

PARKLAND PLAZA

774865

DECLARATION OF CONDITIONS, COVENANTS, RESTRICTIONS AND EASEMENTS REGARDING MUSKEGO PARKLAND SHOPPING CENTER, INC.

THIS DECLARATION, made this 23rd day of October, 1970, by MUSKEGO PARKLAND SHOPPING CENTER, INC., a Wisconsin corporation, hereinafter called the "DEVELOPER";

WITNESSETH:

WHEREAS, DEVELOPER is the owner of the real property described in Article I of this Declaration, and desires to subject it to the conditions, restrictions, covenants, reservations, and easements for the benefit of said property as a whole and for the benefit of each owner of any part thereof;

NOW, THEREFORE, the DEVELOPER hereby declares that the real property hereinafter described shall be used, held, transferred, sold and conveyed subject to the conditions, restrictions, covenants, reservations and easements hereinafter set forth, which shall inure to the benefit of and pass with said property and each and every parcel thereof, and shall apply to and bind the successors in interest, and any owner thereof.

DEFINITION OF TERMS: "Family" shall mean one or more than one person, living, sleeping, cooking or eating on premises as a single housekeeping unit, and shall exclude a group or groups of persons where three or more persons thereof are not household employees or related by blood, adoption, or marriage. "Association" shall mean Muskego Parkland Home Owners Association. "Committee" shall mean the Muskego Parkland Shopping Center, Inc. Architectural Control Committee, more particularly described in section 2.3.

ARTICLE I.

PROPERTY SUBJECT TO THIS DECLARATION: The following property shall be subject to this declaration:

VOL 1212 PAGE 663

That part of the North West 1/4 of Section 10, and that part of the South West 1/4 of Section 3, Township 5 North, Range 20 East, in the City of Muskego, Waukesha County, Wisconsin, bounded and described as follows:

Commencing at the southwest corner of said North West 1/4 Section 10; thence N. 1 degree 09' 27" W. along the west line of said North West 1/4 Section 10, 1323.42 feet to the southwest corner of Meadow Dale Subdivision, a recorded subdivision; thence N. 87 degrees 57' 38" E. along the south line of said Meadow Dale Subdivision 675.67 feet to the southeast corner of said Meadow Dale Subdivision, said point being the point of beginning of the land to be described; thence N. 1 degree 30' 19" W. along the east line of said Meadow Dale Subdivision 1340.08 feet to the northeast corner of said Meadow Dale Subdivision; thence S. 88 degrees 25' 02" W. along the north line of said Meadow Dale Subdivision 2.14 feet to the southeast corner of Southern Heights, a recorded subdivision; thence N. 0 degrees 09' 30" E. along the east line of said Southern Heights 1262.10 feet to the southwest corner of Block "A" of said Southern Heights; thence N. 83 degrees 54' 30" E. along the south line of Block "A" of said Southern Heights 615.00 feet to the southeast corner of Block "A" of said Southern Heights, said point being in the centerline of Martin Drive; thence S. 00 degrees 02' 05" E. along the centerline of said Martin Drive 50.01 feet to a point; thence S. 0 degrees 09' 30" E. on a line 1231.10 feet to a point in a fence line; thence N. 87 degrees 05' 30" E. along a fence line 819.81 feet to a point; thence S. 0 degrees 54' 10" E. on a line 140.00 feet to a point; thence West on a line 50.14 feet to a point; thence S. 00 degrees 09' 30" E. on a line 200.00 feet to a point; thence S. 00 degrees 43' 15" W. on a line 233.00 feet to a point; thence S. 0 degrees 10' 05" W. on a line 120.00 feet to a point; thence N. 03 degrees 02' 05" W. on a line 125.00 feet to a point in a curved line; thence southerly on a curved line (whose center lies to the northeast, having a radius of 200.00 feet, with a chord of 97.97 feet, bearing S. 45 degrees 15' 07" E.) a distance of 77.00 feet to a point of tangency; thence S. 65 degrees 02' 03" E. on a line 100.70 feet to a point of a curve; thence southerly on a curved line (whose center lies to the southeast, having a radius of 400.00 feet, with a chord of 140.87 feet, bearing S. 41 degrees 55' 27" E.) a distance of 170.00 feet to a point of tangency; thence S. 33 degrees 53' 43" E. on a line at right angles to the centerline of State Trunk Highway "27" 100.00 feet to a point in the centerline of said Highway; thence S. 50 degrees 01' 12" W. along the centerline of said Highway 60.00 feet to a point; thence N. 33 degrees 07' 40" W. on a line at right angles to the centerline of said Highway 10.00 feet to a point of curve; thence northwesterly on a curved line (whose center lies to the southwest, having a radius of 355.00 feet, with a chord of 140.10

