

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by FRANK J. WINTON, whose address is Suite 209- 26211 Central Park Blvd., Southfield, Michigan 48076 (hereinafter referred to as “Declarant”) and joined in by FLORA JANE WINTON, his wife, whose address is Suite 209 – 26211 Central Park Blvd., Southfield, Michigan 48076; PULTE HOMES OF MICHIGAN CORPORATION, a Michigan corporation, whose address is 6400 Farmington Road, West Bloomfield, Michigan 48033; LAURA B. CROSS, whose address is 3420 Cambridge Road, Detroit, Michigan; and DELLA L. WILSON TRUST (herienafter referred to as “Proprietors”).

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in the Township of Avon, County of Oakland, State of Michigan, which is more particularly described as:

Lot #1 through 158, inclusive; HEATHERWOODS VILLAGE NO. 1 SUBDIVISION, being part of the South 1/2 of Section 14, T.3N., R. 11E., Avon Township, Oakland County, Michigan, and the Common Areas therein, designated as: Arlington Park and Whitney Park, as recorded in Liber 172, Pages 23, 24, 25, and 26 of Plats, Oakland County Records

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions and subject to the provisions of the subdivision Open Space Plan Agreement entered into between the Declarant herein and the Township of Avon, dated the 8<sup>th</sup> day of APRIL, 1980, as recorded in Liber 7807, Pages 686-695, Incl. Oakland County Records, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having and right, title or interest in the described properties or any part thereof, their heirs, personal representatives, successors and assigns, and shall **Xxure** to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

Section 1. "Association" shall mean and refer to HEATHER WOODS VILLAGE HOMEOWNERS ASSOCIATION, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned, operated and maintained by the Association at the time of the conveyance of the first lot, is described as follows:

Arlington Park and Whitney Park

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Frank J. Winton  
\_\_\_\_\_, their successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II  
PROPERTY RIGHTS

Section 1. Owners' Easement of Enjoyment. Every owner shall have a right and easement of enjoyment in and to all of the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to adopt reasonable rules and regulations for the use of the Common Area, including but not limited to, the right to place limitations on the number of guests; to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds of each class of members has been recorded.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. General Restrictions. The following restrictions are hereby placed on all Lots in Heather Woods Village No. 1 Subdivision :

(a) Antennae. No exterior antennae shall be erected or maintained on any Lot or improvement thereon, except that each Lot Owner shall be entitled to erect one television antenna on the exterior of his residence for the sole use of the Lot Owner and his family.

(b) Insurance Rates. Nothing shall be done that will increase the rate of insurance on any Association Property without the approval of the Board, nor shall anything be done that would result in the cancellation of insurance on any Association Property or which would be in violation of any law.

(c) Lot Divisions. No lot in said subdivision may be divided; provided, however, that the Declarant may approve the division of a vacant lot where a portion of said vacant lot is to be combined with an adjoining lot and which thereafter shall be considered to be a part of said adjoining lot for all purposes, including voting rights.

(d) Signs. No sign of any kind shall be displayed to the public view without the approval of the Architectural Committee, except such signs as may be used by Declarant in connection with the development of and sale of residences and Lots and except such signs of customary and reasonable dimensions, as set forth by the Committee, as may be displayed on or from a residence advertising the residence for sale or lease. All signs, except such signs as may be used by Declarant, shall be placed on the exterior of the residence parallel to the exterior wall. Any "For Sale" or For Lease" signs not more than three (3) feet by two (2) feet, plain white with black block letters, shall not require Committee approval.

(e) Animals. No animals of any kind shall be raised, bred or kept, except that a reasonable number of dogs, cats or other household pets may be kept, provided that they are not key, bred or maintained for any commercial purpose. A "Reasonable Number" as used in this Section shall ordinarily mean no more than two (2) pets per household; provided, however, that the Association (or the Architectural Committee – or such other person or entity as the Association may from

time to time designate) may determine that a Reasonable Number in any instance may be more or less.

(f) Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon any property and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any such property without the prior written approval of the Board of Directors.

(g) Exterior Maintenance and Repair. No Improvement upon any property within said subdivision shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair. All other maintenance repair and upkeep shall be the responsibility of the Owner of the property in need thereof.

(h) Appearance of Lot. No garbage or trash containers may be placed in the front of the property for more than a twenty-four (24) hour period. No wash poles or lines or clothing shall be permitted in front or side yard area. The premises shall be kept free of unsightly weeds and trash at all times, and grass shall not be permitted to exceed six (6) inches in length.

(i) Utilities. All utilities, including electric, telephone and television cable lines, shall be underground.

(j) Site Maintenance. The area between the right of way line of the street and edge of the curb, including the sidewalks, shall be maintained by the abutting property Owner. (Except along Arlington Dr., East of Rochester Rd., to the West boundary line of Lots #62 and 27 \_\_\_\_\_, which shall be maintained by the Association.)

