

**DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
FALLBROOKE FARMS SUBDIVISION**

This Declaration is executed on May 19, 2004, by **OgrandVELT Limited Partnership and OgrandX Limited Partnership**, Michigan limited partnerships, whose address is 201 W. Big Beaver Road, Suite 720, Troy, Michigan 48084 ("Declarant").

RECITALS:

A. Declarant is fee simple Owner of a certain parcel of land located in the Township of Macomb, Macomb County, Michigan, and more particularly described on Exhibit "A" attached which Declarant intends to establish as a single family residential Subdivision.

B. Fallbrooke Farms Subdivision as recorded in Liber 156, Pages 68 through 74, Macomb County Records ("Subdivision") is intended by Declarant to be developed as a single family Subdivision with portions intended by Declarant to be dedicated to common use for the benefit of all the residential Owners in the Subdivision.

C. The Common Areas, as more specifically defined in Section 1.3 herein, will consist of a twenty (20') foot wide landscape easement and detention basin as shown on Exhibit "A" and also shown and depicted on a certain landscape plan (LS 02.225.12) prepared by Calvin Hall & Associates, Revision date January 14, 2003 as approved by the Macomb Township Planning Commission (Exhibit "B").

NOW, THEREFORE, Declarant hereby declares the Subdivision shall be held, sold, conveyed, mortgaged and interests herein transferred subject to the following easements, restrictions, covenants and conditions, which are for the purposes set forth above and for the purposes of protecting the value and desirability of the Subdivision and which shall run with the Subdivision and be binding on all persons having any right, title or interest in the Subdivision or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1.1 Assessment Unit. "Assessment Unit" shall mean any single family residential Subdivision Lot, developed within the Subdivision.

Section 1.2 **Association.** "Association" means Fallbrooke Farms Subdivision Association, a Michigan non-profit corporation, its successors and assigns.

Section 1.3 **Common Areas.** "Common Areas" shall mean all the real property now or hereafter dedicated and/or declared by Declarant for the common use and enjoyment of all of the Owners of property in the Subdivision, including certain easements for maintenance of landscaped areas. No area shown or indicated on any plan or plat of any portion of the Subdivision shall **be** considered as a Common Area unless and until it has been dedicated and/or declared by Declarant for the common use and enjoyment of the Owners in the Subdivision by a recorded instrument executed by Declarant. The initial Common Areas to be administered by the Association shall be the Landscape Easement as shown on the plat, specifically a twenty (20') foot easement for landscaping mat is adjacent south to lots 1, 90 and 105 along 25 Mile Road, and also over an area depicted on Exhibits "A" and "B" as a detention basin. Said depiction and description of said Common Areas is in accordance with the Macomb Township Zoning Ordinance. The Landscape Easement and Common Areas to be administered by the Association exclude the area depicted as "Fallbrooke Park (Passive)" on Exhibit "A".

Section 1.4 **Declarant.** "Declarant" shall mean and refer to Elro Corporation, a Michigan corporation, its successors and assigns.

Section 1.5 **Declaration.** "Declaration" means this Declaration of Easements, Covenants, Conditions and Restrictions for Fallbrooke Farms Subdivision, as recorded in the Office of the Register of Deeds for Macomb County, Michigan.

Section 1.6 **Detention Basin.** "Detention Basin" shall mean and refer to the storm water detention pond, the pump station and stormceptors.

Section 1.7 **Lot.** "Lot" means (a) any numbered Lot shown on the recorded plat of the Subdivision or any further Subdivisions subjected to this Declaration, (b) any building site resulting from the combination of Lots, and (c) any building site resulting from a proper and approved split of any Lot(s).

Section 1.8 **Owner.** "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title (or in the case of any property which is the subject of a validly existing land contract, the land contract vendee) to any Lot which is within the Subdivision, except that one holding any such interest merely as security for the performance of an obligation shall not be deemed an Owner. If there is more than one Owner of an Assessment Unit, the Owners shall designate who will vote on behalf of such Assessment Unit.

Section 1.9 **Subdivision.** "Subdivision" shall mean and refer to Fallbrooke Farms Subdivision as platted and recorded in the Office of the Register of Deeds for Macomb County, Michigan.

ARTICLE H

ESTABLISHMENT AND OPERATION OF THE ASSOCIATION

Section 2.1 **The Fallbrooke Farms Subdivision Association.** A Michigan non-profit corporation known as the Fallbrooke Farms Subdivision Association (the "Association") will be established by Declarant pursuant to Articles of Incorporation and Bylaws. The general purpose of the Association is to encourage and to promote the highest standards of management and maintenance for the

land included in the Subdivision, and to assist the members of the Association in maintaining the Subdivision as a residential development of the highest quality. In furtherance of such purposes, the Association shall have such power and authority as are conferred upon it in its Articles of Incorporation and by this Declaration. Its Board of Directors shall be vested with and shall exercise all powers and authorities thus conferred upon it.

Section 2.2 Membership in the Association. There shall be two classes of membership in the Association as established in its Articles of Incorporation. The Declarant shall be the "Class "A" member; and each Owners' member shall be a "Class B" member.

Section 2.3 Voting. Membership in the Association shall be established in the manner set forth in its Articles of Incorporation. Voting by members of the Association shall be in accordance with the following provisions:

a. Prior to the conveyance by Declarant's builder(s) to individual purchase Owners of 90% of all Assessment Units planned to be developed in the Subdivision and the anticipated expansion thereof, as is determined by the development plan approved by the Township, as the same may be amended from time to time, for the Subdivision and the anticipated expansion thereof, no member, other than the Class A member, shall be entitled to vote. Until such time, Declarant shall be solely entitled to appoint the Board of Directors of and vote in the Association. At and after the conveyance of 90% of the Assessment Units as set forth above, each member of the Association shall be entitled to vote in accordance with Paragraph "b" of this Section 3. The 90% as referenced in this section and in Section 6.6 may be reduced to a lesser percentage upon the sole discretion of the Declarant or its successors or assigns prior to the date of the first annual meeting of the Association.

b. The presence in person or by proxy of members representing at least 60% in number of the Assessment Units qualified to vote shall constitute a quorum for holding a meeting of the members of the Association, except for voting on questions specifically required herein, or in *the* Articles of Incorporation or Bylaws of the Association, to require a greater quorum. The written vote of any person furnished at or prior to any duly called meeting at which meeting said person is not otherwise present in person or by proxy shall be counted in determining the presence of a quorum with respect to the question upon which the vote is cast. Only one vote shall be cast for each Assessment Unit.

