

STATE OF MICHIGAN
COUNTY OF KALAMAZOO
REGISTER AND RECORD

P 14 3 58 PM '71

REGISTER OF DEEDS
Hand Impressed

DECLARATION

of

GENERAL COVENANTS, CONDITIONS AND RESTRICTIONS
FOR PARKVIEW HILLS PLANNED UNIT DEVELOPMENT

THIS DECLARATION, made on the date hereinafter set forth, by PARKVIEW HILLS, a co-partnership, hereinafter referred to as "Declarant",

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Kalamazoo, County of Kalamazoo and State of Michigan, which is more particularly described in Schedule A, annexed hereto;

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

PURPOSE OF PLANNED UNIT DEVELOPMENT

The above described properties constitute a Planned Unit Development governed by the ordinances of the City of Kalamazoo, which plan is on record in the office of the City Clerk of the City of Kalamazoo and is hereby declared to be notice to each owner as hereinafter defined. The purpose of the Planned Unit Development and of this Declaration is to preserve as near as may be in an urban setting the amenities of a natural environment, to give prime consideration to the belief that man's quality of living decreases as he removes himself from or disrupts the order and substance of nature in his immediate environment and to give the strongest practicable consideration to the preservation of the natural features of the environment, including air, soil, water, topography, natural

vegetation, and all kinds of animals, especially in their natural relationships as natural communities. In general this Declaration shall be construed to encourage the leaving of the land in its natural state except as otherwise provided or permitted and to give the Board of Directors the authority to pass reasonable regulations concerning aesthetic considerations including preservation of scenic views, prevention of unsightliness, fostering of quietness, and the like. The right but not the obligation of the Board of Directors to restore and maintain the unpaved portions of the street rights-of-way and the common areas in their natural condition is hereby declared and each grantee, by the acceptance of a conveyance of any portion of the properties, shall be deemed to have agreed to the same on behalf of himself, his successors, heirs and assigns.

It is a further purpose of the development to include the widest variety of housing types as well as a limited amount of non-residential structures and uses as permitted by ordinance.

EFFECT OF FINAL DEVELOPMENT PLAN FILED WITH THE CITY OF KALAMAZOO

The final development plan of the Planned Unit Development which is on record in the office of the City Clerk of the City of Kalamazoo, has the effect and only the effect prescribed by the ordinances of the City of Kalamazoo. The plan constitutes part of the public controls imposed by the City upon developers, owners, residents and users of the Planned Unit Development and does not create, and is not intended to create any private property or contract rights in the owners and residents of the Planned Unit Development except as such rights may be created expressly by separate contracts, deeds and other documents, including this Declaration. A Planned Unit Development confers maximum benefits upon the residents when all of its elements are planned and developed in appropriate relationship to each other. The plan on file in the office of the City Clerk describes a plan of development which the Declarant believes will provide maximum benefits to the residents, owners and the public. During an extended development program, however, various factors can intervene which may hinder the effectiveness of the plan and which may threaten the benefits to be derived by the residents, owners and the public unless the plan can be modified as prescribed by the applicable ordinances. Accordingly although this declaration is applicable to the entire area of the planned unit development, it confines itself to the establishment of a community organization and the definition of the rights and obligations of each owner in and to the organization and its facilities. Some basic limitations upon the use of the land are also included but this declaration is not intended to nor does it grant or create any private property or contract rights in the plan for the planned unit development and such plans continue to remain subject to modification by the proper city authorities in accordance with the procedures

set forth in the ordinance of the city. The declarant believes, however, that additional protection in the nature of private property and contract rights should be accorded to the residents within those areas of the planned unit development which constitute their respective immediate neighborhoods and which are being developed currently. Other protective covenants which will be applicable to the property therein respectively described may hereafter be recorded prior to the conveyance thereof.

Accordingly, it is hereby declared that the plan on file in the office of the City Clerk does not create and shall not be construed to create any private property or contract rights in any resident or owner of the planned unit development.

