

PRESQUE ISLE HARBOR ASSOCIATION
Restrictive Covenants For
ESAU TERRACE
As Transcribed from
Liber 193, Pages 210-219
recorded on November 25, 1970
Presque Isle County Register of Deeds:

**DECLARATION OF RESTRICTIVE COVENANTS BY
AMERICAN CENTRAL CORPORATION
HEREINAFTER CALLED DEVELOPER**

ESAU TERRACE

WITNESSETH:

WHEREAS, Developer is the owner of real property described in Article II of this Declaration together with other contiguous properties and desires to create thereon a residential community with permanent parks, playgrounds, open spaces and other common facilities for the benefit of 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, ipen [sic] 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, hereinafter 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 collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has or shall cause to be incorporated under the laws of the State of Michigan, as a non-profit corporation, PRESQUE ISLE HARBOR 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 PRESQUE ISLE HARBOR 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 designated by the Developer. These lots are intended to be devoted to the common use and enjoyment of the owners of the Properties.

(d) "Original Lot" shall mean and refer to any lot or plat of land shown upon any recorded subdivision map of the properties after the same has been sold by the Developer, or its representatives or assigns, by land contract or by deed but shall not include Common Properties as heretofore defined nor any lot that the Developer has reacquired following the sale of same as a result of default by the purchaser and which the Developer or its assigns holds for the purpose of resale.

(e) "Owner" shall mean and refer to the equitable owner whether one or more persons or entities holding any original lot situated upon the Properties whether such ownership be in fee simple title or as land contract vendee, and notwithstanding any applicable theory of the mortgage, shall not mean nor 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 those 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 the County of Presque Isle, Michigan and is more particularly described as follows:

PLAT OF ESAU TERRACE

Being a Subdivision part of Government Lot 3 and all of Government Lot 2, Section 28.,
and part of the Northeast quarter of Section 29, Town 34 North, Range 8 East in Presque
Isle Township, Presque Isle County, Michigan,

all of which real property is referred to herein as "Existing Property".

Section 2. Additional Lands may become subject to this declaration.

(a) The Developer, its successors and assigns, shall have the right to bring additional lands located in Presque Isle County Michigan, under the covenants and restrictions set forth in this Declaration and the general plan may be made subject hereto to the same force and extent as if such addition were a part of the Existing Property with owners of lots therein subject to like assessments and entitled to like benefits in Common Properties as Owners of lots within the Existing Property. Such additions may be made by filing of record a Declaration or Declarations to that effect. The Developer, its successors and assigns shall not be required to subject properties developed hereafter to the Covenants and Restrictions contained herein or any of them.

(b) **Other Additions.** Upon approval in writing of Association pursuant to a vote of its members as provided in its Articles of the scheme of this declaration and to subject it to the jurisdiction of the

Association, may file a record of supplementary declaration of covenants and restrictions, as described in subsection (a) hereof. This provision is not intended to apply to Developer, its successors or assigns, and shall not limit the rights reserved to them under (a) above.

(d) **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 MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership.

(a) The ownership of each lot within the Properties shall constitute the owners thereof as members of the Association, provided that if more than one lot has common ownership, such ownership shall constitute only a single member of the Association, and provided further that ownership shall mean legal ownership of the fee or equitable ownership as land contract vendee when the Developer or its successors or assigns have sold the same on land contract, provided further that no such lot shall have more than one such ownership, and further provided that no interest held as security only shall constitute ownership under this paragraph.

(b) Persons not holding an interest in any Lot in said Properties may become non-voting members of the Association under terms and conditions prescribed by the Board of Directors.

Section 2. Voting rights. Each lot shall be entitled to one vote. A member shall be entitled to as many votes as the number of lots which he (and his common owners, if any) owns. Each lot shall have but one vote irrespective of the number of common owners thereof; which vote shall be cast as such common owners agree.

ARTICLE IV PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment. Subject to provisions of this article in Section 3, every member shall have a right of use and enjoyment in and to the Common Properties and such right in the nature of an easement shall be appurtenant to and shall pass with the title to every original lot.

Section 2. Title to Common Properties. The Developer shall retain the legal title to the Common Property but not longer than such time as it has sold 90% of the lots in the Properties including all additions thereto and the aggregate of the outstanding balances of the sales prices therefor has been reduced to 80% thereof, but not later than fifteen (15) years from the date of the recording of this document, when Developer shall convey to the Association such Common Properties with all improvements thereon

which conveyance and transfer said Association shall pay to Developer, for a period of ten (10) years after the date of such transfer, an annual payment equal to 20% of the gross assessments received by it under Article V, Section 3 above, during the fiscal year immediately preceding the date of transfer, and an amount similarly determined for each succeeding year on the annual anniversary of such date of payment thereafter until ten (10) such payments have been made. The acceptance of such transfer and the liability to make payment in consideration thereof as above specified is consented to by all members of the Association by the acceptance of a land contract or deed subsequent to the date of the recording hereof.

