

**NEW NEIGHBORHOOD  
LOT OWNERS PACKET**

Empire, Michigan

Quercus Alba LLC  
Sam Marts Architects & Planners Ltd



NEW NEIGHBORHOOD SUBDIVISION  
PLANNED UNIT DEVELOPMENT (PUD) AGREEMENT

THIS AGREEMENT, made this 19th day of August, 2002, by and between the Village of Empire, Michigan, hereinafter called the "VILLAGE", whose mailing address is P.O. Box 253, Empire, Michigan, 49630, and Quercus Alba LLC, whose principal address is P.O. Box 414, Empire, Michigan 49630, hereinafter called the "PROPRIETOR" or "DEVELOPER."

WITNESSETH:

WHEREAS, the PROPRIETOR has caused certain lands within the Village of Empire to be surveyed, divided and mapped as NEW NEIGHBORHOOD SUBDIVISION ("New Neighborhood"), a PUD, and desires approval of the site plan for the PUD, a tentative preliminary plat, and a final preliminary plat; and

WHEREAS, the VILLAGE desires to ensure that certain improvements needed to mitigate environmental impacts resulting from this development be installed properly according to the appropriate standards and that money will be made available by the PROPRIETOR to ensure the installation of all improvements listed in this agreement before any building permits are issued for individual lots.

NOW, THEREFORE, the parties hereto, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, and intending to be legally bound, hereby agree as follows:

Proprietor and Village hereby enter into this PUD Agreement ("Agreement") with respect to the real estate located in the Village, Leelanau County, Michigan, described on Exhibit "A" attached hereto ("Property").

THE PROPRIETOR HEREBY AGREES:

(P-1). To prepare and submit to the Village Council and Planning Commission nine copies of detailed plans and specifications, prepared by a registered professional engineer, depicting construction of streets, grading, and storm water control systems. The Proprietor agrees that it shall not cause to be commenced construction of these improvements until plans and specifications have received final approval from the Village. The roadways within the development shall be 50 feet in width and shall be constructed to meet the construction standards for public streets in the Village of Empire.

(P-2). To install or provide for lot grading, storm water retention, soil erosion, sediment control improvements, drainage easements and impoundments as depicted in the approved plans and specifications as approved in paragraph (P-1) above, and as may be required by the Leelanau County Drain Commissioner or any

other governmental agency having jurisdiction over any particular portion of the Property (See Exhibit "B").

(P-3). The Proprietor shall construct, at its sole expense and to the standards specified by the Village, a water system serving each phase of the development. The Proprietor and Village agree that the water system will be taken over by the Village and connected to the Village water system. The Village shall retain the right to inspect and monitor the water quality during construction and after the system is completed on a routine basis. Each lot owner shall pay all Connection and User fees for Village of Empire water service in effect at the time of hook up. The Village is hereby granted easements across and under the Real Property, at any time for purposes of inspecting, maintaining, repairing and/or replacing the water system. The location of the easements shall be determined by the Village in a reasonable exercise of its discretion. The easements granted herein are for the specific purposes described. The Village specifically acknowledges and agrees that these easements are intended to be utilized only by Village officials and the Village's agents as a means of insuring that the water system is functioning properly and/or is adequately maintained. Other than as set forth in this Agreement, it is not intended that the easements created herein shall be used in any way by the public for any purpose whatsoever.

(P-4). The Developer shall, prior to final site plan approval, obtain a performance guarantee in favor of the Village of Empire in an amount reasonably satisfactory to the Village to guarantee satisfactory completion of infrastructure for each phase of the development in full compliance with the approved final site plan.

(P-5). The Developer shall plant and maintain the landscaping as the Zoning Ordinance requires. The Developer will plant the initial street trees, in each Phase. The Developer will complete and maintain the open spaces as defined in the Landscape Plan hereto attached as Exhibit "E". The Homeowners Associations in the New Neighborhood will engage in replacement tree planting in open spaces to insure continued compliance with the landscaping requirements of the Village of Empire Zoning Ordinance (§3.13) and as they deem necessary and advisable and in the best interest of the New Neighborhood Homeowners Associations, for the purpose of maintaining the unique quality of the natural environment of the New Neighborhood tree lines. The *Declaration of Covenants & Restrictions* shall reflect that obligation.

(P-6). To provide a plan for the installation of signs and install all street signs according to specifications, as may be jointly determined by the VILLAGE and the PROPRIETOR to provide and install such temporary signs during the construction period as are appropriate to protect the health, safety and welfare of the public.

(P-7). To cause to be removed substantially all of the discarded building materials and rubbish to the extent feasible and economically practicable from the New Neighborhood at least once each month during construction of the New Neighborhood and within one month after completion or abandonment of construction.

(P-8). Homeowners Associations shall maintain the road and alley Rights of Way including snow and ice removal, until the Village accepts jurisdiction over the road and alley Rights of Way.

(P-9) To furnish to the Village the construction drawings and as-built drawings provided by PROPRIETOR'S engineers.

(P-10). To record in the Register of Deeds of Leelanau County, a *Declaration of Covenants & Restrictions* attached hereto and incorporated herein by reference as Exhibit "C".

(P-11). To create non-profit corporations composed of all Lot owners of the New Neighborhood Subdivision, which shall be known as New Neighborhood Property Owners Association #1, New Neighborhood Property Owners Association #2, New Neighborhood Property Owners Association #3, New Neighborhood Property Owners Association #4, and New Neighborhood Property Owners Association #5, and which shall be bound by the Articles and Bylaws of each respective Association, the *Maintenance and Indemnification Agreement Regarding Privately Owned Public Sewers*, the *Declaration of Covenants & Restrictions*, and the *New Neighborhood Stormwater Drainage Facilities and Open Space Maintenance Agreement*. These agreements shall meet the approval of the Village lawyer. Said organizations or associations shall be responsible for the perpetual maintenance and ownership of all private septic easements and systems, storm water collection and retention facilities and other private common improvements and areas servicing this subdivision.

(P-12). If at any time one hundred (100%) percent of the lot owners within the confines of New Neighborhood Subdivision shall file a petition or otherwise apply directly or indirectly to the VILLAGE for the purpose of having the VILLAGE accept and maintain all or any portion of the greenways of the subdivision, the VILLAGE will consider the application and may in its sole discretion accept or reject the greenways. If the VILLAGE accepts the greenways, the lot owners within the confines of the New Neighborhood Subdivision shall be required to pay, on a pro rata basis, the cost of improving the greenways or portions thereof to meet the then current and applicable standards as promulgated by the VILLAGE. The provisions of this paragraph will not obligate the VILLAGE and shall be disclosed to each lot owner prior to the conveyance of title to the lot.

(P-13). Except as modified herein, residential development on individual lots within the New Neighborhood Subdivisions shall conform to all applicable Village of Empire R-1 and PUD-B Zoning Ordinance requirements (both substantive and procedural) in effect at the time that each individual use is proposed. The future placement of structures shall meet the R-1 minimum yard setback requirements with the exception that porches may be built within the next ten feet of the front setback. The *Declaration of Covenants & Restrictions* (Exhibit "C") shall specifically state that any porch that extends into the front setback shall have no screens and/ or windows and shall never be converted into heated, year-round, interior living space. The existing



zoning allows structures, such as fences and sheds under 100-sq. ft., in the 10 foot rear alley setback. The *Declaration of Covenants & Restrictions* will restrict solid fences and small sheds, but not trees or shrubs, to an additional 5 feet back from the alley r-o-w line to facilitate snow removal.

(P-14). The Zoning Ordinance permits commercial uses in the CR District to be established on 10% of the land used in a PUD-B District. Ten percent of the New Neighborhood Development is 3.08 acres. The Developer shall be permitted flexibility to develop lots 2, 3, 8, 9, 12, 13, 15, 16, 20, 21, 25, 26 and 30 as neighborhood commercial sites. The total percentage of these lots is only 2.28 acres of land. Except as modified herein, commercial development on individual lots within the New Neighborhood Subdivisions shall have a separate septic system that is inspected annually (with written reports submitted to the Village) and shall conform to all applicable Village of Empire CR Zoning requirements (both substantive and procedural) in effect at the time that each individual use is proposed. In addition to being reviewed by the Design Review Committee, all commercial use site plans must be submitted to the Village Planning Commission for site plan review and approval.

(P-15). Any two-family development within the New Neighborhood Subdivision shall be limited to corner lots within the plat.

(P-16). The Developer will provide an M-22 entrance during Phase 2 of the development.

(P-17). The Developer shall, at its sole expense, construct the streets depicted on the site plan during each phase of the development to the standards applicable to public streets in the Village.

(P-18). The Developer shall pave the alley behind lots 78 through 84 in Phase 5, only if these lots are developed. If these lots are not developed, or if the MDEQ states that the sanitary easements are not required, the trees within the sanitary easements will be preserved.

(P-19). The Village has the right, but not the obligation, to enforce the *Declaration of Covenants & Restrictions*.

#### THE VILLAGE HEREBY AGREES:

(V-1). To accept the scale of 1" = 50' for the review of the preliminary and final plans of New Neighborhood Subdivision. The VILLAGE reserves the authority and right to provide timely and reasonable VILLAGE and individual inspections during the construction of all roads, streets and water systems and approve the same if they comply with the state and municipal code requirements.

(V-2). To accept the lot and street orientation of the plat and to allow lots with less than 100' in width at their frontage as presented in the Tentative Preliminary

plat. In addition, the plat's common areas as presented in the Tentative Preliminary plat will be accepted with no further requirement of open space.

(V-3). Flexibility shall be given to develop lots 2, 3, 8, 9, 12, 13, 15, 16, 20, 21, 25, 26 and 30 as neighborhood commercial sites as presented on the conceptual plan. The total percentage of these lots is 2.28 acres of land. Before commencement of construction of any commercial use, a detailed site plan of the layout shall be submitted to the Village Planning Commission for approval. The fee to be charged for this site plan review shall be the same as the Special Use permit fee. Only those commercial uses which are permitted in the Commercial-Residential District shall be allowed on lots 2, 3, 8, 9, 12, 13, 15, 16, 20, 21, 25, 26 and 30. The plans will also be reviewed by the architectural review committee.

(V-4) To accept the PUD-B density formula for this property as follows:

Total area of the property	30.85 acres
Less r-o-w land	-9.39 acres
Less wetlands area	-0 acres
Less 18% slope areas	-0 acres
Less non-residential	<u>-2.28 acres</u>
Total net project area	19.18 acres

Maximum residential density equals Net Project Area (19.18 acres) times seven dwelling units per acre = 134 maximum residential density allowed. Although the maximum density under the Zoning Ordinance is 134 dwellings, the Developer expressly agrees to limit the overall density in the New Neighborhood Subdivision to 126 residential dwelling units. Each lot that has both commercial and residential use (a storefront with apartment above, for example) will count as an additional dwelling unit for the purposes of the overall density. Each lot that is used for two-family development shall be considered a density of two units (one per family). Each carriage house as well as each granny flat will count as an additional dwelling unit for the purposes of the overall density.

(V-5). To accept the New Neighborhood Subdivision water system into the Village system.

(V-6). That this agreement will be recorded in the Leelanau County Register of Deeds.

(V-7) To allow the New Neighborhood to be built in five phases, beginning at the North property line and progressing (by phase, as indicated on the site plan) to the South property line. Each phase will be fully functional with roads, utilities, sidewalks, tree-planted buffer areas, storm-water facilities and septic systems. Also, 75% of the lots in that phase will be sold before the next phase is started. Construction

of subsequent phases will begin within 12 months after 75% of the lots in the prior phase have been sold.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first written above. This agreement is not intended to create contractual rights for third parties. It may be enforced, amended or rescinded only by the parties or their successors in interest. The obligation of the Proprietor contained herein shall be binding on successors and assigns in ownership of the following described (New Neighborhood Subdivision) parcel:

SEE EXHIBIT "A"

In the Presence of:

VILLAGE OF EMPIRE  
P.O. Box 253  
Empire, MI 49630

Cynthia M. Newmyer

Lanny Stelling

Patricia Richard

Christas Pedky

Douglas S. Bishop

Lori Fasi  
Lori Fasi

Michael J. Deery  
Village President

Patricia R. Fayhofske  
Village Clerk

QUERCUS ALBA L.L.C.

Robert Foulkes  
By: Robert Foulkes  
Its: Manager

STATE OF MICHIGAN            )  
  ) SS  
COUNTY OF LEELANAU        )

On this 19th day of August 2002, before me, Notary Public, personally appeared to me, known to be Michael Deering and Robert Foulkes, and who acknowledged the same to be his free act and deed.

Lea Ann Sterling  
Notary Public

LEA ANN STERLING  
Notary Public, Leelanau County, MI  
My Commission Expires 12/13/2005

STATE OF MICHIGAN            )  
  ) SS  
COUNTY OF LEELANAU        )

On this 21<sup>st</sup> day of August 2002, before me, Notary Public, personally appeared to me, known to be Patricia Zoyhofski, and who acknowledged the same to be her free act and deed.

James A. Martin  
JAMES A. MARTIN, Notary Public  
BENZIE County, MI  
My commission expires: 6-1-2004

Acting in Leelanau County

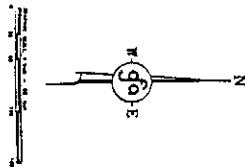
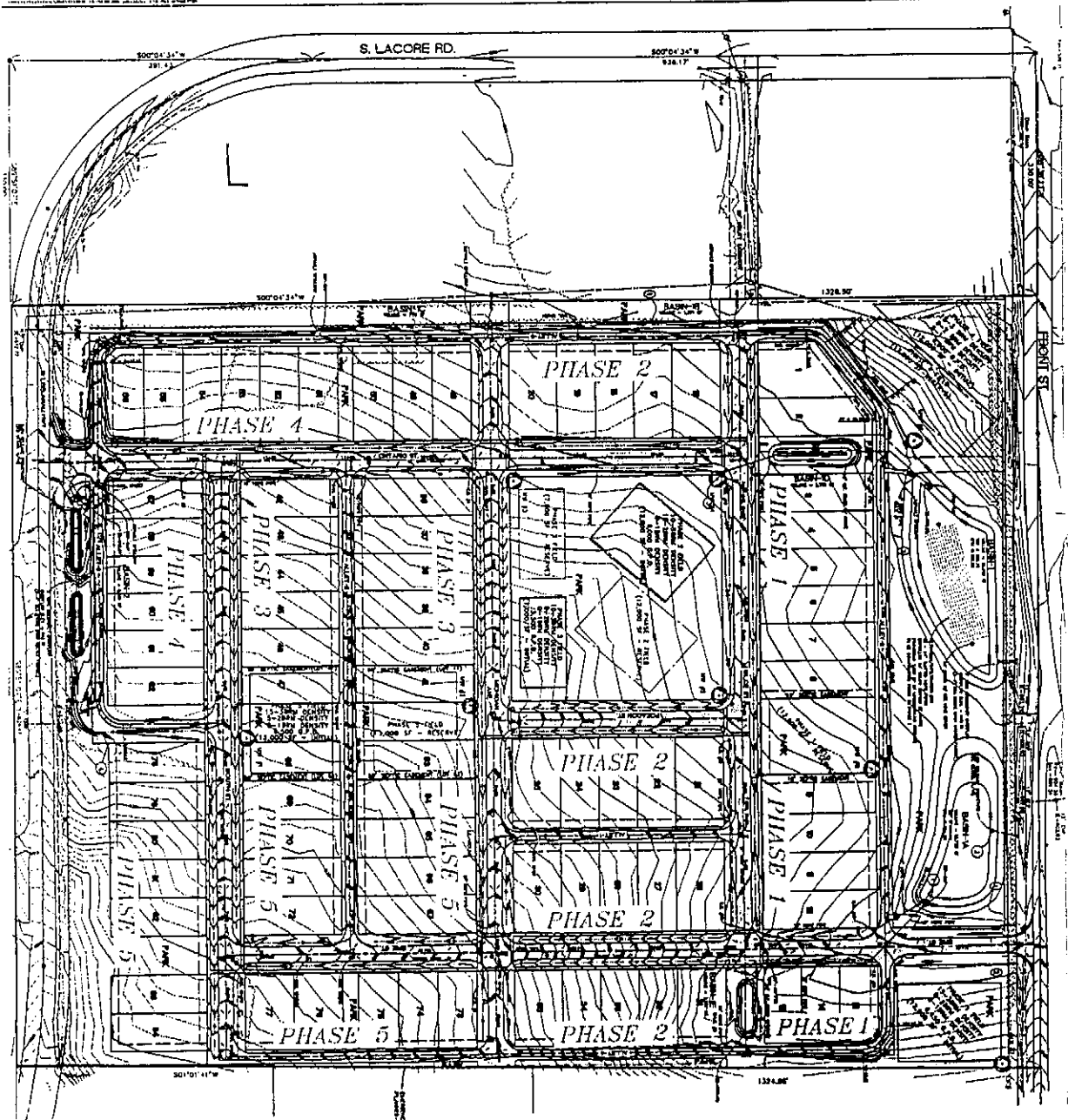
## EXHIBIT "A"

### Property Description

#### PARCEL D

THAT PART OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 19, TOWN 28 NORTH, RANGE 14 WEST, VILLAGE OF EMPIRE, EMPIRE TOWNSHIP, LEELANAU COUNTY, MICHIGAN, MORE FULLY DESCRIBED AS: COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 19; THENCE ALONG THE SOUTH SECTION LINE, NORTH 87 DEGREES 21' 0" WEST, 850.04 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SECTION LINE, NORTH 87 DEGREES 21' 0" WEST, 1002.33 FEET; THENCE ALONG THE EASTERLY LINE OF THE WEST 20 RODS OF SAID SOUTH HALF OF THE SOUTHWEST QUARTER, NORTH 2 DEGREES 32' 50" EAST, 1328.60 FEET; THENCE ALONG THE SOUTH EIGHTH LINE, SOUTH 87 DEGREES 08' 0" EAST, 1024.05 FEET; THENCE SOUTH 3 DEGREES 32' 0" WEST, 1325.00 FEET TO THE POINT OF BEGINNING.