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

d. A majority, except where otherwise provided herein or in the Articles of Incorporation or Bylaws of the Association, shall consist of the votes of more than 50% of the Assessment Units qualified to vote and voted by members of the Association in person or by proxy (or written vote if applicable) at a given meeting of the members of the Association. A majority shall be required for all matters and shall control unless a greater percentage is specifically required herein or in the Articles of Incorporation or Bylaws of the Association as to specific matters.

- e. Other provisions as to voting by members, not inconsistent with the provisions herein contained, may be set form in the Articles of Incorporation or Bylaws of the Association.

ARTICLE m

COMMON AREAS, LANDSCAPE AREAS AND EASEMENTS RELATED THERETO

Section 3.1 Nature and Extent of Common Areas. In addition to the Common Areas more particularly described in Section 1.3 hereof, Declarant may declare, dedicate and/or designate such additional Common Areas as it, in its sole discretion, deems appropriate, whether of an aesthetic, utilitarian, administrative, recreational or other nature. There is no obligation on the part of Declarant to create, construct, establish, declare, dedicate or designate any particular additional area or additional improvement as a Common Area unless is has specifically undertaken to do so in this Declaration or in a subsequent recorded instrument.

Section 3.2 Owners' Easements of Enjoyment of Common Areas. Subject to the provisions of Section 6.2, every Owner shall have an easement of enjoyment in and to the Common Areas now existing or hereafter designated by the Declarant, which right and easement shall be appurtenant to such Ownership, subject to the following:

- a. The right of die Association to make and enforce reasonable rules and regulations to carry out the terms of this Declaration and to fulfill its purposes pursuant to Section 4.2 hereof.
- b. The right of the Association to charge fees for the maintenance of landscaping, situated within the Common Areas and lighting, if any, which fees shall be utilized solely for the maintenance, upkeep and administration of the Common Areas.
- c. The right of the Association to construct, maintain and improve the Common Areas for the benefit of the Owners and to permit die use thereof by other persons, subject to the approval of all applicable governmental authorities.
- d. The right of Declarant, at any time prior to the conveyance of 90% of the Assessment Units therein (and the Association thereafter) to grant easements, licenses, rights-of-entry and rights-of-way over and across die Subdivision.

Section 3.3 Utility Easements.

- a. Declarant also hereby reserves for the benefit of itself and all future Owners of die Subdivision or any portion(s) thereof perpetual easements to utilize, tap, tie into, extend and enlarge all utility mains located in the Subdivision, including but not limited to, water, gas, electric, telephone, telecommunications, storm and sanitary sewer mains, subject to the prior approval of all governmental authorities and public utilities having jurisdiction. In the event Declarant taps, ties into, extends or enlarges any utilities located in the Subdivision, it shall be obligated to pay all of the expenses reasonably necessary to restore the affected portion of the Subdivision to its state immediately prior to such tapping, tying-in, extension or enlargement.
- b. Declarant shall also be empowered to grant such easements, licenses, rights-of-entry and rights-of-way, under and across the Common Areas to the Township, other public authorities or private utilities, as may be necessary for it to fulfill any responsibilities of

construction, maintenance, repair, decoration or replacement of any of the utilities, including without limitation sanitary and storm sewer systems, servicing the Subdivision.

Section 3.4 Maintenance of Subdivision Identification Signs and Landscape Easements. The Association and/or Lot Owner(s) are required to and shall be permitted to enter upon those portions of the plat of the Subdivision as may be necessary to install, repair, replace and maintain such signs, walls, lighting, sprinkling systems and planting, if any, hereinafter collectively referred to as the "Landscape Easement", in accordance with the landscaping plan approved by Macomb Township.

In the event the Association and/or Lot Owner(s) shall, at any time, fail to maintain the Landscape Easement in accordance with the approved landscape plan, then, Macomb Township is authorized to enter the Landscape Easement to maintain the same. The Township shall serve notice by first class mail to the Owner(s), appearing on the Township tax rolls, of each Lot in the Subdivision. The notice shall include a demand that deficiencies in the maintenance be cured within thirty (30) days thereof and notify the Owners of the date, time and place of a public hearing before the Township Board of Trustees or such other boards or body of officials to whom the Township may delegate such responsibility. The hearing shall be held within fifteen (15) days of the notice. At the hearing the Township may modify the terms of the original notice of deficiencies in maintenance and may grant an extension of time within which the deficiencies shall be cured. If the deficiencies, set forth in the original notice or in the modification thereof, are not cured within thirty (30) days or any extensions of time granted at the hearing, the Township, in order to eliminate and cure the deficiencies in the operation and maintenance of the Landscape Easement, may enter upon the property and maintain the Landscape Easement for a period of up to one (1) year. Maintenance of the Landscape Easement by the Township shall not constitute a taking of the Landscape Easement nor vest in the public any additional right to use the same.

Within sixty (60) days prior to the expiration of the aforesaid one (1) year period, that the Landscape Easement is under the control and jurisdiction of the Township, a majority of the Lot Owner(s) or the Association may request another public hearing be held or the Township may call another public hearing upon notice in the same manner as set forth above. At the hearing the Association or Lot Owner(s) shall show cause why maintenance by the Township shall not continue for a succeeding one (1) year period. If the Township shall, reasonably, determine that the Association and/or Lot Owner(s) are ready, willing and able to maintain the Landscape Easement, the Township shall cease to operate and maintain the Landscape Easement at the end of said year. If the Township shall reasonably determine that the Association, or Lot Owner(s) are not ready, willing and able to maintain the Landscape Easement during the next succeeding year, then subject to a similar public hearing and determination in each successive year thereafter, the Township may continue to enter upon and maintain said Landscape Easement.

