

AGREEMENT FOR OPEN SPACE PLAN  
WHISPERING WILLOWS SUBDIVISION

THIS AGREEMENT IS MADE THIS 13th DAY OF SEPTEMBER 1979, by and between the Township of Avon, Oakland County, Michigan, herein called the "Township", 407 Pine Street, Rochester, Michigan and Crooks Wood Development, Inc., a Michigan Corporation, 3935 Dutton Road, Pontiac, Michigan 48057, herein called the "Developer".

WITNESSETH:

WHEREAS, the Developer is the owner of the land located in the Township of Avon, County of Oakland, State of Michigan, described as follows:

"WHISPERING WILLOWS NO. 1", part of the North 1/2 of Section 28, T.3 N., R.11 E., Avon Township, Oakland County, Michigan, being more particularly described as follows:

Beginning at a point located N. 87°34'31" E. along the North Line of Section 28 and the centerline of Hamlin Road, 366.38 ft. from the North 1/4 corner of said Section 28; thence continuing along said line N. 87°34'31" E., 531.96 ft.; thence S. 02°53'10" E., 937.16 ft.; thence N. 87°14'15" E., 314.56 ft.; thence S. 02°26'40" E., 172.73 ft.; thence S. 86°48'31" E., 898.41 ft.; thence S. 01°43'02" E., 175.63 ft.; thence S. 88°32'02" E., 333.14 ft., to a point on East line of said Section 28, said point being S. 01°43'02" E., 1413.00 ft. from the Northeast corner of Section 28; thence S. 01°43'02" E., along the East line of Section 28 and the centerline of Livernois Road, 177.50 ft.; thence N. 88°32'02" W., 1227.34 ft.; thence S. 02°26'40" E., 434.76 ft.; thence S. 68°01'34" W., 143.66 ft.; thence S. 67°47'19" W., 190.00 ft.; thence N. 64°11'29" W., 93.51 ft.; thence N. 89°30'00" W., 180.00 ft.; thence N. 83°41'40" W., 102.55 ft.; N. 82°41'06" W., 182.00 ft.; thence along a curve to the right of radius 340.00 ft. (long chord bears N. 07°39'05" E., 4.00 ft.) an arc distance of 4.00 ft.; thence N. 82° 00' 42" W., 130.00 ft.; thence S. 07° 20' 07" W., 168.52 ft.; thence S. 71°16' 11" E., 117.10 ft.; thence along a curve to the right of radius 240.00 ft. (long chord bears S. 40° 09'44" W., 102.38 ft.) an arc distance of 103.17 ft.; thence N. 37°31'22" W., 135.00 ft.; thence S. 66°48'04" W., 51.95 ft.; thence N. 84°33'02" W., 51.95 ft.; thence N. 58°33'14" W., 29.18 ft.; thence N. 31°12'04" E., 107.03 ft.; thence N. 18°08'57" E., 111.01 ft.; thence N. 05°05'53" [sic; 53"] E., 111.01 ft.; thence N. 07°57'15" W., 111.01 ft.; thence N. 21°15'00" W., 193.59 ft.; thence N. 13°35'32" W., 65.30 ft.; thence N. 86°53'37" W., 125.00 ft.; thence along a curve to the right of radius 300.00 ft. (long chord bears N. 10°11'48" E., 138.06 ft.) an

arc distance of 139.31 ft.; thence N. 23°30'00" E., 179.30 ft.; thence along a curve to the left of radius 790.00 ft. (long chord bears N. 07°37'30" E., 432.19 ft.) an arc distance of 437.77 ft.; thence N. 08°15'00" W., 250.40 ft.; thence along a curve to the right of radius 200.00 ft. (long chord bears N. 39°39'45" E., 296.85 ft.) an arc distance of 334.49 ft.; thence N. 87°34'31" E., 43.00 ft.; thence N. 07°02'28" E., 60.83 ft.; thence N. 00°03'01" W., 185.15 ft. to the point of beginning and containing 51.513 acres, more or less. This plat contains 109 lots numbered 1 to 109, both inclusive and 4 private parks known as Entree Park, Starr Park, Willow Park and Leaf Park, reserved for the use of the lot owners.

WHEREAS, Developer has previously received preliminary plat approval from the Township in connection with the development of the lands as a single family residential subdivision, to be known as WHISPERING WILLOWS #1 (hereinafter referred to as the "Subdivision"); and

WHEREAS, Developer is desirous of obtaining final plat approval at this time of the plat of the Subdivision; and

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

NOW, THEREFORE, in consideration of the approval of the Township of the final plat of WHISPERING WILLOWS #1, and of 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 Subdivision (hereinafter referred to as "Owner"), a right of use and easement of enjoyment in and to Starr Park, Willow Park, Entree Park and Leaf Park (hereinafter referred to as the "Common Areas"), as described on the plat of the Subdivision, 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 liber 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 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 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 Areas 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 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 WHISPERING WILLOWS HOMEOWNERS ASSOCIATION, INC., a Michigan non-profit corporation (hereinafter referred to as the "Association"), to be organized as a non-profit 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 within ninety (90) days following the recording of the plat 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 Areas (including the storm water retention basin 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 fifteen (15) members. The Association members shall be entitled to one (1) vote for each lot in which they hold the interest required for membership. When more than one (1) person holds any such interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any one (1) lot. 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, picnicking, 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, 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.

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, or 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 extensions 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 \_\_\_\_\_ 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 \_\_\_\_\_ 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 any 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 basins, 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 the Agreement and together with this Agreement shall constitute 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.

WITNESSED BY:

\_\_\_\_\_  
William A. Walls Jr.

\_\_\_\_\_  
Marie M. Soule

SIGNED BY:

Crookwood Development, Inc. a Michigan Corporation

By: President

\_\_\_\_\_  
Steven Stolaruk

\_\_\_\_\_  
Doris J. Keylon

The Township of Avon

\_\_\_\_\_  
Betty Adams

\_\_\_\_\_  
By: Earl E. Borden, Supervisor

\_\_\_\_\_  
By: Thelma G. Spencer, Clerk

STATE OF MICHIGAN     )  
  ss  
COUNTY OF OAKLAND    )

On this 15th day of April, A.D., 1980, before me, a Notary Public, in and for said county, personally appeared Earl. E. Borden and Thelma Spencer to me personally known, who being by me duly sworn, did each for himself say that they are respectively the Supervisor and the Clerk of the Township of Avon, the municipal corporation named in and which executed the within instrument, and that the seal affixed to said instrument is the corporate seal of said municipal corporation by authority of its Township Board, and said deponents acknowledged said instrument to be the free act and deed of said municipal corporation.

My commission expires:     9/30/1980.

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Notary Public Betty Adams

Oakland County, Michigan

STATE OF MICHIGAN     )  
  ss  
COUNTY OF OAKLAND    )

The foregoing instrument was acknowledged before me this 13th day of September 1979 by Steven Stolaruk, President of Crookwood Development, Inc., a Michigan Corporation on behalf of said corporation.

My commission expires:     May 31, 1983

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Mark J. Stolaruk Notary Public

Drafted by: William A. Walls, Jr., 2216 Crooks, Auburn Hts., MI 48057

Return to:     Township of Avon  
                  Rochester, Michigan 48063  
                  P.O. Box 250