

Stony Point Homeowners Association

Summary of Covenants and Restrictions

V2.1

August, 2006

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This is Summary V2.1 of the Stony Pointe Homeowners Association Covenants and Restrictions. Its purpose is to provide homeowners with an easy to use reference to the current Stony Pointe Homeowners Association Covenants and Restrictions. It is a summary and it does not contain the detailed legal descriptions and legal signatures of the original documents. It also does not contain the original text or the history of certain sections that were modified by amendment. Those sections having a history of amendment are so identified and contain only the most recent (currently in effect) version of the section. In a few cases, the numbering of sections differed between Phases I, II and III. The section numbers chosen for this document reflects an attempt at clarity. Where they do vary, the numbers differ only by one or two and the section's position in the document is the same. Where obvious and minor typographical or editorial errors were found, they were corrected. This document does contain all the current information homeowners must know in order to understand and abide by the covenants and restrictions.

Complete and legal copies of the Stony Pointe Homeowners Association Covenants and Restrictions are available. The original documents are on file with the County of Oakland and are available for copying at the county offices.

The original covenants and restrictions for Phases I, II and III and accompanying amendments make up a package of 100 pages. The documents are multi-generation copies and many pages are heavily marked with stamps and other markings and are hard to read. Finding specific information can be difficult. This summary combines the information in the Covenants and Restrictions of all three phases which, in most instances, were identical in text,

content and intention. In some instances, the information became identical through amendment. Where information differs in content or intention between any of the phases, it is included and noted.

Efforts were made to ensure that this is an accurate representation of the information in the original Covenants and Restrictions. If errors or discrepancies are found, please call them to the attention of any member of the SPHA Board of Directors for correction. In any event, the legal copies of the Covenants and Restrictions, as recorded with the County of Oakland, remain the final authority.

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EXHIBIT A

Exhibit A is referenced in the covenants and restrictions. Exhibit A is an attachment to the Phase I, II or III

Covenants and Restrictions showing the legal description of the boundaries of that phase of the development.

Introductions to

Declarations of Covenants and Restrictions

Stony Pointe Subdivision No. 1

This Declaration is made on the 12th day of November, 1986, by Stony Pointe Development Corp., a Michigan corporation, whose address is 1377 Catalpa Drive, Rochester, Michigan 48063, hereinafter referred to as "Developer."

WHEREAS, The Developer is the owner in fee simple of lands described in Exhibit A attached hereto, comprising Stony Pointe Subdivision No. 1, hereinafter referred to as the "Subdivision"; and

(Go to the common content following these introductions.)

Stony Pointe Subdivision No. 2

This Declaration is made on the 3rd day of March, 1989, by Stony Pointe Development Corp., a Michigan corporation, whose address is 1377 Catalpa Drive, Rochester, Michigan 48063, hereinafter referred to as "Developer."

WHEREAS, The Developer is the owner in fee simple of lands described in Exhibit A attached hereto, comprising Stony Pointe Subdivision No. 2, hereinafter referred to as the "Subdivision"; and

(Go to the common content following these introductions.)

Stony Pointe Subdivision No. 3

This Declaration is made on the 3rd day of July, 1992, by Stony Pointe Development Corp., a Michigan corporation whose address is 26400 Sherwood, Warren, Michigan 48091, and Stony Pointe Limited Partnership, a Michigan Limited Partnership, whose address is 26400 Sherwood, Warren, Michigan 48091, hereinafter collectively referred to as "Developer."

WHEREAS, The Developer is the owner of lands described in Exhibit A attached hereto, comprising Stony

Pointe Subdivision No. 3, hereinafter referred to as the "Subdivision", and

BEGIN COMMON CONTENT

WHEREAS, The Developer desires to impress upon the Subdivision (but not any property outside of the Subdivision, whether or not owned by the Developer and whether or not adjacent thereto) covenants and restrictions in order to ensure its most beneficial development as a residential area, to preserve the value thereof, to prevent any use thereof which might tend to diminish its value or pleasurable enjoyment, and to assure its harmony, natural beauty and utility; and

NOW, THEREFORE, The Developer, for itself, its successors and assigns, does hereby publish and declare and make known to all intending purchasers and future owners of the various lots comprising the Subdivision, that these lots shall be purchased, used, held, and/or sold expressly subject to the following covenants, restrictions, and easements which shall run with the land, which shall be incorporated by reference in all deeds of conveyance and contracts for the sale of said lots, and which shall be binding upon and inure to the benefit of all parties having any right, title or interest in the Subdivision or in any lot therein, their heirs, successors and assigns. The term of the easements herein reserved shall be perpetual and the covenants and restrictions shall be operative through April 1, 2016 for Phases I and II and operative through June 1, 2022 for Phase III, at which time they shall be automatically extended for successive periods of ten years, unless it is agreed in accordance with the provisions hereinafter set forth to terminate or modify such covenants and restrictions in whole or in part. Notwithstanding the foregoing, the provisions of public and private utility and drainage easements [Additional Phase III text: *and the restrictions on the use of the lots to single-family residential purposes,*] shall remain operative in perpetuity.

ARTICLE I - RESTRICTIONS

The Subdivision and each lot therein shall be subject to the following covenants and restrictions:

1. Use All lots shall be used for single family residence purposes only, and no building of any kind whatsoever shall be erected, re-erected, moved or maintained thereon except a private residence and appurtenant buildings as hereinafter provided. Such residence shall be designed and erected for occupation by a single private family. A garage for the sole use of the respective owner or occupant of the lot upon which said dwelling house is erected may also be erected and maintained.

