

**MASTER DEED**

**LAKE MICHIGAN VIEW AT DIAMOND POINT**

(Act 59, Public Acts of 1978, as amended)

This Master Deed is made and executed on this 9<sup>th</sup> day of August, 2005, by Lake Michigan View Townhomes & Cottages, LLC a/k/a Lake Michigan View at Diamond Point, a Michigan limited liability company, hereinafter referred to as the "Developer", whose office is situated at 135 S. Whittaker Street, New Buffalo, MI 49117, pursuant to the provisions of the Michigan Condominium Act (being Act 59 of the Public Acts of 1978, as amended), hereinafter referred to as the "Act".

**WITNESSETH:**

WHEREAS, the Developer desires by recording this Master Deed, together with the legal description of the initial project attached hereto as Exhibit A, the legal description of the expansion project attached hereto as Exhibit B, the Condominium By-Laws attached hereto as Exhibit C, and the Condominium Subdivision Plan attached hereto as Exhibit D, all of which are incorporated herein by reference and made a part hereof, to establish the real property described in Article 2 below, together with the improvements located and to be located thereon, and the appurtenances thereto, as a residential condominium project consisting of townhome units and a single-family home units under the provisions of the Act.

NOW THEREFORE, the Developer does, upon the recording hereof, establish Lake Michigan View at Diamond Point, as a condominium project under the Act and does declare that Lake Michigan View at Diamond Point, hereinafter referred to as the "Condominium", the "Project" or the "Condominium Project", shall, after such establishment, be held, conveyed, hypothecated, encumbered, leased, rented, occupied, improved, or in any other manner utilized, subject to the provisions of the Act, and to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Master Deed and Exhibits A, B, C and D hereto, all of which shall be deemed to run with the land and shall be burden and a benefit to the Developer, its successors and assigns, and any persons acquiring or owning an interest in the said real property, their grantees, successors, heirs, executors, administrators and assigns. In furtherance of the establishment of said Condominium Project, it is provided as follows:

**ARTICLE 1. TITLE AND NATURE**

The Condominium Project shall be known as Lake Michigan View at Diamond Point, Berrien County Condominium Subdivision Plan No. \_\_\_\_\_. The Condominium Project is established in accordance with the Act. Such architectural plans and specifications as may exist for the Condominium Project will be filed with the City of New Buffalo, Berrien County, Michigan. The improvements contained in the Condominium Project, including the number, boundaries, dimensions and area of each unit are as set forth in the Condominium Subdivision Plan attached hereto as Exhibit D. The Condominium contains individual units to

be used as building sites for single-family residences and town homes to be used for single-family residential purposes.

Each unit is capable of individual utilization as evidenced by each unit having its own entrance from and exit to a common element of the Condominium Project.

Each co-owner in the Condominium Project shall have an exclusive right to occupy his unit and shall have undivided and inseparable rights to share with other co-owners the use and enjoyment of the common elements, as designed by this Master Deed.

## **ARTICLE 2. LEGAL DESCRIPTION**

The land which is submitted to the Condominium Project established by this Master Deed is particularly described on Exhibit A hereto.

## **ARTICLE 3. DEFINITIONS**

Certain terms are utilized not only in this Master Deed and Exhibits A, B, C and D hereto, but are or may be used in various other instruments related to the Lake Michigan View at Diamond Point Project, and deeds, mortgages, liens, land contracts, easements and other instruments affecting the establishment of, or transfer or, interests in Lake Michigan View at Diamond Point as a condominium. Wherever used in such documents or any other instruments, the terms set forth below shall be defined as follows:

- 3.1** The "Act" means the Michigan Condominium Act, being Act 59 of the Public Acts of 1978, as amended.
- 3.2** The "Administrator" means the Department of Consumer and Industry Services, State of Michigan or an authorized designee thereof.
- 3.3** An "Affiliate of Developer" means any person who controls, is controlled by, or is under common control by a Developer. A person is controlled by another person if a person is a general partner, officer, member, director, or employee of the person, directly or indirectly, individually or with one or more persons or subsidiaries owns, controls or holds power to vote more than 20% of the person, controls in any manner the election of a majority of the directors of the person, or has contributed more than 20% of the capital of the person.
- 3.4** The "Arbitration Association" means the American Arbitration Association or its successor.
- 3.5** The "Association" or the "Association of Co-Owners" means Diamond Point Condominium Association, Inc., a non-profit corporation organized under Michigan law of which all co-owners shall be members which corporation shall administer, operate, manage and maintain the Condominium. Any action required of or permitted to the Association shall be exercisable by its Board of Directors unless specifically reserved to a sub-committee of the Association or its members by the Condominium documents or the laws of the State of Michigan.
- 3.6** The "Association By-Laws" means the corporate By-Laws of Diamond Point Condominium Association, Inc., the Association organized to manage, maintain and administer the Condominium.
- 3.7** The "Common Elements", where used without modification, means both the general and limited common elements described in Article 4 hereof and as designated on Exhibit D hereto, that being those portions of the Condominium Project other than the condominium units.
- 3.8** The "Condominium By-Laws" means Exhibit C hereto, being the By-Laws setting forth the substantive rights and obligations of the co-owners and required by Section 3(8) of the Act to be recorded as part of the Master Deed.

