

DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS

**ARTICLE I**

DEFINITIONS

Section 1. "Association" shall mean and refer to North Fairview Farms Homeowners' Association, its successors and assigns.

Section 2. "Owner" and/or Member' 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. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners.

Section 4. "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 5. "Declarant" shall mean and refer to PULTE HOMES OF MICHIGAN CORPORATION, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 6. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions applicable to the Properties recorded in the Office of the Register of Deed, Oakland County, Michigan.

Section 7. "Properties" shall mean and refer to that certain real property described in the Declaration and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**ARTICLE II**

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to 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 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 the owner's Lot remains unpaid;

(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 is signed by two-thirds (2/3) of all members.

Section 2. Delegation of Use. Any owner may delegate, in whole or in part, in accordance with the Bylaws, the owner's right of enjoyment to the Common Area and facilities to the member's family, tenants, or contract purchasers who reside on the property.

### **ARTICLE III**

#### **MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every owner 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. Members 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.

### **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 on 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's fees, shall also be the personal obligation of the person(s) who was(were) the Owner(s) of such property at the time when the assessment fell due.

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 Area. Notwithstanding anything contained herein to the contrary, in the event the Association fails or refuses to provide the necessary repairs, maintenance, operation management and

improvement of the Common Areas, then and in such event the City of Rochester Hills shall have the right to assess all costs for the same under and pursuant to this Declaration and each Owner of such Lot consents to such assessment and agrees that such assessment shall be payable on demand to the City of Rochester Hills. In addition to other methods of collection, the City of Rochester Hills shall have the right to place such assessment on the City of Rochester Hills tax rolls of the assessed property.

### Section 3. Maximum Annual Assessment.

(a) 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) The maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of all members who are voting in person or by proxy, at a meeting called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

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 all 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 twenty (20) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all members entitled to vote shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to a ten (10) day 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 sixty (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.

Section 7. Annual Assessments Due Dates. 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 date(s) 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 Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six (6%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien 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 the Owner's 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. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## **ARTICLE V**

### **CONTROL & ENFORCEMENT**

The Association shall appoint a Control & Enforcement Committee. The Committee shall consist of three (3) members to be appointed by the Board of Directors. One member of the Committee shall be appointed for every three members elected to the Board of Directors. The Control & Enforcement Committee will then abide by the following Committee rules when acting on behalf of the Association in recommending approval or rejection.

1. No building or other structure including swimming pools, shall be commenced, erected or maintained, nor shall any addition to or change or alteration to any structure be made (except interior alterations), until the plan and specifications prepared by a competent architect showing the nature, kind, shape, height, materials, color scheme, location on lots and approximate cost of such structure and the grading plan of the lot to be built upon shall have been submitted to and approved in writing by the Association. A copy of the plans and specifications as finally approved shall be lodged permanently with the Association.

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 plans and specifications the Association may require suitable screening with adequate shrubs, landscape materials or other modifications. In approving any plans and specifications, the Association shall take into consideration the factors stated in the following paragraphs.

a) 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 and does not exceed fifty-four (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 (6') feet in height, sixteen (16') feet in depth and thirty-two (32') feet in width.

b) In any event no fence shall be permitted in the front yard or in either side yard except an ornamental fence not exceeding three (3') 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 Common 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 in accordance with ordinances regulating the construction and use of swimming pools.

c) Swimming pools are considered structures as defined under Paragraph 1 hereof. Only "in-ground" pools will be approved. Nonportable, above-ground swimming pools will not be permitted. "Above-ground" pool is defined as being as swimming pool which projects eighteen (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 eighteen (18) inches from ground level to the top edge of the retainer, covering no more than one hundred twenty-five (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 1st through October 1st.

3. The Association shall have the right to refuse to approve any such plans or specifications or grading plans, 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 paragraph should arise, the decision of the Association shall control and be binding on all parties.

4. In the event that the Association shall have failed to approve or disapprove such plans and location within thirty (30) days after the same shall have been delivered to the Association, then such approval will not be required. However, the plans and location on the lots must still conform to these restrictions and any zoning law or building code applicable thereto.

## **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 judgment or court order shall in no way effect 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 (90%) percent of the Owners, and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the Consent of two-thirds (2/3) of all members.