2. Approval of Plans

(a) No residence, garage, driveway, parking area, fence, wall, hedge, patio screen, dog run, swimming pool, swimming pool enclosure, children's playhouse, playground equipment, basketball net or tennis court (except as permitted below in the rear or side yard) or any other structure or device shall be erected, placed or altered on any lot in the Subdivision until the following (one or more of which may be waived in writing by Developer) have been submitted to and approved in writing by the Developer;

(i) A topographic survey showing existing and proposed grades, the location of all trees in excess of three inches in diameter, and the proposed location of each building, structure, drive, fence, etc.

(ii) Construction and architectural plans including dimensions, floor plans, typical sections and all elevations.

(iii) Specifications setting forth the type and quality of all materials and workmanship and including a detailed finished schedule for all exterior materials, products and finishes with actual brick, stain and shingle samples.

(iv) A landscaping plan showing finished grading, planting, seeding and lighting; and a construction schedule.

(b) The Developer shall have the right to refuse to approve any such plans or specifications, which are not, in

its sole opinion, suitable or desirable for aesthetic or other reasons. In passing on such plans and specifications, the Developer shall have the right to take into consideration the suitability of the proposed structure to be built to the site upon which it is proposed to be erected. The Developer shall have the right to take into consideration the effect of the proposed structure or landscaping on the aesthetics or tranquility of the Subdivision as a whole and particularly on the adjoining lot owners. It is agreed and understood that the purpose of this paragraph is to cause the Subdivision to develop into a beautiful, harmonious, private residential area, and if a disagreement on the points set forth in this Article should arise, the decision of the Developer shall control. The Developer shall have the right under this Agreement to refuse to approve a structure or landscaping which would be permitted under the ordinances of the City of Rochester, but shall in no case have the authority to allow a structure or landscaping which would be in contravention of the ordinances of the City of Rochester. The Developer intends to take into account the preservation of trees and of the natural setting in passing upon plans, specifications and the like. No alterations in the exterior materials or appearance, including stain, paint or roofing colors of any building or structure nor any alteration in the landscaping plans may be made without the written approval of the Developer. One copy of all plans, specifications and related data shall be furnished to the Developer for its records.

(c) Before installation; **swing sets, playhouses, playground equipment, and playscapes** must have approval of the Stony Pointe Homeowners Association Board as follows:

(i) Written request to the Board

(ii) Map of lot showing size & exact placement

(iii) Comply with setbacks as follows: at least 10 feet from side lot line, at least 25 feet from side lot lines for all corner lots, and at least 10 feet from rear lot line of all lots.

(iv) Must be made of wood.

3. Materials Old buildings may not be moved onto any lot in the Subdivision and no used materials except reclaimed brick may be used in construction. All residences shall have finished exteriors of brick, stone, wood or a combination thereof; provided, however, that no less than 20% of the front of the residence facing the street on which the residence fronts shall consist of brick or stone. Visible exteriors of cement, slag or cinderblock, asbestos, aluminum or vinyl siding, concrete or imitation brick are prohibited. [Additional Phases II and III text: *Texture 111 siding or similar siding is prohibited except in such locations and in such quantities as specifically approved by Developer in writing.*]

All exterior windows and doorwalls shall be constructed of wood. (See revision 32, page 8, for **vinyl replacement windows**) All exterior chimneys shall be constructed of brick. No prefabricated chimneys shall be permitted.

All **mailboxes** shall be made of wood exteriors, and metal or plastic newspaper boxes are prohibited. Every mailbox shall be custom built to conform to the design of the house of the homeowner to which it belongs, in accordance with 75% of the existing mailboxes in the subdivision. The mailbox & post must be painted to match the house trim. There shall be no large add-on numbers added to the mailbox post.

4. Square Footage Requirements No residence shall be permitted on any lot in the Subdivision unless, in the case of a one-story residence, the living area thereof shall not be less than 2,500 square feet; in the case of a two-story residence, the living area thereof shall not be less than 3,000 square feet; and in the case of a quad or tri-level residence, the living area thereof shall not be less than 1,750 square feet on each of the upper two levels. All computations of square footage for this purpose shall include only livable interior area and shall exclude basements, garages, porches and terraces.

5. Garages All garages must be attached. Garage doors

shall not face the street on which the residence fronts, except that the Developer may waive this requirement in writing where, in its sole opinion, because of the location, topography, or configuration of the lot in question or other factors, such waiver would not be inconsistent with the intent of these covenants and restrictions. Corner lots (lots having frontage on two streets) shall have garage doors face the side street. No garage shall provide space for less than two automobiles. Carports are specifically prohibited.

6. Set Backs Note: This section was frequently amended as the subdivisions developed and the developer required special set back provisions for certain lots. The most recent wording is shown for each of the three phases.

No buildings or any other structure may be erected or placed on, any lots nearer than:

For Phase I:

- (a) Forty feet from the front lot line with the exception of lots 4, 22, 23, and 24 where the required front set back shall be twenty-five feet;
- (b) Ten feet from one side lot line provided that the sum of the distances to both side lot lines is at least thirty feet; and
- (c) Thirty-five feet to the rear lot line.

