

DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS

FOR

SHELBY ORCHARDS SUBDIVISION

This Declaration of Covenants, Easements and Restrictions ("Declaration"), made as of the 14th day of May, 1999, by Nova Development, Inc., a Michigan corporation, whose address is 48542 Van Dyke Ave., Suite 130, Shelby Township, Michigan 48317 ("Declarant"), is based upon the following:

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

Lots 1 through 83, both inclusive, Shelby Orchards Subdivision according to the Plat thereof recorded in Liber 137, Pages 1 through 8, of Plats, Macomb County Records (the "Subdivision").

B. Declarant desires to impose and subject the Subdivision to certain covenants, restrictions, easements, obligations, charges, and liens, all as more particularly hereinafter set Subdivision and each Owner, as herein defined, of a Lot, as hereinafter defined, in order to, (i) preserve and enhance property values and amenities 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 relative to the Subdivision. *Restrictions recorded Liber 8895 pages 836 through 859.*

C. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the subdivision, to create the Association, as herein defined, as a legal entity to (i) maintain, preserve, and administer the entrance wall, the sign and the landscaping in the landscape easement dedicated to the homeowner association as shown on the plat and any other areas now or hereafter owned or administered by the Association (as hereinafter defined), and such landscaping, facilities, and amenities that may be constructed thereon or used therein, (ii) collect and disburse the assessments and charges hereinafter created, and (iii) promote the recreation, health, safety, and welfare of the residents in the Subdivision.

D. Declarant may, at some future time, plat certain additional land adjacent to the Subdivision as and additional subdivision(s), and subject to the lots therein to the covenants, restrictions, obligations easements, charges, and liens set forth herein by amendments made to the Declaration.

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

Now, therefore, Declarant hereby publishes, declares, and makes known to all intending purchasers and future owners of the Lots within the Subdivision, that the Subdivision, and all of the conveyed expressly subject to the following conditions, restrictions, easements, covenants, and agreements, which shall be incorporated by reference in all deeds of conveyance and contracts for the sale of any of the Lots, and which shall run with the land (the Subdivision 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

The following terms have the following respective meanings when used in this Declaration, and the singular shall include the plural and vice versa, unless the context requires otherwise:

Section 1. Association. "Association" means Shelby Orchards Subdivision Association, a Michigan nonprofit corporation, its successors and assigns.

Section 2. Declarant. "Declarant" means Nova Development, Inc., a Michigan corporation, its successors and assigns.

Section 3. Declaration. "Declaration" shall mean this Declaration of Covenants and Restrictions for Shelby Orchards Subdivision, as recorded in the Office of the Macomb County Register of Deeds, State of Michigan.

Section 4. Lot. "Lot" means (a) any numbered lot shown on the recorded plat of the Subdivision or and any future subdivisions subjected to this Declaration, (b) any building site resulting from the combination of Lots, and (c) and building site resulting from a proper and approved lot split of any Lot.

Section 5. Member. "Member" means those persons entitled to membership in the Association, as provided in this Declaration; provided, however, that for the

purposes of voting in Association matters there shall be deemed to be only one (1) Member for each Lot.

Section 6. Owner. "Owner" means the record owner, whether one or more persons or entities, 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.

ARTICLE II

ESTABLISHMENT AND DEDICATION

Section 1. Establishment of Non-Profit Corporation. There is hereby established an association of Owners of Lots 1 through 83, both inclusive, of Shelby Orchards Subdivision, to be known as the Shelby Orchards Subdivision Association. The Association shall be organized within (90) days after the date the plat of Shelby Orchards Subdivision has been recorded at the Office of the Register of Deeds for Macomb County, Michigan. The Association shall be organized as a nonprofit corporation for a perpetual term under the laws of the State of Michigan and shall have such powers as are enumerated in this Declaration, as well as those set forth in the articles of incorporation and corporate by-laws for the Association.

ARTICLE III

PROPERTY RIGHTS

Section 3 Easement for Landscape, Subdivision Sign and Entrance Wall. The Association shall be permitted to enter upon the portion of Lot 83, shown on the Plat as Private Easement for Landscape, Subdivision Sign and Entrance Wall. Also referenced herein as "Landscape Easement" as may be necessary to install, repair, replace, and maintain such signs, wall, lighting, sprinkling, and landscaping as the Association shall deem appropriate.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership in the Association is, and shall be, appurtenant to, and may not be separated from, ownership of any Lot. Notwithstanding the foregoing, the termination of any person's ownership interest in any Lot, and the consequent termination of such person's membership in the Association, shall not relieve such person from any debt or obligation attributable to such Lot which accrued or arose during the period such person was an Owner of such Lot.

