

STORM WATER OPERATION AND MAINTENANCE AGREEMENT

This Storm water Operation and Maintenance Agreement (the “Agreement”) is executed this ____ day of _____, 200____, between Wright Township, a Michigan general law township, whose address is 1565 Jackson, Marne, Michigan 49435 (the “Township”) and _____, a Michigan _____, whose address is _____, Michigan 49 _____ (the “Developer”).

RECITALS

A. The Developer is the owner of real property located in the Township the street address of which is _____, which is legally described on attached Exhibit A and incorporated by reference herein (P.P. No. 70-06- _____) (the “Property”). The Property consists of approximately ____ acres of land.

B. The Property, in accordance with the Township’s Zoning Ordinance, is zoned _____. The Developer has sought approval from the Township to _____ so as to construct a _____ square foot and install _____ (the “Project”).

C. During the Township _____’s consideration of the Project, areas of concern were identified including the potential for soil erosion, storm water drainage and storm water retention.

D. Chapters _____, and _____, of the Township's Zoning Ordinance mandate that before a _____ for _____ property can be approved to permit development, the Township must find that it complies with certain identified criteria.

E. Sections _____ and _____ of the Township's Storm water Management Systems Ordinance requires that a developer seeking Township approval must provide the Township with an operation and maintenance agreement ensuring the reasonable long-term maintenance of drainage facilities constructed in accordance with a development project.

F. Following its hearing and review, the Township _____ conditionally approved the _____ for the Project on _____, 20____.

G. The Developer acknowledges and agrees that the Township relied upon the Developer's representations and pledges made during the review process in determining to approve the _____ dated _____ 20____ (the "Project"). To memorialize their understanding, the parties have determined to execute this Agreement.

AGREEMENT

For good and valuable consideration including, but not limited to, the covenants and pledges contained herein and the Township's willingness to forego the posting of

performance guarantees to ensure construction and maintenance of the improvements described, the sufficiency of which is acknowledged, the parties agree as follows:

Section 1. Compliance Laws, Ordinances, Permits. Developer agrees to construct, install, and operate the Project in accordance with approvals received from the Township and other governmental entities with applicable jurisdiction In constructing the Project, Developer agrees to comply with all state and local laws, ordinances, and regulations as well as the terms of this Agreement.

Section 2. Compliance with Township Approvals. Without limiting the provisions of Section 1, the Developer agrees to construct and operate the Project in accordance with the terms and conditions adopted by the Township _____for development of the Project on (date)_____, and the Township Engineer's letter dated _____, as well as the terms and conditions of this Agreement and its Exhibits.

Section 3. Operation and Maintenance of Storm water System. As used in this Section, “storm water system” shall mean all storm water systems, catch basins, storage structures, drains, leaching basins, ponds, pipes and appurtenances located on the Property including, but not limited to, all pollution-control devices utilized as part of the storm water system. As used herein, “maintain” or “maintenance” shall mean inspecting, cleaning out, mowing, repairing, and removing leaves, weeds and debris from all ponds, leach basins, pollution-control devices, or similar appurtenances of the storm water system such that failure to maintain is likely to result in impeding the functioning of the storm water system.

- A. Operation of Storm water System. The Developer shall at all times operate the storm water system in a manner. consistent with generally accepted storm water management practices.

- B. Maintenance of Storm water System. Not less than annually, the Developer shall maintain the storm water system located on the Property.

- C. Failure to Maintain. In the event the Developer does not operate and Maintain the storm water system as required under the terms of this Agreement, the Township shall be entitled, and is hereby expressly authorized by the Developer, to take one or more of the following actions (or any combination of the same)

(1) The Township or its agent may go onto the Property and maintain the storm water system. No less than ten (10) days before taking such action, the Township shall provide to the Developer and any other owners (as shown on the latest Township tax assessment roll), by first-class mail, notice of its intention. The Developer hereby grants to the Township and its agents a non-revocable license to go onto the Property to effectuate this subsection. Any and all costs, fees, or expenses incurred by the Township in maintaining the storm water system pursuant to this subsection. may be, without further notice; assessed as a lien on the Property, to be collected in the same manner as ad valerom property taxes.

(2) Require the Developer to provide a letter of credit in an amount sufficient to ensure maintenance of the storm water system, in a form satisfactory to the Township. The Developer shall provide the requested letter of credit within fifteen (15) business days of receiving such a request from the Township. The letter of credit shall provide that the payment to the Township shall be assured upon submission by the Township of notice that the Developer has not maintained the storm water system as required by this Agreement.

Section 4. Violation of Agreement. The parties acknowledge that monetary damages for a breach of this Agreement would be inadequate to compensate the parties for the benefit of their bargain. Accordingly, the parties expressly agree that in the event of a violation of this Agreement, the non-breaching party shall be entitled to receive specific performance. Nothing herein shall be deemed a waiver of the Township's rights to seek enforcement of this Agreement or zoning approvals previously granted, to the extent otherwise authorized by law. Violations of the terms and conditions of this Agreement subsequent to the completion of the Project shall entitle the prevailing party, in the event of litigation to enforce this Agreement, to receive its reasonable attorney and consulting fees incurred.

Section 5. Recording. The obligations under this Agreement are covenants that run with the land, and bind successors in title of the Developer. It is the parties' intent that this Agreement shall be recorded with the Ottawa County Register of Deeds. The Township shall be responsible for any and all costs associated with the recording of the Agreement.

Section 6. Miscellaneous.

A. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the enforceability or validity of the remaining provisions and this Agreement shall be construed in all respects as if any invalid or unenforceable provision were omitted.

B. Notices. Any and all notices permitted or required to be given shall be in writing and sent either by mail or personal delivery to the address first above given.

C. Waiver. No failure or delay on the part of any party in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

D. Governing Law. This Agreement is being executed and delivered and is intended to be performed in the State of Michigan and shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws thereof.

E. Amendment. This Agreement may only be amended in writing, signed, by Parties.

The parties have executed this Agreement on the day and year first above written.

WITNESSES:

WRIGHT TOWNSHIP

Supervisor

Clerk

STATE OF MICHIGAN)

)ss.

COUNTY OF OTTAWA)

On this _____ day of _____, 20 ____, before me a Notary Public,
personally appeared _____ and _____, the
Supervisor and Clerk, respectively, of Wright Township, a Michigan general law township, who,
being first duly sworn, did say they signed this document on behalf of the Township.

Notary Public, Ottawa County, Michigan

My Commission Expires: _____

WITNESSES:

By: _____

Its: _____

STATE OF MICHIGAN)
) ss.
COUNTY OF OTTAWA)

On this _____, 20____, before me a Notary Public, personally appeared
_____, the _____ of _____, who being first duly
sworn, did say he/she signed this document on behalf of said _____.

Notary Public, _____ County,

Michigan

My Commission Expires: _____

When Recorded Return To: Wright Township Clerk
P.O. Box 255, Marne, MI 49435-0255

EXHIBIT A
LEGAL DESCRIPTION