For Phase II:

- (a) Forty feet from the front lot line;
- (b) Ten feet from one side lot line provided that the sum of the distances to both side lot lines is at least thirty feet; and
- (c) Thirty-five feet to the rear lot line.

For Phase III:

- (a) Forty feet from the front lot line, with the exception of lots 131, 132, 133, 140, 141, 142, 143, 150, 151, 157, 164, 165, 166, 167, 168, 169, 170 and 171 where the required front set back shall be thirty-five feet, and with the further exception of lot 158 where the required front setback shall be 30 feet;

(b) Ten feet from one side lot line provided that the sum of the distances to both side lot lines is at least thirty feet; provided, however, that the sum of the distances to both side lot lines between an interior lot and a corner lot may be twenty feet where deemed necessary by the Developer;

(c) Twenty-five feet from the side street lot line of a corner lot; and

(d) Thirty-five feet from the rear lot line.

Setbacks (Common Content for Phases I, II and III)

Provided, however, that with respect to the side lot set back, walkways along the side of a residence which are connected to and are a part of the deck in the rear of the residence shall not be treated as a structure for purposes of the computation of the required set back.

Provided further, however, that with respect to the rear lot set back, in ground swimming pools and decks which have been approved by the Developer and which are located and constructed in accordance with the appropriate ordinances of the City of Rochester shall not be treated as a structure for purposes of the computation of the required rear lot setback.

7. Landscaping Upon the completion of a residence on any of the lots in the Subdivision, the homeowner shall cause the lot to be finish graded and landscaped as soon after completion as weather permits in accordance with the landscaping plan approved by the Developer. All landscaping in the Subdivision shall be of an aesthetically pleasing nature and shall be well maintained at all times. It is the purpose of this paragraph to cause the Subdivision to develop into a beautiful harmonious private residential area. In no event shall basic landscaping, including finish grading, installation of driveways and seeding or sodding, be delayed more than six months after occupancy. For purposes of this paragraph, the term homeowner is intended to refer to the individual who purchases a residence from a builder and each subsequent purchaser of said residence.

8. Landscape Stabilization Zone (Phase I only) The Developer has established a thirty-foot landscape stabilization zone pursuant to Section 5.1-13.4 of the zoning ordinance of the City of Rochester. Each owner of any lot abutting Stony Creek is prohibited from disturbing the natural plant materials occurring in said landscape stabilization zone, except to perform such reasonable maintenance or to add such additional plant life which will enhance the stabilization of the banks of the Stony Creek and prevent erosion and protect and improve the area adjacent to the waterway.

8. Animals *[Amended so all phases are in agreement]* No chickens, other fowl or livestock, shall be kept or housed on any of the lots. No animals shall be kept or maintained on any lot excepting two household pets for the use by the homeowner and the homeowner's family. No animals shall be kept on the premises for any commercial purpose. Household pets shall receive such care as not to become objectionable to adjoining homeowners on account of noise, odor or concern for safety or health. Any dog kept by an owner or occupant of any residence in this Subdivision shall be kept at all times when outside of the residence either on a leash or in a dog run or pen in the rear yard and shall not be allowed to run loose unattended. Dog runs or pens shall be made of wood and may not exceed 150 square feet in area and shall not project past the sidewalks of a residence so as to extend into either side yard and shall not exceed four and one-half feet in height. No owner or occupant of any residence in the subdivision shall himself or herself harm or kill any wildlife in the subdivision or permit his or her invitees or guests to do so.

9. Fences Other than fences around swimming pools and dog runs described in the preceding paragraph, no fences shall be permitted in the Subdivision. Fences around swimming pools shall enclose only the deck area surrounding the swimming pool and shall not enclose the entire rear yard.

10. Storage of Vehicles No house trailers, commercial vehicles, boats, boat trailers, snowmobiles, campers or

trailers of any kind, may be parked overnight or stored on any lot in the Subdivision unless fully enclosed within the garage. Commercial vehicles and trucks shall not be parked in the Subdivision or on any lot therein except while making normal deliveries or pickups in the normal course of business except that small trucks or vans owned or used by a lot owner in his or her business may be parked on the street in front of the residence or in the driveway for short periods of time on a non-overnight basis.

11. Sheds Trailers, tents, shacks, barns, storage sheds, whether permanent or temporary, or any other temporary building of any description whatsoever, are expressly prohibited within the Subdivision, and no temporary residence shall be permitted in unfinished residential buildings. The provisions of this paragraph shall not apply to the Developer or any builder which it may designate, during the construction period or during such periods as any residence may be used for model or display purposes.

12. Trash and Debris All trash and debris shall be stored in sanitary containers concealed from public view and the view of adjacent lot owners. Such containers may be left at the road for pickup purposes as long as they do not remain there for more than twenty-four hours in any one week.

13. Clotheslines No laundry shall be hung for drying in such a way as to be visible from the street on which the lot fronts, and in the case of corner lots, such laundry shall not be hung so that it will be visible from the streets on which the lot fronts and sides.

14. Grades The grade of any lot or lots in the subdivision may not be changed without the approval of the Developer. This restriction is intended to prevent interference with the master drainage plan for the Subdivision.

15. Driveways *[Amended so all phases are in agreement]* All driveways and approaches shall be constructed of concrete or paving stone and shall have a minimum thickness of four inches.