Section 2. Voting Rights. The Association shall be two (2) classes of membership, being Class A and Class B, as follows:

(a) Class A membership shall be voting, and Declarant shall be the only Class A Member.

(b) Each Owner of a Lot other than the Declarant shall be a Class B Member.

(c) Class B membership shall be non-voting until the Transfer Date specified in Subsection 2(d) below, at which time all Owners (including Declarant) shall be entitled to vote on a one vote per lot basis (regardless of the number of Owners of any Lot).

(d) Declarant shall have the sole vote in the Association, and the consequent right to appoint the Board of Directors of the Association (the "Board"), until such date (the "Transfer Date") as shall be the earlier to occur of i) seventy percent (70%) of the lots in the Subdivision, have been sold (as evidenced by delivery of a deed for such lots to the Lot purchaser) to Owners other than builders purchasing for resale in the ordinary course of their business, (ii) five (5) years after the date of recording of the plat of the Subdivision at the Office of the Register of Deeds for Macomb County, Michigan, or (iii) such earlier date as may hereafter be designated in writing by Declarant.

(e) From and after the Transfer Date described in Subsection 2(d) above, Class B Members of the Association shall have the voting rights described in Subsection 2(d) above, and thereafter, the Board shall be elected by the combined vote of the Class A and Class B Members (in each case, voting on a one vote per Lot basis).

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed there for, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual general assessments or charges, and (b) special assessments, which assessments shall be established and collected as hereinafter provided. The general and special assessments, together with interest thereon, late payment fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest thereon, late payment fees, and costs of collection thereof, including reasonable attorneys' fees, shall also be the personal obligation of the person(s) who was (were) the Owner of such lot at the time the assessment fell due.

In the event the Association shall, at any time, fail to maintain the sign, walls, lighting, sprinkler system, and/or landscaping, in the Landscape Easement then, the Charter Township of Shelby ("Township") is authorized to enter the Premises to maintain

the same. The Township shall serve notice by first-class mail to the owner(s), appearing on the Township tax rolls, or each lot in the Subdivision. The notice shall include a demand that deficiencies in the maintenance be cured within thirty (30) days thereof and notify the owners of the date, time, and place of a public hearing before the Township Board of Trustees or such other boards or body of officials to whom Township may delegate such responsibility. The hearing shall be held within fifteen (15) days of the notice. At the hearing the Township may modify the terms of the original notice of deficiencies in the operation and maintenance of the Landscape Easement, may enter upon the property and maintain the Landscape Easement for a period of up to one (1) year. Maintenance of the Landscape Easement by the Township shall not constitute a taking of the Landscape Easement nor vest in the public any additions right to use the same.

Within sixty (60) days prior to the expiration of the aforesaid one (1) year period, that the Landscape Easement is under the control and jurisdiction of the Township, a Majority of the lot owners or Association may request another public hearing upon notice in the same manner as a set forth above . At the hearing the Association or lot owners shall show cause why maintenance by the Township shall not continue for a succeeding one (1) year period. If the Township shall, reasonably, determine that the Association and/or lot owners are ready, willing and able to maintain the Landscape Easement, the Township shall cease to operate and maintain the Landscape Easement at the end of said year. If the Township shall reasonably determine that the Association or lot owners are not ready, willing, and able to maintain the Landscape Easement 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 and maintain said Landscape Easement.

Should deficiencies in the maintenance of the Landscaper Easement be determined by the Township to constitute an impending danger to health, safety, and welfare of the public, or private nuisance, the Township shall have the right to take immediate correction action and summarily abate such danger or nuisance.

The Association and/or lot owners shall hold harmless, defend and indemnify the Township from any and all claims, demands, costs, expenses, including attorney fees, and judgments, whatsoever, which may arise from the Township's maintenance of the Landscape Easement.