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

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

The actual costs and expenditures, including administration expenses and attorney fees, incurred by the Township as a result of its maintenance of the Landscape Easement or the immediate abatement of

an impending danger or nuisance in relation thereto, shall be at the expense of the Association or the Lot Owner(s) and such costs and expenditures shall be assessed against the Lots in the Subdivision and become due, collected and returned for non-payment in the same manner and at the same time as ad valorem property tax levies of the Township.

The Township, at its option, shall be subrogated to any rights the Association and/or Lot Owner(s) may have in this Declaration for the imposition of assessments and the collection thereof in relation to the Landscape Easement.

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

Section 3.5 Maintenance of Detention Basin. The maintenance of the detention basin which includes the stormwater detention pond, the pump station and stormceptors shall be the responsibility of the Association and/or Lot Owner(s) pursuant to the provisions, terms and conditions of a certain Special Assessment District as established and approved by Macomb Township. The Special Assessment District established by Macomb Township authorizes the Township to enter the Subdivision property to maintain the detention basin and to assess the costs of the Township's maintenance equally on all lots in the Subdivision, in the event the Association and/or Lot Owner(s) shall, at any time, fail to maintain the detention basin in accordance with the established Special Assessment District.

Section 3.6 Termination of Easements. If the appropriate governmental authority, within its sole discretion, accepts a dedication and conveyance of any Common Area, or any part thereof, the obligation of the Declarant and the Association to maintain such Common Area, or portion thereof, so dedicated, shall terminate, but the right of the Owners of Assessment Units to continue to use such dedicated Common Areas shall continue. At such time, the appropriate governmental authority shall undertake all maintenance obligations with respect to the Common Area, or portion thereof, so dedicated, and the obligation of Declarant and the Association with respect thereto shall terminate, except with respect to outstanding assessments for maintenance obligations as provided for herein.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.1 Creation of the Lien and Personal Obligation for Assessments. The Declarant hereby covenants, and each Owner of any Assessment Unit by acquisition of title hereeto or an interest therein is deemed to covenant, and agrees to pay to the Association (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall from date of assessment be a charge and a continuing lien upon the Assessment Unit against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Assessment Unit at the time when the assessment fell due, except a land contract purchaser shall be so personally liable and such land contract seller shall not be personally liable for all such assessments levied up to and including the date upon which such land contract seller actually retakes possession of such Assessment Unit following extinguishment of all rights of the land contract purchaser of the Assessment Unit. The personal obligation for the delinquent assessment shall not pass to successor Owners unless expressly assumed by them. A builder who purchased a Lot for resale in the ordinary course of his business may be reimbursed from the initial purchaser of a Lot from such builder at closing, a sum equal

to the pro-rata share of the annual assessment for such Lot for the remainder of the applicable year. The builder has the personal obligation to pay the full annual assessment if he was the Owner or land contract purchaser of the Lot at the time the assessment fell due.

Section 4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, welfare and recreation of the residents of the Subdivision, including, but not limited to, the improvement and maintenance, repair and replacement of, and insurance for the Common Areas and all improvements thereon, the detention basin, the payment of taxes and assessments, if any, levied against the Common Areas and, in general, the carrying out of the purposes set forth in or permitted by this Declaration and for the general welfare of the Subdivision. The Association may provide for reasonable reserves for contingencies, replacements and improvements.

Section 4.3 Method of Assessment. The following shall be assessable.

a. The assessment shall be made against all Assessment Units in the Subdivision. The Common Areas, except to the extent of an undivided Ownership interest therein owned by the Owner of any Assessment Unit, shall not be subject to assessments hereunder. The items of expense which are included within the annual assessment shall be determined by the Association in its sole discretion, subject to the limitations set forth in this Section 4.3, and shall be subject to equal proration among the Assessment Units.

b. The total assessment shall be made against each Assessment Unit as provided in subparagraph a. above, subject to the following:

(i) The initial purchaser of each Lot which includes a builder purchasing a Lot for resale in the ordinary course of his business shall pay to the Association simultaneously with the acquisition of such Lot a sum equal to the pro-rata share of the initial annual assessment for such Lot for the remainder of the applicable year. The pro-rata share will be rounded forward to the first day of the next month if the initial purchaser or builder acquires the Lot on or after the fifteenth day of the month. The pro-rata share will be rounded back to the first day of the existing month if the initial purchaser or builder acquires the Lot prior to the fifteenth day of the month.

(ii) Until January 1 of the year immediately following the conveyance of the first Lot by a builder to an Owner, the annual assessment shall be One Hundred Eighty (\$180.00) Dollars per Lot owned by an Owner. A builder who purchased a Lot for resale in the ordinary course of business may be reimbursed from the initial purchaser of a Lot from such builder a sum equal to the pro-rata share of the annual assessment for such Lot for the remainder of the applicable year. The pro-rata share will be calculated according to the provisions of Section 4.3b(i). The builder has the personal obligation to pay the full annual assessment for the applicable year if he was the Owner or land contract purchaser of the Lot at the time the assessment fell due.

(iii) From and after January 1 of the year immediately following the conveyance of the first Lot by a builder, to an Owner, the maximum annual assessment may be increased by Declarant until the transfer date, and thereafter the Board of Directors of the Association, as necessary each year to an amount which is not more than twenty five percent (25%) greater than the maximum assessment which was permissible to be assessed hereunder for the previous year without a vote of the members.

(iv) From and after January 1 of the year immediately following the conveyance of the first Lot by a builder to an Owner, the maximum annual assessment may be increased above the twenty five percent (25%) increase permitted by Section 4.3b(iii) by a vote of two thirds (2/3) of the members who are voting in person or by proxy, at a meeting duly called for that purpose.

