

AGREEMENT FOR SUBDIVISION OPEN SPACE PLANBROOKEDALE WEST SUBDIVISION

THIS AGREEMENT IS MADE THIS 24th DAY OF JANUARY 1979, by and

between the TOWNSHIP OF AVON, Oakland County, Michigan, herein called the "Township", 407 Pine Street, Rochester, Michigan, and WALTON DEVELOPMENT COMPANY, a Michigan Corporation, 3250 West Big Beaver Road, Troy, Michigan, 48084, herein called the "Developer".

WITNESSETH:

WHEREAS, the Developer is the owner of the land located in the Township of Avon, County of Oakland, State of Michigan, described as follows:

Lots 1 through 182, inclusive, and Common Areas Nos. 1 through 9, inclusive, of Brookedale West Subdivision, according to the Plat thereof, as recorded in Liber 164 of Plats, Pages 30 through 32, inclusive, Oakland County Records; and

WHEREAS, the Avon Township Zoning Ordinance provides for an optional method of development of a subdivision, wherein the minimum permitted lot area may be reduced up to twenty five (25%) percent, provided the total dwelling unit density allowed under the Zoning Ordinance is not increased and the areas so taken from the lots are set aside as Open Space for the benefit of all lot owners in the subdivision; and

WHEREAS, the Developer wishes to develop the above described property under said provisions, such property to be subdivided and known as BROOKEDALE WEST SUBDIVISION; and

WHEREAS, the Developer applied for approval under the "Subdivision Open Space Plan" provisions of said Zoning Ordinance for said BROOKEDALE WEST SUBDIVISION at the time of the submission of the proposed Plat, and final approval of the preliminary Plat has been granted by the Avon Township Board of Trustees; and

WHEREAS, the Developer wishes at this time to obtain approval of the final Plat of BROOKEDALE WEST SUBDIVISION; 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.

1700

NOW, THEREFORE, in consideration of the approval of the Avon Township Board of Trustees of the final Plat of BROOKEDALE WEST 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 BROOKEDALE WEST SUBDIVISION, hereinafter referred to as "Owner", a right and easement of enjoyment in and to those lands hereinafter referred to as the "Common Area", described in Exhibit "A", attached hereto and incorporated herewith, for recreational purposes and for storage of surface water, and hereby covenants for itself, its heirs, and assigns that it will convey fee simple title to the Common Area, hereinafter described, free and clear of all encumbrances, except easements of record, within one (1) year after the Plat of BROOKEDALE WEST SUBDIVISION has been recorded. From and after the date of such conveyance any and all responsibility and liability with respect to the Common Area conveyed shall cease as to the Developer and shall thereupon vest in and be assumed by the said grantee Association and its members in accordance with the terms of the Association By-Laws and the Declaration of Restrictions for BROOKEDALE WEST SUBDIVISION.
2. For purposes herein, an "Owner" is defined as the record fee simple title holder or land contract purchaser, whether one or more persons, of a lot in BROOKEDALE WEST SUBDIVISION, but excluding those having a security interest in a lot, whether mortgage or otherwise, for the performance of an obligation.
3. Reference to this Agreement, and to the liber and page on which it is recorded, shall be included in the Declaration of Restrictions for BROOKEDALE WEST SUBDIVISION.
4. Title to the Common Area shall be vested in the Association, hereinafter described, for the benefit of all Owners, subject to the right and easement of enjoyment in and to such Common Area by said Owners. Such easement 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.
5. Control and jurisdiction over the Common Area shall be vested in the BROOKEDALE WEST HOMEOWNERS ASSOCIATION, hereinafter referred to as the "Association". Such 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 BROOKEDALE WEST SUBDIVISION, but in any event within sixty (60) days following the recording of the Plat of BROOKEDALE WEST SUBDIVISION. Membership in the Association shall be mandatory for each Owner of a lot in BROOKEDALE WEST SUBDIVISION. The Association shall be responsible for the proper maintenance of the Common Area and for compliance with the terms of this Agreement. The By-Laws of the Association shall provide for a Board of Directors of not less than four (4) 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 from and after the occurrence of the events specified in Article IV of the Declaration of Restrictions for BROOKEDALE WEST SUBDIVISION, recorded in Liber \_\_\_\_\_, Pages \_\_\_\_\_, Oakland County Records. When more than one (1) person holds any such interest in any lot, all such persons collectively shall be a member. 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 and responsibility to make and enforce rules and regulations pertaining to the use and maintenance of the Common Area, which regulations shall be binding upon all Owners.

