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CITY OF ROCHESTER HILLS

AGREEMENT FOR SUBDIVISION OPEN SPACE PLAN

HEATHERWOOD VILLAGE NO. 3

*agree*

THIS AGREEMENT is made this 7th day of October, 1985, by and between the CITY OF ROCHESTER HILLS, Oakland County, Michigan, herein called the "CITY", 1000 Rochester Hills Drive, Rochester, Michigan 48063 and PULTE HOMES OF MICHIGAN CORPORATION, a Michigan corporation, of 6400 Farmington Road, West Bloomfield, Michigan 48033 herein called the "DEVELOPER".

WHEREAS, the Developer is the owner of land located the City of Rochester Hills, County of Oakland, State Michigan, described as follows:

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See Exhibit "A" attached hereto incorporated herein, and made a part hereof.

RECORDED  
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WHEREAS, Section 1701.2, Subdivision Open Space Plan, of the City of Rochester Hills, Zoning Ordinance provides an optional method for the development of a subdivision with areas to be set aside for the benefit of lot owners therein while maintaining the maximum density requirements of the Zoning Ordinance, and

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WHEREAS, the Developer wishes to develop the hereinabove described property under the provisions of said Section 1701.2, Subdivision Open Space Plan, such property to be subdivided and known as Heatherwood Village No. 3 herein called the Subdivision, and

WHEREAS, the Developer applied for approval under Section 1701.2, Subdivision Open Space Plan, for said Subdivisions at the time of the submission of the proposed plat and final preliminary plat approval has been granted by the City Council of the City as to the final preliminary plat and development of the land described on the attached Exhibit "A".

*OK*

WHEREAS, the Developer wishes at this time to obtain approval of the final plat of Heatherwood Village No. 3, and

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WHEREAS, it is now desirable that the Developer and the City enter into a binding contract relative to the details of development of said Subdivision, as required under the City of Rochester Hills Zoning Ordinance;

NOW THEREFORE, in consideration of the approval of the final plat of Heatherwood Village No. 3 by the City Council of the City of Rochester Hills 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 the Subdivision a right and easement of enjoyment in and to Whitney, Whitney East and Thornridge parks located in Heatherwood Village No. 3 Preliminary Plat, hereinafter referred to as "Common Areas" and hereby covenants for itself, its heirs and assigns that it will convey fee simple title to said Common Areas to the Association hereinafter described, free and clear of all encumbrances and liens, prior to the conveyance of the first lot in the Subdivision.

2. Reference to this Agreement, and to the liber and page on which it is recorded, shall be included in the subdivision restrictions and made a part thereof.

3. Title to the Common Areas shall be vested in the Association hereinafter described as Trustee for the benefit of the lot owners and subject to the right and easement of enjoyment in and to such Common Areas by the lot 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 said lots whether specifically set forth in deeds to the lots or not.

4. Control and jurisdiction over the Common Areas shall be vested in the Association of said lot owners to be known as Heatherwood Village No. 1 Homeowner's Association and referred to herein as the "Association". Such Association shall be organized as a 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 the Subdivision but in any event

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within ninety (90) days following the recording of the final plat of Heatherwood Village No. 3. Membership in the Association shall be mandatory for each home buyer and any successive owner of residential lots in the Subdivision. The Association shall be responsible for the proper maintenance of the open spaces and for compliance with this Agreement. The By-Laws of the Association shall provide for a Board of Directors of not less than five (5) members nor more than fifteen (15) members, and shall provide for governing of the Association in accordance with the Declaration of Covenants, Conditions and Restrictions annexed hereto. The Association shall further have the authority to make and enforce regulations pertaining to the use and maintenance of the Common Areas in accordance with said annexed Restrictions, which regulations shall be binding upon the lot owners.

5. Said Common Areas may be used for the following purposes:

Recreation of the residents and their families consistent with the development plan as approved by the City and drainage and/or retention area as approved by the City. The portions of the Common Areas designated as storm retention basin(s) shall be used for no purposes other than the retention of surface water without the express agreement of the City. Notwithstanding this requirement, the Association may use water from the basins for purposes of irrigation. Maintenance of the retention basins shall include keeping the bottom of the retention basins free from silt and debris, removing harmful algae, maintaining a steel grating across the pond's inlets, the control of erosion and such other maintenance as is reasonable and necessary to the intended functioning of the basins.

