

APR - 4 2008

AGREEMENT FOR STORM WATER SYSTEM MAINTENANCE

This Agreement is made on January 10, 2008, by Frank Fleury ("Developer"), a (corporation, limited liability company, partnership) whose address is 1171 Hickory Hill Dr., Rochester Hills, MI 48309 and the CITY OF ROCHESTER HILLS (the "City"), whose address is 1000 Rochester Hills Drive, Rochester Hills, MI 48309.

WHEREAS, Developer owns and proposes to develop the Property described in attached Exhibit A; and

WHEREAS, the proposed development of the Property will alter the natural flow of surface and storm water drainage;

WHEREAS, Developer has proposed, and the City has approved, a storm water drainage and detention system (the "System") comprised of storm water detention and water quality treatment facilities and devices, pumping system, storm sewer pipe, catch basins, manholes, end-sections, ditches, swales, open water courses and rip-rap, for the Property as described and depicted in the Storm Water System Plan attached as Exhibit B; and

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

THEREFORE, the parties agree:

1. Use of the System:

Components of the System, including any and all water conveyance, detention and water quality treatment facilities and devices, pumping system, storm sewer pipe, catch basins, manholes, end-sections, ditches, swales, open water courses and rip-rap, shall be used solely for the purpose of conveying, detaining and treating storm and surface drainage on the property until such time as: (i) The City determines and notifies Developer or Developer's successors, grantees or assigns, in writing, that it is no longer necessary to convey, detain or treat the storm and surface drainage; and (ii) An adequate alternative for conveying, detaining and treating storm and surface drainage has been provided which is acceptable to the City and which includes the granting of any easements to the City or third parties as may be required or necessary for the alternative drainage system.

2. Maintenance:

A. Developer shall be responsible for the proper maintenance, repair and replacement of the System and all parts thereof as detailed in the Maintenance Plan attached as Exhibit C.

B. Proper maintenance of the System shall include, but is not limited to: (i) Removing accumulated sediment, trash and debris from the detention basin and at inlet pipes; (ii) Managing deleterious vegetative growth; (iii) Maintaining storm sewer, structures, end-sections and safety features; (iv) Controlling the effects of erosion; (v) Inspection and cleaning of the water quality treatment device; (vi) Inspection of inlet and outlet pipes for structural integrity; (vii) Inspection and replacement of riprap at inlet pipes; (viii) Inspection and cleaning of the storm sewer and catch basins upstream from the detention basin; (ix) Inspection and replacement of stone around the outlet pipe; and (vi) Any other maintenance that is reasonable and necessary to facilitate and continue the proper operation and use of the System.

3. Transfer of Control to Homeowners Association:

In the event Developer or Developer's successors, grantees or assigns later transfer or convey their interest in or control over the Property and the System to a homeowners association, the association members shall each bear their prorata share of the costs of maintaining the System (including any property taxes levied thereon), which shall constitute a lien against each member's lot or parcel. This obligation shall apply to and burden the homeowners association and the association members' lots and shall run with the land regardless of whether the obligation is stated in the homeowners association's or members' deeds.

4. Action by City:

If, at any time, Developer or Developer's successors, grantees or assigns neglect or fail to properly maintain the System or any part thereof, the City may notify Developer or Developer's successors, grantees or assigns. The notice shall be in writing and shall list and describe maintenance deficiencies and demand that they be corrected within thirty (30) days.

The notice shall further specify a date and place for a hearing to be held at least fourteen (14) days after the date of the notice before the City Council, or such other board or official as the City Council may designate. At the hearing, the City Council (or other designated board or official) may affirm or modify the list and description of maintenance deficiencies and, for good cause shown, may extend the time for the deficiencies to be corrected.

Thereafter, if the maintenance deficiencies are not corrected within the time allowed, the City may undertake the necessary corrective actions, and the City may maintain the System for up to one (1) year. Such maintenance of the System by the City shall not be construed to be a trespass or a taking of the Property, nor shall the City's actions vest in the public any right to enter or use the Property. Thereafter, if Developer or Developer's successors, grantees or assigns do not properly maintain the System, the City may, after providing similar written notice, schedule and hold another hearing to determine whether the City should maintain the System for another year, and subject to a similar notice, 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.