Section 4.4 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement upon the Common Areas, including fixtures and personal property relating thereto, or the cost of establishing or adding to a reserve therefore, provided that any such assessment shall have the approval, at a meeting duly called for such purpose, of the votes of the Owners of more than 60% of all Assessment Units, giving one (1) vote for each Assessment Unit. Voting at such meeting shall be in person, by proxy or by a written absentee ballot in which the question or questions to be decided are specifically set forth. Notwithstanding the foregoing, special assessments may be levied by the Association without a vote of Assessment Unit Owners against individual Owners of Assessments Units or against the Association as provided in this Declaration and may also be levied to relieve any deficiency in the Association's current operating funds to provide for maintenance, repair and/or replacement of the Common Areas and any facilities therein.

Section 4.5 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Assessment Units, except for special assessments pursuant to the power reserved to the Association pursuant to this Declaration, which shall be assessed as provided therein.

Section 4.6 Assessments: Date of Commencement and Due Dates. The Association shall fix the rate of the annual assessment, subject to the limitations set forth in Section 4.3 hereof, and the amount of assessment against each Assessment Unit at least thirty (30) days in advance of each annual assessment period. Written notice of annual assessments shall be sent to every Owner immediately after action assessing the same, provided, however, that where there is more than one Owner of an Assessment Unit, only one notice need be sent. The due date for payment shall be established and shall be stated in said notice. The Association shall, upon demand by any person having an interest in an Assessment Unit, furnish a certificate signed by an authorized person with knowledge setting forth whether or not all assessments have been paid and setting forth the unpaid amounts, if any, interest charges and due dates. The Association shall compile the names and addresses of all Assessment Unit Owners who have failed to pay the assessments levied hereunder.

Section 4.7 Effect of Non-Payment of Assessments: Remedies. Any assessment not paid within thirty (30) days after the due date (together with expenses of collection set forth below) shall bear interest from the due date at the rate of 7% per annum or at such lesser uniform rate as shall be established by the Association at the time of the fixing of the assessment period. Additionally, the Association may set automatic late charges and/or assess fines for the failure of an Owner to pay his assessments in a timely manner provided that the same is done on a uniform basis for all Assessment Units. The Association may bring an action against a delinquent Owner or other person personally obligated to pay the same and/or may foreclose the lien established by the terms of this Declaration in the same manner that real estate mortgages may be foreclosed by action under Michigan law. The expenses incurred in collecting unpaid assessments including interest, costs and attorneys' fees and advances for taxes and other liens to protect the lien for assessments shall be chargeable to the Owner in default and shall be secured by the lien on his parcel or Assessment Unit. No Owner may waive or otherwise escape

liability for the assessments provided for herein by non-use of the Common Areas or by abandonment of his Assessment Unit.

Section 4.8 **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage on any of the Properties. However, prior to the sale or transfer of any parcel or Assessment Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, any lien for non-payment of such assessments that are due shall be extinguished by payment of the assessment and any penalty then owing. No foreclosure sale or transfer in lieu thereof shall relieve such parcel or dwelling unit from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

BUILDING AND USE RESTRICTIONS FOR THE SUBDIVISION

Section 5.1 These restrictions are covenants which shall run with the land and shall be binding on all parties hereto and all parties claiming under or through them for a period of twenty five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless it is on the date or at the end of any such period agreed by a vote of the then Owners of a majority of the lots included in the above described land to change such restrictions in whole or in part or to cancel them, or at anytime upon the agreement of eighty percent (80%) of the fee title holders and with the agreement of the Township of Macomb and its duly adopted ordinances.

Section 5.2 No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two (2) stories in height and private attached garage for not more than three (3) vehicles.

Section 5.3 No dwelling on any lot in the Subdivision shall have an area of less than 1600 square feet for a one (1) story structure; 1800 square feet for a one and one half ($1\frac{1}{2}$) story structure; and 2000 square feet for a two (2) story structure.

Section 5.4 Minimum Yard Requirements - No building on any lot in the Subdivision shall be erected nearer than:

- a. Twenty five (25') feet from the front line; nor
- b. Seven and one half ($7\frac{1}{2}$) feet minimum from any side lot line with the combined total of both side yards not less than fifteen (15') feet; nor
- c. Thirty five (35') feet from the rear lot line.

Approval of a variance by the Township of Macomb permitting yards smaller than the above minimums shall be deemed a valid waiver of this restriction.

. Section 5.5 Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and no buildings are to be constructed within the easements.

Section 5.6 No structure of a temporary character, trailer, tent, shack, barn or other outbuildings shall be placed on any lot at any time, either temporarily or permanently, except a structure to be used by builders for storage of materials during the construction period. Outdoor storage sheds are permitted but must comply with the applicable ordinances and requirements.

Section 5.7 No fence, wall or other structure shall be located in the greenbelt/landscape easement except for a subdivision identification structure. Fences over two (2') feet in height within setbacks along public roads are strictly prohibited. Chain link and wooden fences are strictly prohibited.

Section 5.8 No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereupon which may be or may become an annoyance or nuisance to the neighborhood.

Section 5.9 No building, including any shed or swimming pool shall be constructed without the prior written approval of the Developer or Developer's assignee, i.e. Homeowners Association, as to the architectural design and materials to be used in the construction in order to insure reasonable uniformity in quality and appearance of each dwelling or other building in the Subdivision.

Section 5.10 No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except mat dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes.

Section 5.11 No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. The use of any incinerator shall be a type which will not cause offensive odors when burning and must comply with all local, regional and state requirements.

Section 5.12 No business, trade, profession or commercial activity calling for home occupation of any kind shall be conducted in any building or on any portion of the property, except builders' sales offices may be used and maintained until all of the lots in the Subdivision have homes constructed thereon and occupied as a place of residence.

Section 5.13 If the parties hereto, or any of them or their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any person or persons owning any real property situated in said development to prosecute any proceedings at law or in equity against, the persons violating or attempting to violate any such covenants and either to prevent him or them doing so or to recover damages or other dues for such violations.

