

SIMMONS ORCHARD SUBDIVISION #1

DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS

THIS DECLARATION, made the date hereinafter set forth by R & R BUILDING COMPANY, a Michigan corporation, herinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the Owner of certain Property in the City of Novi, County of Oakland, State of Michigan, which is more particularly described as:

SEE ATTACHED EXHIBIT A

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real Property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to SIMMONS ORCHARD HOMEOWNERS ASSOCIATION #1, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real Property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

Section 5. "Declarant" shall mean and refer to R & R Building Company its successors and assigns.

ARTICLE II

GENERAL DESCRIPTIONS

The following restrictions are hereby placed on all Lots in Simmons Orchards Subdivision #1:

(a) Land and Building Use Restrictions: Every Lot shall be restricted for use only as one single-family residential dwelling unit. No structure shall be erected, altered, placed, or permitted to remain on any residential Lot other than one single, private, family dwelling, with attached private garage for not less than two (2) cars, except as herein otherwise provided.

(b) Antennae. No exterior antennae shall be erected or maintained on any Lot or Improvement thereon in the Simmons Orchard Subdivision #1, except that each Lot Owner shall be entitled to erect one television antennae (not to exceed 10 feet from highest point of roof) on the exterior of his residence for the sole use of the Lot Owner and his family; provided, however, licensed radio amateurs, licensed by Federal Communications Commission, may be allowed an antennae for their use as "licensed radio amateurs"; provided, however, approval, if necessary, is first obtained by the appropriate public body of the City of Novi.

(c) Insurance Rates. Nothing shall be done or kept in Simmons Orchard Subdivision #1 which will increase the rate of insurance on any Association Property without the approval of the Board, nor shall anything be done or kept in Simmons Orchard Subdivision #1 which would result in the cancellation of insurance on any Association Property or which would be in violation of any law.

(d) Lot Divisions. No Lot may be divided, provided, however, that the Declarant may approve the division of a vacant Lot where a portion of said vacant Lot is to be combined with an adjoining Lot and which thereafter shall be considered to be a part of said adjoining Lot for all purposes including voting rights.

(e) Animals. No animals of any kind shall be raised, bred, or kept, except that a reasonable number of dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. A "Reasonable Number" as used in this Section shall ordinarily mean no more than two (2) pets per household; provided, however, that the Association may determine that a Reasonable Number in any instance may be more or less.

(f) Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any Property within Simmons Orchards Subdivision #1, and no odors shall be permitted to arise therefrom so as to render any such Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other Property in the vicinity thereof or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any such Property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any such Property without the prior written approval of the Board of Directors of the Association.

(g) Exterior Maintenance and Repair. No improvement upon any Property within Simmons Orchard Subdivision #1 shall be permitted to fall into disrepair, and each improvement shall at all times be kept in good condition and repair. All such maintenance, repair, and upkeep shall be the responsibility of the Owner of the Property in need thereof.

(h) Appearance of Lot. No garbage or trash containers may be placed in front of the Property for more than a twenty-four (24) hour period. No wash poles or lines or clothing shall be permitted in front or side yard area. The premises shall be kept free of unsightly weeds and trash at all times, and grass shall not be permitted to exceed six (6) inches in length.

(i) Drainage. There shall be no interference with the established drainage pattern over any Property within Simmons Orchard Subdivision #1 unless adequate provision is made for proper drainage. For the purposes hereof, "Established Drainage" is defined as the drainage which exists at the time the overall grading is completed.

(j) No Hazardous Activities. No activities shall be conducted on any Property and no improvements constructed on any Property which are or might be unsafe or hazardous to any person or Property.

(k) Vehicle Storage and Repair. No house trailer, camping trailer, hauling trailer, ¹⁹⁹⁸ running gear or boat or accessories thereto, truck or pickup or van or camper van shall be parked, stored, repaired, or maintained on any Lot except within a private garage. This restriction shall not apply to commercial or other vehicles making business or service calls or deliveries to the residents or Owners of Lots or to the Association, or to contractors within the properties.

(l) Exemption of Declarant. Nothing in the Simmons Orchard Subdivision #1 Restrictions shall limit the right of Declarant to complete excavation, grading, and construction of Improvements to any Property within Simmons Orchard Subdivision #1 or to alter the foregoing or to construct such additional improvements as Declarant deems advisable in the course of development of Simmons Orchard Subdivision #1 or to use any structure in Simmons Orchard Subdivision #1 as a model home or real estate sales or leasing office. The rights of Declarant hereunder and elsewhere in these restrictions may be assigned by Declarant.