5. **Charges:**

A. The City shall charge to the current owner of the Property the cost of maintenance or other corrective action undertaken by the City under this agreement, plus a ten percent (10%) administrative fee. If not timely paid, the City may place the charges on the City's tax roll, which charges shall be a lien on the real property and shall be collectable and enforceable in the same manner general property taxes are collected and enforced.

B. If the System is conveyed to a homeowners association, the City shall charge the association the cost of maintenance or other corrective action undertaken by the City under this agreement, plus a ten percent (10%) administrative fee. If not timely paid, the City may place the charges on the City's tax roll, which charges shall be a lien on the real property and shall be collectable and enforceable in the same manner general property taxes are collected and enforced. The City may, at its option, subrogate to the right of the association against the association members to recover the cost. Prior to exercising its right of subrogation, the City shall provide thirty (30) days advance written notice to the association members. Association members shall each bear their prorata share of the costs of maintaining the System (including any property taxes levied thereon). The City may place unpaid charges on the City's tax roll, which charges shall be a lien on the member's lot or parcel and shall be collectable and enforceable in the same manner general property taxes are collected and enforced. The prorated share of the costs shall be based on the ratio of each lot to the total number of lots in the development, not including lots owned by the association.

6. **Notice:**

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

To D & F Development, LLC:

1171 Hickory Hill Dr.
Rochester Hills, MI 48309

To the City:

City Clerk
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

7. **Successors and Assigns:**

This agreement shall bind and inure to the benefit of the parties and their respective successors, grantees and assigns. The benefits, burdens, rights, obligations and responsibilities hereunder shall run with the land and shall bind all current and future owners of the Property and any divisions thereof.

8. **Recording of Agreement:**

This agreement shall be recorded at the Oakland County Register of Deeds.

By: 
Frank R. Fleury
Its: Managing Partner


CITY OF ROCHESTER HILLS

By: _____
Bryan Barnett, Mayor

By: _____
Jane Leslie, Clerk

STATE OF MICHIGAN
COUNTY OF Michigan

This agreement was acknowledged before me on January 10, 2008, by Frank R. Fleury, Managing Partner of D & F Development, LLC on behalf of the Limited Liability Company.


Linda Goetz, notary public
Macomb County, Michigan
My commission expires: June 5, 2012

STATE OF MICHIGAN
COUNTY OF OAKLAND

LINDA GOETZ
Notary Public, Macomb County, MI
Commission Expires June 5, 2012
Residing in the County of Macomb

This agreement was acknowledged before me on _____, by Bryan Barnett, Mayor, and Jane Leslie, Clerk, of the City of Rochester Hills, on behalf of the City.

Drafted By:

Linda Goetz
Urban Land Consultants
8800 23 Mile Rd.
Shelby Twp, MI 48316-4516

Notary public
County, Michigan
My commission expires: _____

When Recorded Return to:

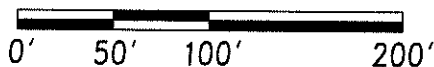
City of Rochester Hills
Clerks of Rochester Hills
1000 Rochester Hills Dr
Rochester Hills, MI 48309

