

AGREEMENT FOR MAINTENANCE OF  
STORM WATER DETENTION SYSTEM

This agreement is made on September 30, 2004 by G. Evangelista Incorporated, a Michigan corporation, whose address is 29437 Ryan Road, Warren, Michigan 48092, and the City of Rochester Hills, a Michigan Municipal corporation, (hereafter known as the "City"), whose address is 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309.

RECITALS:

WHEREAS, G. Evangelista Incorporated is the developer of certain real property located in the City of Rochester Hills, Oakland County, Michigan, which real property is more particularly described in Exhibit "A" attached hereto and made apart hereof, and

WHEREAS, the developer intends to develop said real property described in Exhibit "A" as residential condominiums to be known as The Summit (hereafter known as the "Development"), and

WHEREAS, G. Evangelista Incorporated, the developer, is also the owner of said real property described in attached Exhibit "A", and

WHEREAS, G. Evangelista has proposed, and the City has approved, a storm water drainage and detention system (the "System"), which includes a detention basin described in Exhibit "B" attached hereto and made apart hereof, and

WHEREAS, the parties will benefit from the proper use and maintenance of the System and desire enter into this agreement to provide for the same.

THEREFORE, the parties agree:

1. Use of the System: Components of the System, including the detention basin, shall be used solely for the purpose of detaining storm and surface water on the property until such time as: (i) The City may determine and advise the Association, or its successors, grantees or assigns, in writing that it is no longer necessary to use the detention basin to detain storm or surface water; and (ii) An adequate alternative for draining storm and surface water has been provided which is acceptable to the City and which includes the granting of such easements to the City or third parties for the alternative drainage system as may be necessary.

*OK'd per  
J. S. [unclear]  
3-28-05*

2. The Summit Homeowners Association: Ownership, control and jurisdiction over the System shall be vested in the The Summit Homeowners Association ( the "Association"). The Association shall be organized under the laws of the State of Michigan. Such Association shall be incorporated within sixty (60) days of recording the Master Deed and By-Laws with the Oakland County Register of Deeds. Membership in the Association shall be mandatory for all of the Co-owners of the development. The Association shall be responsible at its sole expense for the proper maintenance for the System and for compliance with the terms of the agreement. The By-Laws of the Association shall provide for a Board of Directors.

The Association members shall each bear their prorated share of the total costs of maintaining the System (including without limitation, the real and person property taxes assessed against it and insurance policies maintained with respect to it), which shall constitute a lien against each Co-owners unit.

The prorated share of the cost shall be based on the proportion of each unit to the total number of units of in the Development.

Each Co-owner shall be entitled to one vote for each unit owned with the restriction hat there shall be only one vote allowed with respect to each unit. When tow or more members hold as ownership interest in a particular unit, the vote attributable to such Unit shall be exercised as such Co-owners shall among themselves determine.

The Association shall have the authority to make and enforce regulations pertaining to the use and maintenance of the System which regulations shall be binding upon all members.

3. Conveyance of the Storm Sewer System. The Developer agrees to convey title to the System to the Association, and the Association shall accept such conveyance and hold title to the System for the benefit of all members of the Association. In no event shall the Association be liable for payment of any debts or liabilities incurred by Developer. Any debts or obligations incurred by the Association shall constitute a personal obligation of its members and shall be considered to be appurtenant to the members property which shall pass with the title to such property whether or not specifically set forth in the deeds thereto.

4. Maintenance:

A. The Association shall be responsible for the proper maintenance, repair and replacement of the System and any part thereof, including the detention basin.

B. Proper maintenance of the System shall include, but not limited to: (I) Keeping the bottom of the detention basin free from silt and debris; (ii) Removing harmful algae; (iii) Maintaining steel grating across the basin's inlets; (iv) Controlling the effects of erosion; and (v) Any maintenance that is reasonable and necessary in order to facilitate or accomplish the intended function and purpose of the System.

5. Action by City: In the event the Association or its successors, grantees, or assigns, neglects or fails at any time to properly maintain the System of any part thereof, the City may notify the Association or its successors, grantees of assigns, in writing, and the notice shall include a listing and description of maintenance deficiencies and a demand that they must be corrected within thirty (30) days. The notice shall further specify the date and place for a hearing to be held at least (14) days after the date of the notice before City Council, or such other board or official to whom the City Council may delegate responsibility. At the hearing, the City Council (or other board or official) may endorse or modify the listing and description of deficiencies to be

corrected and, for good cause, may extend the time within which the deficiencies must be corrected.

Thereafter, if the maintenance deficiencies are not corrected within the time allowed, the City may undertake and make the necessary corrections, and may maintain the System for a period not to exceed one (1) year. Such maintenance of the System by the City shall not be deemed a taking of the property, nor shall the City's actions be deemed to vest in the public any right to use the property. If the City determines maintenance of the System by the City should continue beyond one (1) year, the City shall hold, and provide advance written notice of, a further hearing at which the Association or its successors, grantors or assigns, will not or cannot properly maintain the System, the City may continue to maintain the System for another year, and subject to a similar hearing and determination, in subsequent years.

In the event the City determines an emergency condition caused by or relating to the System threatens the public health, safety or general welfare, the City shall have the right to immediately and without notice enter the property and undertake appropriate corrective action.

6.Charges: The City shall charge to the Association the cost of maintenance or other corrective action undertaken by the City in accordance with this agreement, plus a ten percent (10%) administrative fee. If not timely paid, the City may assess the charges on the City tax roll, which charges shall be a lien on each members unit and shall be collectable and enforceable in the same manner general property taxes are collected and enforced. Th City shall be, at its option, subrogated to the right of the Association against its members to the extent of that cost, the City shall, by an official resolution, give thirty (30) days written notice to each member of the City's election to be subrogated. The Association members shall bear their prorated share of the total costs of maintaining the System, which prorated share of the cost shall constitute a lien against each Co-owners unit and if not paid, the City Shall have the right to add it to the tax rolls and collect it in the same manner as provided above. The prorated share of the cost shall be based on the proportion of each unit to the total number of units in the Development.

7.Notice: Any notices required under this agreement shall be sent by certified mail to the address of each party set forth below, or to such other addresses as such party may notify the other parties in writing:

To Association:  
29437 Ryan Road  
Warren, Michigan 48092

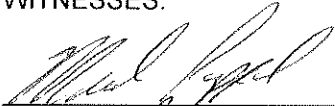
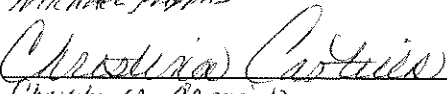
To the City:  
Clerk  
City of Rochester Hills  
1000 Rochester Hills Drive  
Rochester Hills, MI 48309

8. Successors and Assigns: This agreement shall bind an inure to the benefit of the parties and their respective successors, grantees and assigns. The right, obligations and responsibilities hereunder shall run with the land and shall bind all current and future owners.

9. Recording of Agreement: This agreement shall be recorded at the Oakland County Register of Deeds.

IN WITNESS WHEREOF, the parties have executed this agreement on the date set forth above.

WITNESSES:

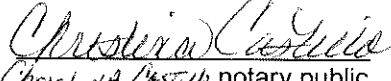
  
\_\_\_\_\_  
MICHAEL PAPPAS  
  
\_\_\_\_\_  
CHRISTINA CASTILLO

G. Evangelista Incorporated

  
\_\_\_\_\_  
By: Gerardo Evangelista, Its President

STATE OF MICHIGAN    )  
                                  )s.s.  
COUNTY OF MACOMB    )

This agreement was acknowledged before me on the 30<sup>th</sup> day of September, 2004, by Gerardo Evangelista, President of G. Evangelista Incorporated on behalf of the corporation.

  
\_\_\_\_\_  
Christina Castillo, notary public  
Macomb County, Michigan  
Acting in Macomb County  
My commission expires: 7-18-2008

WITNESSES:

\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

City of Rochester Hills, a Michigan Municipal corporation

BY: \_\_\_\_\_  
Pat Somerville, Mayor

BY \_\_\_\_\_  
Beverly A. Jasinski, Clerk

STATE OF MICHIGAN    )  
                                  )s.s.  
COUNTY OF                )

This agreement was acknowledged before me on \_\_\_\_\_, 2004, by Pat Somerville, Mayor and Beverly A. Jasinski, Clerk, of the City of Rochester Hills, on behalf of the City.