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 or the immediate abatement of an impending danger or nuisance in relation thereto, shall be at the expense of the Association or the lot owners and such costs and expenditures shall be assessed against the lots in the subdivision and become due, collected and returned for nonpayment in the same manner and at the 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 Declaration for the imposition of assessments and the collection thereof in relation to the Landscape Easement.

The maintenance provisions contained in the Article, or section, shall not be amended in any way without the prior written consent of the Charter Township of Shelby Board of Trustees.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Subdivision and in particular for the improvement and maintenance of the entrance sign, walls, landscaping, sprinkler system, and for payment of water and electric bill associated with the foregoing, planting and maintenance of trees, shrubs, and grass, for the protection of the Owners.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to the Owner, the maximum annual assessment shall be One Hundred Dollars (\$100.00) per Lot owned by an Owner.

(a) From and after January of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased as necessary each year to an amount which is not more than ten percent (10%) greater than the maximum assessment which was permissible to be assessed hereunder for the previous year without a vote of the Members.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the ten percent (10%) increase permitted by Subsection (a) by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy, at a meeting duly called for that purpose.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy against each Owner, in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, replacement, or maintenance of any improvement upon the Common Area, if any, and other areas, facilities, and amenities which now or hereafter may be under the control of the Association, including, without limitation, those listed above in Section 2 of this Article, or for any other legal purpose desired by the Association, provided that any such special assessment shall have the approval of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for that purpose.

Section 5. Notice and Quorum of Actions Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 of the Article shall be sent to all Members not less than fifteen (15) days in advance of the meeting. At the first such meeting called, the presence of Member

or of proxies entitled to cast thirty percent (30%) of the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Rate of Assessment. Both the general and the special assessments shall be set by the Board of Directors at a uniform rate for the Owners of all Lots and may be collected on a monthly or an annual basis.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessment provided for herein shall commence as to all Lots in the Subdivision on the first day of the month following the conveyance of the first Lot to an Owner, but in any event, shall commence within one (1) year after the recording of the plat of the Subdivision at the Office of the Register of Deeds for Macomb County, Michigan. A conveyance to a builder who has purchased a lot for the intended purpose of constructing a residence thereon for sale to an Owner shall not be deemed a conveyance to an Owner. The first annual assessment shall be prorated and adjusted according to the number of months remaining in the calendar year. The Board of Directors shall endeavor to fix the amount of the annual assessment against each Lot and to establish the assessment due date at least thirty (30) days prior to the assessment due date. Failure by the Association to send such written notice shall not permit any Owner to avoid paying the assessment, but shall delay such Owner's assessment due date until thirty (30) days following the date that such notice of assessment is eventually sent. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid in full within thirty (30) days following its due date shall bear interest from the due date at a rate of seven percent (7%) per annum and shall be subject to a late payment fee equal to fifteen percent (15%) of the amount of the assessment to cover the cost of collection by the Association. In the event that the cost of collection, including attorneys' fees, exceeds fifteen percent (15%) of the amount of the assessment, the Association shall be entitled to collect the deficiency. The aggregate amount of the unpaid assessment, interest, late payment fee, and deficiency shall be a lien against the Lot corresponding to the unpaid assessment. The Association may bring an action at law against the Owner personally obligated to pay the assessment, interest, late payment fee, and deficiency, and may foreclose the lien against the Lot in the same manner that real estate mortgages may be foreclosed by action under Michigan law. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of or abandonment of his Lot.

Section 9. Exempt Property. All Common Area, if any, and all other property exempt from taxation by state or local governments and dedicated for public use shall be exempt from the assessments, charges, and liens created herein.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein on any Lot shall be subordinate to the lien of any first mortgage covering the Lot. Sale or transfer of any Lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of the assessments, but shall not extinguish the Owner's personal obligation for payment of assessments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment becoming due after such sale or from the lien thereof.

Section 11. Management Agent. The Board shall be permitted to retain the services of a management agent to aid them in administering and carrying out the purposes of the Association, and may utilize a portion of the Association assessments to pay such management agent a fee deemed reasonable by the Board.

ARTICLE VI

BUILDING AND USE RESTRICTIONS FOR THE SUBDIVISION

Section 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 house 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, may also be erected and maintained, provided that said garage is in compliance with the requirements of Section 2 of the Article VI.

(b) Notwithstanding the limitations on uses set forth in Section 1 (a) above, Declarant hereby reserves the right for itself, its agents or sales representatives, and/or any builder or builders 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.