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

(a) The Developer and the Association, in accordance with its Articles and By-laws, may borrow money for the purpose of improving the Common Properties and in aid thereof may 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 only have 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 Properties returned to the Association, all rights of the members hereunder shall be restored and

(b) the rights of the Association to take such steps as are reasonably 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 the Lien and Personal obligation of Assessments..*

The developer being the owner of all the properties hereby covenants and each subsequent owner by acceptance of a land contract and/or a deed therefor, whether or not it shall be expressed in any such deed or contract is 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 hereinafter 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 to the use and enjoyment of the Common Properties and improvements thereon and thereto, including but not limited to, the payment of taxes and insurance thereon [sic] and repair, replacement and additions thereto, and for the cost of labor equipment, materials, management and supervision thereof [sic], and for repayment to Developer of original development cost thereof, but only to the extent and on the basis as hereinabove provided.

Section 3. *Basis and Amount of Annual Assessments.*

The annual assessment shall be \$28.00 per each Original Lot sold by Developer, its representatives or assigns, by Land Contract or Deed and the assessment shall be distributed evenly against each Original Lot, provided that in cases where an Owner owns more than one lot in a single plat or subdivision the assessment for the first lot owned shall be \$28.00, but each additional lot in the same subdivision shall bear an annual assessment of \$15.00. From all such assessments, the association shall pay for the cost of the maintenance of parks, equipment, general upkeep of the Presque Isle Harbor area, management and operation thereof. In no event shall any assessment or charge or special assessment as provided below be levied against or be due from Developer for any lots owned by it, or otherwise.

Section 4. *Special Assessments for Capital Improvements.*

In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year on each Original Lot sold by the Developer, its representatives or assigns, 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 votes 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.

Section 5. *Change in Basis and Maximum of Annual Assessments.*

Subject to the limitations of Section 3 hereof, the Association may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively for any annual period provided that any change shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be sent to all members at least thirty (30) days in advance setting 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 is authorized to participate under its Articles 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 Sections 4 and 5 hereof shall be as follows:

At the first meeting called, as provided in Sections 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 as 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 Dates. The annual assessments provided for herein shall commence on the first day of April, 1971. The assessment for each succeeding year shall become due and payable on the first day of April of each year. No adjustments or pro-rations 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 Original Lot which is subject to this Declaration of 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 assessments 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 Assessment: The personal obligation of the Owner; the Lien, Remedies of Association.*

If the assessments are not paid on the due date (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 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 assessments provided for herein shall be subordinate 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 decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments 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 hereof; (c) all properties exempted from taxation by the laws of the State of Michigan, upon the terms and to the extent of such legal exemption; (d) all properties owned by the Developer, its successors and assigns, and held by them or any of them for sale or resale.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges and liens.

ARTICLE VI ARCHITECTURAL CONTROL COMMITTEE

Section 1. *Review by Committee.* No building, septic tank, well, signs, dock, pier, incinerator, trash or garbage receptacle, 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, heights, 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 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. This Article shall not apply to Developer on any lots owned by it for the purposes of sale or resale.

ARTICLE VII BUILDING AND USE LIMITATIONS

Section 1. All lots not otherwise specifically designated upon a recorded plat or recorded Declaration by Developer shall be used for residential purposes only, and no business, commercial or manufacturing enterprise, shall be conducted on said premises. No building shall be erected, altered, placed or permitted to remain on any lot other than one single family dwelling not exceeding two and one-half stories in height, and one private garage or boathouse, or combination garage and boathouse for family automobiles [sic] and boats.

The outside finishing of all buildings must be completed within one (1) year after construction has started, and no asphalt shingles, imitation brick, building paper, insulation board or sheathing or similar non-exterior materials shall be used for the exterior finish of any such building; exterior finish shall be wood or asbestos shingles, siding, logs, brick, stone or concrete.

Every dwelling house shall have not less than 800 square feet of enclosed living space exclusive of porches, breezeways, carports, patios, pool areas, garages and other accessory uses. [*Note: Although PIHA only requires 800 square feet, both Presque Isle Township and Krakow Township have a minimum requirement of 1,000 square feet. Township building requirements prevail.*]

Section 2. No basement, tent, shack, garage, barn or other outbuilding shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character or any building in the process of construction, be used as a residence. No signs of any nature not previously approved by the Architectural Control Committee shall be permitted on any lot.

