

## BUILDING AND USE RESTRICTIONS

Lots 100 through 196, both inclusive, Westbriar Park North and Westbriar Park South, Westbriar Village Sub'n No. 2.

### BUILDING AND USE RESTRICTIONS

RESTRICTIONS RE: Lots 100 through 196, both inclusive, Westbriar Park north and Westbriar Park South, part of the Southeast ¼ of Section 33, T. 1S., R.8E, Township of Plymouth, Wayne County, Michigan. A Plat recorded Liber \_\_\_\_\_ 98 \_\_\_\_\_ Pages \_\_\_ 57 and 58 \_\_\_\_, Wayne County Records.

DATED: November 22, 1978

1. These restrictions are covenants which shall run with the land and shall be binding on all parties hereto and all parties claiming under or through them for a period of thirty (30) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless it is on that date or at the end of any such period agreed by a vote of the then owners of a majority of the lots included in the above described land, to change such restrictions in whole or in part or to cancel them, or at anytime upon the agreement of eighty (80%) percent of the fee title holders and with agreement of the Township of Plymouth. This paragraph shall not apply to the restrictions and provisions contained within Paragraphs 19 through 23, both inclusive, and the sub-paragraphs thereof, which are to be observed in perpetuity and may be amended only upon the written consent of the Township of Plymouth, its successors or assigns.
2. No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling not to exceed two (2) stories in height and a private garage for not more than three (3) cars.
3. No dwelling shall be permitted on any lot having an area of less than twelve hundred fifty (125) square feet, exclusive of open porches and garages, for a one-story structure; 800 square feet on the first floor for a 1-1/2 story, and 700 square feet on the first floor for a two-story structure.
4. Minimum Yard Requirements. No building on any lot in The Subdivision shall be erected nearer than:
  - A. Thirty (30) feet from the front line: nor
  - B. Ten (10) feet from each side lot line: nor
  - C. Fifty (5) feet from the rear lot line or forty (40) feet from the rear lot line only when it abuts platted Open Space; nor
  - D. Thirty (30) feet from the side lot line abutting a street on corner lots. Approval of a variance by the Plymouth Township Zoning Board of Appeals permitting yards smaller than the above minimums shall be deemed a valid waiver of this restriction.
5. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and no buildings are to be constructed within the easements.
6. No structure of a temporary character, trailer, tent, shack, barn, or other outbuildings shall be placed on any lot at any time either temporarily or permanently, except a structure to be used by builders for storage of materials during construction period.

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7. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereupon which may be or may become an annoyance or nuisance to the neighborhood.
8. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one (1) square foot, one sign of not more than six (6) square feet for advertising the property for sale or rent; except that signs of any size may be used by a builder to advertise the property during the construction period.
9. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be provided that they are not kept, bred or maintained for any commercial purpose.
10. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. The use of any incinerator shall be a type which will not discharge offensive odors or ash when burning.
11. No fence, well, shrubbery, sign or other obstruction to vision above a height of thirty (30) inches from the established street grades shall be permitted within the triangular area formed at the intersection on any street right-of-way lines by a straight line drawn between said right-of-way lines at a distance along each line of twenty-five (25) feet from their point of intersection. The same sight-line limitation shall apply on any lot within ten (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 the foliage line is maintained at a sufficient height to prevent obstruction to such sight-lines.
12. No fence or wall shall be constructed so as to extend beyond the front or side building setback line, except ornamental fences which shall not exceed twenty-four (24) inches in height, nor shall fences be constructed more than forty-eight (48) inches in height on any other lot lines, except fences constructed on the boundary lines of any public owned properties.
13. No business, trade, profession or commercial activity or calling for home occupation, of any kind shall be conducted in any building or on any portion of the property, except a builder's sales office may be used and maintained until all of the lots in the subdivision have homes constructed thereon and shall be occupied as a place of residence subject, however, to the review and approval of the Plymouth Township Board of Zoning Appeals.
14. If the parties hereto, or any of them, or their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any person or persons owning any real property situated in said development to prosecute any proceedings at law or in equity against the persons violating or attempting to violate any such covenants and either to prevent him or them doing so or to recover damages or other dues for such violations.
15. All public utilities such as water mains, sanitary sewer, storm sewers, gas mains, electric and telephone local Subdivision distribution lines and all connections to same, either private or otherwise, shall be installed underground; provided, however, that above ground transformers, pedestals and other above ground electric and telephone utility equipment associated with or necessary for underground utility installations and distribution systems and surface and off-site drainage channels and facilities, as well as street lighting stanchions, shall be permitted. The said Lots 100 through 196, both inclusive, Westbriar Park North and Westbriar Park South, above