- 3.9** The “Condominium Documents” means this Master Deed and Exhibits A, B, C and D hereto, recorded pursuant to the Act, and any other instrument referred to in this Master Deed or the Condominium By-Laws which affects the rights and obligations of a co-owner in the Condominium Project, including the Association Articles of Incorporation, the Association By-Laws and the Association Rules and Regulations.
- 3.10** The “Condominium Premises” means and includes the land, all improvements and structures thereon, and all easements, rights and appurtenances belonging to the Condominium Project, as described below.
- 3.11** The “Condominium Project”, the “Condominium”, or the “Project” means Lake Michigan View at Diamond Point, as a condominium project established in conformity with the provisions of the Act.
- 3.12** The “Condominium Subdivision Plan” means Exhibit D hereto.
- 3.13** The “Co-owner” means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof who or which owns one or more units in the Condominium Project. The term “Co-owner” shall include a land contract vendee. The term “Owner”, wherever used, shall be synonymous with the term “Co-owner.”
- 3.14** The “Convertible Area” means a unit or portion of the common elements of the Condominium Project which additional condominium units or general or limited common elements may be created for unit boundaries altered in accordance with the act and terms and conditions of this Master Deed.
- 3.15** The “Developer” means Lake Michigan View Townhomes & Cottages, LLC a/k/a Lake Michigan View at Diamond Point, a Michigan limited liability company, which has made and executed this Master Deed, and its successors, assigns and subsequent grantees. The term “Developer” does not include a residential builder licensed under Article 24 of the Occupational Code 1980, PA 299, MCL 399.2401 to 399.2412, who acquires title to one or more Condominium Units for the purpose of residential construction on those Condominium Units and subsequent resale.
- 3.16** The “Escrow Agent” means a bank, savings and loan association, or title company, licensed or authorized to do business in the State of Michigan, and required to hold funds pursuant to Sections 83, 84 and 103b of the Act. An escrow agent may designate a representative to administer escrow funds in the name, and on behalf, of the escrow agent. The escrow agent for the Condominium Project is Metropolitan Title Company pursuant to an Escrow Agreement dated May 20, 2005.
- 3.17** The “General Common Elements” means the Project common elements other than the limited common elements as described in Article 4 hereof and as designated on Exhibit D hereto.
- 3.18** The “Limited Common Elements” means the Project common elements reserved in the Master Deed for the exclusive use of less than all of the co-owners as described in Article 4 hereof and as designated on Exhibit D hereto.
- 3.19** The “Master Deed” means this Master Deed, including Exhibits A, B, C and D hereto, both of which are hereby incorporated by reference and made a part hereof.
- 3.20** The “Percentage of Value” means the percentage assigned to each condominium unit pursuant to Article 5 of this Master Deed.
- 3.21** The “Transitional Control Date” means the date on which the Board of Directors for the Association of co-owners takes office pursuant to an election in which the votes which may be cast by eligible co-owners unaffiliated with the Developer exceed the votes which may be cast by the Developer.

**3.22** The "Unit", the "Condominium Unit", or the "Building Site Unit", means that portion of the Project defined and intended for separate ownership and use as described in Paragraph 5.1, of this Master Deed and as designated in Exhibit D hereto. All structures and improvements, utility lines, facilities and driveways (except as otherwise provided in Paragraphs 4.1 and 4.2) now or hereafter located within the boundaries of a unit shall be owned, in their entirety, by the co-owner of the unit within which they are located.

**Terms not defined herein, but defined in the Act, shall carry the meanings given them in the Act unless the context clearly indicates to the contrary. Whenever any reference herein is made to one gender, the same shall include a reference to any and all genders where the same would be appropriate; similarly, whenever a reference is made herein to the singular, a reference shall also be included to the plural where the same would be appropriate.**

#### **ARTICLE 4. COMMON ELEMENTS**

The common elements of the Project, some of which are specifically designated on Exhibit D hereto and the respective responsibilities for maintenance, decoration, repair or replacement thereof are as follows:

**4.1** The general common elements of the Project are:

- A. The land described in Article 2 hereof, except that portion included in the units of the Project, as shown on Exhibit D, hereto; but including easement interests of the condominium property within the boundaries of any unit.
- B. The residential structures and other improvements located within the boundaries of a unit shall not constitute general common elements.
- C. The electrical distribution and wiring network and the appurtenances thereto throughout the Project, up to and including the pedestals from which service is provided to the improvement(s) located within the boundaries of a unit.
- D. The telephone distribution and wiring network and the appurtenances thereto throughout the Project up to and including the "utility" or "junction" posts from which service is provided to the improvement(s) located within the boundaries of a unit.
- E. The natural gas distribution network and the appurtenances thereto up to, but not including, the point of connection with the line(s) serving the improvement(s) located within the boundaries of a unit, i.e. the main gas lines and appurtenances thereto of the Project, excluding lines serving the individual units.
- F. The water distribution system and the appurtenances thereto from the point (s) of connection with the municipal water system up to and including the shut off/tap at the point of connection with the line(s) serving a particular unit(s), i.e., the main water line(s) and appurtenances thereto of the Project, excluding the line(s) serving the individual unit(s).