APPLICABILITY TO COMMERCIAL PROPERTY

This declaration extends to all properties described in Schedule A, but properties which now or hereafter may be planned for or devoted to commercial purposes, together with properties accessory thereto, do not have any rights or obligations with regard to the common areas and are not subject to assessment for the maintenance thereof, nor do the owners of such properties have any right to membership in the Association. Such properties, however, are subject to some of the basic limitations on the use of land contained in Article V, but only to the extent therein specified, and to such other protective covenants as may hereafter be recorded prior to conveyance thereof. If such property is devoted to residential use, then it is subject to all rights and obligations as residential property.

MAINTENANCE OF COMMON AREAS

The Association, by the acceptance of a conveyance of the common areas, covenants to maintain the same in good condition in accordance with the purposes stated in this declaration.

ARTICLE I

Definitions

Section 1.

"ASSOCIATION" shall mean and refer to "THE PARKVIEW HILLS COMMUNITY ASSOCIATION, INC.", its successors and assigns.

Section 2.

"OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any residential lot or dwelling unit which is in the property, except that one holding such interest merely as security for the performance of an obligation shall not be deemed an owner and except that a contract purchaser in possession shall be deemed an owner.

Section 3.

"PROPERTIES" shall mean and refer to that certain property in Schedule A annexed hereto and to such other real property as may hereafter be added as provided in Article VI, Section 3. "PROPERTY" shall mean a particular parcel within the properties.

Section 4.

"COMMON AREAS" shall mean all the real property owned by the association for the common use and enjoyment of the owners. No area shown or indicated on any plan or plat of the property shall be considered as a common area unless and until it has been conveyed to the association for the common use and enjoyment of the owners.

Section 5.

"PLAN" shall mean the final development plan of the planned unit development on file in the office of the City Clerk of the City of Kalamazoo as the same may be from time to time amended.

Section 6.

"DWELLING UNIT" shall mean an improved space designed for and ready for occupancy by an individual or single family for independent dwelling purposes, whether located in a detached, semi-detached, row or multiple-family structure.

Section 7.

"OWNER OCCUPIED DWELLING UNIT" shall mean a dwelling unit which is occupied by its owner for his residence even though the same be rented by him during a temporary absence.

Section 8.

"LOT" shall mean any numbered lot on a recorded plat and any unplatted parcel but only after such unplatted parcel shall have been improved by a building containing a dwelling unit or dwelling units. Unplatted parcels shall be described in accordance with rules established by the Board of Directors.

ARTICLE II

Property Rights

Section 1.

OWNERS' EASEMENTS OF ENJOYMENT OF COMMON AREAS

Every owner shall have a right and easement of enjoyment in and to the common areas, which right and easement shall be appurtenant to such ownership, subject to the following:

- (a) The right of the Association to make and enforce reasonable rules and regulations to carry out the terms of this declaration and to fulfill its purposes.
- (b) The right of the Association to fix and charge reasonable admission and other fees for the use of any recreational facility situated upon the common area.

- (c) The right of the Association to suspend voting rights and the rights of members to use any of the common areas or any facility therein for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, except that such suspension for any continuing infraction may continue for the duration of such infraction.
- (d) The right of the Association to dedicate or transfer all or any part of the common area, provided the same shall be approved, at a meeting duly called for such purpose, by affirmative vote of two-thirds (2/3rds) of all the outstanding votes held by owners in the Association and by affirmative vote of two-thirds (2/3rds) of all the outstanding votes allowable for owner-occupied dwelling units.
- (e) The right of the Association to construct, maintain and improve recreation and other facilities on the common open space for the benefit of the owners and to permit the use thereof by other persons as provided for herein.
- (f) The right of declarant until December 31, 1975 to retain the exclusive use of a portion of the community center not to exceed 3,000 square feet in area, provided the Developer shall maintain the same at its own expense and shall return it to the Association in a likenew condition.
- (g) The right of Declarant until December 31, 1975 to convey or set aside not to exceed two acres of common open space for the exclusive use of owners of single-family and duplex lots, provided that the same shall not deprive members of the Association of any rights to the shores of Lake Hill 'N' Brook and provided that none of the cost of such area, including maintenance, improvements or taxes, shall be an obligation of the Association.