feet, bearing N. 44 degrees 55' 27"W.) a distance of 147.08 feet to a point of tangency; thence N. 55 degrees 52' 06"W. on a line 100.70 feet to a point of curve, thence northwesterly on a curved line (whose center lies to the northeast, having a radius of 269.00 feet, with a chord of 327.02 feet, bearing N. 18 degrees 23' 03"W.) a distance of 351.50 feet to a point of tangency; thence N. 19 degrees 00'E. on a line 118.07 feet to a point in a curved line, thence westerly on a curved line (whose center lies to the southwest, having a radius of 1023.00 feet, with a chord of 207.54 feet, bearing N. 03 degrees 14' 04.5"W.) a distance of 207.90 feet to a point of tangency; thence N. 2 degrees 02' 22"W. on a line 60.00 feet to the point of beginning, containing 55.828 acres of land, more or less.

ARTICLE II.

2.1 GENERAL PURPOSE: The purpose of this Declaration is to insure the best use and most appropriate development and improvement of each building site thereof; to protect owners of building sites against such use of surrounding building sites as will detract from the residential value of their property; to preserve, as far as is practicable, the natural beauty of said property; to guard against the erection thereon of poorly designed or proportioned structures; to insure the highest and best residential development of said property; to encourage and secure the erection of attractive homes thereon with appropriate locations thereof on building sites; to prevent haphazard and inharmonious improvement of residential building sites; to secure and maintain proper setbacks from street and adequate free spaces between structures; and in general to provide adequately for quality of improvement in said property, and thereby to preserve and enhance the values of investments made by purchasers of residential building sites therein.

2.2 LAND USE AND BUILDING TYPE: No lot shall be used except for single-family, residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached, single-family dwelling with attached two-car garage.

A. No dwelling, garage or auxiliary building shall exceed two and one-half (2½) stories in height. The ground area within the perimeter of the buildings at grade exclusive of porches, gables, breezeways and similar additions shall not be less than the following schedule, to-wit: (a) Not less than 1,200 square feet on the first floor in the case of a one-story dwelling with basement of at least 300 square feet; (b) Not less than 700 square feet on the first floor in the case of a dwelling of two stories with basement of at least 200 square feet; (c) Bi-level dwellings shall have a minimum of 950 square feet on the living room and kitchen level; (d) for dwellings without basements or for dwellings with less than 300 square feet of basement, add 200 square feet to living area to (a) and (b) above.

B. What constitutes a two-story or a one and one-half story dwelling shall be determined by the Committee in its sole discretion. All buildings shall be completed within one (1) year from the date ground is broken for each building unless a further extension of time is given by the Committee.

C. No garage shall be larger than necessary to accommodate three (3) cars and all garages shall be attached to the dwelling either forming an integral part with the dwelling house or by porches or breezeways.

D. No structure of any kind shall be moved onto any lot and no living quarters of temporary character shall be permitted at any time, it being the intention that only permanent private dwellings and garages shall be permitted. All garages shall be built at the same time as the private dwelling and shall be large enough to accommodate a minimum of two cars. No boat or trailer may be parked on the premises outside of the garage and no truck or trucks may be parked on the premises outside of the garage other than for the delivery of materials or merchandise, except during construction or remodeling periods.