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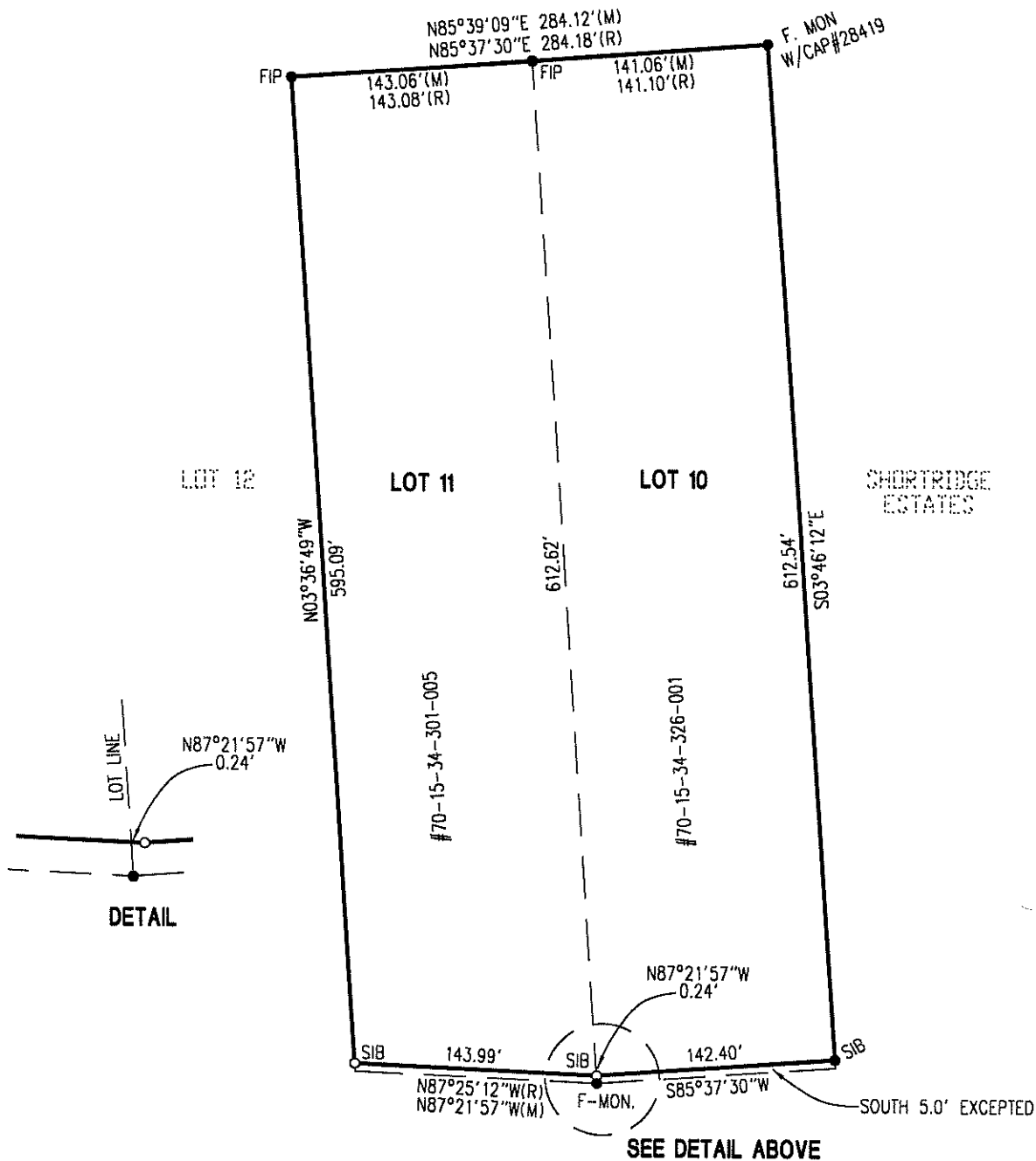
Exhibit A

Scale : 1" = 100'



NOTES:

- BEARINGS IN RELATION TO PLAT OF RECORD.
- NO TITLE WORK HAS BEEN SUPPLIED BY THE CLIENT FOR PURPOSES OF THIS SURVEY. THEREFORE NO GUARANTEE IS MADE THAT ANY OR ALL EASEMENTS, BOTH RECORDED AND UNRECORDED ARE SHOWN ON THIS SURVEY.



SHORTRIDGE AVE. (VARYING WIDTH)

Property Description:

Lots 10 and 11 "Supervisor's Plat No. 6" part of the S.W. 1/4 of Section 34, T.3N., R.11E., Avon Township (now known as the City of Rochester Hills), Oakland County, Michigan as recorded in Liber 5, Page 56 of the Oakland County Records, except the South 5.00 feet for road purposes.

Surveyor's Certificate

I hereby certify that I have surveyed and mapped the land above platted and/or described on March 23, 2005 and that the ratio of closure on the unadjusted field observations of such survey was 1/64,154.



PHONE 586 731-8030
FAX 586 731-2605

**URBAN
LAND
CONSULTANTS** ©

CIVIL ENGINEERS PLANNERS LAND SURVEYORS
GPS CONSULTANTS
8800 23 MILE ROAD SHELBY TWP., MI 48316-4516

LEGEND

- FIB = Found Iron Bar ●
- FIP = Found Iron Pipe ●
- SIB = Set Iron Bar/Cap ○
- R = Record Distance
- M = Measured Distance
- C = Calculated

Date 1-4-08

Drawn T.M.P.

