

"Restrictions indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin are hereby deleted to the extent such restrictions violate 42 USC 3604(c)."

33/7  
LIBER 3582 PG 872 \*

DECLARATION OF BUILDING AND USE RESTRICTIONS  
FOR GLEN VALLEY ESTATES

KNOW ALL PERSONS BY THESE PRESENT, that GLEN VALLEY, L.L.C., a Michigan Limited Liability Company, of 4595 Broadmoor, S.E., Suite 100, Grand Rapids, MI 49512 ("Developer"), ROBERT DEPPE BUILDING AND DEVELOPMENT, INC., a Michigan corporation, of 6709 South Division, Grand Rapids, MI 49548 ("Deppe") and AMERIBANK, F.S.B., a Federal Savings Bank, of 190 Monroe, N.W., Grand Rapids, MI 49503, ("Bank") being the owners and mortgagee, respectively, of the land herein described (the "Plat"):

Lots 1 through 64, inclusive, GLEN VALLEY ESTATES, Section 20, T5N, R10W, Village of Caledonia, Kent County, Michigan, according to the recorded plat thereof;

desire to impose certain protective covenants, restrictions and conditions on the Plat, for the purposes of insuring the use of the stipulated portion of the Plat for single family residential purposes only and for the further purpose of preserving and improving the attractive features of the property and the community and securing to each lot owner the full benefit and enjoyment of his home, with no greater restrictions upon the free and undisturbed uses of his property than is necessary to insure the same advantages to other lot owners.

Therefore, Developer, Deppe and Bank hereby covenant and agree to impose the following protective covenants, restrictions and upon the use of the lots in the Plat, which protective covenants, restrictions and conditions shall be binding for a period of time as hereinafter set forth.

1. (LAND USE AND BUILDING TYPE; YARDS) No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than a one detached single family dwelling. No houses already constructed, shall be moved onto the Plat. No building shall be located nearer to the front lot line than 30 feet. Any side yard must be at least 7 feet minimum and the total for both side yards must be at least 15 feet; the rear yard must be not less than 40 feet.

2. (DWELLING SIZE) For Lots 1 through 32, inclusive, the minimum floor area for ranch, bi-level or tri-level designs shall not be less than 1100 square feet for the main floor or two (2) levels as in a tri-level. A 1½ or 2 story, shall not be less than 1400 square feet. For Lots 33 through 64, the minimum floor area for ranch, bi-level or tri-level designs shall not be less than 1400 square feet on the main floor area or two (2) levels as in a tri-level. A 1½ or 2 story, shall not be less than 1700 square feet. Finished areas do not include unheated porches or garages.

3. (GARAGES) A private two (2) stall garage (minimum)

is to be constructed at the time of erection of the dwelling.

4. (FENCES) No fence may be placed in front of the home. For corner lots, the fence may not be placed closer to the road than the closest part of the home.

5. (RECREATIONAL VEHICLES) Boats, trailers, campers, motorhomes or other R.V.'s may not be left in the driveway or the street for more than 48 hours in a seven (7) day period. If located on the property for any longer period of time, the above-mentioned items must be positioned not less than two (2) feet behind the home or garage.

6. (EXTERIOR MATERIALS; DRIVEWAYS) The exterior walls of buildings shall be of wood, brick, aluminum, vinyl, or a combination of these or comparable materials. No exposed cement block or asbestos cement shingles will be permitted. Only new materials shall be used in house construction. All driveways, driving approaches and off-street parking areas shall be surfaced with asphalt, bituminous or concrete paving prior to occupancy of the residence constructed on the lot.

7. (ARCHITECTURAL CONTROL) An Architectural Control Committee for Glen Valley Estates is hereby established by the Developer to be composed of Robert Deppe and Jerry Baker, or their personal representatives, successors, assigns or designees (the "ACC"). No improvement of any kind, including, without limitation, any building, structure, fence, wall, television or radio antenna, mailbox, above ground electrical or utility service, swimming pool, tennis court, landscape devise or object or other improvement, shall be constructed, erected, made, placed or maintained upon any lot in the Plat, nor shall any exterior addition or alteration be made in any such improvement, until the plans and specifications showing the nature, kind, shape, heights, colors, materials and locations of the improvement have been submitted to and approved in writing by the ACC as to harmony of external design and location in relation to surrounding structures and topography. Prior to approval, each lot owner shall submit to the ACC a detailed site development plan, including a landscaping plan, construction plans and specifications and an exterior finish plan including all materials and colors. ACC shall have thirty (30) days after the submittal of all such information to approve or disapprove of such plans. In addition, prior to commencement of construction, each lot owner shall provide the ACC with not less than five (5) days prior notice of a date and time when the lot will be staked showing the location of all improvements and may be viewed by the ACC for purposes of approval or disapproval. The ACC's approval shall not be unreasonably withheld and, if any proposed improvement is not approved, the ACC shall advise the lot owner of the changes needed to obtain approval. Any approval which is granted shall expire if construction of the improvement has not been commenced within twelve (12) months after the approval is given.

