

Valley Stream Subdivision Building and Use Restrictions

BUILDING AND USE RESTRICTIONS

For

VALLEY STREAM SUBDIVISION These building and use restrictions are executed effective February 16, 1979, by E.V. A ASSOCIATES, a Michigan co-partnership, of 375 South Eton Road, Birmingham, Oakland County, Michigan (Developer).

Whereas, Developer is the owner of the land which is being platted into subdivision described on the attached Exhibit A.

Whereas, Developer desires that all lots in the subdivision have mutual and uniform building and use restrictions to provide for its development as a residential community of the highest type.

Now therefore, Developer hereby declares that every lot in the subdivision is subject to the building and use restrictions set forth below:

1. Definition. The term "Building and Use Restrictions" includes all related provisions and conditions in this document.
2. Notice to Purchasers. The recording of this in the office of the Register of Deeds for Oakland County, Michigan, shall constitute notice to all purchasers of property within the subdivision of these building and use restrictions.
3. Single Residence Use. Each lot in the subdivision shall be used and occupied for single residence purposes only. No building or other structure shall be permitted on any lot other than one single private family dwelling with an attached garage not less than two car capacity; except that a swimming pool, badminton court, or similar facilities, walls, fences or other auxiliary construction may be built in such a manner and location as Developer may permit, which in its sole and absolute opinion is deemed to be in the harmony and conformance with these building and use restrictions and with the character of the subdivision as it develops. Written permission must be obtained from the Developer before installation or construction of any of the improvements listed in this paragraph can commence.
4. Minimum Floor Space and Size. No dwelling shall be built on any lot which has a livable space of less than the following:
 - a. One story dwelling - 1,700 square feet.
 - b. One and one-half story dwelling – 1,500 square feet on first floor.
 - c. Two story dwelling - 1,000 square feet on the first floor and not less than a total of 2,000 square feet.

- d. Tri-level dwelling - 1,400 square feet on the first floor and upper floor. As used herein "first floor" shall mean the floor which is at the grade level of the entrance facing the street on which the dwelling fronts.
 - e. "Living Area" includes the actual area within the outer surfaces of the outside walls, including any finished living area which is above an enclosed porch or garage but excluding a garage, basement or unheated porch.
5. Lot Division. No lot may be divided or any part of any lot be sold separately except by the Developer when approved by the Municipality and in conformance with Township ordinances.
6. Building Setbacks. No dwelling shall be located less than thirty (30) feet from the front line of its lot nor less than ten (10) feet from any side lot line nor less than thirty-five (35) feet from its rear lot line. Projections, such as open porches, overhangs, and the like shall be considered as part of the dwelling for purposes of setbacks. On any lot having a curved front lot line dwelling shall be located not less than thirty (30) feet from the middle point of the front lot line.
7. Garages. All garages must be attached to the dwelling house.
8. Exterior Building Materials. The following material shall not be used in the finished exterior of any building on the subdivision: logs or any other materials which Developer may deem unsuitable for the proposed use.
9. Trees and Soil. No trees which exceed six (6) inches in diameter shall be removed or cut, nor shall surface soil be dug or removed from any lot for purpose other than building and landscaping of the lot, without prior consent of the Developer.
10. Building Approval. No dwelling, structure or other development shall be permitted upon any lot in the subdivision, nor shall any grade in the subdivision be changed or other construction work done, unless Developer's written approval is obtained in advance as follows: The proposed plot plan, construction plans and specifications shall be submitted in duplicate to ERB LUMBER CO., Managing Partner, for approval. The plot plans shall show the finished grade, the plot, the location of the dwelling and all other buildings and structures. The construction plan and specifications shall show the size, type and materials of the exterior construction together with the grade and elevation of all buildings and structures, and shall provide other pertinent construction details. One copy of the plans and specifications shall be permanently kept by the Developer. Developer shall not give its approval to the proposal unless in its sole and absolute opinion such construction and development will comply in all respects with the building and use restrictions set forth in this document; nor shall Developer give its approval unless the exterior design, materials and location of the construction proposal shall be in harmony with the character of the subdivision as it develops and with the topography and grade elevations both of the lot upon which the proposed construction is to take place, and the neighboring lots in the subdivision.