Section 2.

DELEGATION OF USE

Any owner may delegate, in accordance with the bylaws, his rights of enjoyment of the common area and facilities to members of his family, his tenants and guests.

ARTICLE IIIMembership and Voting RightsSection 1.

Membership in the Association shall be limited to owners, but enjoyment of facilities may be extended to others on such terms as may be provided in the Bylaws. Fees for such enjoyment shall not be less than the monies paid by members for use of the facilities to which such privileges are extended.

Section 2.

Every member of the Association shall be entitled to one vote for each lot or dwelling unit owned by such member but if a lot is improved by one or more dwelling units the owner shall vote his dwelling unit and not the lot. If more than one person holds an interest in any lot or dwelling unit, the vote allowed by such lot or dwelling unit by this section shall, subject to the Association Bylaws, be exercised as they among themselves determine, but in no event shall more than one vote be cast in respect to any one lot or dwelling unit.

ARTICLE IV

Covenant for Maintenance Assessments

Section 1.

CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS

The Declarant, for each lot or dwelling unit owned within the properties, hereby covenants, and each owner of any lot or dwelling unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys fees, shall from date of assessment be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successor owners unless expressly assumed by them.

Section 2.

PURPOSE OF ASSESSMENTS

The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the properties, including, but not limited to the improvement and maintenance of the common areas and the recreation facilities thereon, and unpaved land within street rights-of-way, the payment of taxes and assessments levied against property owned by the Association and the expenses of the Association, and, in general, the carrying out of the purposes set forth in or permitted by the Articles of Incorporation and this Declaration. The Association may provide for reasonable reserves for contingencies, replacements and improvements, provided the amount placed in reserve in any fiscal year shall not exceed 10% of the annual assessment except upon compliance with Section 4. below.

Section 3.BASIS AND MAXIMUM ANNUAL ASSESSMENT BY ASSOCIATION

The following shall be assessable:

- (a) Except as otherwise provided in this Section 3, the assessment shall be made against each lot. If a lot is improved by one or more dwelling units, the assessment shall be an amount obtained by multiplying the assessment for one lot by the number of dwelling units thereon. A lot shall not be assessable so long as the right to construct a dwelling unit thereon is precluded by deed restrictions enforceable by and acceptable to the Association.
- (b) In the case of a condominium, the assessment shall be made against each dwelling unit and its appurtenant share of the common elements.
- (c) The total annual assessment of the Association shall be levied pro rata against all of the assessable lots and dwelling units, as provided in (a) and (b) above, subject to the following:
 - (1) No lot or dwelling unit shall be assessable until January 1, 1973;
 - (2) Until January 1, 1975 no owner-occupied dwelling unit shall be assessed in excess of \$100 per year;
 - (3) On and after January 1, 1975 no owner-occupied dwelling unit shall be assessed in excess of 1/300th of the total annual assessment.

Section 4.SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS

In addition to the annual assessments authorized above, the Association may levy, in any assessment year beginning January 1, 1973, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement upon the common area, including fixtures and personal property relating thereto, or the cost of establishing or adding to a reserve therefor, provided that any such assessment shall have the assent, at a meeting duly called for this purpose, of 60% of the owner-occupants voting in person or by proxy, each owner-occupant having one vote, and of 60% of all of the members voting in person or by proxy.

Section 5.NOTICE AND QUORUM FOR SPECIAL ASSESSMENTS UNDER SECTION 4.

Written notice of any meeting called for the purpose of taking any action authorized under Section 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty (50%) percent of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6.UNIFORM RATE OF ASSESSMENT

Both annual and special assessments must be fixed at a uniform rate for all assessable lots or dwelling units except as provided in Article IV, Section 3 (c).