6. The Common Area may be used for all forms of recreation, including hiking, nature study, picnicking and similar pursuits in keeping with the nature of the area, as well as for the storage of surface water. No change shall be permitted in the Common Area which would alter the storm water and surface water retention and storage facilities constructed thereon without the express approval of the Township of Avon. All Owners, their families and guests shall have equal access to the Common Area.

7. Assessments shall be levied by the Association against each Owner who is not the Developer or a Builder/Purchaser from the Developer who purchases more than one (1) lot for the purpose of construction and sale of houses upon said lots, which parties are specifically excluded from any such assessments. Assessments shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners of lots in the subdivision, and in particular, for the operation, maintenance, management and improvement of the Common Area and storm water retention facilities thereon, including but not limited to, the payment of taxes and insurance, maintenance, repair and replacement of improvements thereon, and additions thereto, and for the cost of labor, equipment, materials, management and supervision for and in connection with the Common Areas and the Association itself.

8. The Association shall be responsible for the maintenance of the storm water retention basin(s) located in the Common Area, and the cost thereof, as hereinafter more fully set forth:

(a) The storm water retention basin(s) 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 such facility. Notwithstanding this requirement, the Association may use water from the basin(s) for purposes of irrigation.

(b) Maintenance of the retention basin(s) shall include keeping the bottom of the retention basin(s) free from silt and debris, removing harmful algae, maintaining a steel grating across the pond's inlets and/or outlets, the control of erosion, and such other maintenance as is reasonable and necessary to the intended functioning of the basin(s).

9. In the event the Association shall at any time fail to maintain the Common Area, including the storm water retention facilities, 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 and storm water retention basin(s) and facilities 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 modifications thereof shall not be cured within said thirty (30) days or any extension thereof, the Township, in order to prevent the Common Area and storm water retention areas 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 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 reasonably determine that the Association is ready and able to maintain the Common Area and the storm water retention basin(s) therein in a reasonable condition, the Township shall cease to maintain the Common Area and the storm water retention basin(s) at the end of the said year. If the Township shall reasonably determine that the Association is not ready and able to maintain the Common Area and storm water retention basin(s) therein 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 reasonable cost of such maintenance by the Township shall be charged to the Association, and, if not paid, assessed equally against each lot in BROOKEDALE WEST SUBDIVISION, and shall become a lien on each lot, added to the tax rolls, and collected and enforced in a like manner as general township taxes are collected and enforced. In addition, the Township shall be, at its option, subrogated to the Association's rights of collection from its members to the extent of that 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. However, should an emergency threatening the public health, safety and/or general welfare of the public be determined by the Township to exist, the Township shall have the right to take immediate corrective action.

10. The Developer hereby consents that taxes assessed against the Common Area may be prorated among the lot Owners and billed as a part of the taxes assessed to the individual lots.

11. The Developer and any Builder/Purchaser from the Developer, as the case may be, agrees to display an acknowledgement of this Agreement, containing the Associations' duties and responsibilities, with the Liber and Pages on which it is recorded in a conspicuous location in all places where said lots are being sold and any Builder/Purchaser from the Developer, agree to supply each lot Purchaser with a copy of this Agreement and a schematic of the development plans and requirements for maintenance of the Common Area at the time of entering into a Purchase Agreement.

12. These covenants shall be binding on the parties hereto, their heirs, devisees and representatives, unless the Township of Avon and seventy five (75%) percent of the Owners of lots in BROOKEDALE WEST SUBDIVISION who are entitled to vote, by an instrument in writing recorded in the office of the Register of Deeds for Oakland County, Michigan, agree to cancel, alter, amend or modify this Agreement.

13. Invalidation of any one or more of these Covenants by Judgment or Order of any Court shall in no way affect any of the other provisions which shall remain in full force and effect.

14. In the event of a violation or attempted violation of any of the Covenants herein, it shall be lawful for any person or persons owning any interest in a lot to institute a proceeding at law or in equity against the person or persons so violating or attempting to violate such Covenant to prevent and enjoin such violation and/or to recover damages therefor, as the case may be.

15. The Developer agrees that at such time as any two or more lots are sold to a Builder, the Developer will obtain from such Builder an acknowledgement that the Builder will comply with the provisions of Paragraph 11. of this Agreement. A notarized copy of said Acknowledgement shall be submitted to Avon Township.

16. 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 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.

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

18. The Developer has submitted to the Township a certain Declaration of Restriction which have been approved by the Township, and which together with this Agreement shall constitute restrictions running with the land and applicable to said BROOKEDALE WEST SUBDIVISION. The Declaration of Restrictions applicable

to BROOKDALE WEST SUBDIVISION shall be submitted at the time of submission of the final Plat of the subdivision to the Township Board of Trustees for approval.