(m) Easements. Easements for construction, installation, modification, and maintenance of public utilities, surface drainage facilities, and sanitary sewer, storm sewer, and water main facilities are reserved as shown on the plat and/or as may otherwise appear of record as set forth herein. The use of these easements or any part thereof may be assigned by Declarant at any time and from time to time to any person, firm, corporation, governmental agency, municipal authority, or department furnishing one or more of the foregoing services and/or facilities, and any such easement herein reserved may be relinquished, waived, and terminated, in whole or in part, by the Declarant upon filing for record an appropriate instrument or relinquishment. No structure, planting, or other materials or obstacle shall be placed or permitted to remain within the area reserved herein for such easements which may damage or interfere in any way with the installation and maintenance of such services facilities and utilities, including without limitation, facilities for underground electrical and telephone distribution systems; which may affect, change, obstruct, or retard the flow or direction of water in and through drainage channels in such easements; or which may change, obstruct, or retard the flow of surface water or would be detrimental to the property of others and/or change or affect the finished grade of any Lot once established by Developer. The easement area contained in each Lot and all improvements therein shall be maintained in presentable condition continuously by the Lot Owner, other than as to utilities for which a public authority or utility company shall be responsible. Drainage ditches now located or hereafter constructed in the subdivision shall not be drained, filled, altered, changed, dammed, or widened without the express written consent of Developer and the Board of Directors of the Association.

(n) Intersection Sight Distance. No fence, wall, structure, planting, or obstruction shall be erected, established, or maintained on any corner Lot within a triangular area formed by the street lines and a connection line which runs from points twenty-five (25) feet from the intersection of such street lines which shall have a height that is more than two (2) feet; provided, however, shade trees with wide branches which are at least eight (8) feet above ground shall be permitted within such area.

ARTICLE III

SIMMONS ORCHARDS HOMEOWNERS' ASSOCIATION

Section 1. Organization Declarant hereby covenants that it shall, within six (6) months of the date of this Declaration, organize a non-profit corporation under the laws of the State of Michigan which shall be known as the Simmons Orchards Homeowners' Association Subdivision #1 or such other name as shall be determined by Declarant. The Association and its members shall have those rights and shall be subject to those duties as are described in this Declaration, and those right and duties as may be contained in the Articles of Incorporation or the Bylaws of the Association.

Section 2. Every owner of a Lot which is subject to assessment as hereinafter provided shall be a member of the Association. Membership shall be appurtenant to and may not

be separated from ownership of any Lot which is subject to assessment.

Section 3. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an Interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. Class B Membership shall be limited to Declarant which shall be entitled to three (3) votes for each Lot owned by Declarant. Class B Membership shall terminate as to any Lots owned by Declarant and be converted to and become Class A Membership as to any Lots owned by Declarant when the total votes outstanding in the Class A Membership equal the total votes then outstanding in the Class B Membership.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any 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: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Special Assessments. The special assessments levied by the Association shall be used exclusively to maintain, repair, operate, manage and improve the Retention Basin located in Subdivision #1 as appears more fully in the recorded plat.

(a) Said Retention Basin is to be utilized as part of the surface water drainage system within the subdivision.

(b) Notwithstanding anything contained herein to the contrary, in the event the Association fails or refuses to provide the necessary repairs, maintenance, operation, management and improvement of the Retention Basin, then in such event the City of Novi, a Michigan municipal corporation, shall have the right to assess all costs for the same under and pursuant to this Declaration and each Owner of such Lot consents to such assessments and agrees that such assessment shall be payable on demand to the City of Novi. In addition to other methods of

collection, the City of Novi shall have the right to place such assessment on the City tax rolls of the assessed property.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot by Declarant to an Owner, the maximum annual assessment shall be Twenty-Five (\$25.00) Dollars per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot by Declarant, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Purpose of Annual Assessment. The annual assessment levied by the Association shall be used exclusively for the betterment of the subdivision as may be determined from time to time by the Board of Directors of the Association and for the maintenance, repair, operation, management and improvement of the Retention Basin.

Section 5. Notice and Quorum for any Action Authorized Under Section 2. Written notice of any meeting called for the purpose of taking any action authorized under Section 2 above or to increase the annual assessments as provided in Section 3 above shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Lot by fee holder. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto.