No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes. Noxious or poisonous weeds shall not be permitted to grow on any lot.

The dumping or accumulation of trash or rubbish shall not be permitted on any lot. Trash, garbage or other waste shall not be kept except in a sanitary container. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition, and the design and location thereof shall require the prior approval of the Architectural Control Committee.

Any condition in violation of or contrary to this Section 2 is hereby declared to be a nuisance and the same may be abated, removed or otherwise corrected by the Architectural Control Committee without prior notice to the owner of the lot or lots involved. The same may be done at the expense of the Owner of the lot or charged to such Owner and such owner shall have no cause for action or claim for damages arising from such abatement, removal or correction.

Section 3. *Building Location.* No building shall be located on any property nearer than 25 feet to the front property line or nearer than 20 feet to any side street line. No building shall be located nearer than 10 percent to the width of the property on which such building is to be placed to any sideline, except that a three foot minimum side yard shall be permitted for a garage or other permitted accessory building which is located toward the rear of the property. For the purposes of this Covenant, eaves, steps and open porches shall not be considered as a part of the building provided, however, that this shall not be construed to permit any portion of the building to encroach upon adjoining property. [*Note: Zoning requirements of Presque Isle Township and Krakow Township prevail, as to setback requirements.*]

Section 4. In accordance with Rule 560.304 of the Rules adopted by the Water Resources Commission of the State of Michigan, any building used or capable of being used for residential purposes and occupancy within or adjacent to the flood plain limit for Lake Esau as defined by elevation 599.8 (I.G.L.D.) shall:

- a. Have lower floors, excluding basements, a minimum of 1 foot higher than the elevation of the contour defining the flood plain limits.
- b. Have openings into the basement not lower than the elevation of the contour defining the flood plain limits.
- c. Have basement walls and floors, below the elevation of the contour defining the flood plain limits, watertight and reinforced to withstand hydrostatic pressures from a water level equal to the elevation of the contour defining the flood plain limits.
- 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.

Section 5. Easements are reserved along and within twelve feet of front lot lines and five feet of side and rear lines of all original lots in the subdivision for the construction and perpetual maintenance of conduits, poles, wires, pipe and fixtures for electric light, telephones, water and other public and quasi-public 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 extend along any owner's side, rear and front property lines 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 such easement for one of the foregoing purposes.

It shall not be considered a violation of the easement if wires or cables carried by such pole lines pass over some portion of said properties not within the easement as long as such lines do not hinder the construction of buildings on the property.

Section 6. Each residence shall be provided with and maintain only inside toilets with septic tanks and drain fields or dry well installations meeting the requirements of the Michigan State Board of Health.

Section 7. The developer has caused to be formed a water company which proposes to serve all lots in the Properties. The water company will give written notice to all Owners to whom such service is then available whereupon the Owners of each lot to which such water service is available shall pay an annual charge of \$60.00 per lot which may be billed on an annual, quarterly or monthly basis at the discretion of the water company. In addition, a hook-on fee of \$95.00 or the actual cost thereof at the time of such hook-on, if greater, shall be charged for each connection made at the time of making such connection. Upon the availability of water or the construction of a dwelling, whichever is later, the owner of an individual lot shall hook up to the central water supply provided by the water company. Following hook-up, the rates for standard one family residential water usage shall not exceed the sum of \$60.00 per year adjusted not more frequently than annually for cost-of living charges as determined by the United States Government; provided, however, that in the event the water company shall apply for regulation thereof by appropriate state authority, then the rates and conditions of service approved thereby shall control.

Any owner of real property in said plat of Esau Terrace shall have the right to prosecute any proceedings in law or in equity against any person or persons violating or attempting to violate any covenant contained herein, either to prevent him or them from doing so or to recover damages or other dues for such violations. Invalidation of any one of these covenants by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

The provisions of this Article VII shall not apply to the Common Properties, nor to properties owned by the Developer.

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 from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive period of ten years unless an instrument signed by the then owners of two-thirds of the lots, subject to this Declaration, including all lots, if any, still owned by the Developer or its successors or assigns, 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 three years in advance of the effective date of such change, or unless written notice of the proposed agreement is sent to every owner at least ninety (90) days in advance of any action taken. This provision does not include Article VII, Section 4 pertaining to the buildings within flood plains. Said restrictions on buildings within flood plains are excluded from the above provisions and must be in effect for perpetuity.

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 known 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 restrictions, 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.

Dated: October 8, 1970