Subdivision.
- i. Any basketball net shall only be on a free-standing post and set back at least twenty-five feet (25') from the road.
- j. Any debris resulting from the construction and/or the destruction by fire or otherwise, in whole or in part, of any dwelling or Improvements on any Lot shall be promptly removed (within forty-eight (48) hours of issuance of temporary or final certificate of occupancy or final acceptance of any permit therefor by the appropriate governmental authority(ies) or the occurrence of such destruction, whichever occurs first) from such Lot in order to preserve the sightly condition of the Subdivision. Each Owner shall prevent their Lot(s), and any dwelling(s), structure(s) or other improvement(s) thereon from becoming unsightly or unkempt or from falling into a state of disrepair.

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

12. Lease Restrictions. No Owner of any Lot shall lease and/or sublet less than the whole of any dwelling on any Lot. Any lease of an entire dwelling shall be subject to all of the terms, covenants, provisions, and requirements hereof, including without limitation, the provisions of Paragraph 1 of Article II hereof.

13. Fences.

- a. No fence, wall or hedge may be erected, grown or maintained in front of or along the front building line of any Lot; provided, however, that low ornamental fencing may be erected along the front lot line in architectural harmony with the design of the house. The side Lot line of each corner Lot line which faces a street shall be deemed to be a second front building Lot line and shall be subject to the same restrictions as to the erection, growth or maintenance of fences, walls or hedges as is herein before provided for front building lines.
- b. No fence or wall may be erected or maintained on or along the side lines of any Lot, and/or on or along the rear line of any Lot, and/or anywhere on any Lot without the prior written approval of Declarant in accordance with the requirements of this Declaration, and if so approved by Declarant, only in

compliance with the requirements of the Township and all other governmental authorities having jurisdiction with respect thereto.

- c. Any such fence, wall or solid hedge required by Declarant or any governmental authority(ies) shall be subject to the prior written approval of Declarant as to the location, materials, design, and style thereof in accordance with the provisions of Paragraph 2.d. of this Article II.
- d. No fence, wall or hedge shall be greater in height than the minimum required by any governmental authority(ies) having jurisdiction, nor, without the prior written permission of Declarant, extended beyond the front building line. The design of all fences must be approved by Declarant prior to installation.
- e. If a particular condition arises in which fencing beyond four feet (4') in height is desirable, and a request for approval by Declarant is made pursuant to Paragraph 2 of this Article II, Declarant shall have the right to grant such permission if, in its sole opinion, a variance from the provisions of this Paragraph 13 is desirable.
- f. Notwithstanding any other provision of this Declaration, Lots 1, 3 & 28 may not place a fence along the north side of the lots, along 25 Mile Road, without the prior written permission of Declarant or the Architectural Control Committee.

14. Signs. No signs or billboards shall be placed, erected or maintained on any Lot, except for one (1) professional quality sign of not more than six (6) square feet in size and not more than three feet (3') in height for the sole purpose of advertising the Lot and the dwelling on the Lot for sale or rent. All permitted signs must also be in compliance with the ordinances and regulations of the Township and all other governmental authorities having jurisdiction and shall be constructed and installed in a professional manner. All permitted signs shall be kept clean and in good repair during the period of its placement and maintenance on any Lot. The provisions of this Paragraph 14 shall not apply to (a) such signs as may be installed or erected on any Lot by Declarant or any builder which it may designate, during the construction period or during periods as any dwelling on any Lot may be used as a model or for display purposes, or (b) any Subdivision entrance sign(s).

15. Sidewalks. Each Lot in the Subdivision shall at the time of construction of a residence thereon also have constructed and installed thereon a concrete sidewalk running within the public right-of-way parallel to the adjoining street at the front of the Lot. Each corner Lot shall have two (2) intersecting sidewalks constructed and installed on it in accordance with the provisions of the previous sentence, with one sidewalk running parallel with the adjoining street at the front of the Lot and the other sidewalk running parallel with the adjoining street at the side of the Lot. Each sidewalk on a Lot shall tie in with the sidewalk existing or to be built on the adjacent Lot(s), and in the case of corner Lots shall also connect into the adjoining street perpendicular to the sidewalk. Notwithstanding anything to the contrary, all sidewalks shall be constructed and installed in accordance with the requirements of the Township and all other governmental authorities having jurisdiction with respect thereto.

16. Landscaping. Each Lot shall have a lawn installed, by sod and not seed, and shrubbery planted by the Owner within eight (8) months after the completion of the dwelling located on such Lot. This requirement is to aid in the overall value and nature of the Subdivision, to eliminate or minimize surface erosion and maintain the drain characteristics of the Subdivision.