Exhibit "B"



**STORM SEWER/DRAINAGE NOTES**

1. Storm sewer system - 15" diameter, 4' deep, 10' long
2. Storm sewer system - 15" diameter, 4' deep, 10' long
3. Storm sewer system - 15" diameter, 4' deep, 10' long
4. Storm sewer system - 15" diameter, 4' deep, 10' long
5. Storm sewer system - 15" diameter, 4' deep, 10' long

**SOIL EROSION NOTES**

1. Erosion control - 10' wide, 4' deep, 10' long
2. Erosion control - 10' wide, 4' deep, 10' long
3. Erosion control - 10' wide, 4' deep, 10' long
4. Erosion control - 10' wide, 4' deep, 10' long
5. Erosion control - 10' wide, 4' deep, 10' long

NO.	DATE	DESCRIPTION	BY	CHECKED	DATE
1	01/15/14	Initial	JM	JS	01/15/14
2	01/15/14	Revised	JM	JS	01/15/14
3	01/15/14	Revised	JM	JS	01/15/14
4	01/15/14	Revised	JM	JS	01/15/14
5	01/15/14	Revised	JM	JS	01/15/14
6	01/15/14	Revised	JM	JS	01/15/14
7	01/15/14	Revised	JM	JS	01/15/14
8	01/15/14	Revised	JM	JS	01/15/14
9	01/15/14	Revised	JM	JS	01/15/14
10	01/15/14	Revised	JM	JS	01/15/14



NEW NEIGHBORHOOD SUBDIVISION  
AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS

The undersigned, Quercus Alba, L.L.C., a Michigan limited liability company, the developer of the New Neighborhood subdivision, pursuant to the plat recorded at Liber 8, Pages 135 through 138, Leelanau County Records, and New Neighborhood Homes, L.L.C., a Michigan limited liability company, and Robin Johnson, a woman, representing two-thirds (2/3) of the owners of lots in said subdivision not owned by the developer, hereby agree and declare that the Declaration of Covenants and Restrictions are hereby amended, pursuant to Section 14.2 of said Declaration of Covenants and Restrictions, as recorded at Liber 687, Page 73, Leelanau County Records, are amended, so that Article IV (Design Review Process) shall hereinafter, in its entirety, read as follows:

4.1 Committee Approval. It is an express condition for all construction on any undeveloped lots that a design proposal be reviewed and approved by a duly constituted design review committee under these restrictions, with such approval being a condition precedent to commencement of construction and to application for a building permit.

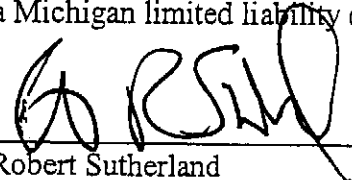
4.1.a. The lot purchaser may submit to the committee a set of drawings, including, but not limited to, site plan, exterior elevations, a list of exterior materials and total number of bedrooms. The design ideas set forth by the purchaser must be consistent with ideas shown in the New Neighborhood Design Guidelines booklet from the Association.

4.1.b. It shall be a condition of closing of any undeveloped lot that the purchaser shall execute a New Neighborhood Design Review Agreement, in recordable form, signifying understanding and agreement to these conditions.

DEVELOPER:

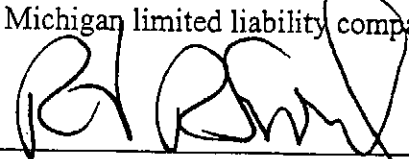
QUERCUS ALBA, L.L.C.,  
a Michigan limited liability company,

By:


  
Robert Sutherland  
Its: Manager

NEW NEIGHBORHOOD HOMES, L.L.C.,  
a Michigan limited liability company,

By:


  
Robert Sutherland  
Its: Sole Member



  
Robin Johnson, a woman


STATE OF MICHIGAN )  
 ) ss  
COUNTY OF GRAND TRAVERSE )

On this 22<sup>nd</sup> day of August, 2003, before me, a Notary Public in and for said county and state, personally appeared Robert Sutherland, to me known to be the manager of Quercus Alba, L.L.C. and the Sole Member of New Neighborhood Homes, L.L.C., and who acknowledged the same on behalf of said limited liability companies.

  
Douglas S. Bishop, Notary Public  
Grand Traverse County, Michigan  
My commission expires: 10/21/05

STATE OF MICHIGAN )  
 ) ss  
COUNTY OF GRAND TRAVERSE )

On this 10<sup>th</sup> day of September, 2003, before me, a Notary Public in and for said county and state, personally appeared Robin Johnson, a woman, to me known to be the person described in and who executed the within instrument.

  
Tracie M. Sears, Notary Public  
Grand Traverse County, Michigan  
My commission expires: 06/17/07

Drafted by:

Douglas S. Bishop (P27616)  
Bishop & Heintz, P.C.  
440 West Front at Oak Street  
P.O. Box 707  
Traverse City, MI 49685-0707  
(231) 946-4100

**EXHIBIT "C"**

**Declaration of Covenants & Restrictions**

New Neighborhood  
Village of Empire  
Leelanau County, Michigan

This Declaration made this 13<sup>th</sup> day of August, 2002, by Quercus Alba LLC, P.O. Box 414, Empire, Michigan 49630 (herein called "Developer"), being the owner of the property contained in a subdivision known as New Neighborhood, which is legally described on Exhibit "A" attached hereto, located in the Village of Empire, Leelanau County, Michigan (the "Development"), the subdivision plat which was recorded on November 27, 2002 in the office of the Register of Deeds, Leelanau County, Michigan (the "Plat") hereby makes the following declarations, limitations and restrictions on the Development.

**WITNESSETH:**

The declarations contained herein are based on the following factual recitals:

- A. Developer has divided the Development into Lots as shown on the Plat and identified by the numbers "1" through "84" (each of which is individually referred to as a "Lot", and which are collectively referred to herein as the "Lots").
- B. Developer wishes to permit the development of the New Neighborhood into a community suitable for family living, limited commercial use and, at the same time, wishes to maintain, insofar as possible, the natural character of this property and to require all man-made structures to blend into the historic setting of the Village rather than stand out against it.
- C. It is essential to the use value of the Lots in the New Neighborhood that the Development be perpetually maintained in a manner consistent with high environmental, aesthetic, residential and commercial standards.

- D. To accomplish the foregoing, Developer desires to impose certain building and use restrictions, covenants, and conditions as herein contained, upon and for the benefit of said Lots in the New Neighborhood and the Village as a whole.
- E. Developer also desires to provide for the maintenance of common areas to serve the Lots and their owners and to provide such easements for the construction and maintenance of common facilities as are required for the Development.

NOW, THEREFORE, Developer hereby declares that the property described below is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, obligations and liens hereinafter set forth.

## ARTICLE I

### DEFINITIONS

The following words and terms, when used in this Declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

**Section 1.1** "Associations" shall mean and refer to the New Neighborhood Property Owners' Association #1, New Neighborhood Property Owners' Association #2, New Neighborhood Property Owners' Association #3, New Neighborhood Property Owners' Association #4, and New Neighborhood Property Owners' Association #5, Michigan non-profit corporations.

**Section 1.2** New Neighborhood or "N.N. Subdivision" or "Plat" or "Development" shall mean and refer to the Plat recorded in Liber 8 Pg. 135 in the office of the Register of Deeds, Leelanau County, Michigan on November 27, 2002 and the real property described therein.

**Section 1.3** "Common Areas" shall mean all real property owned by the Associations for the common use and enjoyment of the owners as shown on the Plat.

**Section 1.4** "Lot" shall mean and refer to a subdivided Lot in the Plat.

**Section 1.5** "Declarant" or "Developer" shall mean and refer to Quercus Alba LLC, or its successors, or any person or entity to whom or to which they may, in a document recorded with the Register of Deeds of Leelanau County, Michigan, expressly assign one or more of their rights hereunder or delegate all or any of their authority hereunder.

**Section 1.6** "Owner" shall mean and refer to the recorded owner, whether one or more persons, firms, associations, corporations or other legal entities, of the fee simple title to any Lot but shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure proceedings or any proceeding in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. In the event of a Land Contract covering a Lot, the holder of the Land Contract vendee's interest shall, in the absence of an agreement between the vendor and vendee to the contrary, be considered the Owner and the Land Contract Vendor shall have the rights of a mortgagee under his Declaration.

**Section 1.7** "Member" shall mean and refer to all those Owners who are Members of the New Neighborhood Associations as provided in Section 12.1 of Article XII hereof.

**Section 1.8** "Septage System" shall mean one of the community septic systems that serve the residences in each of the 5 Property Owners' Associations.

**Section 1.9** "Development" shall mean the property which is the subject of the Plat as recorded with the Register of Deeds of Leelanau County, Michigan.

**Section 1.10** "Improvement" shall mean every building or other structure of any kind or any fence, wall, pool, tennis court, stairway, deck, lawn ornamentation, mail box or other structure or recreational facility which may be erected or placed on any Lot or Common Area, any drainage system that may be established thereon, any driveway or landscaping thereon, or the water or septage systems or any part thereof on any Lot or Common Area and shall include any site development and any tree removal in connection therewith.

**Section 1.11** "Committee" shall be the Design Review Committee provided for in Article III hereof.

**Section 1.12** "Granny flat" shall mean a secondary living space attached to a primary residence.

**Section 1.13** "Coach house" shall mean a building that fronts on an alley or side street with one or more of the following uses – vehicle storage, secondary living space, home occupations, and/or general storage.

**Section 1.14** "Two-family Dwelling" shall mean a single building that has two dwelling units.

## ARTICLE II

### INTENDED USE AND CHARACTER OF DEVELOPMENT

**Section 2.1** Intent. It is the intention of the Developer to encourage the creation of a vibrant neighborhood that uses the physical plan of the old plats of the Village and encourages pedestrian connections within the neighborhood and to the other parts of the Village. It is further intended that the north and south greenbelts be maintained as green village edges for the east and south entrances to the Village.

**Section 2.2** Compliance with Laws. The Plat and all properties located therein must be used only in compliance with the laws of the Village of Empire, Leelanau County, the State of Michigan and the United States.

**Section 2.3** Conformity with Lots. No Lot may be further divided. No single-family residence shall be built so as to be sited on more than one Lot.

**Section 2.4 Design Standards.** All proposed homes and commercial buildings shall meet the design standards set forth in the New Neighborhood Design Guidelines booklet (see Exhibit "D").

**Section 2.5 Association Lots.** The Lots for which each Association is responsible are as set forth herein:

<u>Association</u>	<u>Lots</u>
New Neighborhood Property Owners' Association #1	1-15
New Neighborhood Property Owners' Association #2	16-35
New Neighborhood Property Owners' Association #3	36-47
New Neighborhood Property Owners' Association #4	48-62
New Neighborhood Property Owners' Association #5	63-84

### ARTICLE III

#### DESIGN REVIEW COMMITTEE

**Section 3.1 Appointment.** The Developer shall appoint the Design Review Committee (the "Committee"). The Associations shall keep on file at their respective office(s) a list of the names and addresses of the members of the Committee.

**Section 3.2 Meetings.** Except as otherwise provided herein, a majority of the members of the Committee shall have the power to act on behalf of the Committee without the necessity of a meeting and without the necessity of consulting the remaining members of the Committee. The Committee may act only by written instrument setting forth the action taken and signed by the members of the Committee consenting to such action.

**Section 3.3 Appointment of Agent.** The Committee may designate one of its members to act as its agent in performing inspections or otherwise carry out decisions or policies duly authorized by the Committee.

**Section 3.4 Cessation of Committee.** If the Committee shall cease to exist or for any reason shall fail to function, one Member from the Board of Directors of each Association shall serve as the Committee, and in the absence of such a board, the majority of Lot owners within each Association shall elect an individual to serve on the Design Review Committee.

**Section 3.5 Committee and Member Liability.** The Committee shall have no affirmative obligation to be certain that all the restrictions contained in this Declaration are fully complied with and no member of the Committee shall have any liability, responsibility, or obligation, whatsoever, for any decision or lack thereof, in the carrying out of duties as a member of such Committee. Such Committee and its members shall have only an advisory function, and the sole responsibility for compliance with all of the terms of this Declaration shall rest with the Owner. Each Owner agrees to save, defend, and hold harmless the Committee and each of its members on account of any activities of the committee relating to such Owner's Lot or Improvements to be constructed on such Lot.

**Section 3.6 Initial Committee Members.** The initial Design Review Committee will consist of the following: Sam Marts, Ben Weese, Chris Hall, Julie Wentworth, Robert Foulkes. Future members

of the Design Review Committee will be recruited from firms Sam Marts Architects & Planners, Weese Lanley Weese, and Skidmore Owings & Merrill and/or architects or planners active in Empire.

## ARTICLE IV

### DESIGN REVIEW PROCESS

**Section 4.1 Committee Approval.** It is a condition of initial purchase of all undeveloped Lots, that a design proposal be reviewed and approved by a design review committee with such approval being a condition precedent to close of purchase.

**4.1 (a)** The Lot purchaser must submit to the Committee a set of preliminary sketches showing site plan, exterior elevations, a list of exterior materials and total number of bedrooms. The design ideas set forth by the purchaser must be consistent with the ideas shown in the New Neighborhood Design Guidelines booklet (See Exhibit "D").

**Section 4.2 Time Limit.** The Committee will approve or disapprove a design within thirty (30) days of submission of the plan. If the Lot Purchaser has submitted to the Committee plans and specifications in accordance with this Article for a structure and the Committee has neither approved such plans and specifications within thirty (30) days from the date of submission nor notified the Lot Purchaser of its objection within such 30-day period, then such plans and specifications shall be deemed to have been approved by the Committee. In the event that a Lot Owner shall file revised plans and specifications for a structure or alteration with the Committee after receiving objections from the Committee with respect to original plans and specifications, and the Committee has neither approved them nor notified the Lot Purchaser of further objections within thirty (30) days from the date of submission, then such revised plans and specifications shall be deemed to have been approved by the Committee.

**Section 4.3 Purchasers of Multiple Lots.** Purchasers of adjoining Lots will be required to submit design plans for only one Lot at time of initial purchase. Design Review will be required before vacant Lots are built on.

## ARTICLE V

### BUILDING RESTRICTIONS

**Section 5.1 Compliance with Codes and Ordinances.** All Lot owners shall comply with the Village of Empire Zoning Ordinance provisions (both substantive and procedural) in effect at the time these individual uses are proposed (specific attention to R-1, CR and PUD-B portions of the Ordinance) with exceptions to the front-yard porches and the rear-yard setbacks. Please note the front-yard porch exception to the Ordinance in Section 5.7a of these covenants and restrictions. Also note the rear-yard setback exception to the ordinance in Section 5.7b of these covenants and restrictions. All Improvements shall be constructed and maintained in accordance with all federal, state, and local laws, regulations, codes, and ordinances, including the obtaining and posting of all necessary permits. Where such laws, regulations, codes, and ordinances impose greater restrictions

then are required by this Declaration, now and as it may be amended from time to time, the provisions of such other laws, regulations, codes and ordinances shall control.

**Section 5.2 Floor Area of Residence.** The total finished living area for primary residential buildings shall comply with the Village of Empire Zoning Ordinance R-1 standards in effect at the time the residential building is constructed. The floor area of secondary units (Granny flats, Coach houses) shall meet the Village of Empire zoning ordinance requirements, if any, at the time the granny flats or coach houses are built or the minimum building standards administered by Leelanau County, whichever is more restrictive.

**Section 5.3 Roofs.** Rooflines should be steep for the main building- 8/12 to 12/12 pitches. Porches and one-story extensions and secondary buildings may have lower pitches.

**Section 5.4 Two Family Dwellings.** The location of two-family dwellings shall be limited to corner Lots only. Any structure containing a two-family dwelling shall have one front door on the front street side, and the structure will be developed in conformity with all requirements of the Village of Empire R-1 zoning ordinance requirements (both substantive and procedural) in effect at the time of development, as a special use subject to site plan review. Each second living unit within a two-family dwelling will affect the overall density count by one unit.

**Section 5.5 Height.** In the case of a primary or accessory structure, the vertical distance shall be measured from the average grade to the highest point of the structure. Refer to the Village of Empire Zoning Ordinance for exact procedure in calculating the height.

**Section 5.6 Coach houses and Granny flats.** The floor area of secondary units (Granny flats, Coach houses) shall meet the Village of Empire zoning ordinance requirements, if any, at the time the granny flats or coach houses are built or the minimum building standards administered by Leelanau County, whichever is more restrictive. "Coach houses" used as secondary living spaces and "granny flats" will affect the overall density count by one unit per livable "coach house" or "granny flat."