6. All residents of the Subdivision and guests accompanying said residents shall have equal access to the Common Areas, subject to reasonable Association Regulations.

7. The Developer hereby consents that taxes assessed against the Common Areas may be prorated among the residential lot owners and billed as a part of the taxes assessed to the individual lots.

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9. In the event that the Association shall at any time fail to maintain the Common Areas in reasonable order and condition, the City may serve written notice upon the Association or upon said lot owners setting forth the manner in which the Association has failed to maintain the Common Areas in reasonable order and 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 City's Council or such other Council, body or official to whom the City's Council shall delegate such responsibility, which shall be held within fourteen (14) days of the notice. At such hearing the City may modify the terms of the original notice as to the deficiencies and/or may give an extension of time within which the deficiencies shall be cured. If the deficiencies set forth in the original notice or in the modifications thereof shall not be cured within thirty (30) days or any extension thereof, the City, in order to preserve the taxable values of the properties within the Subdivision and to prevent the Common Areas from becoming a public nuisance, may enter upon said Common Areas and maintain the same for a period of one (1) year. Said maintenance by the City shall not constitute a taking of the Common Areas nor vest in the public any right to use the same. Before the expiration of the said year the City Council shall upon its own initiative or upon the request of the Association, call a public hearing upon notice to the Association and to the residents of the Subdivision at which hearing such Association or the residents of the Subdivision shall show cause why such maintenance by the City shall not, at the election of the City, continue for a succeeding year. If the City Council shall determine that the Association is ready and able to maintain the Common Areas in reasonable condition, the City shall cease to maintain the Common Areas at the end of said year. If the City Council shall determine that the Association is not ready and able to maintain the Common Areas in a reasonable condition, the City may, at its discretion, continue to maintain said Common Areas during the next succeeding year and, subject to a similar hearing and determination, in each year

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thereafter. The cost of such maintenance by the City, including reasonable administrative costs, shall be assessed against the Association and added to the tax rolls, collected and enforced in a like manner as the general City taxes are collected and enforced. The City shall be, at its option, subrogated to the right of the Association against its members to the extent of that cost, if the City shall, by an official resolution, give thirty (30) days written notice to each member, that the City elects to be subrogated. The owner or owners of each lot shall bear their prorata share of the total costs of maintaining the Common Areas (including, without limitation, the real and personal property taxes assessed against the Association or its property and insurance premiums on insurance policies maintained with respect thereto), which shall constitute a lien against each owner's lot or lots and shall be paid in accordance with the Declaration of Restrictions for the Subdivision. In the event that the City declares the existence of any emergency upon, caused by or relating to the Common Areas or the storm water retention basins which threatens the public health, safety or general public welfare, the City shall have the right immediately and without notice to enter the Common Areas and storm water retention basins and to take corrective action, and any expense so incurred shall be collected by the City as otherwise provided in this paragraph.

9. Notwithstanding any other provision of this Agreement, the Developer reserves the right to grant easements within the Common Areas for the installation, repair and maintenance of water mains, sewers, drainage courses and other public utilities, subject to the approval of the City, provided that such utilities shall be installed in such manner as to minimize damage to the natural features of the Common Areas.

10. Additional uses for the Common Areas may be established, if approved in writing, by not less than fifty-one (51%) percent of said lot owners and thereafter ratified by the City's Council.

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11. The Developer has submitted to the City a certain Declaration of Restrictions which shall be recorded and together with this Agreement shall constitute restrictions running with the land and applicable to said Heatherwood Village No. 3.

12. Subsequent to the recording of this Agreement and the companion Declaration of Restrictions with regard to the Subdivision, additional lands may be added to and made subject to the operation of this Agreement solely by action of the Developer and the City, and without the approval or consent of any owner or mortgagee, which addition shall be described as an amendment to the Agreement, shall contain a metes and bounds description of the lands to be added to the operation of the Agreement and shall include the name or description of any Common Areas included within any such lands.

