Appendix K:
Stormwater Management Operations and Maintenance Agreement

Stormwater Management Operations and Maintenance Agreement

This Agreement is made on [DATE], by and between [Community Name], (hereinafter "Community") whose address is [address] and [Owner Name], whose address is [address], (hereinafter "Owner"). Community and Owner agree as follows:

Article I. <u>The Subject Property</u>.

1.1 Owner owns the property located at and commonly known as [address or general description] (hereinafter the "Subject Property"). The legal description of the Subject Property is set forth at ***Exhibit A***.

Article II. <u>The Stormwater System</u>.

2.1 Owner, in accordance with Livingston County Stormwater Standards and State Municipal Separate Storm Sewer System permit requirements, agrees to install and maintain a Stormwater System on the Subject Property in accordance with approved plans and conditions. The Stormwater System is set forth at ***Exhibit B***.

2.2 After construction has been verified and accepted by the Community for the Stormwater System, the Owner shall file with the Community the "as-built" documents showing the design and construction details and shall reference this Agreement.

2.3 The Stormwater System will be governed by the terms and conditions in this Agreement.

Article III. <u>The Stormwater O&M Plan</u>.

3.1 The Owner shall be solely responsible for the installation, maintenance, and repair of the Stormwater System, drainage easements, and associated landscaping identified in Exhibit B in accordance with the Stormwater Management Operations and Maintenance Plan, hereinafter the "Stormwater O&M Plan" set forth at ***Exhibit C*** to this Agreement.

3.2 The Stormwater O&M plan is subject to approval by the Community.

3.3 The Owner agrees that the Stormwater O&M Plan is intended to and will serve the Subject Property in perpetuity.

3.4 The Owner, at its expense, shall secure from any affected owners of land all easements and releases of right-of-way necessary for implementation of the Stormwater O&M Plan and shall record them with the Livingston County Register of Deeds. These easements and releases of rights-of-way shall not be altered, amended, vacated, released, or abandoned without prior written approval of the Community.

3.5 No alterations or changes to the Stormwater O&M Plan shall be permitted unless they are deemed to comply with this Agreement and are approved in writing by the Community.

3.6 The Owner shall retain the services of a qualified inspector as described in Exhibit C – Maintenance Requirement 1) to operate and ensure the maintenance of the Stormwater O&M Plan.

3.7 The Owner shall annually, by December 30th, provide to the Community records (logs, invoices, reports, data, etc.) of inspections, maintenance, and repair of the Stormwater System in compliance with the Stormwater O&M Plan.

3.8 The Community agrees to enforce compliance with the annual inspection, maintenance and repair records as set forth in 3.7 above, such enforcement may require an ordinance.

Article IV. <u>Access and Enforcement</u>.

4.1 The Community or its designee is authorized to access the property as necessary to conduct inspections of the Stormwater System, implication of the Stormwater O&M Plan, or drainage easements to ascertain compliance with the intent of this Agreement.

Upon written notification by the Community or their designee of required maintenance or repairs, the Owner shall complete the specified maintenance or repairs within a reasonable time frame determined by the Community. The Owner shall be liable for the failure to undertake any maintenance or repairs so that the public health, safety and welfare shall not be endangered nor the road improvement damaged.

4.2 If the Owner does not keep the Stormwater System in reasonable order and condition, or complete maintenance activities in accordance with the Stormwater O&M Plan, or the reporting required in 3.7 above, the Community is authorized, but not required, to perform the specified inspections, maintenance or repairs in order to preserve the intended functions of the Stormwater System and prevent the Stormwater System from becoming a threat to public health, safety, general welfare or the environment.

4.3 In the case of an emergency, as determined by the Community, no notice shall be required prior to the Community performing emergency maintenance or repairs. The Community may levy the costs and expenses of such inspections, maintenance or repairs against the Owner.

The Community, at the time of entering upon said Stormwater System for the purpose of maintenance or repair, may file a notice of lien in the office of the Register of Deeds of Livingston County upon the property affected by the lien. If said costs and expenses are not paid by the Owner, the Community may pursue the collection of same through appropriate court actions and in such a case, the Owner shall pay in addition to said costs and expenses all costs of litigation, including attorney fees.

4.4 The Owner hereby conveys to the Community an easement over, on and in the property described in Exhibit A for the purpose of access to the Stormwater System for the inspection, maintenance and repair thereof, should the Owner fail to properly inspect, maintain and repair the Stormwater System.

Article V. Term and Covenants.