**Section 5.7 Building Setbacks.**

**5.7(a) Front Setbacks and Front Porches.** Front setbacks are measured from the "body" of the building (meaning the principle wall) to the front property line (this excludes bays, porches, and roof overhangs). The body of each residence shall be set back a minimum of 20 feet measured at right angles from the right-of-way line of the street at the front of the Lot (the narrow front of corner Lots). Porches, including all steps and overhangs, are allowed in the 10 feet beyond the first 10 feet of the front setback. Porches built within the 20-foot front setback shall have no screens and/or windows and shall never be converted into heated, year-round, interior living space.

**5.7(b) Side and Rear Building Setbacks.** Side and Rear building setbacks shall be 10 feet from the side and rear Lot lines. These setbacks shall be measured from the closest part of the building to the Lot line. Porches, including all steps, roof overhangs, and similar structures shall not be allowed within the 10-foot setback. Although the existing zoning ordinance allows structures, such as fences and sheds under 100-sq. ft., in the 10-foot rear alley setback, this additional setback is restricted to benefit snow removal in the alleys. No fence nor shed shall be located closer than 15 feet from any alley to facilitate snow removal.

**Section 5.8 Commercial Uses.** All commercial buildings within the New Neighborhood shall comply with Village of Empire Zoning Ordinance CR provisions (both substantive and procedural) in effect at the time each individual CR use is proposed. Commercial development within the New Neighborhood shall be limited to Lots 2, 3, 8, 9, 12, 13, 15, 16, 20, 21, 25, 26, and 30. Each permitted CR use in the development shall have a separate septic system which shall be monitored annually and the findings reported to the Village. Each Lot owner having a separate septic system shall be required to perform any maintenance of the septic system specified by the Benzie-Leelanau Health Department or the health department or agency then responsible for the geographic area. Prior to any neighborhood commercial construction on the above Lots, a detailed site plan of the layout shall be submitted to the Planning Commission for approval. The fee to be charged for this site plan review shall be the same as the Special Use permit fee. Only those commercial uses which are permitted in the Commercial-Residential District shall be allowed on the above mentioned Lots. The proposed commercial use plans will also be reviewed by the architectural review committee.

**Section 5.9 Utilities.** All utility lines including electric, gas, telephone and cable television must be installed underground.

**Section 5.10 Design Variances.** This is not to be confused with an official Zoning Board of Appeals variance. The Review Committee may only review changes that already comply with the Zoning Ordinance in effect at the time of the development. The Review Committee has no authority to grant variances relating to the Village Zoning Ordinance. Design variances may be pursued, but only to the extent and in such a manner as not to violate the spirit and intent of the New Neighborhood Covenants & Restrictions and further that the requested variance can be accomplished without substantial damage to the natural environment or the harmony and character of the New Neighborhood. Any proposed changes which require a Zoning Variance must always follow the Village of Empire Zoning Ordinance appeal process (please refer to the Village of Empire Zoning Ordinance Article VIII).

**Section 5.11 Time Limits.** Initial Purchasers of unimproved Lots shall be required to begin construction, in accordance with the pre-approved plans, within 24 months following the purchase of the Lot, or within 24 months following the date when the infrastructure in the phase where their Lot is located, is ready for construction and occupancy. Purchasers of multiple adjoining Lots will not be required to build more than one residence within the time limits.

**Section 5.12 Construction Damage.** Each Lot Owner shall be responsible for any damage of whatever kind or nature caused to the Common Areas, including the roadways and pathways, by any contractor, tradesperson or utility supplier entering the Development at the Owner's request for the purpose of working on any improvement on the Owner's Lot. Any such damage to the Common Areas must be repaired to the Committees reasonable satisfaction and if any such Owner fails to make such repairs, the Committee may do so and charge the cost of such repairs to the Owner, which charges, if unpaid, shall be a lien against the Owner's Lot.

**Section 5.13 Purpose of Construction Limitations.** The purpose of the construction limitations is to insure the Owners' continued enjoyment, use, and the enhancement of the value of their properties. It is also to prevent unnecessary disturbance of the neighbors, abuse of the Common Areas and unsafe or disruptive practices.



**Section 5.14 Community Sewer Capacity.** The New Neighborhood has been approved with a community sewer, which will be constructed in five phases and in accordance with the Maintenance and Indemnification Agreement Regarding Privately Owned Public Sewers. The residential density of each phase of the New Neighborhood shall be limited by and shall not exceed the capacity of the corresponding community sewer. Gourdie Fraser and Associates and the Leelanau Health District have calculated the maximum number of bedrooms which may connect to the community sewer system within each phase or Association. The number of bedrooms within each phase shall be limited to and may not exceed the capacity as set forth within the table below.

<u>Phase</u>	<u>Maximum Number of Bedrooms</u>
Phase 1	53
Phase 2	50
Phase 3	30
Phase 4	55
Phase 5	55

## ARTICLE VI

### GENERAL RESTRICTIONS

**Section 6.1 Nuisance.** No activity shall be carried on which constitutes a nuisance.

**Section 6.2 Care and Appearance of Lots.** Lot Owners shall maintain the exterior of all improvements on any Lot and the Lot itself in a neat and attractive manner, and in good condition and repair and kept free from damaged machinery, unsightly junk, debris and rubbish. Commercial machinery and equipment and unlicensed, inoperable motor vehicles must be housed out of view.

**Section 6.3 Permanent Signs.** No permanent sign of any kind shall be displayed to the public view on any Lot without the prior written consent of the Board of Directors of the Association.

**Section 6.4 Lights.** No outdoor property night light of any kind shall be permitted to cast its direct rays, or any indirect excessive glow, outward beyond any of the boundary Lot lines of the Lot on which it is installed or maintained.

**Section 6.5 Tanks.** No elevated tanks of any kind shall be erected, placed or permitted on any Lot except as specifically provided herein. Any tanks used in connection with a dwelling or a Lot, including tanks for the storage of fuel, must be buried or walled or screened sufficiently to conceal them from the view of other Lots and the streets and alleys.

**Section 6.6 Radio and Television Antennas.** Lot Owners may be permitted to construct and/or use and operate their own external radio and/or television antennae including, but not limited to, satellite dishes; provided, they are constructed or placed in such a manner as to minimize the possibility of being visible from any neighboring property while permitting reasonable use of the device.

**Section 6.7 Dangerous Devices.** No use of any firearms, air rifles, pellet guns, BB guns, bows and arrows or similar dangerous weapons, projectiles or devices shall be used on or about any Lot or in the Common Areas.

**Section 6.8 Motorized Vehicle Use and Parking.**

**6.8(a)** No motorized vehicles of any kind or nature shall be operated in the Common Areas except for maintenance of the common areas and seepage systems.

**6.8(b)** Motor vehicle storage and/or parking for any individual Lot shall be normally accessed from the appurtenant alley, only.

**6.8(c)** Parking surfaces shall be kept as green and pervious as possible and shall be graded and drained so as not to harm neighboring property.

**Section 6.9 Swimming Pools.** No above ground swimming pools shall be erected or maintained on any Lot. The size, configuration, location and exterior appearance of any in-ground swimming pool shall be subject to the Committee's prior written approval.

## ARTICLE VII

### RULES AND REGULATIONS

**Section 7.1 Agreements Binding on Associations and Their Members.** These Declarations of Covenants & Restrictions, New Neighborhood Subdivision Planned Unit Development (PUD) Agreement, Maintenance and Indemnification Agreement Regarding Privately Owned Public Sewers, New Neighborhood Stormwater Drainage Facilities and Open Space Maintenance Agreement, Articles of Incorporation for each New Neighborhood, and the Bylaws for each New Neighborhood are attached hereto and hereby incorporated by reference and shall be binding upon New Neighborhood Property Owners' Association #1, New Neighborhood Property Owners' Association #2, New Neighborhood Property Owners' Association #3, New Neighborhood Property Owners' Association #4, and New Neighborhood Property Owners' Association #5, and equally binding upon the present and future individual Lot owners within each Association.

## ARTICLE VIII

### EASEMENTS

**Section 8.1 Perpetual easements.** The Developer hereby establishes perpetual easements across, over and through the Plat as shown thereon for the purpose of construction, maintenance, and repair (including reconstruction) of all utilities.

## ARTICLE IX

PROPERTY RIGHTS IN THE COMMON AREAS

**Section 9.1 Easement of Enjoyment.** Subject to the provisions of this Declaration and the rules and regulations of the associations, every member and their invitees shall have the right and easement of enjoyment to the Common Areas.

## ARTICLE X

MAINTENANCE AND USE OF COMMON AREAS, DRAINAGE STRUCTURES AND DRAINAGE EASEMENTS, SEPTAGE SYSTEMS, TREE PLANTING AND REPLACEMENT

**Section 10.1 Property Owners' Associations.** The owner of each Lot shall, by such ownership, be deemed a member of the related, designated Property Owners' Association. Each Property Owners' Association shall hold title to a portion of the parks and greenways of the New Neighborhood. The restrictive covenants referenced herein shall be binding on the members of each Property Owners' Association and are intended to benefit the members of all the Property Owners' Associations within the New Neighborhood, each Lot owner, and the Village of Empire (but not individual or groups of residents in the Village). The Developer shall establish and the Association thereafter shall fund and maintain an Escrow Account for the operation, maintenance, repair, and/or replacement of the septage system, as more specifically set forth within the Maintenance and Indemnification Agreement Regarding Privately Owned Public Sewers attached to and incorporated by reference herein.

**Section 10.2 Greenways.** The Greenways continue the traditional street grid but shall be left unpaved and limited to non-motorized travel. The Greenways also are designed to collect and disperse storm water. To serve these purposes, the Greenways will be established and maintained with plantings and pathways and preserved in perpetuity (see section 10.5).

**Section 10.3 Greenbelts.** The Greenbelts along M-22 (south property edge) and M-72 (north property edge) will be maintained as green Village edges with evergreen trees being primary along M-22 and deciduous trees being primary along M-72. The Greenbelts along the East and West property lines will be maintained as well except where future road and/or sidewalk connections occur. The West Greenbelt tree line of evergreens will be maintained and the East Greenbelt has been planted with a mix of evergreen and deciduous trees. The Greenbelt areas provide for both septage fields and storm water run off areas. Pathways, plantings, and grading will be maintained to keep these uses functional. These Greenbelts shall be limited to passive uses and shall be preserved in perpetuity (see section 10.5).

**Section 10.4 Public Park.** The Park (bounded by Pokagon, Michigan, Ontario, and Wilce Streets) serves first as the central lawn of the New Neighborhood. It will remain as an open, grass covered, passive park with a few trees planted in clusters or alone. This common space also will serve many of the New Neighborhood residents as the location of their septage fields. No "active uses" such as permanent ball fields or parking areas will be allowed. These uses for the Public Park shall be preserved in perpetuity (see section 10.5).

**Section 10.5 Common Area Maintenance in Perpetuity.** All Common Areas of the New Neighborhood, including all required open spaces, shall be maintained, used, and preserved in perpetuity as set forth herein. The Common Areas shall be maintained by the Property Owners' Associations and their respective present and future Members, jointly and severally, in perpetuity for the benefit of the Members of the Associations; provided that, maintenance and use of the Common Areas shall be limited to the purpose for which the respective Common Areas were dedicated as set forth in Sections 10.2, 10.3 and 10.4 above.

**Section 10.6 Common Area Maintenance Funding.** The Property Owners' Associations shall be responsible for the dedication and maintenance of the Common Areas of the Development. The Property Owners' Associations shall raise sufficient funds to maintain these Common Areas in their natural state, unless the use intended in the Common Area requires more intensive maintenance. The Property Owners' Associations shall hold the Village of Empire harmless and indemnify it from any liability arising out of the use or maintenance of the Common Areas herein.

**Section 10.7 Maintenance Schedule.** The Property Owners' Associations shall establish a schedule to maintain the respective Common Areas in their natural state; provided that, nothing herein shall prevent the Property Owners' Associations from establishing maintenance standards that are more frequent or more detailed in nature.

**Section 10.8 Village Rights Regarding Maintenance.** In the event that the Village of Empire determines that the Common Areas are not properly maintained, the Village may, after first providing to all Property Owners' Associations having a property interest in the Common Areas thirty days' written notice, undertake responsibility for the appropriate maintenance of the Common Areas and assess to the Property Owners' Associations the pro rata share of the costs incurred by the Village to maintain the Common Areas. The Village of Empire, if for any reason it is unable to collect assessments from the Property Owners' Associations, shall have the ability to assess and attach those liens to individuals Lots within the Development on a pro rata basis and enforce those liens in the same manner that state law permits the foreclosure of tax liens.

**Section 10.9 Assessments.** Each Association shall have the ability to levy assessments against Lots to cover maintenance expenses. All assessments shall be apportioned among Lots equally. The Association shall advise each Lot owner in writing of maintenance charges assessed and, upon request, provide each Lot owner a copy of the budget upon which such assessments are based.

**Section 10.10 Lot Owner Responsibilities for Assessment and Default.** Each Lot owner shall be obligated to pay all assessments levied on the Lot during the period of time in which the Lot owner owns the Lot. No Lot owner may be exempted from liability for contribution towards maintenance expenses by waiver or abandonment, or any other means. If any owner defaults by failing to pay assessments within thirty (30) days from the date the assessment becomes due, the Association may impose fines and charge interest on the assessment from the date it becomes due. All unpaid assessments, fines and charges shall constitute a lien on the Lot. Any lien established pursuant to this provision shall have priority over all other liens, except state or federal tax liens and sums unpaid on a prior recorded first mortgage.

**Section 10.11 Enforcement.** The Association may enforce the collection of a lien by suit at law, by foreclosure, or by any other means available.

**Section 10.12 Recovery of Unpaid Assessments.** Upon the sale of any Lot, any unpaid assessments shall be paid out of the proceeds of the sale by the purchaser. Unpaid assessments shall be paid in preference over any other assessments or charges. Any purchaser may request, and shall receive from the Association upon request, a statement of assessments unpaid on any Lot.

## ARTICLE XI

### WATER, STORM WATER, SEPTAGE, ROADWAYS

**Section 11.1 Water.** All Lots will be served by the Village Water System. All Lot owners shall be subject to the Village of Empire Water Department Connection and User fees.

**Section 11.2 Roadways.** The Property Owners' Associations will be required to maintain the road and alley Rights of Way including snow and ice removal until such time, if any, the Village of Empire accepts jurisdiction over the road and alley Rights of Way.

## ARTICLE XII

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATIONS

**Section 12.1 Membership.** Each Lot Owner shall be a Member of the Property Owners' Association designated for that Lot.

**Section 12.2 Associate Membership.** Every person who is entitled to possession and occupancy of any Lot as a tenant or lessee of a Member may become an Associate Member of the Association designated for that Lot, subject to the Rules and Regulations of the Property Owners' Association; however, Associate Members shall not be entitled to notice of any action by the Developers or Associations, nor be entitled to vote.

**Section 12.3 Voting Rights.** Members of the Associations, as defined in Section 12.1 of this Article XII shall be entitled to vote in person or by proxy as follows: for each Lot (as defined in the Section 1.5 of Article I) one (1) vote. When more than one person owns any Lot as Co-Owners (including but not limited to tenants by the entirety, joint tenants of tenants in common) the vote for such Lot shall be exercised as the Co-Owners among themselves may determine, but in no event shall more than one vote be cast with respect to any one Lot. When one or more Co-Owners sign a proxy or purports to vote for his, her or its Co-Owners, such vote shall be counted unless one or more of the other Co-Owners are present and object to such vote, or are not present and submit a proxy or object in a writing delivered to the Secretary of the Associations before the vote is counted. If Co-Owners disagree as to the vote, the vote shall be split equally among the Co-Owners. Associate Members shall not be entitled to vote.

COVENANT FOR ASSESSMENT

**Section 13.1 Creation of the Lien and Personal Obligation of Assessments.** Each person who accepts a deed for a Lot or accepts title as an heir or devisee shall be deemed to have consented to pay the Annual Assessments and Special Assessments as provided herein and to have agreed to all the other terms and provisions of this Declaration. The Annual and Special Assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge and shall constitute a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall also be the personal obligation of the Owners of such Lot at the time when the assessment fell due. In the case of Co-Ownership of a Lot all of such Co-Owners of the Lot shall be jointly and severally liable.

**Section 13.2 Purpose of Assessment.** The Annual Assessments levied by the Associations shall be used exclusively for promoting the health, safety, pleasure and welfare of the Owners of Lots, costs and expenses incident to the operation of the Association, including, without limitation, the maintenance of the Common Areas, the operation, maintenance, repair and/or replacement of the sewage systems, maintenance and replacement of improvements located in the Common Areas, payment of all taxes and insurance premiums, and all costs and expenses incidental to the operation and administration of the Associations and their facilities and services.

The Special Assessments shall be used for the purpose of paying the cost of the capital improvement for which such Special Assessment is levied, and all expenses incidental thereto.

**Section 13.3 Basis and Maximum of Annual Assessments.** The amount of Annual Assessments shall be sufficient to provide all funds necessary for the Associations to fulfill their obligations specified in these Covenants & Restrictions and all agreements incorporated into these Covenants & Restrictions by Section 7.1, and shall be fixed by a majority vote of the Members present and voting as provided in Section 13.5 of this Article, for a period not exceeding the next succeeding three years.

The Board of Directors of the Associations may, after consideration of current maintenance costs and future needs of the Association, fix the annual assessment for any one year at a lesser amount, but such action shall not constitute a waiver by the Associations of their right to revert to the full assessment for the remaining year or years in the then current period fixed as provided in the preceding paragraph.

