

## APPENDIX "G"

### STORM WATER OPERATION AND MAINTENANCE AGREEMENT

This Storm Water Operation and Maintenance Agreement (the "Agreement") is executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between Allendale Charter Township, a Michigan charter township, whose address is 6676 Lake Michigan Drive, PO Box 539, Allendale, Michigan 49401-0539 (the "Township") and \_\_\_\_\_, a Michigan \_\_\_\_\_, whose address is \_\_\_\_\_ (the "Developer").

#### RECITALS

A. The Developer is the owner of real property located in the Township at \_\_\_\_\_, and is legally described on attached Exhibit A incorporated by reference herein (the "Property") (PP No. 70-09-\_\_\_\_\_). The Property comprises approximately \_\_\_\_\_ acres of land.

B. The Property is zoned \_\_\_\_\_. The Developer has sought approval from the Township to improve the property by constructing \_\_\_\_\_ (the "Project").

C. The Township has reviewed the proposed improvement plan, and, 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 or detention.

D. Article 24 of the Township's Zoning Ordinance requires that before a site plan can be approved to permit certain development, the Township must find that it complies with certain identified criteria, including proper surface water drainage (Section 24.07 D).

E. Section 2.01 of the Township's Storm Water Ordinance prohibits a developer from installing or constructing any impervious surfaces that require approval of a site plan, plat, site condominium, special land use, planned unit development, rezoning, land division, or private road or other approvals without first obtaining a storm water permit from the Township. Section 2.02 of the Township's Storm Water Ordinance requires that a developer seeking Township storm water permit approval must provide the Township with an operation and maintenance agreement ensuring the reasonable routine, emergency and long-term maintenance of all storm water management facilities constructed in accordance with a development project, unless dedicated as part of a Drainage District under the jurisdiction of the Ottawa County Drain Commissioner.

F. The Township's Engineer and the Ottawa County Drain Commissioner have indicated that the storm water drainage facilities and systems, as detailed in the plans prepared by \_\_\_\_\_ and dated \_\_\_\_\_, 20\_\_, are adequate, provided that the Developer executes an agreement for the ongoing maintenance of the referenced storm water

drainage facilities as described and detailed in the plans prepared by \_\_\_\_\_ and dated \_\_\_\_\_, 20\_\_\_\_, which plans are hereby incorporated by reference.

## **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 drainage improvements described, the sufficiency of which is acknowledged, the parties agree as follows:

Section 1. Compliance with 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. Alterations or changes. No alterations or changes to the storm water systems, as defined in this Agreement, shall be permitted unless they are approved, in writing, by the Township, and any such approved changes will be deemed to comply with this Maintenance Agreement.

Section 3. Easements to be secured and recorded. The Developer, at its expense, shall secure from any affected owners of land all easements and releases of rights-of-way necessary for utilization of the storm water systems, as defined in this Agreement, and shall record them with the Ottawa County Register of Deeds. Copies of easements shall be provided to the Township. These easements and releases of rights-of-way will not be altered, amended, vacated, released or abandoned without prior written approval of the Township. Shrubs, trees or permanent structures shall not be located within the easements utilized by the Developer without the prior written approval of the Township.

Section 4. 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, porous pavement and appurtenances located on the Property including, but not limited to, all pollution-control devices utilized as part of the storm water system, as detailed in the plans prepared by \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_. As used herein, "maintain" or "maintenance" shall mean inspecting, cleaning out, mowing, repairing, and removing accumulated sediment, leaves, weeds, debris, and obstructions 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. Not less than annually, the Developer shall maintain the storm water system located on the Property.

The Developer shall submit certified reports of the maintenance performed to the Township.

- B. Maintenance of Storm Water Detention / Retention System. At a minimum, the following maintenance procedures shall be performed by the Developer:
- (1) Inspect the facilities regularly for clogging and clean / repair as necessary several times during the first few months after construction and then quarterly or after a large rain event thereafter.
  - (2) Check banks and bottom surface of basin for erosion and repair as necessary.
  - (3) Trim or harvest any aquatic vegetation as appropriate, and frequently mow grassy areas.
  - (4) Remove sediment when accumulation reaches 6 inches, or if re-suspension is observed or is probable.
  - (5) The Developer shall submit certified reports of the maintenance performed to the Township.
- C. Maintenance of Storm Water System with porous pavement. At a minimum, the following maintenance procedures shall be performed by the Developer:
- (1) Inspect the system several times during the first few months after construction.
  - (2) Inspect the system 2 times per year and after heavy storms. Check for standing water on the surface and within the stone bed under the porous pavement.
  - (3) Clean the surface of the porous pavement at least 2 times per year by vacuum sweeping followed by high pressure jet hosing.
  - (4) The Developer shall limit the use of deicing chemicals and shall not use sand on porous pavement surfaces. Repairs of porous pavement by sealing or repaving with non-porous materials shall be avoided and limited to 10 percent of the total surface area.
  - (5) The Developer shall submit certified reports of the maintenance performed to the Township.

In the event that storm water facilities maintenance is not conducted, an authorized representative of the Township shall notify the Developer, specifying the necessary maintenance. Within thirty (30) days of the notice, the Developer shall perform the specified maintenance at his expense. Within thirty-six (36) hours of notice, the Developer shall perform any specified emergency maintenance as may be required in the Township's notice.

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. Not 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 carry out the provisions of this subsection. The Township will invoice the cost of the specified maintenance, and the Developer shall pay the amount of the invoice within thirty (30) days of the Township's mailing the invoice by first class mail. If the Developer shall fail to pay the amount of the invoice, 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 valorem property taxes.

(2) If requested, the Developer shall 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 5. 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. A violation of the terms and conditions of this Agreement by the Developer or its successors subsequent to the completion of the Project shall entitle the Township, in the event of litigation to enforce this Agreement, to receive its reasonable attorney and consulting fees incurred.

Section 6. 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.

Section 7. 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. All notices permitted or required to be given shall be in writing and sent either by mail or by 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 all parties.





**EXHIBIT A**

LEGAL DESCRIPTION

(Insert legal description of parcel indicated in RECITALS, (A), page 1)