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described are, in addition, subject to the terms of a Restriction Agreement recorded in Liber 20257, Pages 582-587, Wayne County Records, between the undersigned and the Detroit Edison Company and the Michigan Bell Telephone Company, relating to the installation and maintenance of the underground electric and communications service and facilities, and which instruments are, by this reference, incorporated herein.

16. No inoperative vehicles or commercial vehicles, house trailers or mobile trailers, boats and boat trailers shall be permitted to be parked or stored on any lot in said subdivision unless such vehicles are parked or stored in a garage on said lot which conforms to the requirements pertaining to the construction of garage as set above.
17. Each owner-occupant shall, within sixty (60) days of receipt of fee simple title, install or cause to have installed seed and mulch or sod or other vegetative growth covering all exposed earth; provided, however, if such fee simple title shall be received between October 1, in any year, and April 15 of the next succeeding year the obligations as above set forth shall be completed no later than May 15, of the succeeding year.
18. 18 Common Areas:
  - A. Definitions
    1. "Developer" shall mean and include Westbriar Ventures or its assigns
    2. "Association" shall mean and refer to the Westbriar Village Subdivision No. 2 Homeowners Association
    3. "Properties" shall mean and include Lots 100 through 196, both inclusive, of Westbriar Village Subdivision No. 2 described above.
    4. "Common Area" shall mean and refer to those areas of land denoted on the recorded plat of the properties as Westbriar Park North and Westbriar Park South, as set forth on the recorded plat of the properties and all intended to be owned by the Association and to be devoted to the common use and enjoyment of the owners of the property and any improvements thereon.
    5. "Owners" shall mean and refer to the record owner whether one or more persons or entity of the fee simple title to any lots above described including land contract vendors, but not including any mortgagee, unless and until such mortgagee shall have acquired fee simple title pursuant to foreclosure or any proceeding of conveyance in lieu of foreclosure. When more than one person or entity has an interest in the fee simple title or any lot, the interest of all such persons collectively shall be that of a single owner.
    6. "Owner-occupant" shall mean the same as "Owner" only at such time as a certificate of occupancy shall be issued by the Township of Plymouth for a dwelling upon a lot and not prior thereto.
    7. "Member" shall mean and refer to all those owners who are or qualify as members of the Association as hereinafter set forth.
  - B. Membership and voting rights in the Association
    1. Membership – Every person or entity who is the owner of a lot shall be a member of the Association and membership shall become effective when the transfer becomes of record. Membership in the Association is and shall be appurtenant to and may not be separated from ownership to any lot.

