

AGREEMENT FOR SEDIMENTATION BASIN

This Agreement is made on January 28, 2014, by MJC Somerset Pines LLC, a Michigan limited liability company ("Developer"), whose address is 46600 Romeo Plank Rd., Ste 5, Macomb MI 48044, and the City of Rochester Hills, a Michigan municipal corporation (the "City"), whose address is 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309.

RECITALS:

A. Developer is the owner of the land located in the City of Rochester Hills, County of Oakland, and State of Michigan more particularly described in attached Exhibit A (the "Property").

B. The Developer wishes to develop the Property, such Property to be known as Somerset Pines (the "Condominium").

C. The Developer wishes at this time to obtain approval of the Condominium development.

D. It has been determined necessary for the Developer to construct temporary sedimentation controls including a basin for the protection of adjacent and downstream properties, watercourses and wetlands, which basin is defined on the approved construction drawings on file with the City Engineering Department.

E. It is desirable that the Developer and the City enter into a binding contract relative to the details of development of said sedimentation controls including basin and the use, repair and maintenance thereof.

NOW THEREFORE, in consideration of the approval of the City Council of the City of Rochester Hills of the Condominium development site plan and of the mutual promises contained herein, the parties agree as follows:

1. From the date of recording of the Master Deed for the Condominium, and until such time as this agreement terminates as provided in Section 3 below, the Developer shall have the responsibility and shall be obligated to the City to maintain and keep in good order the sedimentation controls including basin. Maintenance shall include stabilization of the banks and slopes, removal of trash, refuse and accumulated sediment on a reasonable, periodic basis, cleaning of stone filter systems, replacement of filter fabrics, erosion control and such other maintenance as may be reasonable and necessary to foster the intended functioning of the basin. Inspection of the sedimentation will be performed by the City Engineering Department and the Developer or its designee on a monthly basis until such time that this agreement terminates as provided in Section 3 below. The costs of inspection shall be paid by the Developer in accordance with Code of Ordinances, Chapter 4-01, Subdivision Control, Section 13, Fees.

2. In order to obtain an approval of the Condominium site plan by the City, Developer shall file with the City Clerk security, as provided for in the Code of Ordinances, Chapter 4-01, Subdivision Control, in such amounts as determined reasonable and necessary by the City Engineering Department to guarantee ongoing maintenance and repair to the sedimentation basin.

3. This agreement shall terminate after the City Engineering Department determines ninety percent (90%) of the homes, and all landscaping and sodding in the tributary watershed area serving those homes, are completed. Accordingly, accumulated sediment and debris is to be removed, final storm sewer connections made, the sedimentation basin backfilled with compacted engineered fill, and the area restored and vegetated. This work shall be solely the responsibility of the Developer.

4. In the event that the Developer shall at any time fail to maintain the sedimentation basin and related facilities in reasonable order and condition, the City may serve written notice upon the Developer setting forth the manner in which the Developer has failed to maintain the sedimentation basin in a reasonable condition, and said notice shall include a demand that deficiencies of maintenance be cured within fifteen (15) days thereof. If the Developer fails to cure pursuant to said notice and within fifteen (15) days of the date of such notice or any extension thereof, the City may enter upon said sedimentation basin and maintain the same. Said maintenance by the City shall not constitute a taking of the sedimentation basin nor vest in the public any right to use the same. In the event that the City determines the existence of an emergency upon, caused by or relating to the sedimentation basin which threatens the public health, safety or welfare, the City shall have the right to immediately and without notice take appropriate corrective action. The cost of any maintenance or any action by the City pursuant to the terms hereof, plus the prevailing administrative fee, shall be assessed against the Developer and deducted from the security and escrow accounts that are currently on file with the City.

5. Notwithstanding any other provisions of this agreement, Developer reserves the right to grant easements within the sedimentation basin area for the installation, repair and maintenance of water mains, sewers, drainage courses and other utilities, subject to obtaining the consent of the City, provided that such utilities shall be installed in such manner as to minimize damage to the natural features of the area.