The ACC may, upon a showing of practical difficulties, grant variances from the terms and conditions of this Declaration,

but only to the extent and in such manner as not to violate the spirit and intent of this Declaration.

8. (SOIL REMOVAL) All soil to be removed from any lot in the Plat, either in grading or excavation, shall, if desired by it, become the property of the Developer, and when removed shall be dumped by any person so removing said soil, and at his expense, at such place or places upon the Plat or elsewhere the Developer shall designate.

9. (ANIMALS) No animals shall be kept except household pets. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint so as not be obnoxious or offensive on account of noise, odor, or unsanitary conditions. No savage or dangerous animal shall be kept without written permission of the Developer.

10. (TERMS OF CONSTRUCTION) Construction, once started on a building site, must be completed within eight (8) months and the landscaping of the site must be completed within twelve (12) months of the completion of the building.

11. (DESIGNATED BUILDER) All construction must be done by a professional builder, approved in writing by Robert J. Deppe.

12. (SIDEWALKS) The construction of sidewalks across the frontage of each lot is the responsibility of the lot buyer and must be completed before the house is occupied. Notwithstanding the foregoing, all sidewalks within Phase 1 (being Lots 1 through 64) shall be completed by January 1, 1998. For lots not sold at that time, the Developer will be responsible to construct the sidewalks. The Developer will construct the sidewalk along the common lot line 15 and 16 at such time the houses are completed on both of these lots, but no later than January 1, 1998.

13. (LANDSCAPING AND MAINTENANCE) One tree, a maple with a minimum one inch caliper will be planted on the parkway of each lot by the owner of the lot not later than the date of completion of the house. All lawn areas of lots and landscaping are to be properly maintained.

14. (ENFORCEMENT) The provisions of this Declaration shall be enforceable only by the Developer, by any owner of any lot in the Plat and any expanded portion or phase of the Plat or by the Association described in Paragraph 20, below, and by their respective successors or assigns. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

15. (OFFENSIVE ACTIVITIES) No immoral, unlawful or offensive activities shall be carried on any lot or within the Plat, nor shall anything be done which may be or become a nuisance to the other lot owners, nor shall any unreasonably noisy activity be carried on any lot or within the Plat.

16. (SEVERABILITY) Invalidation of any one of these covenants by judgment of court order shall in no way affect any of the other provisions which shall remain in full force and effect.

17. (RESTRICTIONS IMPOSED PURSUANT TO THE REQUIREMENTS OF THE MICHIGAN DEPARTMENT OF NATURAL RESOURCES ("M.D.N.R.)) The flood plain of the Emmons Lake Drain encroaches on Lots 17 through 39, inclusive, and Lot 64, as shown on the final Plat drawing. The 100 year flood plain limits for said Emmons Lake Drain vary from Elevation 767.0 (N.G.V. Datum) at the upstream plat limit (Lot 18) to Elevation 766.0 (N.G.V. Datum) at the downstream plat limit (Lot 64), as shown on the recorded plat drawing. No filling or occupation of the floodplain area will be allowed without prior written approval of the Department of Natural Resources. To insure that no encroachments occur, and to protect future construction from flood damage, the following restrictions are imposed on building construction on any building used or capable of being used for residential purposes and occupancy within, or effected by, the floodplain. Each such building must:

(A) Have lower floors, excluding basements, higher than the elevation of the contour defining the floodplain limits.

(B) Have openings into the basement not lower than the elevation of the contour defining the floodplain limits.

