

September 10, 1979

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR WARNER CREEK PROPERTIES

WHEREAS, the Developer is the owner of real property described in Article II of this Declaration together with other contiguous properties and desires to create thereon a residential community with permanent open spaces and other common facilities for the benefit of said community; and,

WHEREAS, the Developer wishes to provide for the preservation of the values and amenities in said community and for the maintenance of open spaces and other common facilities, and to this end desires to subject the real property described in Article II, together with such additions as may hereafter be made thereto, (as provided in Article II), to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the property and each owner thereof; and,

WHEREAS, the Developer has deemed it desirable, for the efficient preservation of the values and amenities in the community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities, and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created;

NOW, THEREFORE, the Developer declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions"), hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1: "Association" shall mean and refer to the

Warner Creek Home Owners' 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 purchasers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3: "Properties" shall mean and refer to all existing real property hereinafter described and such additions as may hereafter be brought within the jurisdiction of the Association.

Section 4: "Common areas" shall mean any real property owned by the Association for the common use and enjoyment of the owners.

Section 5: "Lot" shall mean and refer to any lot or portion of Lots or plot of land shown on any recorded subdivision map of the properties with the exception of any common area.

Section 6: "Developer" shall mean and refer to 401 Service Corporation, its successors and assigns.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

#### ADDITIONS THERETO

Section 1: Existing Property. The real property which is, and shall be held, transferred, sold, conveyed, and occupied, subject to this declaration is located in the Township of Pittsfield, County of Washtenaw, State of Michigan,

and is more particularly described as follows:  
Commencing at the East one-quarter corner of Section 27, Town 3 South, Range 6 East, Pittsfield Township, Washtenaw County, Michigan; thence North 88° 41' 40" West 1329.58 feet along the East and West one-quarter line of said Section to the Point of Beginning; thence South 01° 22' 30" West 128.97 feet; thence North 88° 37' 30" West 145.00 feet; thence North 48° 18' 20" West 86.56 feet; thence North 88° 37' 30" West 350.00 feet; thence South 77° 43' 50" West 108.74 feet; thence North 67° 44' 20" West 250.30 feet; thence North 16° 37' 50" East 112.01 feet; thence North 34° 34' 00" East 285.05 feet; thence North 01° 23' 10" East 177.54 feet; thence North 59° 10' 00" East 188.79 feet; thence North 30° 50' 00" West 143.00 feet; thence North 78° 09' 20" West 97.36 feet; thence North 30° 50' 00" West 160.00 feet; thence North 59° 10' 00" East 960.25 feet; thence South 01° 22' 30" West 1401.27 feet along the East line of the West one-half of the Northeast one-quarter of said Section to the Point of Beginning. Being a part of the East one-half of Section 27, Town 3 South, Range 6 East, Pittsfield Township, Washtenaw County, Michigan, and containing 21.49 acres of land, more or less. To be known as Warner Creek Subdivision, containing 58 lots.

all of which real property is referred to herein as "existing property."

Section 2: The Developer, its successors and assigns, shall have the right to bring additional lands located in Section 27, Pittsfield Township, Washtenaw County, Michigan, under the covenants and restrictions set forth in this Declaration and be made subject thereto to the same extent as if such addition were a part of the existing property with owners of lots therein subject to like assessments and entitled to like benefits in common properties as owners of lots in the existing property. Such additions may be made by filing with the Washtenaw County Register of Deed's Office, a declaration to that effect.

### ARTICLE III

#### PROPERTY RIGHTS

Section 1: Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to any common area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) It is the right of the Association to charge reasonable fees for the use and maintenance of the common areas and any recreational facilities which may hereafter be situated thereon;

(b) The right of the Association to suspend the voting rights and the right to use the common areas and any recreational facilities erected thereon of 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 signed by 3/4 of the owners agreeing to such

dedication or transfer 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: Title to Common Properties. The Developer shall retain the legal title to the common properties but no longer than such time as it has sold 75 percent of the lots it plans to develop as the residential community, in Section 27, Pittsfield Township, but not later than five (5) years from the date of the recording of this document, when Developer shall convey to the Association such common properties with all improvements thereon.

#### ARTICLE IV

##### 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: Voting Rights. Each lot shall be entitled to one (1) vote. An owner shall be entitled to as many votes as the number of lots which the owner (and his common owners, if any) owns. Each lot shall have but one vote irrespective of the number of common owners thereof, which vote shall be cast as such owners agree.