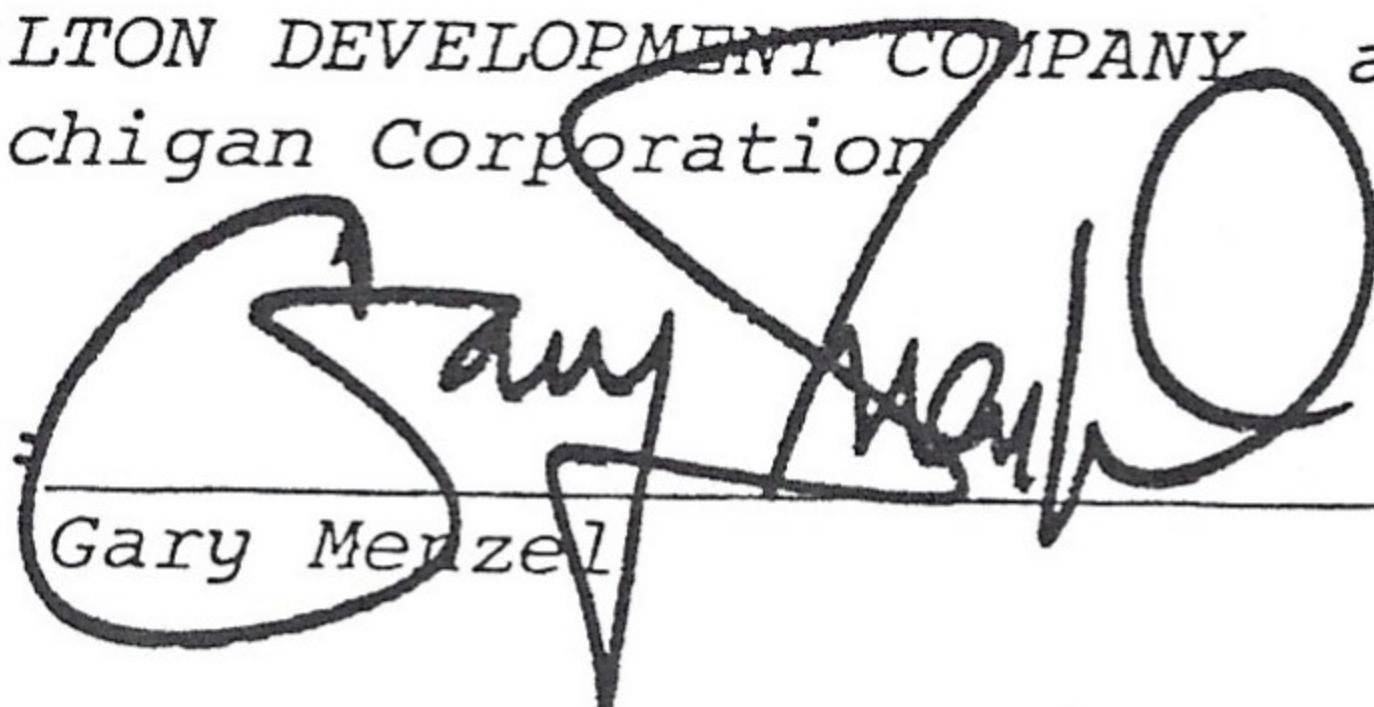
20. The parties hereto make this Agreement on behalf of themselves, their heirs, successors, and assigns and hereby warrant that they have the authority and capacity to make this contract.

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

WITNESSED BY:

SIGNED BY:

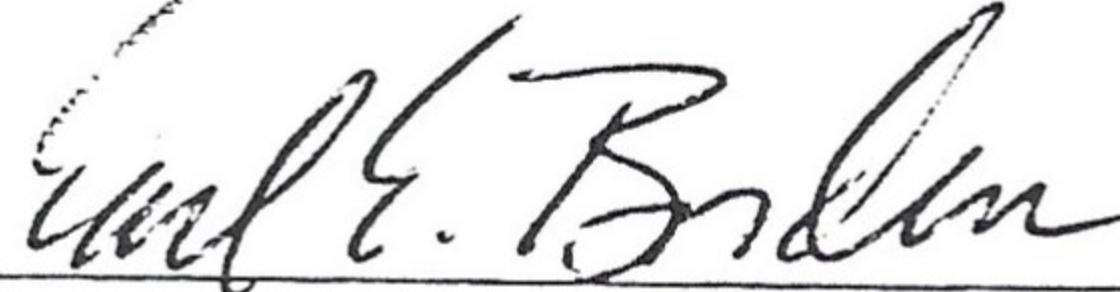
WALTON DEVELOPMENT COMPANY a  
Michigan Corporation