Section 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 therefore shall have been submitted to and approved in writing by Declarant in the manner set forth in Paragraph 2(d) hereof.

(b) No deck, patio, swimming pool, 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 therefore shall have been submitted to and approved in writing by Declarant in the manner set forth in Paragraph 2 (d) hereof.

(c) Any and all construction of the buildings, structures, and other items set forth in Paragraphs 2 (a) and 2 (b) hereof (collectively the "Improvements") shall be diligently completed in accordance with the plans and specifications which are ultimately 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) hereof, or otherwise as provided in this Declaration, shall be prepared by a competent architect, and shall show the nature, kind, shape, eight, 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, would not be suitable or desirable for aesthetic or other reasons or for no reason; and in so passing upon such plans and specifications, Declarant shall have the right to take in to considerations the suitability of the proposed Improvements on the Lot upon which they are proposed to be erected, and the harmony as planned in view of the appearance from adjacent or neighboring properties. Declarant shall also have the right to specify the materials to be used in the construction of and Improvements on the Lots, and may require suitable screening in of Improvements with adequate shrubs, landscaped materials, and other modifications. It is understood and agreed that the purpose of the 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 the Paragraph 2 (d), the decision of Declarant shall control and be conclusive upon all parties.

(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 ill not be required as a condition precedent to construction of the Improvements set forth therein, provided that the plans and specifications (and all construction based upon the such plans and specifications) (i) conform to the restrictions set forth in the Declaration and all applicable statutes, laws, ordinances, and regulations, including zoning laws, and (ii) are otherwise in harmony with the existing Improvements constructed on the Lots.

(f) 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 compliance with the requirements of (i) Section 263 of the Michigan Land Division Act of 1967 (M.C.L.A. 560.101, et seq), as the same may hereafter be

amended, or any replacement or successor statute thereto, and (ii) all applicable ordinances of the City and all other governmental authority(ies) having jurisdiction.

Section 3. Size and Character of Buildings.

(a) No dwelling shall be permitted on any Lot unless the living area thereof shall be not less than two thousand three hundred (2,300) square feet in the case of a one (1) story dwelling, and not less than two thousand eight hundred (2,800) square feet in the case of any other dwelling. 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" variety), garages, porches, terraces, breezeways, and other unenclosed or unheated areas.

(b) All dwelling 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 four (4) 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 on any Improvements in the Subdivision.

(d) All dwelling shall have finished exteriors of brick or stone on each side of the first floor level and brick, stone, wood siding or any combination thereof above the first floor level. The use of cement block, clay, cinder block, aluminum siding, asbestos siding, concrete, or imitation brick (other than face brick) are expressly prohibited.

(e) The design, material, color and construction of approved by Declarant (and the United States Postal Service) with respect to mailboxes prior to their erection. They must also be properly maintained and kept of sightly appearance.

(f) Grantor, 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, whim, or caprice of Declarant.

Section 4. Minimum Setback and Yard Requirements. No building or structure shall be erected on any Lot nearer to any front, side, or rear Lot line than is allowed by applicable zoning ordinances, as modified by any variance already obtained by Grantor prior to the date hereof with respect to the Subdivision, or otherwise provided herein.

Section 5. Animals.

(a) No farm animals, livestock, poultry, or wild animals shall be kept, bred, or harbored on any Lot, nor shall any animals be kept or bred for commercial

purposes. Only domesticated animals commonly deemed to be household pets may be kept on any Lot by the Owner and members of his household so long as such pets shall have such care so as not to be objectionable or offensive to other due to noise, odor, or unsanitary conditions.

(b) 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 portion of his Lot. No Owner of a Lot shall use, nor shall he permit or suffer any occupant of any Lot which he owns, or his or their invitees or guests, to use any B-B guns, firearms, air rifles, pellet guns, bows and arrows, sling shots, or any other weapons on his Lot.

Section 6. Easements.

(a) Easements are reserved as shown on the plat of the Subdivision.

(b) Private easements for public utilities, and landscape easement have been granted and reserved on the plat of the Subdivision

(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 Lot line Improvements of any type over or on any easements shall be allowed only so 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.