16. Air Conditioners *[Amended so all phases are in agreement]* No "through-the-wall" air conditioners may be installed on the front or sidewall of any building in the Subdivision. Except with the written permission of the Developer, no outside compressors for central air conditioning units or other similar machinery may be located other than in the rear yard and within five feet of the rear wall of the residence and shall not project past the sidewalks of said residence so as to extend into the side yard. Any outside compressor permitted in the side yard of a residence pursuant to written permission given by the Developer shall be entirely enclosed with appropriate landscaping materials such that the outside compressor shall not be visible from the street.

17. Swimming Pools No swimming pool may be higher than one foot above the existing lot grade. No temporary or permanent above-the-ground pools shall be permitted.

18. Basketball Nets *[Amended so all phases are in agreement]* Basketball boards and baskets may be installed only in the rear or side yard, not to extend beyond the structure of the house into the front yard. No use of any basketball boards and baskets shall be allowed after 9:00 p.m.

19. Firearms No homeowner shall use, nor shall he or she permit or suffer an occupant of the premises or his or her invitees or guests to use any bee-bee guns, firearms, air rifles, pellet guns, bow and arrow, slingshot, or any other weapon of any kind, outside the confines of the dwelling house in the Subdivision.

20. Water and Sewer All residences must be connected to the city water and sewer system.

21. Leasing No owner of any lot may lease less than the entire residence located on the lot.

22. Signs No signs or billboards shall be placed, erected or maintained on any lot in the Subdivision or attached to or displayed from the window or any building or structure on the lot. Notwithstanding the foregoing, one sign advertising that the house or lot are for sale may be erected

and maintained on the lot; provided, however, that such sign shall be constructed and installed in a professional manner, according to sign ordinances of the City of Rochester. Such sign shall be kept clean and in good repair during the period of its maintenance on the lot, and shall in no event be placed or maintained nearer than twenty-five feet from the front lot line. The provisions of this paragraph shall not apply to signs installed or erected on any lot by the Developer, or any builder during the construction period or during such period as any residences may be used as a model or for display purposes.

23. Tanks and Antennas [*Amended so all phases are in agreement*] Exterior fuel tanks, exterior TV or other antennas in excess of nineteen inches in diameter shall not be permitted and shall constitute a nuisance per se.

Satellite dishes in excess of (1) meter in diameter shall not be permitted and shall constitute a nuisance per se. Satellite dishes one (1) meter or smaller in diameter may be installed provided they are done so on the rear wall of the house, not exceeding either side of said wall, if signal quality is acceptable or, if not acceptable, same may be installed on the roof to the rear so as to not be visible from the street in front of the home. In the event neither of the foregoing can be accomplished, then said dish may be installed on either side of the home provided it is done so in a location that is the furthest to the rear thereof which still results in acceptable signal quality.

Homeowners are expected to comply with these provisions except if doing so would unreasonably increase the cost of installation or use and maintenance of the dish.

24. Stockpiles The stockpiling and storage of building and landscape materials and/or equipment or any other materials or substances shall not be permitted on any lot except such as may be used within a reasonable length of time, and in no event shall the storage of landscape materials extend for a period of more than thirty days.

25. Fire or Storm Debris Any debris resulting from the destruction in whole or in part of any dwelling or building on any lot in the Subdivision shall be removed with all

reasonable dispatch from such lot in order to preserve the slightly condition of the Subdivision.

26. Trees It shall be the responsibility of any lot owner, including any builder [Additional Phase III text: *to comply with the tree ordinances of the City of Rochester and*] to preserve all trees exceeding six inches in diameter, including welling if necessary. No trees exceeding six inches in diameter at ground level shall be removed or cut without written permission of the Developer.

27. Nuisance No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon tending to cause discomfort, annoyance or embarrassment to the surrounding neighborhood. No homeowner or other resident shall dump rubbish, trash, garbage, branches, leaves, grass clippings or other waste on any portion of his or her lot, on any easement area or in the Landscape Stabilization zone. It shall be the responsibility of each homeowner to prevent the development of any unclean, unsightly or unkempt conditions of buildings, lawns, drives or landscaping on his or her lot which shall tend to decrease the beauty of the neighborhood.

28. Nuisance Abatement Developer shall have the right but not the obligation to enter upon any residential lot for the purpose of mowing, removing, clearing, cutting or pruning under-brush, weeds, trees, other unsightly growth, trash, or other thing or conditions proscribed by these covenants and restrictions. Such right is reserved for the purpose of assuring the overall beauty and safe condition of the Subdivision and such entrance shall not be deemed a trespass. It shall be the obligation of the lot owner to promptly reimburse the Developer for all costs incurred by it in performing such acts, and failure to do so shall result in a fine for such costs being placed against such lot or lots.

29. Boundary Lines No lot shall be subdivided, or its boundary lines changed, except with the written consent of the Developer. However, the Developer hereby expressly reserves to himself the right to replat any two or more lots shown on the plat or preliminary plat of the Subdivision in

order to create a modified building lot or lots and to take such other steps as are reasonably necessary to make such replanted lot suitable and fit as a building site to include, but not to be limited to, the relocation of easements, walkways and rights-of-way to conform to the new boundaries of said replatted lots.

30. Elevations No front elevation of any house may be duplicated on any lot less than ten houses away unless approved by the Developer.

31. Electricity Generators Permanently installed home generator systems must meet the following requirements:

When installed at the side of the home, it must be no closer to the front than 25% of the length of the side.

