

## **AGREEMENT FOR THE OCCUPANCY, USE AND MANAGEMENT OF TOWNSHIP LANDS (BONNELL PARK)**

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2010 by and between the CHARTER TOWNSHIP OF GRAND RAPIDS, a Michigan charter township, of 1836 East Beltline Avenue, N.E., Grand Rapids, Michigan (the "Township") and WOODCLIFF PARK ASSOCIATION, a Michigan nonprofit corporation, of 3516 Reeds Lake Boulevard, SE, Grand Rapids, Michigan, (the "Association").

### **Factual Background**

A. The Township is the owner of the lands described as Parcel B on Exhibit A (the "Park"), which comprises a portion of lands commonly referred to as Bonnell Park, and located within the Township (Parcel A on Exhibit A is not a subject of this Agreement).

B. The Township has permitted the Association to use and occupy the Park for park and recreation purposes only, and the Association has done so.

C. The Township has requested the Association to determine whether the Association has acquired, by deed or other written instrument, any rights to such occupancy and use of the Park that may be superior to the record title to the land held by the Township, and the Association has informed the Township that, to the Association's knowledge, there is no such deed or other written instrument.

D. The Township and the Association desire that the Association's current occupancy and use of the Park may continue on a revised, more formal basis, for the benefit of both parties and the public and, to that end, the parties desire to enter into this Agreement and thereafter proceed according to its terms.

### **Agreement by the Township and the Association**

1. Occupancy, Use and Management of the Park. The Township grants to the Association, and the Association accepts, the right to occupy, use and manage the Park, for public park and recreation purposes only, according to the terms and subject to the limitations of this Agreement. The lands comprising the Park are those described on Exhibit A, attached hereto and made a part hereof. The Township, as the legal owner of the Park, may lawfully grant the rights described herein and, by assenting to this Agreement, the Association acknowledges the Township's ownership and confirms that there are no recorded instruments whereby the Association has acquired any interest in the Park.

2. Duration of this Agreement. This Agreement shall have an initial term commencing on the date hereof and ending on December 31, 2015, subject to the right of termination stated below in this paragraph; provided, however, that in the absence of prior termination, this Agreement shall thereafter continue in subsequent terms of five years each, commencing January 1, 2016, but subject to the right of either party to terminate this Agreement, by giving a written notice of termination to the other party. Such notice of termination may be given by either party only during the period from October 1 through December 31 of the last calendar year of the initial term or the last calendar year of each subsequent term, as the case may be. Such termination may be with or without cause. In the event of the timely giving of such notice of termination, this Agreement shall terminate and be of no further force or effect, except to the extent necessary to enforce its terms, as of December 31 of the calendar year in which the notice is given.

3. Fees Payable by the Association. In consideration for the grant of rights of occupancy, use and management of the Park, according to the terms hereof, the Association shall pay the following monetary amounts to the Township:

(a) \$4,000 for each of the calendar years of the initial term of this Agreement, commencing with 2011 and ending with 2015, inclusive, payable not later than June 1 of each calendar year.

(b) \$1,100 for the sixth calendar year, being 2016, of this Agreement, payable not later than June 1, 2016.

(c) \$1,100 plus an additional 3% thereof for the seventh calendar year of this Agreement, being 2017, payable not later than June 1, 2017, and in each calendar year thereafter, a sum equal to the amount paid in the immediately preceding calendar year, plus an additional 3% thereof, payable not later than June 1 of each such calendar year.

(d) There shall be no refund of any such amounts previously paid, in the event of termination of this Agreement by either party under the terms of paragraph 2, or termination by the Township under paragraph 8.

(e) There shall be no abatement of any such amounts if, for whatever reason, the Association or any of its members shall be unable temporarily to obtain access to the Park, without fault of the Township.

4. Rights and Obligations of the Association.

(a) The Association may use and occupy, and shall manage, the Park for park and recreation purposes only, including recreational activities by its members and their authorized guests, to the extent limited in this Agreement, including the use of the land for picnicking, socializing, outdoor games, boating, water sports and other recreational activities appropriate to the location and which can be conveniently accommodated within the area of the Park.

(b) The Association shall adopt, implement and enforce written rules and regulations for the use of the Park by Association members (both Neighborhood Memberships

and Non-Neighborhood Memberships, as defined herein) and their authorized guests; such rules and regulations, whether as originally adopted or as they may be amended, shall be subject to the approval of the Township.

