

# EXISTING WESTMORELAND DEED RESTRICTIONS

AMENDED

## DECLARATION OF RESTRICTIONS

as to

WESTMORELAND ADDITION

an addition in the City of Toledo

Lucas County, Ohio.

WHEREAS, by instrument dated May 15, 1919, filed for record May 16, 1919, and recorded in Volume 503 of Deeds, page 1, The Ottawa Park Realty Company, hereinafter Company, created certain Restrictions applying to the inuring to the benefit of Westmoreland Addition and all lots contained therein; and

WHEREAS, pursuant to Section 13 thereof the rights, powers, duties, and obligations of said Declaration of Restrictions have by instrument dated December 28, 1973, and recorded in Volume 2783 of \_\_\_\_\_, page 158, been assigned to the Westmoreland Association, a non-profit Ohio Corporation created for the purpose of assuming said rights, powers, duties, and obligations, the membership of which includes all owners of residences in Westmoreland Addition; and

WHEREAS, said instrument provided in Section 10 thereof that said Restrictions may, except for those set forth in Sections 1, 2, 3(a), and 6, be annulled, waived, changed, modified or other restrictions imposed by the Company, its successor or assignee with the consent of the owner of a majority of the lots in Westmoreland Addition; and

WHEREAS, because of changed conditions and the needs of the residents of Westmoreland Addition, the owners of the majority of the lots in Westmoreland Addition do consent to the substitution of the following declaration of restriction for those hereinbefore mentioned<sup>1</sup>;

NOW, THEREFORE, the Westmoreland Association, the lawful assignee of the rights and powers set forth in the heretofore valid and subsisting Restrictions, pursuant to Section 13 thereof, does hereby amend, modify, annul and add to said Restrictions, declaring those which follow to be sole valid Declaration of Restrictions applicable to Westmoreland Addition and each and every lot contained therein and declares that all lots in Westmoreland Addition shall be held and conveyed subject to all of the restrictions, conditions, covenants, charges and agreements hereinafter set forth:

1. DEFINITIONS: The work "Westmoreland" as used herein shall be held to mean the tract of land hereinbefore described as shown upon said plat of Westmoreland; and if the context requires, shall include, in a collective sense, the inhabitants thereof, and the community established hereon.

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<sup>1</sup> Exhibit A hereto

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The words “restriction” or “restrictions” as hereinafter used, shall be held to include and mean the covenants, conditions, agreements, provisions, easements, restrictions, reservations and charges herein set forth.

The work “street” used herein shall be held to mean such portions of the real estate comprising said Sub-division as have heretofore been dedicated to public use.

The word “plot” as used herein shall be held to mean any piece or parcel of land conveyed as a unit by the company as and for a building site. It may be one lot or more or less than one lot, but no lot or lots shall be divided into plots having less than (60) feet frontage.

2. GENERAL PROVISIONS: The restrictions hereinafter contained have been adopted pursuant to a general plan for the better and uniform improvement and development of Westmoreland and the benefit and protection of all persons who may hereafter become owners of lots therein.

Westmoreland Association shall have the right to construe and interpret the restrictions contained, herein, and its construction or interpretation in good faith shall be final and binding as to all persons or property benefitted or bound by such restrictions. In each case such restrictions shall be given that construction or interpretation which shall best tend toward the consummation of the plan for the improvement of Westmoreland as aforesaid, and if necessary the restrictions may be extended or enlarged by constructions or implication to make them effective to consummate such purpose. All the restriction herein contained shall be construed together, but if it shall be held that any restriction, or any part of any restriction, is invalid or unforcible for any reason whatsoever, no other restriction or restrictions, or any part thereof, shall be thereby affected or impaired.

The restrictions herein contained are created in consideration of the benefits to accrue to Westmoreland and to all parties who are or may become owners of lots therein; and said restrictions shall always be conclusively deemed to have substantial value and no proof to the contrary shall be permitted.

None of the provisions hereof shall be applied to the property designated upon the plat of Westmoreland as lots numbered 50 to 63, both inclusive, said lots having been heretofore conveyed to the Board of Education of the City School District of the City of Toledo, Lucas County, Ohio for school purposes.

The company covenants and agrees that it will not convey any of said ,lots in Westmoreland or contract to convey the same except subject to all of the restrictions herein contained an no covenants provisions, conditions, restrictions or recitals in any deed subsequently executed by the company or by the owner of any lot or lots in Westmoreland shall have the effect of enlarging or diminishing or in any way affecting or placing a construction upon any of said restrictions, except as herein specifically provided.