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

IN WITNESS THEREOF, the parties hereto have set their hands and seals on the date above written.

WITNESSED BY:

Dolly Zimmerman  
Dolly Zimmerman  
Karen Koppe  
Karen Koppe

SIGNED BY:

PULTE HOMES OF MICHIGAN CORPORATION  
a Michigan corporation

By: Thomas D. Eckert  
Thomas D. Eckert  
Its: President

STATE OF MICHIGAN)  
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 7th day of October, 1985, by Thomas D. Eckert, President of Pulte Homes of Michigan Corporation, a Michigan corporation, on behalf of the corporation.

My Commission Expires: 10-25-87

KATHLYN J. BESSONEN  
Notary Public, Oakland County, Mich  
My Commission Expires Oct. 25, 1987

Kathlyn J. Bessonnen  
Kathlyn J. Bessonnen  
Notary Public

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WITNESSED BY:

SIGNED BY:

CITY OF ROCHESTER HILLS

Doris J. Keylor  
Doris J. Keylor

By: Billie M. Ireland  
Billie M. Ireland  
Its: Mayor

Beverly A. Jasinski  
Beverly A. Jasinski

By: Betty Adamo  
Betty Adamo  
Its: Clerk

STATE OF MICHIGAN)  
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this  
8th day of December, 1986 by Billie M. Ireland and  
Betty Adamo the Mayor and  
clerk respectively, of the City of Rochester  
Hills, a Michigan municipal corporation, on behalf of it.

My Commission Expires:  
BEVERLY A. JASINSKI  
Notary Public, Oakland County, MI  
My Comm. Expires Nov. 13, 1988

Beverly A. Jasinski  
Beverly A. Jasinski  
Notary Public

DRAFTED BY:

WHEN RECORDED, RETURN TO:

Thomas D. Eckert  
Pulte Homes of Michigan Corporation  
6400 Farmington Road  
West Bloomfield, MI 48033

Clerk  
City of Rochester Hills  
1000 Rochester Hills Drive  
Rochester Hills, MI 48063

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EXHIBIT "A"

"Heatherwood Village No. 3", part of the S. 1/2 of Section 14, T. 3N., R. 11E., City of Rochester Hills, Oakland County, Michigan, more particularly described as commencing at the W. 1/4 corner of said Section 14; thence along the E. & W. 1/4 line of said Section 14, N. 88 07' 12" E., 1790.56 feet to the POINT OF BEGINNING; thence continuing along said E. & W. 1/4 line, N. 8d 07' 12" E., 905.08 feet to the Center of said Section 14; thence continuing along said E. & W. 1/4 line, N 87 58' 41" E., 1349.56 feet; thence S. 00 50' 00" W., 1223.98 feet; thence S. 83 29' 00" W., 1369.67 feet to a point on the easterly line of "Heatherwood Village No. 2" subdivision recorded in Liber 183 of plats: Pages 30 thru 34, both inclusive, of G.C.R.; thence along the easterly and northerly line of said "Heatherwood Village No. 2" the following eight courses and distances, N. 20 55' 27" E., 159.33 feet and N. 04 34' 09" E., 53.08 feet and N. 08 56' 47" E., 295.92 feet and N. 85 22' 07" W., 120.00 feet and N. 65 24' 35" W., 65.15 feet and N. 89 30' 00" W., 123.73 feet and N. 59 10' 51" W., 751.50 feet and N. 01 52' 48" W., 345.00 feet to the point of beginning and contains 49.776 acres.

Consisting of 134 lots numbered 296 through 429, both inclusive and three private Parks.

Excepting herefrom a parcel described as part of the S.E. 1/4 of said Section 14, more particularly described as commencing at the Center of said Section 14, N. 87 58' 41" E., 722.82 feet and S. 00 13' 35" W., 180.14 feet to the POINT OF BEGINNING; thence S. 00 13' 35" W., 200.00 feet; thence S. 87 58' 41" W., 150.00 feet; thence N. 00 13' 35" E., 200.00 feet; thence N. 87 58' 41" E., 150.00 feet to the point of beginning and contains 0.688 acres.

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