

FILE COPY

LIBER 7449 PAGE 595

20330

AGREEMENT FOR SUBDIVISION OPEN SPACE PLAN

"VALLEY STREAM" Recorded in Liber 164

This Agreement is made this 13th day of ^{P. 21 thru 23} ~~DECEMBER~~ 1978, by and between the TOWNSHIP OF AVON, Oakland County, Michigan (the "Township"), 407 Pine Street, Rochester, Michigan 48063, and E.V.A. Associates, a Michigan co-partnership, (the "Developer"), 375 S. Eton Road, Birmingham, Michigan 48012.

W I T N E S S E T H :

WHEREAS, the Developer is the owner of the land located in the Township of Avon, County of Oakland, State of Michigan, described in the attached Exhibit A.

WHEREAS, Developer intends to develop the land described above into a single family subdivision to be known as "Valley Stream Subdivision" (hereinafter, the "Subdivision"), and in connection therewith, Developer plans to reduce the size of the lots in the Subdivision below that normally required by the Township and to dedicate the land area so taken from the lots to the common use of all lot owners in the Subdivision; and

WHEREAS, the Developer wishes at this time to obtain approval of the final plat of the Subdivision and of Developer's plan to reduce the lot size and to dedicate the land area to common use of all lot owners in the Subdivision as described above; and

WHEREAS, it is desirable that the Developer and the Township enter into a binding contract relative to the details of development of said Subdivision and the use of and government of the common area contained therein.

NOW, THEREFORE, in consideration of the approval of the Avon Township Board of Trustees of the final plat of Valley Stream Subdivision, and of the mutual promises contained herein, the parties hereto agree as follows:

1. The Developer hereby dedicates and conveys to each owner of a lot in Valley Stream Subdivision, hereinafter referred to as "Owner", a right and easement of enjoyment in and to Valley Stream Park and Oakstone Park, hereinafter referred to as the "Common Area". For purposes of this Agreement, an "Owner" shall include the owner or owners of the fee simple title to any lot in the Subdivision (other than the Owners of a lot with respect to which there is an outstanding land contract), together with the owner or owners of a land contract vendee's interest in any such lot.
2. Reference to this Agreement shall be included in the Declaration of Building and Use Restrictions for Valley Stream Subdivision.
3. The Developer agrees, on or before the date of conveyance of the last lot in the Subdivision, to convey title to the Common Area to the Valley Stream Subdivision Association, hereinafter described,

and the Valley Stream Subdivision Association shall accept such conveyance and hold title to the Common Area for the benefit of all Owners free from any encumbrance evidencing indebtedness but subject to the right and easement of enjoyment in and to such Common Area by said Owners, to the reservation by Developer of the right to grant easements in accordance with paragraph 9 below, and to the other easements and restrictions. The Owners' easement of enjoyment shall not be personal but shall be considered to be appurtenant to said lots, which easement shall pass with the title to the said lots whether or not specifically set forth in the deeds to individual lots.

4. Control and jurisdiction over the Common Area shall be vested in the Valley Stream Subdivision Association, hereinafter referred to as "Association". The Association shall be organized as a non-profit corporation for a perpetual term under the laws of the State of Michigan. Such Association shall be incorporated prior to the sale of any of the lots in Valley Stream Subdivision, but in any event within ninety (90) days following the recording of the plat of Valley Stream Subdivision. Membership in the Association shall be mandatory for each Owner in Valley Stream Subdivision. The Association shall be responsible, at its sole expense, for the proper maintenance of the Common Area (including the storm water retention basins located therein) and for compliance with the terms of this Agreement. The Bylaws of the Association shall provide for a Board of Directors of not less than three (3) members nor more than fifteen (15) members. The Association members shall be entitled to one (1) vote for each lot in which they hold the interest required for membership. When more than one (1) person holds any such interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any one (1) lot. The Association shall have the authority to make and enforce regulations pertaining to the use and maintenance of the Common Area, which regulations shall be binding upon all Owners.