17. Architectural Control.

- a. Declarant may, in its sole discretion, at any time prior to the date on which all of the Lots in the Subdivision have been sold and conveyed by Declarant to third parties, exercise all of Declarant's rights to approve or refuse to approve any plans, specifications, drawings, elevations or other matters with respect to the construction or location of any dwelling or Improvement on any Lot in the Subdivision. Thereafter, all of the authority and discretion granted to Declarant in this Declaration relative to approving or disapproving such matters shall lapse and expire, and Declarant shall have no further responsibilities with respect to such matters, nor shall any other party have any right or authority thereafter to exercise any of such rights. Anything contained herein to the contrary notwithstanding, any dwelling or other improvement built or to be built on any Lot after the approval/disapproval rights of Declarant have lapsed and expired as set forth above shall (i) conform to the provisions of this Declaration and all applicable statutes, laws ordinances and regulations, including zoning laws, and (ii) be otherwise in harmony with the existing improvements constructed on the Lots.
- b. Any submission(s) to Declarant or the Architectural Control Committee for any approval provided for under this Declaration shall be in writing, and shall conform to the requirements of Paragraph 2 of Article II hereof. The primary purpose for providing architectural control for the Declarant is to ensure the proper and harmonious development of the Subdivision in order to maximize the aesthetic beauty of the Subdivision and its blending with the surrounding area. To this end, Declarant shall be deemed to have broad discretion in determining what dwellings or improvements will enhance the aesthetic beauty and desirability of the Subdivision or otherwise further or be consistent with the purposes of this Declaration. Approvals and/or waivers may be granted, denied or conditioned for any reason or for no reason. In no event shall Declarant have any liability whatsoever to anyone for their approval or disapproval of any plans, drawings, specifications or elevations or the dwellings or improvements built or to be built pursuant thereto, whether such alleged liability is based on negligence, tort, express or implied contract, fiduciary duty or otherwise. By way of example, Declarant shall have no liability to anyone for the approval of any plans, specifications, elevations or the like which are not in conformity with the provisions of this Declaration or for the disapproval of any plans, specifications, elevations or the like which arguably are in conformity with the provisions hereof.

18. Maintenance. Declarant, after reasonable written notice to Owner(s), reserves for itself the right to enter upon any residential Lot for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth which in the opinion of Declarant detracts from the overall beauty, setting and safety of the Subdivision. Such entrance for the purpose of mowing, cutting, clearing or pruning shall not be deemed a trespass. Declarant may likewise enter upon such land to remove any trash which has collected on such Lot without such entrance and removal being deemed a trespass. The provisions of this Paragraph 18 shall not be construed as an obligation on the part of Declarant to mow, clear, cut or prune any Lot nor to provide garbage or trash removal services. In the event Declarant deems it necessary to take the actions necessary as provided for herein, any costs and expenses incurred may be assessed by Declarant against the Lot(s) and/or Owner(s).

19. Wetland Work Restrictions for Lots 62, 63, and 64. State regulated wetlands exist on Lots 62, 63, and 64 as shown on the Plat. Any work on the wetlands on Lots 62, 63, and 64 require permits as issued by the State of Michigan, Department of Environment Quality and the owners of Lots 62, 63, and 64 shall be responsible to obtain permits for any such work.

ARTICLE III

ARCHITECTURAL CONTROL COMMITTEE

1. Committee. At such time as all of the Lots in the Subdivision are sold by Declarant and dwellings are erected and occupied thereon, or at such earlier or later time as Declarant may, in its sole discretion, elect, Declarant may from time to time, or all at one time, assign to an Architectural Control Committee certain or all of its rights of approval or waiver under Article II of this Declaration of Covenants, Conditions and Restrictions. Thereafter, the Architectural Control Committee shall exercise all of the authority and discretion granted to Declarant in Article II above relative to approving or disapproving or waiving such matters as are assigned to the Architectural Control Committee, and Declarant shall have no further responsibilities, duties, liabilities or obligations, express or implied, of any kind or nature whatsoever with respect to such matters. The Architectural Control Committee shall be comprised of up to five (5) members to be appointed by Declarant. Declarant may also transfer its right to delegate members of the Architectural Control Committee to the Association referred to in Article IV herein; and until such event, Declarant reserves the right to appoint and remove members of the Architectural Control Committee in its sole discretion.

2. Submission to Committee. Any submission to Declarant or the Architectural Control Committee for any approval provided for under Paragraph 2 of Article II above of this Declaration shall be in writing and shall conform to said Paragraph 2 of Article II above, except as to any items waived or modified by Declarant or the Architectural Control Committee in its sole discretion. The parties acknowledge that the primary purpose for providing for architectural control is to ensure the proper and harmonious development of the Subdivision in order to maximize the aesthetic beauty of the Subdivision and its blending with the surrounding area. To this end, Declarant or the Architectural Control Committee, as the case may be, shall be deemed

to have broad discretion in terms of determining what dwellings, fences, walls, decks, patios, paved areas, berms, hedges or other structures or improvements will enhance the aesthetic beauty and desirability of the Subdivision or otherwise further or be consistent with the purpose of any restrictions and broad discretion in terms of approving or waiving any item or matter of any kind or nature under Article II of this Declaration. In no event shall either Declarant or the Architectural Control Committee have any liability whatsoever to anyone for their approval or disapproval of plans, drawings, specifications, elevations of the dwellings, fences, walls, decks, patios, paved areas, berms, hedges or other structures or improvements or for their approval or disapproval or for their waiving or failing to waive any items of matters of any kind or nature under Article II of this Declaration, whether such alleged liability is based on negligence, tort, express or implied contract, fiduciary duty or otherwise. By way of example, neither Declarant nor the Architectural Control Committee shall have liability to anyone for approval of plans, specifications, structures or the like which are not in conformity with the provisions of this Declaration or for disapproving plans, specifications, structures or the like which arguably are in conformity with the provisions hereof, or for refusing or failing to act, or for abandoning its rights to act, upon plans, specifications, structures or the like.