Section 5.14 All new public utilities such as water mains, sanitary sewer, storm sewers, gas mains, electric and telephone local Subdivision distribution lines, and all connections to same, either private or otherwise, shall be installed underground; provided, however, mat above ground transformers, pedestals and other above ground electric and telephone utility equipment associated with or necessary for underground utility installations and distributions systems and surface lighting stanchions shall be permitted. Lots 1 through 105, both inclusive, are, in addition, subject to the terms of a certain Restriction Agreement executed between the undersigned and the DTE Energy and SBC Communications, Inc., relating to the installation and maintenance of the underground electric and communication service and facilities, and which instruments are, by this reference, incorporated herein.

Section 5.15 No inoperative vehicles, commercial vehicles, house trailers or mobile trailers, boats or boat trailers shall be permitted to be parked or stored on any lot in said Subdivision unless such vehicles are parked or stored in a garage on said lot which conforms to the requirements pertaining to the construction of garages as set forth above.

Section 5.16 Each owner/occupant shall, within one (1) year after completion of the construction of a dwelling on any lot, cause lot to be finish graded, sodded and suitably landscaped. All landscaping in the subdivision shall be of an aesthetically pleasing nature and shall be continuously and properly well maintained at all times. **No statues may** be placed in the front yard of any dwelling. It is the purpose of this Section 5.16 to cause the subdivision to develop into a beautifully harmonious, private residential area. Landscaping, including but not limited to vegetable gardens, shall not in any way obstruct the drainage of the subdivision.

Section 5.17 Invalidation of any of these covenants by judgement or court order shall in nowise affect any of the other provisions which shall remain in full force and effect.

Section 5.18 Nothing herein provided shall-constitute a waiver of, inapplicability of or invalidity of any current or future ordinance of the Township of Macomb or its successors, and to the extent and degree any such ordinance or any portions, terms or conditions are more restrictive than herein provided, such ordinance, or any portions thereof shall take precedence and be treated as having the full force and effect as being a part herein incorporated by reference in this instrument.

Section 5.19 Satellite receivers and dish antennae are permissible subject to Macomb Township Zoning Ordinance No. 10, Sections 10.0331 and 10.0336.

Section 5.20 Anything contained herein to the contrary notwithstanding, vehicular ingress and egress to and from Lots 1, 90 and 105 shall not be permitted from Twenty Five Mile Road, nor shall Lots 1, 90 or 105 have a driveway that intersects Twenty Five Mile Road.

ARTICLE VI

GENERAL

Section 6.1 **Remedies for Violations.** For a violation or breach of any of these reservations, covenants, conditions, restrictions, and rules and regulations of this Declaration, the Declarant, the Association, or any member of the Association, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent or obtain damages for the violation or breach of any provision hereof or to seek relief as follows:

a. **Legal Action.** Failure to comply with any of the terms or provisions of this Declaration shall be grounds for relief, which may include, without intending to limit the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien (if default in payment of assessment) or any combination thereof, and such relief may be sought by the Declarant or the Association.

b. **Recovery of Costs.** In any proceeding which arises because of any alleged default under this Declaration of any Owners' Association or the Owner of any Assessment Unit, then the Declarant, the Association or the member of the Association seeking enforcement, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorney¹ s

fees (not limited to statutory fees) as may be determined by the court, but in no event shall any Assessment Unit Owner or the Association be entitled to recover such attorney's fees.

c. **Abatement.** The violation of any of the provisions of this Declaration or rules and regulations shall also give the Declarant, tire Association or any member of the Association, the right, in addition to the rights set forth above, to enter upon any Assessment Unit, or any of the Common Areas, where reasonably necessary, and summarily remove, abate or rectify, at the expense of the person or entity committing the infraction, any structure, tiring or condition maintained contrary to the provisions of this Declaration. The Association shall have no liability to any person arising out of its removal, abatement and rectification power authorized herein. The powers herein set forth are granted both generally and specifically in furtherance of this Declaration.

d. **Assessment of Fines.** The violation of any of the provisions of this Declaration by any Owner of any Assessment Unit shall be grounds for assessment by the Association, acting through its duly constituted Board of Directors, of monetary fines for such violations. No fine may be assessed unless rules **and** regulations establishing such fine have first been duly adopted by the Board of Directors of tire Association and notice thereof given to the offending Assessment Unit Owner. All fines duly assessed may be collected in the same manner as provided in Article FV of this Declaration. There shall be no fine for an initial infraction and no fine shall exceed \$100.00 for the second or any subsequent violation.

e. **Non-waiver of Right.** The failure of the Declarant, the Association or of any other person or entity within the Subdivision to enforce any right, provision, covenant or condition which may be granted by this Declaration shall not constitute a waiver of the right of the Declarant or Association or such person or entity to enforce such right, provision, covenant or condition in the future.

f. **Cumulative Rights, Remedies and Privileges.** All rights, remedies and .privileges granted to the Declarant or Association or any other person or entity pursuant to any terms, provisions, covenants or conditions of this Declaration shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising **the** same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

Section 6.2 **Addition of Common Areas.** Declarant may hereafter add or reduce, by separate recorded Declaration or by amendment to this Declaration, other land in the vicinity of the Subdivision to the Common Areas and incorporate such other land into the Subdivision. Declarant may, as development progresses, add to the Common Areas and may, but shall not be obligated to, add other parcels to the Common Areas to be used for recreational or common amenity purposes. Declarant may also, in its sole discretion, convey to the Association other Common Areas as may be constructed and added to this Declaration. The rights of the Declarant as reserved in this Section 6.2 shall remain throughout tire period of development by Declarant of the Subdivision. No additions or reductions to the Common Areas shall be recorded until the change is approved in writing by the Township of Macomb.

. Section 6.3 **Association Bank Account.** All assessments collected by Declarant shall be held in and expended from a separate bank account in the name of the Association. Said assessments and the expenditures thereof shall be accounted for pursuant to generally accepted accounting procedures. After the Association is controlled by the Class B members, the books of account shall be audited annually by

qualified independent auditors; provided, however, that such auditors need not be certified public accountants nor does such audit need to be a certified audit. The costs of any audit and accounting expenses shall be paid for by the Association.