**Section 13.4 Special Assessments for Capital Improvements.** In addition to the annual assessments authorized in Section 13.3 of this Article, the Associations may levy, in any assessment year, special assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement upon the Common Areas, including the necessary fixtures, equipment, and other personal property related thereto or for the purpose of reimbursing the escrow account required to be maintained under the terms of the *Maintenance and Indemnification Agreement Regarding Privately Owned Public Sewers*. Except for a special assessment to reimburse the escrow account specified above, which shall only require the consent of a simple majority of Members present at a meeting

duly called for that purpose, any such special assessment shall require the consent of two-thirds (2/3) if such special assessment is \$500 or less per Lot or four-fifths (4/5) if such special assessment is more than \$500 per Lot of all of the votes eligible to be cast by all of the Members, present at a meeting duly called for this purpose, at which a quorum is present as provided herein.

**Section 13.5** Notice and Quorum for Any Action Authorized Under Section 13.3 and 13.4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 13.3 or 13.4 shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. Membership shall be determined by the records of the Secretary of the Associations as to who are the record title holders of the Lots. No transfer of ownership of a Lot shall be effective for purposes of the requirements of this Section as to notice of a meeting or who is entitled to vote at such meeting after such notice has been sent by the Secretary. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes eligible to be cast by all of the Members 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 60 days following the preceding meeting. If at such meeting the required approval is not given, then the Secretary shall hold open the ballot for 30 days to enable those Members not present to vote. If at the end of the 30-day period the required approval has not been given then the proposal shall be deemed to have been defeated.

**Section 13.6** Change in Basis and Maximum Amounts of Annual Assessments. Subject to the limitations of Section 13.3 of this Article, and for annual assessments within a three-year term set pursuant to Section 13.3, the Associations may change the maximum amounts of the assessments; provided, that any such change shall have the assent by the vote in person or by proxy of two-thirds (2/3) of all of the votes eligible to be cast by all of the Members at a meeting duly called for this purpose. Any change in basis and/or maximum amount of annual assessment for a subsequent three-year period shall be determined as set forth in Section 13.3.

**Section 13.7** Period for which Annual Assessments are made: Due Dates For Payment of Annual and Special Assessments. The period for which Annual Assessments are made shall be the twelve-month period extending from January 1 through the next succeeding December 31. The period for the first Annual Assessment shall begin as of the date the Plat is recorded with the Register of Deeds of Leelanau County, Michigan.

Each Annual Assessment shall become due upon and payable on or before the first day of February following the commencement of such Annual Assessment period; however, the Associations may provide that the annual assessments shall be payable in twelve equal monthly payments and the due date, in such case, shall be the first day of each month during the year.

The due date of any Special Assessment under Section 13.4 of this Article shall be fixed in the resolution authorizing such Special Assessment.

**Section 13.8** Rate of Assessment, Notice of Assessment, Payment. Both the annual assessment and any special assessment must be assessed equally for all Lots as specified by Section 10.9. Written notice shall be sent to every Owner subject thereto. The Associations shall, upon the request of any Owner liable for an assessment, or of the mortgagee of the Owner's Lot,

furnish to such Owner or mortgagee a certificate in writing, signed by an officer of one of the Associations, setting forth whether or not such assessment has been paid. Such certificate shall constitute conclusive evidence of the payment of any assessments therein stated to have been paid.

**Section 13.9 Effect of Non-Payment of Assessment: The Personal obligation of the Owner: The Lien: Remedies of the Association.** If the assessments are not paid promptly on the due date thereof as specified in section 13.7 of this Article, then such assessment, whether annual or special, shall become delinquent automatically and shall, together with interest thereon at the rate equal to the rate of interest on unpaid and past due county real property taxes, per annum from the due date, and costs of collection thereof, as hereinafter provided, thereupon become a continuing lien on the Lot against which it is levied, which lien shall bind such Lot in the hands of the then Owner, his, her, their or its heirs, executors, devisees, personal representative, successors, and assigns. The personal obligation of the then Owner to pay such assessment, however shall remain his, her, their or its personal obligation for a period of six (6) years from the due date thereof, and shall not pass as a personal obligation to his, her, their, or its successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the due date, specified in Section 13.7 of this Article, the assessment together with interest thereon at the rate equal to the rate of interest on unpaid and past due county real property taxes per annum may be enforced and collected by the Associations by the institution of an action at law against the Owner of Owners personally obligated to pay the same or by an action to foreclose such lien against such Lot. If the obligation is to be enforced by foreclosure, the procedure followed will be identical to those set forth as Section 3100 et seq. of the Michigan Revised Judicature Act, as amended.

In a proceeding arising because of an alleged default by an Owner, the Associations, if successful, may recover the costs of the proceeding and such reasonable actual attorney's fees as may be determined by the Court.

**Section 13.10 Subordination of Assessment Liens to First Mortgages.** The assessment liens provided for herein shall be subordinate to the lien of any prior recorded first mortgage. A sale or transfer of any Lot shall not affect the assessment liens.

## ARTICLE XIV

### GENERAL PROVISIONS

**Section 14.1 Duration.** The Covenants and Restrictions set forth in this Declaration shall run with and bind all the Development, shall be perpetual and shall inure to the benefit of and be enforceable by the Developer, the Associations, the Village of Empire, and the Owners of any land subject to this Declaration, their respective successors, assigns, heirs, executors, administrators, and personal representatives.

**Section 14.2 Amendment.** Unless otherwise provided within this Declaration or the PUD Agreement, this Declaration may be amended, from time to time, by the affirmative written consent of the Developer and two-thirds (2/3) of the Owners of Lots not owned by the Developer. Provided, that the covenants and restrictions required as conditions of the PUD approval by the Village shall not be amended without amendment to the PUD final site plan by the Village. So long as the Developer owns any Lot, this Declaration may not be amended at any time without the consent of the Developer.



Any amendments shall become effective ten (10) days after notice of adoption of the amendment, together with a copy of the recorded amendment, mailed to all Owners.

**Section 14.3 Notice.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be in writing and shall be deemed to have been duly given on the date of service if personally served or on the first day after mailing by regular mail, with first class postage prepaid, addressed to the Member or Owner, at the last known address of the person who appears as a Member on the records of the Association at the time of such mailing. Notice to one of two or more Co-Owners of a Lot shall constitute notice to all Co-Owners. It shall be the obligation of every Member to immediately notify the Secretary of their Association in writing as to any change of address.

**Section 14.4 Enforcement.** Enforcement of these Covenants and Restrictions shall be by any appropriate proceeding in law or equity in any court or administrative tribunal having jurisdiction, against any person or persons, firm or corporation violating or attempting to violate or circumvent any Covenant or Restriction. Failure by the Developer, the Associations, the Village of Empire, or any Owner, or Member, to enforce any Covenant or Restriction herein contained for any period of time, shall in no event be deemed a waiver or estoppel of the right to thereafter enforce the same. The Village has the right, but not the obligation to enforce the covenants and restrictions.

**Section 14.5 Powers of Developer.** All the powers, rights and privileges granted and reserved to Developer hereunder shall be exercisable by Developer until such time as Developer shall have sold all the Lots or shall have assigned in writing all or some of such powers, rights and privileges to the Associations prior thereto. Thereafter all the said powers, rights and privileges to the extent so assigned shall be exercisable to the full extent thereof by the Associations.

**Section 14.6 Third Parties.** This Declaration is intended solely for the benefit of the Developer, the Village of Empire, and the Owners and their respective heirs, successors and assigns, and may not be relied upon or enforced by any other third party beneficiary, except that the Village has the right, but not the obligation, to enforce the covenants and restrictions.

**Section 14.7 Severability.** Should any covenant or restriction herein contained, or any article, section, subsection, sentence, clause, phrase, or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

**Section 14.8 Priority of Land Division Act and Other Agreements and Declarations.** The provisions of this Declaration of Covenants & Restrictions shall at all times be subject to the provisions of the Land Division Act. In addition, to the extent that any provision of this Declaration of Covenants & Restrictions or the PUD Agreement shall in any way conflict with the provisions of the Land Division Act, as amended, the provisions of the Land Division Act shall control.

QUERCUS ALBA, L.L.C.

Robert Foulkes

By: Robert Foulkes

Its: Manager

STATE OF MICHIGAN

COUNTY OF: Leelanau

The foregoing instrument was acknowledged before me this 23rd day of November, 2002, by Robert Foulkes, Manager on behalf of said Quercus Alba, L.L.C.

Lea Ann Sterling

Notary Public

LEA ANN STERLING

Notary Public, Leelanau County, MI

My Commission Expires 12/13/2005

County, Michigan

My commission expires \_\_\_\_\_.

DRAFTED BY:

Douglas S. Bishop (P27616)  
Bishop & Heintz, P.C.  
440 W. Front at Oak  
P.O. Box 707  
Traverse City, MI 49685-0707  
231/946-4100



## DECLARATION OF ADDITIONAL COVENANTS AND RESTRICTIONS

This Declaration is made this 8<sup>th</sup> day of November, 2004, by Quercus Alba, L.L.C., P.O. Box 74, Empire, Michigan 49630 (hereinafter called "the Developer"), being the owner of Lots 25 and 30 within the New Neighborhood as more specifically described on **Exhibit A** attached hereto, located in the Village of Empire, Leelanau County, Michigan.

Declaration of Covenants and Restrictions were recorded concerning the development at Liber 01687, Page 73, and this Declaration of Covenants and Restrictions is in addition to and supplements those restrictions as to Lots 25 and 30, but as to no other property located within the development.

WHEREAS, there exist two large maple trees adjacent to Lots 25 and 30 which the Developer desires to save; and the Developer has determined the following covenants and restrictions will further the likelihood these trees will survive.

NOW, THEREFORE, Developer hereby declares that the property described in Exhibit A is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to these covenants, restrictions and conditions as hereinafter set forth.

1. These restrictions shall apply only to the two large maple trees existing in the area adjacent to Lots 25 and 30 on this date as identified on **Exhibit B**.
2. Neither tree shall be trimmed, cut, logged, damaged or in any other manner harmed by any party having an interest in Lots 25 and 30.
3. There shall be no digging, improvements, construction or excavation more than six (6) inches beneath the surface, or in any area in which the root system for any tree exists, between the tree trunks and the drip line of the trees identified on Exhibit B. This restriction shall be deemed to include a prohibition of any foundation for a garage, outbuilding or home, the excavation for a septic tank, or any other improvement. For purposes of these covenants and restrictions, "drip line" shall mean a line drawn on the ground around a tree directly under its outermost branch tips and which identifies that location where rainwater tends to drip from the tree.
4. No improvement, including any roof, structure, cement or gravel driveway, or other impermeable surface shall be constructed, erected or otherwise established within an area measuring ten (10) feet from any point of the circumference of the tree trunks identified on Exhibit B.

6. The Village of Empire, Quercus Alba, L.L.C., or the New Neighborhood Property Owners Association having authority over the portion of this development may remove or maintain the identified trees, or take any other action deemed necessary to address exigent or emergency circumstances pertaining to the identified trees without prior notice to or consent from any parties with an interest in Lots 25 or 30.

ARSA

STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF GRAND TRAVERSE )

AR

2

## **EXHIBIT A**

### **Property Descriptions**

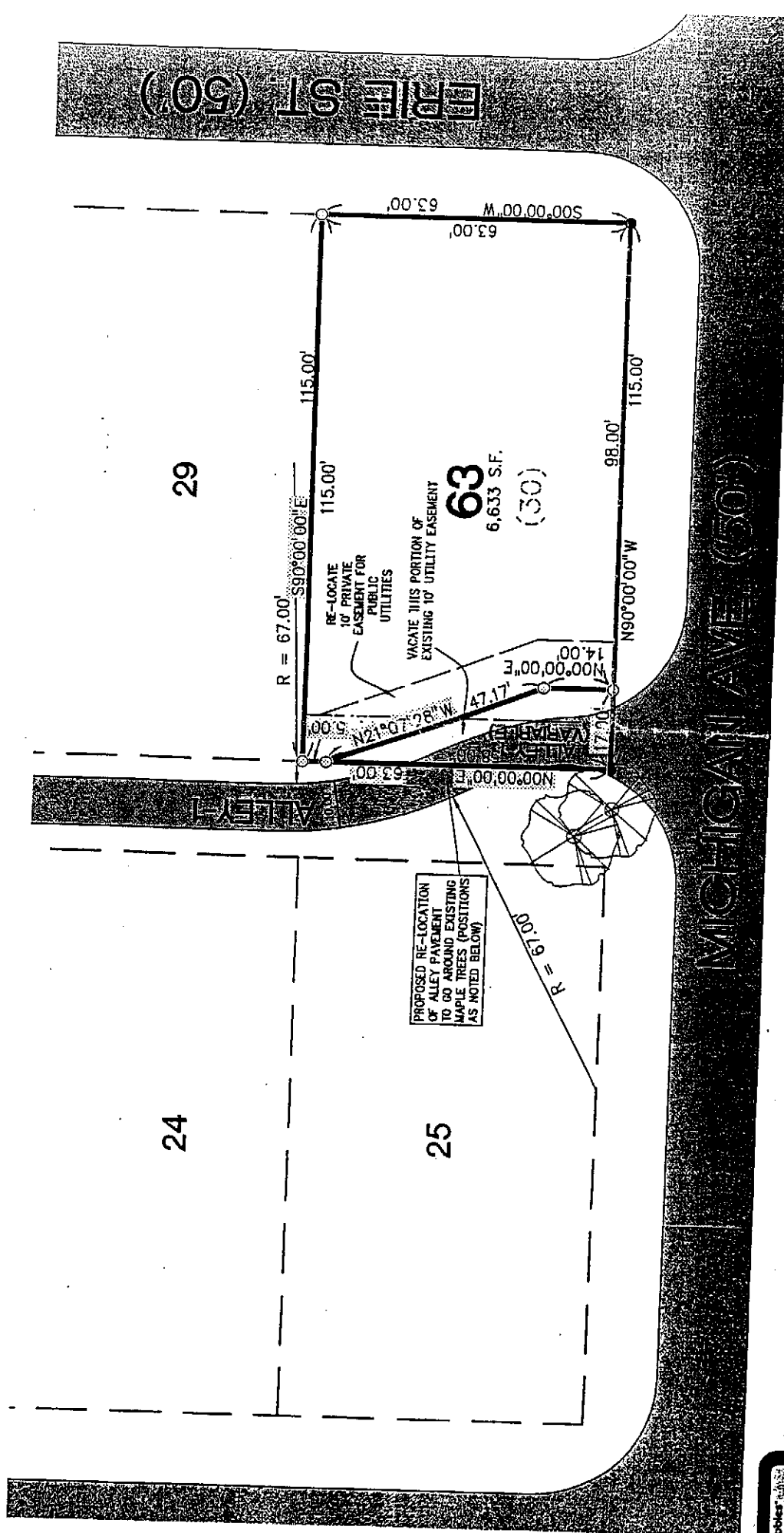
#### **Lot 25:**

Lot 25 of the New Neighborhood Plat as recorded in the Leelanau County Register of Deeds at Liber 8, Page 135, and any amendment thereto.

#### **Lot 30:**

Lot 30 of the New Neighborhood Plat as recorded in the Leelanau County Register of Deeds at Liber 8, Page 135, and any amendment thereto.