ARTICLE IV

HOMEOWNERS ASSOCIATION RIGHTS AND RESPONSIBILITIES

1. Homeowners Association. There possibly may be, and Declarant may form but is not required to form, a homeowners association for the Subdivision ("Association") which shall be comprised of the Owners of the Lots in the Subdivision. The Association shall be organized as a non-profit corporation for a perpetual term under the laws of the State of Michigan. The Association may be established when eighty percent (80%) of the Lots in the Subdivision have occupied dwellings built upon them or at such other earlier or later time as Declarant may elect. All Lot owners shall be, and are required to be, members in the Association formed by Declarant. All voting in Association affairs shall be on a one vote per Lot basis. In order to pay the cost of carrying out its responsibilities hereunder, the Association may levy fees, dues or assessments upon each Lot in the Subdivision, whether or not the Owner is an active member of the Association, except upon Lots owned by Declarant or by a builder(s) prior to residential occupancy. In no event shall Declarant or such builder(s) be obligated to pay fees, dues or assessments to the Association. All fees, dues or assessments hereunder shall be charged equally to each Lot subject to levy by the Association, and may be enforced through the lien provided for in Paragraph 2 of this Article or by any other lawful means of collecting debts. No fees, dues or assessments on any Lot levied by the Association, except for charges under Paragraph 18 of Article II above, except for charges under Article V below and except for amounts and expenses incurred in enforcing these restrictions which are reimbursable under Article VI below, shall exceed in total Two Hundred Dollars (\$200.00) per calendar year unless the amount in excess is voted upon and approved by the Association members representing at least seventy-five percent (75%) of the Lots in the Subdivision which have been sold to and occupied by residential homeowners and provided such amount in excess has also received Declarant's approval in writing; except that assessments up to Fifty Dollars (\$50.00) per Lot per calendar year in addition to all of the fees, dues and assessments provided for herein may be charged to the Lot owner of

each Lot in the Subdivision including Lots owned by Declarant or a builder prior to occupancy, for snow removal from the streets by the Association provided such amount for snow removal has also received Declarant's approval in writing.

2. Lien. Any fees, dues or assessments established by the Association, and any amounts or expenses incurred in enforcing these restrictions which are reimbursable under Article VI below, shall constitute a lien on the Lot of each Lot owner responsible for such fees, dues, assessments, amounts or expenses. Declarant or the Association, as the case may be, may enforce the lien by recording appropriate instruments confirming the existence of the lien and foreclosing the lien by appropriate legal action. In such legal action, a court of competent jurisdiction shall be empowered to order a sale of the Lot subject to the lien in order to satisfy the lien. The lien shall be subordinate and junior to the lien of any first mortgage securing a loan for the acquisition or improvement of any Lot in the Subdivision; and except for a transfer of title of said first mortgagee, its assigns or designees as a result of foreclosure or deed in lieu of foreclosure or other sale or transfer to or at the direction of said first mortgagee as a result enforcing its security on such Lot, the sale or transfer of any Subdivision Lot shall not affect, release nor discharge the lien arising out of the failure to pay any fees, dues or assessments, and amounts and expenses referred to above, when due. All fees, dues or assessments which shall remain due and unpaid sixty (60) days after the date said charges become due and unpaid shall be subject to interest at the highest legal rate allowable as of the date said sums become due, but not to exceed eleven per cent (11%) per annum.

3. Bylaws. Any sale or purchase of a Lot in the Subdivision shall be subject to such bylaws for the Association as Declarant may hereafter establish or approve, and each Owner agrees to abide by and observe such bylaws. It is understood that the bylaws may provide that the Declarant may control and designate the Board of Directors of the Association up to the time that eighty percent (80%) of the Lots in the Subdivision have been sold by the Declarant and all land contracts, if any, from Declarant, and all mortgages, if any, to Declarant on said sale of said eighty percent (80%) of the Lots in the Subdivision have been paid in full or such earlier time as the Declarant may elect. Until the Association is created for the Subdivision, Declarant shall have the right to modify, amend or supplement the bylaws, and so long as they are reasonable, any such modifications, amendments or supplements shall have retroactive effect to the date immediately preceding the date of this Declaration. When the Subdivision is governed by an Association the Association may amend or modify the bylaws upon the affirmative vote of Owners representing at least seventy-five percent (75%) of the Lots in the Subdivision, but such amendment or modification shall not have retroactive effect, and so long as Declarant owns or is the seller on land contract or an option or holder of a mortgage of any Lot in the Subdivision, such an amendment must have the approval of Declarant in writing to be effective.

4. Use of Funds. The Association may use the fees, dues or assessments collected for such purposes as the Association shall determine as necessary and advisable, including, but not limited to: improving and maintaining any property of the Association, including any future property, real, personal or mixed, acquired by the Association; maintaining and improving entryways of the Subdivision; planting and maintaining trees and shrubbery; collecting and disposing of garbage, ashes and rubbish; snow removal; employing night watchmen; caring for

vacant property; removing grass or weeds; establishing and operating any community programs and facilities which in the opinion of the Association benefit the general welfare of the members; expenses incident to the examination of building plans and specifications or any other items or matters requiring approvals or waivers by the Architectural Control Committee; the enforcement of these restrictions or any other building restrictions applicable to the Subdivision; or for any other purposes for which the Association is incorporated.