\_\_\_\_\_  
\_\_\_\_\_, notary public  
County, Michigan  
Acting in \_\_\_\_\_ County  
My commission expires:

Drafted By:  
Gerardo Evangelista  
29437 Ryan Road  
Warren, Michigan 48092

When Recorded Return To:  
Clerk  
City of Rochester Hills  
1000 Rochester Hills Drive  
Rochester Hills, MI 48309

EXHIBIT "A"

LEGAL DESCRIPTION

Parcel 1 Tax I.D. No.: 15-03-326-016

A parcel of land in the Southwest 1/4 of Section 3, T.3 N., R.11 E., City of Rochester Hills, Oakland County, Michigan, described as beginning at a point on the North and South 1/4 line of said Section 3 distant North 02 degrees 01 minute 12 seconds East, 1,315.50 feet and North 02 degrees 09 minutes 56 seconds East, 1,078.50 feet from the South 1/4 corner of said Section 03, thence South 48 degrees 44 minutes 02 seconds, West 440.00 feet; thence due West 123.74 feet; thence North 48 degrees 57 minutes 08 seconds West 63.84 feet; thence along a curve to the right 61.08 feet on the arc of a 330.12 foot radius curve being subtended by a long chord bearing South 51 degrees 22 minutes 31 seconds West with a distance of 60.99 feet; thence North 48 degrees 57 minutes 08 seconds West, 104.19 feet; thence North 69 degrees 28 minutes 05 seconds West, 120.05 feet; thence North 15 degrees 58 minutes 28 seconds West, 285.63 feet; thence North 85 degrees 44 minutes 34 seconds West, 113.08 feet; thence North 40 degrees 42 minutes 07 seconds West, 46.67 feet; thence North 85 degrees 44 minutes 34 seconds West, 127.66 feet; thence South 78 degrees 35 minutes 25 seconds West, 139.94 feet; thence North 78 degrees, 33 minutes 52 seconds West, 290.85 feet; thence North 30 degrees 09 minutes 01 second West, 54.08 feet; thence North 14 degrees 24 minutes 54 seconds East, 49.00 feet; thence North 30 degrees 37 minutes 27 seconds West, 194.32 feet; thence North 54 degrees 03 minutes 19 seconds West, 56.00 feet; thence North 13 degrees 21 minutes 07 seconds West, 75.00 feet; thence along the East and West 1/4 line of said Section 3 South 87 degrees 36 minutes 10 seconds East, 1,708.80 feet; thence along the North and South 1/4 line of said Section 3 South 02 degrees 09 minutes 56 seconds West, 478.16 feet to the point of beginning. Containing 862,488 square feet or 19.80 acres of land. Reserving easement and right of ways of record.

Parcel 2 Tax I.D. No.: 15-03-326-018

A parcel of land in the Southwest 1/4 of Section 3, T.3 N., R.11 E., City of Rochester Hills, Oakland County, Michigan, described as beginning at a point on the North and South 1/4 line of said Section 3 distant North 02 degrees 01 minute 12 seconds East, 1,315.50 feet and North 02 degrees 09 minutes 56 seconds East, 367.78 feet from the South 1/4 corner of said Section 03; thence North 88 degrees 00 minutes 00 seconds West, 135.20 feet; thence South 02 degrees 00 minutes 00 seconds West 148.07 feet; thence North 88 degrees 00 minutes 00 seconds West, 526.31 feet; thence North 32 degrees 00 minutes 00 seconds East, 322.50 feet; thence North 11 degrees 39 minutes 46 seconds East 89.48 feet; thence North 33 degrees 07 minutes 40 seconds East, 88.31 feet; thence North 31 degrees 27 minutes 05 seconds West, 78.96 feet; thence North 48 degrees 57 minutes 08 seconds West, 70.52 feet; thence along a curve to the left 61.08 feet on the arc of a 330.12 foot radius curve being subtended by a long chord bearing North 51 degrees 22 minutes 31 seconds East with a distance of 60.99 feet; thence South 48 degrees 57 minutes 08 seconds East, 63.84 feet; thence due East, 123.74 feet; thence North 48 degrees 44 minutes 02 seconds East, 440.00 feet; thence South 02 degrees 09 minutes 56 seconds West, 710.72 feet to the point of beginning, containing 325,383.71 square feet or 7.47 acres of land. Reserving easement and right of ways of record.

RECORDED  
1-26-05  
M. Gault  
ROCHESTER HILLS  
ENGINEERING DEPT.