(C) Have basement walls and floors, below the elevation of the contour defining the floodplain limits, watertight and designed to withstand hydro-static pressures from a water level equal to the elevation of the contour defining the floodplain limits following methods and procedures outlined in Chapter 5, Type A construction and Chapter 6 for Class 1 loads found in "Flood Proofing Regulations" EP 1165 2 314 prepared by the Office of the Chief of Engineers, U.S. Army, Washington, D.C., June 1972. Figure 5, Page 14.5 of the regulation shows typical foundations, drainage and waterproofing details. This document is available at no cost from the Department of Natural Resources Land & Water Management Division, Stevens T. Mason Building, P.O. Box 30028, Lansing, Michigan, 48909, or Department of the Army, Corps of Engineers, Publications Depot, 890 South Pickett, Alexandria, Virginia, 22304.

(D) Be equipped with a positive means of preventing sewer backup from sewer lines and drains which serve the building.

(E) Be properly anchored to prevent flotation.

18. (RESTRICTIONS IMPOSED PURSUANT TO THE REQUIREMENTS OF THE KENT COUNTY DRAIN COMMISSION)

(A) A storm water drainage district, which includes a number of lots in the Plat, has been established by the Kent County Drain Commissioner. At some point in the future, the lots within the drain district may become subject to a special assessment for the improvements and maintenance of the drain serving the drainage district. The drainage district boundary is shown on Exhibit "A" attached hereto.

(B) Most of the lots in the Plat are subject to private easements for drainage, and said easements shall be protected and maintained by the adjoining lot owners and shall not be the responsibility of the Kent County Drain Commission. These easements are for the benefit of all lots, and no construction development or grading may occur within these easements which will interfere with the drainage rights of all lots within the subdivision. The easements are for the continuous passage of surface drainage water across said lots and are for the benefit of all adjacent lots. The imposition of such easements shall not, however, prevent the alteration, development and improvement of said lots, or the construction of permanent buildings and structures, provided that no such alteration, development, improvement or construction unreasonably interferes with the continuous passage of surface drainage across said lots. Care shall be taken when final yard grading and landscaping is performed to insure that no major plantings, earthmoving, structures, swimming pools, fences or shrubs be installed which will jeopardize the effectiveness of the drainage course or storm sewer system. Each lot owner shall be responsible to maintain that portion of the drainage system or easement on his property. The direction of surface water drainage is shown on the block grading plan, Exhibit "B" attached hereto.

(C) To eliminate the potential of flooding from backyard surface drainage of storm water from adjacent higher lots and the Emmons Lake Drain, the following lots shall maintain the minimum building opening elevations listed for each lot. The elevations listed below are shown on the block grading plan, Exhibit "B", and are based on N.G.V. Datum; a bench mark is available in the plat.

<u>Lot Number</u>	<u>Minimum Opening Elevation</u>
1-16	769.5
17-39	768.5
40-43	772.3
58-62	770.8
63	771.0
64	768.5

19. (INCONSISTENCIES) In the event of any inconsistencies among the foregoing restrictions, the more stringent restrictions shall govern.

20. (DURATION) The foregoing restrictions imposed by the Michigan Department of Natural Resources and the Kent County Drain Commission are perpetual and shall run with the land. They may not be amended or modified without the prior written approval from the Michigan Department of Natural Resources and the Kent County Drain Commission. All other covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years, from the date these covenants and restrictions are recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten years unless an instrument signed by a majority of the then lot owners recorded agree to change said covenants and restrictions in the whole or part.

21. (PROPERTY OWNERS' ASSOCIATION) The Developer has established the Glen Valley Property Owners' Association as a Michigan non-profit corporation (the "Association") as an association of the lot owners in the Plat and lot owners in Glen Valley Business Center (the "Business Center") located immediately adjacent to the Plat. All lot owners in the Plat and the Business Center shall automatically become members of the Association. At whatever time in the future it may deem fit to do so, Developer may turn over and delegate its authority under this Declaration to the Association. The mere establishment of the Association shall not, however, constitute such a delegation.

22. (COMMON AREAS AND IMPROVEMENTS; RULES AND REGULATIONS) All decisions concerning the development, use, maintenance and repair of those areas and improvements within the Plat and the Business Center dedicated or reserved for the private use and enjoyment of lot owners, including, without limitation, the boulevard in Glengarry Drive, the entrance signs and related improvements, the berm located on the south side of Glengarry Drive within the Business Center, the fence at the rear of Lots 1 through 15 of the Plat, the sidewalk between Lots 15 and 16 of the Plat and other similar areas and improvements (the "Common Areas and Improvements") shall be made by the Developer except to the extent such authority is delegated to the Association. The Developer and the Association, with the consent of the Developer, shall each have the authority to establish and enforce reasonable rules and regulations governing the development, use, maintenance and repair of the Common Areas and Improvements.