Check W.C.A.

Sheet 1 of 1

Fld. Bk.

Job No.
050233-6891

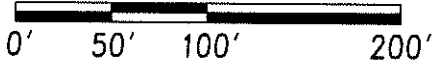


Exhibit B

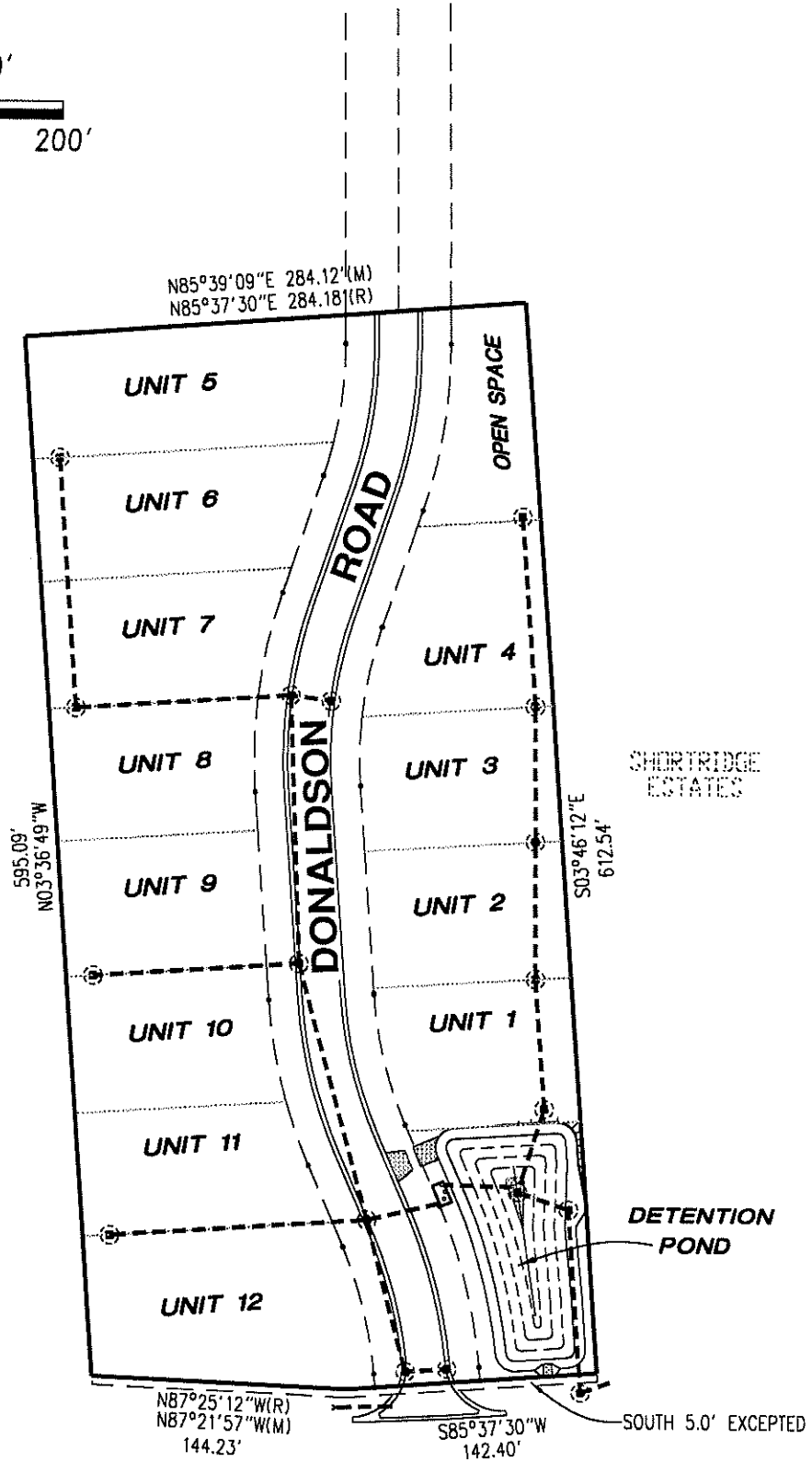
NOTES:

- BEARINGS IN RELATION TO PLAT OF RECORD.