2.3 ARCHITECTURAL CONTROL: In the interest of promoting attractive design, it is required that any residence or attached garage be designed by an architect, professional engineer or designer experienced in residential design. No structure shall be erected, placed, or altered on any lot in the platted blocks involved until the building plans, specifications, and plot plan showing the location thereof have been approved in writing as to quality, materials, harmony of external design and colors, with existing and planned structures, and as to location with respect to topography, neighboring buildings, setbacks, finish grade elevations, driveways and planting, by the Association's Architectural Control Committee (herein referred to as the "Committee"), or by a representative designated by a majority of the members of said Committee. The Committee shall have the power to waive its right to review plans for nonresidential structures for a period of time or a particular area. In the event said Committee, or its designated representative, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or, in any event, if no suit to enjoin the erection of such structure or the making of such alterations or to require the removal thereof has been commenced before one year from the date of the completion thereof, such approval will not be required and this covenant shall be deemed to have been fully complied with.

The original Committee shall be composed of George F. Schroeder, Gordon A. Schroeder and Gerald P. Lee. Neither the members of the Committee nor its designated representative shall be entitled to compensation for services performed pursuant to this covenant. In the event of the death or resignation or refusal to act of any of the members of the Committee while any unimproved lot remains unsold by the DEVELOPER or its successor or assignee, then said member's respective successor to the Committee shall be appointed in writing by the undersigned or its successor assignee. When all the unimproved lots in the planned development have been sold by the undersigned, or its successor or assignee, the Committee shall thereafter consist of three (3) persons, who shall be elected by the Association.

2.4 LANDSCAPE ARCHITECTURAL CONTROL: All landscaping must be completed within one (1) year after the completion of the residence. Said landscaping must include a hard surfaced drive, parking stand or turnabout consisting of concrete or asphalt or similar material. No permanent gravel drives will be permitted. The hard surface with concrete, asphalt or similar material must be installed within one (1) year from the date the premises are completed. Said landscaping must further include at least one (1) gas lamp post, to be installed where the drive abuts the lot line, and one mail box and one paper box of approved design, the location of which shall be determined by the Committee.

2.5 DWELLING QUALITY: The design, layout, and exterior appearance of each residence shall be such that, in the opinion of the Architectural Control Committee at the time of approving the building plans, and the residence plans, the residence will be of high quality and will have no substantial adverse effect upon property values in the neighborhood.

2.6 BUILDING LOCATION: Buildings may be located anywhere on the lot provided such location, in the opinion of the City of Muskego Plan Commission, is consistent with the basic principles of good site interrelationship between the various other buildings in the court grouping. The Plan Commission may delegate its building location approval to such responsible agent as it may see fit. The Plan Commission may also grant a special exception to the specific minimal restrictions where literal application would cause undue hardship and where the granting of such special exception would not be incompatible with the basic concept of the planned residential development of DEVELOPER or adversely affect the value of any lot within said

development. Under no circumstances may any part of a structure, such as the eave of a building, extend beyond the lot line of the lot upon which a structure is located.

2.7 SETBACKS: Every building shall have a setback from the front property line of a minimum of twenty-five (25) feet; from the side lot line an aggregate of at least fourteen (14) feet from the side of each house to the lot line to be divided eight (8) feet on one side and six (6) feet on the other; there must be at least fourteen (14) feet between any given house and another house. The setback from the rear lot line shall be a minimum of twenty (20) feet.

The minimum setback for a corner lot shall be as follows: the minimum setback on one (1) front side shall be twenty-five (25) feet and the minimum setback on the other front side shall be fifteen (15) feet; the side lot line setback shall be a minimum of eight (8) feet; the rear lot line setback shall be a minimum of twenty (20) feet.

~~A garage shall not be located so as to provide less than twenty-five (25) feet of driveway apron within the entire lot area of any given lot.~~ 385 16.

2.8 GENERAL FILL ON BUILDING SITE: Where fill is necessary on the building site to obtain the proper topography and finished ground elevation it shall be ground fill free of waste material and shall not contain noxious materials that will give off odors of any kind, and all dumping of fill material shall be leveled immediately after completion of the building. Any excess excavation earth shall be removed from the building site and deposited with in the planned development where directed by DEVELOPER.

2.9 OPEN SPACE EASEMENT: The plot of DEVELOPER'S planned development identifies certain lands subject to a perpetual easement for the benefit of the City of Milwaukee and the residents of DEVELOPER'S planned development. (In general, the easement restricts the use of the outlets to the aesthetic, recreational, and cultural enjoyment of residents of said planned development or certain uses not inconsistent therewith.) The easement is recorded as Document No. 774866 in the office of the Register of Deeds for Waukesha County, Wisconsin.