(e) Wetland conservation easement on lots 20 ,21, 22, and 23 as shown on the plat. Property owners of such lots shall refrain from altering the topography of, placing fill material in , dredging, removing any soil or minerals from, draining surface water from, constructing or placing any structure on, plowing, tilling, cultivating, or otherwise altering or developing the Easement Premises.

Section 7. Prohibited Vehicles and Structures.

(a) No housetrailer, 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, 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; provided, however, 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 Section 3 (d) of this Article VI.

(c) Antennae of any kind and satellite reception equipment (including, without limitation, so-called "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 the Section 10 shall not apply to Declarant or any builder which it may designate, during the construction period or during such periods as any dwelling may be used for model or display purposes.

Section 8. General Conditions.

(a) 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]** water, and the same shall not be kept on any Lot except in sanitary containers properly left at the road for **[no]** more than twenty-four (24) hours in any one week.

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

(c) All homes in the Subdivision shall be equipped with electric garbage disposal units in the kitchen.

(d) The grade, slope, and/or contour of any Lot shall not be changed without the prior written consent of Declarant, the Township, and all other governmental authorities having jurisdiction. This restriction is intended to prevent interference with the master drainage plan for the Subdivision.

(e) No "through the wall" or "through window" air **[conditioners allowed in t]**he Subdivision.

(f) 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.

(g) 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 or nuisance to the neighborhood or the owners of any of the Lots in the Subdivision.

(h) 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 therefore by the appropriate governmental authority(ies), or the occurrence of such 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.

Section 9. 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.

Section 10. 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 swelling shall be subject to tall of the terms, covenants, provisions, and requirements hereof, including, without limitation, the provisions of Article VI, Section 1 hereof.

Section 11. Fences. No fence, wall, or solid hedge may be erected, grown, or maintained on any Lot, except decorative fences required for swimming pools. No such required fence 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 of the building line.

Section 12. Signs. No signs or billboards shall be placed, erected, or maintained on any Lot, except for (1) professional quality sign or not more than six (6) square feet in size and not more than three (3) feet 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 Shelby Township and all other governmental authorities have jurisdiction with respect there to. Such sign shall have been constructed and installed in a professional manner and shall comply with all ordinances of the City. 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 the Section 12 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).

Section 13. Landscaping.

(a) Upon the completing of a residence on each of the Lots, the owner thereof (and the word "owner," as used in this connection, is intended to mean the party who purchases a residence from the builder thereof, and each subsequent purchaser thereof) shall cause all portions of the Lot to be finish-graded, seeded or sodded, and suitably landscaped on or before six (6) months after the completion of the dwelling, weather permitting. All Lawns and landscaping in the Subdivision (including any berm and landscaping areas) shall be of an aesthetically pleasing nature and shall be continuously and properly well maintained at all times. No statues may be placed in the front yard of any dwelling. It is the purpose of this Section 13 to cause the Subdivision to develop into a beautiful, harmonious, private residential area.

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

The cost incurred by Declarant or the Association for such maintenance, repair, and replacement, plus an administrative fee equal to twenty percent (20%) of such cost, shall be due and payable by the Owner of such Lot to Declarant or the Association, as the case may be, within ten (10) days following such date as Declarant or the Association sends the Owner a bill therefore. If the unpaid amount shall be a charge on the Lot, shall be a continuing lien upon the Lot, and shall be treated as an additional assessment against the Lot subject to treatment in accordance with the provisions of the Declaration controlling and affecting such assessments, including, without limitation, those stated in Article V of this Declaration.

Section 14. Architectural Control Committee.

(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, assign, transfer, and delegate to and architectural control committee (the

"Architectural Control Committee") 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, the Architectural Control Committee shall exercise all of the authority and discretion granted to Declarant in Section 3 of Article VI hereof relative to approving or disapproving such matters, and Declarant shall have no further responsibilities with respect to such matters. The Architectural Control Committee shall be comprised of up to three (3) members to be appointed by the Declarant. Upon the Transfer Date, Declarant shall transfer its right to appoint the members of the Architectural Control Committee to the Association. Until such transfer, Declarant reserves the right to appoint and remove members of the Architectural Control Committee in its sole discretion.

(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 Section 3 of Article VI hereof. The primary purpose for providing 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 determining what swellings 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 either Declarant or the Architectural Control Committee 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, neither Declarant nor the Architectural Control Committee shall have 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 provision hereof.