**NOTE: Water service to Units 45-61 is subject to a permit from the MDEQ and City of New Buffalo for expansion of the current water main system. Said permits are expected to be received, but have not been issued as of the date of the filing of this Master Deed. Construction and sale of these units is contingent upon receipt of these permits.**

- G. Cable TV and/or internet distribution lines.
- H. The sanitary sewer system and the appurtenances thereto from the point(s) of connection with the municipal sanitary sewer system up to and including the tap and the point of

connection with the line(s) serving a particular unit(s), i.e., the main sewer line(s) and appurtenances thereto of the Project, excluding the line(s) serving the individual unit(s).

**NOTE: Sanitary sewer service to Units 45-61 is subject to a permit from the MDEQ and Galien River Sanitary District for expansion of the current sanitary sewer system. Said permits are expected to be received, but have not been issued as of the date of the filing of this Master Deed. Construction and sale of these units is contingent upon receipt of these permits.**

- I. The storm sewer drainage system and appurtenances thereto, if any, throughout the Project.

***NOTE: THE PROJECT STORM SEWER DRAINAGE SYSTEM IS NOT A PUBLIC SYSTEM. AS SUCH THE ASSOCIATION IS RESPONSIBLE FOR MAINTAINING THE STORM SEWER DRAINAGE SYSTEM FROM THE POINT (S) OF CONNECTION WITH THE NEW BUFFALO TOWNSHIP STORM SEWER DRAINAGE SYSTEM. IN THE EVENT AT SOME TIME IN THE FUTURE THE ASSOCIATION SHALL ELECT TO DEDICATE SUCH STORM SEWER DRAINAGE SYSTEM TO THE PUBLIC, IT SHALL BE THE RESPONSIBILITY OF THE ASSOCIATION, IN ADVANCE OF SUCH DEDICATION, TO BEAR ALL COSTS AND EXPENSES REASONABLE AND NECESSARY TO BRING THE PROJECT STORM SEWER DRAINAGE SYSTEM INTO COMPLIANCE WITH THE STANDARDS NECESSARY FOR PUBLIC ACCEPTANCE AND TO PROVIDE A PUBLIC BODY WITH SUCH DOCUMENTATION THEREOF AS SHALL BE REQUIRED***

- J. The Project roadway and utilities right of way, known as Diamond Point Lane, as shown on Exhibit D hereto (Right of Way), including the roadway built within the right of way, but excluding all portions of driveways built upon the frontage area by co-owners; provided, however, that each co-owner shall have the right to build a driveway and place a mailbox upon the frontage area adjoining his unit when built, the portion of the driveway, but not the ground beneath it built upon the frontage area shall be as provided in Article 4, Paragraph 4.2, of this Master Deed, a limited common element.
- K. To the extent installed, if any, the Project common entrance lighting system and the appurtenances thereto, including the electrical meter for such common entrance lighting.
- L. The Project signage, Project fencing and Project gate, if any.
- M. Designated Open Space Areas (D.O.S.) as designated on the Condominium Subdivision Plan, Exhibit D hereto, Site Plan, and as further explained and discussed in Article 10 of this Master Deed.
- N. The following amenities: pool/club house; retention pond; observation deck and walkways; and, if constructed, the tennis courts and putting green.
- O. Such other common elements of the Condominium Project not herein designated as general common elements which are not enclosed within the boundaries of a unit, and which are intended for the common use or are necessary for the existence, upkeep and safety of the Project.

**NOTE: The designation of the utility general common elements as set forth is for the purpose of defining the Developer's responsibility with regard to providing utilities. The Developer is responsible for providing the main utility lines of the Project and for providing the service lines from the "main lines" to the improvements located on the co-owner's unit. The co-owner shall be responsible for the expense of**

**maintenance of the service lines from the point of connection with the “main lines” to the improvements located within the co-owner’s unit.**

**NOTE: Some or all of the utility lines, systems (including mains and service leads) and equipment and the cable television system described above may be owned by the local public authority or by the company that is providing the service. Accordingly, such utility lines, systems and equipment and the cable television system shall be general common elements only to the extent of the co-owner’s interest therein, if any, and the Developer makes no warranty whatsoever with respect to the nature or extent, if any.**

**4.2** The limited common elements of the Condominium Project are:

- A.** The mailbox for each unit shall be a limited common element appurtenant to the unit to which such mailbox is assigned.
- B.** The telephone distribution and wiring network and the appurtenances thereto from the “utility” or “junction” post up to the point of connection with the internal service of the residential structure or other improvement(s) located within the boundaries of a unit.
- C.** The gas distribution system and the appurtenances thereto from the point of connection with the general common element gas line up to and including the gas meter(s) serving the residential structure or other improvement(s) located within the boundaries of a unit.
- D.** The electrical distribution system and the appurtenances thereto from the point of connection with the general common element pedestal up to and including the electric meter(s) serving the residential structure or other improvement(s) located within the boundaries of a unit.