EXHIBIT "E"







## EXHIBIT "D"

### NEW NEIGHBORHOOD DESIGN GUIDELINES

Empire, Michigan

Quercus Alba LLC  
Sam Marts Architects & Planners Ltd

8/1/2002



**QUERCUS ALBA LLC**

11950 LaCore PO Box 414  
Empire, Michigan 49630  
(231) 326 5570  
Fax: 326 5575

Bob Sutherland  
Ben Weese  
Reuben Chapman  
Mary Ann Chapman  
Sam Marts  
Julie Wentworth  
Christopher Hall  
Robert Foulkes

© July 1, 2002  
Sam Marts Architects & Planners Ltd

[www.timbersmart.com](http://www.timbersmart.com)

**SAM MARTS ARCHITECTS & PLANNERS, LTD.**

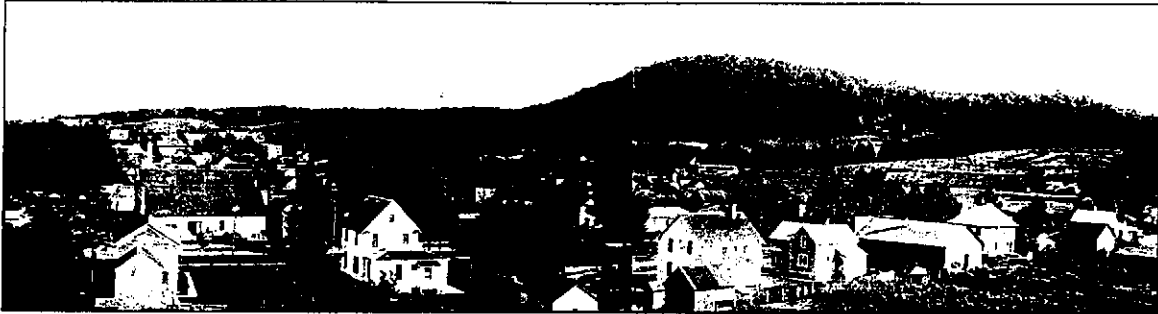
2014 West Wabansia  
Chicago, Illinois 60647  
phone (773) 862-0123  
fax (773) 862-0173

**EMPIRE OFFICE:**

11950 LaCore P.O. Box 414  
Empire, Michigan 49630  
phone (231) 326-5570  
fax (231) 326-5575

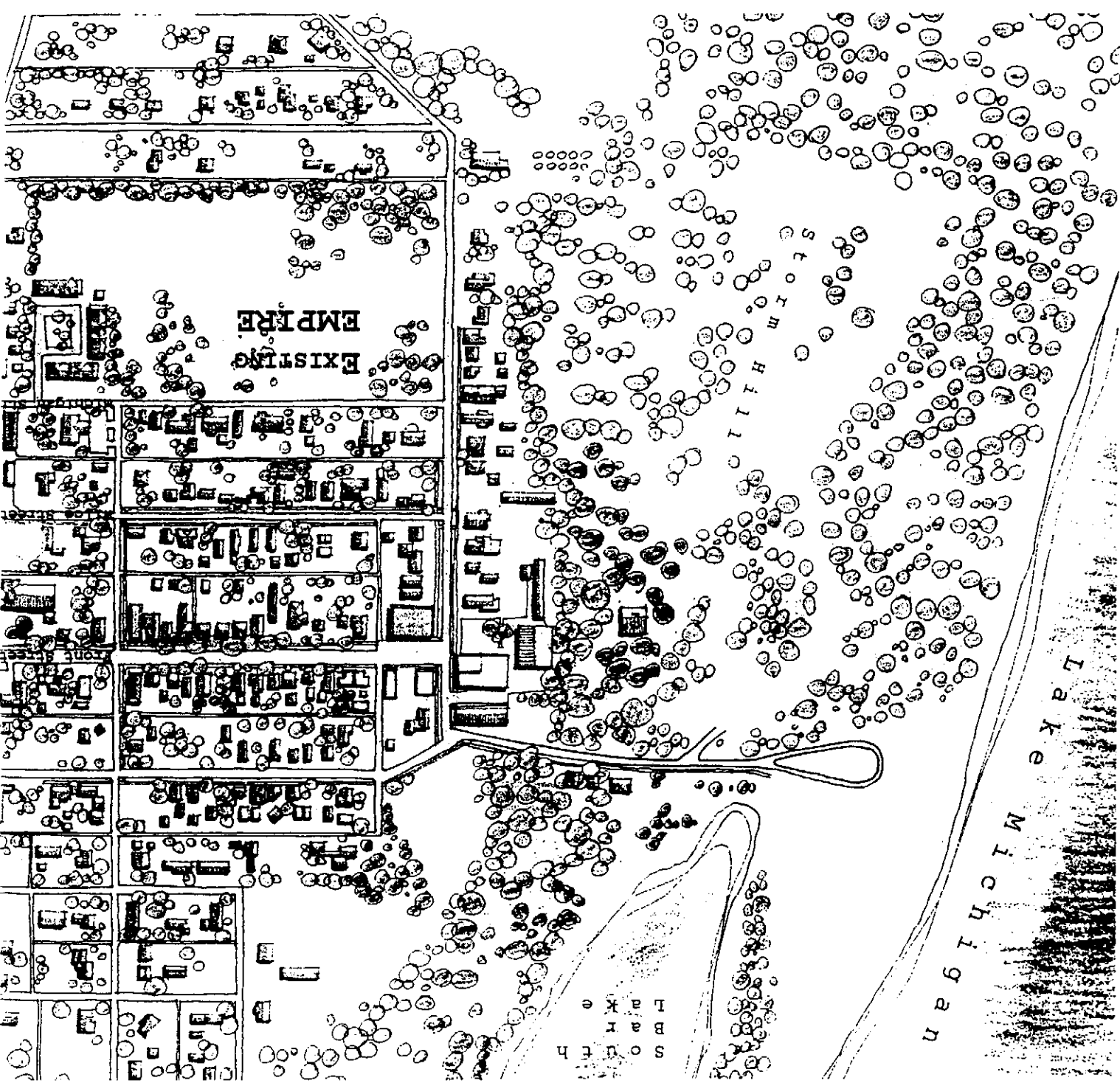
**REALTOR:**

**Christine Stapleton**  
Address: P.O. Box 264 Empire, MI 49630  
Phone: (231) 326 4000

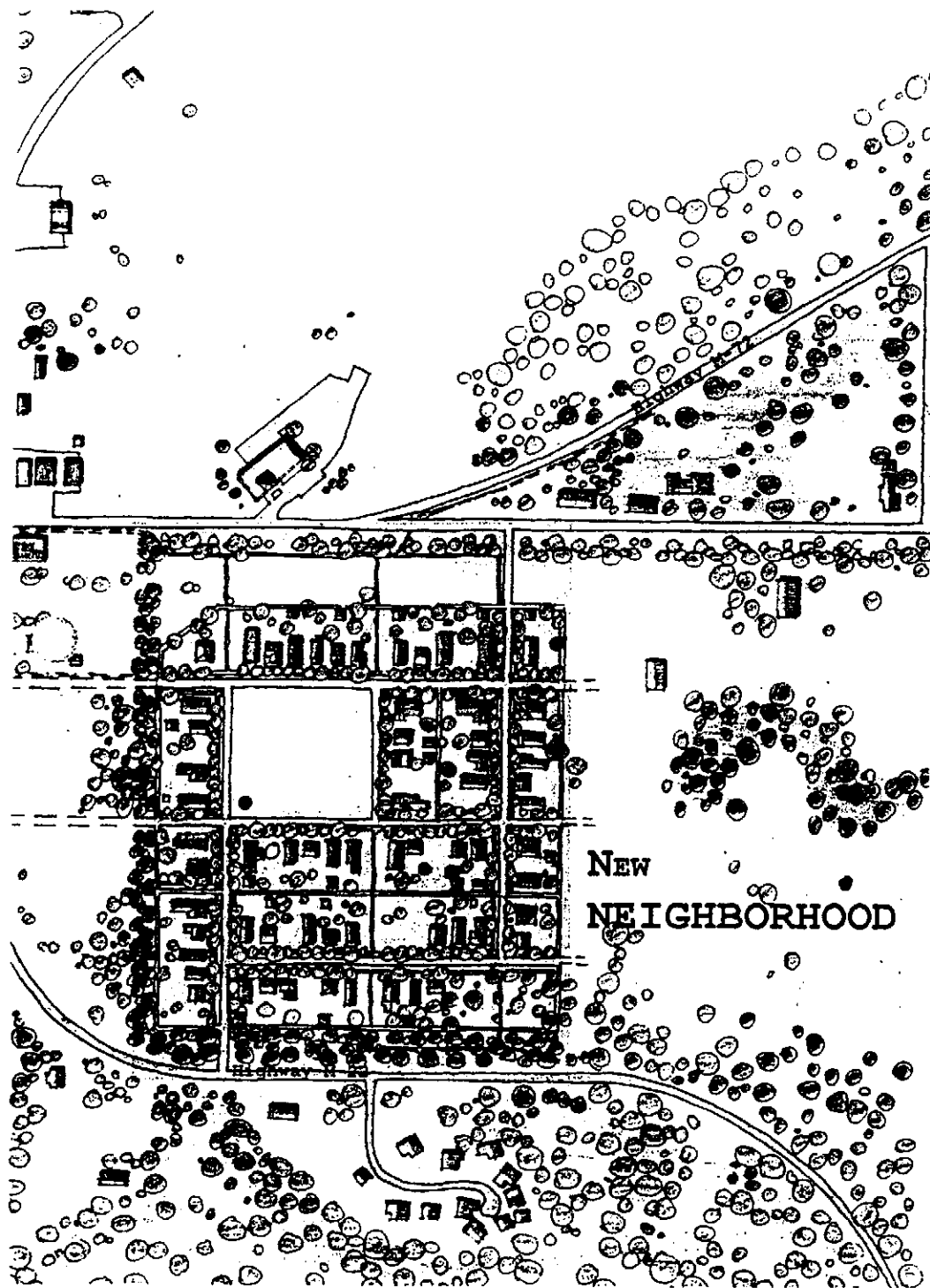


#### HISTORIC BUILDING PATTERNS IN EMPIRE

The patterns described in this book are the designs used to build the individual homes and workspaces when Empire was first settled. We still find these patterns attractive and functional for current and future buildings as well. The patterns are detailed here as recommendations, not requirements. We expect that many of the patterns described here will be used in thoughtful combination to create the homes and workspaces of the New Neighborhood.



north



## SITE PLAN

This plan follows the pattern of the original plat of Empire by continuing Wilce and Michigan streets east, and creating new North/South streets, paths and lots at the same scale. Original sizes are 50-foot road Right of Ways, 20-foot alley Right of Ways, and predominantly 50-foot wide lots. There are 84 building lots of various depths. The plan gives flexibility for future generations to build and rebuild as they see fit. Adjoining lots can be assembled for special uses (for example, Empire's old school is on 5 lots).

## DESIGN GUIDELINES

### RECOMMENDED MATERIALS

The historic building materials used to build northern Michigan towns - bevel siding, cedar shingles, local stone and brick - are still available. We recommend that these same materials be used on the homes and businesses.

Vertical board and batten is a simpler building finish and can be used on smaller buildings and extensions.

Stone, brick and concrete block can be used for foundations, piers, chimneys, and entire multi-use buildings.

### COMMERCIAL GUIDELINES

#### "Neighborhood Commercial" Use

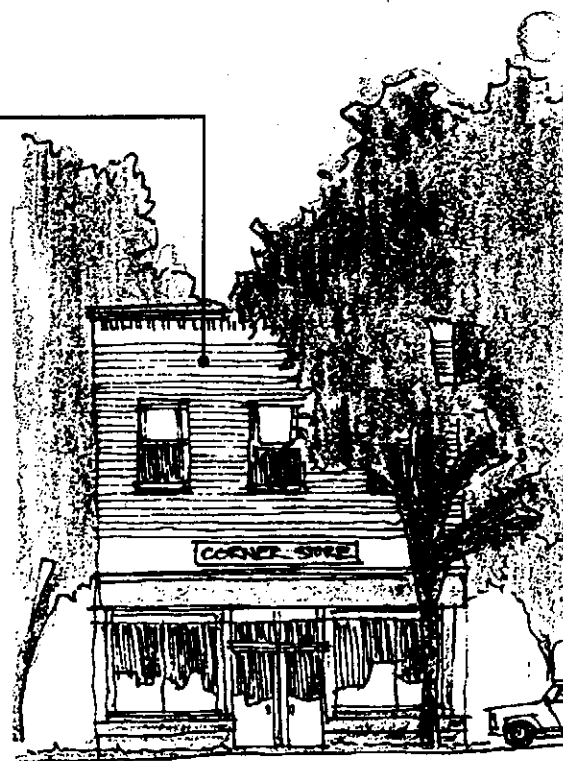
"Neighborhood Commercial" is defined as business use compatible with a neighborhood setting, with low traffic impact, serving those who live in the neighborhood. Some examples of "Neighborhood Commercial" are: corner cafe, doctor or dentist's office, senior assisted living center, health club, church, or storefront artist studio.

Neighborhood Commercial uses are allowed on up to 10 percent of the land in the New Neighborhood. The larger corner lots (2,3,8,9,12,13,15,16,20,21,25,26 and 30) in phases 1 and 2 are most appropriate for these uses. Second floor residential uses are encouraged. This will create a scattering of compatible uses in the residential setting.

## RECOMMENDED RESIDENTIAL GUIDELINES

### SCALE

Buildings should be taller than they are wide on the street front. Narrow lots encourage tall buildings. Buildings can be built with their first floors and porches above grade to increase the building height.



#### WINDOWS

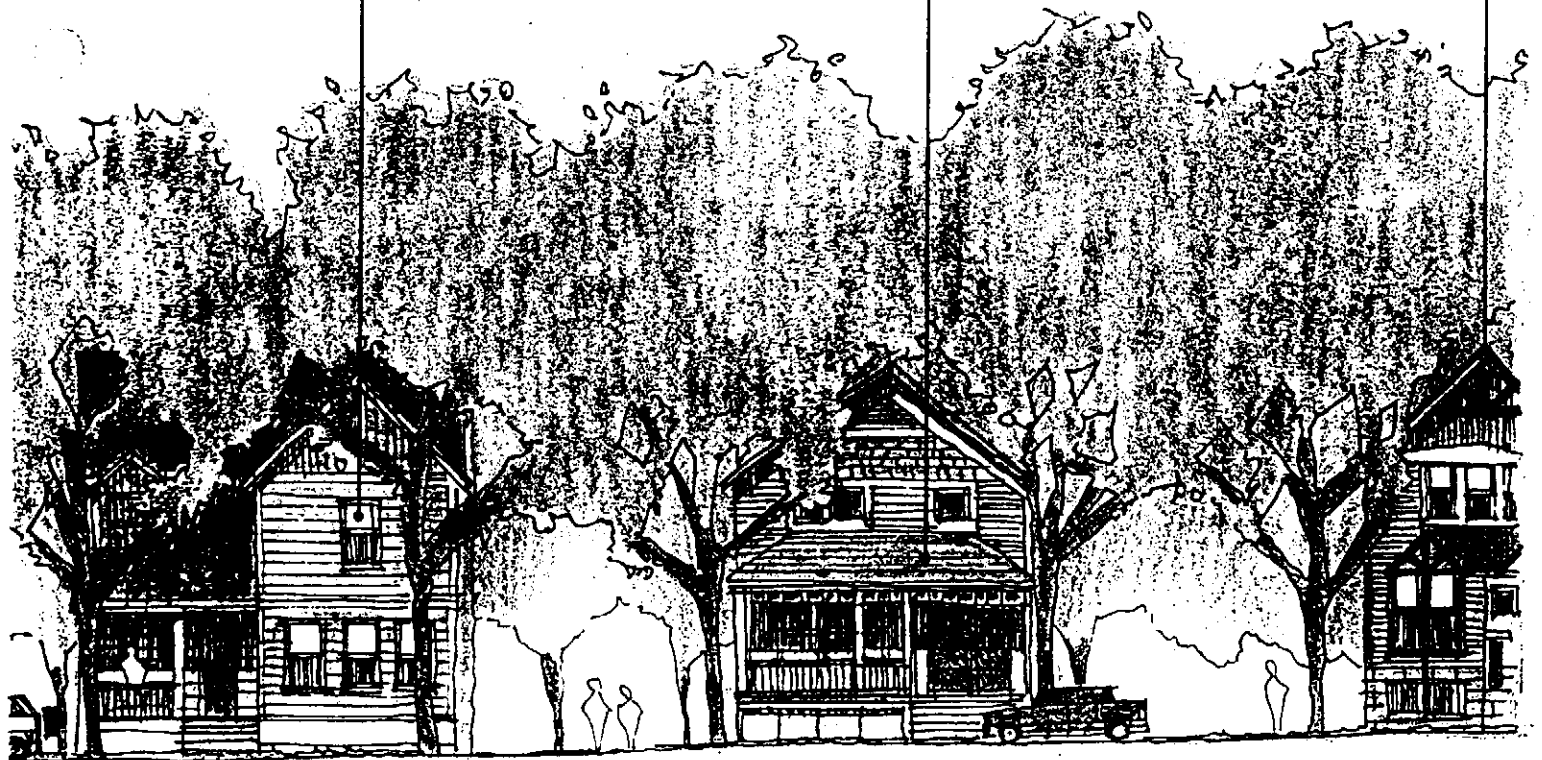
Large windows should be vertical. Double hung windows are encouraged. ○