The Department of Natural Resources, State of Michigan, has determined that the flood plain limit for Valley Stream is defined by elevation 818.53 (U.S.G.S Datum) upstream and 804.33 (U.S.G.S. Datum) downstream. Any building used or capable of being used for residential purposes and occupancy with or affected by the flood plain shall:

- a) Be located on a lot having a minimum buildable site of 3,000 square feet of its area at its natural grade above the elevation of the contour defining the flood plain limits. This requirement may be waived if the building is to be elevated on stilts or similar design to provide an open area above ground level and if the requirements of subdivision (c) of section 194 of the act and sections 2a, 3, 4, 5a, of Act No. 245 of the Public Acts of 1929, as amended, being sections 323.2a, 323.3, 323.4, 323.5a and 323.5b of the Michigan Compiled Laws, are met.
- b) Be served by streets within the proposed subdivision having surfaces not lower than one (1) foot below the elevation of the contour defining the flood plain limits.
- c) Have 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 1 loads found in "Flood Proofing Regulations" EP 1165 2 314 prepared by the Office of the Chief Engineers, U.S. Army, Washington, D.C. June, 1972. Figure 5, Page 14.5 of the regulations shows typical foundations drainage and waterproofing details. This document is available, at not cost, from the Department of Natural Resources' Hydrological Survey Division of the Army, Corps of Engineers, Publications Depot, 890 S. Pickett, Alexandria, Virginia 22304.
- f) Be equipped with a positive means of preventing sewer backup from sewer lines and drains which serve the building.
- g) Be properly anchored to prevent flotation.

No filling or occupation of the flood plain area will be allowed without the approval of the Department of Natural Resources.

The foregoing covenants and restrictions may not be amended or otherwise modified and shall not be subject to the provisions of Paragraph 22 hereof.

11. Construction Progress. The building, alteration or repair of any dwelling or structure in the subdivision, once commenced, shall be completed as soon as reasonably possible; and in the event

construction progress ceases for a period of more than thirty (30) days, except due to strikes acts of God, or other conditions beyond the control of the builder, Developer is authorized to demolish it and clear the property, or to complete it; and in either event the expense involved shall be charged against and be a lien upon the subject lot. All unused building materials and temporary construction shall be removed from the subdivision within thirty (30) days after substantial completion of construction. The portion of the ground surface which is disturbed by excavation and other construction work shall be finished, graded and seeded or covered with other landscaping as soon as the construction work and weather permits.

12. Unfinished and temporary Structures. No unfinished or temporary structures may be occupied as a residence at any time prior to completion in accordance with approved plans.
13. Signs and Billboards. No signs, billboards, or other advertising devices or symbols shall be displayed anywhere in the subdivision except "For Sale" signs not more than six (6) square feet in area, advertising a single lot or dwelling; and except those signs of a larger size which may be erected and displayed by Developer advertising the subdivision during its development, construction and sales. All such signs allowed must be maintained in good condition and must be removed promptly upon the termination of their use.
14. Sales Agency. Developer, or its successors in the interest may construct and maintain a sales agency office together with appropriate signs on lots of their choosing in this subdivision until such time as all lots in the subdivision have been sold.
15. Temporary Structures. Trailers, tents, shacks, barns, or any temporary building of any design are expressly prohibited within this subdivision, except those necessary for current construction and approved by Developer.
16. Vehicle Storage and Miscellaneous. No trailers or commercial vehicles other than those temporarily present on current business may be parked in the subdivision. Boats, mobile homes and similar vehicles must be kept in the garage. No laundry shall be hung for drying in such a way as to be readily visible from the street on which the lot fronts. All mailboxes shall be located uniformly with reference to the dwelling.
17. Animals. The raising or keeping of animals, livestock, poultry, and the like is prohibited, except that dogs, cats and pets of the like may be permitted so long as they do not constitute a neighborhood nuisance.
18. Waste Materials. Every resident in the subdivision shall promptly dispose of all refuse, garbage and waste materials. No outside storage or incinerators shall be used for such items; and each dwelling shall be equipped with an effective waste disposal unit installed on the inside of the dwelling.
19. Nuisances. No obnoxious or offensive activity shall be conducted on any lot in the subdivision nor shall anything be done which may be an annoyance or a nuisance to the neighborhood.