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### **3. BUILDINGS ALLOWED:**

- a. Westmoreland shall be used for private residences only, and no building shall be erected or maintained thereon except private dwelling houses with cellars, each for occupancy by one family only; not more than one such dwelling house shall be built upon any one plot; provided that private garages for the sole use of the owners and occupants of the plots upon which they erected may be built.
- b. No residence shall be erected or maintained upon any plot which shall cost less than \$45,000.00 or the fairly appraised replacement cost new of a previously existing residence which has been destroyed or removed whichever amount shall be less.
- c. No building, fence, wall or other structure shall be erected or maintained, nor any change or alteration made thereon, unless erected or made in accordance with general plan and specifications showing the nature, kind, shape, height, material, color scheme and location of such structure, and the grading plan of plot to be built upon, which shall have been submitted to the Westmoreland Association and its approval thereof endorsed thereon in writing.

In approving or withholding its approval of any plans and specifications so submitted, the Westmoreland Association may consider, having in mind the contemplated harmonious and artistic development of Westmoreland as a high grade residential subdivision, the appropriateness of the improvement contemplated with relation to improvements for contiguous or adjacent lots, its artistic and architectural merit, its adaptability to the plot upon which it is proposed it shall be erected or made, and such other matters and consideration as in its uncontrolled discretion it may deem to the interest and benefit of Westmoreland as a whole; and any determination made by the Westmoreland Association in good faith shall be binding upon parties in interest.

4. SET BACKS: Upon the Plat of Westmoreland there is marked and designated upon each lot a building line. No building or any part thereof, except as hereinafter provided, shall be erected or maintained closer to any street than the building line aforesaid. The portion of said lots respectively lying between said building line and the line of the street is hereinafter referred to as restricted areas.

Unenclosed covered porches may encroach upon said restricted areas by projecting thereon not more than ten (10) feet. Steps, uncovered porches, terraces and other structures, no part of which is more than three (3) feet above the level of the plot upon which it is built at said building limit line may be built and maintained upon any part of such restricted areas. Bay, bow, box and oriel windows may encroach upon such restricted areas by projecting thereon not more than three (3) feet.

5. FREE SPACES: Free spaces shall be left upon each plot built upon, upon each side of each dwelling house, extending from the street line to a point forty (40) feet in the rear of said

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building line; which free space shall be independent of any free space pertaining to or required for buildings upon contiguous plots.

The aggregate width of such free space on both sides of any dwellings house shall not be less than fifty percent (50%) of the width of the dwelling house erected upon said plot. Not less than three-tenths (3/10) of such aggregate free space shall be left on either side of such dwelling house.

In the event that on account of the irregular shape of any dwelling house proposed to be erected, or the irregular shape of the plat upon which a dwelling house is proposed to be erected, the provision with reference to free space are not, in the opinion of the company, applicable, or if, by reason of the character of that part of the dwelling house which should encroach upon such free space said provisions are not, in the opinion of the company, necessary for the protection of the owners of the adjoining property, then, and in any such event, the width, depth and shape of the free space to be maintained may be determined by the company, and such determination by the company shall be binding upon all parties interested. No building nearer than three (3) feet of the rear line thereof or nearer than five (5) feet of the side line thereof; provided that garages may be built nearer to the side lines than above mentioned with written consent of the owner of the property immediately adjacent to such side line.

No detached garage shall be built upon any plot nearer than forty (40) feet to any building limit line, except in cases of irregular shaped or shallow lots, in which cases the company may permit their erection nearer the building limit lines, then aforesaid.

6. NUISANCES: There shall not be erected, permitted or maintained in Westmoreland any stables, cattle yard, hog pen, flow yard or house, cesspool, privy vault or any form of privy, nor shall any live poultry, hogs, cattle or other livestock, or any noxious, dangerous or offensive thing, whether of the character of those hereinbefore enumerated or not, be permitted or maintained thereof. No business or trade of any character shall be carried on in Westmoreland, provided that this shall not be construed to prevent the maintenance of any office by a duly qualified doctor or dentist. No signs, bill boards or advertising matter of any kind shall be placed or maintained on the property without the consent of the Westmoreland Association in writing, nor shall any lot be used as a dump for material of any sort, or any filling material be brought in and used on any plot except unmixed fresh earth or stone.

A violation of any one of the terms or provisions of this section shall be conclusively deemed to be a nuisance and the determination by the Westmoreland Association, in good faith, that any such violation or alleged violation is such nuisance shall be conclusive and binding. All such nuisances shall be forthwith abated upon notice or demand to that effect from the Westmoreland Association and upon failure so to do the Westmoreland Association or any owner or occupant of any lot in Westmoreland, may summarily abate such nuisance, using such force as may be necessary and entering upon such land as may be necessary for the purpose; and neither the Westmoreland Association nor any such owner or occupant shall be liable for damages in any action or suit, but

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shall be entitled to be paid by and may recover from the owner of the land upon which said nuisance was committed all the cost and expense, including attorney's fees, incurred or expended in abating such nuisance.