## ARTICLE VII

### GENERAL RESTRICTIONS AND EASEMENTS

Section 1. The following restrictions are hereby placed on all Lots:

(a) Antenna. No exterior antenna shall be erected or maintained on any lot or improvement thereon in the subdivision, except that each lot owner shall be entitled to erect one television antenna on the exterior of his or her residence for the sole use of the lot owner and his or her family. Notwithstanding the above restriction, each lot owner shall be entitled to erect one satellite dish antenna less than one meter in diameter on his or her residence for the sole use of the lot owner and his or her family.

(b) Insurance Rates. Nothing shall be done or kept which will increase the rate of insurance on any Association property without the approval of the Board, nor shall anything be done or kept which would result in the cancellation of insurance on any Association property or which would be in violation of any law. The aforementioned shall include but not be limited to unsafe storage of flammable materials, storage of personal property, and any unlawful activities on the Properties.

(c) Lot Divisions. No Lot 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 Control & Enforcement Committee, except such signs as may be used by Declarant in connection with the development of the Subdivision and for the sale of residences and lots and except such signs of customary and reasonable dimensions as set forth by the Control & Enforcement 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 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 kept, bred or maintained for any commercial purposes. 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 Control & Enforcement 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 the Properties and no odors shall be permitted to arise there from 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 said Properties 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 Association.

(g) Exterior Maintenance and Repair. No improvement upon the Properties 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 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 areas. 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 the Brewster and Dutton Roads, and then this area shall be maintained by the City of Rochester Hills and/or the Oakland County Road Commission.)

(k) Drainage. There shall be no interference with the established drainage pattern over any property unless adequate provision is made for proper drainage and is approved by the Control & Enforcement Committee. For the purposes hereof, "Established Drainage" is defined as the drainage which exists at the time the overall grading of the Properties is completed or which is shown on any plans approved by the Control & Enforcement Committee.

(l) No Hazardous Activities. No activities shall be conducted on the Properties and no improvements constructed on the Properties which are or might be unsafe or hazardous to any person or property.

(m) 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 Control & Enforcement Committee for approval.

(n) Improvements and Alterations. There shall be no excavation or construction or alteration which in any way alters the exterior appearance of any improvements, nor removal of any improvement without the prior approval of the Control & Enforcement Committee.

(o) Residential Use: Rentals. No residence shall be used for any purposes other than single-family residential purposes. This provision 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 Declarations.

(p) Vehicle Storage and Repair. No house trailer, camping trailer, hauling 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 not apply to commercial or other vehicle making business or service calls or deliveries to the residents or Owners of Lots or to the Association or the Contractors within the properties.

(q) Exemption of Declarant. Nothing in these Restrictions 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 of the Subdivision so long as any Lot remains unsold, or to use any structure in the Subdivision as a model home or real estate sales or leasing office. Declarant need not seek or obtain Control & Enforcement 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 on any such property does not substantially deviate from the general architectural scheme. The rights of Declarant hereunder and elsewhere in these Restrictions may be assigned by Declarant.

## Section 2. 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 Areas, 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, 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 one foot within the boundaries of the Common Area and 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 or improvements thereon 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 of the existing and additional Subdivision property the use of the easements set forth in this Article which are intended to and shall be for the benefit of all Owners, and no reference thereto need be made in any Deed, instrument of conveyance or any other instrument.

(d) Easement for Utilities. The Declarant hereby grants a right of way and 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 utility easements and rights of way shall be binding upon the Declarant and the Association and their respective successors and assigns.

(e) Easement for Entrance Markers. The Declarant and Association reserve the right to construct, maintain, and/or replace entrance markers adjacent to entrances to the Subdivision.

## **ARTICLE VIII**

### **VOTING LIMITATIONS**

Suspension of Voting Rights. If any Owner, family, or any licensee, lessee or invitee violates these Restrictions and/or Subdivision Rules once adopted by the Board, the Board may suspend the right of such person to vote under such conditions as the Board may specify, for a period not to exceed thirty (30) days for each violation. Before invoking any such suspension of voting rights, the Board shall give such person Notice and an opportunity to be heard, and shall make appropriate findings of fact based on the record before the Board.

## **ARTICLE IX**

### **POWERS AND DUTIES OF THE ASSOCIATION**

Section 1. Association Duties. The Association shall have the obligation, subject to and in accordance with these Restrictions, to perform each of the following duties for the benefit of the Owners:

(a) Association Property. To accept and exercise jurisdiction over all property, real and personal, conveyed free and clear of all liens and encumbrances to the Association by Declarant, including (1) Common Areas, (2) easements for operation and maintenance purposes over any common areas, and (3) easements for the benefit of Association members within the Common Areas.