#### ARTICLE V

##### HOME OWNERS' ASSOCIATION

Section 1: Creation of Home Owners' Association. The Developer shall establish a Home Owners' Association within one year of the date of the recording of the first plat of the subdivision. The business of the Association shall be managed by a Board of Directors pursuant to By-laws established by the membership at its first annual meeting within thirty (30) days after the Association has been established. Thereafter the Board of Directors shall be elected and the Association managed pursuant to the By-laws adopted by the owners, subject to

the terms and conditions of this Declaration.

Section 2: Functions and Responsibilities of the Association.

(a) The Association shall hold title in fee simple to the common areas, which property shall be administered and maintained by the Association for the use, enjoyment and convenience of the owners of all lots in the properties.

(b) The Association shall administer and maintain such easements as it may from time to time acquire hereunder, or in any other way for the benefit of the owners of all lots.

(c) The Association shall pay all real estate taxes or other charges which may be assessed against or levied upon the lands to which the Association has title in fee, provided, however, the Association shall not be responsible for any tax with respect to any property in which it has merely an easement. The Association shall be responsible for the maintenance, repair and replacement of improvements in the common areas including all sidewalks and retention ponds and basins within the properties and the Association shall be empowered to contract and furnish such services, including, a security guard service, as shall be necessary or appropriate to the maintenance, protection and preservation of the real property of the Association and of its members. The Association may also contract for such other service, including, but not limited to, utilities such as sewer, water, gas and electricity, as may be appropriate for the convenience and general welfare of all owners and the expense of said services shall be expenses of administration.

(d) The Association shall carry public liability and property damage insurance in such amounts as its Board of Directors shall determine, insuring against loss caused by or connected with the ownership by the Association of the common areas and such other insurance as it deems necessary and appropriate.

(e) In the event the need for maintenance or repair of common areas is caused through the willful or negligent act of an owner, his agents, guests or invitees, the cost of such maintenance or repair will be added to and become a part of the assessment to which such owner's lot is subject under this Article.

(f) The Association shall have and shall administer the rights of access to, over and through such portions of the lands within the properties as may be necessary and reasonable for the installation, repair, maintenance, or improvement of the various utilities which service the properties.

Section 3: Creation of the Lien and Personal Obligation of Assessments. The Developer, for each lot owned within the Properties hereby covenants, and each owner of any lot by acceptance of a deed or a vendee's interest in a land contract therefor, whether or not it shall be so expressed in such deed or land contract, 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, with respect to each lot, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be continuing lien upon such lot, and shall also be the personal obligation of the person who was the owner of such lot at the time when the assessment fell due.

Section 4: 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 improvements and maintenance of the common areas.

Section 5: Establishment of Annual Assessment. The Board of Directors of the Association shall establish an annual budget in advance for each calendar year and such budget shall project

all expenses of administration for the forthcoming year.

Expenses of administration as used herein, shall refer to:

(a) The cost to the Association of all repair and maintenance of common areas and all repair, maintenance and upkeep functions, if any, performed by the Association with reference to all lots as required or permitted by this Declaration.

(b) Real property taxes relating to common areas and any personal property or other taxes imposed upon the Association.

(c) The cost of any insurance carried by the Association as required or permitted by this Declaration.

(d) Any other amounts which are necessary or incidental to the performance of any functions, duties or actions which the Association is required or permitted to do under this declaration or in furtherance thereof.

Section 6: 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 assessment shall have the assent of two-thirds of the owners of the lots in the subdivision.

Section 7: Notice and Quorum for Any Action Authorized

Under Sections 5 and 6. Written notice of any meeting called for the purpose of taking any action authorized under Section 5 or 6 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At such meetings the presence of members or of proxies entitled to fifty (50%) percent of all the membership shall constitute a quorum. The Annual Meeting shall be held on the 1st Tuesday of March of every year at 7:30 P.M., Eastern Standard Time, at 401 E. Liberty Street, Ann Arbor, Michigan; or at such other date, time and place as the Board of Directors may set. 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 8: 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, quarterly or annual basis, as may be determined by the Board of Directors.

Section 9: 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, or upon such other date as may be determined by the Board of Directors. 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, from a member of the Association or a mortgagee, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a special lot have been paid.