ARTICLE VII

ASSESSMENT OF FINES

Section 1. General. The Association, acting through its board, shall be permitted to assess monetary fines against any Owner in the event that the Owner or his tenants, guests, family, or invitees shall violate any of the provisions of this Declaration or any of the rules and regulations duly established by the Association. Such Owner shall be deemed responsible for such violations whether they occur as a result of his personal actions or the actions of his family, guests, tenants, or invitees.

Section 2. Procedures. Upon any such violation being alleged by the Board, the following procedures shall be followed:

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

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

(c) Default. Failure to respond to the notice of violation shall constitute a default by the Owner.

(d) Hearing and Decision. Upon appearance by the Owner before the Board and presentation of evidence of defense, or, in the event of the Owner's default, the Board shall, by majority vote of a quorum of the Board, decide whether a violation has occurred. The Board's decision shall be final.

Section 3. Amounts. Upon finding by the Board that a violation has occurred, the following fines shall be levied against the offending Owner:

(a) First Violation. No fine shall be levied.

(b) Second Violation. A Fifty Dollar (\$50.00) fine shall be levied.

(c) Third Violation. A One Hundred Dollar (\$100.00) fine shall be levied.

(d) Fourth Violation and Subsequent Violations. A Two Hundred Dollar (\$200.00) fine shall be levied.

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

Section 4. Collection. The fines levied pursuant to Section 3 above shall be assessed against the Owner in the same manner as the annual Association assessments and shall be due and payable to the Association on the first day of the next following month. Failure to pay the fine when due shall subject the offending Owner and his Lot(s) to all of the liabilities set forth in Article V, Section 8 hereof.

ARTICLE VIII

PRESERVATION OF TREES

Section 1. Removal of Trees. No trees measuring six (6) inches or more in diameter at ground level may be removed without the written approval of the Architectural Control Committee, and a plan for preservation of trees in connection with the construction process is delivered to the Architectural Control Committee prior thereto. It shall be the responsibility of each Lot Owner to attempt to maintain and preserve all large trees on the Owner's Lot, which responsibility includes welling trees, if necessary. Provided, however, no permission shall be necessary from the Architectural Control Committee for the removal of trees which fall within the area being used for the construction of a home which shall include all areas within ten (10) feet of the outer walls of a home and the areas within the driveway, utility easements or rights-of-way.

Section 2. Waiver. The restrictions and limitations of this Article may be waived in whole or in part by the Architectural Control Committee in appropriate cases, in the sole judgment of the Architectural Control Committee, so long as the granting of such waiver does not violate any Township of Shelby Ordinances which regulate such activity, and that any necessary approvals and permits are obtained from the Township of Shelby.

Section 3. Natural Features. The natural features and character of land shall be preserved wherever possible. Due regard must be shown for all natural features such as large trees, natural groves, water courses and similar community assets that will add attractiveness and value to the property if preserved.

Section 4. Trees.

(a) Existing trees near street right-of-way shall be preserved.

(b) In keeping with the Shelby Township Ordinance, as may be amended from time to time, street trees shall be provided; at least one (1) per lot or not less than one (1) tree for each fifty (50) feet - placed halfway between the sidewalk and curb;

(c) The following species of trees shall be permitted:

- a. Norway Maple
- b. London Plane
- c. Pin Oak
- d. Honey Locust
- e. Cork Tree
- f. Sugar Maple
- g. Little Leaf Linden
- h. Modesta Ash
- i. Idaho Locust
- j. Moraine Locust
- k. Hop Horn Beam
- l. Paul Scarlet Hawthorne

m. Such other species as may be approved by the Superintendent of the Department of Public Works for the Township of Shelby.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, the Association, and each Owner shall have the right to enforce, by any proceeding 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.

Section 2. Severability. Invalidation of any one of the covenants or restrictions by judgment or court order shall in no way wise affect any other provisions, which other provisions shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of the Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period after the Transfer Date by a recorded instrument signed by not less than seventy percent (70%) of the Owners and thereafter by an instrument signed by not less than sixty percent (60%) of the Owners. Prior to Transfer Date, Declarant, the Association of any Members thereof, 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 thin 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/or Common Area and making this Declaration and/or other restrictions apply to such Lots and/or Common Area.