The due dates shall be established by the Board of Directors. 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 is 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 within thirty (30) days after the due date shall bear interest from the due date at the rate of six (6%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner 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 (1) of these covenants or restrictions by judgement or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Provided, however, those restrictions and covenants which refer to the retention basin may not be amended, altered or changed without permission therefor from the City of Novi. Further, the Association shall continue so long as there is necessity to maintain the retention basin.

Section 4. Annexation. Additional residential property may be annexed to the Properties with the consent of two-thirds ($\frac{2}{3}$) of each class of members and/or by Declarant without approval of any other person or entity.

Section 5. The Association and the City of Novi, their agents and representations shall have the perpetual easement for reasonable access to the Retention Basin at all reasonable times, for purposes of maintenance, repair, operation and improvement therefor.

Section 6. The Declarant intends to develop Subdivision #1 with the retention basin. Subdivision #2 is to be developed by Declarant at a future time with its separate Retention Basin to be use exclusively for owners of Lots in Subdivision #2. In the event Subdivision #2, directly or indirectly, requires the utilization of the retention basin in any manner whatsoever, then those Owners of Lots in Subdivision #2 utilizing the Retention Basin in Subdivision #1 shall be required to join the Association and be bound by all the conditions pertaining to special assessments as required by the owners in Subdivision #1.


In the event Subdivision #2 does not need to utilize the Retention Basin, then, in such event, Owners of Lots in Subdivision #2 need not belong to the Association or be bound by any conditions of Subdivision #1, EXCEPT AS EXPRESSLY PROVIDED HEREIN.


Section 7. The Declarant shall file with the Oakland County Register of Deeds a statement as to whether or not Owners of Lots in Subdivision #2 are to be bound by these restrictions relating to the Retention Basin, only, and whether or not Owners of Lots in Subdivision #2 need join the Association.

Section 8 Nothing in this Declaration of Covenants, Conditions, and Restrictions shall limit the Declarant unilaterally amending same until such time as

IN WITNESS WHEREOF, the undersigned, being the
Declarant herein, has hereunto set its hand and seal
this 8th day of November, 1979.

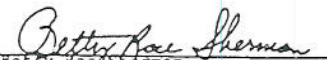
R & R BUILDING COMPANY,
a Michigan corporation

By: 
ROBERT M. ROSIN
Its: President

By: 
RICHARD S. ROSIN
Its: Vice President

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing Instrument was acknowledge before me
this 8th day of November, 1979, by Robert M. Rosin
President ^{RICHARD S ROSIN VICE PRESIDENT} of R & R Building Company, a Michigan corporation,
on behalf of the said corporation.


Betty Rae Sherman Notary Public
Oakland County, Michigan
My commission expires: 6/9/82

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

IT IS HEREBY AGREED by and between the parties named below, that a certain Declaration of Convenants, Conditions and Restrictions heretofore filed with the Oakland County Register of Deeds on January 21, 1980 Liber 7716, Pages 559 through 570 inclusive, having reference to certain Lots in Simmons Orchards Subdivision #1 as set forth in attached Exhibit A, be amended as follows:

1. Section 8, Article V (General Provisions) shall be deleted and in its place shall be a new Section 8, Article V (General Provisions) as follows:

"Until one hundred percent (100%) of the Lots described herein have been sold, the Declarant may unilaterally amend this Declaration of Convenants, Conditions, and Restrictions in any manner it so determines."

All other terms and provisions of the Declaration of Convenants, Conditions, and Restrictions not expressly changed herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties do hereby execute this Agreement as of the 8 day of May, 1980.

IN THE PRESENCE OF:

Lee Walter
LEE WALTER

Betty Rae Sherman
Betty Rae Sherman

R & R BUILDING COMPANY, a Michigan corporation

By: Robert M. Rosin
ROBERT M. ROSIN
Its: President

AVENTURA HOMES, INC., a Michigan corporation

By: Gary Weishan
GARY WEISHAN
Its: President

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

Subscribed and sworn to before me this 8th day of May, 1980 by Robert M. Rosin of R & R Building Company, a Michigan corporation and Gary Weishan of Aventura Homes, Inc., a Michigan corporation.

Betty Rae Sherman
Betty Rae Sherman, Notary Public
Oakland County, Michigan
My commission expires: 6/9/82

EXHIBIT A

LEGAL DESCRIPTION

Simmons Orchard Subdivision #1, part of the S.E. ¼ of Section 21, T.I.N., R8E, Novi Twp., (now City of Novi, County of Oakland, State of Michigan) more particularly described as Lots 1 through 95, both inclusive.