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2. Voting Rights – The Association shall have two (2) classes of members: Class A members and Class B members.
  - a) Class B members shall be only the Developer or its agents and the Developer or its agents shall be entitled to one (1) vote as a Class B member for each lot within the properties of which it is an owner. Upon the transfer by the Developer of any lot to a new owner, the Class B membership of the Developer with respect to such lot shall be terminated. Each Class B member shall be entitled to one (1) vote for each lot within the properties of which it is an owner.
  - b) Class A members shall be the owner-occupant of any lot (s). Class A members shall have no voting rights until the event described in the next succeeding paragraph shall occur.
  - c) At such time as the number of Class A members are eighty percent (80%) or more of the number of votes of original Class B members, or at such other time prior thereto as the Class B Members shall so declare, in their sole discretion, all Class A and Class B members then outstanding, and all subsequent members of the Association, shall be and be deemed to be Class A members and entitled to one (1) vote per lot.
- C. Property rights in the common areas.
  1. Members' easements of enjoyment – Subject to the provisions of Section 3 hereof, following, every member shall have right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every lot.
  2. Title to Common Areas – The Developer may retain legal title to the common areas until such time as it has completed the improvement of the existing properties and until such time as, in the opinion of the developer, the Association is able to maintain the same, but notwithstanding any provision herein contained, the Developer hereby covenants that it shall convey the common areas to the Association, free and clear of all liens and encumbrances, except easements and rights-of-way of record, not later than the time of the conveyance of the first lot within the subdivision.
  3. Extent of Members' Easements – The rights and easements of enjoyment of the members created herein are, and shall be, subject to the following:
    - a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common areas; and
    - b) The right of the Association to suspend the voting and enjoyment rights of any member for any period during which any assessment against his lot remains unpaid, and for a period not to exceed thirty (30) days, for any infraction by such member of its published rules and regulations; and
    - c) The right of the Association to dedicate or transfer all or any part of the common areas to any public agency, authority or utility for such purposes, and subject to such conditions, as may be agreed to by the members provided that no such dedication or transfer, or determination as to the conditions thereof, shall be effective unless an instrument signed by the holders of two-thirds (2/3) of all outstanding Class A stock has been recorded, agreeing to such dedication or transfer and as to the conditions thereof; and provided, further, that no such dedication or transfer, or determination as to the conditions thereof, shall be effective unless the prior consent thereto of the Township

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of Plymouth, Wayne County, Michigan, by and through its Township Board shall have first been obtained.

4. Delegation of Use – Any owner may delegate, in accordance with the By-laws of the Association, his right of enjoyment in and to the common areas to the members of his family, his tenants, or to land contract vendees who reside on the property.
- D. Covenant for maintenance assessment
1. Creation of the lien and personal obligation of assessments. The Developer, for each lot owned by it within the properties, hereby covenants, and each owner of any lot within the properties, by acceptance of any lot within the properties, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments or charges, and the annual assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the lot and shall be a continuing lien upon the lot against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall also be the personal obligation of the person(s) who was the owner of such lot at the time when the assessment fell due.
  2. Purpose of assessments – The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the properties and in particular, for the operation, maintenance, management and improvement of the common areas, including, but not limited to, the payment of taxes and insurance thereon, the repair and replacement thereof, for additions thereto and improvements thereof, and for the cost of labor, equipment, materials, management and supervision for and in connection with the common areas and the Association.
  3. Basis and maximum of annual assessments – There shall be no assessment against the properties until the calendar year of 1979, however, the Developer shall make such initial improvements to the common areas in accordance with its agreement with the Township of Plymouth. From and after January 1, 1979, the annual assessment shall be no less than \$5.00 per year and not more than \$10.00 per year for a lot owner and no less than \$20.00 per year nor more than \$50.00 per year for lot owner-occupant. The amount of dues shall be fixed at such an amount so that the total revenue of the Association shall be sufficient to pay for all costs of operating and maintaining the properties owned by said Association including by way of illustration and not limitation capital improvements, additions or replacements.
  4. Notice and Quorum for Action Authorized Under Section 3 – Notice of the annual or special meeting of the membership shall be mailed to all members entitled to vote at least ten (10) days prior to the date of such meeting. At any annual or special meeting of the members, one quarter (1/4) of the members entitled to vote shall constitute a quorum and shall be empowered to transact business. If at any meeting of the members no quorum shall be present, the meeting shall be adjourned to a subsequent date, and the secretary shall notify the members thereof in writing at least ten (10) days prior to such subsequent date, and at

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such adjourned meeting, the members shall constitute and be a quorum even if there are present less than one quarter (1/4) of the members entitled to vote.