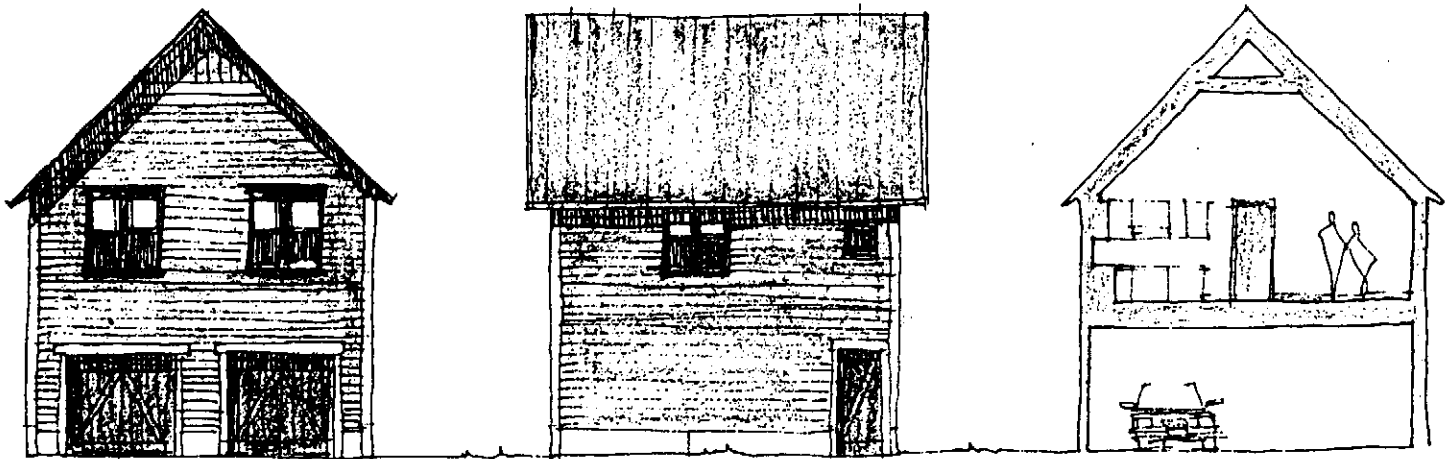
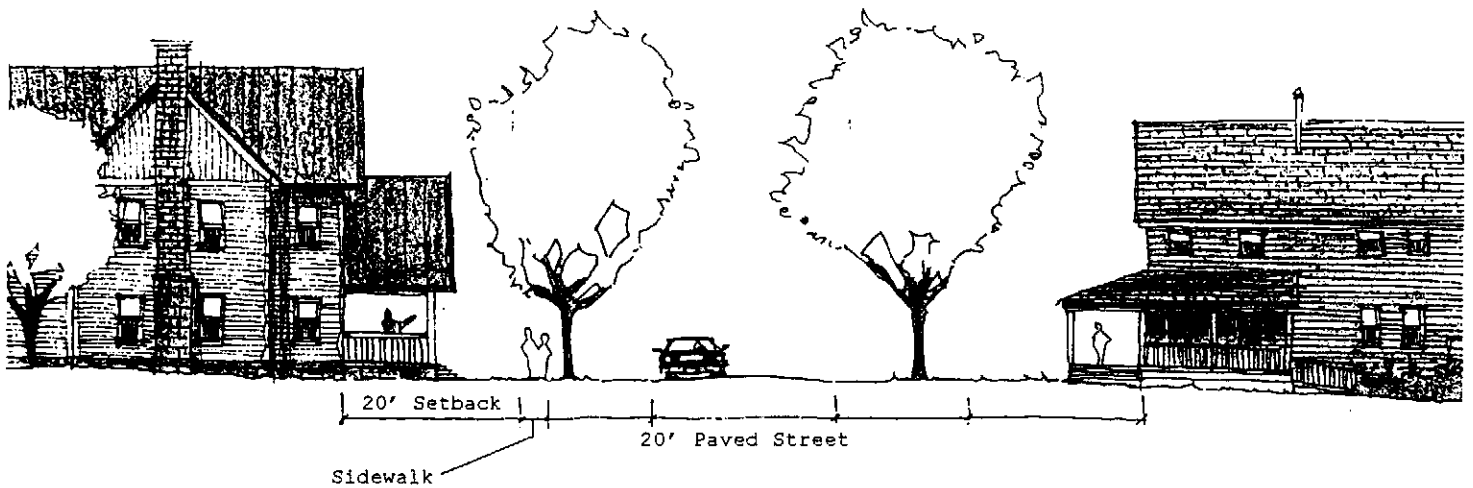
#### PORCHES

Porches can be built within the first ten feet of the front lot setback and are encouraged. Porches built within the 20 foot front setback cannot be converted into interior living space. ○

#### ROOFS

Rooflines should be steep for the main building - 8/12 to 12/12 pitches. Porches and one-story extensions may have lower pitches. ○





Modern Coach Houses are an adaptive reuse of the stable with the hay loft above. They can be unfinished spaces for storage or a small apartment or office space. Materials and finishes should be simple.



## SITE DESIGN

All lots in the New Neighborhood are longer than they are wide and (except for phase 6) have alleys. Alleys are meant for car storage. No driveways will be allowed on the streetfront in phases 1 through 5.

## VISITABILITY GUIDELINES

We recommend that all buildings be designed to achieve the highest "Visit-ability" standard. Visitability is defined as designed space that allows access to those with physical impairments.

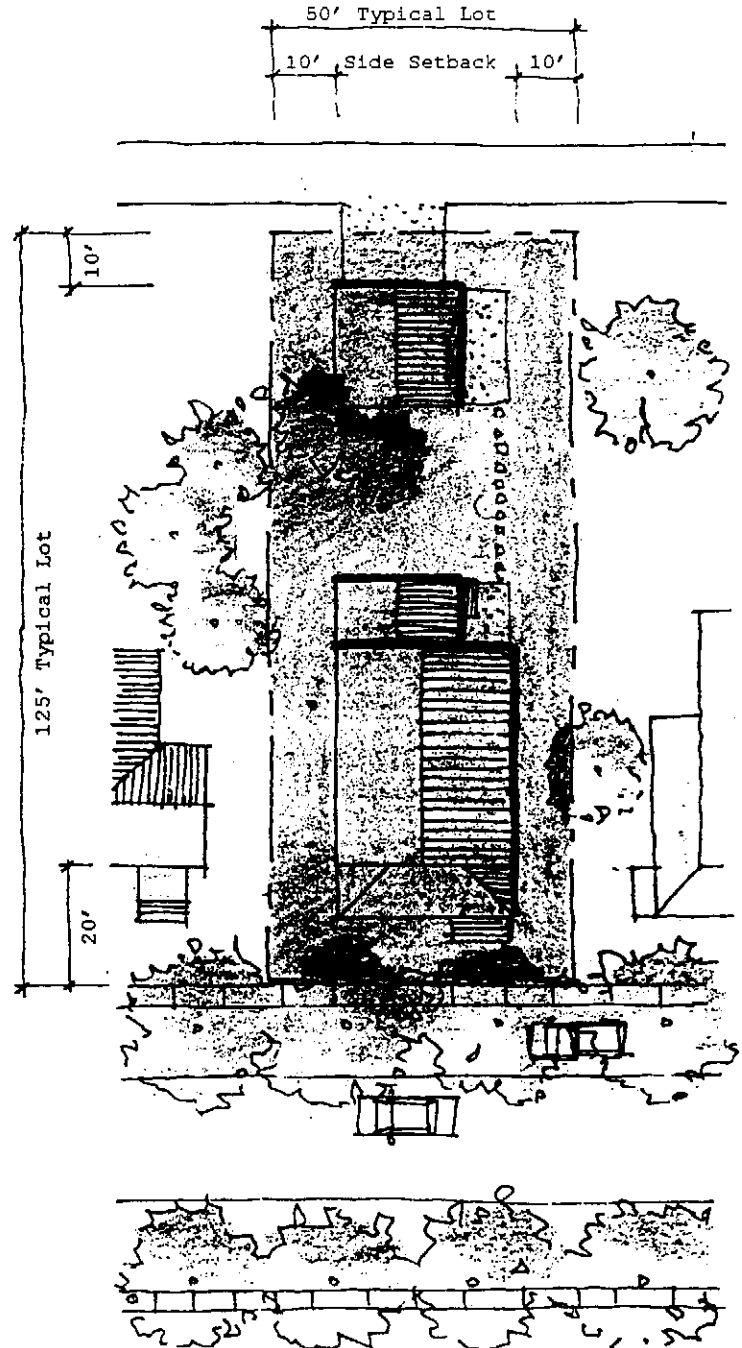
Lowest Rating - 0      Highest Rating - 4

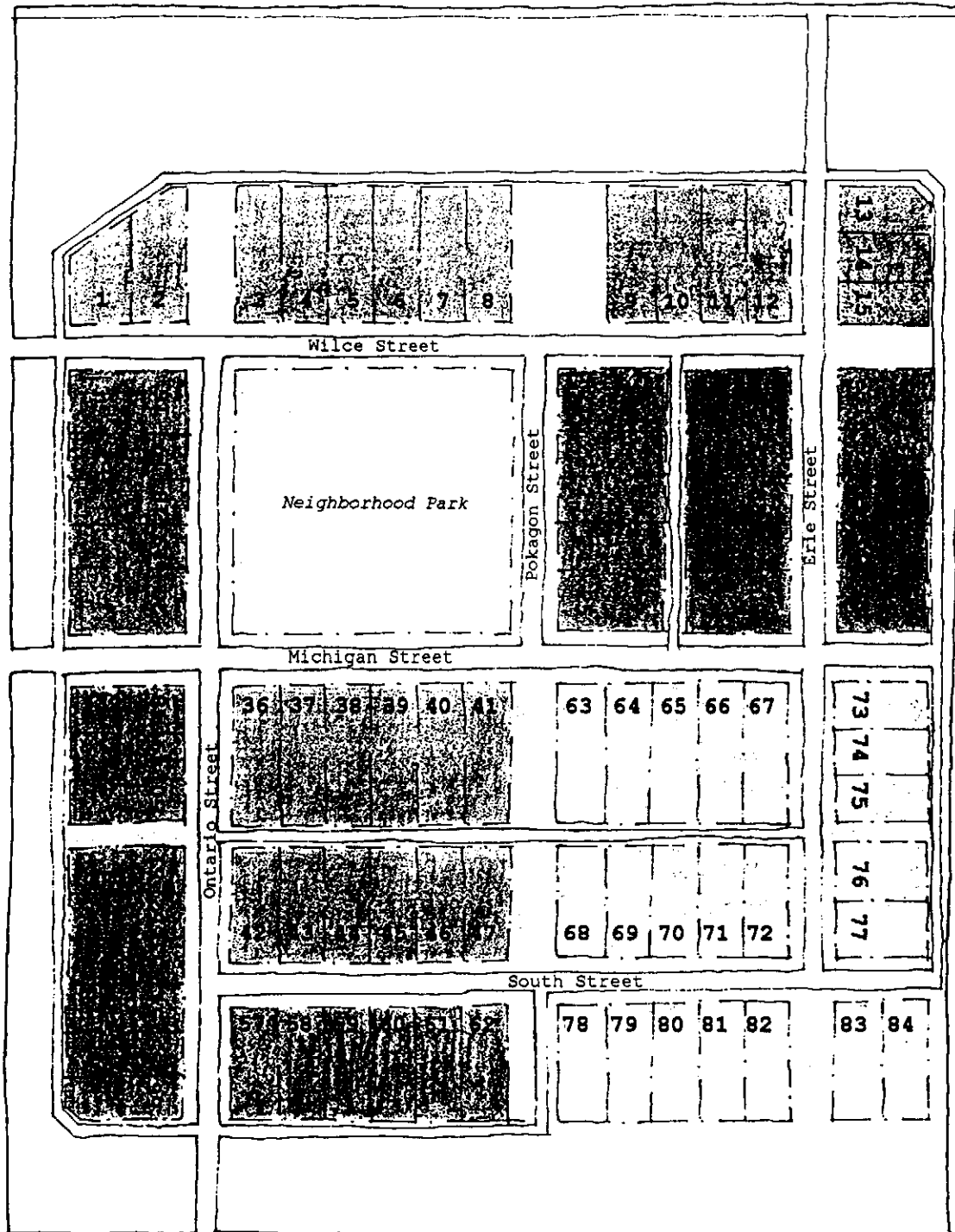
Rating #1 - If your neighbor who uses a wheelchair can, by their own efforts, join you in your home for a visit (hence the name).

Rating #2 - Your neighbor can access a bathroom in your home.

Rating #3 - Your kitchen is accessible and this same neighbor can help you make the meal as well. (You're becoming friends now....)

Rating #4 - All the above can happen.  
(You both have had too much food and  
drink and no one wants to move....)  
and you can offer a bedroom to your  
friend as well.





KEY

PHASE ONE



PHASE TWO



PHASE THREE



PHASE FOUR



PHASE FIVE



PARKS & GREENWAYS



GREENBELT



THE  
NEIGHBORHOOD

## COVENANTS

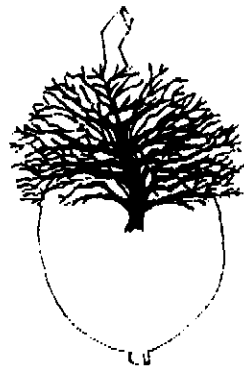
(Definition - A binding agreement made by two or more persons or parties)

If you wish to live in the New Neighborhood there are a few things we would like all to agree on and live up to -

- 1 All motor vehicles will use the alley to enter and exit private property whenever possible.
- 2 All lot purchasers will have a design proposal reviewed and approved by the Design Review Committee before the lot is purchased. (see below)
- 3 Lot purchasers will begin construction no longer than 24 months after the purchase of the lot or 24 months after the date when the infrastructure in their phase is ready for house construction.
- 4 All residential lot owners will be members of a homeowner's association and therefore owners of a portion of the parks and greenways. The homeowner's association will have the responsibility to repay the developer for the initial cost of the septage system, to pay for the maintenance of the septage system, and to pay into a fund held for future repair or replacement of the system. The homeowner's association will also own and pay their portion of the taxes on the commonly held land (parks and greenways) and any maintenance fees.

## DESIGN REVIEW PROCESS

A simple set of design sketches (street elevation(s), a site plan, and a list of exterior materials, number of bedrooms) will be reviewed by the Design Review Committee. The Design Review Committee will consist of three of the following: Sam Marts, Ben Weese, Chris Hall, Julie Wentworth, Robert Foulkes.



**Quercus Alba LLC**



## EXHIBIT "E"

### New Neighborhood Landscaping Plan

In compliance with Section 3.31 Landscaping, the following plant materials and maintenance schedules will be used –

#### **NORTH GREENBELT**

(M-72 Front St.)

PLAN (see New Neighborhood site plan dated July 11, 2002)

This is the largest greenspace in the New Neighborhood and will act as both visual and sound buffer from traffic on M-72. The landscaping will be a continuation of the existing pattern of mixed pine and hardwood edge along the road right of way (north edge of greenbelt) and open grassland. The open grassland areas (center and south edge) will be kept as close to it's current state, a mix of native and agricultural grasses. These grasses grow about knee high and flower at different times. Grade changes will be as minimal as possible, for the two storm water areas primarily.

#### **PLANTINGS**

Replacement hardwood trees (*Quercus Alba*) have already been planted in this greenbelt.

#### **MAINTENANCE**

Further replacement trees (both hardwoods and pines) will be planted as needed. Grasses removed for construction purposes will be replaced in kind. The open grass areas will be high mowed twice each year. The pathway will be mowed monthly in the summer and in areas that are heavily used, will be surfaced with wood chips.

#### **THE PARK**

##### **PLAN**

This is the central public space of the neighborhood. It is intended as a passive park, primarily a tall (12" to 18") grass area with a few clusters of trees in different corners (see site plan) to create shady areas for gatherings. Grading will be done to level the land (holes still exist from when the orchard was removed). This area has wild strawberries and many different types of flowers, as much of this diversity will be kept as possible. No formal path system is intended for this area. If there is a need for a snow storage area, it can be done in this park except on any septic field areas.

**PLANTINGS**

Existing grasses will be kept and replaced where removed during construction. The clusters of trees will be both hardwoods (oaks and maples) and pines (red and white pines).

**MAINTENANCE**

The clusters of trees, because they will stand in open settings, will require trimming (to keep them growing up instead of out). This will create open shaded spaces beneath them as they grow. The grass will be mowed twice each year.

**THE SOUTH GREENBELT****PLAN**

This area is the buffer to M-22. It is a narrow strip that is densely wooded with mature pines and young maples along the M-22 road right of way. Because the grade of M-22 rises above the greenbelt in most of this area it is important to keep the dense evergreen buffer that currently exists and to fill in with new trees in the understory of the maturing pines. This is the shadiest area in the New Neighborhood and the grasses that grow here are therefore different than in the Park or North Greenbelt. They too will be left in place. Mixed hardwoods will be planted on the north edge of this line of pines.

**PLANTINGS**

Existing grasses will be kept and replaced where removed during construction. Both hardwoods (oaks and maples) and pines (red and white pines) will be planted to keep the tree row dense.

**MAINTENANCE**

The trees will not be trimmed to keep them growing out as well as up. This will create a dense green wall. Grass will be mowed as needed but will be kept longer than in the Park. Grape vines that are choking trees will be removed.

**THE WEST GREENBELT****PLAN**

This area defines the west border of the New Neighborhood and acts as a visual buffer. It has an existing mature tree line of red and white pines. The mature trees are a single row with younger trees seeding themselves nearby. The central and southern portions of this greenbelt will serve as shallow storm water retention areas as well and therefore will be kept open

**PLANTINGS**

No new tree plantings are called for. Existing grasses will be kept and replaced where removed during construction.

**MAINTENANCE**

Grass will be mowed as needed but will be kept longer than in the Park. Grape vines that are choking trees will be removed. Trees will be replaced when needed.

**EAST GREENBELT****PLAN**

This is the smallest and least developed neighborhood "edge." There are existing young trees that define this border as they grow.

**PLANTINGS**

A mixture of pine trees and oak trees have been planted.

**MAINTENANCE**

Replacement of trees as needed.

**THE SIX GREENWAYS**

(between lots 2 and 3, 8 and 9, 15 and 31, 41 and 63, 47 and 68, 62 and 78, 82 and 83)

**PLAN**

These greenways are continuations of the roadway grid for pedestrian and bicycle use. The paths curve to break the visual line as shown in the site plan. The greenways will be graded to accept storm water and planted with a mix of trees (hardwood and pines). All storm water areas are designed to be shallow and therefore will be walkable.

**PLANTINGS**

Existing grasses will be kept and replaced where removed during construction. Both hardwoods (oaks and maples) and pines (red and white pines) will be planted as shown in the site plan.

**MAINTENANCE**

Pathways and storm water drains and spillways will be kept open and cleared monthly. Trees will be trimmed annually.

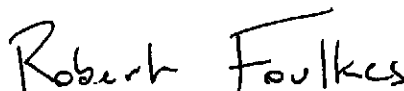
**NEIGHBORHOOD COMMERCIAL**

All proposals for commercial uses within the New Neighborhood will be required to submit landscaping plans as part of their Village site plan review process and will be required to meet all CR standards set forth within the Village of Empire Zoning Ordinance.

**STREET TREE PLANTING BY PHASE**

- Phase 1 - (19) 2.5 inch diameter (deciduous)
- Phase 2 - (31) 2.5 inch diameter (deciduous)
- Phase 3 - (17) 2.5 inch diameter (deciduous)
- Phase 4 - (14) 2.5 inch diameter (deciduous)
- Phase 5 - (18) 2.5 inch diameter (deciduous)

QUERCUS ALBA, L.L.C.