5.1 The Owner agrees that this Agreement shall bind all current and future owners of the property. The Owner agrees in the event that the Subject Property is sold, transferred, or leased to provide information to the new owner, operator, or lessee regarding proper inspection, maintenance and repair of the Stormwater System and Stormwater O&M Plan. The information shall accompany the first deed transfer and include Exhibits B and C and this Agreement. The transfer of this information shall also be required with any subsequent sale, transfer or lease of the Subject Property.

5.2 The Owner agrees that the rights, obligations and responsibilities hereunder shall commence upon execution of the Agreement.

Article VI. The Memorandum.

6.1 The Owner shall record with the Livingston County Register of Deeds a Memorandum of Stormwater Management Operations and Maintenance Agreement which serves as notice of this Agreement in a title search, the template for which is set forth at ***Exhibit D*** to this Agreement.

Article VII. Claims and Authority.

The Owner, its agents, representatives, successors and assigns shall defend, indemnify and hold Community harmless from and against any claims, demands, actions, damages, injuries, costs or expenses of any nature whatsoever, hereinafter "Claims", fixed or contingent, known or unknown, arising out of or in any way connected with the design, construction, use, maintenance, repair or operation (or omissions in such regard) of the Stormwater System, appurtenances, connections and attachments thereto which are the subject of this Agreement. This indemnity and hold harmless shall include any costs, expenses and attorney fees incurred by Community in connection with such Claims or the enforcement of this Agreement.

7.1 The parties whose signatures appear below hereby represent and warrant that they have the authority and capacity to sign this agreement and bind the respective parties hereto.

IN WITNESS WHEREOF, the Owner and Community have executed this agreement on the day and year first above written.

Owner

By:_____

Its: _____

STATE OF MICHIGAN)
)ss.
_____ COUNTY)

The foregoing instrument was acknowledged before me on this_____day of_____, 20____, by_____, the_____of _____.

_____
Notary Public

Community

By:_____

Its: _____

STATE OF MICHIGAN)
)ss.
_____ COUNTY)

The foregoing instrument was acknowledged before me on this_____day of_____, 20____, by_____, the_____of _____.

_____
Notary Public

Explanation of Exhibits

Exhibit A – Legal Description: Provide a legal description and reduced copy map to identify the land parcel(s) affected by this Agreement. This exhibit must be customized for each site. It must include a reference to a Subdivision Plat, Certified Survey number, or Condominium Plat, and a map to illustrate the affected parcel(s).

Exhibit B – Stormwater System Description and Map: Provide a written description and location map of the Stormwater System. This exhibit must be customized for each site. Map scale must be sufficiently large enough to show necessary detail.

Exhibit C – Stormwater O&M Plan: This exhibit explains the basic function of the stormwater management operation and maintenance plan, schedule, and budget providing the minimum specific maintenance activities and frequencies for each practice. The minimum elements of this exhibit include a description of the drainage area and the installed Stormwater System, a description of the specific maintenance activities which should include the following in addition to specific maintenance actions:

- Employee training and duties,
- Routine service requirements,
- Operating, inspection, and maintenance schedules, and
- Detailed construction drawings showing all critical components and their elevations.

The plan must include maintenance tasks and schedules. Refer to the Low Impact Development Manual for Michigan for maintenance task checklists for permanent BMPs and create a table of applicable maintenance tasks and schedules.

Exhibit D – Template for Memorandum of Stormwater Management Operations and Maintenance Agreement: This exhibit contains a template for said Memorandum to be recorded with the County Register of Deeds to put any future owners, or interest holders, on notice of the Stormwater System and the Stormwater System O&M Plan.

Memorandum of Stormwater Management Operations and Maintenance Agreement

The "Owner"_____and the "Community"_____have entered into a Stormwater Management Operations and Maintenance Agreement dated_____for real property located in the State of Michigan, County of Livingston, City of_____and further described as follows:

[real property description]

Commonly known as: _____

Parcel ID: _____

The Stormwater Management Operations and Maintenance Agreement provides for a stormwater management operation and maintenance plan for a stormwater system located on the real property. It authorizes easements for the local community to take enforcement action if the Agreement is breached. This Agreement runs with the land, binds all current and future owners of the real property and serves the real property in perpetuity.

Owner:

By:_____

Its: _____

STATE OF MICHIGAN)
)ss.
_____ COUNTY)

The foregoing instrument was acknowledged before me on this_____day of_____, 20__, by_____, the_____of _____.

_____
Notary Public

Recording Fee: $15.00

Drafted by and Return to: