

Restrictions

FIFTH AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS FOR FAIRWAY PINES SUBDIVISIONS

This Fifth Amendment of Declaration of Covenants and Restrictions made this December 30, 1998, by and between FAIRWAY PINES LIMITED PARTNERSHIP, a Michigan limited partnership ("Declarant") having its principal office at 2025 W. Long Lake Road, Suite 104, Troy, Michigan 48098.

WHEREAS, the Declarant has previously established certain restrictions hereinafter referred to as the "Original Restrictions" for the Benefit of ALL Owners of Lots in Fairway Pines at Pheasant Run Subdivision No. 1, which restrictions are recorded in Liber 26813, Page 134-154 inclusive, Wayne County Records; and

WHEREAS, the Declarant has amended the Original Restrictions and established other restrictions pursuant to (a) the First Amendment to Declaration of Restrictions for Fairway Pines at Pheasant Run Subdivision No. 1, hereinafter referred to as the "First Amendment", which is recorded in Liber 26882, Pages 484 to 485 inclusive, Wayne County Records, (b) a Declaration of Restrictions for Fairway Pines at Pheasant Run Subdivision No. 1 and a Second Amendment to Declaration of Restrictions for Fairway Pines at Pheasant Run Subdivision No. 1, the Second Amendment which is recorded in Liber 29338, Pages 593 through 598 inclusive, Wayne County Records; and (c) Third Amendment to Declaration of Restrictions for Fairway Pines at Pheasant Run Subdivision No. 1 and Fairway Pines of Pheasant Run Subdivision No. 2 (hereinafter referred to as the "Third Amendment"), which Third Amendment is recorded in Liber 29678, Pages 2587 through 2593 inclusive, Wayne County Records; and Fourth Amendment to Declaration of Restrictions for Fairway Pines at Pheasant Run Subdivision No. 1, and No. 2, and Declaration of Restrictions for Fairway Pines at Pheasant Run Subdivision No. 3, recorded in Liber 29953, Page 2010, Wayne County Records; and

WHEREAS, Article IX Section 4 of the Original Restrictions provides, in part, that "additional subdivisions of land, now or hereafter owned by the Declarant, or any affiliate of Declarant and located within the northeast 1/4 of Section 21 of the Township (in each case, and in addition) may be brought by the Declarant under and within the jurisdiction of the association in (without the consent or approval of the association or any owner), and in each case by means of supplemental declaration of conveyance and restrictions filed of record with regard to such addition, which shall extend to such addition the scheme of the covenants and restrictions contained in this Declaration, and which shall subject the lots therein to assessment; and shall extend membership in the association to such owners on the basis set forth herein and which shall provide that any additional park or common areas therein shall be for the use and benefit of the owners, the residence and such addition and the residence in any subsequent addition. Any such addition may or may not contain additional park or common areas. . ."; and

WHEREAS, the Restrictions provide for the creation of the Fairway Pines at Pheasant Run Subdivision Association (the "Association") which is now in existence; and

WHEREAS, it is provided under Section 6, Amendment and Duration. . . that until December 31, 1999, Declarant shall have the right, by written instrument, signed, acknowledged and recorded with the Wayne County Register of Deeds, to modify, amend, restate, waive, repeal any or all of the provisions contained within and respect to anything, or any particular lot within the subdivision; and

WHEREAS, by Quit Claim Deed dated May 1, 1997, Declarant has conveyed to Fairway Pines at Pheasant Run Subdivision Association certain lands herein referred to as "Additional Common Area and Park Areas" described as wooded area west of Fairway Pines at Pheasant Run Subdivision No. 2 which instrument was recorded in Liber 29695, Page 2029, Wayne County Records, and by instrument recorded in Liber 27943, Page 067, on March 8, 1995 caused to be conveyed to the Fairway Pines of Pheasant Run Subdivision Association, a certain 10' private walkway described therein, private park described therein with the intent that such lands and property be used for Common Area only, for the benefit of all lot owners in Fairway Pines at Pheasant Run Subdivisions No. 1, 2 and 3, and