**4.3** The respective responsibilities for the maintenance, decoration, repair and replacement of the common elements are as follows:

- A.** Except as otherwise provided herein, the costs of maintaining, repairing, and replacing the general common elements of the Project shall be borne by the Association, except to the extent of maintenance, repair, or replacement due to the act or neglect of a co-owner or his agent, guest, invitee, family member, or pet, for which such co-owner shall be wholly responsible, unless, and to the extent, any such loss or damages covered by insurance maintained by the Association.
- B.** Each co-owner of the single-family units (Unit Nos. 45 to 61) shall bear the cost of installing and maintaining the landscaping within the frontage area adjacent to his unit; installing, maintaining, repairing and replacing the portion of the unit driveway built upon the frontage area; and installing, decorating, maintaining, repairing and replacing the mailbox located within the frontage area.
- C.** The costs of maintaining, repairing and replacing the limited common elements appurtenant to the condominium units (including the frontage area) shall be borne by the owner of the unit to which such limited common elements appertain subject to the rules and regulations of the local utilities providing service to the Project, except to the extent of maintenance, repair, or replacement due to the act or neglect of a co-owner or his agent, guest, invitee, family member, or pet, for which such co-owner shall be wholly responsible.
- D.** Except to the extent of maintenance, repair, or replacement due to the act or neglect of another co-owner, his agent, guest, invitee, family member or pet, for which such co-owner shall be wholly responsible, the owners shall also be responsible for the maintenance,

repair, or replacement of all structures and improvements erected within the boundaries of the unit.

- E.** While it is intended that each co-owner will be solely responsible for the performance and cost of the maintenance, repair and replacement of the residence and all other appurtenances and improvements constructed or otherwise located within a unit, it is nevertheless a matter of concern that a co-owner may fail to properly maintain the exterior of his residence or any limited common element appurtenant thereto in a proper manner and in accordance with the standards set forth by the Association.

In the event a co-owner fails, as required by this Master Deed, the By-Laws or any rules or regulations promulgated by the Association, to properly and adequately decorate, repair, replace or otherwise maintain his unit or any improvement or appurtenance located therein or any limited common element appurtenance thereto, the Association (and/or the Developer during the development and sale period), shall have the right, but not the obligation, to undertake such regularly recurring, reasonable uniform, periodic exterior maintenance functions with respect to residences or other improvements constructed or installed within any unit boundary as it may deem appropriate (including, without limitation, painting or other decoration, without limitation, lawn mowing, snow removal and forestry preservation).

Failure of the Association (or the Developer) to take any such action shall not be deemed a waiver of the Association's (or the Developer's) right to take any such action at a future time. All costs incurred by the Association or the Developer in performing any responsibilities which are required in the first instance to be borne by a co-owner shall be charged to the affected co-owner or co-owners on a reasonably uniform basis and collected in accordance with the assessment procedures established by the Condominium By-Laws. The lien for non-payment shall attach to any such charges as in all cases of regular assessments and may be enforced by the use of all means available to the Association under the Condominium documents and by law for the collection of regular assessments, including without limitation, legal action, foreclosure of the lien securing payment and the imposition of fines.

- F.** Each co-owner shall be responsible for the payments of utilities attributable to his unit. Further, unpaid utilities may constitute a lien under applicable state or local law or may inhibit transferability of utility service to a co-owner successor.
- G.** Any maintenance, repair and replacement, the cost of which is to be borne by the co-owner, may, if not performed by the co-owner, be performed by or under the direction of the Association and the cost may be assessed against the responsible co-owner.
- H.** Unless provided otherwise in this Master Deed or the Condominium By-Laws, damage to a unit, or any improvement or property located within the boundaries of a unit, caused by the repair, replacement or maintenance activities of the Association of the common elements which must be maintained by the Association shall be repaired at the expense of the Association.

**4.4** No co-owner shall use his unit or the common elements in any manner inconsistent with the purposes of the Project or in any manner which will interfere with or impair the rights of any other co-owner in the use and enjoyment of his unit or the common elements.

**4.5** No co-owner shall be exempt in contributing toward expenses and administration (as defined in the Condominium By-Laws) or from the payment of assessments against his unit by reason of non-use or waiver of use of the common elements or by the abandonment of his unit.

## ARTICLE 5. UNIT DESCRIPTION AND PERCENTAGE OF VALUE

- 5.1** Each unit in the Condominium Project is described in this Paragraph with reference to the Condominium Subdivision Plan of Lake Michigan View at Diamond Point, as prepared by Wightman & Associates, Inc., 2303 Pipestone Road, Benton Harbor, Michigan 49022. Each unit shall include the land area located within the unit boundaries, as shown on Exhibit D hereto and delineated with heavy outlines, to a depth of fifteen (15) feet below grade level and a height of fifty (50) feet above grade level, together with all appurtenances thereto.

Detailed architectural plans and specifications (except for the residential structures and other improvements located within a unit) as may exist for the Condominium Project will be filed with the City of New Buffalo, Berrien County, Michigan.

- 5.2** The "Percentage of Value" means the percentage of value assigned to each Condominium unit in this Master Deed. The percentage in the Project shall total one hundred (100%) percent in the Project. The percentage of value shall be determinative of each co-owner's undivided interest in the common elements, the proportionate share of each respective co-owner in the proceeds and expenses of the administration and the value of such co-owner's vote at meetings of the Association of co-owners.