5. Duties of Board of Directors – The Board of Directors of the Association, subject to the limitations set forth in Section 3 hereof, shall fix the amount of the assessment against each lot for each assessment period and shall, at that time, prepare a roster of the lots and the assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any owner. Written notice of the assessments shall thereupon be sent to every owner subject thereto. The Association shall, upon demand and payment of a reasonable charge, furnish to any owner liable for such assessment(s) a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid.
  6. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner: The Lien: Remedies of the Association - If any assessment is not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on such lot which shall bind such lot in the hands of the then owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then owner to pay such assessment(s), however, shall remain his personal obligation for the statutory period and shall not pass as a personal obligation to his successors in title unless expressly assumed by them but shall run with the land. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of six percent (6%) per annum, and the Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the lot, and there shall be added to the amount of such assessment the costs of preparing and filing the Complaint in such action, or in connection with such foreclosure, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorney's fee to be fixed by the court together with the costs of the action.
  7. Subordination of the Lien to Mortgages – The lien of the assessment(s) provided for herein is and shall be subordinate to the lien(s) of any mortgage or mortgages now or hereafter placed upon any lot subject to assessment hereunder; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to sale or transfer of such lot pursuant to foreclosure of such mortgage(s), or prior to any other proceeding or conveyance in lieu of foreclosure. Such sale transfer or conveyance shall not, however, relieve such lot from liability for any assessment thereafter coming due, or from the lien of any such subsequent assessment.
19. Rear yard drains, retention ponds and related storm drains, drainage grades and footing drains.
- A. Maintenance of the rear yard drains, retention ponds and related storm sewers, drainage grades and footing drains.
    1. SURFACE DRAINAGE:

It shall be the responsibility of each lot owner to maintain the surface drainage grades of his lot as established by the Developer. Each lot owner covenants that he will not change

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the surface grade of his lot in a manner which will materially increase or decrease the storm water flowing onto or off of his lot or block. The Board of Directors of the Association shall enforce this covenant and may enter upon the lots in the subdivision to correct any violation of this covenant and shall charge the cost of the correction to the lot owner who had violated this covenant.

### 2. REAR YARD DRAINS:

The Subdivision Association shall be responsible for the maintenance of enclosed rear yard storm water drains. In the event such drains shall require repair, the drains shall be repaired by the Association and the cost of such repair shall be allocated equally among all lots served by the arm of the drain line repaired. The allocation of cost shall be assessed to the lot owners and shall be a lien upon the lot and a personal obligation of each lot owner assessed.

### 3. FOOTING DRAINS:

It shall be the responsibility of each lot owner to maintain the footing drains for all construction on his lot and to assure the footing drains are clear of obstructions and are connected to the Storm Sewer System, where required, as shown in the approved plans on file with the Township of Plymouth. In the event any lot shall fail to maintain the footing drains or shall fail to have the drains properly connected to the storm water drainage system, where required, as shown on the approved plans on file with the Township of Plymouth, the Association may enter upon the land of such owners and perform all necessary repairs and maintenance of the footing drains. The costs for such repairs and maintenance shall be charged to the lot owner and shall be a lien upon the land and a personal obligation of the owner of the lot.

### 4. RETENTION PONDS AND RELATED STORM DRAINS:

The subdivision Association shall be responsible for the maintenance of the retention ponds and related storm drains. In the event such retention ponds and related storm drains shall require repair, the same shall be repaired by the Association and the cost of such repair shall be allocated equally among all lots within the subdivision. The allocation of cost shall be assessed to the lot owners and shall be a lien upon the lots and a personal obligation of each lot assessed.

### B. Failure of a lot owner or the Association to maintain the drainage grades, retention ponds and related storm drains, rear yard drains or footing drains.