7. **RESIDENTIAL USE LIMITATIONS:** No residence in Westmoreland Addition now in existence, or hereafter constructed or conveyed shall be used for any purpose other than single-family residential purposes as interpreted in good faith by the Westmoreland Association. No building, except as herein specifically provided may be constructed or used for any purpose other than single-family residential purposes. In no event may any residence or other building be occupied or regularly or frequently used by any fraternity, sorority, business, corporation, institution, other organization except for Westmorland Association. No residence, building, or plot conveyed after the date of this amendment may be used or occupied contrary to any provision in this Amended Declaration of Restrictions regardless of any use existing as of the date of the amendment. **This section shall be enforced by the Westmoreland Association in the manner provided in Section 6 hereof.**
  
8. **SERVICE OF UTILITIES:** Easements and rights of way are and shall be reserved over and under all lots in Westmoreland for the erection, construction, maintenance and repair of poles, wires, pipes, conduits, appliances and fixtures necessary or proper for the operation and maintenance of serves by any and all public utilities, under such restrictions and conditions as shall not unreasonably interfere with the proper use and enjoyment of the said lots by the respective owners thereof; and the company of such person, firm or corporation operating any such public utility to whom it may assign any or all of said easements and rights of way, shall have the right to enter upon said premises at any and all times for any of the purposes for which said easements and rights of way are reserved.
  
9. **CHARGES FOR MAINTENANCE:** All lots in Westmoreland shall **on and after the date hereof** be subject to the payment of annual dues established by the Westmoreland Association **and to an annual maintenance charge or assessment of not to exceed twenty-five (.25¢) per front foot, which said maintenance charge or assessment shall be paid by the owners thereof to the Westmoreland Association in equal installments in advance semiannually on the first day of January and July in each and every year<sup>2</sup> and dues on or before the date established by the Westmoreland Association.** The Westmoreland Association for itself, its successors and assigns, reserves a lien upon all of said lots for the die and punctual payment of said charges and assessments as hereinafter provided.

In the event that any of said charges and assessments are not paid when due, the Westmoreland Association may, when and as often as such delinquencies occur, proceed by process of law to collect the amount thereof then due by foreclosure of said lien, or otherwise, in such event shall be entitled to recover and have and enforced against said premises a lien for its expenses in that behalf including its attorney fees.

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<sup>2</sup> Exhibit B hereto.

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In computing the frontage of any lot for the purposes of this section its frontage along one street only shall be considered, and in the case of a corner lots the Westmoreland Association shall have the right and privilege to determine which is the front of said lot. In case of irregularly shaped lots, the frontage shall be computed by the Westmoreland Association in accordance with the spirit of this provision and in the light of the purpose to be accomplished, the resulting benefit to the lot in question, and the cost of maintenance to that lot with reference to the other lots in Westmoreland; and any such computation so made by the Westmoreland Association in good faith shall be binding upon the owner of said lot and the owners of other lots in Westmoreland. In any event, any agreement or stipulation as to the frontage of any lot for the purpose of this section made in any deed by the Westmoreland Association or the company to any lot owner shall be held to be conclusive and binding.

Said charge or assessment shall be levied against all lots in Westmoreland and shall be applied only towards the payment of the cost of the following charges, to-wit:

Lighting, cleaning, repairing and maintaining streets, curbs, and sidewalks, including all grass plots and planted areas within curb lines, collecting and disposing of garbage, ashes, rubbish, etc. caring for and improving those lots which may become the property of the Westmoreland Association and all things incident thereto; providing for the protection and security of Westmoreland Addition; removing snow from and cleaning the sidewalks; operating and maintaining storm water drains; for expenses incident to the examination and approval of plans of improvement upon lots as herein provided; to the enforcement of the restrictions herein contained; expense of maintaining the corporate organization of Westmoreland Association or of a successor corporation; expense of doing all things allowed to be done by the Westmoreland Association, in its Articles of Incorporation, By-Laws and Regulation whether now in existence or hereafter established; expense of collection by process of law of any delinquent assessments hereunder, and generally said fund may be applied to such other purposes as the Westmoreland Association in its uncontrolled discretion may deem to the best interest of the owner of lots in Westmoreland or residents therein.

No provision of these restrictions shall be deemed to prevent any lot owner from performing with respect to his own property any maintenance function which may be performed by the Westmoreland Association; but such action by a lot owner shall in no way limit the rights of the Westmoreland Association stated herein.

When any of the aforesaid maintenance functions accrues to the particular benefit of any lot or lots, in the opinion of the Board of the Westmoreland Association, the maintenance charges assessed against those lots may reflect, in comparison to those assessed against the remaining lots, the particular benefit thus derived.