Declarant's right to amend, change, or replace this Declaration shall be permitted at any time prior to the Transfer Date, notwithstanding an assignment of Declarant's rights and powers pursuant to Section 5 of this Article IX.

Section 4. Annexation of Additional Lots and/or Common Area. Declarant reserves the right any time in the future to amend this Declaration by subjecting to it one or more additional adjacent subdivisions of land hereafter developed and platted by Declarant or its successors or assigns. Such additional subdivisions may or may not contain Common area. Any such amendment(s) to this Declaration shall provide that the owners of all residential Lots located in such future added subdivisions subject to the covenants, restrictions, obligations, easements, charges, and liens set forth herein. Such amendment(s) shall also provide that the Common Area contained within the Subdivision

and all such future added subdivisions. Additional Lots and Common Area may be annexed to the Association or any of its Members or any Owner. Annexation by action of the Association shall require the consent of two-thirds (2/3rds) of its members.

Section 5. Assignment or Transfer of Rights and Powers. Declarant hereby reserves the unequivocal right to assign to the Association or any other party, in whole or in part, from time to time, any or all of the rights, powers, titles, hereby reserved or given to the Declarant herein, including the right and power to approve or disapprove any use, act, proposed action, or any other matter or thing, except that Declarant's right to amend, change, or replace this Declaration without the consent of the Owners as provided in Section 3 of the Article IX 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, so assigned, and such instrument, when executed by such assignee, shall without further act release said Declarant from all obligation, duties, and liability in connection therewith.

Section 6. Deviations by Agreement with Developer. Declarant hereby reserves the right at any time prior to the Transfer Date to enter into agreements with the Owner of any Lot or Lots, without the consent of Owners of other Lots or adjoining or adjacent property, to deviate from any or all of the covenants set forth in this Declaration provided there are practical difficulties or particular hardships evidenced by Owner. Following the Transfer Date, such power vested in Declarant shall be transferred to the Association. Any such deviation (which shall be manifested by agreement in writing) shall not constitute a waiver of any such covenant as to the remaining Lots.

Section 7. Transition of Association Board of Directors. The Association by-laws shall provide that the members of the Board may, at the Declarant's options, be appointed by the Declarant until the Transfer Date, and thereafter, shall be elected by the Owners. In the event that Declarant no longer desires to appoint the members of the Board who desire to serve as Directors, the Declarant reserves the right to grant to the Management Agent of the Association or to such other designee chosen by Declarant the right to appoint a Board composed of either Owners or non-Owners, or some combination thereof. The fee charged by the Management Agent or other designee and by the Directors shall be paid directly by the Association. The right of the Management Agent or other designee to appoint the Board shall continue until the first annual meeting at which the Owners are willing and able to elect a Board of Owners who desire to serve as Directors.

IN THE PRESENCE OF:

Mary Lou Palazzolo
Mary Lou Palazzolo
Michelle Peon
Michelle Peon

NOVA DEVELOPMENT, INC., A
MICHIGAN CORPORATION,

By: Alfio Caradonna
Alfio Caradonna, President

STATE OF MICHIGAN)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this
14th day of May, 1999, by Alfio Caradonna,
President of Nova Development, Inc., a Michigan corporation, on
behalf of it.

Neil E. Dempsey
Neil E. Dempsey Notary Public
Macomb County, Michigan
My Commission Expires: March 14, 2002

DRAFTED BY AND WHEN
RECORDED RETURN TO:

Nova Development, Inc.
48542 Van Dyke Ave.
Suite 130
Shelby Twp., MI 48317

CONSENT OF MORTGAGEE

The undersigned, Huntington National Bank, whose address is , One North Main Street, Mt. Clemens, MI 48043 being the holder of a certain Mortgage covering Shelby Orchards Subdivision, hereby acknowledges and consents to the foregoing Declaration of Covenants, Easements and Restrictions for Shelby Orchards Subdivision.

WITNESSES:

Mary Lou Palazzolo
Mary Lou Palazzolo
Michelle Peon
Michelle Peon

Huntington National Bank

Maria Dubiel
Maria Dubiel, Vice President

STATE OF MICHIGAN)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 14th day of May, 1999, by Maria Dubiel, the Vice President of Huntington National Bank, on behalf of it.

Neil E. Dempsey
Neil E. Dempsey Notary Public
 Macomb County, Michigan
My Commission Expires: March 14, 2002