

DECLARATION OF COVENANTS AND RESTRICTIONS

WESTWIND ESTATES SUBDIVISION

THIS DECLARATION, made this 15th day of July 1994 by T. A. Forsberg, Inc. a Michigan Corporation of 2360 Jolly Oak Road, Okemos, MI 48864, hereinafter called "Developer"; City of Ithaca, a Municipal Corporation located at 129 W. Emerson Street, Ithaca, MI 48847, hereinafter called "City"; George H. and Suzanne L. Bailey, Husband and wife, 624 Leeward Court, Ithaca, MI 48847; and Robert and Sheila Bennett, Husband and wife, 721 Westwind Lane, Ithaca, MI 48847; as their interest may appear.

WITNESSETH:

WHEREAS, Developer is the owner of the real property described in Article II of this Declaration and desires to create thereon a residential community; and

WHEREAS, City is the owner of the infrastructure improvements necessary to develop the real property described in Article II of this Declaration and as such has developed a special assessment district to secure repayment of said costs; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and, to this end, desires to subject the real property described in Article II to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof.

NOW, THEREFORE, the Developer declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "Covenants and restrictions") hereinafter set forth.

ARTICLE I: DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

"The Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of the properties.

"Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat of the properties.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or the land contract purchaser of any Lot situated

upon the properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

ARTICLE II:

(Legal Description of Westwind Estates)

ARTICLE III: RESTRICTIVE COVENANTS

SECTION 1. LAND USE AND BUILDING TYPE.

All Lots within the subdivision are restricted to residential use. Further, any building that is erected, altered, placed or permitted to remain shall be one detached single-family dwelling or new construction not to exceed two and on-half stories in height and a private attached garage for not more than four cars or less than two cars.

However, model homes or homes with displays and sales activities may be maintained by the builder, developer or real estate broker as long as they are well maintained and they are not a nuisance to the general neighborhood. Also "Home Occupation" is permitted as defined by the City of Ithaca Zoning Ordinance at the time of such use.

SECTION 2. ARCHITECTURAL CONTROL.

The Developer in conjunction with City reserves the right to review all construction projects within the subdivision. The following are considered permitted uses with the approval of the City and Developer: buildings or any other structure on any Lot or subdivision property. All plans must be submitted in writing to the City and will be approved in writing by the City as to the harmony of external design, location in relationship to surrounding structures.

In addition to the foregoing, the following requirements shall be met and the following improvements shall be made with regard to that portion of the property upon which any dwelling will be constructed:

- A. The setback from the front lot line to the front of the house shall be at least thirty (30) feet unless this requirement is waived by the City of Ithaca;
- B. The setback from the rear lot line to the rear of the house shall be at least forty (40) feet unless this requirement is waived by the City of Ithaca;
- C. The side yards shall be at least ten (10) feet unless this requirement is waived by the City of Ithaca;

- D. Any trees being planted must be a minimum of fifteen (15) feet behind the curb; and
- E. Five-(5) foot sidewalks shall be constructed and installed between any dwelling and any street located in the City of Ithaca with twelve (12) feet to be between the sidewalk and the curb.

SECTION 3. FENCES.

Fences, walls, and hedges may be constructed or grown on any Lot in the subdivision, under the following guidelines:

- A. Fences required by law or ordinances may be constructed around a swimming pool and shall be constructed of materials and in a manner that is not unsightly from neighboring Lots (see Item "C").
- B. Fences must be of wood construction or approved metal wrought iron.
- C. Fences, walls, and hedges, shall be of open construction not more than five (5) feet in height and shall not extend in front of the rear dwelling line.

SECTION 4. BUILDINGS

Dwelling foundations are limited to an exposure height of two (2) feet. Further, all elevations are to be approved by the developer.

SECTION 5. DRIVEWAYS.

All driveways must be made of paving brick or concrete materials. The City will not approve a site plan with an asphalt or gravel driveway.

SECTION 6. PARKING AREAS.

Outside parking areas may be permitted with the approval of the City.

SECTION 7. BUILDING SIZE.

Any one-story residential building shall have no less than 1,400 sq. ft. of livable first floor area and shall have an attached 2-car (or more) garage.

Any 2-story residential building shall have no less than 950 sq. ft. of livable first floor area and minimum 1,700 total sq. ft. floor area on first and second floors (finished basements shall never be included in square footage requirements) and shall have an attached 2-car (or more) garage.

Any one and one-half story residential building shall have no less than 1,200 sq. ft. of livable first floor area and shall have no less than 1,600 sq. ft. total living area on first and second levels and shall have an attached 2-car (or more) garage.

Any split-level residential building shall have no less than 1,700 sq. ft. of livable floor space and shall have an attached 2-car (or more) garage.

Any residence shall be constructed in accordance with the requirements of the Michigan State Housing Code.

The term "Livable Floor Space or Area" shall include all the area enclosed by, and including, the exterior walls of the dwelling, but shall not include any space or area in basements, garages, breezeways, carports, porches or terraces. "Livable Floor Space or Area" is defined as living area with finished walls and ceilings and approved floor finish.

SECTION 8. EXTERNAL ENERGY SYSTEMS, SATELLITE DISHES OR ANTENNAS.

Solar collectors and satellite dishes or any other device or equipment erected either on the exterior of a dwelling or detached therefrom and designed for the production shall be permitted upon review and approval of the Developer.