ARTICLE V

LANDSCAPE EASEMENT AND PARKS

1. Lots 1, 3 & 28. The north fifteen (15) feet of Lots 1, 3 & 28, as identified in the Plat, shall be deemed a private easement for the Subdivision to be used solely for landscape maintenance purposes (the "Landscape Easement") as the Association shall deem appropriate. All costs in connection with the improvement, maintenance, repair and replacement of any items in connection with the landscaping of the Landscape Easement shall be the sole responsibility of the Association referred to in Article IV.
2. Aurora Park, Morning Park, Aurora Park South and Morning Park South. Aurora Park and Morning Park, as identified in the Plat of Phase I, and Aurora Park South and Morning Park South, as identified in the Plat of Phase II, shall be identified as private parks of the Subdivision and shall be dedicated to the use and enjoyment, for recreation purposes only, of the Owners of the Lots of the Subdivision and any future adjacent landowners for whom title is traceable to the owners of this Plat. All costs in connection with the improvement, maintenance, repair and replacement of any items in connection with Aurora Park, Morning Park, Aurora Park South and Morning Park South shall be the sole responsibility of the Association referred to in Article IV.
3. Wetlands and Conservation Easement. Any wetlands, as identified in the Plat of Phase I or Plat of Phase II, shall be maintained as wetlands in accordance with all applicable federal, state, or local laws, ordinances, rules or regulations and the Owners of the Lots of the Subdivision and any future adjacent landowners for whom title is traceable to the owners of this Plat of Phase I or Plat of Phase II shall have the right to utilize such wetlands in accordance with those laws, ordinances, rules or regulations. The wetlands, including those portions of Aurora Park, Morning Park, Aurora Park South and Morning Park South which contain wetlands, may be subject to a Conservation Easement in favor of the State of Michigan, Department of Environmental Quality. All costs in connection with the improvement, maintenance, repair and replacement of any items in connection with the wetlands shall be the sole responsibility of the Association referred to in Article IV.
4. Maintenance. The Association referred to in Article IV shall maintain the Landscape Easement, Aurora Park, Morning Park, Aurora Park South, Morning Park South and the wetlands, described in Paragraphs 1, 2, 3 & 4 of this Article V in reasonable condition and order and if applicable, in accordance with the Conservation Easement contemplated in Paragraph 3 of this Article V.

In the event the Association shall at any time fail to maintain the Landscape Easement, Aurora Park, Morning Park, Aurora Park South or Morning Park South in reasonable condition and order, the Township shall serve written notice upon the Association setting forth the manner in which the Association has failed to maintain the Landscape Easement, Aurora Park, Morning Park, Aurora Park South or Morning Park South in reasonable condition and order. The notice shall include a demand that deficiencies in the maintenance be cured within thirty (30) days thereof, and notify the Association of the date, time and place of a public hearing before the Township Board or such other boards or body of officials to whom the Township shall delegate such responsibility. Such hearing shall be held within fifteen (15) days of the notice. At such hearing the Township may modify the terms of the original notice of deficiencies in maintenance and may grant an extension of time within which such deficiencies shall be cured. If the deficiencies set forth in the original notice or the modification thereof, are not cured within said thirty (30) day period or any extensions of time granted at the hearing, the Township, in order to eliminate and cure the deficiencies in the operation and maintenance of the Landscape Easement, Aurora Park, Morning Park, Aurora Park South or Morning Park South, may enter upon the property and maintain said for a period of one (1) year. The maintenance of the Landscape Easement, Aurora Park, Morning Park, Aurora Park South or Morning Park South by the Township shall not constitute a taking of the Landscape Easement, Aurora Park, Morning Park, Aurora Park South or Morning Park South nor vest in the public any additional right to use the same.

Within sixty (60) days prior to the expiration of the aforesaid one (1) year period that the Landscape Easement, Aurora Park, Morning Park, Aurora Park South or Morning Park South is under the control and jurisdiction of the Township, the Association may request another public hearing be held or the Township may call another public hearing upon reasonable notice to the Association. At such hearing the Association shall show cause why such and maintenance by the Township shall not continue for a succeeding one (1) year period. If the Township shall reasonably determine that the Association is ready, willing and able to maintain the Landscape Easement, Aurora Park, Morning Park, Aurora Park South or Morning Park South in reasonable condition and order, the Township shall cease to operate and maintain the Landscape Easement, Aurora Park, Morning Park, Aurora Park South or Morning Park South at the end of said year. If the Township shall reasonably determine that the Association is not ready, willing and able to maintain the Landscape Easement, Aurora Park, Morning Park, Aurora Park South or Morning Park South during the next succeeding year, then subject to a similar public hearing and determination in each successive year thereafter, the Township may continue to enter upon the property and maintain said Landscape Easement, Aurora Park, Morning Park, Aurora Park South or Morning Park South.

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

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

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

The Township shall have the right to defray any costs of maintaining the Landscape Easement, Aurora Park, Morning Park, Aurora Park South or Morning Park South by establishing a special assessment district against any property benefited by the Landscape Easement, Aurora Park, Morning Park, Aurora Park South or Morning Park South in accordance with the provisions, Section 192 and 192a of Act No. 288 of the Public Acts of 1967, as amended.