Scale : 1" = 100'



LOT 12



SHORTRIDGE AVE. (VARYING WIDTH)



PHONE 586 731-8030
FAX 586 731-2805

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Drawn T.M.P.
Check W.C.A.
Sheet 1 of 1
Fld. Bk.
Job No.
050233-6891

EXHIBIT C

Storm Water Management Inspection & Maintenance Schedule

The Commons South

Storm Sewer Systems

Task	Frequency
• Inspect all inlet and outlet pipes for structural integrity	Annually
• Inspect riprap at all respective inlet and outlet pipes and weirs	Annually
• Cleanout and inspect the storm water treatment units A vacuum truck shall be used to remove sediment and pollutants. A licensed contractor is required to dispose of the waste in accordance with current regulations.	Annually
• Conduct routine inspections for trash or other debris that maybe be blocking the inlet or outlet pipes or emergency spillway	Monthly and after major rain events
• Inspect and clean the storm sewer system and catch basins Upstream from the detention basin	Every 5 years or as needed
• Inspect for sediment and trash accumulation at the inlet pipes	Semiannually and after major rain events
• Inspect the stone around the riser/standpipe (outlet pipe)	Semiannually and after major rain events
• Inspect the riser/standpipe cover for trash and debris	Annually
• Inspect for excess sediment accumulation in the ponds	Annually
• Remove accumulated sediment at basin inlets	Semiannually and after major rain events
• Have a Professional Civil Engineer or Licensed Storm Water Operator inspect the pond to ensure it is functioning properly	Every 3 years or as needed
• Have a Professional Civil Engineer or Licensed Storm Water Operator inspect all outlet control structures to ensure they are functioning properly	Every 3 years or as needed

Storm Water Management Inspection & Maintenance Schedule

The Commons South

Detention Basin Vegetation

Task	Frequency
• Inspect side slopes, berms and spillways for erosion	Annually and after major rain events
• Re-establish permanent vegetation on eroded slopes	Annually or as needed
• Mow the 15-25 foot buffer and chemical-free zone around all pond edges	Monthly or as needed
• Inspect basin and perimeter for invasive species such as purple loosestrife, phragmites, buckthorn (common & glossy), honeysuckle and autumn olive that out-compete native vegetation. If these invasive species are present then have a License Herbicide person spray these plants until they are dead.	Annually – July

Property Management

Task	Frequency
• Common area maintenance	Annually
• Inspect basin for signs of chemicals (solvents, gas, diesel, Paint, etc.) Identify and remove/dispose of properly	Monthly and after major rain events
• Review maintenance plan	Annually

EXHIBIT C

Storm Water Management Inspection & Maintenance Checklist

Project: The Commons South

City: Rochester, Section: 34

Storm Sewer Systems

Task	Frequency	Month:	Year															
			Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.				
Inspect all inlet and outlet pipes for structural integrity	Annually																	
Inspect riprap at all respective inlet and outlet pipes and weirs	Annually																	
Cleanout and inspect the storm water treatment units. A vacuum truck shall be used to remove sediment and pollutants. A licensed contractor is required to dispose of the waste in accordance with current regulations.	Annually																	
Inspect the riser/standpipe cover for trash and debris	Annually																	
Inspect for excess sediment accumulation in the ponds	Annually																	
Have a Professional Civil Engineer or Licensed Storm Water Operator inspect the pond to ensure it is functioning properly	Every 3 years or as needed																	
Have a Professional Civil Engineer or Licensed Storm Water Operator inspect the pond to ensure it is functioning properly	Every 3 years or as needed																	
Inspect and clean the storm sewer system and catch basins Upstream from the detention basin	Every 5 years or as needed																	
Conduct routine inspections for trash or other debris that maybe be blocking the inlet or outlet pipes or emergency spillway	Monthly and after major rain events																	
Inspect for sediment and trash accumulation at the inlet pipes	Semiannually and after major rain events																	
Inspect the stone around the riser/standpipe (outlet pipe)	Semiannually and after major rain events																	
Remove accumulated sediment at basin inlets																		

Inspection and maintenance responsible person: _____

contact phone number: _____