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State of Michigan Register's Office County of Leelanau } SS
Received for record the 27th day of August A.D. 1965 at 11:00
o'clock AM and recorded in Liber 138 of Deeds on pages 1 to
12 incl.

Register of Deeds

Liber 138 Page 1.

**This Declaration,
by American Central Corporation, hereinafter called Developer.**

WITNESSETH:

Whereas, Developer is the owner of the real property described in Article II of this declaration and desires to create thereon a residential community with permanent parks, playgrounds, open spaces, and other common facilities for the benefit of the said community; and

Whereas, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said parks, playgrounds, open spaces and other common facilities; and, to this end, desires to subject the real property described in Article II together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, restrictions, easements, charges and liens thereafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

Whereas, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collection and disbursing the assessments and charges hereinafter created; and

Whereas, Developer will cause to be incorporated under the laws of the State of Michigan, as a non-profit corporation, **THE CHERRY HOME ASSOCIATION**, for the purpose of exercising the functions aforesaid;

Now Therefore, the Developer declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- a. **“Association”** shall mean and refer to the CHERRY HOME ASSOCIATION.
- b. **“The Properties”** shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II, hereof.
- c. **“Common Properties”** shall mean and refer to those areas of land shown on any recorded subdivision plat of The Properties and intended to be devoted to the common use and enjoyment of the owners of The Properties.
- d. **“Lot”** shall mean and refer to any plot of land shown upon any original recorded subdivision map of The Properties with the exception of Common Properties as heretofore defined.
- e. **“Owner”** shall mean and refer to the equitable owner whether one or more persons or entities holding any interest in any lot situated upon The Properties whether such ownership be in fee, simple title, or as a land contract vendee, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee except if the mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- f. **“Member”** shall mean and refer to all these owners who are members of the Association as provided in Article III, section 1 hereof.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION ADDITIONS THERETO

Section 1. Existing Property. The real property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Leelanau Township, Leelanau County, Michigan, and is more particularly described as follows:

**CHERRY HOME SUBDIVISION # 1,
part of Section 17 and 20, T32N, R10W**

all of which real property shall herein after shall be referred to as “Existing Property”

Section 2. Additional lands may become subject to this Declaration.

- a. The Developer, its successors and assigns, at any time prior to December 31st, 1975, shall have the right to bring additional lands into the scheme of this declaration. Such proposed additions if made shall become subject to assessment for their just share of Association expenses. The common properties within all such additions shall be devoted to the common use and enjoyment of all owners of properties which are subject to this declaration. The Developer's rights to bring additional lands into the declaration shall not be held to bind the Developer, its successors or assigns, to make the proposed additions or to adhere to the scheme in any subsequent development of the land described herein. The additions authorized under this and the succeeding sub-sections shall be made by filing of

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record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the Covenants and Restrictions of this Declaration to such property. Such Supplementary Declarations may contain such complementary additions and modifications of the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any of the added properties and as are not inconsistent with the scheme of this Declaration. In no event however shall such Supplementary Declaration revoke, modify, or add to the covenants established by this Declaration within the existing property.

- b. **Other Additions.** Upon approval in writing of the Association pursuant to a vote of its members as provided in its Articles of Incorporation, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants and Restrictions, as described in subsection (a.) hereof.
- c. **Mergers.** Upon a merger or consolidation of the association with another Association as provided in its Articles of Incorporation, its properties, rights and obligations may by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Covenants and Restrictions established by this Declaration within the Existing Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the Covenants established by this Declaration within the Existing Property except as hereinafter provided.

ARTICLE III MEMBERS AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership:

- a. Every person or entity who holds an equitable interest or an undivided equitable interest in any lot whether as land contract, or vendee, or fee holder being subject to these Covenants and to assessment by the Association shall be a member of the Association provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.
- b. Persons not holding an interest in any Lot may become non-voting members of the Association under terms and conditions prescribed by the Board of Directors.

Section 2. Voting Rights:

The association shall have one class of voting membership. Voting members shall be all those members who hold the interests required for Membership according to Article III section 1 (a) above. When more than one person holds such interest or interests in any lot, all such persons shall be members and the vote for each such lot shall be exercised as they among themselves determine.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members` Easements of Enjoyment.

Subject to the provisions of Article IV in section 3, every member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every lot.

Section 2. Title to Common Properties.

The Developer may retain the legal title to the common properties until such time as in the opinion of the Developer the Association is able to maintain the same and to meet any existing obligations which may be lien thereon, notwithstanding any provision herein, the Developer hereby covenants, for itself, or it's successors, and assigns, that it shall convey the Common Properties to the Association not later than January 1st, 1970.

