

**ROLLING OAKS SUBDIVISION AND ROLLING OAKS SUBDIVISION #2 DRAINAGE DETENTION
BASIN AGREEMENT;
ROLLING OAKS HOME OWNERS ASSOCIATION; VOTING; ASSESSMENTS**

Section 1. Definitions.

- A. Park Areas. Park Areas as referenced herein shall include but not be limited to storm water detention and sedimentation ponds, lakes, wetlands, floodplains and recreation areas.
- B. Easements. Easements and rights of ways are hereby reserved as shown in the recorded Plat of Rolling Oaks Subdivision and Rolling Oaks Subdivision #2, and shall not be encroached upon in any manner by any Owner. The appropriate governmental agency shall have the right to assess all of the Lots in the subdivision on an equal basis for the necessary maintenance and repair in said easements and right of ways pursuant to P.A. 288 of 1967, Sections 192 and 192(a).
- C. Declarant. The declarant is the plot proprietor or proprietors.

Section 2. Title to Park Area. Title to the Park Areas shall be vested in the Association hereinafter described as Trustee for the nonexclusive benefit of the owners and subject to the right of enjoyment and easement in and to such Park Areas by each Owner. Such easements shall not be personal, but shall be considered appurtenant to the Lots, which easement shall pass with the title to the Lots whether specifically set forth in deeds to the Lots or not, subject to the following:

- A. The right of Declarant to make and enforce reasonable rules and regulations to carry out the terms of this Declaration and to fulfill its purposes.
- B. The right of Declarant to fix and levy reasonable assessments with respect to the Park Areas, which assessments shall be utilized solely for the operation, use, maintenance, repair, replacement and administration of said Park Areas.
- C. The right of Declarant to construct, maintain, repair, replace and administer improvements on the Park Areas for the benefit of the Owners.
- D. The reserved right of the Declarant to grant future easements within the Park Areas for the installation, repair and maintenance of water mains, storm and sanitary sewers, drainage courses and other public utilities, provided that such utilities shall be installed in such manner as to minimize damage to the natural features of the Park Areas, and provided further that Declarant obtain the consent of the Circuit Court having jurisdiction and record an amended plat of the area affected.

Section 3. Control and Jurisdiction of Park Areas. Control and jurisdiction over the Park Areas shall be vested in the Declarant until such time as Declarant assigns same to the Rolling Oaks Homeowners Association herein referred to as the "Association".

Section 4. Organization of the Association. The Association has been organized as a non-profit corporation, on a non-stock basis, for a perpetual term under the laws of the State of Michigan for Rolling Oaks Subdivision and Rolling Oaks Subdivision #2.

Section 5. Membership in the Association. Membership in the Association shall be mandatory for each owner and any subsequent owner of lots in Rolling Oaks Subdivision. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. When more than one person holds an interest in any lot, all such persons shall be members but each lot shall be entitled to only one (1) vote and such persons shall exercise their vote as they among themselves determine. Notwithstanding the foregoing, the Declarant shall be entitled to twenty (20) votes for each lot in which it holds fee simple title in order to assure the orderly development of the subdivision and the Park Areas; until 90% of the lots in both phases of the Subdivision (211 lots total) are sold, and fee simple title conveyed, at which time the Declarant shall be entitled to only one (1) vote for each lot in which it holds the fee simple title.

Section 6. Authority and Responsibility of the Association.

Association shall have the authority and responsibility to establish by-laws, rules, regulations, and policies for the Association, including the authority to make and enforce stringent rules and regulations pertaining to the ownership, maintenance and use of the Park Areas, which shall be binding upon the Owners.

Section 7. Assessments by the Association. Assessments shall be levied by the Association and shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the owners, and in particular, for the operation, maintenance, management and improvement of the Park Areas, including but not limited to, the payment of taxes, and insurance thereon, the maintenance, repair and replacement of improvements thereon, for additions thereto, and for the cost of labor, equipment, materials, management and supervision for and in connection with said Park Areas.

A. The Board of Directors may assess differently for Subdivisions 1 and 2 prior to completion of construction of 90% of the homes in Subdivision #2, in order to apportion the relative expenses associated with each of the phases to the owners residing therein.

B. There shall be no proration of assessments for the first lot owner (other than Declarant). First lot owners shall pay the full assessment due for that year in which they become lot owners, and the assessment shall become due within thirty (30) days of either their taking title to the lot or occupying the lot, whichever is earlier.

C. Assessments are due June 1st of each year.

D. In addition to the annual assessments authorized above, the Association may levy a special assessment applicable to such year only for the purpose of defraying in whole or in part the cost of construction of any capital improvement upon the Park Areas, including fixtures and personal property relating thereto, or the cost of establishing or adding to a reserve therefore, provided that any such assessment shall have the consent, at a meeting duly called for such purpose, of more than fifty (50%) percent of all members within the Association.