6. Amendment. Notwithstanding anything contained elsewhere in this Declaration, this Article V shall not be amended and/or modified without the consent of the Township.

ARTICLE VI

GENERAL PROVISIONS

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

2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect in any way any other provisions, which other provisions shall remain in full force and effect.

3. Amendment. The covenants and restrictions of this Declaration, other than those contained above in Paragraphs 2.f. and 14.f. of Article II hereof, shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended after the date on which all of the Lots in the Subdivision have been sold and conveyed by Declarant to third parties by a recorded instrument signed by not less than seventy percent (70%) of the Owners and recorded at the Office of the Register of Deeds for Macomb County, Michigan. Prior to such date, Declarant without the consent, vote, signature or approval of any Owner, may, prospectively or retroactively, by instrument recorded at the Office of the

Register of Deeds for Macomb County, Michigan, modify, restate, waive, repeal, amend, change or replace this Declaration or any or all of the provisions hereof, with respect to any thing or any particular Lot or Lots located within the Subdivision or located within any future subdivision(s) subjected to this Declaration, as Declarant in its sole discretion deems necessary or desirable, including, without limitation, for the purpose of adding additional residential Lots and making this Declaration and/or other restrictions apply to such Lots.

Declarant's right to amend, change or replace this Declaration as set forth above shall be permitted notwithstanding an assignment of Declarant's rights and powers pursuant to Paragraph 5 of this Article VI.

4. Annexation of Additional Lots. Declarant reserves the right any time in the future to amend this Declaration by subjecting to it one or more additional adjacent parcels of land hereafter developed and platted by Declarant or its successors or assigns. Any such amendment(s) to this Declaration shall provide that the owners of all residential Lots located in such future added subdivisions shall be subject to the covenants, restrictions, obligations, easements, and charges set forth herein. Additional Lots may be annexed to the Subdivision by Declarant without the consent or approval of any Owner(s).

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

6. Deviations by Agreement with Developer. Declarant hereby reserves the right at any time prior to the date on which all of the Lots in the Subdivision have been sold and conveyed by Declarant to third parties to enter into agreements with the Owner of any Lot(s) without the consent of Owners of other Lots or adjoining or adjacent property, to deviate from any or all of the provisions or requirements of this Declaration provided there are practical difficulties or particular hardships evidenced by such Owner. Any such deviation which shall be by agreement in writing shall not constitute a waiver of any such covenant as to the remaining Lots.

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AURORA PARK SUBDIVISION HOMEOWNERS ASSOCIATION

ASSOCIATION BYLAWS

ARTICLE 1

DEFINITIONS

Section 1. "Association" shall mean and refer to the Aurora Park Subdivision Homeowners Association, a Michigan non-profit corporation, its successors and assigns.

Section 2. "Owner(s)" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of Aurora Park Subdivision Homeowners Association and any future subdivisions hereafter annexed, or the land contract purchaser thereof, but excluding those having any interest merely as security for the performance of an obligation.

Section 3. "Lot" shall mean and refer to any numbered lot shown on the recorded plat of Aurora Park Subdivision No. 1 and Aurora Park Subdivision No. 2, as recorded in Liber 126, Pages 5 through 8, of Plats, Macomb County Records, and Liber 140, Pages 28 through 31 of Plats, Macomb County Records, respectively, and any future subdivision hereafter annexed.

Section 4. "Declarant" shall mean and refer to Aurora Land Development, L.L.C., a Michigan limited liability company, its successors and assigns.

Section 5. "Declaration" shall mean and refer to the Restated Declaration of Covenants and Restrictions for Aurora Park Subdivision Homeowners Association, as recorded in Liber 9166, pages 142 through 161, of Plats, Macomb County Records.

Section 6. "Member" shall mean and refer to the Declarant and/or an Owner in accordance with the Declaration and the Articles of Incorporation of the Association.

Section 7. "Subdivision" shall mean and refer to the Aurora Park Subdivision No. 1 and Aurora Park Subdivision No. 2, as recorded in Liber 126, Pages 5 through 8, of Plats, Macomb County Records, and Liber 140, Pages 28 through 31 of Plats, Macomb County Records, respectively.

ARTICLE II

Section 1. **Vote.** Except as limited in the Declaration and these Bylaws, each Owner shall be entitled to one vote for each Lot.

Section 2. **Eligibility to Vote.** No Owner, other than the Declarant, shall be entitled to vote at any meeting of the Association until he has presented evidence of ownership of a Lot in the Subdivision to the Association. Except as provided in Article IV, Section 2 of these

Bylaws, no Owner, other than the Declarant, shall be entitled to vote prior to the date of the First Annual Meeting of members held in accordance with Section 2 of Article III. The vote of each Owner may be cast only by the individual representative designated by such Owner in the notice required in Section 3 of this Article II below or by a proxy given by such individual representative. The Declarant shall be the only person entitled to vote at a meeting of the Association until the First Annual Meeting of Members and shall be entitled to vote during such period notwithstanding the fact that the Declarant may own no Lots at some time or from time to time during such period. At and after the First Annual Meeting of Member the Declarant shall be entitled to vote for each Lot which it owns.