Must be shielded by evergreens on all except back sides. Evergreens must be taller than the unit.

Must be fueled by natural gas, gasoline, or diesel. No separate tanks are allowed.

May be operated only during power outages, except for exerciser runs. Exerciser runs allowed only between five & seven PM.

Must have a permit from the city of Rochester.

Must have written permission from SPHA Board before obtaining city permit.

Must have SPHA inspect & approve site after completion

32. Window Replacements All-vinyl and composite-vinyl replacement window frames shall be allowed if the glass area remains the same as the original windows. New frames must be colored or painted to match the rest of the trim. All plans for vinyl window frame replacement must be approved by the SPHA Board prior to any such replacement.

ARTICLE II - EASEMENTS

1. Utilities The Developer reserves perpetual, alienable and releasable easements on, over and under the ground at all locations shown on the final plat and over the front ten feet of each lot to erect, maintain, replace and use electric, telephone and television poles, wires, cables, conduits, sewers, water mains, lighting fixtures, and other suitable equipment for the conveyance and use of electricity, telephone, television, gas, sewer, water or other public conveniences or utilities. These easements expressly include the right to cut any trees, bushes, or shrubbery, change grades, or to take any other similar action reasonably necessary to provide and maintain the utilities and conveniences in an economical and safe manner and to maintain reasonable standards of health, safety and appearance. Such rights may be exercised by any licensee or assignee of the Developer, but this reservation shall not be considered as an obligation of the Developer to provide or maintain any such utility or service.

2. Drainage Developer reserves a perpetual, alienable and releasable easement on, over and under the ground for surface water accumulation and drainage purposes as set forth in the plat. In the event that the City of Rochester, Oakland County Road Commission or Drain Commission find it necessary, in their discretion, to go upon such drainage easements in order to maintain such drainage easements and perform all operations required for proper operation, the City of Rochester, Drain Commission and Road Commission or their successors or assigns, shall have the right to go upon such drainage easements.

3. Restrictions on Use by Homeowner No excavations, except for public utility purposes; no changes of finished grade; and no structures or apparatus of any kind shall be allowed within the public utility and drainage easements of the Subdivision. Except as provided herein, the lot owners shall have the right to make any use of the land subject to such public utility easements which is not inconsistent with the right of the utility, provided, however, the public

utility shall have the right to trim trees, bushes or other plants of any kind within said easement and also shall have the right to trim any trees, bushes or other plants of any kind outside of said easement, which interfere with the utilities in said easement or is necessary for the installation, repair, maintenance or removal of the utility facilities. All plantings or lot line improvements of any type over, on or in close proximity to either the public utility or drainage easements shall be allowed only upon written approval of the Developer. No plantings or use of the drainage easements shall be allowed which might tend to interfere with, obstruct, hinder, or impair the drainage plan of the Subdivision. Within reason, after consultation with the property owner, the trimming or removal of trees, shrubs, plants or other obstructions of any kind by the public utility for the purposes set forth above, shall be without liability to the utility.

4. Connections to the Residence The installation, underground maintenance and replacement of the electric service conductors, gas lines, and telephone facilities, from the public easement to the residence, shall be at the lot owner's sole expense. The lot owner, and not the utility or the Developer, shall be responsible for injury to persons or property caused by the trenching, existence or back-filling of the trench. The installation of all underground service conductors shall comply and conform to the National Electric Code and such other codes as may be applicable and to the specifications of the public utility concerned. No shrubs or foliage shall be permitted on property within five feet of transformer enclosures or secondary connection pedestals.

5. Subdivision Maintenance The Developer reserves perpetual, alienable and releasable easements for the erection, maintenance, repair, alteration, improvement, and replacement of Subdivision entrances, walls, gates, signs, ornamental lights and sprinkler systems at each entranceway of the Subdivision and over and under the front ten feet of each lot.

ARTICLE III - HOMEOWNERS ASSOCIATION

1. Membership (See Phase III Amendment 5 for certain modifications to this section.) A non-profit corporation was established by the Developer for a perpetual term under the laws of the State of Michigan under the name Stony Pointe Homeowners Association No. 1, No. 2 or No. 3 (hereinafter the "Association"). Membership in the Association shall be mandatory and automatic for each lot owner in the Subdivision. Every person or entity who or which is the record owner of a fee simple interest in any lot in the Subdivision (except record owners who are in the process of selling their interest under an executory land contract, in which case the purchaser under such a land contract as long as it is in force) shall be considered the lot owner for the purpose of membership in the Association.

2. Voting All members shall be entitled to one vote for each lot in which he, she, or it owns an interest in the Subdivision. When more than one person is the owner of a lot, all such persons shall be considered members of the Association, but only one vote with respect to a lot may be cast, as they among themselves determine.

3. Annual Maintenance Charge All of the lots in the Subdivision shall be subject to an annual maintenance charge, to be paid by the respective owners thereof, to the Association in advance on the first day of January in each year, commencing with January 1, 1988 for Phases I and II and commencing with January 1, 1992 for Phase III. The initial annual maintenance charge shall be \$150.00 per lot and shall be paid at closing. The annual maintenance fee may be adjusted from year to year by the Board of Directors of the Association up to a maximum of \$500.00 per lot. The annual membership fee may not be increased beyond this maximum without approval by fifty-one (51%) percent of the eligible votes, but upon such approval such increase shall be binding upon all of the members in the Association. The yearly charge to homeowners shall be determined by the budget approved by vote at the annual meeting. Billing will be by first class mail, and those not paid as of February 15, will have a late fee of \$50.00

accessed in addition to the interest and penalties charged after April 1, as described in "Delinquent Maintenance Charges" item 5, below. The SPHA Board shall have the authority to waive the \$50.00 fee in special circumstances.