E. Declarant may, at its sole discretion, exempt certain builders from the payment of annual assessments while they are building within the Subdivision. In no event shall Declarant be obligated to pay fees, dues or assessments to the Association.

Section 8. Notice of Meetings. Written notice of any meeting called for the purpose of taking any action authorized under this Declaration shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members in person or by a duly executed writing entitled to cast more than thirty-five (35%) percent of all of the votes shall constitute a quorum. All such proxies or writings shall be specific in nature. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting; provided, however, that passage of special assessments under Section 7(D) above shall always require more than fifty (50%) percent approval of all Members, and no reduced quorum requirements shall be applicable thereto.

Section 9. Reserve Fund. The reserve fund in the amount of Two Thousand (\$2,000.00) Dollars, for maintenance, repairs and replacement of Park Areas that must be maintained, repaired or replaced on a periodic basis, shall be accumulated and maintained from the annual assessment. To the extent that funds are withdrawn and utilized for the purposes set forth, the funds shall be replenished within a reasonable period not to exceed two (2) years notwithstanding any other provision for assessment set forth herein. Written notice of annual assessments shall be sent to every Owner immediately after action assessing the same; provided, however, that where there is more than one Owner of a Lot, only one notice need be sent. Such annual assessments shall be payable within thirty (30) days of such notice. The Association need only maintain a single reserve for Rolling Oaks subs 1 and 2 totaling \$2,000.

Section 10. Assessment Delinquency. Any assessments levied hereunder against any lot which are not paid within ten (10) days after the due date (together with expenses of collection set forth below) shall bear interest from the due date at the rate of seven (7%) percent per annum, and the Association may, pursuant to duly promulgated rules and regulations, establish fines for late payment of such assessments. The expenses incurred in collecting any such delinquent assessments, including interest, costs and reasonable attorneys fees (not limited to statutory fees), shall be chargeable to the Owner in default and shall be secured by the lien on his lot. The Association may file liens to enforce collection of any delinquent assessments. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Park Areas or by abandonment of his lot.

Section 11. Subordination of Assessment Lien. The lien for the assessments provided for herein shall be subordinate to the lien of any first mortgage on the Property. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereon.

Section 12. Use, Enjoyment, Maintenance, Restrictions or Alteration of Park Areas.

The Park Areas heretofore referred to shall be equally available for the use and enjoyment of all Owners, their immediate families and guests thereof. Except as initially improved by the Declarant, the Park Areas shall not be altered in any way without approval of the City of Howell, Livingston County Road Commission, the Department of Natural Resources or other appropriate governmental agencies.

The Association shall be responsible for the maintenance of all Park Areas including the Storm Water Detention Pond and the conservation easement located within the Rolling Oaks Subdivision, and the cost thereof as is more fully set forth herein.

Section 13. Taxes and Assessments on Park Areas. Any taxes or assessments assessed against or levied on the Park Areas shall be pro-rated among the Owners and billed as part of the taxes assessed to the lots.

Section 14. Control and Jurisdiction by City of Howell. In the event that the Association shall at any time fail to maintain the Park Areas in reasonable condition and order, the City of Howell may serve written notice upon the Association or upon the Owners setting forth the manner in which the Association has failed to maintain the Park Areas in reasonable condition and said notice shall include a demand that deficiencies of maintenance be cured within thirty (30) days thereof, and further, shall state the date and place of a hearing thereon before the Howell City Council or such other boards, body of officials to whom the City of Howell shall delegate such responsibility, which shall be held within fifteen (15) days of the notice. At such hearing the City of Howell may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be cured. If the deficiencies set forth in the original notice or in the modifications thereof, shall not be cured within said thirty (30) days or any extensions thereof, the City of Howell, in order to prevent blight hazards or nuisance conditions, may in its sole reasonable discretion enter upon and maintain said Park areas for a period of one (1) year. Lot owners shall be assessed by the City of Howell for any actual expenditures including administration expenses.