1. The Township of Plymouth, or its successors, shall have the right to enter upon all lots within the subdivision, at all reasonable times for the purpose of inspecting the surface drainage, retention ponds and related storm drains, rear yard drains and footing drains, for the purpose of determining if the drains are adequately maintained.

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2. In the event the Township of Plymouth shall determine the drainage grades, retention ponds and related storm drains, footing or rear yard drains are inadequately maintained, or that there exists a danger to public health, safety or morals, the Township shall advise the Board of Directors of the Association of the condition objected to and shall establish a reasonable time limit for the correction of the deficiency.
3. The Association shall comply with the notice from the Township within the time specified and shall establish such additional assessments on the lots and the subdivision as shall be necessary to fund the cost of the required maintenance. Assessments for repair of footing drains shall be made only against the lot on which the repair is completed. In the event the Association fails to complete the maintenance items of which it has been notified within the period limited by the notice, the Township of Plymouth may enter upon the lots and perform the required maintenance either through its employees or through independent contractors. The Association shall be responsible for the cost of the maintenance performed by the Township and each lot owner shall be responsible for his proportionate share of the costs including reasonable inspection and supervision fees to the Township.
4. The provisions of these restrictions authorizing assessments upon the lots are for the benefit of the Township of Plymouth and the Township may enforce this agreement in its own name by order of the Circuit Court directing the levy of the required assessment on each lot, the establishment of a lien on each lot to the extent of its share of the assessment, and the foreclosure of the lien, or the enforcement of the personal liability of each lot owner for his proportionate share of the assessment, which remedies shall be cumulative.
5. Anything contained herein or elsewhere to the contrary notwithstanding at such time as the Township of Plymouth, as a matter of governmental function, shall provide maintenance of enclosed rear yard storm water drains, retention ponds and related storm sewers without individual subdivision or lot charge or assessment therefor, then and at such time, these restrictions with relation to maintenance and the cost therefor, as to rear yard storm water drains, retention ponds and related storm sewers, shall no longer be of any force or effect.
20. Invalidation of any one of these covenants by judgment or court order shall in nowise affect any of the other provisions which shall remain in full force and effect.
21. Nothing herein provided shall constitute a waiver of, inapplicability of or invalidity of any current or future ordinance of the Township of Plymouth, or its successors, and to the extent and degree in form and substance any such ordinance, or any portions, terms or conditions than herein provided, such ordinance, or any portions thereof, shall take precedence and be treated as having the full force and effect as being a part herein incorporated by reference in this instrument.
22. The document entitled "Residential-Unit Development Subdivision Agreement Westbriar Village Subdivision No. 2" is a restriction upon the land and nothing in these Building and Use Restrictions shall be read or interpreted to abrogate, amend or in any way contradict the provision of said "Residential Unit Development Subdivision Agreement Westbriar Village Subdivision No. 2".
23. The Township of Plymouth, and its successors and assigns, does not by its exercise of any right herein provided to said Township of Plymouth or by its undertaking of any act or obligation in relation to the premises, including without limitation Common Area and storm water drainage rights, outlets or facilities, constitute directly or indirectly the Association or Owners as the agents or



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beneficiaries of the Township of Plymouth. Further, the Township of Plymouth shall retain its full governmental immunity in the premises. Any act, right or obligation of the Township of Plymouth either specifically or by implication, arising from or occurring as a result of this instrument shall be done or omitted by the Township of Plymouth in its sole and exclusive discretion. In no event shall the Township of Plymouth be liable in damages, by specific performance or otherwise to the Association, or any Owner or Owners, by reason of or from any matter in connection with this instrument.

WITNESSES:

\_\_\_\_\_

Wendy Webster

\_\_\_\_\_

Carolyn R, Bloom

WESTBRIAR VENTURES

a Michigan Co-Partnership

By: \_\_\_\_\_

Rescom Development Corporation

a Michigan Corporation

Milton P. Rotenberg, President