Section 3. Designation of Voting Representative. Each Owner shall file a written notice with the Association designating the individual representative who shall vote at meetings of the Association and receive all notices and other communications from the Association on behalf of such Owner. Such notice shall state the name and address of the individual representative designated, the number or numbers of the Lot or Lots owned by the Owner, and the name and address of each person, firm, corporation, company, partnership, association, trust or other entity who is the Owner. Such notice shall be signed and dated by the Owner. The individual representative designated may be changed by the Owner at any time by filing a new notice in the manner herein provided.

Section 4. Quorum. The presence in person or by proxy of thirty (30%) percent of the Owners qualified to vote shall constitute a quorum for holding a meeting of the members of the Association. The written vote of any person furnished at or prior to any duly called meeting at which meeting said person is not otherwise present in person or by proxy shall be counted in determining the presence of a quorum with respect to the question upon which the vote is cast.

Section 5. Voting. Votes may be cast only in person or by a writing duly signed by the designated voting representative not present at a given meeting in person or by proxy. Proxies and written votes must be filed with the secretary of the Association at or before the appointed time of each meeting of the members of the Association. Cumulative voting shall not be permitted.

Section 6. Majority. A majority shall consist of more than fifty (50%) percent of those qualified to vote and present in person or by proxy (or written vote, if applicable) at a given meeting of the members of the Association.

ARTICLE III

MEETINGS

Section 1. Place of Meeting. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Owners as may be designated by the Board of Directors. Meetings of the Association shall be conducted in accordance with Sturgis' Code of Parliamentary Procedure, Roberts Rules of Order or some generally recognized manual of parliamentary procedure, when not otherwise in conflict with the laws of the State of Michigan.

Section 2. First Annual Meeting of Members. The First Annual Meeting of Members of the Association may be convened only by Declarant and may be called at any time after the earlier of (a) eighty (80%) percent of the Lots in the Subdivision have occupied dwellings built upon them, or (b) such earlier date as may be hereafter designated in writing by the Declarant. Declarant may call meetings of members for informative or other appropriate purposes prior to the First Annual Meeting of Members and no such meeting shall be construed as the First Annual Meeting of Members. The date, time and place of such meeting shall be set by the Board of Directors, and at least 10 days written notice thereof shall be given to each Owner.

Section 3. Annual Meetings. Annual meetings of members of the Association shall be held on the second Tuesday of April each succeeding year after the year in which the First Annual Meeting of Members is held at such time and place as shall be determined by the Board of Directors. At such meetings there shall be elected by ballot of the Owners a Board of Directors in accordance with the requirements of Article IV of these Bylaws. The Owners may also transact at annual meetings such other business of the Association as may properly come before them.

Section 4. Special Meetings. It shall be the duty of the President to call a special meeting of the Owners as directed by resolution of the Board of Directors or upon a petition signed by 1/3 of the Owners presented to the Secretary of the Association. Notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 5. Notice of Meetings. It shall be the duty of the Secretary (or other Association Officer in the Secretary's absence) to serve a notice of each annual or special meeting, stating the purpose thereof as well as of the time and place where it is to be held, upon each Owner of record, at least 10 days but not more than 60 days prior to such meeting. The mailing, postage prepaid, of a notice to the representative of each Owner at the address shown in the notice required to be filed with the Association by Article II, Section 3 of these Bylaws shall be deemed notice served. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association shall be deemed due notice.

Section 6. Adjournment. If any meeting of Owners cannot be held because a quorum is not in attendance, the Owners who are present may adjourn the meeting to a time not less than 48 hours from the time the original meeting was called.

Section 7. Order of Business. The order of business at all meetings of the members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) appointment of inspector of elections (at annual meetings or special meetings held for purpose of election of Directors or officers); (g) election of Directors (at annual meeting or special meetings held for such purpose); (h) unfinished business; and (i) new business. Meeting of members shall be chaired by the most senior officer of the

Association present at such meeting. For purposes of this Section, the order of seniority of officers shall be President, Vice President, Secretary and Treasurer.

Section 8. Action Without Meeting. Any action which may be taken at a meeting of the members (except for the election or removal of Directors) may be taken without a meeting by written ballot of the members. Ballots shall be solicited in the same manner as provided in Section 5 for the giving of notice of meetings of members. Such solicitations shall specify (a) the number of responses needed to meet the quorum requirements; (b) the percentage of approvals necessary to approve the action; and (c) the time by which ballots must be received in order to be counted. The form of written ballot shall afford an opportunity to specify a choice between approval and disapproval of each matter and shall provide that, where the member specifies a choice, the vote shall be cast in accordance therewith. Approval by written ballot shall be constituted by receipt within the time period specified in the solicitation of (i) a number of ballots which equals or exceeds the quorum which would be required if the action were taken at a meeting; and (ii) a number of approvals which equals or exceeds the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the same as the total number of ballots cast.

Section 9. Consent of Absentees. The transactions at any meeting of members, either annual or special, however called and noticed, shall be valid as though made at a meeting duly held after regular call and notice if a quorum be present either in person or by proxy; and if, either before or after the meeting, each of the members not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 10. Minutes, Presumption of Notice. Minutes or a similar record of the proceedings of meetings of members, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation in the minutes of any such meeting that notice of the meeting was properly given shall be prima facie evidence that such notice was given.

