

18-28 (Highgate) Commerce
1
REFR 5222 CASE 253

68 45427

MICHIGATE ON THE GREEN NO.1
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by
OPEN SPACE COMMUNITIES, INC., a Michigan Corporation, hereinafter
referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City
of Nixon, County of Oakland, State of Michigan, which is more par-
ticularly described as:

That part of the easterly 1125.0 ft. of the southwest one-
quarter of Section 28, lying South of Loon Lake Road, Town
2 North, Range 8 East, Township of Commerce, Oakland County,
Michigan, such property also described as Highgate on the
Green Subdivision No. 1.

and,

WHEREAS, Declarant will convey individual lots in said subdivi-
sions subject to certain protective covenants, conditions, restric-
tions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the pro-
perties described above shall be held, sold and conveyed subject to
the following easements, restrictions, covenants, and conditions,
all of which are for the purpose of enhancing and protecting the
value, desirability, and attractiveness of the real property. These
easements, covenants, restrictions, and conditions shall run with the
real property and shall be binding on all parties having or acquiring
any right, title or interest in the described properties or any part
thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I.

DEFINITIONS

Section 1. "Association" shall mean and refer to Highgate on
the Green Association, a Michigan non-profit corporation, its suc-
cessors and assigns.

Section 2. "Properties" shall mean and refer to that certain
real property hereinbefore described.

Section 3. "Common Areas" shall mean Park A and Park B High-
gate on the Green Subdivision No. 1.

Section 4. "Lot" shall mean and refer to any plot of land
shown upon any recorded subdivision map of the properties with the
exception of the Common Area.

Section 5. "Member" shall mean and refer to every person or
entity who holds membership in the Association.

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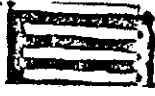
LA 5222 RE 253-240

John D. Humphrey
Declarant

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RECORDED
OAKLAND COUNTY MICHIGAN
REGISTER OF DEEDS RECORDS

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Section 6. "Declarant" shall mean and refer to OPEN SPACE COMMUNITIES, INC., or its successor.

ARTICLE II.

MEMBERSHIP

Membership in the Association shall be automatic for each lot owner. A lot owner shall be defined as every person or entity who or which is a record owner of a fee or undivided fee interest in any lot included within the purview of this Association, but not including owners who have sold their interest under executory land contract. During such time as such a land contract is in force, the land contract vendee shall be considered to be the member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association. Ownership of such lot as defined herein shall be the sole qualification for membership.

ARTICLE III.

VOTING RIGHTS

The Association shall have two classes of voting membership:

Class A. Class A members shall be all those Owners as defined in Article II, with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Article II. Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever first occurs:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on January 1, 1973

ARTICLE IV.

PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to:

(a) The right of the Association to make and enforce reasonable regulations pertaining to the use and maintenance of the Common Area, which regulations shall be binding upon the members.

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by a member for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 90 days for any infraction of its published rules and regulations.

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(c) The right of the Association to dedicate or transfer all or any part of the Common area to any public agency, authority, or utility for such purposes, and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than 30 days nor more than 60 days in advance.

Section 2. Use of the Common Area. All residents of the Properties and guests accompanying said residents shall have equal access to the Common Area.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey a fee simple title to Park A and Park B, to the Association hereinafter described, free and clear of all encumbrances and liens, prior to the conveyance of the first lot in Highgate on the Green Subdivision No. 1.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

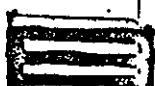
Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association the annual maintenance charge provided for herein. The annual maintenance charge, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

Section 2. Amount of Charge. Amount of said annual charge shall be established and may be adjusted from year to year by the Association as the needs of the property may in their judgment require, but in no event shall such charge be more than \$50.00 per lot except that said maximum charge may be increased at any annual meeting or special meeting called for such purpose by a vote of not less than 51% of the members of the Association, which members may vote in person or by proxy upon said question; provided further that notice of the intention to increase the maximum charge and of the amount of the proposed increase shall have been given to the members with the notice of the meeting as required by the By-laws of the Association. Approval and consent of such additional assessment shall thereafter be binding upon all of the members.

Section 3. Purpose of Charge. Said Maintenance Fund shall be used for such of the following purposes as the Association shall determine necessary and advisable:

- For improving and maintaining common areas and property of the Association, and entrance-ways of the Highgate on the Green Subdivision; for planting trees, shrubbery and the care thereof;
- for collecting and disposing of garbage, ashes and rubbish; for employing night watchmen; for caring for vacant property; for removing grass or weeds; for constructing, purchasing, maintaining, or operating any community service, or for doing any other thing necessary or advisable in the opinion of the Highgate on the Green Association for the general welfare of the members;
- for expenses incident to the examination of plans as herein provided and to the enforcement of these building restrictions, condition, obligations, reservations, rights, powers and charges.

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Section 4. Uniform Rate. Annual Maintenance charges must be fixed at a uniform rate for all Lots.