The percentages of value allocated to the units, except as otherwise provided in this Master Deed, may be changed only with the prior written approval of each holder of a first mortgage lien of any unit in the Project and with the unanimous consent of all co-owners expressed in a duly recorded amendment to this Master Deed.

- 5.3** Maintenance and Repair of Individual Units. Each co-owner is responsible for maintenance and repair of his or her unit and any and all items of personal property within the unit. Neither the Developer nor the Association shall have any responsibility for repair, replacement, or maintenance of any portion of an individual unit, including but not limited to all personal property located therein.
- 5.4** The percentage of value assigned to each unit in the Project is based upon the anticipated equal demands that each unit will place upon the Project general common elements, the fact that all unit utilities are separately metered and considerations of administration and equity in assessment and voting power.



THE PERCENTAGE OF VALUE ASSIGNED TO EACH UNIT IN THE PROJECT GENERAL COMMON ELEMENTS SHALL BE EQUAL.

Therefore, the percentage of value shall be as follows:

Unit No.	%	Unit No.	%
1	3.33	27-44	Reserved for Use in the Future Expansion Area
2	3.33	45	3.33
3	3.33	46	3.33
4	3.33	47	3.33
5	3.33	48	3.33
6	3.33	49	3.33
7	3.33	50	3.33
8	3.33	51	3.33
9	3.33	52	3.33
10	3.33	53	3.33
11	3.33	54	3.33
12	3.33	55	3.33
13	3.33	56	3.33
14-26	Reserved for Use in the Convertible Area	57	3.33
		58	3.33
		59	3.33
		60	3.33
		61	3.33

\*Rounded to 100.00%

## ARTICLE 6. ALTERATION OF UNIT BOUNDARIES

**6.1 Developer's Right to Modify Unit Boundaries.** As long as the Developer holds any unit available for sale in the Condominium Project, it may, in its discretion, modify the dimensions of any such unit or units, the general common elements, or any limited common element appurtenant to such unit or units, by enlargement, combination, division or reduction in size or relocation of boundaries between units, even if such action will result in the elimination of a unit from the Condominium Project.

No such modification shall unreasonably impair or diminish the appearance of the Project or the view, privacy, or other significant attribute or amenity of any unit which adjoins or is proximate to the modified unit or general or limited common element.

No unit which has been sold or is subject to a binding purchase agreement shall be modified without the consent of the co-owner or purchaser and mortgagee thereof.

**6.2 Amendment of Master Deed.** No unit modified in accordance with the provisions of this Paragraph shall be conveyed until an amendment to this Master Deed effectuating such modification is recorded.

The Developer or Association may also, in connection with any such amendment, readjust percentages of value for all units in a manner which gives reasonable recognition to such modifications based upon the method of original determination of percentages of value for the Project. All co-owners, mortgagees of units and other persons interested or to become interested in

the Project from time to time shall be deemed to have unanimously consented to any amendment or amendments necessary to effectuate the foregoing and, subject to the limitations set forth herein, the proportionate reallocation of percentages of value of existing units which the Developer or its successors may determine to be necessary in conjunction therewith. All such interested persons irrevocably appoint Developer and its successors as agent and attorney for the purpose of executing such amendments to the Master Deed and all other condominium documents as may be necessary to effectuate the foregoing.

## ARTICLE 7. THE CONVERTIBLE AREA AND EXPANSION OF THE PROJECT

- 7.1 The Convertible Area.** The Developer intends to build condo units #14-26 on the convertible area as identified on Exhibit D, hereto. However, those units are not currently classified as "must be built." The construction of these units will require an amendment of this Master Deed to include these units and the percentages of value shall be adjusted therefore.
- 7.2 Reservation of Right to Expand the Condominium.** The Developer of the Project for itself, its successors, assigns and subsequent grantees, hereby reserves without limitation, the right for a period of six (6) years from the date of the recording of this Master Deed to expand Lake Michigan View at Diamond Point as provided herein.
- 7.3 Legal Description of Additional Real Estate.** The proposed future development of Lake Michigan View at Diamond Point shall take place on the parcel (or portions of the parcel as provided in Paragraph 7.4 below) of real estate described on Exhibit B hereto.
- 7.4 Manner of Expansion.** The Developer may, in its discretion, construct up to a maximum of Forty (40) additional townhomes and ten (10) additional single-family units within the expansion areas described in Paragraph 7.3 above. The Developer shall have the reserved right to expand the Project within the expansion area in such phases and at such times as the Developer, in its discretion, may deem appropriate. However, in no event, shall an expansion phase consist of less than one (1) unit with general and limited common elements of substantially the same character and quality as exists in the original Project. There shall be no restriction on the size of the portion of the expansion area which the Developer may add to the Project or the order in which portions of the expansion area may be added to the Project by the Developer.

All units within the expansion area shall be residential units. However, the location of all such additional units as may be constructed in the expansion area shall be determined by the Developer in its sole discretion. All structures, improvements, buildings and units constructed in the expansion area set forth in Paragraph 7.3 above shall be compatible with existing units with respect to density, use, construction and architectural style. Construction within the expansion area will be limited to the support facilities for additional residential units thereto, including but not limited to streets and roadways, landscaping, and recreational facilities. The Developer shall not be required to construct any of the recreational facilities referred to herein; but rather the same may be constructed in the sole discretion of the Developer.

