

(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 therefor, 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, and collection costs, including reasonable attorneys' 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.

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 any future subdivisions subjected to this Declaration, and in particular for (a) the improvement and maintenance of the Common Area, if any, and the landscaping, facilities, or amenities constructed thereon or used therein, including, without limitation, the storm water retention and sedimentation control areas and facilities, storm sewers (to the extent located outside of the road rights-of-way maintained by the County or Township), greenbelts (and berms and irrigation systems located within greenbelts), landscaped traffic islands and cul-de-sacs located within the Subdivision, fencing, access roads, temporary sedimentation basins, walkways (whether located within or adjacent to the Common Area or the wetlands, if any), and subdivision entrance areas (including, without limitation, entrance monuments, entrance monument lighting, signs, landscaping, walls, water features, irrigation systems, and fountains, if any), (b) the payment of water and electric bills associated with the foregoing, (c) planting and maintenance of trees, shrubs and grass, if any, (d) providing community services, and (e) 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

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an Owner, the maximum annual assessment shall be One Hundred Ten Dollars (\$110.00) per Lot owned by an Owner.

(a) 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 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 or 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 this 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 Members 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 first annual assessment shall be prorated and adjust-

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ed according to the number of months remaining in the calendar year. 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 assessments provided for herein by non-use of the Common Area 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 proposes 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 house 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 this 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 therefor 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, 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) 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.

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(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, 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, 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 into consideration 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 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 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 will 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 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 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 in 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 Township 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 one thousand

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.

## 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 this Declaration or the rules or regulations violated, together with a description of the factual nature of the alleged offense shall be sent by first class mail, postage prepaid, or shall be personally delivered to the Owner.

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

(c) **Default.** Failure to respond to the notice of violation 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 a finding by the Board that a violation has occurred, the following fines shall be levied against the offending Owner:

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

(b) **Second Violation.** A Twenty-Five Dollar (\$25.00)

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fine shall be levied.

(c) **Third Violation.** A Fifty Dollar (\$50.00) fine shall be levied.

(d) **Fourth Violation and Subsequent Violations.** A One Hundred Dollar (\$100.00) fine shall be levied.

In addition to such fines, the Owner, at the option of the Board, shall be subject to the suspension of his voting rights 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

##### GENERAL PROVISIONS

**Section 1. Enforcement.** The Declarant, the Association, 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.

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

**Section 3. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period 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 the Transfer Date, Declarant, without the consent, vote, signature, or approval of any Owner, the Association or any Members thereof, may, prospectively or retroactively, by instrument recorded at the Office of the Register of Deeds for Macomb County, Michigan,

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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/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 VIII.

**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. Subject to the provisions of Section 6 of this Article VIII, any such amendment(s) to this Declaration shall provide that the owners of all residential Lots located in such future added subdivisions shall be required to be Members of the Association and shall be subject to the covenants, restrictions, 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 shall be for the use and benefit of all owners of Lots in the Subdivision and all such future added subdivisions. Additional Lots and Common Area may be annexed to the Association by Declarant without the consent or approval of the Association or any of its Members or any Owner. Annexation by action of the Association shall require the consent of two-thirds (2/3rds) of its members.

**Section 5. Assignment or Transfer of Rights and Powers.** Declarant hereby reserves the unequivocal right to assign to the Association or any other party, in whole or in part, from time to time, any or all of the rights, powers, titles, easements, and estates hereby reserved or given to Declarant herein, including the right and power to approve or disapprove any use, act, proposed action, or any other matter or thing, except that Declarant's right to amend, change, or replace this Declaration without the consent of the Owners as provided in Section 3 of this Article VIII 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.

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**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 such Owner. Following the Transfer Date, such power vested in Declarant shall be transferred to the Association. Any such deviation (which shall be manifested by an agreement in writing) shall not constitute a waiver of any such covenant as to the remaining Lots.

**Section 7. Transition of Association Board of Directors.** The Association By-Laws shall provide that the members of the Board may, at the Declarant's option, 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 and the Owners are unwilling or unable to elect a 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.

**Section 8. Sedimentation Basin Maintenance.** The Pinecrest Subdivision Association is responsible for the operation and maintenance of the Sedimentation Basin which services Pinecrest Subdivision. In the event that Association shall at any time fail to maintain the Sedimentation Basin, Macomb Township ("Township") has created a Special Assessment District pursuant to the State Land Division Act which authorizes the Township to enter the Sedimentation Basin, maintain the same, and assess each Lot owner in the Subdivision a proportionate share of the maintenance cost incurred by the Township.

**Section 9. Conservation Easement.** A portion of the Common Area to be added to Pinecrest Subdivision is encumbered by a Conservation Easement and Consent Agreement (copies of which are attached hereto) recorded in Liber 8720, Page 681, Macomb County Records. Declarant shall be responsible for completing all of the obligations called for under the Conservation Easement and Consent Agreement. The Conservation Easement is to be preserved in its natural undeveloped condition and the Association shall refrain from altering the topography of, placing fill material in, dredging, removing, or excavating any soil or materials from, draining surface water from, constructing or placing any structure in, plowing, tilling, cultivating or otherwise altering or developing the Easement Premises without the prior approval of

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the Michigan Department of Environmental Quality.