(c) All costs and expenses for the operation, upkeep, maintenance and improvement of the Park shall be the responsibility of the Association; the Township shall have no such responsibility or obligation.

(d) The Association shall maintain the Park in good condition and appearance, to such extent as would be expected for this small recreational area on an inland lake substantially developed with homes and cottages. The grass in the Park shall be regularly mowed; litter, refuse and trash shall be regularly picked up and removed from the Park; and other measures shall be taken to maintain the Park in an attractive condition, appropriate to the neighborhood.

(e) Docks may be installed and used on the Reeds Lake frontage of the Park.

(f) Activities within the Park shall be carried out only in a safe and responsible manner. Care shall be taken in the use and operation of outdoor grills. Social gatherings and similar events shall be carried out so as not to disrupt the use and enjoyment of the nearby residential lands.

(g) As a part of maintenance of the Park, the Association may trim and remove trees, shrubs and other plants, and may plant new trees, shrubs and other plants.

(h) The gravel surface of the vehicle parking area within the Park shall be improved when necessary with new gravel or other suitable parking surface.

(i) Signs may be installed and maintained for the purpose of giving notice of Park rules and regulations and for other messages, consistent with this Agreement.

(j) Personal property such as picnic tables and the like, may be placed and used in the Park, and may be removed from the Park, in the Association's discretion.

(k) No buildings or similar permanent structures shall be constructed or maintained within the Park.

(l) The Association shall not permit any act or conduct within the Park that is contrary to law or to any applicable county or township ordinance or other governmental order or requirement.

(m) There shall be no release or discharge of any hazardous or toxic material within the Park, nor in any adjacent wetlands or the waters of Reeds Lake, in violation of any federal or state law or regulation or county or township ordinance.

(n) Storm water drainage control and management measures may be undertaken and maintained, including the installation and use of storm water drainage pipes,

detention or retention basins, rain gardens and other storm water management measures, subject to the provisions of the Township storm water ordinance.

(o) The Association shall at all times maintain in good standing its legal status as a Michigan nonprofit corporation.

(p) So long as this Agreement remains in effect, without breach or default by the Association, the Township shall not approve a similar agreement covering the same lands with any other person or entity.

5. Insurance. The Association shall maintain and keep in force a general liability insurance policy or policies, insuring against any harm, injury or casualty in or on the lands comprising the Park or resulting from or in any way arising out of the uses or activities therein, including but not limited to motor vehicle uses and the use of boats, docks and other lake-related uses and activities on or about the Park premises. The policy or policies shall name the Township as an additional insured. Such insurance shall be in a coverage amount of at least \$1,000,000 per occurrence so long as the number of Non-Neighborhood Memberships, defined below, does not exceed five, but such coverage shall be increased to \$2,000,000 per occurrence for all periods of time during which the number of Non-Neighborhood Memberships exceeds five. Upon the initial acquisition of the policy or policies, and upon subsequent renewal, the Association shall furnish the Township with a certificate of insurance, provided by the insurance carrier, attesting to the existence, coverage and term of the insurance.

6. Indemnity. The Association shall indemnify the Township and hold it harmless from any and all loss, damage, harm, injury, claim, cause of action, liability or expense, including without limitation reasonable attorney fees, to or by any person in, on or about the Park resulting from or in any way related to the use of the Park by the Association or any of its members or guests, in whole or in part, including, but not limited to motor vehicle uses and dock, boating and other waterfront uses, by the Association, its members, its invitees or the public.

In the event of a lawsuit against the Township and the Association concerning this Agreement, brought by a plaintiff who is not an Association member and who does not reside or own real property in the Neighborhood Area of the Association as defined in Exhibit B, if the lawsuit alleges that the Township is without legal authority to enter into this Agreement, and if the Township elects to defend the case, the Township shall indemnify the Association for the Association's reasonable costs and expenses in defending allegations made against the Association with respect to this Agreement in the lawsuit.

7. Memberships in the Association.

(a) Memberships in the Association shall be offered to persons or families residing in the neighborhood area described on attached Exhibit B (the "Neighborhood Area"). Such memberships (the "Neighborhood Memberships") shall include full use of the Park, to the extent permitted for the Association by this Agreement. The Association may charge fees for such memberships, on an annual basis.