Section 6.4 Duration; Amendment. The provisions of this Declaration shall run with and bind all land within the Subdivision for a period of twenty (20) years from the date hereof, after which time they shall be extended automatically for successive periods of ten (10) years each unless 75% of the Assessment Units in the Subdivision vote to limit or remove the provisions hereof; provided, however, all utility easements contained in this Declaration shall be perpetual. Prior to the date of the First Annual Meeting of the Association, this Declaration may be amended or restated in its entirety upon the sole discretion of the Declarant or its successors or assigns for the purpose of creating additional easements, or altering or amending existing easements, or for the purpose of adding additional Common Areas and Residential Areas, or to clarify or amplify some portion or portions hereof; provided such amendments are in furtherance of the purposes of this Declaration. All of the Owners or Mortgagees of Assessment Units and other persons interested or to become interested in the Subdivision from time to time shall be deemed to have irrevocably and unanimously consented to such amendment or amendments to this Declaration. All such interested persons irrevocably appoint Declarant or its successors as agent and attorney for the execution of such amendments to this Declaration and all other documents necessary to effectuate the foregoing. Subsequent to the time at which the Class B members of the Association acquire the right to vote after 90% of the Assessment Units planned to be constructed in the Subdivision and the anticipated expansion thereof have been conveyed by the Declarant, this Declaration may be amended by the affirmative vote (in person or in writing) of 75% of all Owners of Assessment Units within the Subdivision; PROVIDED, HOWEVER, that there shall be no amendment to this Declaration prior to the sale and conveyance by Declarant of the last Assessment Unit to be constructed in the Subdivision without Declarant's express written consent, further provided, however, that Section 3.4 of this Declaration shall not be amended without the written consent of the Township. Notwithstanding the terms and conditions of this section, the Township shall have the right to maintain the landscaping easement perpetually, pursuant to the terms and conditions contained in Section 3.4 of this Declaration.

Section 6.5 Assignment, Any or all of the rights and powers granted or reserved to the Declarant in this Declaration, including the power to approve or disapprove any act, use or proposed action or any other matter or thing, may be assigned by it to any other entity or to the Association. Any such assignment or transfer shall be made by appropriate instrument in writing duly recorded in the office of the Macomb County Register of Deeds.

Section 6.6 Enforcement. The terms, covenants and agreements contained in this Declaration may be enforced by the Declarant, the Association after the conveyance of 90% or a lesser percentage as provided for in Section 2.3a. of the Assessment Units by Declarant or, as specifically provided herein, the Township.

Section 6.7 Severability. In the event that any of the terms, provisions or covenants of this Declaration are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, modify or impair in any manner whatsoever any of the other terms, provisions or covenants of this Declaration or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

Section 6.8 Additional Land. In the event Developer develops or subdivides additional land within the area described on Exhibit "A" attached hereto and by this reference incorporated herein and attached hereto and desires to subject such new development(s) or Subdivision(s) to declarations

substantially in the form to those imposed upon the Subdivision, including requirements for the payment of maintenance charges and the requirement for mandatory membership in the Association, said land may be incorporated within said Association for the purpose of the interpretation and enforcement of these Declaration of Easements, Covenants, Conditions and Restrictions for Fallbrooke Farms Subdivision. In such event, these restrictions and those applicable to the new development(s) or Subdivision(s) shall be considered to be reciprocal negative easements thus making the restrictions applicable herein enforceable by property Owners in the new land and restrictions applicable to said new land enforceable by property Owners of the Subdivision.

Witnessed by:


Daniel S. Spatafora

Joanne B. Jennings

Ogrand XL.P., a Michigan limited
Ogrand VIII L.P., partnership
a Michigan limited partnership
By: Ogrand VIII One, Inc.,
a Michigan corporation, General Partner

By: 
Graham A. Orley, President

By: Ogrand X One, Inc.,
a Michigan corporation, General Partner

By: 
Joseph H. Orley, President

STATE OF MICHIGAN)
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me May 19, 2004, by Graham A. Orley, President of OgrandVUI One, Inc., a MI corporation, General Partner, on behalf of OgrandVIII Limited Partnership, a MI limited partnership and Joseph H. Orley, President of OgrandX One, Inc., a MI corporation, General Partner, on behalf of OgrandX Limited Partnership, a MI limited partnership.

My commission expires:
July 7, 2007


Joanne B. Jennings, Notary Public,
Oakland County, Michigan

DRAFTED BY AND WHEN RECORDED RETURN TO: Daniel
S. Spatafora Elro Corporation
201 W. Big Beaver Road, Suite 720
Troy, MI 48084

DESCRIPTION OF PROPERTY: FALLBROOKE FARMS

PART OF THE SE 1/4 OF SECTION 4, T3N, R13E, MACOMB TOWNSHIP, MACOMB COUNTY MICHIGAN, DESCRIBED AS: COMMENCING AT THE SE CORNER OF SECTION 4- THENCE S89°02'17"W 660.23 FEET ALONG THE SOUTH LINE OF SECTION 4 AND CENTERLINE OF 25 MILE ROAD (33 FEET HALF WIDTH) FOR A POINT OF BEGINNING; THENCE CONTINUING S89°02'17"W 180.65 FEET ALONG THE SOUTH LINE OF SECTION 4 AND CENTERLINE OF 25 MILE ROAD; THENCE N00°57'43"W 599.45 FEET; THENCE S89°02'18"W 218.00 FEET; THENCE S00°57'43"E 599.45 FEET TO THE SOUTH LINE OF SECTION 4 AND CENTERLINE OF 25 MILE ROAD; THENCE S89°02'17"W 282.88 FEET ALONG SOUTH LINE OF SECTION 4 AND CENTERLINE OF 25 MILE ROAD; THENCE N00°33'30"W 2544.99 FEET; THENCE S86°43'02"E 697.10 FEET TO THE WEST LINE OF "A. HENRY KOTNER'S BEVERLY GARDENS SUBDIVISION", PART OF THE E1/2 OF THE SE 1/4, SECTION 4, T3N, R13E, MACOMB TOWNSHIP, MACOMB COUNTY, MICHIGAN, RECORDED IN LIBER 38 OF PLATS, PAGE 16, MACOMB COUNTY RECORDS; THENCE S00°14'10"E 2493.53 FEET ALONG THE WEST LINE OF "A. HENRY KOTNER'S BEVERLY GARDENS SUBDIVISION", AND TO THE POINT OF BEGINNING. CONTAINING 1604021 SQUARE FEET OR 36.823 ACRES, MORE OR LESS.

