

AGREEMENT FOR
SUBDIVISION OPEN SPACE PLAN

THIS AGREEMENT made this 5th day of DECEMBER, 1979, by and between the TOWNSHIP OF AVON, 47 Pine Street, Rochester, Michigan 48063 (hereinafter referred to as the "Township") and FRANK J. WINTON of 26211 Central Park Blvd., Southfield, Michigan 48076 (hereinafter referred to as the "Developer")

W I T N E S S E T H :

WHEREAS, Developer is the owner of a certain parcel of land located in the South $\frac{1}{4}$ of Section 14, Town 3 North, Range 11 East, Avon Township, Oakland County, Michigan, as more particularly described on Exhibit "A" attached hereto and mad a part hereof; and

WHEREAS, Developer has previously received preliminary plat approval from the Township in connection with the development of the lands described on the attached Exhibit "A" as a single-family residential subdivision, to be known as Heather Woods Village Subdivisions (hereinafter referred to as the "Subdivision"); and

WHEREAS, Developer is desirous of obtaining final plat approval at this time of the plat of Heather Woods Village Subdivision No. 1 and at future dates the plats of Heather Woods Village Subdivision No. 2 and No. 3; and

WHEREAS, Developer and Township are desirous of entering into a binding agreement with respect to the development of the Subdivisions and the use and government of the common area contained therein for the use of all lot owners in the Subdivisions.

NOW, THEREFORE, in consideration of the approval of the Township of the final plats of Heather Woods Village Subdivisions, and the mutual covenants and conditions herein contained, the parties hereto do hereby join in the execution of this Agreement for Subdivision Open Space Plan (hereinafter referred to as the "Agreement") and agree as follows;

1. Developer hereby dedicates and conveys to each owner of a lot in The Subdivisions (hereinafter referred to as "Owner") a right of use and easement of enjoyment in and to Arlington Park, Whitney Park, Thornridge Park and Baker Park (hereinafter referred to as the "Common Area"), as described on the plats of the Subdivisions, subject to the reservations hereinafter contained. For purposes of this Agreement, an Owner shall include the owner or owners of the fee simple title to any lot in the Subdivision (other than the Owners of a lot with respect to which there is an outstanding land contract), together with the owner or owners of a land contract vendee's interest in any such lot.

2. Reference to this Agreement and to the liver and page on which it is recorded shall be included in the Declaration of Restrictions of the Subdivision.

3. Within ninety (90) days after the date of the recording of the plat or plats of the Subdivision, or immediately prior to the first conveyance of any lot in the Subdivision by Developer, the Developer agrees to convey title to the Common Area in such plat or plats to the Association hereinafter described, as trustee for the benefit of all Owners, free and clear of all encumbrances and liens, excepting a certain Declaration of Restrictions submitted to and approved by the Township concurrently herewith, the right of use and easement of enjoyment in and to such Common Area by the Owners, the reservation by the Developer of the right to grant easements in accordance with Paragraph 8 hereof, easements of record and zoning. In no event, however, shall said Association be liable for the payment of any debts or liabilities incurred by the Developer and constituting a lien on the Common Area. The right of use and easement of enjoyment of the Owners shall not be personal, but shall be considered appurtenant to each lot and shall pass with title to any lot whether or not specifically set forth in the deeds to individual lots.

4. Control and jurisdiction over the Common Area shall be vested in the Heather Woods Village Homeowners Association, a Michigan nonprofit corporation

(hereinafter referred to as the "Association"), to be organized pursuant hereto.

The Association shall be organized as a nonprofit corporation for a perpetual term under the laws of the State of Michigan. Such Association shall be incorporated prior the sale of any of the lots in the Subdivision, but in any event, within ninety (90) days following the recording of the plat, or plats, of the Subdivision.

Membership in the Association shall be mandatory for each Owner in the Subdivision.

The Association shall be responsible, at its sole expense, for the proper maintenance of the Common Area (including the storm water retention basins located therein) 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 three (3) members, nor more than nine (9) members. The Association shall have two class of voting membership: Class A members shall be all Owners, with the exception of the developer, and shall be entitled to one (1) 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 members shall be the developer 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 firstly:

- (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, 1984.

The Association shall have the authority to make and enforce regulations pertaining to the use and maintenance of the Common Area, which regulations shall be binding upon all Owners.

5. The Common Area may be used for park, recreation, and related uses, including hiking, nature study, picknicking, and such other uses for the benefit of the Owners as may be determined, from time to time, by the Association, to be in keeping with the nature of the area. The portions of the Common Area 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 Township of Avon. 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, removal of 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 Area.

7. In the event that the Association shall at any time fail to maintain the Common Area (including without limitation, the storm retention basins therein) 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 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, of such other 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 modification thereof shall not be cured within said thirty (30) days or any extension thereof, the Township, in order to prevent the Common Area 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 the 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 residents of the Subdivision 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 determine that the Association is ready and able to maintain the Common Area in reasonable condition, the Township shall cease to maintain the Common Area at the end of said year. If the Township shall determine that the Association is not ready and able to maintain the Common Area in a reasonable condition, the Township may, at its discretion, continue to maintain said Common Area during the next succeeding

year and, subject to a similar hearing and determination, in each year thereafter. The cost of maintenance by the Township shall be assessed against the Association and added to the tax rolls, collected and enforced in a like manner as the general Township taxes are collected and enforced. The Township shall be, at its option, subrogated to the right of the Association against 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, that the Township elects to be subrogated. The Owner or Owners of each lot shall bear their prorata share of the total costs of maintaining the Common Area (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 Township declares the existence of an emergency upon, caused by or relating to the Common Area or the storm water retention basins which threatens the public health, safety or general public welfare, the Township shall have the right immediately and without notice to enter the Common Area and storm water retention basins and to take corrective action.

8. Notwithstanding any other provisions of this 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, water retention, and other public utilities, subject to the approval of the Township, provided that such utilities shall be installed in such a manner as to minimize damage to the natural features of the Common Area.

9. Additional uses for the Common Area may be established if approved in writing by not less than fifty-one percent (51%) of said lot owners and thereafter ratified by the Township.

10. The Developer has submitted to the Township a certain Declaration of Restrictions which has been approved by the Township and which shall be recorded

subsequent to the recording of this Agreement and together with this Agreement shall constitute the restrictions running with the land and shall be applicable to the Subdivision.

11. 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 Township, 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 Area included within any such lands.

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

IN WITNESS WHEREOF, the parties have set their hands and seals at the Township of Avon, Oakland County, Michigan on the date above.

WITNESSES:

Elaine J. Seal

FRANK J. WINTON

Glenna H. Hawley

TOWNSHIP OF AVON

MARCELLA PROPST

By: _____
EARL E. BORDEN, SUPERVISOR

BETTY ADAMO