By:   
Gary Menzel

Its: Secretary

AND BY:

THE TOWNSHIP OF AVON

By:   
Earl E. Borden, Supervisor

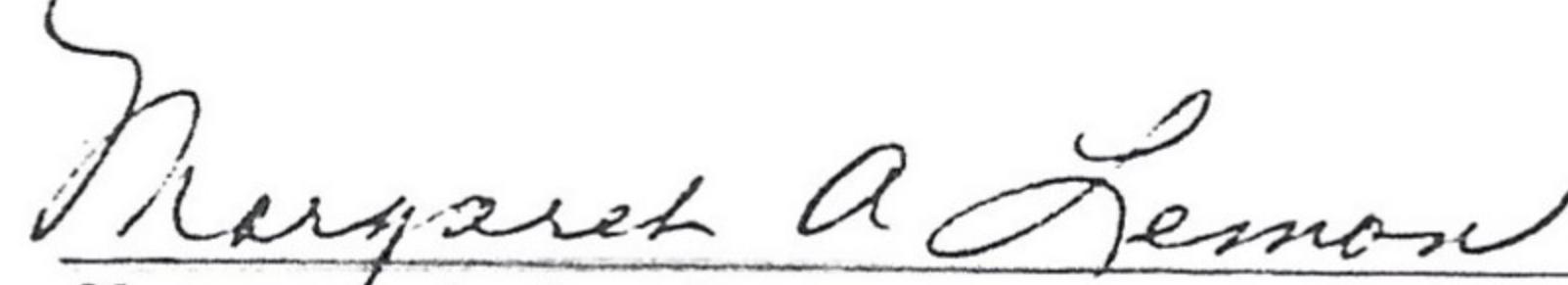
By:   
Thelma G. Spencer, Clerk

STATE OF MICHIGAN)

)ss.:

County of Oakland)

On this 26th day of JANUARY 1979, before me personally appeared Gary Menzel, who being duly sworn by me, did say that he is Secretary of WALTON DEVELOPMENT COMPANY, a Michigan Corporation, and that said instrument was signed on behalf of said Corporation and Gary Menzel acknowledged that said instrument was the free act and deed of said Corporation.

  
Margaret A. Lemon, Notary Public  
Oakland County, Michigan  
My Commission Expires: June 10, 1980

STATE OF MICHIGAN)

)ss.:

County of Oakland)

On this 26th day of JANUARY 1979, before me, a Notary Public, in and for said County, personally appeared EARL E. BORDEN and

THELMA G. SPENCER, to me personally known, who being by me duly sworn, did each for himself say that they are respectively the Supervisor and Clerk of the Township of Avon, the municipal corporation named in and which executed the within instrument by authority of its Township Board, and said deponents acknowledged said instrument to be the free act and deed of said municipal corporation.

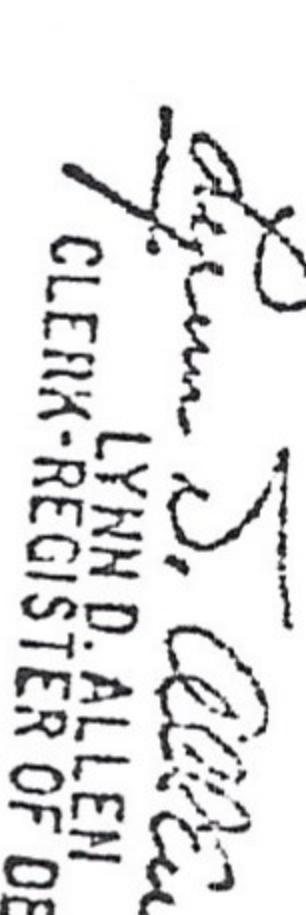
Betty Adams  
 Betty Adams, Notary Public  
 Oakland County, Michigan  
 My Commission Expires: Sept. 30, 1980

Drafted by

Robert A. Jacobs, Esq.  
 2900 West Maple Road  
 Troy, Michigan 48084

WHEN RECORDED RETURN TO:

Thelma G. Spencer, Clerk  
 Charter Township of Avon  
 P.O. Box 250 - 407 Pine Street  
 Rochester, MI 48063

1979 MAR 30 AM 9 00  
  
 LYNN D. ALLEN  
 CLERK-REGISTER OF DEEDS  
 OAKLAND COUNTY, MICHIGAN  
 REGISTER OF DEEDS RECORDS