(b) The Association shall offer memberships to persons or families who do not reside in the Neighborhood Area. Such memberships (the "Non-Neighborhood

Memberships”) shall include full use of the Park, to the same extent as is granted in the Neighborhood Memberships, consistent with this Agreement. Non-Neighborhood Memberships shall be offered (1) to persons and families residing in the Township, but outside the Neighborhood Area, and (2) to persons and families residing outside the Township. The total of all Non-Neighborhood Memberships shall be limited to 25, in view of the small size of the Park and the very limited area available for off-street parking. There shall be an annual enrollment period from January 1 through March 15 annually, during which time eligible persons and families may apply for Non-Neighborhood Memberships.

A person or family that is accepted for a Non-Neighborhood Membership and has timely paid the required annual fee to the Association for a particular year need not annually reapply for membership for the ensuing four years, but shall be timely mailed an annual fee invoice by the Association for the next subsequent year, and if such person or family timely pays the invoice, then that person or family shall have a Non-Neighborhood Membership for that year; but if the person or family fails to timely pay the annual fee invoice for the next subsequent year (of such four ensuing years), such membership shall terminate, subject to the right of such person or family to re-apply for a Non-Neighborhood Membership, if available, in any subsequent year, to the same extent as others eligible for Non-Neighborhood Memberships could do under the terms hereof.

If those applying for such Non-Neighborhood Memberships exceed the above-stated number, those chosen to be granted memberships shall be determined by lot; those not so chosen may be placed on an annual waiting list, for potential approval of membership, based on their respective dates of application, in the event of withdrawal or cancellation of other Non-Neighborhood Memberships.

(c) The annual fee charged by the Association for a Non-Neighborhood Membership for a person or family residing within the Township may be up to five times the annual membership fee for a person or family residing in the Neighborhood Area. The annual fee for a Non-Neighborhood Membership for a person or family residing outside the Township may be up to ten times the annual membership fee for a person or family residing in the Neighborhood Area.

(d) The Association may impose other fees or charges for the rental of boat slips on the docks located within the Park; provided, however, that the annual fee or charge for rental of a boat slip by a person or family holding a Non-Neighborhood Membership shall not exceed twice the amount of the annual fee or charge for rental of a boat slip by a person or family holding a Neighborhood Membership. Persons or families renting boat slips shall be members of the Association. In its rules and regulations, the Association may require security deposits for approved events or gatherings and may establish other fees for particular uses within the Park, not inconsistent with this Agreement. All such fees shall be the same for Non-Neighborhood Memberships and Neighborhood Memberships.

(e) The Association shall keep accurate records of its memberships and the membership and other fees charged each year. Records of previous years shall be retained for at least five years. Upon request by the Township, the Association shall promptly disclose all of

such records to the Township, for purposes of determining compliance with the provisions of this Agreement.

8. Events of Default. Any of the following occurrences shall constitute an Event of Default by the Association under the terms of this Agreement:

(a) Failure of the Association to pay any of the monetary amounts to the Township stated in paragraph 3, by the required date for any such payment.

(b) Failure of the Association to comply, in whole or in part, with any other provision of this Agreement.

Upon the occurrence of an Event of Default, the Township shall prepare and send to the Association by first-class U.S. mail a written notice stating the Event of Default and notifying the Association that it has up to ten days in which to fully cure the default, but that in the absence of such timely curing of the default, the Township terminates this Agreement as fully and with the same force and effect as if the termination had occurred at the end of one of the above-stated terms of this Agreement.

Upon the failure of the Association to fully cure an Event of Default, within the time authorized for the curing thereof, the Township may without further notice enter upon the Park and take full possession thereof without further proceedings, or as otherwise permitted by law, and may dispossess and remove the Association and all other persons and property from the Park and thereafter may have, hold and enjoy the Park as if this Agreement had not been entered into, except with respect to any provision of this Agreement necessary to enforce its provisions. In addition to or in the place of the above-stated remedies upon an Event of Default, the Township shall have and may exercise all of its rights and remedies authorized by law.

9. Access. The Township shall have the right to enter upon the Park at all reasonable times for the purpose of inspection or for evaluating compliance with the terms hereof.