2.10 NUISANCES: No noxious odors shall be permitted to escape from any building site and no activity which is, or may become, a nuisance or which creates unusually loud sounds or noises shall be suffered or permitted on any building site.

2.11 SIGNS: No sign shall be displayed to the public view on any lot except one (1) professional sign of not more than one (1) square foot, or one (1) sign of not more than six (6) square feet advertising the property for sale or rent, or one (1) sign of not more than thirty-two (32) square feet used to advertise the property during the construction and sales period of model homes.

2.12 TEMPORARY STRUCTURES: No structure of a temporary character and no trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

2.13 ANIMALS AND POULTRY: No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that two (2) dogs, two (2) cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose, or allowed to annoy neighbors.

2.14 FENCES: No decorative fences shall be located closer than five (5) feet from the front lot line. All fences must be suitable to and conforming to the improvements, the types, heights and design to be improved in writing by Muskego Parkland Shopping Center, Inc. Architectural Control Committee, its agents, successors or assigns, before any such fence is constructed.

2.15 POOLS: The construction and installation of any swimming pool on any lot shall be governed by the ordinances in effect in the City of Muskego as of November 1, 1970.

ARTICLE III.

3.1 OPEN SPACE: The DEVELOPER, as part of its development of said planned development, has created various open space, and the landscaped areas within the dedicated

streets, all as shown on the recorded plat of the development. Said open space shall be developed for the common benefit and enjoyment of each property owner in the development, and as shown in detail on the plat submitted by DEVELOPER in conjunction with such plat which is Project No. 134301 drawing under date of 7/1/73, in the MUSKEGO PARKLAND SHOPPING CENTER, INC. file in the records of the City of Muskego. There shall be no change or amendment in the planned development of DEVELOPER as shown on such plat without the written consent and approval of the City of Muskego.

3.2 MUSKEGO PARKLAND HOMEOWNERS ASSOCIATION: The DEVELOPER shall create an association to be known as "Muskego Parkland Homeowners Association", herein referred to as the "Association", for the purpose of maintaining the open space above referred to and assessing the pro rata share of such maintenance or future improvements decided upon to the individual lot owners and the collection of assessments therefor. The owner or owners of each lot in the planned development shall be entitled to one (1) vote in the management and operation of the Association.

3.3 TRANSFER OF TITLE: DEVELOPER shall transfer the title in fee simple of said open space to said Association not later than December 31, 1973.

3.4 ASSOCIATION MEMBERSHIP: Each lot owner in the planned development shall be a member of the Association and as such be entitled to an easement to use said open space and landscaped areas for the purposes intended. Such membership and easement shall be appertaining to and shall pass with title to each lot in the planned development.

3.5 ASSESSMENTS: The membership of each lot owner in the Association shall be subject to the following:

A. An annual assessment which shall be a pro rata share, or one (1) share per lot, of the costs incurred by the Association to maintain the open space for the recreation, health, safety, welfare and enjoyment of its members. Said costs shall include, but not be limited to, payment of insurance, repair, replacement and additions to the improvements made upon said open space and the cost of labor, equipment, materials, management and supervision thereof.

B. DEVELOPER shall pay its pro rata share of such costs for each lot it still owns in said planned development with the exception that it shall not be assessed on any lot it owns for additions to said improvements for which it has not consented to the construction or installation thereof.

C. The maximum annual assessment shall be Fifty Dollars (\$50.00) per lot. Such maximum annual assessment may be changed by majority vote of the members of the Association. The assessment, however, as established by the Association shall be set taking into consideration the costs of current maintenance and future needs and may be in any lesser amount than the maximum which meets these requirements.

3.6 SPECIAL ASSESSMENT: A special assessment may be levied by the Association for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement upon the open space if consented to by two-thirds (2/3) of the members of the Association. DEVELOPER shall not be assessed for any such capital improvements of any lot it owns for which it has not consented to the construction or installation thereof. Such special assessments shall be due and payable ninety (90) days after the required affirmative vote of the members of the Association.