20. Utility Easements. It is the intent of the Developer to have telephone lines installed underground and to have electric power distribution lines placed underground to supply single phase 120 volt, three-wire, 60 cycle service and provide for certain rights and benefits to the utilities placing their lines underground, where practical.
- a. Private easements for public utilities have been granted on the plat VALLEY STREAM SUBDIVISION.
 - b. No excavations (except for public utility purposes), no change of finished grade, and no structures or apparatus of any kind, except line fences, shall be allowed within the public utility easements of the subdivision. Except as provided herein, the owner shall have the right to make any use of the land, subject to such easements, which is not inconsistent with the right of utility; provided however, that the owner shall not plant trees or large shrubs within the public utility easements. The public utilities shall have the right to trim or remove any trees, bushes, or other plants of any kind within said easements and also shall have the right to trim any trees, bushes, or other plants of any kind outside of said easement which, in the sole opinion of the utilities, interferes with the facilities thereto or is necessary for in the installation, re-installation, repair, maintenance, or removal of their facilities in the public utility easement of the subdivision. The trimming or removal of such trees, shrubs or plants of any kind by a public utility for the purpose set forth above shall be without liability to the utility.
 - c. No shrubs or foliage shall be permitted on the owner's property within five (5) feet of the front doors of the transformer enclosures and no shrubs or foliage shall be permitted within five (5) feet of secondary connection pedestals.
 - d. The original or subsequent owners of all lots shall install underground, own, maintain and replace at their own expense, the single phase electric service conductors laying between the transformers or secondary connection pedestals in said easements and the residence erected on said lots.
 - e. All underground electric service conductors installed shall be at least #1/0 copper in size with insulation of a type approved by the National Electrical Code for direct burial and at a depth specified by the utilities concerned.
 - f. The original or subsequent owners of all lots, to whom telephone service is now and hereafter furnished, shall be responsible for furnishing, at no cost to the utility, the trenching and backfilling necessary for the installation, maintenance or repair of telephone facilities from the public utility easement to the residence as required by the utility. The property owners and not the utility shall be responsible for injury or damage to persons or property caused by the trenching, existence or backfilling of the trench.
 - g. The grade established by the Developer at the time the utilities place their underground facilities in the easements shall be considered final or finished grade.

- h. No property owner shall make any change in such grade in or near easements or alter any ground conditions, including drainage, when the change in grade or alteration of ground conditions, in the opinion of the utility concerned, interferes with the facilities already installed.
 - i. The foregoing restrictions a. through h. shall be covenants running with the land and shall not be subject to termination without the consent of the utilities herein concerned.
 - j. Enforcement shall be by proceeding in civil action against any person or persons violating or attempting to violate any covenants, either to restrain violation or to recover damages.
 - 21. Binding Effect. The building and use restrictions set forth in this document are for the benefit of all present and future owners of lots in the subdivision as well as the Developer. Any party who accepts title to any part or lot of the subdivision binds himself, his heirs, legal representatives, and successors and assigns, to these building and use restrictions, which shall run with the land and shall bind and insure to the benefit of the Developer and all parties acquiring an interest in the subdivision, their respective heirs, legal representatives, successors and assigns.
 - 22. Term of Building and Use Restrictions. All of the building and use restrictions in this document except as otherwise provided herein, shall constitute in full force and effect until December 21, 1999, and shall automatically continue thereafter for successive periods of fifteen (15) years each; except however that the owners of sixty (60) or more of the lots in the subdivision may release all or part of the lots from all or any portion of these restrictions, be executing and acknowledging an appropriate agreement in writing for such purposes and filing the same in the office of the Register of Deeds for Oakland County, Michigan. Such right of release shall apply to each successive fifteen (15) year period by executing and acknowledging and filing such an agreement at least five (5) years prior to the expiration of any such fifteen (15) year period.
- The Open Space Plan referred to in Article 28, which is an agreement between Avon Township and the Developer, E.V.A Associates, shall continue in perpetuity, and cannot be amended, and shall be an obligation running with the land.
- 23. Violation of Building and Use Restrictions. In the event of a violation of any of the building and use restrictions, the Developer, in addition to all other remedies provided by law, shall have the right, but not the obligation to enter upon the land upon which such violation exists, and summarily abate and remove, at the expense of the owner, any construction or other violation that may exist thereon; and the Developer shall not thereby be liable for trespass or damages.
 - 24. Assignment by Developer. The rights and obligations of the Developer with respect to approval, supervision, and control of these building and use restrictions involving discretionary decision may be assigned by the Developer hereafter to a homeowners association of the association. Such a

transfer of rights and obligations may be made at any time the Developer deems it appropriate, but in any event shall be made when the Developer has sold all of the lots in the subdivision or has no further interest therein. Developer shall have the right to form a Michigan non-profit corporation, and each lot owner shall be required to be a member thereof and to accept it as an operative association, to which the subject rights and obligations may be transferred by the Developer.

