

CONSERVATION EASEMENT

(This instrument is exempt from County and State transfer taxes pursuant to MCL 207.505(a) and MCL 207.526, respectively)

This CONSERVATION EASEMENT is created _____, 2005, by and between the City of Rochester Hills, a Michigan Municipal Corporation whose address is, 1000 Rochester Hills Drive, Rochester Hills, MI 48309 (Grantor) and the Michigan Department of Environmental Quality (MDEQ), whose address is, Constitution Hall, 1st Floor South, P.O. Box 30458, Lansing, Michigan 48909-7958; of 525 West Allegan Street Lansing Michigan 48933 (Grantee);

The Grantor is the titleholder of real property located in the City of Rochester Hills, Oakland County, and State of Michigan, more fully described in Exhibit A.

MDEQ is the agency charged with administering Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), and

Permittee/Grantor has applied for a permit (MDEQ File Number 88-14-0582-P) pursuant to Part 303 to authorize activities that will impact regulated wetland. The Geological and Land Management Division of the MDEQ evaluated the permit application and determined that a permit could be authorized for certain activities within regulated wetlands provided certain conditions are met, and

Permittee has agreed to grant the MDEQ a conservation easement that protects the wetland mitigation site and/or the remaining wetlands on the property and restricts further development to the area described in Exhibit B, a map depicting the Easement Premises is attached as Exhibit C together with the right of access for ingress and egress to the easement area across adjacent of other properties as described in Exhibit "D". The MDEQ shall record the conservation easement with the county register of deeds.

ACCORDINGLY, Grantor conveys this Conservation Easement to Grantee pursuant to Subpart 11 of Part 21, Conservation and Historic Preservation Easement, of the NREPA, MCL 324.2140 *et seq*, on the terms and conditions stated below.

1. The purpose of this Easement is to protect the wetland functions and values existing or established on the property consistent with MDEQ Permit Number 88-14-582 and 97-10-0558 on the Easement Premises by requiring Grantor to maintain the Easement Premises in its natural and undeveloped condition.
2. Except as authorized under MDEQ Permit Number 88-14-582 or MDEQ Permit Number 97-10-0558 or as provided in paragraph 5 (and paragraph 4, if appropriate), Grantor shall refrain from, and prevent any other person from, altering or developing the Easement Premises in any way. This includes, but is not limited to, the alteration of the topography, the creation of paths or trails, the placement of fill material as defined in Part 303, the dredging, removal, or excavation of any soil or minerals, the

draining of surface water, the construction or placement of any structure, plowing, tilling, or cultivating, and the alteration or removal of vegetation.

3. Grantor shall not be responsible for modifications to the Property resulting from causes beyond the owner's control, including, but not limited to, unauthorized actions by third parties that were not reasonably foreseeable or natural disasters such as unintentional fires, floods, storms, or natural earth movement.
4. With the prior approval of the Grantee, the Grantor may perform activities associated with the construction or maintenance of the mitigation project within the Easement Premises. Grantor shall provide 5 days notice of undertaking any mitigation activity even if the mitigation project has been conceptually approved. Any activities undertaken pursuant to this paragraph shall be performed in a manner to minimize the adverse impacts to existing wetland or mitigation areas.
5. Grantor warrants that Grantor has good and sufficient title to the Property, and that any other existing interests in the property have been disclosed to the MDEQ and subordinated as necessary.
6. The Grantor warrants that the Grantor has no knowledge of hazardous substances or hazardous wastes on the property.
7. This Conservation Easement does not grant or convey to Grantee or members of the general public any right to possession or use of the Easement Premises, except for the access provided in paragraph 10.
8. Grantor shall continue to have all rights and responsibilities as owner of the property subject to the Easement.
9. Upon reasonable notice to Grantor, Grantee, and its authorized employees and agents, may enter the Easement Premises to determine whether they are being maintained in compliance with the terms of this Conservation Easement and for the purpose of taking corrective actions if Permittee for Permit Number 88-14-582, fails to comply with the mitigation conditions of the permit. 97-10-0558
10. This Conservation Easement shall be binding upon the successors and assigns of the parties and shall run with the land in perpetuity unless modified or terminated by written agreement of the parties.
11. This Conservation Easement may be enforced by either an action at law or in equity and shall be enforceable against any person claiming an interest in the Easement Premises despite a lack of privity of estate or contract.
12. Grantor shall indicate the existence of this Conservation Easement on all deeds, mortgages, land contracts, plats, and any other legal instrument used to convey an interest in the Easement Premises.
13. Within 90 days after this Conservation Easement is executed, Grantor, at its sole expense, shall place signs, fences, or other suitable markings along the boundary of the Easement Premises to clearly demarcate the boundary of the Easement Premises.

The foregoing instrument was acknowledged before me this ___ day of _____, 20_____,
by Mary Ellen Cromwell Chief, Land and Water Management Division, State of Michigan, on behalf of the
Michigan Department of Environmental Quality.

_____, Notary Public
_____, County, Michigan

My Commission Expires: _____

Drafted by:

Department of Attorney General

Environment, Natural Resources
and Agriculture Division
P.O. Box 30755

AFTER RECORDING, RETURN TO:

**Land and Water Management Division
Michigan Department of Environmental Quality
P.O. Box 30458
Lansing, MI 48909-7958**

(September 13, 2002)

sewer system upon payment of any fees and charges that are applicable under City ordinance.