4. Use of Maintenance Fund The maintenance fund shall be used for such of the following purposes as the Association shall determine necessary and advisable: enforcing these restrictions or other rules of the Association (including attorneys' fees); examining plans and drawing specifications submitted to it for approval under the terms of these restrictions; street lighting; plowing snow; maintenance of other property of the Association; maintenance of entry ways of the development; planting trees and shrubbery and the care thereof; collecting and disposing of garbage and rubbish; employing night watchmen; caring for vacant property; removing grass or weeds; constructing, purchasing, maintaining or operating any community service; and for doing any other thing which, in the opinion of the Board of Directors of the Association, is appropriate and helpful for the homeowners within the Subdivision and consistent with the Association's Bylaws.

[Additional Phase III text: *In the event of a violation of the restriction in Section I of Article I which requires that each lot is to be used for residential purposes, the Association shall be required to reimburse Parke, Davis & Company ("Parke Davis") or its successors and assigns for any expenses incurred by Parke Davis or its successors and assigns in successfully enforcing the use restriction pursuant to its Article IV enforcement rights.*]

5. Delinquent Maintenance Charges [Amended so all phases are in agreement] All maintenance charges which shall remain due and unpaid on April 1st of the year in which said charges become due shall thereafter be deemed delinquent and shall thereafter accrue interest at the highest legal rate allowable on said April 1st until paid. The Association shall record with the Oakland County Register of Deeds a notice of such delinquency against each lot owned by the delinquent owner, showing the

amount due and owing, and such notice shall act as a lien upon the delinquent owner's lot, and any subsequent titleholders of such lot shall assume the indebtedness of the delinquent owner. The Association shall discharge the lien only upon payment in full of the amount due and owing by the delinquent owner, plus recording costs and attorney fees sustained in effectuating and discharging the lien. A certificate will (upon request) be issued in writing by the Association to any prospective purchaser which shall set forth the status of said charges. This certificate shall be binding upon the parties hereto. The lien provided herein shall be subordinate to any valid purchase money first mortgage lien. The sale or transfer of any lot which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure, shall extinguish the lien as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien therefore.

6. Authority of Association Any and all rights, powers, obligations and easements imposed by or reserved to the Developer, including the right and power to approve or disapprove any use, or proposed action, under this Declaration, shall be assumed by the Association once assigned to it by this Developer. The Association shall have the authority to make and enforce regulations pertaining to the use and maintenance of all property, including easements, in the Subdivision. Such regulations shall be binding upon the other members of the Association and all residents of the Subdivision. The Association shall have the authority under the Nuisance Abatement Section of Article I to enter upon any privately owned lot in the Subdivision to abate a nuisance. The Association shall be obligated to maintain Subdivision entranceways, easements, especially drainage easements and other property within the Subdivision not located on any privately-owned lot in the Subdivision. The Association shall have authority to carry out any other activities permitted by its Articles and Bylaws.

7. Power to Sue [*Amended so all phases are in agreement*]

By his acceptance of title, each owner shall be held to vest in the Association the right and power in its own name to take and prosecute all suits, legal, equitable, or otherwise, which may, in the opinion of the Association, be necessary or advisable for the collection of the delinquent maintenance charge or charges or the enforcement of any other provision of this Declaration or regulation or rule promulgated by the Association. In the event the Association commences a suit against any owner to enforce payment of the annual maintenance charge, all legal costs, including court costs and attorney fees, shall be taxed against the delinquent owner and added to the amount then due and owing by said delinquent owner.

8. Foreclosure of Lien The assessment lien may be foreclosed by the Association in the same manner as a foreclosure under the laws relating to foreclosure of real estate mortgages by judicial action or advertisement, or in accordance with the procedures for foreclosure of liens set forth in the Condominium Act.

9. Architectural Control Committee [Additional text for Phases II and III: *Once the Developer assigns to the Association the rights, powers, obligations and easements imposed by or reserved to the Developer under this Declaration,*] The Association shall have the authority to appoint an architectural control committee to approve or refuse to approve plans, specifications, drawings, elevations or other matters with respect to the construction or location of any dwelling, fence, wall, hedge or other planting or structure on any lot in the Subdivision. The architectural control committee shall exercise all of the authority and discretion granted to the Developer in these restrictions. The architectural control committee shall be comprised of up to three members to be appointed by the Board of Directors of the Association. The architectural control committee shall be authorized to retain the services of professionals such as architects, engineers and attorneys. The cost of such services shall be paid for by the Association out of its maintenance fund.