3.7 DELINQUENT ASSESSMENTS: If the assessments are not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. Such assessments shall also be the personal obligation of the owner of the lot at the time said assessment becomes delinquent, and shall remain a personal obligation for the statutory period.

A. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of nine per cent (9%) per annum, and the Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment, the costs of preparing and filing the complaint in such action, and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

B. The Association shall, upon demand at any time, furnish to any lot owner a certificate in writing signed by an officer of the Association setting forth whether said assessments have been paid. Such certificate shall be conclusive evidence of the payment of any and all assessments therein stated to have been paid.

C. In the event the City of Muskego shall at any future date assume the maintenance of the open space and/or landscaped areas, either at the request of the Association or because said Association is not maintaining said open space and/or landscaped areas to the satisfaction of the City of Muskego, the City of Muskego shall have the power and authority to levy and collect a special assessment annually from each lot in the planned development for the cost of the operation and maintenance of the open space and improvements thereon with the City of Muskego. For these purposes, the planned development shall constitute an assessment district, and there shall be no limitations as to the amount of these assessments provided they shall not exceed the actual cost thereof.

3.8 RESTRICTIONS: Any violation of these restrictions, which shall exist for a period of one (1) year without a written protest thereof being received by the owner of the lot involved, shall not be considered a violation thereafter. These restrictions may be changed, modified and amended by the Committee with the consent of sixty per cent (60%) of the owners of the lots in the planned development. Each lot in said planned development shall be entitled to one (1) vote in determining said consent. These restrictions shall be deemed and construed to run with the land and shall be binding upon the respective owners of each of said lots and upon all persons holding or claiming under or through them. Upon the violation of any one or all of these restrictions by any owner or owners of any said lot, their heirs, personal representatives, or assigns, or by any person or persons holding under them then, and upon the happening thereof, any person or persons owning any lot or lots in the planned development or any member of the Committee shall have the right to proceed at law or in equity against the person or persons violating or attempting to violate any such covenant or restriction, and shall be entitled to both equitable and legal relief. Invalidation of any one of these covenants and restrictions by judgment or court order shall in no wise affect any of the other provisions, each of which shall be construed and deemed severable and all of which are not so invalidated shall remain in full force and effect. Any violation of these restrictions shall not result in any forfeiture or reversion of title to any lot in the planned development.

ARTICLE V.

5.1 TERM: This Declaration shall run with the land and shall be binding on all persons claiming under the DEVELOPER for a period of fifty (50) years from the date this Declaration is recorded, after which time it shall automatically stand renewed for successive periods of ten (10) years, provided that an instrument terminating or changing such covenants in whole or in part, if signed by the owners of a majority of such lots, shall be effective as of the end of the term of ten-year extension within which it is recorded.

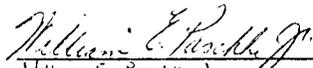
5.2 MODIFICATION AND ENFORCEMENT: These declarations can be amended at any time by the execution by the owners of ninety-five per cent (95%) of the lots of an amendment and such amendment shall take effect from the date of the recording thereof. The Association shall have the sole right to enforce the provisions hereof by proceedings at law or in equity against any person or persons violating or attempting to violate any provisions of this Declaration, either to restrain violation or to recover damages, or both.

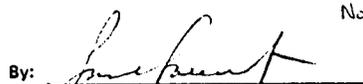
5.3 SEVERABILITY: Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions and said unaffected provisions shall remain in full force and effect.

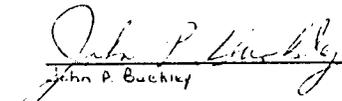
IN WITNESS WHEREOF, the DEVELOPER has caused this instrument to be executed the day and year first above written by Sam N. Lawent, its President, and Gordon Schroeder, its Assistant Secretary.

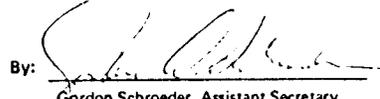
In the Presence of:

MUSKEGO PARKLAND SHOPPING CENTER, INC.


William E. Paschke, Jr.

By: 
Sam N. Lawent, President


John P. Buckley

By: 
Gordon Schroeder, Assistant Secretary

"DEVELOPER"

Vol 1212 p. 673