Section 5. Date of Commencement of Annual Maintenance Charges Due Dates. The annual maintenance charges provided for herein shall commence as to Lots in each subdivision on the first day of the month of January following the recording of the Plat. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Association shall upon demand at any time furnish a certificate in writing signed by an Officer of the Association, setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 6. Effect of nonpayment of Assessments; remedies of the Association. Any Assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of six (6) percent per annum and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his lot.

Section 7. Subordination of the Lien to Mortgages. The Lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI.

USES OF PROPERTY

Section 1. Lots shall be used for providing residence purposes only and no building of any kind whatsoever shall be erected, re-erected, moved or maintained except private dwellings. Such dwellings shall be designed and erected for occupation by one single family. A private attached garage for the sole use of the owner or occupant may be provided.

Section 2. Notwithstanding that which is contained herein to the contrary, the Declarant, his agents or sales representatives may occupy and use any house built in the subdivision or a temporary building or mobile trailer as a sales office for sales of lots and/or houses until all of the lots and/or houses built in this subdivision shall have been sold.

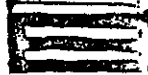
Section 3. House trailers, boats or boat trailers or commercial vehicles (except while making normal deliveries) shall not be stored or parked on any lot except within a private attached garage.

Section 4. No lot in said subdivision may be divided; provided, however, that the Declarant may approve the division of a vacant lot where a portion of said vacant lot is to be combined with an adjoining lot and which thereafter shall be considered to be a part of said adjoining lot for all purposes.

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ARTICLE VII

CHARACTER AND SIZE OF BUILDING

Section 1. No building or other structure shall be commenced, erected or maintained, nor shall any addition to or change or alteration to any structure be made, except interior alterations, until the plans and specifications, prepared by a competent architect showing the nature, kind, shape, height, and materials, color scheme, location on lots, and approximate cost of such structure and the grading plan of the lot to be built upon shall have been submitted to and approved in writing by the Declarant, and a copy of said plans and specifications as finally approved, lodged permanently with said Declarant.

Section 2. Fences, garden walls and similar devices may be constructed or erected only after plans and specifications of such proposed fence, wall or other device shall have first been submitted in writing to the Declarant and approved by it. In any event, no fence, other than ornamental fence not exceeding 3 ft. in height, shall extend on either side of the lot toward the front of the lot further than the rear corner of the building closest to the side lot line. A fence will be permitted to be erected around any privately owned swimming pool as a safety precaution or in accordance with ordinances regulating the construction and use of swimming pools.

Section 3. The Declarant shall have the right to refuse to approve any such plans or specifications or grading plan which are not suitable or desirable in its opinion for aesthetic or other reasons; and in so passing upon such plans, specifications and grading, it shall have the right to take into consideration the suitability of the proposed building or other structure to be built to the site upon which it is proposed to erect the same, and the harmony as planned in view of the outlook from the adjacent or neighboring properties. It is understood and agreed that the purpose of this paragraph is to cause the platted lands to develop into a beautiful, harmonious private residence section, and if a disagreement on the points set forth in this paragraph should arise, the decision of the Declarant shall control.

Section 4. However, in the event the Declarant shall have failed to approve or disapprove such plans and location within thirty (30) days after the same shall have been delivered to the Declarant, then such approval will not be required provided the plans and location on the lots conform to, or are in harmony with existing structures in the subdivisions, these restrictions, and any zoning law applicable thereto.

Section 5. In any case, with or without the approval of the Declarant, no dwelling shall be permitted on any lot in the subdivision unless, in the case of a one-story building it shall have a total living area of not less than 800 square feet; in the case of a one and one-half story building the living area shall not be less than 950 square feet; and in the case of a two-story building the living area shall not be less than 1100 square feet.

ARTICLE VIII

BUILDING LINES

No building on any of said lots shall be erected nearer than 25 feet to the front lot line. In addition, no building shall be erected nearer than 4 feet to the side lot line on any one side, or nearer than a total of 13 feet to both side lot lines, except by written consent of the Declarant, which consent the Declarant is empowered to give.

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ARTICLE IX

ANIMALS

No chickens, other fowl, horses or livestock shall be kept or harbored on any of the said lots. No animals shall be kept or maintained on any lot excepting household pets for use by the occupants of the dwelling. No animals shall be kept on the premises for any commercial purpose. Household pets shall have such care as not to be objectionable or offensive on account of noise, odor or unsanitary conditions. Animals may be declared nuisances by Declarant and must be removed within thirty (30) days if so requested in writing by the Declarant or its authorized representatives.

ARTICLE X

SIGNS

No sign or billboard shall be placed or maintained on any lot except one sign advertising the lot or house and lot for sale or lease, and having not more than three square feet of surface, and the top of which shall be three feet or less above the ground; provided, however, such other signs may be erected and maintained on lots as are permitted in writing by the Declarant.