10. Notices. All notices authorized or required herein to be provided to the Township by the Association shall be sent by first-class U.S. mail to the Charter Township of Grand Rapids, Attention: Township Supervisor, 1836 East Beltline Avenue, Grand Rapids, Michigan 49525. Any such notices authorized or required to be provided to the Association by the Township shall be sent by first-class U.S. mail to Woodcliff Park Association, to the attention of the then-registered agent of the Association, directed to the registered agent's address as shown in the Association's most recent Annual Report, and such notices shall also be sent (1) to the address shown on the most recent payment check received by the Township from the Association and (2) to William H. Bowie, the Association's attorney, at 3611 Reeds Lake Boulevard, Grand Rapids, Michigan 49506; provided, however, that in any event, such mailing of notice only to the Association's registered agent shall be sufficient for notice purposes hereunder, but in the absence of a registered agent, such mailing to either of the above-stated other addressees, at their respective addresses, shall suffice for notice purposes hereunder.

11. Waiver. One or more waivers by the Township of any term or condition of this Agreement or any default by the Association shall not be construed as a waiver of any such term

or condition in the future, or as to any subsequent default. Any consent or approval given by the Township as to any act or omission by the Association shall not constitute consent or approval as to any subsequent similar act or omission by the Association.

12. Assignment. This Agreement, or any provision hereof, may not be assigned or conveyed by the Association. The Township may in its discretion convey the lands comprising the Park, or any interest therein, subject to the rights of the Association hereunder.

13. Entire Agreement. This Agreement constitutes all of the understandings of the Township and the Association with respect to the subject matter hereof; there are no oral or other representations, assurances or agreements.

14. Amendment. This Agreement shall not be amended or modified except by a writing signed on behalf of the Township and the Association, by their authorized representatives.

IN WITNESS WHEREOF the Township and the Association, by their authorized representatives, have signed this Agreement as of the day and year first-above written.