Said maintenance by the City of Howell shall not constitute a taking of the Park Areas nor vest in the public any additional right to use the same. Before the expiration of said year, the City of Howell shall upon its own initiative, or upon the request of the Association, call a public hearing upon notice to the Association and the members thereof, at which hearing the Association or the members shall show cause why such maintenance by the City of Howell shall not, at the election of the City of Howell, continue for a succeeding year. If the City of Howell shall reasonably determine that the Association is ready, willing and able to maintain the Park Areas in reasonable condition, the City of Howell shall cease to maintain the Park Areas at the end of said year. If the City of Howell shall reasonably determine that the Association is not ready, willing and able to maintain the Park Areas during the next succeeding year, then subject to a similar hearing and determination, in each year thereafter, the City of Howell may continue to enter upon said Park Areas and maintain same. However, should an emergency threatening the public health, safety and general welfare of the public be determined by the City of Howell to exist, the City of Howell shall have the right to take immediate corrective action. Assessments imposed pursuant to this paragraph shall become due, be collected and be returned for non-payment in the same manner at the same time as ad valorem property tax levies of the City of Howell. In addition, the City of Howell shall be subrogated, at its option, herein provided. The Association agrees to hold harmless and indemnify the City of Howell from any actions taken in exercising said rights of collection. The City of Howell shall also have the right to assess for the maintenance of detention areas.

GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, its successors and assigns, and any Owner shall have the right to enforce, by any proceeding at law or equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant, its successors and assigns, 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.

By their acceptance of title each lot owner shall be held to vest in Declarant, its successors and assigns, and it shall be deemed to have the right and power in its own name to take, prosecute, and enforce pursuant to Act 228 of P.A. of 1967, all suits legal, equitable or otherwise, which they deem necessary or advisable. Upon violation of any restriction or breach of any covenants, Declarant, its successors and assigns, may enforce them by a suit for money judgment, or by an action in equity seeking a mandatory injunction, and the exercise of any one or more of them shall not be deemed to constitute an election of remedies. In addition to all other remedies, the Declarant, its successors, and assigns, may enter upon the land as to which such violation or breach exist, and summarily abate and remove at the expense of the Owner thereof any construction or other violation that may be or exist thereon contrary to the intent and provision hereof. The Declarant, its successors and assigns, shall not thereby become liable for trespass, abatement, removal or in any other manner.

Any and all rights and remedies which Declarant, its successors and assigns, may have under this Declaration or by operation of law, either at law or in equity, upon any violation or breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them, whether exercised by Declarant and/or any Owner or their heirs, successors or assigns, or not, shall be deemed to be in exclusion of any other and any two or more or all of such rights and remedies may be exercised at the same time.

Section 2. Severability. In the event any provision of the restrictions contained in this Declaration should be held ineffective or invalid for any reason by waiver, judgment, decree or other Court order or otherwise, all other parts and provisions of these restrictions shall nevertheless remain in full force and effect.

Section 3. Amendments. The conditions, covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of fifteen (15) years. This Declaration may be amended during the first thirty (30) year period and during each successive fifteen (15) year period thereafter by an instrument signed by not less than seventy-five (75%) percent of the Owners and the City of Howell. Any amendment changing or modifying this Declaration in whole or in part must be recorded in the Office of the Register of Deeds of Livingston County, Michigan.

Section 4. Interpretation of Terms. The masculine pronouns and relative words used in this agreement shall be read as though written in masculine, feminine, neuter or plural forms respectively as the context requires or permits.

Section 5. Assignment. Declarant may at any time assign and convey all or part or its reserved rights, power, privileges and duties which are herein reserved to it to the Rolling Oaks Homeowners Association, and upon the execution and recording of the appropriate instrument, the powers, privileges and duties so assigned and Declarant shall be fully released and discharged from further obligations and responsibilities in connection therewith.

Section 6. Conflict in Agreements. In the event of any conflict between the terms of this Agreement and the terms of the Drainage Detention Basin Agreement recorded in Liber 1768 Pages 34 through 39, Livingston County Records, the terms herein shall control.

IN WITNESS WHEREOF, Distinctive Land, Inc., a Michigan Corporation, herein referred to as Declarant, caused this Agreement to be executed.

WITNESSED BY:

DECLARANT

Distinctive Land, Inc.
a Michigan Corporation

By: _____ Michael E. Tobin, Vice President

STATE OF MICHIGAN)
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 1997 by Michael E. Tobin, vice president of Distinctive Land, Inc., a Michigan Corporation, on behalf of the Corporation.

Notary Public
State of Michigan,
County of _____
My Commission Expires: _____

The undersigned on behalf of the Rolling Oaks Homeowners Association do hereby consent to the foregoing terms.

Rolling Oaks Homeowners Assoc.
a Michigan Corporation

By: _____ Michael E. Tobin, President

STATE OF MICHIGAN)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 1997 by Michael E. Tobin, president of Rolling Oaks Homeowners Association, a Michigan Corporation, on behalf of the Corporation.

Notary Public

State of Michigan,

County of _____

My Commission Expires: _____

drafted by and return to:
Bruce H. Tobin, Esq.
Lebow and Tobin, P.L.L.C.
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