Section 3. Extent of Members` Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- a. The right of the Developer and of the Association, in accordance with its Articles and By-laws, to borrow money for the purpose of improving the common properties and in aid thereof to mortgage said properties. The members rights and easements in the Common Properties shall be subordinate to any mortgage given by the Developer or Association as security for funds borrowed, for said improvements. Any indebtedness which shall be created for the purpose of making improvements to the Common Properties shall be an obligation of the Association. In the event of a default upon any such mortgage, the lender or mortgagee shall have all the rights afforded under the mortgage or security agreement and under the laws of the State of Michigan, including the right after taking possession of The Properties, to charge admission and other fees as a condition to continued enjoyment by the members, and if necessary to open the enjoyment of such properties to a wider public. If the mortgage indebtedness is satisfied and possession of the properties returned to the association, all rights of the members here under shall be restored; and
- b. the right of the Association to take such steps as are reasonable necessary to protect the above described properties against foreclosure; and
- c. The right of the Association, as provided in its Articles and By-laws, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and
- d. the right of the Association to charge reasonable admission and other fees for the use of the Common Properties.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of Liens and Personal Obligation of Assessments:

The Developer being the owner of all the Properties hereby covenants and each subsequent owner by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or conveyance, be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, 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 assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as herein after 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 thereon and cost of collection thereof as herein after provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments:

The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Properties, and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the homes situated upon the Properties, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

Section 3. Basis and Amount of Annual Assessments:

The annual assessment shall be \$20.00 per lot. The Board of Directors of the Association may after consideration of current maintenance costs and future needs of the association, fix the actual assessment for any year whether before or after January 1, 1970 at a lesser amount.

Section 4. Special Assessment for Capital Improvements:

In addition to the annual assessments authorized by section 3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided any such assessment shall have the affirmative of two thirds (2/3) of the voters of all voting 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 at least thirty (30) days in advance and shall set forth the purpose of the meeting.

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Section 5. Change in Basis and Maximum Annual Assessments:

Subject to the limitations of section 3 hereof, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively for any such period provided that any such change shall have the assent of two-thirds (2/3) of the voting 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 at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of section 3 hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association in which the association is authorized to participate under its Article of Incorporation and under Article II, Section 2, hereof.

Section 6. Quorum for Any Action Authorized Under Sections 4 and 5.

The quorum required for any action authorized by section 4 and 5 hereof shall be as follows. At the first meeting called, as provided in section 4 and 5 hereof, the presence at the meeting of Members or of proxies, entitled to cast sixty (60) percent of all the votes of the 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 in section 4 and 5, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments:

Due Date. The annual assessments provided for herein shall commence on the first day of April, 1966. The assessment for each succeeding year shall become due and payable on the first day of April of each year. No adjustments or prorations of assessments shall be made by the Association. For purposes of levying the assessment, assessments shall be considered as paid in advance and shall be levied against any property which is subject to the Declaration or Supplementary Declarations. The due date of any special assessment under section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board of Directors.

The Board of Directors of the Association shall prepare a roster of the properties and assessments applicable thereto at least thirty (30) days in advance of such assessment due date. Such assessment roster shall be kept in the office of the Association and shall be open to inspection by any owner. Written notice of the assessment shall thereupon be sent to every owner subject thereto. The Association shall upon demand at any time furnish to any owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessments:

The Personal Obligation of the Owner; The Lien; Remedies of The Association.

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If the assessments are not paid on the date when due (being the dates specified in section 7 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon becoming a continuing lien on the property which shall bind such property in the hands of the then owner, his heir, devisees, personal representatives, and assigns. The personal obligation of the then owner to pay such assessment, however shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, a penalty fee not to exceed **\$2.00** shall be added thereto and from that date interest at the rate of **six (6%)** percent per annum may be added to the delinquent balance and penalty 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. There shall be added to such assessment, delinquent fee and interest and the cost of preparing and filing Complaint in such action and in the event that judgment is obtained, such Judgment shall include interest on the total amount as above provided and reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 10: Subordination of the Lien to Mortgages.

The lien of the assessment provided for herein shall be subordinated to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment, provided however that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 11: Exempt Property.

The following property subject to this Declaration shall be exempted from the assessments charge and lien created herein; (a) All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) All Common Properties as defined in Article I, section 1. Hereof. (c) All properties exempted from taxation by laws of the State of Michigan, upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

**ARTICLE VI
ARCHITECTURAL CONTROL COMMITTEE**

Section 1. Review by Committee.

No building, fence, wall, or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives

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appointed by the board. In the event said board or its designated committee fail 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 addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. Informational Requirements.

Prior to any work being done, the property owner or his representative shall supply to the Architectural Committee or the Board of Directors of the Association the following information:

- a. Name of owner, address, and telephone number
- b. Lot number(s) and subdivision number
- c. A site plan drawn to a scale sufficient to show the lot on which the proposed improvement is to take place. The plan shall show location of all abutting streets, location of existing building, and the proposed location of structures to be built or altered. It must also show the location and type of fuel tank to be used.
- d. A detailed drawing of the proposed structure(s) indicating materials to be used in construction and type of construction.
- e. The site plan shall show the location of the water well and sewage system approved by the Health Department. The Architectural Committee or Board of Directors will review plans and request additional information if required. The following standards shall apply.
 - 1) Minimum 4/12 roof pitch
 - 2) Homes must have a permanent foundation. Exposed foundation no more than thirty six (36) inches above final grade.
 - 3) L.P. gas tank shall be placed a minimum of twenty (20) feet from the road.
 - 4) Owner responsible for repair of all construction damage to roads and shoulders.
 - 5) After determining setbacks, natural topography should be retained as much as possible. Maximum number of trees to be retained.