By: Robert Foulkes  
Its: Manager



STATE OF MICHIGAN  
COUNTY OF GRAND TRAVERSE

The foregoing instrument was acknowledged before me this 13th day of August, 2002, by Robert Foulkes, Manager on behalf of said Quercus Alba, L.L.C.



Sarah A. Liles, Notary Public  
Grand Traverse (Kent) County, Michigan  
My Commission Expires: 5/14/03

DRAFTED BY:

Douglas S. Bishop (P27616)  
Bishop & Heintz, P.C.  
440 W. Front at Oak  
P.O. Box 707  
Traverse City, MI 49685-0707  
231/946-4100



**MAINTENANCE AND INDEMNIFICATION AGREEMENT  
REGARDING PRIVATELY OWNED PUBLIC SEWERS**

THIS AGREEMENT made and entered into on the 19th day of AUGUST, 2002, by and between Quercus Alba, L.L.C. (hereinafter the "Developer"), the Village of Empire, a Michigan municipal corporation, whose address is P.O. Box 253, Empire, Michigan 49630 (hereinafter the "Village"), and the New Neighborhood Property Owners' Association #1, a Michigan non-profit corporation; the New Neighborhood Property Owners' Association #2, a Michigan non-profit corporation; the New Neighborhood Property Owners' Association #3, a Michigan non-profit corporation; the New Neighborhood Property Owners' Association #4, a Michigan non-profit corporation; the New Neighborhood Property Owners' Association #5, a Michigan non-profit corporation; (hereinafter individually an "Association" and collectively the "Associations") which comprise the development known as the New Neighborhood.

**Recitals**

- A. Developer is the owner of real property located in the Village of Empire ("Real Property") more particularly described in the attached Exhibit A.
- B. Each Association is a nonprofit corporation formed to represent the interests of the Members of the Associations and to manage and oversee the open space and any common areas of the New Neighborhood for which those Members are responsible, including, but not limited to, the Community Sewers the subject of this Agreement.
- C. The Developer is developing the Real Property as a plat, known as the New Neighborhood. Each lot within the New Neighborhood will utilize one of the Community Sewers and the party holding legal title to a lot shall be a Member of the Association responsible for the Community Sewer to which the Member's lot discharges.
- D. The Community Sewers servicing the project are to be constructed by Developer on the Real Property and each Community Sewer will be turned over to the Association responsible for those lots.

E. The Community Sewer Plans were prepared by Gourdie-Fraser, licensed engineers, whose address is 123 W. Front Street, Traverse City, MI 49684, and have been reviewed by the Village ("Community Sewer Plans").

F. The Village Council has agreed to adopt a resolution in which the Village will assume responsibility for the effective and continued operation, maintenance, repair and/or replacement of the Community Sewers.

G. The Village desires that Developer and the Associations, and all present and future Members and owners of any lot within the New Neighborhood, indemnify the Village for any and all costs incurred by the Village with respect to the Community Sewers.

### **Agreement**

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties hereby agree as follows:

#### **1. Definitions**

A. Association. Association means one of the nonprofit property owners' associations, each of which is established to maintain, upkeep, and repair the common areas and improvements, including the Community Sewer, for each lot. Association also includes all present and/or future owners of lots within each designated association below. The Associations are known as, and include those lots listed, and are responsible for maintaining the Community Sewer designated as follows:

<b><u>Association</u></b>	<b><u>Lots</u></b>
New Neighborhood Property Owners Association #1	1 - 15
New Neighborhood Property Owners Association #2	16 - 35
New Neighborhood Property Owners Association #3	36 - 47
New Neighborhood Property Owners Association #4	48 - 62
New Neighborhood Property Owners Association #5	63 - 84

B. Member. Member means a present and/or future lot owner. Each Member shall belong to the Association to which its lot(s) has been designated.

C. Developer. Developer means Quercus Alba, L.L.C.

D. Real Property. Real Property means the real estate on which the New Neighborhood will be established, and which is legally described in Exhibit A.

E. Community Sewer. Community Sewer means one of the septic systems and drainfields and the improvements appurtenant to which each of the lots in an Association discharge septic sewage. Each Community Sewer shall be maintained by its Association pursuant to the terms of this Agreement.

F. Community Sewer Plans. Community Sewer Plans means a set of engineering drawings, specifications, and related documents illustrating the construction design for the Community Sewers.

G. Escrow Account. Escrow Account means an amount held in an interest bearing account which may be used only for the inspection, operation, maintenance, repair and/or replacement of the Community Sewers as provided by this Agreement. The interest generated in the account shall for income tax purposes be deemed the income of the Associations with operational Community Sewers and shall be divided among such Associations equally.

2. Developer may construct Community Sewers at the New Neighborhood only in accordance with the Community Sewer Plans. The Developer and/or the Associations shall thereafter annually inspect the Community Sewer for which it is responsible, shall provide to the Village a written report outlining the findings of the annual inspections, shall properly operate and maintain the Community Sewer in accord with all applicable laws and regulations, and shall comply with any use limitations suggested by the village engineer, if any, Gourdie Fraser & Associates or an engineering firm of Developer's choice, the Michigan Department of Environmental Quality, and/or the District Health Department in order to maintain the Community Sewer in optimum working condition. In addition, the Developer and/or the Associations shall provide written notice to the Village of any defects in the privately owned public sewer within forty-eight (48) hours of discovering the defect.

3. Subject to the terms of this Agreement, the Village shall assume responsibility for the effective and continued operation and maintenance of any or all of the Community Sewers if Developer, the Associations, and/or the present or future owners of the lots within the New Neighborhood, or their respective successors, should fail to do so.

4. The Village is hereby granted easements across and under the Real Property, at any time for purposes of inspecting, maintaining, repairing and/or replacing the Community Sewers. The easements granted herein shall be utilized only to insure adequate maintenance, repair and/or replacement of the Community Sewers as deemed necessary by the village engineer or the District Health Department. The location of the easements shall be determined by the Village in a reasonable exercise of its discretion. The easement granted herein is for the specific purposes described. The Village specifically acknowledges and agrees that this easement is intended to be utilized only by Village officials and the Village's agents as a means of insuring that the Community Sewers are functioning properly and/or are adequately maintained. Additionally, the Village or its

agents may utilize the easements to repair and/or replace the Community Sewers in the event Developer or the Association, the New Neighborhood, and/or the present or future lot owners within the New Neighborhood fail to make such repairs or replacements as required in this Agreement. Other than as set forth in this Agreement, it is not intended that the easements created herein shall be used in any way by the public for any purpose whatsoever.

5. The Developer, an Association and/or each of its Members shall jointly and severally indemnify the Village for all actual and continuing costs the Village incurs concerning the Community Sewer for which it is responsible pursuant to this Agreement. The Village shall be indemnified for its actual costs, including actual and reasonable attorney fees, arising out of a breach of this Agreement by an Association and/or each of its Members, including, but not limited to, undertaking necessary operation or maintenance, repair or replacement of the Community Sewer, or seeking legal and/or engineering advice relating to the Community Sewer for that Association. If required as set forth herein, an Association and/or its Members shall reimburse to the Village within fifteen (15) days after notice of the actual costs has been furnished by the Village to the Developer, the Association, and/or its Members. Upon default, the Village may undertake any collection proceeding available to it against the Association and/or its Members. The collection proceedings available to the Village shall include, but not be limited to, the addition of actual costs to the tax roll which will be collected in the same manner as property taxes against real property, or any interest therein, owned by the Developer, Association, or its Members.

6. The Developer shall deposit prior to the sale of any lot within the New Neighborhood an amount equal to the replacement cost of the Community Sewer for the Association with the largest sewage discharge, as certified to the Village attorney by Gourdie Fraser or another engineering firm acceptable to the Village attorney. This account shall be known as the Escrow Account. The Escrow Account shall be established as an interest bearing account at a bank or financial institution agreeable to the Village and the Developer. The bank or financial institution shall provide monthly balances of the Escrow Account to the Developer, Associations, and the Village. The Village may, in three-year increments, review the adequacy of the balance of the Escrow Account, and require an increase in the Escrow Account if the Village deems it necessary, based on reasonable projections of the increased expenses necessary to operate, maintain, repair, or replace the Community Sewer for the Association with the largest sewage discharge. If the Village requires an increase in the Escrow Account hereunder, each Association and the Developer shall contribute, in a pro rata share, an amount to satisfy the Village requirement.

7. Withdrawals from the Escrow Account may only be in accord with this Agreement. If a dispute arises among the Associations concerning withdrawal of money from the Escrow Account, the Village shall have final authority to resolve the dispute.

8. The Escrow Account shall remain in effect for as long as a Community Sewer is in use.

9. The Village may draw upon the Escrow Account in order to recover any expenses and/or costs incurred by the Village as a result of having to inspect, maintain, repair and/or replace all or any portion of a Community Sewer. In order to draw upon the Escrow Account, the Village must:

- (i) Present written notice from the village engineer or District Health Department that inspection, maintenance, repair and/or replacement is necessary;
- (ii) Provide the Developer, the Association and/or their respective successors or assigns, with written notice that inspection, maintenance, repair and/or replacement of all or a portion of the Community Sewer is necessary or has not been adequately performed as determined by the village engineer or District Health Department, and;
- (iii) Allow the Developer, the Association, and/or their respective successors or assigns a period of thirty (30) days to take corrective action which is satisfactory to the village engineer or District Health Department. This period may be shortened by the village engineer or District Health Department if, in their sole discretion, there is imminent danger of pollution.

In the event the Developer, an Association, or their respective successors and assigns fail to take such corrective action in a timely manner, the Village may draw on the Escrow Account by providing copies of invoices and/or other written documentation evidencing the costs and/or the expenses actually incurred by the Village. The Developer, the responsible Association, and/or its Members shall repay the bank or other financial institution any funds withdrawn by the Village in twelve (12) equal monthly installments from the date of the withdrawal.

10. Developer or an Association may also access and draw on the Escrow Account upon written permission from the Village, which permission shall not be unreasonably withheld, in order to maintain, repair and/or replace a Community Sewer. Any such draws on the Escrow Account shall be repaid to the bank or other financial institution by Developer, the responsible Association, and/or its Members in twelve (12) equal monthly installments from the date of the withdrawal.

11. In addition, the Developer, the Associations, and all present and future Members of each Association hereby consent to the establishment of a special assessment district to

reimburse the Village for all costs and fees for which the Village is entitled to be indemnified under this Agreement or which are necessary for the Village to carry out its maintenance, repair, and/or replacement obligations regarding the Community Sewers in the event that the Village does not draw upon the Escrow Account. If a petition of property owners is required to form such a special assessment district, then this Agreement shall be deemed to be such a petition. None of the parties to this Agreement nor their successors in interest (including future Members) can withdraw their consent or their participation in a petition for a special assessment district. It is acknowledged that the Village receives no direct benefit for agreeing to assume obligations relating to the Community Sewers. Accordingly, the Village relies upon all representations, promises and agreements made in this Agreement and related documents.

12. In the event the Village should elect to establish a special assessment district to defray all or a portion of the costs which it should ever incur in constructing or extending a municipal sewer system to service the New Neighborhood, or in the event the Village should elect to establish a special assessment district to defray all or a portion of the costs which it should ever incur to actively operate, maintain, repair and/or replace a Community Sewer, then in any such event all present and future Members shall be deemed to have waived their rights to challenge all aspects of such special assessment district, except as noted below. This waiver includes but is not limited to waiving the right (i) to object to the proposed improvements or to the special assessment district, (ii) to challenge whether the special assessment district is reasonably related to the benefit conferred, (iii) to contest whether a properly functioning privately owned public sewer system or a municipal sewer system specially benefits their properties and (iv) to challenge whether the special benefits conferred on their properties are equivalent to all reasonable costs, including administrative and legal expenses, incurred by the Village in operating and maintaining a privately owned public sewer system or a municipal sewer system. The present or future Members of any Association shall not, however, be deemed to have waived their rights (i) to receive all notices required to be given by law during the creation of the special assessment district, (ii) to have the hearings required by law actually held, (iii) to have an opportunity to be heard at all hearings required by law to be held, and (iv) to adjudicate whether the calculations and special assessment role are mathematically accurate. The Village shall have the sole discretion whether to create a special assessment district under this paragraph.

13. In the event that a municipal sanitary sewer system should be constructed or extended in a manner to facilitate connection with the New Neighborhood, and if the Village should so request, the Community Sewers shall be abandoned and the Associations and their Members shall connect into the municipal sanitary sewer system within six (6) months of being requested by the Village to connect. The Escrow Account shall, at such time, be revoked or canceled by the Village and any money within the account shall be returned to the Associations on a pro rata basis. Nothing contained in this paragraph, however, shall be construed to confer upon any person or entity the right to



connect to a municipal sewer system, if one becomes available, unless the Village should request abandonment of the Community Sewers, as aforesaid.

14. The Articles of Incorporation or Bylaws of the Associations and the Declaration of Covenants & Restrictions shall reference to the satisfaction of the Village Attorney the existence of this Agreement, the terms of which shall bind the parties hereto and their respective heirs, representatives, successors and assigns, including, but not limited to, any and all individuals or entities who may acquire an interest in any lot within the New Neighborhood.

15. The term of this Agreement shall extend for so long as any Community Sewer exists and is operated.

16. The Developer, the Associations, and all present and/or future owners of lots within the New Neighborhood subdivision hereby hold the Village, its officers, employees, agents, successors, and assigns harmless from any and all damages, legal fees or expenses, awards, demands, rights, causes of action, losses, or claims which may arise out of any failure of any Community Sewer.

17. The Developer hereby agrees to include in any future contracts with its engineers and/or contractors a provision that recognizes the Village as a third party beneficiary of those contracts with the ability to enforce claims against the engineers and/or contractors, under either contract or negligence theories, regardless of privity.

18. The Developer hereby agrees to reimburse the Village for the actual and reasonable attorney fees it incurred in the development of this Agreement; provided, that reimbursement shall not exceed \$1,000.

19. This Agreement shall inure to and be binding upon the parties hereto, their heirs, successors, and assigns.

20. This Agreement shall be governed and construed in accordance with the laws of the State of Michigan.

21. Notwithstanding any other provision herein, the parties hereby agree that when the Developer conveys legal title to non-developer owners of 100% of the lots, the responsibilities of the Developer under this Agreement shall end. In addition, the parties agree that the responsibilities of a Member shall end upon the conveyance of legal title to another Member.

22. This Agreement constitutes the entire understanding and agreement between the parties which may not be amended or modified without the express written consent of all parties hereto.

23. If any provision of this Agreement is declared invalid by a Court of competent jurisdiction, then the validity of the remaining provisions of this Agreement shall not be affected, and this Agreement shall be construed and applied as if it did not contain the provision declared invalid.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first written above.

VILLAGE OF EMPIRE

Michael J. Deering  
By: MICHAEL J. DEERING  
Its: PRESIDENT

STATE OF MICHIGAN  
COUNTY OF LEELANAU

The foregoing instrument was acknowledged before me this 19th day of August, 2002, by Michael Deering, President of the Village of Empire, Leelanau County, Michigan on behalf of said Village.

Lea Ann Sterling  
, Notary Public  
County, Michigan

My Commission Expires:

**LEA ANN STERLING**  
Notary Public, Leelanau County, MI  
My Commission Expires 12/13/2005

QUERCUS ALBA, L.L.C.

Robert Foulkes

By: Robert Foulkes  
Its: Manager

STATE OF MICHIGAN  
COUNTY OF GRAND TRAVERSE

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of August, 2002, by Robert Foulkes, Manager, on behalf of said Quercus Alba, L.L.C.

Sarah A. Liles

Sarah A. Liles, Notary Public  
Grand Traverse (Kent) County, Michigan  
My Commission Expires: 5/14/03

NEW NEIGHBORHOOD PROPERTY  
OWNERS ASSOCIATION #1

Douglas S. Bishop

By: Douglas S. Bishop  
Its: Incorporator

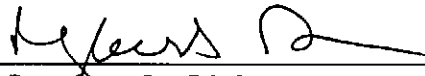
STATE OF MICHIGAN  
COUNTY OF GRAND TRAVERSE

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of August, 2002, by Douglas S. Bishop, Incorporator of New Neighborhood Property Owners Association #1, on behalf of said Association.

Sarah A. Liles

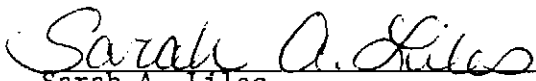
Sarah A. Liles, Notary Public  
Grand Traverse (Kent) County, Michigan  
My Commission Expires: 5/14/03

NEW NEIGHBORHOOD PROPERTY  
OWNERS' ASSOCIATION #2

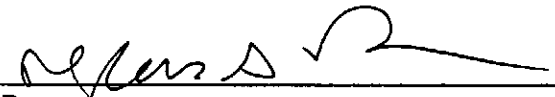
  
By: Douglas S. Bishop  
Its: Incorporator

STATE OF MICHIGAN  
COUNTY OF GRAND TRAVERSE

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of August, 2002, by Douglas S. Bishop, incorporator of New Neighborhood Property Owners Association #2, on behalf of said Association.