Section 7.ASSESSMENTS: DATE OF COMMENCEMENT AND DUE DATES

The annual assessments provided for herein shall commence January 1, 1973. The Board of Directors shall fix the rate of the annual assessment and the amount of assessment against each lot 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 of the Board of Directors assessing the same, provided, however, that where there is more than one owner of a property, only one notice, subject to reasonable regulation by the Board of Directors, need be sent. The due date for payment shall be established by the Board of Directors and shall be stated in said notice. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not all assessments have been paid and setting forth the amounts, if any, interest charges and due dates.

Section 8.EFFECT OF NON-PAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 7% per annum or at such lesser uniform rate as shall be established by the Board of Directors at the time of the fixing of the assessment period. The Association may bring an action against a delinquent owner or other person personally obligated to pay the same and may foreclose the lien established by the terms of this declaration. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or by abandonment of his lot.

Section 9.SUBORDINATION OF THE LIEN TO MORTGAGES

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

ARTICLE V

Land Planning and Building Committee

Section 1.

ARCHITECTURAL CONTROL

The Board shall exercise the authority to carry out the obligations imposed on it by any covenants or restrictive agreements imposed on any properties. For this purpose it may appoint an architectural committee in accordance with such reasonable rules as it may impose.

Section 2.

RUBBISH

The Board of Directors is empowered to prescribe reasonable rules and regulations for garbage cans and other waste containers, their location and concealment, and for waste disposal, including prohibition of outdoor burning. The Board may, on approval by a majority vote of the members present in person or by proxy at a meeting called for such purpose, enter into contracts on an annual basis for trash and garbage service and may add the cost thereof to the annual assessment or may cause the same to be billed directly to the respective owners. Such contracts may be renewed annually without approval of the members, but future authority may be revoked by similar action of the members.

Section 3.

NATURAL GROWTH

The natural growth on any property shall not be deemed a nuisance, but the Board of Directors may pass reasonable regulations for control thereof for the health, safety and welfare of the owners and occupants of the properties.

Section 4.NOISE

It being one of the purposes of this Declaration to foster an environment free of unnecessary annoyances, discomforts and health hazards of urban living, the Board of Directors is hereby given the power to make reasonable regulations for the control of noise, which regulations may take into consideration the differing uses appropriate to different parts of the properties.

No motor or motor driven vehicle of any kind shall be allowed in the common open space, except for maintenance or service authorized by the Association. Owners covenant not to oppose the banning of motorboats, except electric motors not exceeding 5 horsepower, from Lake Hill 'N' Brook.

Section 5.REMEDIES FOR VIOLATIONS: INVALIDATIONS

For a violation or breach of any of these reservations, covenants and restrictions, the Association and any owner or either of them severally 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. The failure of the Association or of any owner to enforce or the failure to enforce promptly any of the reservations, covenants or restrictions shall not bar other or subsequent enforcement. The invalidation of any one or more by any court of competent jurisdiction shall not effect any other reservation, covenant or restriction but shall remain in full force and effect.

ARTICLE VIGeneral ProvisionsSection 1.ACTION BY ASSOCIATION

Except where otherwise provided herein, when action is required of or permitted by the Association the same shall be deemed to refer to the action of the Board of Directors.

The Board of Directors may close the books of the corporation against transfer of membership for a stated period not to exceed forty (40) days prior to such meeting.

Section 2.DURATION: AMENDMENT

The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by affirmative vote of 75% of all the outstanding votes held by the owners of the Association and by affirmative vote of 75% of all the outstanding votes allowable for owner-occupied dwelling units. The certificate of an officer of the Association, attested by a member of the Board of Directors, and bearing the seal of the corporation, shall be conclusive proof of the action taken.