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The Westmoreland Association shall not be held to guarantee the payment of the assessment aforesaid, but will disburse the same in accordance with the terms and conditions hereof without profit to itself over and above the actual cost incurred by it in the administration of said fund.

Such annual assessments maybe adjusted from year to year by the Westmoreland Association as the interest of the property may in its judgment require, but in no event shall the charge in any one year exceed the above mentioned sum of twenty-five cents (.25¢) per front foot. The Westmoreland Association shall exercise its discretion and judgment as the amount of said fund to be expended in connection with each of the purposes for which said fund is collected, and its decision in reference thereto shall be binding upon all parties interested. It does not guarantee the sufficiency of the fund aforesaid for the purposes hereinabove set forth, and it shall have no liability in respect thereto.

10. **POWERS OF WESTMORELAND ASSOCAITON:** The Westmoreland Association or any lawful successor thereto shall be deemed to be authorized by the owners of each lot in Westmoreland Addition, to do all things consistent with this Amended Declaration of Restrictions and with its Articles of Incorporation, By-Laws, and Regulations lawfully established as they may now exist or hereafter be created or amended.

With respect to any of the foregoing purposes or actions set forth in Section 9 hereof which may in the alternative be accomplished by the City of Toledo, or its agencies or compel other public authorities or agencies the Westmoreland Association may take such steps as it deems necessary to petition or col the accomplishment of such purpose or action and the owners of all lots in Westmorland Association are hereby deemed to have appointed irrevocably Westmoreland Association, Inc. or its successor, so land as it shall continue to exist, as the agent of each in such representations before or against The City of Toledo, its agencies or any other public authorities or agencies.

All such actions taken by Westmoreland Association shall be taken in good faith by the trustees of the Westmoreland Association for the benefit of Westmoreland Addition or for the benefit of portion or portions thereof in a manner consistent with the preservation and best interests of Westmoreland Addition as a whole. In taking such actions the judgment of the trustees shall be final and binding upon the owners of all lots in Westmoreland Addition. Nothing in this paragraph shall limit the exercise by any lot owner in any of the foregoing matters of any legal right in the event of failure of the Westmoreland Association to act with respect thereto.

11. **MODIFICATIONS:** All restrictions herein contained, except the restriction set forth in Sections 1, 2, 3(a) and 6 may be annulled, waived, changed and modified or other restrictions imposed by the Westmoreland Association with consent of the owners of a majority of the lots in Westmoreland.

12. **DURATION OF RESTRICTIONS:** All of the restrictions contained herein shall run with the land and bind and inure to the benefit of any and all of the owners of any lot in Westmoreland, and as

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previously modified as hereinabove provided shall continue in force until the owners of majority of the lots in Westmoreland shall have executed and filed for record in the Recorder's Office in Lucas County, Ohio, an appropriate instrument amending, annulling, or cancelling said restrictions.

13. Each grantee of conveyance of a lot or lots or any portion or portions thereof in Westmoreland Addition accepts the same subject to all restrictions, conditions, covenants, reservations, easements, and the jurisdiction, rights and powers of Westmoreland Association and all easements, rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed, shall run with the land and bind any owner of any interest therein, regardless of how acquired, and inure to the benefit of such owner in like manner as though the provisions of these Restrictions were recited and stipulated at length in each and every deed conveyance.

All restrictions, covenants, conditions, agreements and other provisions herein contained shall be deemed subject to and subordinate to all mortgages or deeds of trust in the nature of a mortgage now or hereafter executed, encumbering any of the real property herein described, and none of said restrictions, covenants, conditions, agreements, or other provisions shall in any way reduce the security or validity of any such mortgage or deed of trust in the nature of a mortgage. It is distinctly understood and agreed, however, that if any portion of said property is acquired in lieu of foreclosures of any mortgage, or under the provisions of any deed of trust in the nature of a mortgage, or under any judicial sale, any purchaser at such sale, his heirs, successors, or assigns shall hold any and all property purchased or acquired subject to all the restrictions, covenants, conditions, agreements and other provisions of these Restrictions.

The provisions herein contained shall bind and inure to the benefit of and be enforceable by the Westmoreland Association, or its assigns, or the owners of any land included in Westmoreland, their respective legal representatives, successors, assigns, and failure by the Westmoreland Association or assigns, or any land owner to enforce any of said restrictions shall in no event be deemed a waiver of the right to do so thereafter as to the same breach or as to one occurring prior or subsequent thereto.

IIN WITNESS WHEREOF, Warren K. Badgett, President, and Fran D. Cuthrie, Executive Secretary, have by the authority granted them by the Board of Westmoreland Association<sup>3</sup> executed this instrument this 16<sup>th</sup> day of May 1974.

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<sup>3</sup> Exhibit C hereto.