ARTICLE XI

EASEMENTS

Easements and rights-of-way are hereby reserved as shown on the recorded plat. In addition to the above, easements and rights-of-way are reserved in and over a strip of land six feet in width along all rear and side lot lines wherever it may be deemed necessary for the installation or maintenance of telephone or electrical poles, lines or conduits, or sewer, gas lines, or water mains, for drainage purposes, or for the use of any other public utility deemed necessary or advisable by Declarant. The use of all or a part of such easements and rights-of-way may be granted or assigned at any time hereafter by the Declarant to any person, firm, governmental unit or agency or corporation furnishing any such services.

ARTICLE XII

REFUSE

No refuse pile or other unsightly or objectionable materials shall be allowed on any of said lots unless the same shall be properly concealed. Refuse, ashes, building materials, garbage and debris of any kind shall be cared for in such a manner as not to be offensive to neighboring property owners. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

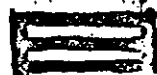
ARTICLE XIII

ASSIGNMENT OF DECLARANT'S RIGHTS

Declarant may at any time assign all or part of its rights, privileges and duties of supervision and control in connection with these restrictions which are herein reserved to the Declarant, to the Association and upon the execution and recording of appropriate instruments of appointment by the Declarant the said Association shall thereupon have and exercise all the rights so assigned and the Declarant shall

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be fully released and discharged from further obligations and responsibilities in connection therewith. Declarant and/or its successors shall make such assignment of all rights still held by it to the Association at such time as the Declarant or its successors no longer have interest in any property contained within these subdivisions, or at January 1, 1973, whichever shall first occur.

ARTICLE XIV

VIOLATIONS

Violations of any restrictions or condition or breach of any covenant or agreement herein contained shall give the Declarant in addition to all other remedies provided by law, the right to enter upon the land as to which such violation or breach exists, and summarily to abate and remove, at the expense of the owner thereof, any erection, sign, thing or condition that may be or exist contrary to the intent and meaning of the provision hereof, and the Declarant shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal.

ARTICLE XV

TERM OF RESTRICTIONS - AMENDMENT

The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners.

ARTICLE XVII

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property shall require the assent of two-thirds (2/3) of the Class A members and two-thirds (2/3) of the Class B members, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be call, subject to the notice requirement set forth above, and the required quorum at such subsequent meeting shall be one-half of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

Section 2. If within seven years of the date of incorporation of this Association, the Declarant should develop additional lands within the Southwest one-quarter of Section 28, Town 2 North, Range 8 East, Township of Commerce, Oakland County, Michigan, such additional lands may be annexed to said Properties without the assent of the Class A members; provided however, that the development of the additional lands described in this section shall be in accordance with a general plan submitted to the Federal Housing Administration with the processing papers for the first section. Detailed plans for the development of additional lands must be submitted to the Federal Housing Administration prior to such development. If the Federal Housing Administration determines that such detailed plans are not in accordance with the general plan or file and so advises the Association

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and the Declarant, the development of additional lands must have the assent of two-thirds (2/3) of the Class A Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. At this meeting the presence of members or of proxies entitled to cast sixty (60%) percent of all of the votes of the Class A membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

ARTICLE XVI

F.R.A. APPROVAL

As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration. Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

ARTICLE XVIII

SEVERABILITY

Each restriction contained herein is intended to be severable and in the event that any one covenant is for any reason void it shall not affect the validity of the remaining covenants and restrictions.

Signed in the presence of:

Jessie Mueller
Jessie Mueller
Ernestine S. Nadolni
Ernestine S. Nadolni

OPEN SPACE COMMUNITIES, INC.

By: Douglas A. Colwell
President Douglas A. Colwell
By: Harold D. Colwell
Secretary Harold D. Colwell

STATE OF MICHIGAN)) SS.
COUNTY OF OAKLAND)

On this 25th day of June, 1968 before me personally appeared Douglas A. Colwell and Harold D. Colwell to me personally known, who being by me duly sworn, did each for himself say that they are the President and Secretary, respectively, of OPEN SPACE COMMUNITIES, INC., the corporation named in and which executed the within instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and said Douglas A. Colwell and Harold D. Colwell acknowledged said instrument to be free act and deed of said corporation.

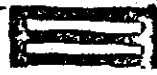
Jessie Mueller
Notary Public Jessie Mueller
Oakland County, Michigan

My commission expires: June 15, 1970

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XVIII



Covenants and restrictions recorded May 1, 1969 in Liber 5353,
Page 256, Oakland County records.

HIGHGATE ON THE GREEN NO. 1

ARTICLE XIX

FENCES

Section 1. Fences of any kind are specifically prohibited on Lots 1 and 31 thru 73 inclusive. However, this shall not be construed to prohibit shrubs, trees or plant material. On Lots 2 thru 30 the provisions of Article VII, Section 2, of the Declaration of Covenants, conditions and restrictions recorded July 11, 1968, in Liber 5222, pages 523 thru 530 inclusive, Oakland County Records, shall apply.

Section 2. Anything to the contrary, notwithstanding detached garages are specifically prohibited on Lots 1 and 31 thru 73 inclusive. On Lots 2 thru 30 inclusive detached garages are prohibited unless the plans, specifications and plat plan are approved in writing by the Declarant.

* * * *