ARTICLE IV

BOARD OF DIRECTORS

Section 1. Number of Qualification of Directors. The Board of Directors shall initially be comprised of 3 persons and shall continue to be so comprised until enlarged to 5 persons in accordance with the provisions of Section 2 hereof. Thereafter, the affairs of the Association shall be governed by a Board of 5 Directors all of whom must be members of the Association, except for the first Board of Directors, or its successors as selected by the Declarant, and so long as Declarant is entitled to vote for directors Declarant may nominate non-Owner who may be members of the Board of Directors. Directors' compensation, if any, shall be set by the affirmative vote of seventy-five (75%) percent of all Owners.

Section 2. Election of Directors.

(a) **First Board of Directors.** The first Board of Directors or its successors as selected by the Declarant, shall be composed of 3 persons and such first Board of Directors or its successors as selected by the Declarant, shall manage the affairs of the Association until the appointment of the first non-declarant Owners to the Board. Immediately prior to the appointment of the first non-declarant Owners to be Board, the Board shall be increased in size from 3 persons to 5 persons. Thereafter, elections for non-declarant Owner Directors shall be held as provided in subsection (b) below.

(b) **Election of Directors at and After First Annual Meeting.**

(i) At the First Annual Meeting of Members, 3 Directors shall be elected for a term of 2 years and 2 Directors shall be elected for a term of 1 year. At such meeting all nominees shall stand for election as 1 slate and the 3 persons receiving the highest number of votes shall be elected for a term of 2 years and the 2 persons receiving the next highest number of votes shall be elected for a term of 1 year. At each annual meeting held thereafter, either 2 or 3 Directors shall be elected depending upon the number of Directors whose terms expire. After the First Annual Meeting of Members, the term of office (except for 2 of the Directors elected at the First Annual Meeting of Members) of each Director shall be 2 years. The Directors shall hold office until their successors have been elected and hold their first meeting.

(ii) Once the Owners have acquired the right hereunder to elect a majority of the Board of Directors, annual meetings of Owners to elect Directors and conduct other business shall be held in accordance with the provisions of Article III, Section 3 hereof.

(c) Such earlier date may be hereafter designated in writing by the Declarant.

Section 3. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things as are not prohibited by the Declaration, Articles of Incorporation or required thereby to be exercised and done by the others.

Section 4. Other Duties. In addition to the foregoing duties imposed by these Bylaws or any further duties which may be imposed by resolution of the members of the Association, the Board of Directors shall be responsible specifically for the following:

(a) To manage and administer the affairs of and to maintain Aurora Park Subdivision Homeowners Association (the "Association");

(b) To encourage and to promote the highest standards of management and maintenance for the Association.

(c) To levy and collect assessments against and from the members of the Association and to use the proceeds thereof for the purposes of the Association;

(d) To carry insurance and to collect and allocate the proceeds thereof;

(e) To maintain entranceway signs, parks within the subdivision and wetlands within the subdivision subject to applicable law;

(f) To make and enforce reasonable regulations concerning the use and enjoyment of the Association;

(g) To contract for and employ persons to assist in the maintenance and administration of the Association;

(h) To enforce the provisions of the Restated Declaration of Covenants and Restrictions for Aurora Park Subdivision Homeowners Association and of the Articles of Incorporation and such bylaws and rules and regulations of the Association as made and hereinafter adopted; and

(i) In general, to enter into any activity in connection with the foregoing purposes, to make and perform any contract and to have and exercise all powers necessary, incidental or convenient to the administration, management, maintenance, repair, replacement and operation of the Association and to the accomplishment of any of its purposes.

Section 5. Management Agent. The Board of Directors may employ for the Association a professional management agent (which may include the Declarant or any person or entity related thereto) at reasonable compensation established by the Board to perform such duties and services as the Board shall authorize, including, but not limited to, the duties listed in Section 3 and 4 of this Article, and the Board may delegate to such management agent any other duties or powers which are not by law or by the Declaration, Articles of Incorporation or required to be performed by or have the approval of the Board of Directors or the members of the Association.

Section 6. Vacancies. Vacancies in the Board of Directors which occur after the First Annual Meeting caused by any reason other than the removal of a Director by a vote of the members of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum, except that the Declarant shall be solely entitled to fill the vacancy of any Director whom it is permitted in the first instance to designate. Each person so elected shall be a Director until a successor is elected at the next annual meeting of the Association.

Section 7. Removal. At any regular or special meeting of the Association duly called with due notice of the removal action proposed to be taken, any one or more of the Directors may be removed with or without cause by the affirmative vote of more than fifty (50%) percent in number and in value of all of the Owners and a successor may then and there be elected to fill

any vacancy thus created. The quorum requirement for the purpose of filling such vacancy shall be the normal thirty (30%) percent requirement set forth in Article II, Section 4. Any Director whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting.

The Declarant may remove and replace any or all of the Directors selected by it at any time or from time to time in its sole discretion. Likewise, any Director selected by the non-declarant Owners to serve before the First Annual Meeting may be removed before the First Annual Meeting in the same manner set forth in this paragraph for removal of Directors generally.

Section 8. First Meeting. The first meeting of a newly elected Board of Directors shall be held within 10 days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, providing a majority of the whole Board shall be present.