DESCRIPTION OF PROPERTY: BROOKEWOODS

Port of the SE 1/4 of Section 4, T.3N., R.13E., Macomb Township, Macomb County, Michigan, described as: Commencing at the SE corner of Section 4; thence S89°02'17"W 840.88 ft. along the South line of Section 4 and centerline of 25 Mile Road to a point of beginning; thence continuing S89°02'17"W 218.00 ft. along said South line of Section 4 and centerline of 25 Mile Road; thence N00°57'43"W 599.45 ft.; thence N89°02'18"E 218.00 ft.; thence S00°57'43"E 599.45 ft. to the point of beginning.
Containing 130,680 Square Feet -----3.00 Acres gross
117,600 Square Feet -----2.70 Acres net

DESCRIPTION OF PROPERTY: LOT SPLITS

PART OF THE SE 1/4 OF SECTION 4, T3N, R13E, MACOMB TOWNSHIP, MACOMB COUNTY, MICHIGAN, DESCRIBED AS: COMMENCING AT THE SE CORNER OF SECTION 4; THENCE S89°02'17"W 660.23 FEET ALONG THE SOUTH LINE OF SECTION 4 AND CENTERLINE OF 25 MILE ROAD (33 FEET HALF WIDTH); THENCE N00°14'10" W 262.00 FEET ALONG THE WEST PROPERTY LINE OF "FALLBROOKE FARMS SUBDIVISION" (L. 156, P. 68-74) AND 60 FEET WD. ROW OF ENGLEWOOD DRIVE FOR A POINT OF BEGINNING; THENCE CONTINUING N00°14'10"W 388.65 FEET ALONG THE WEST PROPERTY LINE OF "FALLBROOKE SUBDIVISION" (L. 156, P. 68-74) AND WEST 60 FEET WD. ROW OF ENGLEWOOD DRIVE; THENCE N89°25'16" E 150.00 FEET; THENCE S00°14'10"E 386.79 FEET ALONG THE WEST LINE OF "A. HENRY KOTNER'S BEVERLY GARDENS SUBDIVISION" (L. 38, P. 16); THENCE S88°42'36"W 150.03 FEET. TO THE POINT OF BEGINNING. CONTAINING 58,158 SQUARE FEET OR 1.34 ACRES, MORE OR LESS.

CLIENT: ELRO

DATE: 9-29-04

MCS ASSOCIATES, INC.
CIVIL ENGINEERING AND SURVEYING 44444
MOUND ROAD, SUITE 100 STERLING HEIGHTS,
MICHIGAN 48314 TELEPHONE 726-6310
FAX 726-0042

FIRST AMENDMENT TO DECLARATION OF
EASEMENTS, COVENANTS, CONDITIONS AND
RESTRICTIONS FOR FALLBROOKE FARMS
SUBDIVISION

This amendment, made _____, 2004, incorporates by reference, in its entirety, the Declaration of Easements, Covenants, Conditions and Restrictions for Fallbrooke Farms Subdivision, which Declaration is recorded in Liber 15469, Pages 218 through 233 inclusive, Macomb County Records.

This First Amendment is intended to add additional land particularly described on Exhibit "A", pursuant to Sections 6.2 and 6.8 of the original Declaration as mentioned in the first paragraph above.

This First Amendment is also intended to amend the following sections of the original Declaration, to now read as follows:

RECITALS:

D. Declarant is also fee simple owner of a certain parcel of land adjacent to the Fallbrooke Farms Subdivision which Declarant also intends to establish as a single family residential subdivision known as Brookewoods Subdivision, and which is also particularly described on Exhibit "A" as Brookewoods.

Section 1.2 **Association.** "Association" means Fallbrooke Farms Subdivision Association, a Michigan non-profit corporation, its successors and assigns, and shall include the lot owners of Fallbrooke Farms Subdivision, Brookewoods Subdivision and lot splits, all as described on Exhibit "A".

Section 1.3 **Common Areas.** "Common Areas" shall mean all the real property now or hereafter dedicated and/or declared by Declarant for the common use and enjoyment of all of the Owners of property in the Subdivision, including certain easements for maintenance of landscaped areas. No area shown or indicated on any plan or plat of any portion of the Subdivision shall be considered as a Common Area unless and until it has been dedicated and/or declared by Declarant for the common use and enjoyment of the Owners in the Subdivision by a recorded instrument executed by Declarant. The initial Common Areas to be administered by the Association shall be the Landscape Easement as shown on the plat, specifically a twenty (20') foot easement for landscaping that is adjacent south to lots 1, 89 and 104 along 25 Mile Road, and also over an area depicted on Exhibits "A" and "B" of the original Declaration

as a detention basin. Said depiction and description of said Common Areas is in accordance with the Macomb Township Zoning Ordinance, The Landscape Easement and Common Areas to be administered by the Association exclude the area depicted as "Fallbrooke Park (Passive)" on Exhibit "A" of the original Declaration. Use, enjoyment and maintenance of the landscape easement and common areas shall extend to all owners in the adjacent Brookewoods Subdivision and all lot owners of the adjacent lot splits as identified on Exhibit "A" of this First Amendment.

Section 1.6 **Detention Basin.** "Detention Basin" shall mean and refer to the storm water detention pond, the pump station and stormceptors. The utilization and maintenance expenses of the Detention Basin shall be shared equally or proportionally by Fallbrooke Farms Subdivision, future Brookewoods Subdivision and the owners of tire lot splits all described on Exhibit "A".

Section 1.9 **Subdivision.** "Subdivision" shall mean and refer to Fallbrooke Farms Subdivision as platted and recorded hi the Office of the Register of Deeds for Macomb County, Michigan. For purposes of this Section 1.9 "Subdivision" shall also include the additional land owned by Declarant intended to be developed as future lots as particularly described on Exhibit "A" as lot splits.