5. The Common Area may be used for the storage of surface water and for park, recreation and related uses, including hiking, nature study, picnicking and similar pursuits in keeping with the nature of the area.

6. The storm water retention basins located in the Common Area shall be used for no purpose other than retention of surface water until such time as the Township may determine and signify by written notice to the Association or its successors that there is no further need for the facility. Notwithstanding this requirement, the Association may use water from the basins for purposes of irrigation. Maintenance of the retention basins shall include keeping the bottom of the retention basins shall include keeping the bottom of the retention basins free from silt and debris, removing harmful algae, maintaining a steel grating across the pond's inlets, the control of erosion, and such other maintenance as is reasonable and necessary to the intended functioning of the basins.

7. All Owners, their families and guests shall have equal access to the Common Area.

8. In the event that the Association shall at any time fail to maintain the Common Area (including without limitation the storm water retention basins) in reasonable order and condition, the Township may serve written notice upon the Association or upon said Owners setting forth the manner in which the Association has failed to maintain the Common Area or storm water retention basins in a 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 Township Board or other such Board, body or official to whom the Township Board shall delegate such responsibility, which shall be held within fourteen (14) days of the notice. At such hearing, the Township 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 modification thereof shall not be cured within said thirty (30) days or any extension thereof the Township, in order to prevent the Common Area from becoming a public nuisance, may enter upon said Common Area and maintain the same for a period of one (1) year. Said maintenance by the Township shall not constitute a taking of the Common Area nor vest in the public any right to use the same. Before the expiration of the said year, the Township shall upon its own initiative or upon the request of the Association call a public hearing upon notice to the Association and to the members thereof, at which hearing such Association or the members shall show cause why such maintenance by the Township shall not, at the election of the Township, continue for a succeeding year. If the Township shall determine that the Association is not ready and able to maintain the Common Area in a reasonable condition, the Township may in its discretion continue to maintain the said Common Area during the next succeeding year, and subject to a similar hearing and determination, in each year thereafter. The cost of maintenance by the Township shall be assessed against the Association and added to the tax rolls, collected and enforced in a like manner as general township taxes are collected and enforced. The Township shall be, at its option, subrogated to the right of the Association against its members to the extent of the cost, if the Township shall, by an official resolution, give thirty (30) days written notice to each member of the Township's election to be subrogated. The Owner or Owners of each lot shall bear their pro-rata share of the total costs of maintaining the Common Area (including, without limitation, the real and personal property taxes assessed against the Association or its property and insurance premiums on insurance policies maintained with respect thereto), which shall constitute a lien against each Owner's lot or lots and shall be paid in accordance with the Declaration of Building and Use Restrictions for Valley Stream Subdivision. In the event that the Township declares the existence of an emergency upon, caused by or relating to the Common Area or the storm water retention basins which threatens the public health, safety or general public welfare, the Township shall have the right immediately and without notice to enter the Common Area and storm water retention basins and to take corrective action.

9. Notwithstanding any other provisions of the Agreement, the Developer reserves the right to grant easements within the Common Area for the installation, repair and maintenance of pedestrian walkways, vehicular traffic, water mains, sewers, drainage courses and other public utilities, subject to the approval of the Township, provided that such utilities shall be installed in such manner as to

minimize damage to the natural features of the Common Area.

10. Additional uses for the Common Area may be established if approved in writing by not less than fifty-one (51%) percent of the members of the Association and thereafter ratified by the Avon Township Board of Trustees.

11. The Developer has submitted to the Township a certain Declaration of Building and Use Restrictions which have been approved by the Township, and which together with this Agreement shall constitute restrictions running with the land and applicable to said Valley Stream Subdivision. The Declaration of Building and Use Restrictions applicable to Valley Stream Subdivision shall be submitted at the time of submission of the final plat of that subdivision to the Township Board of Trustees for approval.

12. The parties hereto make this Agreement on behalf of themselves, their heirs, successors and assigns and hereby warrant that they have the authority and capacity to make this contract.

IN WITNESS WHEREOF, the parties hereto have set their hands on the date first above written.