WHEREAS, as set forth within the Original Restrictions recorded in Liber 26813, Page 134, Subdivision which shall consist of private parks (the "Common Areas") for the benefit of the Subdivision and intended for the use, in common of (a) the owners of each lot (the "Owners"); (b) the occupants; (c) the permittees;... and

WHEREAS, it is provided within the Original Restrictions in paragraph D of the Recitals that the "Declarant "desires to subject the Subdivision to covenants, restrictions, conditions, easement charges, liens hereinafter set forth. . . to provide the perpetual preservation and maintenance of the common areas and roadways within the Subdivision and manner consistent with high environmental, aesthetic and residential standards;"... and

WHEREAS, it is provided under Article I of the Original Restrictions, that "Common Areas, shall mean and refer to: (a) those areas of land denoted as private parks on the recorded plat of the Subdivision; (b) those additional park or common areas located within any Subdivisions which are in the future annexed in accordance with Article IX, Section 4 of this Declaration; (c) all such additional park or common areas which may be located contiguous to either the Subdivision or any such future Subdivisions and which may be conveyed by the Declarant to the Association; together with any and all landscaping and other improvements now or hereafter located therein; . . .the common areas are intended to be (i) owned by the Association, and (ii) devoted to the common use and enjoyment of the residents in the Subdivision"; and

WHEREAS, Declarant desires to amend the Original Restrictions and to include such Additional Common Areas and Park Areas within the Common Areas and Park Areas of Fairway Pines at Pheasant Run Subdivisions No. 1, 2 and 3 and to provide that such

areas may only be used for open space purposes and may not be built or constructed upon and are for the benefit of the lot owners in Fairway Pines at Pheasant Run Subdivision No. 1, Fairway Pines at Pheasant Run Subdivision No. 2, and Fairway Pines at Pheasant Run Subdivision No. 3 and devoted to the common use and enjoyment of the residents in the Subdivisions as provided within the Original Restrictions as Amended. Further, no "Additional Common and Park Areas" shall be used for the construction and/or occupancy of a detached single family residential dwelling or related improvements and such Additional Common Areas and Parks shall constitute exempt property from taxation by state or local governments. All owners of lots in the collective Fairway Pines at Pheasant Run Subdivisions No. 1, 2 and 3, shall have a right and easement of enjoyment in and to the Additional Common Areas and Park Areas and such easements shall be appurtenant to and shall pass with title to any lot whether or not specifically set forth in the Deed or other conveyance to such lot, consistent with Article IV of the Original Restrictions, recorded in Liber 26813, Pages 134 through 154 inclusive, Wayne County Records.

The Restrictions On The Use Of The Common Areas as set forth in Article VIII of the Original Restrictions shall apply to the Additional Common Areas and Park Areas as set forth herein.

The Declarant reaffirms the Original Restrictions and all Amendments thereto which remain in full force and effect except as modified herein, if any.

The invalidity of the conditions, covenants, agreements, charges and liens contained in this Fifth Amendment shall not affect the remaining portions hereof and in such event the Original Restrictions, as amended, shall be construed as if such invalid portion had not been contained therein or herein.

The Restrictions and the provisions hereof shall be applicable to the present and further Owners of Lots located in Subdivision No. 1, Subdivision No. 2 or in Subdivision No. 3. All Lots located in Subdivision No. 1, Subdivision No. 2 or in Subdivision No. 3 shall be used, held and/or sold expressly subject to the conditions, restrictions, covenants, agreements, easements, charges and liens set forth in the Original Restrictions as Amended and as provided herein, which conditions, restrictions, covenants, agreements, easements, charges and liens shall be incorporated by reference in all deeds of conveyance and contracts for the sale of said Lots and shall run with the land and be binding upon all grantees and assigns and their respective heirs, personal representatives, successors and assigns.

In witness whereof, the undersigned has caused this Fifth Amendment to be executed this December 30, 1998.

FAIRWAY PINES LIMITED PARTNERSHIP, a Michigan limited partnership By: Biltmore Associates, Inc., a Michigan corporation, General Partner