ARTICLE IV - ENFORCEMENT

The Developer, the Homeowners Association or the owners of eight lots in the Subdivision shall have the right to enforce any of the provisions contained in these restrictions or any of the rules or regulations duly adopted by the Association in a court of law or equity [Additional Phase III text: *and Parke Davis or its successors and assigns shall have the right to enforce the use restriction in Section 1 of Article I.*] Such enforcement shall include the right to seek injunctive relief to prevent violation or continued violation, to prevent or abate such violations, to compel compliance with the terms hereof, to enter upon any land within the Subdivision and correct any condition and remove any building, structure or improvement erected, installed or maintained in violation of the terms hereof, at the lot owner's expense, and to recover damages for any violation. Any such entry shall not constitute a trespass. The Developer, Association, owners of eight lots [Additional Phase III text: *or Parke Davis (or its successors and assigns)*] as the case may be, may recover against a lot owner violating the provisions of this Declaration or a duly adopted rule or regulation of the Association, all reasonable costs incurred in enforcing such provisions in any of the foregoing ways, including the cost of removing offending structures, and actual attorneys' fees and other litigation costs. All such costs shall constitute a lien upon the lot involved and such lien shall be subject to collection and enforcement in the same manner and to the same extent as the lien for the annual maintenance charge of the Association provided in Article III above. Failure to enforce any provision contained herein in any particular instance shall not be deemed a waiver of the right to do so as to any continuing, subsequent or other violation.

ARTICLE V - ASSIGNMENT OF DEVELOPER RIGHTS

All rights, duties and easements conferred upon or reserved by the Developer herein may, at its discretion, be

assigned by it to any corporation or other entity including the Stony Pointe Homeowners Association. Such assignment or transfer shall be made by appropriate instrument, in writing, in which the assignee or transferee shall join for the purpose of evidencing its consent to the acceptance of such rights, duties and easements, and such assignee shall thereupon have the same rights and powers, and be subject to the same obligations and duties as herein conferred on the Developer. Such assignment, when executed by such assignee, shall without further act release the Developer from its obligations hereunder.

ARTICLE VI - SUBDIVISION ENTRANCES

The Subdivision entranceways, gates, walls, fences, ornamental lights, and any other ornamental structures which may be erected by the Developer in the Subdivision as well as the circles and outlots and landscaping and sprinkler systems on or around any of these facilities shall be maintained, repaired and replaced when necessary, by the Subdivision Association. All maintenance, repair and replacement is to be done in a manner consistent with the high standards of quality and beauty originally established by the Developer. All repairs and replacements shall be of the same design, color, construction, and type of material originally utilized by the Developer. No modification or addition may be made to these facilities without the written consent of the Developer, and no assignment or transfer of Developer's rights or powers under this Declaration made pursuant to Article V above shall give any other entity the right to approve such changes or additions; such right being expressly reserved to the Developer, unless it shall expressly and specifically assign and transfer the same.

ARTICLE VII - MISCELLANEOUS

Flood plain area (Phase I only)

The 100-year flood elevation of Stony Creek varies within the plat from 720.2 (NGV Datum) at the existing pump station to 705.0 at the south plat boundary, as shown on the enclosed profile. This was determined from the Flood Insurance Study for the City of Rochester.

Building Restrictions (c) through (g) of Subdivision Rule R560.304(2) are listed as follows:

(c) Have lower floors, excluding basements, not lower than the elevation of the contour defining the flood plain limits.

(d) Have openings into the basement not lower than the elevation of the contour defining the flood plain limits.

(e) Have basement walls and floors, below the elevation of the contour defining the flood plain limits, watertight and designed to withstand hydrostatic pressures from a water level equal to the elevation of the contour defining the flood plain limits following methods and procedures outlined in Chapter 5, Type A Construction and Chapter 6, For Class I Loads found in "Flood Proofing Regulations" EP 1165 2 314 prepared by the Office of the Chief of Engineers, U.S. Army, Washington, DC, June 1972. Figure 5, page 14.5 of the Regulations show typical foundations, drainage and waterproofing details. This document is available, at no cost, from the Department of Natural Resources, Land and Water Management Division, Stevens T. Mason Building, P.O. Box 30028, Lansing, Michigan, 48909, or Department of the Army, Corps Of Engineers, Publications Depot, 890 South Pickett, Alexandria, VA, 22304.

(f) Be equipped with a positive means of preventing sewer back-up from sewer lines and drains which serve the building.

(g) Be properly anchored to prevent flotation.

No filling or occupation of the floodplain shall take place without prior written approval from the Michigan Department of Natural Resources. The restrictions listed herein apply to any building used or capable of being used for residential purposes and occupancy within or affected by the floodplain. The floodplain restrictions contained herein are to be observed in perpetuity, excluded from any time limitations set forth in this declaration, and may not be amended.

1. Severability Invalidation of any of the covenants, conditions or restrictions in this instrument, by judgment

or court order, shall in no way affect any of the other covenants, conditions or restrictions which shall remain in full force and effect.

2. Headings The headings used throughout these restrictions are for convenience only and shall not constitute an integral part of this document nor in any way govern its construction or interpretation.

3. Binding Effect The provisions hereof shall run with and bind the land and shall be binding upon and inure to the benefit of all owners of lots within the Subdivision and the Developer and their respective successors and assigns.

4. Modification (Phases I and II only) The restrictions contained in this document may be supplemented or modified by the Developer by recording an appropriate instrument with the Oakland County Register of Deeds at any time prior to the assignment by the Developer of its rights and obligations hereunder to the Homeowners Association. The Homeowners Association may modify these restrictions by an affirmative vote of 51% of the votes entitled to be cast. The foregoing notwithstanding, the provisions of Article II may not be modified or repealed. Any modification may be retroactive to January 1, 1987.