Section 3.ADDITIONAL PROPERTY

- (a) Residential property and common area not now a part of PARKVIEW HILLS planned unit development may be added to the property by the declarant within five years of the date of this declaration, provided the same shall not exceed in the aggregate ten acres in size, shall not have a smaller ratio of common area to total area than that presently obtaining in PARKVIEW HILLS planned unit development, and provided such addition shall be approved by proper authorities of the City of Kalamazoo pursuant to procedures set forth in the ordinance of the city.
- (b) Additional land may be added at any time provided that such addition shall have the assent, at a meeting duly called for such purpose, of two-thirds (2/3rds) of the owner-occupants voting in person or by proxy, each owner-occupant having one vote, and of two-thirds (2/3rds) of all of the members voting in person or by proxy.

Section 4.EXCEPTIONS

Inasmuch as certain property within the plan is isolated from the other properties by the west branch of Portage Creek, sometimes called Hill 'N' Brook Creek, it would be inequitable to assess the owners thereof for maintenance and operation of the community center, recreation facilities and common areas without their consent. However, it is desirable that such facilities be made available to such owners on an optional basis. Therefore, the foregoing declaration notwithstanding, no lot in that part of the property lying south of the west branch of Portage Creek shall be subject to assessment nor shall the owner thereof be a member of the Association unless and until such owner shall file with the Association, in form and manner provided by the Association, a consent to assessment. Upon such filing the owner shall be an owner for all purposes under the declaration. Such consent shall be binding for the assessment years stated therein.

SCHEDULE A

Land situate in the City of Kalamazoo, County of Kalamazoo and State of Michigan described as:

The East half of the Northeast quarter, the West half of the Southeast quarter, and the Northeast quarter of the Southeast quarter, all in Section 31, T 2 S, R 11 W, said three parcels containing 200 acres, more or less. ALSO, all that part of the Northwest quarter of the Southwest quarter of Section 32, T 2 S, R 11 W, lying West of Limekiln Lake, and West of the old channel of Portage Creek, containing 20 acres, more or less. ALSO, beginning in the West line of Section 32, T 2 S, R 11 W, at a point 1386.1 feet South of the Northwest corner of said section, thence East 199.27 feet, thence South 0° 12' East 364.3 feet, thence East 280 feet, thence South 0° 12' East 88 feet, thence East 190 feet, thence South 0° 12' East 801.6 feet to the East and West quarterline of said Section 32, thence West on said quarterline 672.74 feet to the West quarterpost of said Section 32, thence North along the West line of said Section 32 to beginning, containing 14.95 acres, more or less.

ALSO beginning on the West line of Section 32 at a point 1296.1 feet South of the Northwest corner of said section, thence East 339.69 feet, thence South 0° 12' East 45 feet, thence East 190 feet, thence South 0° 12' East 225 feet, thence East 140 feet, thence South 0° 12' East 272.3 feet, thence West 190 feet, thence North 0° 12' West 88 feet, thence West 280 feet, thence North 0° 12' West 364.3 feet, thence West 199.27 feet to the West line of said section, thence North along the West line of said section 90 feet to the place of beginning.

ALSO the Southeast quarter of the Southeast quarter of Section 31, EXCEPT the plats of "Hill 'N' Brook Villages No. 5 and 8". ALSO that part of the Southwest quarter of the Southwest quarter of Section 32 lying within the extension of Lake Forest Drive.

ALSO a parcel of land in the Northwest quarter of Section 32, T 2 S, R 11 W, more particularly described as follows: Beginning at the Southeast corner of Lot 110, Assessor's Plat of Oakland Park, as recorded in the Register of Deeds Office in and for Kalamazoo County, Michigan in Liber 13 of Plats, Page 17, thence West 330 feet, thence South about 889.6 feet to the East and West quarterline of said section, thence East along said quarterline 290 feet, thence North 94.58 feet, thence East 40 feet, thence North about 806.42 feet to the place of beginning, EXCEPT the east 65 feet of the North 65 feet thereof.