In witness whereof, Declarant has executed this Declaration of Covenants, Easements and Restrictions for Pinecrest Subdivision as of the date first above written.

IN THE PRESENCE OF:

*Barbara S. Gates*  
BARBARA S. GATES  
*Stephen R. Neeper*  
STEPHEN R. NEEPER

M & C LIMITED OF UTICA,  
a Michigan corporation

By: *Michael A. Chirco*  
Michael A. Chirco  
President

STATE OF MICHIGAN        )  
                                  ) ss.  
COUNTY OF MACOMB        )

The foregoing instrument was acknowledged before me this  
29TH day of JULY, 1999, by Michael A. Chirco,  
the President of M & C Limited of Utica, a Michigan corporation,  
on behalf of it.

*Janis A. Vollbach*  
JANIS A. VOLLBACH        Notary Public  
MACOMB                    County, Michigan  
My Commission Expires: SEPT 24, 2003  
JANIS A. VOLLBACH  
Notary Public, Macomb County, MI  
My Commission Expires Sept. 24, 2003

DRAFTED BY AND WHEN  
RECORDED RETURN TO:

MARK J. ABDO  
ATTORNEY AT LAW  
42550 Garfield Road  
Suite 104A  
Clinton Township, Michigan 48038

CONSERVATION EASEMENT

This Conservation Easement ("Agreement"), made as of the 2nd day of June, 1998, by and between M. & C, LIMITED OF UTICA, a Michigan corporation, whose address is Suite One, 46401 Romeo Plank Road, Macomb, Michigan 48044 (hereinafter "Grantor"), and the MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY, and successors or assigns, whose address is P. O. Box 30458, Lansing, Michigan 48909-7958 (hereinafter "Grantee"):

Witnesseth, for and in consideration of the sum of One Dollar (\$1.00), the receipt of which is acknowledged, and other good and valuable consideration, Grantor hereby grants to Grantee a Conservation Easement pursuant to the Conservation and Historic Preservation Easement Act (1980 PA 197, MCL 399.251 et seq.), on the terms and conditions stated below.

1. The premises subject to the Easement (hereinafter the "Easement Premises") are situated in the Township of Macomb, Macomb County, Michigan, and is more particularly described on Exhibit A attached hereto and made a part hereof. A map depicting the Easement Premises is attached as Exhibit B.

2. Except as authorized under a certain Consent Agreement, dated June 2, 1998, between Grantor and Grantee, and the mitigation plan approved in connection therewith (collectively, the "Consent Agreement"), Grantor shall refrain from altering the topography of, placing fill material in, dredging, removing, or excavating any soil or minerals from, draining surface water from, constructing or placing any structure in, plowing, tilling, cultivating, or otherwise altering or developing the Easement Premises.

3. Except as authorized under the Consent Agreement, the purpose of this Easement is to maintain the Easement Premises in their natural and undeveloped condition. Except as authorized under the Consent Agreement, Grantor shall allow the Easement Premises to remain in their natural and undeveloped condition.

4. This Easement does not grant or convey to Grantee or members of the general public any right of ownership, possession, or use of the Easement Premises.

5. Upon reasonable written notice to Grantor, Grantee, and its authorized employees and agents, may enter upon and inspect the Easement Premises to determine whether they are being maintained in compliance with the terms of this Easement and the Consent Agreement.

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6. This Agreement may be enforced by either an action at law or in equity and shall be enforceable against the owner of the Easement Premises or any other person despite a lack of privity of estate or contract.

7. The Easement shall run with the land in perpetuity unless modified or terminated by the written agreement of the parties.

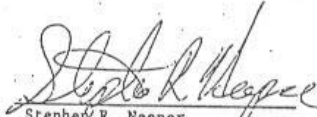
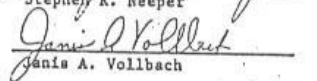
8. Grantor shall indicate the existence of this Agreement on all deeds, mortgages, land contracts, plats, and any other legal instrument used to convey an interest in the Easement-Premises.

9. Within ninety (90) days after this Agreement is executed, Grantor, at its sole expense, shall place signs, fences, or other suitable marking along the boundary of the Easement Premises to clearly designate the boundary of the Easement Premises.

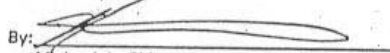
10. This Agreement shall be binding upon the successors and assigns of the parties.

In witness whereof, the parties have executed this Conservation Easement as of the date first above written.

Signed in the presence of:

  
Stephen R. Neep  
  
Janis A. Vollbach

M & C, LIMITED OF UTICA,  
a Michigan corporation


By:   
Michael A. Chirco  
Its: President

"Grantor"

STATE OF MICHIGAN )  
                                  ) ss.  
COUNTY OF MACOMB )

The foregoing instrument was acknowledged before me this 2nd day of June, 1998, by Michael A. Chirco, the President of M & C, LIMITED OF UTICA, a Michigan corporation, on behalf of the corporation.

JANIS A. VOLLBACH  
NOTARY PUBLIC - MACOMB COUNTY, MI  
MY COMMISSION EXPIRES 09/24/98

  
Janis A. Vollbach, Notary Public  
Michigan County, Michigan  
My Commission Expires: September 24, 1998

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