CHARTER TOWNSHIP OF GRAND RAPIDS

By: \_\_\_\_\_  
Michael J. DeVries, Supervisor

WOODCLIFF PARK ASSOCIATION

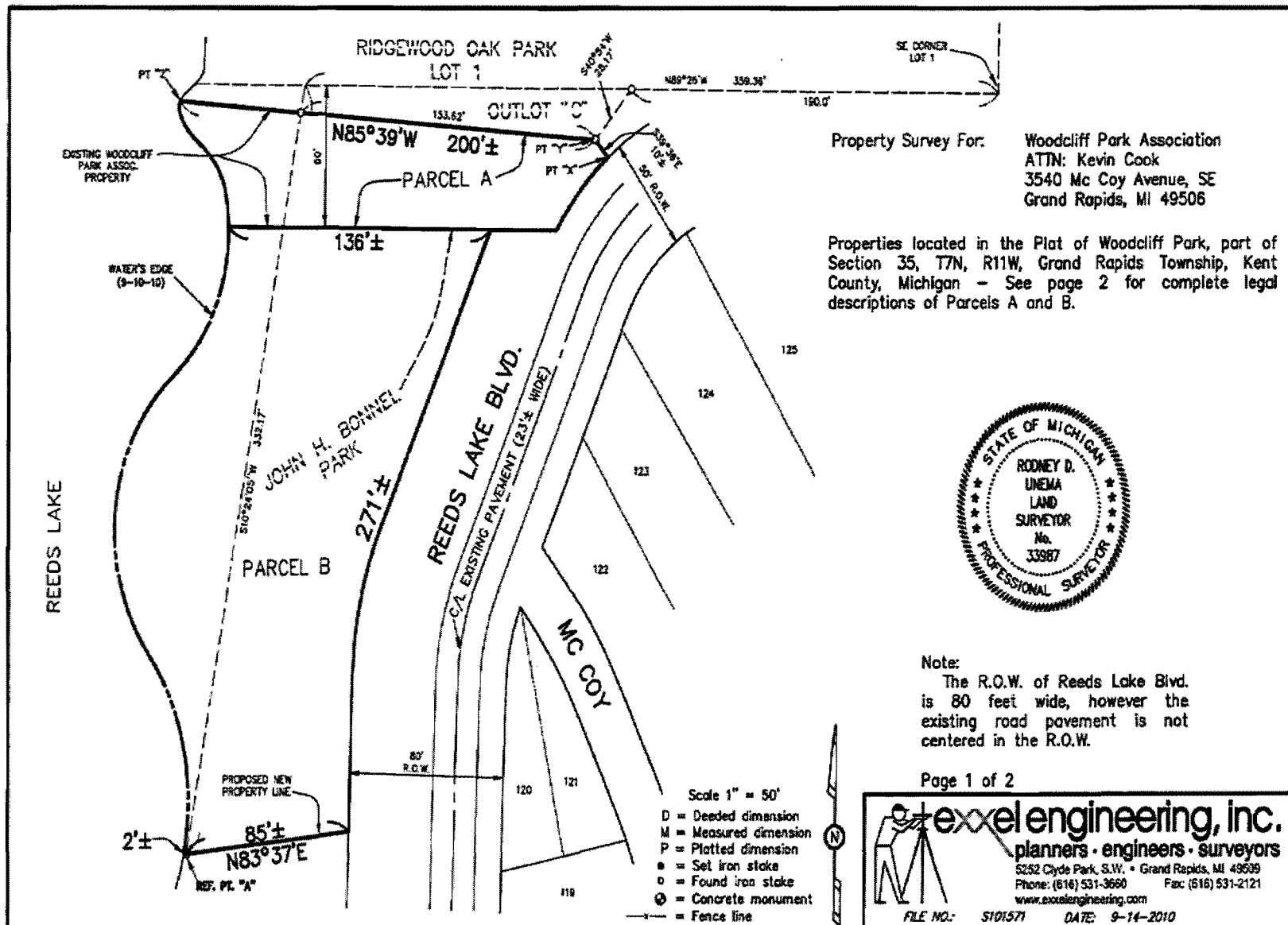
By: \_\_\_\_\_  
\_\_\_\_\_, President

## **EXHIBIT A**

### **Description of the Lands Comprising the Park**

That part of John H. Bonnell Park, Plat of Woodcliff Park, lying South of Outlot "C", Easterly of the water's edge of Reeds Lake, Westerly of Reeds Lake Boulevard right-of-way and Northerly of a line described as: Commencing at the Southeast corner of Lot 1, Ridgewood Oak Park; thence North 89°26' West 359.36 feet along the South line of said Lot and the North line of Outlot "C"; thence South 10°24'05" West 332.17 feet to Reference Point "A" (an existing wood stake) and the place of beginning of said line; thence North 83°37' East 85 feet, more or less, to the Westerly right-of-way line of Reeds Park Boulevard. Also, beginning at above described Reference Point "A"; thence South 83°37' West 2 feet, more or less, to the water's edge of Reeds Lake. All in Section 35, Town 7 North, Range 11 West, Grand Rapids Township, Kent County, Michigan.






## Parcel B::

That part of John H. Bonnell Park, Plat of Woodcliff Park, lying South of Outlot 'C'; Easterly of the water's edge of Reeds Lake, Westerly of Reeds Lake Boulevard R.O.W. and Northerly of a line described as: Commencing at the SE corner of Lot 1, Ridgewood Oak Park; thence N89°26'W 359.36 feet along the South line of said Lot and the North line of Outlot 'C'; thence S10°24'05"W 332.17 feet to Reference Point 'A' (an existing wood stake) and the PLACE OF BEGINNING of said line; thence N83°37'E 85 feet, more or less, to the Westerly R.O.W. line of Reeds Park Boulevard. Also, Beginning at above described Reference Point 'A'; thence S83°37'W 2 feet, more or less, to the water's edge of Reeds Lake. All in Section 35, T7N, R11W, Grand Rapids Township, Kent County, Michigan.

Property Survey For:

Woodcliff Park Association  
ATTN: Kevin Cook  
3540 Mc Coy Avenue, SE  
Grand Rapids, MI 49506

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**excel engineering, inc.**  
planners • engineers • surveyors  
5252 Clyde Park, S.W. • Grand Rapids, MI 49509  
Phone: (616) 531-3660 Fax: (616) 531-2121  
www.excelengineering.com