- I. The Project will be connected to the public water mains. The individual residential units shall be entitled to connect to the public water lines upon payment of any fees and charges that are applicable under City ordinance.
- J. Landscaped areas will be maintained in a healthy growing condition, neat and orderly in appearance, and will be kept free of refuse and debris. If any vegetation, landscaping or trees to be installed by the Developer or its successors within ten feet of any underground public utility line is disturbed or destroyed by the City within such ten foot area in the repair or inspection of any underground public utility, such shall be replaced within the next period suitable for planting after receipt of written notice from City, or within an extended time period as specified in said notice, by the Developer and or the Condominium Association. Further, the Developer or its successors shall be responsible for the removal of any vegetation, landscaping or trees in the event the City needs to repair or maintain the underground public utilities within such ten feet of such area subject to the City providing sufficient prior written notice to the Developer or its successors of the need to repair. In the event of an emergency situation the City may remove the vegetation, landscaping or trees and seek reimbursement from the Developer or its successors.
- K. All improvements within the boundaries of the Property, including but not limited to the interior private roads, signs, pavement, pavement markings, building materials and landscaping shall be maintained by a non-profit Condominium Association to be formed by the Developer. The cost of maintaining the interior road shall be as provided in the Private Road Construction and Maintenance Agreement as well as within the Master Deed. The Master Deed shall delineate maintenance requirements for the open space areas, improvements and roads, and provide that each unit owner shall be assessed by the non-profit Condominium Association for such costs in paying its pro-rata share of such maintenance, repair, inspection and replacement. A copy of the covenants and restrictions for the condominiums contained in the Master Deed and By Laws shall be provided and subject to the reasonable approval of the City which shall not be withheld or delayed.
- L. In the event of a conflict between the provisions of this Agreement and the City Zoning Ordinance, the provisions of this Agreement shall prevail.
- M. The Developer shall enter into a Maintenance Agreement as agreed to between the parties for the "Storm Water Detention Basin" depicted in Exhibit "B" attached. The Developer will construct the "Storm Water Detention Basin".
- N. The Developer shall, upon receiving all approvals from all necessary governmental and regulatory bodies, and after variances have been approved and granted for it to construct and develop the Project in accordance with the PUD Final Plan.
- O. As is set forth within the City Zoning Ordinance Section 138-1076 there shall be a minimum setback of 25 feet from a "natural feature" as defined in the Zoning Ordinance. No person shall fill, land balance, dredge, construct or create any deposit, installation or removal of any material including structures, soils mineral and/or vegetation within a natural feature setback, which is prohibited. Further all wetlands and setbacks are to be

delineated by appropriate signage located at the midpoint of the open space between adjacent buildings.

- P. The PUD and the Master Deed shall provide that a condominium unit owner may not undertake any construction, including the construction of any patio and/or deck outside the building envelope as depicted in the PUD Final Site Plan, attached as Exhibit "B." This provision is specifically being inserted to protect the bluff/slope area directly adjacent to the Clinton River. Developer shall use caution in any construction of this development to maintain conservation of the bluff/slope area.
- Q. This PUD Agreement and Master Deed shall prohibit the removal of trees (other than dead, diseased or seriously damaged) on the slope area directly behind the building envelope area for each home site. For purposes of this paragraph the "clearing and grading lines" as depicted on the PUD Final Plan shall be used as a guideline in determining the area in which trees shall not be removed.
- R. This PUD Agreement and Master Deed shall prohibit the use of non-organic lawn and garden fertilizer.
- S. The Developer shall enter into a Land Conservation Easement with the Oakland Land Conservancy under terms acceptable to Developer and the Oakland Land Conservancy. This Land Conservation Easement shall be filed with the Oakland County Register of Deeds and is being entered into to further protect the slope area directly adjacent to the Clinton River. The initial funding for the Land Conservation Easement shall be the responsibility of the Developer. The future funding for preservation of the easement shall be covered by an annual fee to be assessed against each homeowner by the Hidden Ridge Homeowner's Association and shall be in the amount of \$100 per year, per household, to be adjusted for inflation using a standard consumer price index.
- T. Developer agrees that trees will be planted along the southerly property line, adjacent to the Cloverport residences, as set forth in the Landscape Plan. In addition, Developer agrees that the trees shall be 12 to 15 feet tall and planted 12 feet on center in a staggered manner.

ADDITIONAL GENERAL PROVISIONS

- (1) Any Amendments to this Agreement must be in writing and approved by the City Council and the Developer, and their successors and assigns.
- (2) The approval of the PUD described herein and in the PUD Final Plan, and the terms, provisions and conditions of this Agreement are and shall be deemed to be of benefit to the Property and shall run with and bind the Property, and shall bind and inure to the benefit of the successors or assigns of the parties hereto. In no event shall the terms of this Agreement inure to the benefit of, or be enforceable by, any person other than the parties, their respective successors and assigns, and parties acquiring an interest in the Property (or part thereof).
- (3) The Condominium Association and its Members shall be solely responsible for all repair, replacement and maintenance of the interior road, storm water retention basin and common areas. The owner/members of the Condominium Association shall pay dues