Section 9. Regular Meetings. Regular meetings of the Board of Directors may be held at such times and places as shall be determined from time to time by a majority of the Directors, but at least two such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally, by mail, telephone or telegraph at least 10 days prior to the date named for such meeting.

Section 10. Special Meetings. Special meeting of the Board of Directors may be called by the President on 3 days' notice to each Director, given personally, by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of two Directors.

Section 11. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 12. Adjournment. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting to a subsequent time upon 24 hours' prior written notice delivered to all Directors not present. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof, shall constitute the presence of such Director for purposes of determining a quorum.

Section 13. Fidelity Bonds. The Board of Directors shall require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be expenses of administration.

ARTICLE V

OFFICERS

Section 1. Officers. The principal officers of the Association shall be a President, who shall be a member of the Board of Directors, a Vice President, a Secretary and a Treasurer. The Directors may appoint an Assistant Treasurer, and an Assistant Secretary, and such other officers as in their judgment may be necessary. Any two offices except that of President and Vice President may be held by one person.

(a) President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of the President of an association, including, but not limited to, the power to appoint committees from among the members of the Association from time to time as he may in his discretion deem appropriate to assist in the conduct of the affairs of the Association.

(b) Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to so do on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

(c) Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the members of the Association; he shall have charge of the corporate seal, if any, and of such books and papers as the Board of Directors may direct; and he shall, in general, perform all duties incident to the office of the Secretary.

(d) Treasurer. The Treasurer shall have responsibility for the Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association, and in such depositories as may, from time to time, be designated by the Board of Directors.

Section 2. Election. The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board and shall hold office at the pleasure of the Board.

Section 3. Removal. Upon affirmative vote of a majority of the members of the Board of Directors, any officer may be removed either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purpose. No such removal action may be taken, however, unless the matter shall have been included in the notice of such meeting. The officer who is proposed to be removed shall be given an opportunity to be heard at the meeting.

Section 4. Duties. The officer shall have such other duties, powers and responsibilities as shall, from time to time, be authorized by the Board of Directors.

ARTICLE VI

SEAL

The Association may (but need not) have a seal. If the Board determines that the Association shall have a seal, then it shall have inscribed thereon the name of the Association, the words "corporate seal," and "Michigan."

ARTICLE VII

FINANCE

Section 1. Assessments. Every member shall pay an annual assessment which shall be levied by the Board of Directors which shall be used exclusively for the purpose of the Association as set forth in the Declaration. The due date of such annual assessments shall be fixed by the Board of Directors and it shall send written notice of such assessments to each member.

Section 2. Fiscal Year. The fiscal year of the Association shall be an annual period commencing on such date as may be initially determined by the Directors. The commencement date of the fiscal year shall be subject to change by the Directors for accounting reasons or other good cause.

Section 3. Bank. Funds of the Association shall be initially deposited in such bank or savings association as may be designated by the Directors and shall be withdrawn only upon the check or order of such officers, employees or agents as are designated by resolution of the Board of Directors from time to time. The funds may be invested from time to time in accounts or deposit certificates of such bank or savings association as are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation and may also be invested in interest-bearing obligations of the United State Government.

ARTICLE VIII

INDEMNIFICATION OF OFFICERS AND DIRECTORS

Every Director and Officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party of in which he may become involved by reason of his being or having been a Director or Officer of the Association, whether or not he is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty of willful or wanton misconduct or gross negligence in the performance of his duties; provided that, in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the Director or Officer seeking such reimbursement or indemnification, the indemnification herein shall apply only if the Board of Directors (with the Director seeking reimbursement abstaining) approves such settlement and reimbursement as being in the best interest of the Association.

The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Directors or Officer may be entitled. At least 10 days prior to payment of any indemnification which it has approved, the Board of Directors shall notify all owners thereof. Further, the Board of Directors is authorized to carry officers' and director' liability insurance covering acts of the officers and directors of the Associations in such amounts as it shall deem appropriate.

ARTICLE IX

AMENDMENTS

Section 1. Proposal. Amendments to these Bylaws may be proposed by the Board of Directors of the Association acting upon the vote of the majority of the Directors or may be proposed by 1/3 or more in number of the Owners by instrument in writing signed by them.

Section 2. Meeting. Upon any such amendment being proposed, a meeting for consideration of the same shall be duly called in accordance with the provision of these Bylaws.

Section 3. Voting. These Bylaws may be amended by the Owners at any regular meeting or special meeting called for such propose by an affirmative vote of not less than seventy-five (75%) percent of all Owners.

Section 4. By Declarant. Prior to the lapse of 2 years after the First Annual Meeting, these Bylaws may be amended by the Declarant without approval from any other person.

Section 5. When Effective. Any amendment to the Bylaws shall become effective immediately upon adoption.

Section 6. Binding. A copy of each amendment to the Bylaws shall be furnished to every member of the Association after adoption; provided, however, that any amendment to the Bylaws that is adopted in accordance with this Article shall be binding upon all persons who have an interest in the Subdivision irrespective of whether such persons actually receive a copy of the amendment.

ARTICLE X

COMPLIANCE

These Bylaws are set forth to comply the requirements of Act No. 162 of the Public Acts of 1982, as amended, and with the duly recorded Declaration. In case any of these Bylaws conflict with the provisions of the statute or with the provisions of the Declaration, the provisions of the statute and Declaration shall be controlling.

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