SECTION 9. GARAGES.

Any dwelling built on any Lot shall have at least a 2-car garage attached to, connected with, or built as part of the dwelling, with interior walls finished. Area will be a minimum of 400 sq. ft.

SECTION 10. TEMPORARY STRUCTURES.

No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other out buildings shall be erected or maintained on any Lot at any time as a residence or for storage whether temporarily or permanently.

SECTION 11. EASEMENTS FOR DRAINAGE AND SIGNS.

The display of any sign in public view on any Lot is prohibited except one sign of not more than six (6) sq. ft. advertising the property for sale or rent, or signs used by builder to advertise the property during construction and sales period.

Easements for installation and maintenance of drainage facilities, structures and grades are reserved over eight (8) feet of the side and rear of each Lot. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may obstruct or retard the flow of water through the drainage channels in the easements. The easement area of each Lot and all improvements shall be maintained continuously by the Owner of the Lot.

The Developer covenants that it will endeavor to provide drainage channels within said easements, but it is expressly recognized that water flow obstruction may result by reason of grade on any particular Lot in the subdivision. In the event that obstruction of water flow does result, Developer shall be permitted, but not required, to take such action to correct the obstruction upon any Lot, whether such obstruction occurs on that Lot or on any other Lot within the property.

Further, attendant to said easement for said drainage purposes, rights of ingress and egress are reserved to the Developer for the purpose of installation of drainage channels in the easement for correction of flow obstruction.

SECTION 12. SIGHT DISTANCE AT INTERSECTIONS.

No fence, wall hedge, shrub or planting which obstructs sightline at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street lines, or in case of a rounded property corner, from the intersection of the street property lines extended. The same sightline limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless foliage line is maintained at sufficient height to prevent obstruction of such sightlines.

SECTION 13. YARD AND LAWN PLANTING.

Each Lot, including the area between front lot line and the curb, shall be seeded or sodded or landscaped in a neat, orderly and aesthetically pleasant manner within one (1) year from the start of construction.

SECTION 14. EXTERIOR STORAGE.

Outdoor storage shall be limited to temporary on-site storage of recreational vehicles whose title is held by the Lot owner "Storage" is considered anything over forty-eight (48) hours in any one week. "Temporary" is defined as not exceeding 20 days in any given 30-day period. No carport shall be erected or maintained on any Lot. Garden sheds or outbuildings will be permitted with the following restrictions: minimum area 10'x12', frame construction on a cement slab, shingled roof and keeping with the aesthetics of the primary structure. Exterior storage is limited to the rear yard of any Lot and must be located on a cement slab.

SECTION 15. RESTORATION.

Any dwelling on any Lot in the Plat which may be damaged or destroyed by fire, windstorm or from any other cause, shall be repaired, rebuilt or torn down and all debris removed and the Lot restored to a sightly condition with reasonable promptness. Developer may enter on any premises where an excavation or foundation to be filled or removed, or such uncompleted house has been left without substantial and continuing

building progress for more than three (3) months and cause such excavation or foundation to be filled or removed, or such uncompleted house to be demolished, the expense thereof shall be immediately due and payable to Developer by the Lot owner and shall become a lien on the property, and may be foreclosed by the Developer as in the case of the foreclosure of a mortgage under Michigan statutes.

SECTION 16. LOT CONDITION AND MAINTENANCE.

The Owner of any improved Lot shall at all times keep and maintain the same in an orderly manner causing grass and other growth to be regularly cut, prevent accumulations of rubbish and debris, and in general maintain the Lot in a sightly condition. Should the Owner refuse or neglect to maintain any Lot in an orderly manner as herein provided after notice in writing is given him by the City of violation of the requirements herein contained, the premises may be placed in an orderly manner and the Owner shall be required to pay the cost thereof, and shall be a continuing lien assessment, together with such interest thereon, and cost of collection thereof, shall be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

SECTION 17. NUISANCES.

The following shall not be permitted within the plat:

- A. The keeping of livestock or poultry.
- B. Outdoor tanks for storage of fuel.
- C. Outdoor receptacles for ashes, garbage or refuse.
- D. On-site exploration or drilling of oil or gas.
- E. On-site exploration or removal of sand, gravel or other subsurface minerals.
- F. Vegetable gardens in the front or side yards.
- G. No swimming or wading pool with a water surface of more than 50 square feet shall be erected on any Lot unless the proposed water level is below the average elevation of the ground around the pool.
- H. Basketball backboards attached to the primary structure including the garage.
- I. Clotheslines in front or side yards.

ARTICLE IV: GENERAL PROVISIONS

SECTION 1. DURATION.

The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Developer, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of 25 years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of two thirds (2/3) of the Lots has been recorded agreeing to change. Said advance of the effective date of such change, and

only if written ninety (90) days in advance of any action taken. However, changes can be made in these covenants at any time upon the recording of an instrument, signed by the then Owners of eighty (80) percent of the Lots (with a minimum of three homeowners), agreeing to said changes.

SECTION 2. NOTICES.

Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the person who appears as Owner on the records of the Developer at the time of such mailing.

SECTION 3. ENFORCEMENT.

Enforcement of these covenants and restrictions shall be any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Developer to enforce any lien created by these covenants and failure by the Developer to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 4. SEVERABILITY

Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way effect any other provision which shall remain in full force and effect.