[Additional Phase II text: *For so long as National Bank of Detroit holds a mortgage on the property, any modifications to these restrictions shall require its prior written consent.*]

4. Signatures of Interested Parties (Phase II only) Angelo's Crushed Concrete, Inc., a Michigan Corporation, and National Bank of Detroit, a national banking association, are interested in the property described in Exhibit A attached hereto as mortgagees and execute this Declaration of Covenants and Restrictions for the sole purpose of subordinating their interests to the restrictions and covenants contained herein.

4. Signatures of Interested Parties (Phase III only) NBD Bank, N.A., a national banking association, is interested in the property described in Exhibit A attached hereto as mortgagee and executes this Declaration of

Covenants and Restrictions for the sole purpose of subordinating its interests to the restrictions and covenants contained herein.

5. Other Interested Parties (Phase III only) Parke Davis is interested in the property described in Exhibit A attached hereto by virtue of its interest in the use restrictions. Parke Davis has released to the Developer certain reverter rights applicable to certain property in the Subdivision in consideration for the enforcement rights applicable to the use restrictions given by the Developer to Parke Davis.

6. Modification (Phase III only) With the exception of the single family use restriction which may not be modified without the consent of Parke Davis, the restrictions contained in this document may be supplemented or modified by the Developer by recording an appropriate instrument with the Oakland County Register of Deeds at any time prior to the assignment by the Developer of its rights and obligations hereunder to the Homeowners Association. Except for modifications to the single family use restriction, which modification shall require an affirmative vote of 75% of the votes entitled to be cast, and the consent of Parke Davis, the Homeowners Association may modify these restrictions by an affirmative vote of 51% percent of the votes entitled to be cast. The foregoing notwithstanding, the provisions of Article II may not be modified or repealed. Any modification may be retroactive to February 1, 1992. For so long as National Bank of Detroit holds a mortgage on the property, any modification to these restrictions shall require its prior written consent.

RESOLUTION

A Resolution of the Rochester City Council dated November 9, 1991 refers to Stony Pointe Subdivision No. 3 and No. 2 and dedication of a new portion of Romeo Road and also a vacation of a portion of existing Romeo Road right-of-way by the developers. A legal description

of these portions of Romeo Road is attached to the resolution.

AMENDEMENTS

Attachment to each amendment: To the extent not inconsistent herewith, the Stony Pointe Subdivision Nos. 1, 2 and 3 Declaration of Covenants and Restrictions shall remain in full force and effect.

Phase I

1. (May, 1990) Section 19 *Basketball Nets* of Article I
2. (July 9, 1992) Sections 6 *Setbacks*, 9 *Animals*, 16 *Driveways*, 17 *Air Conditioners*, and 19 *Basketball Nets* of Article I and Sections 5 *Delinquent Maintenance Charges* and 7 *Power to Sue* of Article III.
3. (October 16, 1992) Section 6 *Setbacks* of Article I.
4. (May 28, 1993) Section 6 *Setbacks* of Article I.
5. (November 23, 1993) Section 6 *Setbacks* of Article I was amended and is currently in effect.

Phase II

1. (March 28, 1990) Section 6 *Setbacks* of Article I
2. (May, 1990) Section 19 *Basketball Nets* of Article I
3. (July 9, 1992) Sections 6 *Setbacks*, 9 *Animals*, 15 *Driveways*, 16 *Air Conditioners*, and 18 *Basketball Nets* of Article I and Sections 5 *Delinquent Maintenance Charges* and 7 *Power to Sue* of Article III.
4. (May 28, 1993) Section 6 *Setbacks* of Article I was amended and is currently in effect.

Phase III

1. (Oct. 13, 1992) Section 6 *Setbacks* of Article I
2. (May 28, 1993) Section 6 *Setbacks* of Article I was amended and portions of this amendment are currently in force.
3. (August 23, 1993) Section 6(a) *Setbacks* of Article I
4. (Oct. 11, 1993) Section 6(a) *Setbacks* of Article I was amended and is currently in effect.
5. (January 24, 1994) Section 1 of Article III was amended as follows and is currently in effect.

1. Membership and Required Merger A non-profit corporation has been established by the Developer for a perpetual term under the laws of the State of Michigan under the name Stony Pointe Homeowners Association No. 3 (hereinafter the "Association"). Membership in the Association shall be mandatory and automatic for each lot owner in the Subdivision. Every person or entity who or which is the record owner of a fee simple interest in any lot in the Subdivision (except record owners who are in the process of selling their interest under an executory land contract, in which case the purchaser under such a land contract as long as it is in force) shall be considered the lot owner for the purpose of membership in the Association. As the Subdivision immediately adjoins Stony Pointe Subdivision Nos. 1 and 2 and since the three subdivisions share common entrances, nearly identical covenants and restrictions and have numerous common concerns, there shall be a mandatory merger of the Association into Stony Pointe Homeowners Association, Inc., the association for Subdivision Nos. 1 and 2. The mandatory merger of the two associations shall occur at such time as the Developer is prepared to assign its rights, duties and easements reserved to it under the Covenants and Restrictions. It is contemplated that such merger and assignment will take place sometime after 50% to 75% of the lots in the Subdivision have been sold and are occupied.

Phases I, II and III Common Amendments

4. (July 1, 1996) Phase I Section 24 and Phases II and III Section 23 of Article I regarding *Tanks and Antennas* were amended and are currently in effect.
(It is unclear why this amendment is number 4.)