

CITY OF FENTON

RESIDENTIAL PROPERTY

DETENTION/RETENTION SYSTEM MAINTENANCE AGREEMENT

This Agreement made this ____ day of _____, 20____, by and between the City of Fenton (the “City”), a Michigan municipal corporation, whose address is 301 South Leroy Street, Fenton, Michigan 48430-2196, and _____ (the “Owner”), a [Michigan corporation, individual, LLC, etc.], whose address is _____.

WHEREAS, the Owner is the owner of land located in the City of Fenton, County of Genesee, described in the attached Exhibit “A”, and

WHEREAS, the Owner is seeking approval for [name of development] (the “Development”), as depicted in the plans prepared by [insert name of engineering firm], dated _____, 200____; and

WHEREAS, the construction of the Development requires the installation of a detention/retention system (the “System”), as described in the attached Exhibit “B”, which includes, but is not limited to, all sedimentation control devices, storm water facilities and other appurtenant devices and structures; and

WHEREAS, the City requires assurances that the System will be properly operated and repaired/maintained at all times and without cost to the City; and

SAMPLE

WHEREAS, the Owner desires to provide assurances to the City that the System will be properly operated and repaired/maintained; and

WHEREAS, the Owner desires to receive approval for the final construction plans of the Development from the City and/or Genesee County, and develop the property according to the approved plans; and

WHEREAS, the parcels of land within the Development will benefit from the System being properly operated and repaired/maintained;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

(1) An association (the “Association”) shall be established, including all parcels within the Development to control the operation and repair/maintenance of the System and to collect fees necessary for such operation and maintenance.

(2) Owner shall be responsible for the operation and repair/maintenance of the System until such time as the Association is formed and a Master Deed, Deed Restrictions or other appropriate instrument has been recorded, which sets forth the rights, powers, privileges, responsibilities and duties so assigned and conveyed, and which makes the Association responsible for any and all operation and/or repair/maintenance of the System.

(3) The Owner dedicates and conveys to the City and to the owner of each parcel within the Development a right and easement for use for surface water accumulation and site drainage, and the Owner hereby covenants for itself, its successors, heirs and assigns, to the owner of each parcel within the Development, the continued right to use the land for site drainage purposes for this development.

(4) The Owner and the subsequent owners of each parcel within the Development shall be responsible for the operation and repair/maintenance of the System, at no cost to the City.

(5) Owner and the subsequent owners of each parcel within the Development shall be members of the Association, which shall enforce the responsibilities of the Owner hereunder.

(6) The System, as constructed, shall not be altered by the Owner, the Association, or any subsequent owners of the parcels within the Development, in any way, without the approval and consent of the City or any other appropriate governmental agencies having jurisdiction over any portion thereof.

(7) Easements for installation and maintenance of the System are acknowledged and reserved as described on attached Exhibit "B". Within the easement and site drainage areas, no structure, landscaping, planting, fill or other material shall be placed which may interfere with, impede, obstruct or change the direction of the water flow within any drainage easement. The operation and repair/maintenance of all easement areas shall be the responsibility of parcel owners of each parcel described in Exhibit "A", and enforced by the Association.

(8) The cost of such operation and repair/maintenance shall be borne by each parcel owner within the Development, as if a special assessment district, as provided by the Subdivision Control Act of 1967, as amended, were created, and such cost shall be collected and paid by the Association. The cost of operating and/or repairing/maintaining the System shall be prorated by the Association among the parcel owners within the Development. The Association shall bill the owners of said parcels at such times as the Association may find convenient and expedient.

(9) In the event the City determines that the System is not being properly operated and/or repaired/maintained, the City shall serve written notice upon the Owner, the Association (or any subsequent owners of the parcels within the Development), setting forth the manner in which they have failed to operate and/or repair/maintain the System in reasonable condition and order. The notice shall include a demand that deficiencies in the operation and repair/maintenance be cured within fifteen (15) days. If the deficiencies set forth in the notice are not cured within said fifteen (15) day period, the City may enter upon the described property and the site drainage easements to operate and/or repair/maintain same, and assess the cost of such operation and/or repair/maintenance, including any related administrative expense and attorney fees, to the owners of parcels within the Development. The City may add to the actual cost of maintenance and repair a sum of twenty-five (25%) percent to cover the costs of servicing this Agreement. All maintenance assessments shall be due and payable upon receipt. Any assessment not paid within thirty (30) days shall bear interest at the rate of one and one-half (1½%) percent per month until paid.

(10) Should deficiencies in the operation and repair/maintenance of the System be determined by the City to constitute an impending and immediate danger to the health, safety and welfare of the public, or a private or public nuisance, the City shall have the right to take immediate corrective action and summarily abate such danger or nuisance. Furthermore, the City, at its option, shall be subrogated to any rights the Owner, the Association and any subsequent owners of all parcels within the Development may have in the Master Deed, By-Laws or Deed Restrictions of the Development for the imposition of assessments and the collection thereof in relation to the System.

(11) The City shall have the right to defray any costs of operating and/or repairing/maintaining the System by establishing a special assessment district against any property benefited by the System in accordance with the provisions of Act 188 of Public Acts of 1954, as amended. The Owner agrees that this Agreement shall constitute a petition pursuant to and in accordance with the aforesaid Act 188 and hereby waives any and all hearings, notices of hearings and other requirements preliminary to the establishment of a special assessment district as may be required by the aforesaid Act 188.

(12) It is expressly understood that any operation and/or repair/maintenance assessments provided for herein shall be a lien and encumbrance upon the property with respect to which the assessment is made, which lien may be enforced by the City in the same manner as enforcement of liens for delinquent sewer or water charges or enforcement of Special Tax Assessments.