FILE NO.: S101571 DATE: 9-14-2010

EXHIBIT "B"  
Neighborhood Area  
of Woodcliff Park Association

WOODCLIFF PARK ASSOC.  
SEPTEMBER 28, 2006  
UPDATED FROM 1941 DOCUMENT

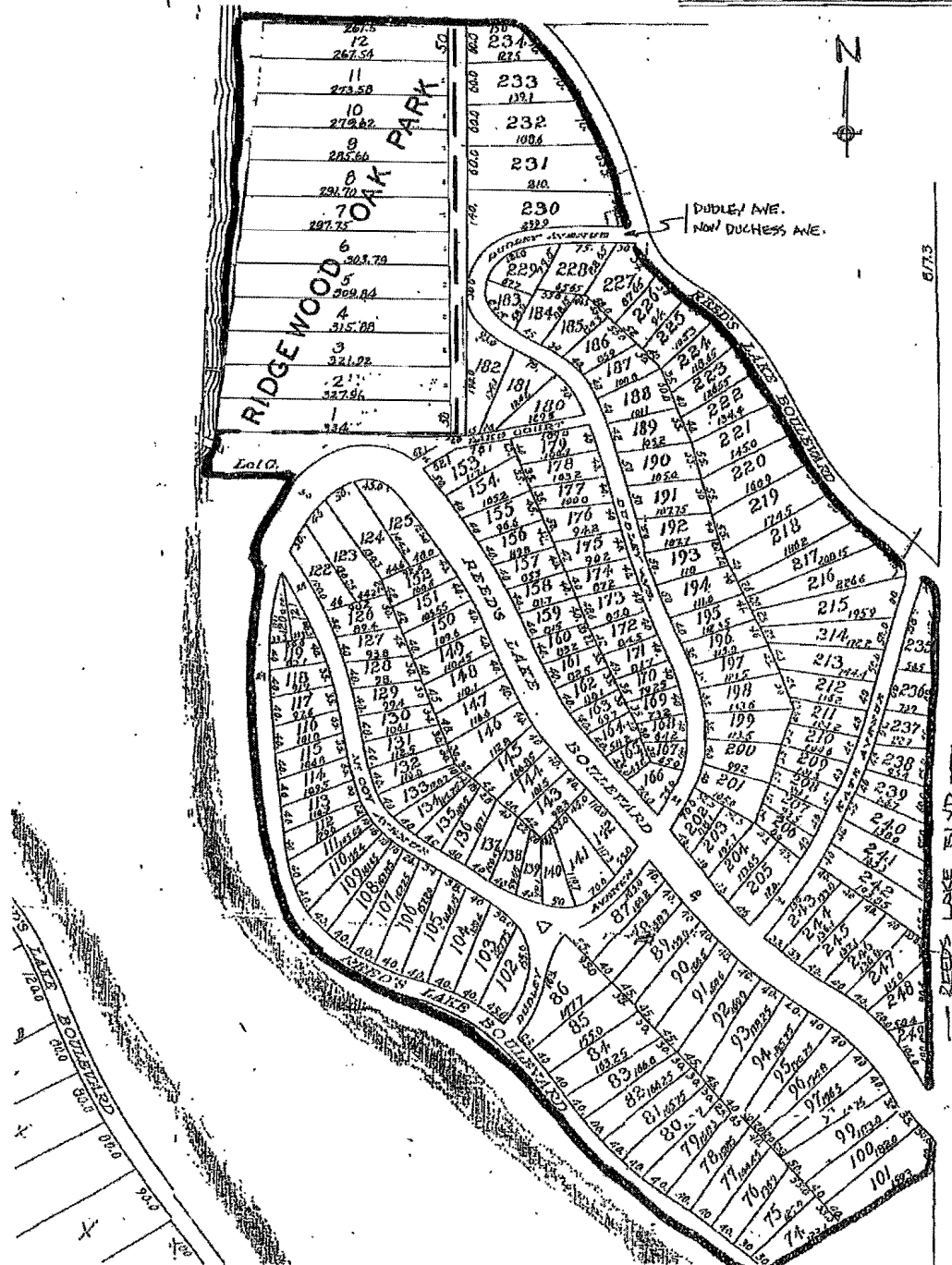


Exhibit "B"  
Continued

Legal Description of Neighborhood Area  
of  
Woodcliff Park Association

Lots 74 thru 249 and Outlot "C" of Woodcliff Park and Lots 1 thru 12 of Ridgewood Oak Park.  
All in Section 35, T7N, R11W, Grand Rapids Township, Kent County, Michigan