It is further agreed that at the discretion of the individual owner, the lawful use of any building or structure, and of any lot as existing and lawful on the date of recording of the original declaration or supplementary Declaration of Covenants and Restrictions, or on the date of subsequent lawful amendment thereto, may be continued even though such use may not be in conformity with the provisions of Article VII Section 1. and 3. as amended herein.

ARTICLE VII BUILDING AND USE LIMITATIONS

Section 1. Residential Use.

All land which is subject to this Declaration shall be limited to residential use. No building shall be erected, altered, placed or permitted to remain on any property other than a one family dwelling and private garage or outbuilding incidental thereto. All dwellings must have a minimum enclosed living area of 850 square feet with a minimum building size of not less than 24 feet in width for a single story home, or 1150 square feet for a two story home, exclusive of open porches or attached garages. All structures shall be completed on the exterior within six months from start of

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construction. All structures intended for occupancy must be equipped with inside plumbing facilities. **Mobile homes are not permitted structures** on any lot, and this prohibition shall not be changed, modified, or added to by property owners as provided in Article VII, Section r of the Declaration.

Section 2. Nuisances.

No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be occupied or stored on the property at any time, either temporarily or permanently. No animals, livestock or poultry of any kind shall be raised or kept on any lot except dogs, cats, or other household pets provided that they shall not be so maintained for any commercial purpose. Trash, garbage, or any other waste material shall not be kept except in sanitary containers or incinerators. Equipment for the storage of disposal of such materials shall be kept in a clean and sanitary condition.

Section 3. Building Location.

The minimum front, rear and side setback requirements for all lots in the Cherry Home Association (except common areas) shall be the same as those requirements provided by the governing zoning ordinance for the district which includes that lot. The building height and lot coverage for all lots in the Cherry Home Association (except common areas) shall be the same as those requirements provided by the governing zoning ordinance for the district which includes that lot. This section is not effective until three (3) years from the date of approval of the amendments by two thirds (2/3) of the property owners, being May 27th, 2000, and then pertains to and affects only those lots upon which no structure exists, or upon which construction of a structure has not commenced.

Section 4 Easements.

Easements are reserved along and within five feet of the rear line and sidelines of all lots in the subdivision for the construction and perpetual maintenance of conduits, poles, wires, and fixtures for electric lights, telephones and other public and quasipublic utilities and drainage, and to trim any trees which at any time may interfere or threaten to interfere with the maintenance of such lines with right of ingress to and egress from and across said premises to employees of said utilities. Said easement to also extends along any owner's side and rear property line in cases of fractional lots. The person owning more than one lot may build on such lot line and the easement shall be inoperative as to said line provided that such building shall be placed thereon prior to the instigation of use of this easement for one of the foregoing purposes. It shall not be considered a violation of the provision of easement if wires or cables carried by such pole lines pass over some portion of said properties not within the five foot wide easement as long as lines do not hinder the construction of building on the property.

Section 5. Variance:

The purpose of the foregoing Building and Use Limitations being to insure the use of the properties for attractive residential uses, to prevent nuisances, to prevent impairment of the attractiveness of the property, to maintain the desirability of the community and thereby secure to each owner the full benefits and enjoyments to his home with no greater restriction upon the

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free and undisturbed use of his property than are necessary to insure the same advantages to other owners. Any reasonable change, modification or addition to the foregoing shall be considered by the Developer and the Association and if so approved will then be submitted in writing to the abutting property owner and if consented to in writing shall be recorded and when recorded shall be as binding as the original covenants. The foregoing building and use limitations shall not apply to the common properties.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Duration:

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 land subject to this Declaration their respective legal representatives, heirs, successors, and assigns, for a term of twenty years (20) from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then owners of three fifths (3/5) of the lots has been recorded, agreeing to change said Covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded one (1) year in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every owner ninety (90) days in advance of any action taken.

Section 2. Notices:

Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last know address of the person who appears as member or owner on the records of the Association at the time of such mailing.

Section 3. Enforcement:

Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages, and against the land to enforce any lien created by these Covenants: and failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability:

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

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Witnessed:

American Central Corporation

Carolyn F. Esch

Don L. Foote (President)

Ferne Morley

Robert M. Andrews (Vice President)

State of Michigan } SS
County of Ingham }

On this 26th day of August in the year one thousand nine hundred and sixty five before me a Notary Public in and for said county, appeared to me personally know, who being by me duly sworn did say that Don L. Foote and Robert M. Andrews the President and Vice President, respectively, of American Central Corporation, the corporation named in 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 it's board of directors; and said Robert M. Andrews acknowledged said instrument to be the free act and deed of said corporation.

Carolyn F. Esch

Notary Public, Ingham County , Michigan

My commission expires July 15th 1969

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The following Articles have been amended under Article VII , on May 27, 2000, and recorded in the County court house, Leland, Michigan.

1. Article VI Section 2. Information Requirement.
2. Article VII Section 1. Residential Use
3. Article VII Section 3. Building Locations
4. Article VIII Section 1. Duration