The increase in size of this Project shall be given effect by an appropriate amendment(s) to this Master Deed in a manner provided by law, which amendment(s) shall be prepared by and at the discretion of the Developer, its successors, assigns, and subsequent grantees, and in which the percentages of value set forth in Article 5 hereof shall be proportionately readjusted in order to preserve a total value of one hundred (100%) percent for the entire project resulting from such amendment(s) to the Master Deed. Such amendment(s) to the Master Deed shall contain such further definitions and redefinitions of general or limited common elements as may be necessary to adequately describe and service the additional parcel(s) being added to the Project by such amendment(s).

All of the co-owners and mortgagees of units and other persons interested or to become interested in the Project from time to time shall be deemed to have irrevocably and unanimously consented to

such amendment(s) of this Master Deed to effectuate the foregoing and, subject to the limitations set forth herein, to any proportionate reallocation of percentages of value of existing units which the Developer or its successors may determine necessary in conjunction with such amendment(s) as the same may be approved by the Department of Commerce. All such interested persons irrevocably appointed the Developer or its successors as agent and attorney for the purpose of execution of such amendment(s) to the Master Deed and all other documents necessary to effectuate the foregoing. Such amendments may be effected without the necessity of re-recording an entire Master Deed or the Exhibits thereto and may incorporate by reference all or any pertinent portions of this Master Deed and the Exhibits hereto; **provided, however**, that a Consolidating Master Deed, when recorded, shall supersede the previously recorded Master Deed and all amendments thereto.

**7.5 Changes in Percentages of Values of Units.** The percentage of value assigned to each unit shall remain EQUAL as provided in Paragraph 5.3, of this Master Deed in the event that the Developer shall exercise its reserved right to expand the Project. In the event the Developer shall elect to expand the Project phases, the total value of the Project shall at all times remain at one hundred (100%) percent including the expansion phase and the percentage of value allocated to all units including those within the expansion phase shall be equal.

**7.6 Expansion at Discretion of the Developer.** Nothing herein contained, however, shall in any way obligate the Developer to enlarge the Project beyond the phase established by this Master Deed and the Developer (or its successors and assigns) may, in its discretion, establish all or a portion of said future development as rental development, a separate project(s) or any other form of development. There are no restrictions on the election of the Developer to expand the Project other than as explicitly set forth herein. There is no obligation on the part of the Developer to add portions of the proposed future development described in this Article 7 in any particular order, nor to construct particular improvements thereon in any specific locations.

## ARTICLE 8. EASEMENTS

**8.1 Easements for Maintenance and Related Matters.** If all or any portion of a unit or common element encroaches upon another unit or common element due to shifting, settling, or moving of a foundation due to surveyors, construction deviations, reconstruction, replacement, renovation, or repair, reciprocal easements respectively benefiting and burdening each such unit or common element shall exist for the maintenance of such encroachment so long as such encroachment exists, and for the maintenance thereof after rebuilding in the event of any destruction. This provision shall not be construed to allow or permit any encroachment upon, or an easement for an encroachment upon, units described in the Master Deed as being comprised of land and/or air space above and/or below said land, without the consent of the co-owner of the unit to be burdened by the encroachment or easement.

There shall also be permanent easements to, through, over, under and across the Condominium premises, including all units for the following:

- A.** For the maintenance and repair (including replacement) of common elements, which easement shall be administered by the Association.
- B.** As may be reasonable for the installation and continuing maintenance and repair (including replacement) of all utilities in the Condominium Project, including, but not necessarily limited to, light, power, cable television, water, sanitary sewer and communications.

The Association may grant such easements and right of way over, under and across the Condominium Project for utility purposes, including access to utilities and such other lawful purposes as may be necessary for connecting a unit to utility; subject, however, to the approval of the Developer so long as the Developer holds any unit within the Project for sale or so long as any additional unit(s) may be created in the Project.

## 8.2 Easements Retained by the Developer.

- A. Roadway, Walkway and Utility Easements.** Until the final completion of the Project or the final completion of any adjacent development pursuant to Subparagraph D below, the Developer reserves, for the benefit of itself, its agents, employees, invitees, guests, independent contractors, successors and assigns, an easement for the unrestricted use of all roadways, walkways and utilities (water, sanitary sewer, storm sewer, gas, electric, cable, phone) in the Condominium Project for the purpose of ingress and egress to and from all or any portion of the Condominium premises until such time as the units are deeded to the association.
- B. Use of Facilities.** The Developer and its duly authorized agents, representatives and employees, may maintain offices, model units and other facilities on the Condominium premises and engage in any acts reasonably necessary to facilitate the sales of units in the Condominium Project. In connection therewith, the Developer shall have full and free access to all common elements and unsold units.
- C. Repair and Replacement of Utilities.** The Developer also hereby reserves, for the benefit of itself, its successor and assigns, with respect to the land described in Article 2 hereof, and any other land contiguous to the Condominium Project which may be owned or hereafter acquired by the Developer, or its successors or assigns, a perpetual easement to construct, modify, repair, maintain, utilize, tap, tie into, extend and enlarge all utility mains located within the Condominium Project, including, but not limited to, water, and sanitary and storm sewer, electric, light and communication. In the event the Developer, its successors or assigns, utilizes, taps, ties into, extends, or enlarges any utilities located on the Condominium premises, the Developer, its successors or assigns, shall be obligated to pay all the expenses reasonably necessary to restore the Condominium premises to its state immediately prior to such utilization, tapping, tying in, extension, or enlargement; and such restoration shall be made promptly.