(k) Violation of Rules. There shall be no violation of the Rules once adopted by the Board after Notice and Hearing. If any Owner, his family, or any licensee, lessee or invitee violates the Rules, the Board may suspend the right of such person to use the Association properties, under such conditions as the Board may specify, for a period not to exceed thirty (30) days for each violation. Before invoking any suspension, the Board shall give such person Notice and Hearing. In the event any Owner of any Lot shall violate any Rule or regulation which shall result in damage to any part of the Common Area or Improvements thereon, the Board of Directors shall have the right after Notice and Hearing and to the extent allowed by the laws of the State of Michigan to assess the cost of repair of such damages against the Lot of the Owner or Owners responsible for such damage. Such assessment shall be added to and become a part of the Assessment to which such Lot is subject.

(l) Drainage. There shall be no interference with the established drainage pattern over any property within said subdivision unless adequate provision is made for proper drainage and is approved by the Architectural Committee. For the purposes hereof, "Established Drainage" is defined as the drainage which exists at the time the over-all grading of any Association Property is completed, or which is shown on any plans approved by the Architectural Committee. A permanent easement across the Common Area for drainage purposes is hereby granted.

(m) No Hazardous Activities. No activities shall be conducted on any Property and no Improvements constructed on any property which are or might be unsafe or hazardous to any Person or property.

(n) Separate Structures. Any structure erected on the premises, other than the dwelling house, shall conform architecturally to the dwelling house and the plans shall be submitted to the Architectural Committee for approval.

(o) Improvements and Alterations. There shall be no excavation or construction or alteration which in any way alters the exterior appearance of any Improvement, nor removal of any Improvement (other than repairs or rebuilding pursuant to Section 3 (g) hereof) without the prior approval of the Architectural Committee pursuant to Article V hereof.

(p) Residential Use: Rentals. No residence shall be used for any purpose other than single-family residential purposes. Declarant shall not prevent the rental of property within a Residential Area by the Owner thereof for residential purposes, subject to all the provisions of these Restrictions.

(q) Vehicle Storage and Repair. No house trailer, camping trailer, haul trailer, running gear or boat or accessories thereto, truck or pickup or van or camper van, shall be parked, stored, repaired, or maintained on any Lot except within a private garage. This restriction shall no apply to commercial or other vehicles making business or service calls or deliveries to the residents or Owner of Lots or to the Association or to contractors within the Properties.

(r) Exemption of Declarant. Nothing shall limit the right of Declarant to complete excavation, grading and construction of Improvements to any property owned by Declarant, or to alter the foregoing or to construct such additional Improvements as Declarant deems advisable in the course of development so long as any Lot remains unsold, or to use any structure as a model home or real estate sales or leasing office. Declarant need not seek or obtain Architectural Committee approval of any Improvement constructed or placed by Declarant on any property owned by Declarant so long as the Improvement constructed or placed by Declarant does not substantially deviate from the general architectural scheme. The right of Declarant hereunder and elsewhere in these Restrictions may be assigned by Declarant.

#### Section 4. Easements.

(a) Reciprocal Easements. The Declarant hereby reserves for itself so long as it shall own one or more Lots, and for the Association, without limitation, their successors and assigns, a right of way and easement for maintenance and repair of all Common Area Improvements, and the installation, inspection and replacement of utility lines, including but not limited to, water lines, sewer lines, gas lines, telephone lines, television cable antenna lines and such other utility lines and incidental equipment thereon, over, under and across the Common Area and that portion of any Lot situated between and Lot Improvement and the street adjacent

thereto. Declarant or Association shall, except in cases of emergency, furnish to all affected Owners twenty-four (24) hours notice before exercising the rights granted by this Article. Perpetual reciprocal easements for the aforementioned purposes shall exist both for the benefit and burden of all of the Owners.

(b) Easements for Encroachments. If any portion of a Lot Improvement encroaches upon the Common Area, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist, provided such encroachments do not exceed two feet within the boundaries of the Common Area as such encroachments do not touch any buildings or interfere with the use or enjoyment of any building or improvement on the Common Area. If any portion of the Common Area encroaches upon a Lot, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Area or the Lot.

(c) Reservation of Easements. Declarant reserves for itself and the purchasers the use of the easements set forth in this Article II which are intended to and shall be for the benefit of all Owners, and no reference thereto need be maintained in any Deed, instrument of conveyance or any other instrument.

(d) Easement for Utilities. The Declarant hereby grants a right of way around easement for utility purposes, including but not limited to, water lines, sewer lines, gas lines, telephone lines, television cable antenna lines and such other utility lines and incidental equipment over, under and across the Common Area. Such use of easements and rights of way shall be binding upon the Declarant and the Association and their respective successors and assigns.

(e) Easement for additional Common Area.

(i) Each Owner of a Lot subject to this Declaration shall have a non-exclusive easement in common with all other Owners in the project for the use of all of the Common Area.