6. The Developer shall be solely responsible for the maintenance of the sedimentation basin and the cost thereof as set forth in Section 4. In addition, the sedimentation basin shall be used for no purpose other than its proposed use until such time as this agreement terminates and there is no further need for the sedimentation basin.

7. The City may enforce the obligations contained herein in a court of competent jurisdiction. Any reasonable attorneys' fees or costs incurred by the City in enforcement of this Agreement in court shall be paid for by the Developer if the City prevails in such enforcement action.

8. The obligations of the Developer contained herein shall not be delegable by the Developer unless approved by a Resolution of the City Council.

9. The parties herein make this Agreement on behalf of themselves, their heirs, successors and assigns and hereby warrant that they have the authority and capacity to make this contract.

IN WITNESS WHEREOF, the parties have executed this agreement on the date first written above.

MJC SOMERSET PINES LLC

By: 

Michael Chirco, its Manager

CITY OF ROCHESTER HILLS

By: _____

Bryan K. Barnett, Mayor

By: _____

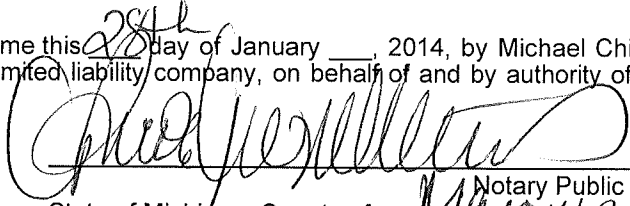
Tina Barton, City Clerk

[Acknowledgments on Following Page]

STATE OF MICHIGAN
COUNTY OF Macomb

The foregoing instrument was acknowledged before me this 28th day of January, 2014, by Michael Chirco, Manager of MJC Somerset Pines LLC, a Michigan limited liability company, on behalf of and by authority of the Company.

NICOLE J. WITTENMYER
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Nov 16, 2018
ACTING IN COUNTY OF Macomb



Notary Public
State of Michigan, County of Macomb
My commission expires: 11-16-2018
Acting in the County of Macomb

STATE OF MICHIGAN
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Bryan K. Barnett, Mayor, and Tina Barton, Clerk, of the City of Rochester Hills, on behalf of the City.

_____, Notary Public
State of Michigan, County of _____
My commission expires: _____
Acting in the County of _____

Drafted by
Stephen M. Guerra, Esq.
Makower Abbate PLLC
30140 Orchard Lake Road
Farmington Hills, MI 48334

When recorded, return to:
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

John Staran
Approved 2/18/14

**EXHIBIT A
THE PROPERTY**

The land which comprises the Condominium Project established by this Master Deed is particularly described as follows:

Land in the City of Rochester Hills, Oakland County, Michigan described as follows:

Lots 1-4, "Supervisor's Plat of Messmore Farms Subdivision" of part of the southwest $\frac{1}{4}$ of section 32, T. 3 N., R. 11 E, Avon Township (now City of Rochester Hills), Oakland County, Michigan, as recorded in Liber 66 of Plats, Page 16, Oakland County Records, Described As: Commencing at the South $\frac{1}{4}$ corner of Section 32; thence West 993.34 feet along the South line of said Section 32 and the centerline of South Blvd (120 ft wide); thence North 60.00 feet to the Northerly right-of-way line of South Blvd, the Southeast corner of Lot 4 and the Point of Beginning; thence West 658.68 feet along the Northerly right-of-way line of South Blvd and the South line of Lots 1-4, inclusive; thence North $08^{\circ}13'44''$ West (recorded as North $08^{\circ}15'56''$ West), 1255.28 feet along the West line of "Supervisor's Plat of Messmore Farms Subdivision" to the Northwest corner of "Supervisor's Plat of Messmore Farms Subdivision"; thence North $89^{\circ}35'31''$ East, 686.24 feet along the North line of "Supervisor's Plat of Messmore Farms Subdivision" to the Northeast corner of Lot 4; thence South $06^{\circ}57'14''$ East, 1256.49 feet along the East line of Lot 4 to the Point of Beginning;

Containing 19.23 acres of land more or less, subject to easements and restrictions of record.

#15-32-300-007, -008, -009 & -010

Mike Taunt
Approved 2/19/14