In addition, the Developer retains for the benefit of itself, its successors and assigns, and representatives of any utility company, including any cable television company, and to the burden of the Condominium premises, the right to enter the Condominium Project and do all the things necessary to install, maintain, repair, replace, or inspect utility facilities within the purview of their responsibilities.

- D. Easement for Expansion.** The Developer reserves for itself, its successors and assigns, the right to extend the existing roads and utilities (water, sanitary sewer, storm sewer, gas, electric, phone, cable) in the Condominium Project and install said roadways and utilities thereto in order to serve any adjoining condominium projects hereafter constructed and perpetual easements for the continuing use of such additional roadways and utilities shall exist for the benefit of such other condominium projects constructed for the same purposes and upon the same conditions as the condominium project as are applicable to the existing Project roadways.

In the event that the Developer shall construct additional condominium projects for which it is necessary to use the existing roadways and utilities within the Condominium Project, the co-owners of the Condominium Project shall be responsible from time to time for the payment of a proportionate share of the expenses for maintenance, repair, and replacement of any contiguous roadways and utilities common to both projects. Such share shall be determined by such expense times a fraction, the numerator of which shall be the number of units within the Condominium Project, and the denominator of which will be the number of units within the Condominium Project plus all other units of such contiguous condominium project or projects which utilize such common roadway or utilities as a means of access to public roads or utilities.

- 8.3 Other Project Easements.** The other project easements for provision of electric, gas, cable and phone services are set forth in Exhibit D to this Master Deed.
- 8.4 Termination of Easements.** The Developer reserves the right to terminate and revoke any utility or other easement granted in this Master Deed at such time as a particular easement has become unnecessary. No easement for a utility may be terminated or revoked unless and until all units served by it are adequately served by appropriate substitute utility on a shared maintenance basis. The termination or revocation of any such easement shall be affected by the recording of an appropriate amendment to the Master Deed in accordance with the requirements of the Act.
- 8.5 The Financial Support of Easements.** The Association shall financially support all easements described in this Article 7 or otherwise pertaining the Condominium Project, regardless of the rights of others to utilize such easements.

#### **ARTICLE 9. PRIVATE ROADWAY AND UTILITY EASEMENT**

- 9.1 Private in Nature.** The private roadway (Right of Way) as described in Paragraph 4.1, J, and as designated on Exhibit D hereto, constitute a private non-public right of way. Said right of way is designated as a general common element of the Condominium Project, and as provided in Paragraph 4.3, A, the cost of the maintenance, repair, and replacement of such general common element roadway shall be borne by the Condominium Association.

**THE ROADWAY WILL BE DESIGNED, PERMITTED AND BUILT PURSUANT TO THE STANDARDS FOR PRIVATE ROAD PURSUANT TO THE CITY OF NEW BUFFALO ZONING ORDINANCE. HOWEVER, BECAUSE THE RIGHT OF WAY IS PRIVATE, NEITHER THE BERRIEN COUNTY ROAD COMMISSION NOR CITY OF NEW BUFFALO WILL REPAIR, MAINTAIN OR REPLACE SAID PRIVATE ROAD OR RIGHT OF WAY.**

- 9.2 Dedication to the Public.** In the event that at some time in the future, the Association shall elect to dedicate such right of way to the public, it shall be the responsibility of the Association, in advance of such dedication, to bear all costs and expenses reasonable and necessary to bring such right of way into compliance with the standards necessary for public acceptance.

#### **ARTICLE 10. PUD DESIGNATION--FUTURE DEVIATION**

- 10.1 PUD Designation.** The Condominium Project was approved as a Planned Unit Development on July 19, 2005 pursuant to the provisions of the City of New Buffalo Zoning Ordinance, Berrien County, Michigan.

#### **ARTICLE 11. AMENDMENT**

- 11.1 Amendments Which Do Not Materially Alter or Change Rights.** The Developer retains, for itself, its successors or assigns, or the Condominium Association, the right to amend the "Condominium Documents" without the consent of the co-owners or mortgagees if such amendment does not materially alter or change the rights of a co-owner or mortgagee. Amendments which do not materially alter or change the rights of a co-owners or a mortgagee, include, but are not limited to, amendment modifying the types and sizes of unsold units and their appurtenant common elements, correcting survey or other errors made in the Condominium documents, or for the purpose of facilitating loan financing for existing or prospective co-owners, and to enable the purchase of insurance of such mortgage loans by an institutional participant in the secondary mortgage market which purchases or insures mortgages.
- 11.2 Amendments Which Materially Alter or Change Rights.** Except as provided elsewhere in this Article 11, the Master Deed, By-Laws and Condominium Subdivision Plan may be amended with

the consent of not less than sixty-six and two-thirds (66-2/3%) percent of the votes of all co-owners entitled to vote as of the record date for such votes. A mortgagee shall have one vote for each first mortgage held. Mortgagees' votes shall be cast and counted pursuant to the provisions of Sections 90 and 90(a) of the Act.