23. (DUES AND ASSESSMENTS) The Developer and the Association, with the consent of the Developer, may establish reasonable dues and assessments which shall be paid upon request by all lot owners (including the Developer) on a per lot basis in order to pay any reasonable maintenance, repair and/or replacement costs for the Common Areas and Improvements, future taxes and assessments that may be levied by any state or municipal authority affecting the Common Areas and Improvements, and any other

3582 878

reasonable costs and expenses of the Association. [For this purpose, the lots which the Developer anticipates developing in subsequent phases of the Plat and the Business Center (the "Undeveloped Lots") shall be included in determining the per lot shares.] The share of each lot owner shall be determined by dividing the number of lots owned by each lot owner by the total number of lots owned by all lot owners (including the Undeveloped Lots) and multiplying that fraction by the total cost, taxes and/or assessment to be paid or incurred; PROVIDED, HOWEVER, the owners of lots in the Business Center shall not have any responsibility for costs or expenses for Common Areas and Improvements located entirely within the Plat and outside the boundaries of the Business Center. (In addition, the owners of Lots 1 through 15 shall be solely responsible for the costs and expenses of maintaining, repairing and replacing the fence at the rear of Lots 1 through 15 which costs and expenses shall be due and payable as they are incurred.) All such assessments may be levied on such a periodic basis as the Association shall determine and may be based on the Association's reasonable estimation of the costs and expenses to be incurred during the ensuing year. In addition, each lot owner, upon the closing of his or her purchase of a lot, will be required to pay to the Association the sum of \$\_\_\_\_\_ to establish a maintenance, repair and replacement fund (the "Maintenance Fund"). The Maintenance Fund and any interest earned on the fund shall be used for the payment of the share of the maintenance, repair and replacement of Common Areas and Improvements allocable to lots which have been sold by the Developer and for other costs and expenses of the Association. Consequently, it is anticipated that the Maintenance Fund will substantially reduce or eliminated the need for periodic assessments.

24. (COLLECTION OF ASSESSMENTS) Each lot owner shall be personally liable for all assessments levied by the Association with regard to his lot during the time he has any ownership interest in each lot. If any lot owner defaults in paying any assessments, interest at the rate of seven percent (7%) per annum shall be charged on such assessment from the due date thereof and further penalties or proceedings may be instituted by the Board of Directors of the Association in its discretion. If such assessment, or any part thereof, is not paid on or before the due date established by the Board of Directors for such payment, then such payment shall be in default. The Board of Directors may, but need not, report such a default to any mortgagee of record. Any mortgagee of a lot may consider a default in the payment of any assessment a default in the payment of its mortgage. Unpaid assessments and any other amount due the Association and/or the Developer from a lot owner under this Declaration, shall constitute a lien upon the lot prior to all other liens except tax liens and sums unpaid on a first mortgage of record. The Association and/or the Developer may enforce collection of delinquent assessments or other amount due by a suit at law for a money judgment or by foreclosure of the lien that secures payment of assessments. Each lot owner, and every other person, except for a first mortgagee, who from time to time has any interest in the lot, shall be deemed to have granted to the Association the unqualified right to elect