Section 10: 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 the rate of Ten (10%) 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 in the manner provided by statute for foreclosing mortgages of real 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 11: 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, except that, 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 become 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 VI

BUILDING AND USE RESTRICTIONS

The following restrictions, easements and reservations are hereby imposed on all lots in the properties:

Section 1: Land Use and Building Type. No lot shall be used for other than one-family residential purposes. No building or structure shall be erected, altered, placed, or permitted to remain on any lot other than one detached single family dwelling not exceeding two stories in height but which may include a Bi-level, Tri-level, or a Quad-level, together with accessory buildings appropriate to single family dwellings.

Section 2: Size and Height. No structure shall be erected, placed or altered on any lot not in conformance with the following minimum requirements for the finished living area:

1100 square feet for a one story  
 1100 square feet for a bi-level  
 1200 square feet for a tri-level  
 1200 square feet for a quad-level  
 1500 square feet for a two story  
 No building in excess of 2-1/2 stories to be built.

garages, carports, porches and breezeways shall not be included in computing such required floor areas. No part of a structure which is more than two-thirds below exterior ground level shall be included and computed in such required floor area.

Section 3: Type of Construction. Materials consistent with existing structures may be used in the exterior of all structures. All other materials must be approved in advance by the Architectural Board of Review.

Section 4: Garages, Carports, Breezeways. Each dwelling must have no less than a two car attached or detached garage with or without a breezeway.

Section 5: Temporary Buildings. No old or used structures of any kind shall be placed upon any lot or anywhere within the properties. No temporary structure of any character, such as a tent, trailer, shack, or other out buildings shall be erected or placed upon any lot. This shall not prevent the use of temporary buildings incidental to the construction of the main residential structure, during the period of construction.

Section 6: Lot Splits: No lot shall hereafter be reduced in area from its original plat of the area without the written approval, in advance, by the Association.

Section 7: Line Fences: Lot line fences may be installed only after receipt of written approval by the Architectural Board of Review.

Section 8: Intersection Sight Clearance. No hedge, shrub, tree planting, or other installation more than two feet above the level of the roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the property lines and the line connecting them at points 20 feet from the intersection of the property lines.

Section 9: Antenna. No antenna shall be installed on any lot other than regular radio or TV antenna, and shall not extend more than eight feet above the roof line.

Section 10: Lot Maintenance. All lots shall be kept trim and the grass mowed and free of debris. In the event unimproved lots are not properly maintained, the Association is authorized to contract for the necessary maintenance and charge the property owner therefor.

Section 11: Business or Commercial Operation: No business or profession of any kind shall be conducted on any lot. Mobile Homes during subdivision development will be permitted.

Section 12: Pets and Animals. No animals, livestock, birds or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats and other household pets may be kept provided they are not kept, bred, or maintained for commercial purposes. No pets shall be allowed to roam freely or become a public nuisance.

Section 13: Utilities. No utilities other than underground utilities shall at any time be installed on any lot, except on prior written approval by the Association.

Section 14: Signs. No sign of any kind shall be displayed to the public view on any lot except one sign not more than five square feet in area advertising the property for sale or rent, and except for house numbers and residents' names. During the construction of a residence, a builder may place a sign on a lot advertising the property provided that prior written approval as to the sign itself, its placement, and length of posting has been given by the Association. A previously approved sign may be used by a builder at various building sites provided its placement is consistent with prior approval.

Section 15: Easements. Easements for installation and maintenance of public utilities shall be as shown on the recorded plats, and as may otherwise be placed upon the property. Each owner shall maintain the surface area of easements within his property, keep the grass and weeds cut, keep the area free of trash and debris, and take such other action as may be necessary to eliminate or minimize soil erosion. Within the easments,

no structure, planting, or other materials shall be placed or permitted to remain which shall damage or interfere with the installation and maintenance of utilities, or which may obstruct, retard or change the direction of flow of water through drainage channels in the easements. The easement area on each lot and all improvements thereon shall be maintained continuously by the owner of the lot, except those improvements for which public authorities or utility company is responsible.

Section 16: Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish or other debris. Trash, garbage, and all other waste shall be kept in closed sanitary containers which shall be concealed from public view except for collection days. Each residence shall be equipped with an approved type of garbage disposal unit. No garbage or other wastes shall be burned at any time on a lot.

Section 17: Vehicles.