25. Severability. Invalidation of any part of these building and use restrictions by judgment or court order will not affect any of the other provisions and conditions which shall remain in full order and effect.
26. Pronouns. Whenever in this document, words, including pronouns, are used in the masculine, they shall be read and construed in the feminine or neuter whenever they would so apply, and whenever in this document, words, including pronouns, are used in the singular or plural, they shall be read and construed in the plural or singular, respectively, whenever they would so apply.
27. Ambiguities and Omissions. Any ambiguities in this document shall be resolved pursuant to the spirit of these Building and Use Restrictions and the actual development of the subdivision.
28. Open Space. (Valley Stream Park and Oakstone Park)
 - a. An Agreement between the Township of Avon and E.V.A Associates is annexed hereto and incorporated herein by reference. Said Agreement provides for a homeowners association which governs the use of Valley Stream Park and Oakstone Park pursuant to the Avon Township's Open Space Plan referred to in Paragraph 22 and as provided by its ordinances and regulations.
 - b. The Developer or the homeowners' association shall have the authority to impose such dues and assessments as are deemed necessary to pay property taxes, if applicable, and the cost of maintaining and improving Valley Stream Park and Oakstone Park. Dues and assessments shall be due and payable within thirty (30) days after billing. In the event any lot owner shall fail to pay such dues or assessments when due, the Developer or succeeding homeowners' association may record a statement in the Office of the Register of Deeds for Oakland County against the lot showing the amount due which shall be a lien on the lot until fully paid. The Association shall have the right to bring an action in a court of competent jurisdiction to collect against said owner or foreclose the lien. Upon payment thereof, an appropriate discharge of the lien in the form eligible for recording shall be given to the lot owner. Any and all such liens for the dues and assessments herein provided shall be subordinate to the lien of any first mortgage.
 - c. A minimum annual maintenance fee in the amount of \$36.00 per year is hereby established for each and every lot in Valley Stream Subdivision, commencing November 1, 1979. These charges shall be prorated on the closing statement of future sales of lots in Valley Stream Subdivision, between buyer and seller. Said annual charge of \$36.00 can be reviewed and increased at the discretion of the Board of Directors of Valley

Stream Subdivision Association, a Michigan non-profit corporation, (to be formed) when approved by a majority of the lot owners. The annual fee of \$36.00 can never be reduced.

- d. Notwithstanding any other provisions herein, Developer reserves the right to grant easements within Valley Stream Park and Oakstone Park for the installation, repair and maintenance of pedestrian walkways, vehicular driveways, water mains, sewers, drainage courses, and other public easements and utilities, subject to the approval of the township, provided that such utilities shall be installed in such a manner as to minimize damage to the natural features of Valley Stream Park and Oakstone Park.

- e. In the event that Developer develops or subdivides additional lands adjacent to Valley Stream Subdivision and desires to subject such new developments(s) or subdivisions(s) to restrictions substantially in the form to those imposed upon Valley Stream Subdivision including requirements for the payment and maintenance charges and the requirement for mandatory membership in the Valley Stream Subdivision Association, said land may be incorporated with said Association with Valley Stream Subdivision for the purpose of the interpretation and enforcement of the restrictions, and the Subdivision Open Space Plan Agreement, at the option of the Developer and without approval of the Valley Stream Subdivision. The exercise of this option by Developer shall be by the amending of these Building and Use Restrictions to provide for such incorporation of additional lands in these Building and Use Restrictions as well as the Building and Use Restrictions for said new development and subdivision. In such an event, these restrictions and those applicable to the new development or subdivision shall be considered to be reciprocal negative easements thus making the restrictions applicable herein enforceable by property owners on the new land and restrictions applicable to said new land enforceable by property owners of Valley Stream Subdivision.

IN THE PRESENCE OF E.V.A ASSOCIATES, a Michigan co-Partnership John
A. Theisen, Senior Vice-President of Erb Lumber Co. (Managing Partner) a Michigan Corporation
Terrence J. O'Connor, Proprietor Trustee under Living Trust ERNEST L. GRYKA
and PATRICIA ANN GUSTINIS witnesses Recorded in Liber 7299,
Page 334 on August 31, 1978, amended and recorded in Liber 7443, Pages 22 thru 37 on February
16, 1979, Oakland County Records