**11.3 Developer's Reserved Right to Materially Amend Condominium Documents.** Notwithstanding any contrary provision of the Condominium Documents, Developer reserves the right to amend materially this Master Deed or any of its exhibits for any of the following purposes:

- A. To amend the Condominium Bylaws, subject to any restrictions on amendments stated therein;
- B. To correct arithmetic errors, typographical errors, survey or plan errors, deviations in construction or any similar errors in the Master Deed, Condominium Subdivision Plan or Condominium Bylaws, or to correct errors in the boundaries or locations of improvements;
- C. To clarify or explain the provisions of this Master Deed or its exhibits;
- D. To comply with the Act or rules promulgated thereunder or with any requirements of any governmental or quasi-governmental agency or any financing institution providing mortgages on units in the Condominium Premises;
- E. To create, grant, make, define or limit easements affecting the Condominium Premises;
- F. To record an "as built" Condominium Subdivision Plan and/or consolidating Master Deed and/or to designate any improvements shown on the Plan as "must be built", subject to any limitations or obligations imposed by the Act;
- G. To terminate or eliminate reference to any right which Developer has reserved to itself herein; and
- H. To make alterations described in Article 6 above, even if the number of units in the Condominium Project would thereby be reduced.
- I. Any amendments not prohibited by the Act until the transactional control date has passed and control of the project is accepted by the Association in writing.

Amendments of the type described in this Article 11 may be made by the Developer without the consent of the co-owners or mortgagees, and any co-owner or mortgagee having an interest in a unit affected by such an amendment shall join with the Developer in amending this Master Deed.

**11.4 Amendments Changing Percentage of Value.** The method or formula used to determine the percentage or value of units within the Project as provided in Paragraph 5.3, above and any provisions relating to the ability or terms under which a co-owner may rent a unit, may not be modified without the consent of each affected co-owner and mortgagee. A co-owner's Condominium unit dimensions or appurtenant limited common elements may not be modified without such co-owner's consent. This provision shall not restrict the Developer's ability to add additional units in the future expansion area and correspondingly change the percentage of value of all units due to the addition of said units.

**11.5 Termination.** Except as provided in Section 50 of the Act, the Condominium Project may not be terminated, vacated, revoked, or abandoned without the written consent of eighty (80%) percent of all co-owners.

**11.6 The Developer's Exemption.** The restrictions contained in this Article 11, Amendment, shall not in any way affect the rights of the Developer as set forth elsewhere in this Master Deed.

- 11.7 Articles Not Subject to Amendment.** Article 2, Legal Description (except to correct surveying or scrivener's errors); Article 4, Common Elements; Article 5, Unit Description and Percentage of Value; Article 6, Alteration of Unit Boundaries; Article 8, Easements; and Article 11, Amendments; shall not be amended, nor shall the provisions thereof be modified by any other amendment to this Master Deed without the written consent of the Developer, its successors or assigns, and subsequent grantees so long as the Developer, its successors, assigns and subsequent grantees, continues to offer any unit of the Condominium for sale for so long as there remains, under such provisions, any further possibility of expansion of the Condominium Project by utilization of the convertible areas.
- 11.8 Notice of Amendment.** Co-owners and mortgagees shall be notified of proposed amendments under this Article not less than ten (10) days before the amendment is recorded.
- 11.9 Effective Date of Amendment.** Amendment to the Condominium documents shall not be effective until such amendment is recorded. A copy of such recorded amendment shall be delivered to each co-owner of a unit within the Project.
- 11.10 Cost of Amendment.** A person causing or requesting an amendment to the Condominium documents shall be responsible for the cost and expenses of such amendment, except for amendments based upon a vote of a prescribed majority of co-owners and mortgagees or based upon the advisory committee's decision, the cost of which shall be considered expenses of the administration.

#### **ARTICLE 12. MUST BE BUILTS**

- 12.1** The improvements as shown on Exhibit D hereto constitute "must be built" requiring the retention of funds in escrow pursuant to Section 103b of the Act upon the closing of unit sales.

Any improvements identified on Exhibit D as "need not be built" need not be built and do not require the retention of funds in escrow pursuant to § 103(b).

**ARTICLE 13. CONTROLLING LAW**

**13.1** The provisions of the Act and the other laws of the State of Michigan shall be applicable to this Master Deeds and its attachments and all activities related thereto.

“DEVELOPER”

LAKE MICHIGAN VIEW TOWNHOMES &  
COTTAGES, LLC, a Michigan limited liability  
company

\_\_\_\_\_  
Paul D. Oselka, Member and Manager

STATE OF MICHIGAN )  
                                  ) SS:  
COUNTY OF BERRIEN )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, a Notary Public, in and for said County, personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is a Member and Manager of Lake Michigan View at Diamond Point, a Michigan limited liability company, qualified to do business in Michigan, named in and which executed the within instrument, and that said instrument was signed on behalf of said Corporation, and acknowledged said instrument to be the free act and deed of said Corporation.

\_\_\_\_\_, Notary Public  
Berrien County, Michigan  
Commission expires: \_\_\_\_\_