WITNESSES:

Ernest L. Gryka
Ernest L. Gryka
Gail C. Foco
Gail C. Foco

E.V.A. ASSOCIATES,
a Michigan co-partnership

By Erb Lumber Co., a Michigan Corporation, Managing Partner

By John A. Theisen
John A. Theisen
its Senior Vice-President

THE CHARTER TOWNSHIP OF AVON

By Earl E. Borden
Earl E. Borden Supervisor

By Thelma G. Spencer
Thelma G. Spencer Clerk

Doris J. Keylon
Doris J. Keylon
Betty Adams
Betty Adams

STATE OF MICHIGAN)
COUNTY OF OAKLAND)SS

The foregoing instrument was acknowledged before me this 7th day of DECEMBER, 1978, by JOHN A. THEISEN, who is Senior Vice President of Erb Lumber Co., a Michigan Corporation, the managing partner of E.V.A. Associates, on behalf of the corporation.

Ernest L. Gryka
Notary Public,

ERNEST L. GRYKA
Notary Public, Oakland County, Mich.
My Commission Expires 7-11-1982

STATE OF MICHIGAN)
COUNTY OF OAKLAND)^{SS}

The foregoing instrument was acknowledged before me this
22nd day of DECEMBER, 1978, by EARL E. BORDEN, SUPERVISOR
and THELMA G. SPENCER, CLERK, who are Supervisor and Clerk,
respectively, of the Township of Avon, on behalf of the Township.

Betty Adamo
Notary Public - BETTY ADAMO
OAKLAND County, Michigan
My commission expires Sept. 30, 1980

Drafted by:

Ronald P. Strote
Bonk and Pollick
1588 American Center
27777 Franklin Road
Southfield, MI. 48034
358-2922

WHEN RECORDED RETURN TO:
THELMA G. SPENCER, CLERK
CHARTER TOWNSHIP OF AVON
P. O. BOX 250
ROCHESTER, MI 48063 -

SURVEYOR'S CERTIFICATE:

I, DAVID PAWLACZYK, SURVEYOR, CERTIFY, THAT I HAVE SURVEYED, DIVIDED AND MAPPED THE LAND SHOWN ON THIS PLAT, DESCRIBED AS FOLLOWS; "VALLEY STREAM", A PART OF THE SOUTHEAST 1/4 OF SECTION 9, T-3-N., R-11-E., AVON TOWNSHIP, OAKLAND COUNTY, MICHIGAN, MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE EAST 1/4 CORNER OF SAID SECTION 9; THENCE S.00°00'11"E., 175.00 FEET ALONG THE EAST LINE OF SAID SECTION 9 TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID EAST SECTION LINE, S.00°00'11"E., 482.93 FEET TO THE NORTHEAST CORNER OF "HEART PEACE HILLS NO. 2", AS RECORDED IN LIBER 129, PAGE 7 OF PLATS, OAKLAND COUNTY, MICHIGAN RECORDS; THENCE N.88°49'04"W., 669.92 FEET ALONG THE NORTH LINE OF SAID "HEART PEACE HILLS NO. 2"; THENCE S.00°30'37"W., 650.00 FEET ALONG THE WEST LINE OF SAID "HEART PEACE HILLS NO. 2" TO THE CENTER OF THE SARGENT CREEK; THENCE N.83°20'00"W., 165.00 FEET ALONG THE CENTER OF THE SARGENT CREEK; THENCE N.00°30'37"E., 40.00 FEET; THENCE N.89°29'30"W., 125.00 FEET; THENCE N.26°35'00"W., 268.48 FEET; THENCE S.69°46'20"W., 525.94 FEET; THENCE ALONG A CURVE TO THE LEFT 178.08 FEET, SAID CURVE HAVING A RADIUS OF 695.00 FEET, CENTRAL ANGLE OF 14°40'52" AND LONG CHORD BEARING S.09°09'34"E., 177.60 FEET; THENCE S.16°30'00"E., 412.45 FEET; THENCE ALONG A CURVE TO THE RIGHT 111.00 FEET, SAID CURVE HAVING A RADIUS OF 240.00 FEET, CENTRAL ANGLE OF 26°30'00" AND LONG CHORD BEARING S.03°15'00"E., 110.02 FEET; THENCE ALONG A CURVE TO THE LEFT 85.44 FEET, SAID CURVE HAVING A RADIUS OF 473.19 FEET, CENTRAL ANGLE OF 10°20'43" AND LONG CHORD BEARING S.04°49'38.5"W., 85.32 FEET; THENCE ALONG A CURVE TO THE LEFT 121.67 FEET, SAID CURVE HAVING A RADIUS OF 366.70 FEET, CENTRAL ANGLE OF 19°00'38" AND LONG CHORD BEARING S.09°51'02"E., 121.11 FEET; THENCE S.89°39'17"W., 100.00 FEET; THENCE N.00°20'43"W., 32.00 FEET; THENCE ALONG A CURVE TO THE RIGHT 164.97 FEET, SAID CURVE HAVING A RADIUS OF 564.97 FEET, CENTRAL ANGLE OF 16°45'22" AND LONG CHORD BEARING N.08°01'58"E., 164.38 FEET; THENCE ALONG A CURVE TO THE LEFT 103.39 FEET, SAID CURVE HAVING A RADIUS OF 180.00 FEET, CENTRAL ANGLE OF 32°54'39" AND LONG CHORD BEARING N.00°02'40.5"W., 101.98 FEET; THENCE N.16°30'00"W., 412.45 FEET; THENCE ALONG A CURVE TO THE RIGHT 195.12 FEET, SAID CURVE HAVING A RADIUS OF 600.00 FEET, CENTRAL ANGLE OF 14°48'27" AND LONG CHORD BEARING N.09°05'46.5"W., 194.58 FEET; THENCE S.89°45'20"W., 606.97 FEET; THENCE S.15°01'00"W., 164.30 FEET; THENCE S.00°34'45"W., 95.00 FEET TO THE CENTER OF THE SARGENT CREEK; THENCE N.74°42'10"W., 220.86 FEET ALONG THE CENTER OF SARGENT CREEK TO A POINT ON THE EAST LINE OF "TIENKIN MANOR ESTATES NO. 12", AS RECORDED IN LIBER 123, PAGE 30 OF PLATS, OAKLAND COUNTY, MICHIGAN RECORDS, ALSO BEING THE N.-S. 1/4 LINE OF SAID SECTION 9; THENCE N.00°34'45"E., 494.45 FEET ALONG THE EAST LINE OF SAID "TIENKIN MANOR ESTATES NO. 12" AND N.-S. 1/4 LINE, AND EAST LINE OF "TIENKIN MANOR ESTATES NO. 8", AS RECORDED IN LIBER 115, PAGE 14 OF PLATS, OAKLAND COUNTY, MICHIGAN RECORDS; THENCE N.89°46'20"E., 710.00 FEET; THENCE N.00°34'45"E., 699.99 FEET TO THE SOUTHWEST CORNER OF "GREAT OAKS WEST SUBDIVISION NO. 1", AS RECORDED IN LIBER 134, PAGES 39 AND 40 OF PLATS, OAKLAND COUNTY, MICHIGAN RECORDS, ALSO BEING A POINT ON THE E.-W 1/4 LINE OF SAID SECTION 9; THENCE THE FOLLOWING TWO COURSES ALONG THE SOUTH LINE OF SAID "GREAT OAKS WEST SUBDIVISION NO. 1" AND E.-W 1/4 LINE OF SECTION 9: (1) S.89°48'13"E., 1153.48 FEET, AND (2) N.89°56'48"E., 338.09 FEET; THENCE S.00°00'11"E., 175.00 FEET; THENCE N.89°56'48"E., 320.00 FEET TO THE POINT OF BEGINNING AND COMPRISING LOTS 1 THROUGH 109, INCLUSIVE, VALLEY STREAM PARK AND OAKSTONE PARK AND CONTAINING 43.12 ACRES.

EXHIBIT A