Section 2.1 **The Fallbrooke Farms Subdivision Association.** A Michigan non-profit corporation known as tire Fallbrooke Farms Subdivision Association (the "Association") will be established by Declarant pursuant to Articles of Incorporation and Bylaws. The general purpose of the Association is to encourage and to-promote the highest standards of management and maintenance for the land included in the Subdivision, and to assist the members of the Association in maintaining the Subdivision as a residential development of the highest quality. In furtherance of such purposes, the Association shall have such power and authority as are conferred upon it in its Articles of Incorporation and by this Declaration. Its Board of Directors shall be vested with and shall exercise all powers and authorities thus conferred upon it. The lot owners of the adjacent Brookewoods Subdivision and lot splits as described on Exhibit "A" shall also be included in the membership of the Association and share in the rights, privileges, obligations and expenses of the Association members.

Section 2.3 **Voting.**

b. The presence in person or by proxy of members representing at least one third (1/3) in number of the Assessment Units qualified to vote shall constitute a quorum for holding a meeting of the members of die Association, except for voting on questions specifically required herein, or hi die Articles of Incorporation or Bylaws of die Association, to require a greater quorum. The written vote of any person furnished at or prior to any duly called meeting at which meeting said person it not otherwise present in person or by proxy shall be counted in determining the presence of a quorum with respect to the question upon which the vote is cast. Only one vote shall be cast for each Assessment Unit.

Section 5.14 All new public utilities such as water mains, sanitary sewer, storm sewers, gas mains, electric and telephone local Subdivision distribution lines, and all connections to same, either private or otierwise, shall be installed underground; provided, however, that above ground transformers, pedestals and other above ground electric and telephone utility equipment associated with or necessary for

underground utility installations and distributions systems and surface lighting stanchions shall be permitted. All lots in the subdivision are, in addition, subject to the terms of a certain Restriction Agreement executed between the undersigned and the DTE Energy and SBC Communications, Inc., relating to the installation and maintenance of the underground electric and communication service and facilities, and which instruments are, by this reference, incorporated herein.

Section 5.20 Anything contained herein to the contrary notwithstanding, vehicular ingress and egress to and from Lots 1, 89 and 104, Fallbrooke Farms Subdivision, shall not be permitted from Twenty Five Mile Road, nor shall Lots 1, 89 and 104, Fallbrooke Farms Subdivision, have a driveway that intersects Twenty Five Mile Road. Vehicular ingress and egress to and from Lots 6, 7 and 8, Brookewoods Subdivision, shall be permitted from Twenty Five Mile Road with said Lots 6, 7 and 8, Brookewoods Subdivision, being permitted to have turn around driveways for such ingress and egress.

Section 6.4 Duration; Amendment. The provisions of this Declaration shall run with and bind all land within the Subdivision and shall be perpetual. Prior to the date of the First Annual Meeting of the Association, this Declaration may be amended or restated in its entirety upon the sole discretion of the Declarant or its successors or assigns for the purpose of creating additional easements, or altering or amending existing easements, or for the purpose of adding additional Common Areas and Residential Areas, or to clarify or amplify some portion or portions of the Declaration; provided such amendments are in furtherance of the purposes of this Declaration. All of the Owners or Mortgagees of Assessment Units and other persons interested or to become interested in the Subdivision from time to time shall be deemed to have irrevocably and unanimously consented to such amendment or amendments to this Declaration. All such interested persons irrevocably appoint Declarant or its successors as agent and attorney for the execution of such amendments to this Declaration and all other documents necessary to effectuate the foregoing. Subsequent to the time at which the Class B members of the Association acquire the right to vote after 90% or a lesser percentage, as provided for in Section 2.3a., of the Assessment Units planned to be constructed in the Subdivision and the anticipated expansion thereof have been conveyed by the Declarant, this Declaration may be amended by the affirmative vote (in person or in writing) of 75% of all Owners of Assessment Units within the Subdivision; PROVIDED, HOWEVER, that there shall be no amendment to this Declaration prior to the sale and conveyance by Declarant of the last Assessment Unit to be constructed in the Subdivision without Declarant's express written consent, further provided, however, that Section 3.4 of this Declaration shall not be amended without the written consent of the Township. Notwithstanding the terms and conditions of this section, the Township shall have the right to maintain the landscaping easement perpetually, pursuant to the terms and conditions contained in Section 3.4 of this Declaration.

This First Amendment is also intended to add the following new Section:

Section 5.21 No swimming pool or other recreational structure shall be constructed on any lot unless approved by the Association. Any swimming pool or similar structure which has been approved in writing by the Association shall be constructed in accordance with this Declaration and with all applicable local ordinances and/or state laws. Swimming pools, tennis courts, whirlpools, hot tubs and other similar recreational structures, if permitted in writing by the Association, shall be screened from any street lying entirely within the subdivision, by wall, fence, evergreen hedge or other visual barrier as approved in

writing by the Association and in compliance with all laws and governmental regulations and ordinances pertaining thereto.

Ogrand VIII L.P.,
a Michigan limited partnership
By: Ogrand VIII One, Inc.,
a Michigan corporation, General Partner

By: _____
Graham A. Orley, President

Ogrand XL P.,
a Michigan limited partnership
By: Ogrand X One, Inc.,
a Michigan corporation, General Partner

By: _____
Joseph H. Orley, President

STATE OF MICHIGAN)
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me _____, 2004, by Graham A. Orley, President of OgrandVHI One, Inc., a MI corporation, General Partner, on behalf of OgrandVIII Limited Partnership, a MI limited partnership and Joseph H. Orley, President of OgrandX One, Inc., a MI corporation, General Partner, on behalf of OgrandX Limited Partnership, a MI limited partnership.

My commission expires:
July 7, 2007

Joanne B. Jennings, Notary Public, Oakland
County, Michigan, acting in Oakland County

DRAFTED BY AND WHEN RECORDED RETURN TO: Daniel
S. Spatafora Elro Corporation
201 W. Big Beaver Road, Suite 720
Troy, MI 48084