USEF 3582 PG 879

to foreclose such lien either by judicial action or by advertisement (in accordance with the provisions of Chapter 32 of the Michigan Revised Judicature Act, as amended). The provisions of Michigan law pertaining to foreclosure of mortgages by judicial action and by advertisement, as the same may be amended from time to time, are incorporated herein by reference for the purposes of establishing the alternative procedures to be followed in lien foreclosure actions and the rights and obligations of the parties to such actions. The Association is hereby granted what is commonly known as a "power of sale." Each lot owner and every other person, except a first mortgagee, who from time to time has any interest in the lot shall be deemed to have authorized and empowered the Association to sell or to cause to be sold at public auction the lot with respect to which the assessment is delinquent and to receive, hold and distribute the proceeds of such sale in accordance with the priorities established by applicable law. EACH LOT OWNER ACKNOWLEDGES THAT WHEN HE ACQUIRED TITLE TO HIS LOT, HE WAS NOTIFIED OF THE PROVISIONS OF THIS SECTION AND THAT HE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY WAIVED NOTICE OF ANY PROCEEDINGS BROUGHT BY THE DEVELOPER OR THE ASSOCIATION TO FORECLOSE BY ADVERTISEMENT THE LIEN FOR NONPAYMENT OF ASSESSMENTS AND A HEARING ON THE SAME PRIOR TO THE SALE OF THE SUBJECT LOT. Notwithstanding the foregoing, neither a judicial foreclosure action nor a suit at law for money judgment shall be commenced, nor shall any notice of foreclosure by advertisement be published, until ten (10) days have expired after the mailing, by certified mail, return receipt requested and postage prepaid, addressed to the delinquent lot owner at his last known address, of a written notice that an assessment, or any part thereof, levied against his lot is delinquent and that the Association may invoke any of its remedies hereunder if the default is not cured within ten (10) days after the date of mailing. A written affidavit of an authorized representative of the Association that sets forth (a) the affiant's capacity to make the affidavit, (b) the statutory and other authority for the lien, (c) the amount outstanding (exclusive of interest, costs, attorney fees and future assessments), (d) the legal description of the subject lot, and (e) the name of the lot owner of record, shall accompany such written notice. Such affidavit shall be recorded in the Office of the Kent County Register of Deeds prior to the commencement of any foreclosure proceeding, but it need not have been recorded as of the date of mailing the notice. If the delinquency is not cured within the ten (10) day period, the Association and/or the Developer may take such remedial actions as may be available to it hereunder or under Michigan law. In the event the Association and/or the Developer elect to foreclose the lien by advertisement, the Association and/or the Developer shall so notify the lot owner, and shall inform him that he may request a judicial hearing by bringing suit against the Association. The expenses incurred in collecting unpaid assessments or other amounts due, including interest, costs, reasonably attorney's fee (not limited to statutory fees) and advances for taxes or other liens paid by the Association and/or the Developer to protect its lien, shall be secured by the lien on the subject lot. In addition, a lot owner who is in default in the payment of assessments shall not be entitled to vote at any meeting

of the Association so long as the default continues.

If the holder of a first mortgage on a lot obtains title to the lot by foreclosing the mortgage, accepting a deed in lieu of foreclosure or similar remedy, or any other remedy provided in the mortgage, such person, and its successors and assigns, or other purchaser at a foreclosure sale shall not be liable for unpaid assessments chargeable to the lot which became due prior to the acquisition of title to the lot by such person; provided, however, that such unpaid assessments shall be deemed to be expenses collectible from all of the lot owners, including such person, its successors and assigns, and that all assessments chargeable to the lot subsequent to the acquisition of title shall be the responsibility of such person as hereinbefore provided with respect to all lot owners.

25. (CONNECTION TO PUBLIC WATER SYSTEM). The owner of each lot in the Plat shall, upon construction of a habitable structure on such lot, connect the lot and structure to the public water system serving the Plat.

26. (SCOPE) The terms and conditions of this Declaration shall only apply to the Plat and shall not apply to any land or premises adjacent thereto and owned by the Developer or Deppe. However, the Developer reserves the right by amendment to this Declaration to include subsequent phases in the Plat under the terms of this Declaration.

27. (AMENDMENT) This Declaration may be amended by an instrument duly executed by the Developer and not less than two-thirds (2/3) of the then owners of lots in the Plat who are not affiliated with the Developer and shall be effective upon the recording of such instrument with the Kent County Register of Deeds; provided, however, the signature of the Developer shall not be required in the event the Developer no longer owns any lot in the Plat and has assigned or delegated its authority under this Declaration to the Association. The provisions of Paragraph 16 of this Declaration may not, however, be amended without the prior written approval of the Michigan Department of Natural Resources and the provisions of Paragraph 17 of this Declaration may not be amended without the prior written approval of the Kent County Drain Commissioner.

28. (SIGNS AND OTHER IMPROVEMENTS) All decisions regarding the installation, maintenance, repair and/or replacement of signs and other improvements within the public rights of way within the Plat shall be made by the Developer until such time as this authority is turned over to the Association.

29. (NOTICES) All notices given or required under this Declaration shall be in writing and mailed by certified mail, return receipt, requested, to the party or persons to be notified at his last known address.