(a) No motor vehicles of any kind shall be parked on any street, or in any driveway or yard, for more than one week in a non-operating and/or non-licensed condition.

(b) No commercial motor vehicles over 24 feet in length, or semi-tractor, and/or trailer shall be parked on any street, or in any driveway or yard for more than eight hours in any 24 hour period, except for vehicles, machines and equipment used in the construction of the subdivision and buildings constructed therein.

(c) No recreational vehicles, such as but not limited to campers, motor homes, snowmobiles, boats and boat trailers, shall be parked on any street or on any lot for more than 24 hours unless suitably housed in an enclosed structure.

ARTICLE VII

ARCHITECTURAL BOARD OF REVIEW

Section 1: Appointments; The Board of Directors of the Association shall annually appoint an Architectural Board of Review of not

less than three (3) persons to review the plans, specifications, designs and plot plans for all lot development including the proposed placement of all structures and exterior alternations and additions thereto.

Section 2: Requirements for Approval: In order to insure the development of the property subject to these conditions into a desirable residential community and to control the landscaping, improvements and structures therein, no building, fence or other structure shall be erected, placed or altered on any lot until the building plans, specifications, designs, and plot plans showing the location and placement of such building, fence or structure upon the lot have been approved in writing by the Architectural Board of Review. All such plans, specifications, designs, and proposed locations shall be deemed to be approved as submitted unless rejected or disapproved by said board of review within thirty days after the same are submitted to any member of said Board of Review. All plans, specifications, designs, and locations of structures to be erected shall conform to and be in harmony of the existing structures in the subdivisions and shall in all respects conform to the restrictions herein set forth, and, further, shall blend aesthetically with the adjoining stuctures, in which regard the judgment of the Board of Review shall be conclusive. If any plans, specifications, designs, or site plans are disapproved, said disapproval shall be in writing signed by a majority of the members of the Board of Review, which shall be sent to the applicant and which shall specify the reason(s) for disapproval. No building or other improvement shall be commenced until approval of said Board of Review thereof is obtained. The approval or disapproval of said Board of Review shall not prevent subsequent enforcement of these restrictions. The Board of Review may approve exceptions to these requirements as it deems necessary and appropriate to effect the overall intent of these restrictions.

Section 3: Fees for additional reviews beyond the original site plan and house plan may be charged.

ARTICLE VIII

GENERAL PROVISIONS

Section 1: Enforcement. The Association, or any owner, shall have the right to enforce in any court of competent jurisdiction all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waive 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 affect any other provisions which shall remain in full force and effect.

section 3: Notices. Any notice required to be sent to any owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as owner on the records of the Association at the time of such mailing.

Section 4: Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty years from the date this declaration is recorded, after which time they shall be automatically extended for successive period of ten years. This Declaration may be amended by an instrument signed by not less than seventy-five (75) percent of the lot owners, and recorded in the Register of Deeds Office for Washtenaw County, Michigan.

WITNESSETH:

Grace G. Lampe  
Grace G. Lampe

Cheryl A. Dale  
Cheryl A. Dale .

401 SERVICE CORPORATION,  
a Michigan Corporation

BY: Robert A. Reiff  
Robert A. Reiff, its  
Executive Vice President

BY: John W. Corey  
John W. Corey, its  
Secretary/Treasurer

STATE OF MICHIGAN )  
 ) S.S.  
COUNTY OF WASHTENAW )

SEP 11 1979

The foregoing instrument was acknowledged before me this 10th day of September, 1979, by ROBERT A. REIFF and JOHN W. COREY the Executive Vice President and Secretary/Treasurer of 401 SERVICE CORPORATION, a Michigan Corporation, on behalf of the corporation.

My Commission Expires:  
April 27, 1983

*Grace G. Lampe*  
Grace G. Lampe  
Notary Public, Washtenaw County,  
Michigan

Drafted By:

John R. Laird  
Laird & Grace  
Great Lakes Federal Savings Bldg.  
Suite 401  
401 E. Liberty Street  
Ann Arbor, Michigan 48104

When Recorded, Return to:

401 Service Corporation  
Great Lakes Federal Savings Bldg.  
Suite 402  
401 E. Liberty Street  
Ann Arbor, Michigan 48104

RECEIVED  
FOR RECORD

SEP 11 10 17 AM '79

PATRICIA NEWKIRK HARDY  
REGISTER OF DEEDS  
WASHTENAW COUNTY, MICH.