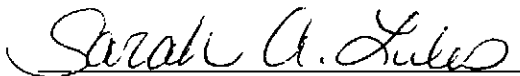
  
Sarah A. Liles, Notary Public  
Grand Traverse (Ken) County, Michigan  
My Commission Expires: 5/14/03

NEW NEIGHBORHOOD PROPERTY  
OWNERS' ASSOCIATION #3


  
By: Douglas S. Bishop  
Its: Incorporator

STATE OF MICHIGAN  
COUNTY OF GRAND TRAVERSE

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of August, 2002, by Douglas S. Bishop, incorporator of New Neighborhood Property Owners Association #3, on behalf of said Association.

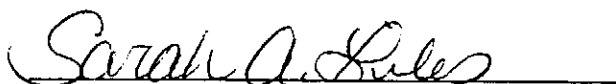
  
Sarah A. Liles, Notary Public  
Grand Traverse (Ken) County, Michigan  
My Commission Expires: 5/14/03

NEW NEIGHBORHOOD PROPERTY  
OWNERS' ASSOCIATION #4

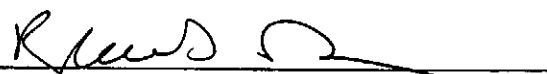
  
By: Douglas S. Bishop  
Its: Incorporator

STATE OF MICHIGAN  
COUNTY OF GRAND TRAVERSE

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of August, 2002, by Douglas S. Bishop, incorporator of New Neighborhood Property Owners Association #4, on behalf of said Association.


  
Sarah A. Liles, Notary Public  
Grand Traverse (Kent) County, Michigan  
My Commission Expires: 5/14/03

NEW NEIGHBORHOOD PROPERTY  
OWNERS' ASSOCIATION #5

  
By: Douglas S. Bishop  
Its: Incorporator

STATE OF MICHIGAN  
COUNTY OF GRAND TRAVERSE

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of August, 2002, by Douglas S. Bishop, incorporator of New Neighborhood Property Owners Association #5, on behalf of said Association.

  
Sarah A. Liles, Notary Public  
Grand Traverse (Kent) County, Michigan  
My Commission Expires: 5/14/03

Drafted By:  
Steven R. Fox (P52390)  
BISHOP & HEINTZ, P.C.  
440 W. Front St., P.O. Box 707  
Traverse City, MI 49685-0707  
(231) 946-4100

EXHIBIT "A"  
Property Description

## PARCEL D

THAT PART OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 19, TOWN 28 NORTH, RANGE 14 WEST, VILLAGE OF EMPIRE, EMPIRE TOWNSHIP, LEELANAU COUNTY, MICHIGAN, MORE FULLY DESCRIBED AS: COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 19; THENCE ALONG THE SOUTH SECTION LINE, NORTH 87 DEGREES 21' 0" WEST, 850.04 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SECTION LINE, NORTH 87 DEGREES 21' 0" WEST, 1002.33 FEET; THENCE ALONG THE EASTERLY LINE OF THE WEST 20 RODS OF SAID SOUTH HALF OF THE SOUTHWEST QUARTER, NORTH 2 DEGREES 32' 50" EAST, 1328.60 FEET; THENCE ALONG THE SOUTH EIGHTH LINE, SOUTH 87 DEGREES 08' 0" EAST, 1024.05 FEET; THENCE SOUTH 3 DEGREES 32' 0" WEST, 1325.00 FEET TO THE POINT OF BEGINNING.





## New Neighborhood Stormwater Drainage Facilities and Open Space Maintenance Agreement

This agreement is made by and between Quercus Alba, L.L.C. (the Developer), New Neighborhood Property Owner's Association #1, New Neighborhood Property Owner's Association #2, New Neighborhood Property Owner's Association #3, New Neighborhood Property Owner's Association #4, New Neighborhood Property Owner's Association #5 (the Associations), the Leelanau Conservation District (the District), and the Village of Empire (the Village), concerning the manner by which the development known as The New Neighborhood will maintain stormwater drainage facilities and open spaces within the development.

WHEREAS, the Associations and Developer (collectively hereinafter referred to as Associations/Developer), own and are developing certain property legally described as follows:

THAT PART OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 19, TOWN 28 NORTH, RANGE 14 WEST, VILLAGE OF EMPIRE, EMPIRE TOWNSHIP, LEELANAU COUNTY, MICHIGAN, MORE FULLY DESCRIBED AS: COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 19; THENCE ALONG THE SOUTH SECTION LINE, NORTH 87 DEGREES 21' 0" WEST, 850.04 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SECTION LINE, NORTH 87 DEGREES 21' 0" WEST, 1002.33 FEET; THENCE ALONG THE EASTERLY LINE OF THE WEST 20 RODS OF SAID SOUTH HALF OF THE SOUTHWEST QUARTER, NORTH 2 DEGREES 32' 50" EAST, 1328.60 FEET; THENCE ALONG THE SOUTH EIGHTH LINE, SOUTH 87 DEGREES 08' 0" EAST, 1024.05 FEET; THENCE SOUTH 3 DEGREES 32' 0" WEST, 1325.00 FEET TO THE POINT OF BEGINNING.

WHEREAS, the Associations/Developer have submitted an engineering certification of the New Neighborhood stormwater drainage system prepared by Gourdie/Fraser & Associates, Inc., dated 6 - 21 - 02; and,

WHEREAS, this agreement shall be binding upon the members of the Associations, jointly and severally, in addition to the Associations or their successors; and

WHEREAS, said storm water drainage facilities are in conformance with the preliminary plans approved by the Leelanau County Erosion Control Office of the Leelanau Conservation District (the District); and

WHEREAS, the District has indicated that the storm water drainage facilities and soil erosion control structures, as detailed in the plans submitted by Gourdie/Fraser & Associates, Inc., dated July 11, 2002, are adequate, provided that the Association provides an agreement for the maintenance of the referenced storm water drainage facilities; and,



WHEREAS, the storm water drainage facilities are described and detailed as Easements on the Exhibit B drawing prepared by Gourdie/Fraser & Associates, Inc., which drainage easements are hereby incorporated by reference; and

WHEREAS, the Village relied on the representations of the Developer concerning the *Stormwater Drainage Facilities and Open Space Maintenance Agreement* in approving the New Neighborhood PUD; and

WHEREAS, the Village relied upon representations of the Developer concerning the establishment, preservation and maintenance of open spaces in approving the New Neighborhood PUD; and

WHEREAS, the Associations/Developer have agreed to provide for maintenance of the storm water drainage facilities and to establish, preserve, and maintain the open spaces within the New Neighborhood;

NOW, THEREFORE, IT IS HEREBY AGREED:

That, the District approves the final plans upon the following conditions:

1. That, in the event any changes or alterations are to be made by the Associations to the drainage facilities which affects flow, capacity, or the nature of the drainage system, said changes are to be approved in writing by the District and any such changes will be noted as to be in compliance with this Maintenance Agreement.
2. That, the Associations/Developer shall maintain, at their expense, the drainage facilities including, but not limited to, periodic removal of accumulated sediment, removal of debris and other obstructions which alter or reduce the effective operation of drainage facilities capacity or function, maintenance of inlets and/or outlets, mowing of side slopes or other lawful vegetation control. Vegetation control measures shall be taken when growth significantly hinders the facilities capacity or function.
3. That, in the event the Associations/Developer does sell, convey, or transfer title to any, all or part of the above-described lands, the successor, or successors in interest, shall be responsible for the costs of maintenance of the storm water drainage facilities detailed on the approved plans for the New Neighborhood. Upon the sale, conveyance or transfer of interest by the Associations/Developer, shall notify the District, by its designated officer, of such sale, conveyance or transfer of interest specifying the name of the successor in interest and the description of the lands conveyed.



4. That, in the event that the storm water facility is not properly maintained, the District shall notify the Associations/Developer, and specify the necessary maintenance. Within thirty (30) days of the notice, the Associations/Developer shall perform the specified routine maintenance, at its expense. Within thirty-six (36) hours of notice or a time otherwise agreed to between Associations/Developer and the District, the Associations/Developer shall perform any specified emergency maintenance.
5. That, in the event the Associations/Developer fails to perform the maintenance so specified, the Soil Erosion Control Officer or the Village may perform the maintenance or contract with third parties to perform the maintenance. In either instance, the Associations/Developer shall be responsible for the actual costs incurred by the District or the Village or charged to it to perform the maintenance. The District or the Village shall provide the Associations/Developer with a written statement of the costs incurred for the specified maintenance and the Associations/Developer shall pay the same within thirty (30) days of receipt of the statement. If the Associations/Developer fails to pay the amount set forth in the statement, the Soil Erosion Control Officer or the Village may place a lien for the amount of the costs incurred including actual and reasonable attorney fees incurred in the preparing of the lien upon or otherwise encumbering any lots within the New Neighborhood development. The assessment may be made by the Village or the Leelanau County Treasurer, and shall be collected as taxes due and owing for the benefit of the District or the Village. Any liens arising pursuant to this provision or agreement may be enforced in any manner by which the Village or District may foreclose tax liens under state law then in effect.
6. The Associations/Developer, hereby grants the District and/or the Village the right to access the Easements shown on the Exhibit "B" Drawings to inspect, maintain, or perform any repair work permitted by this agreement.
7. The Associations/Developer shall, at its expense, secure from the affected owners of land, all easements, releases, or rights of way necessary for the facilities, and each shall be recorded in the Leelanau County Register of Deeds.

IT IS FURTHER AGREED, that the Developer, the Associations and their Members will establish, preserve and maintain the Open Spaces within the development as set forth within the *Declaration of Covenants & Restrictions*. In the event that the Open Spaces are not properly maintained, the Village shall notify the Associations/Developer, and specify the necessary maintenance. Within thirty (30) days of the notice, the Associations/Developer shall perform the specified routine maintenance, at its expense. In the event that the Associations/Developer fail to perform the maintenance required by the Village, the Village may perform the



maintenance or contract with third parties to perform that maintenance. In either instance, the Associations/Developer shall be responsible for the actual costs incurred by the Village or charged to it to perform the maintenance. The Village shall provide the Associations/Developer with a written statement of the costs incurred for the specified maintenance and the Associations/Developer shall pay the same within thirty (30) days of receipt of that statement. If the Associations/Developer fail to pay the amount set forth within the statement submitted by the Village, the Village may place a lien for the amount of the costs incurred (including actual and reasonable attorney's fees incurred in preparing the lien upon or otherwise encumbering the lots within the New Neighborhood). The assessment may be made by the Village and shall be collected as taxes due and owing for the benefit of the Village. Any lien arising pursuant to this provision or agreement may be enforced in any manner by which the Village may foreclose tax liens under state law then in effect.

IT IS FURTHER AGREED, that neither the District, Associations/Developer nor the Village shall undertake any action, or neglect or refuse, to perform any act which increases the burden of any party in the performance of this agreement.

IT IS FURTHER AGREED, notwithstanding any other provision herein, the parties hereby agree that when the Developer conveys legal title to non-developer owners of 100% of the lots, the responsibilities of the Developer under this Agreement shall end. In addition, the parties agree that the responsibilities of a Member shall end upon the conveyance of legal title to another Member.

IT IS FURTHER AGREED, that this document shall be executed in recordable form and recorded in the office of the Leelanau County Register of Deeds.

IT IS FURTHER AGREED, that the term "Associations/Developer" shall include all present and/or future lot owners within the Development and shall include their heirs, assigns, and/or successors in interest and the term "District" shall include its assigns and/or successors in interest.

Prepared by Bishop & Heintz P.C. on July 31, 2002 .



IN WITNESS WHEREOF, the parties have executed this Agreement on the  
7 th day of August, 2002.

In the Presence of:

QUERCUS ALBA, L.L.C.

Sarah A. Heyder  
 Sarah A. Heyder  
Lori DuCheney  
 Lori DuCheney  
 STATE OF MICHIGAN )  
 ) SS.  
 COUNTY OF LEELANAU )

Robert Foulkes  
 By: Robert Foulkes  
 Its: Manager

On this 7 th day of August, 2002, before me Notary Public,  
 personally appeared to me known to be the individual described herein, and who  
 acknowledged the same to be his/her free act and deed.

Sarah A. Liles  
 Sarah A. Liles, Notary Public  
 Kent acting in Leelanau County, MI  
 My Commission Expires: 5/14/03

IN WITNESS WHEREOF, the parties have executed this Agreement on the  
7 th day of August, 2002.

In the Presence of:

NEW NEIGHBORHOOD PROPERTY  
 OWNERS' ASSOCIATION #1

Sarah A. Heyder  
 Sarah A. Heyder  
Lori DuCheney  
 Lori DuCheney  
 STATE OF MICHIGAN )  
 ) SS.  
 COUNTY OF LEELANAU )

By: Douglas S. Bishop  
 Its: Douglas S. Bishop, Incorporator

On this 7 th day of August, 2002, before me Notary Public,  
 personally appeared to me known to be the individual described herein, and who  
 acknowledged the same to be his/her free act and deed.

Sarah A. Liles  
 Sarah A. Liles, Notary Public  
 Kent acting in Leelanau County, MI  
 My Commission Expires: 5/14/03

IN WITNESS WHEREOF, the parties have executed this Agreement on the  
7 th day of August, 2002.



In the Presence of:

NEW NEIGHBORHOOD PROPERTY  
OWNERS' ASSOCIATION #2Sarah A. Heyder  
Sarah A. HeyderLori DuCheney  
Lori DuCheney

STATE OF MICHIGAN )

) SS.

COUNTY OF LEELANAU )

By: no

Its: Douglas S. Bishop, Incorporatory

On this 7 th day of August, 2002, before me Notary Public,  
personally appeared to me known to be the individual described herein, and who  
acknowledged the same to be his/her free act and deed.

Sarah A. Liles  
Sarah A. Liles

Notary Public

Kent acting in Leelanau County, MI

My Commission Expires: 5/14/03

IN WITNESS WHEREOF, the parties have executed this Agreement on the  
7 th day of August, 2002.

In the Presence of:

NEW NEIGHBORHOOD PROPERTY  
OWNERS' ASSOCIATION #3Sarah A. Heyder  
Sarah A. HeyderLori DuCheney  
Lori DuCheney

STATE OF MICHIGAN )

) SS.

COUNTY OF LEELANAU )

By: no

Its: Douglas S. Bishop, Incorporator

On this 7 th day of August, 2002, before me Notary Public,  
personally appeared to me known to be the individual described herein, and who  
acknowledged the same to be his/her free act and deed.

Sarah A. Liles  
Sarah A. Liles

Notary Public

Kent acting in Leelanau County, MI

My Commission Expires: 5/14/03

IN WITNESS WHEREOF, the parties have executed this Agreement on the  
7 th day of August, 2002.



In the Presence of:

NEW NEIGHBORHOOD PROPERTY  
OWNERS' ASSOCIATION #4

Sarah A. Heyder  
Sarah A. Heyder  
Lori DuCheney  
Lori DuCheney  
STATE OF MICHIGAN  
COUNTY OF LEELANAU

By: Douglas S. Bishop  
Its: Douglas S. Bishop, Incorporator

) SS.

On this 7th day of August, 2002 before me Notary Public,  
personally appeared to me known to be the individual described herein, and who  
acknowledged the same to be his/her free act and deed.

Sarah A. Liles  
Sarah A. Liles, Notary Public  
Kent acting in Leelanau County, MI  
My Commission Expires: 5/14/03

IN WITNESS WHEREOF, the parties have executed this Agreement on the  
7th day of August, 2002

In the Presence of:

NEW NEIGHBORHOOD PROPERTY  
OWNERS' ASSOCIATION #5

Sarah A. Heyder  
Sarah A. Heyder  
Lori DuCheney  
Lori DuCheney  
STATE OF MICHIGAN  
COUNTY OF LEELANAU

By: Douglas S. Bishop  
Its: Douglas S. Bishop, Incorporator

) SS.

On this 7th day of August, 2002 before me Notary Public,  
personally appeared to me known to be the individual described herein, and who  
acknowledged the same to be his/her free act and deed.

Sarah A. Liles  
Sarah A. Liles, Notary Public  
Kent acting in Leelanau County, MI  
My Commission Expires: 5/14/03

IN WITNESS WHEREOF, the parties have executed this Agreement on the  
7th day of August, 2002



In the Presence of:

LEELANAU CONSERVATION DISTRICT

Georgia J. NewtonBy: Steven R. ChristensenName: Steven R. Christensen  
Title: Soil Erosion Control Officer

STATE OF MICHIGAN )

) SS

COUNTY OF LEELANAU )

On this 20<sup>th</sup> day of August 2002, before me, Notary Public, personally appeared to me known to be Steven R. Christensen, and who acknowledged the same to be his/her free act and deed.Georgia J. Newton, Notary Public  
County, MI

My commission expires:

GEORGIA J. NEWTON

Notary Public, Leelanau County, MI  
My Commission Expires 12/29/2002IN WITNESS WHEREOF, the parties have executed this Agreement on the  
19 th day of August 2002.

In the Presence of:

VILLAGE OF EMPIRE

Lanny Sterling  
Chad M. NicolsonBy: Michael J. DeeringName: MICHAEL J. DEERING  
Title: PRESIDENT

STATE OF MICHIGAN )

) SS

COUNTY OF LEELANAU )

On this 19<sup>th</sup> day of August 2002, before me, Notary Public, personally appeared to me known to be Michael Deering, and who acknowledged the same to be his/her free act and deed.Lea Ann Sterling, Notary Public  
County, MI

My commission expires:

LEA ANN STERLING

Notary Public, Leelanau County, MI  
My Commission Expires 12/13/2005