(e) Easement for Entrance Markers. The Declarant and Association reserves the right to construct, maintain and/or replace entrance markers within the confines of the subdivision at such locations as the Declarant and the Association in their judgement deem necessary.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner (including Declarant) of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, or
- (b) on December 31, 1985

### ARTICLE IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in

such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. The owner further agrees by his acceptance of title to a Lot that the Association shall be vested with the right and power in its own name to take and prosecute all suits which may, in the opinion of the Association, be necessary or advisable for the collection of such delinquent assessments.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Areas

Compulsory Minimum Assessment and

Section 3. /Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Twenty-Five Dollars (\$25.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum; provided, however, that after 50% of the lots have been delivered to the ultimate owners, a compulsory minimum assessment **Twenty-Five**

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. Assessments on unimproved and improved Lots owned by Declarant shall, notwithstanding anything to the contrary in the preceding sentence, be at a rate equal to twenty-five percent (25%) of the assessment rate applicable to Lots owned by the owners other than Declarant. Declarant shall also, however, underwrite any difference between actual expenses of the Association and assessments levied (subject to annual assessment increases of 5%) until Association control passes to Class A Members.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The

Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the Annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate of eight (8%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the line against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE V

### ARCHITECTURAL CONTROL

Section 1. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board or its designated committee, fails to approve or disapprove such design and location within ???? (?)

days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. No fence garden wall, patio screen, dog run, pool enclosure, or other similar devices and/or structures shall be permitted until the plans and specifications thereof shall prior to start of construction, first have been submitted in writing to the Association and approved by the Association; provided, however, that in approving any of the plans and specifications of the herein abovementioned devices and/or structures the Association may require suitable screening with adequate shrubs, landscape materials or other modifications. In approving any of the abovementioned devices the Association shall take into consideration the factors stated in the following paragraph:

A dog run may be approved, subject to all the above, provided that said dog run is attached to the rear of the main structure, does not extend beyond the side yard building lines of the main structure, and does not exceed 54 inches in height. Patio screens may be approved, subject to all of the above, provided that said patio screen is attached to the rear of the main structure, does not exceed six feet in height, 1 foot in depth and 32 feet in width. In any event, no fence shall be permitted in the front yard or the either side yard, except an ornamental fence not exceeding three feet in height. The front and side yards shall include all of the areas from the front lot line back to the rear corner of the building closest to each side lot line. Rear yard enclosures on lots adjoining open space or the Commons Area shall not be permitted. The Declarant hereby expressly states its intention to maintain the open character of this residential area, and further expressly states its intention to discourage yard enclosures. A fence will be permitted to be erected around any privately owned swimming pool as a safety precaution or in accordance with ordinance regulating the construction and use of swimming pools.

Swimming pools are considered structures, as defined under Section 2 hereof. Only "In Ground" pools will be approved in the Subdivision. Nonportable, above-ground swimming pools will not be permitted. "Above Ground" pool is defined as being a swimming pool which projects 18 inches, or more, above grade on any side.

Therefore, the following will apply: For aesthetic and safety reasons, no above-ground swimming pools will be allowed. However, children's pools that comply to the following requirements will be considered wading pools and not above-ground pools; any pool having a retaining wall no higher than 18 inches from ground level to the top edge of the retainer, covering no more than 125 square feet of ground surface, being a type that can be readily emptied, not requiring filtering equipment and being in use only during the period from May 1<sup>st</sup> through October 1<sup>st</sup>.

Section 3. The Association shall have the right to refuse to approve any such plans or specifications or grading plan, which are not suitable or desirable in its sole opinion for aesthetic or other reasons; and in so passing upon such plans, specification and grading, it shall have the right to take into consideration the suitability of the proposed

building or other structure to be built on the site upon which it is proposed to erect the same. It is understood and agreed that the purpose of this paragraph is to cause the platted lands to develop into a beautiful aesthetic, private residential area, and if a disagreement on the points set forth in this section should arise, the decision of the Association shall control and be binding on all parties.

Section 4. In the event that the Association shall have failed to approve or disapprove such plans and location within ten days after the same shall have been delivered to the Association, however, the such approval will no be required, provided the planes and location on the lots conform to these Restrictions and any zoning law applicable thereto.

Section 5. In any case, with or without the approval of the Association no dwelling shall be permitted on any lot in the subdivision unless it complies with the existing ordinance of the Township of Avon, as to square footage, height, size, etc.

Section 6. No building on any of said lots shall be erected that is not in full conformance with the set-back requirements of the Zoning Ordinance of Township of Avon.

## ARTICLE VI

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration

is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners and thereafter by an instrument signed by not less than seventy five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation

(a) Additional residential property and Common Area may be annexed to the Properties with the consent of two thirds (2/3) or each class of members.

(b) Additional land within the area described below may be annexed by the Declarant without the consent of members until December 31, 1985, or until the Declarant loses voting control of the Association as provided in Article II, whichever shall occur first, and provided that FHA and/or VA determines the annexation is in accord with the general plan heretofore approved by it.

A parcel of land located in part of the South 1/2 of Section 14, T. 3 N., R. 11 E., Avon Township, Oakland County, Michigan, being described as: Commencing at the S.W. corner of Section 14, T. 3 N., R. 11 E., N. 00° 14' 16" E., 1421.75 ft. along the West line of said Section 14 to the POINT OF BEGINNING; thence continuing N. 00° 14' 16" E., 60.00 ft.; thence S. 89° 42' 52" E., 600.00 ft.; thence N. 00°