(13) The site drainage easements for the System provided for herein shall continue in effect until such time as the City may determine that there is no further need for them.

(14) By execution of this Agreement, which shall be recorded with the Genesee County Register of Deeds, the Owner warrants that it is the owner in fee simple of the property described in Exhibit "A" and executes this Agreement on behalf of [name of corporation] , its successors, heirs and assigns, including the Association and all future owners of parcels within the Development, and intends that the benefits and burdens of this Agreement shall run with the land.

(15) The Owner shall carry and maintain in full force and effect, with such company or companies as it shall select, comprehensive general liability insurance for bodily injury and property damage in relation to the System with a minimum coverage of Five Hundred Thousand (\$500,000.00) Dollars for each occurrence. Such policy shall name the City as an additional insured by an appropriate endorsement thereon. The minimum coverage and the terms and conditions of the insurance policies required hereunder, are subject to such modifications as may be reasonably required by the City. Proof of said insurance shall be provided annually to the City Clerk.

(16) Owner, its successors, heirs and assigns, the Association and all future owners of parcels within the Development shall hold harmless and indemnify the City for any liability incurred by the City resulting from any loss, claim or damage to persons or property arising out of the design, placement, construction, operation, use, maintenance, repair or replacement of the System, or the failure of any of the parties to perform their obligations under this Agreement.

(17) In the event any provisions contained in this Agreement should be held ineffective or invalid by reason of judgment, decree, court order or otherwise, all other parts and provisions of this Agreement shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and date above written.

WITNESSES:	CITY OF FENTON	TO BE COMPLETED BY THE CITY
_____	By: _____	
_____	Its: City Manager, City of Fenton	
_____	By: _____	
_____	Its: Clerk, City of Fenton	
ACKNOWLEDGEMENT		
STATE OF MICHIGAN))	
COUNTY OF GENESEE)) ss.	
<p>On this ____ day of _____, 2003, before me appeared _____, to me personally known, who, being by me duly sworn, did said that they are, respectively, the City Manager and the Clerk of the City of Fenton, Genesee County, Michigan, and that said instrument was signed and sealed on behalf of said City, by the authority of its Board, and they acknowledge said instrument to be the free act and deed of said City.</p>		
		<p>_____, Notary Public Genesee County, Michigan My Commission Expires: _____</p>

WITNESSES:	OWNER:
	<u>[name of corporation]</u> , a Michigan corporation.
<u>[signature]</u> _____	By: <u>[signature]</u> _____
<u>[printed name]</u> _____	<u>[printed name]</u> _____
	Its: <u>[printed title]</u> _____

SAMPLE

ACKNOWLEDGEMENT

STATE OF MICHIGAN)
) ss
COUNTY OF _____)

On this ____ day of _____, 20____, before me appeared _____, to me personally known, who, being by me duly sworn, did said that he/she is the [printed title] of [name of corporation], and that said instrument was signed and sealed on behalf of said corporation, by the authority of its board of directors, and he/she acknowledges said instrument to be the free act and deed of said corporation.

_____, Notary Public
_____ County, Michigan
My Commission Expires: _____

When recorded return to:
City of Fenton
301 South Leroy Street
Fenton, MI 48430-2196

EXHIBIT "A"

**LEGAL DESCRIPTION, PARCEL TAX I.D. NUMBER & SKETCH
FOR ENTIRE DEVELOPMENT**

[*PROVIDED BY DEVELOPER***]
(MAY ALSO INCLUDE SURVEY)**

SAMPLE

EXHIBIT “B”

**LEGAL DESCRIPTION & SURVEY
FOR SYSTEM/SITE DRAINAGE AREA**

[***PROVIDED BY DEVELOPER***]

SAMPLE

CITY OF FENTON

RESIDENTIAL PROPERTY

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IN WITNESS WHEREOF, the parties have executed this Agreement on the day and date above written.

WITNESSES:

CITY OF FENTON

By: _____
Its: City Manager, City of Fenton
By: _____
Its: Clerk, City of Fenton

ACKNOWLEDGEMENT

STATE OF MICHIGAN)
)
COUNTY OF GENESEE) ss.

On this ____ day of _____, 2003, before me appeared _____, to me personally known, who, being by me duly sworn, did said that they are, respectively, the City Manager and the Clerk of the City of Fenton, Genesee County, Michigan, and that said instrument was signed and sealed on behalf of said City, by the authority of its Board, and they acknowledge said instrument to be the free act and deed of said City.

_____, Notary Public
Genesee County, Michigan
My Commission Expires:_____

WITNESSES:

OWNER:

_____, a Michigan corporation.
By: _____

Its: _____

ACKNOWLEDGEMENT

STATE OF MICHIGAN)
) ss
COUNTY OF _____)

On this ____ day of _____, 20____, before me appeared _____, to me personally known, who, being by me duly sworn, did said that he/she is the _____ of _____, and that said instrument was signed and sealed on behalf of said corporation, by the authority of its board of directors, and he/she acknowledges said instrument to be the free act and deed of said corporation.

_____, Notary Public
_____ County, Michigan
My Commission Expires:_____

When recorded return to:
City Clerk
301 South Leroy Street
Fenton, MI 48430-2196

EXHIBIT “A”

**LEGAL DESCRIPTION, PARCEL TAX I.D. NUMBER & SKETCH
FOR ENTIRE DEVELOPMENT**

[*PROVIDED BY DEVELOPER***]**

EXHIBIT “B”

**LEGAL DESCRIPTION & SKETCH OF
DETENTION/RETENTION FACILITY**

[*PROVIDED BY DEVELOPER***]**