

STORM WATER DETENTION BASIN MAINTENANCE AGREEMENT

ROCHESTER INDUSTRIAL PARK SUBDIVISION

as recorded in Liber 178 pages 11 & 12 O.C.R.

THIS AGREEMENT is made this 8th day of April, 1981, by and between the TOWNSHIP OF AVON, Oakland County, Michigan, herein called the "TOWNSHIP", 1275 W. Avon Rd., Rochester, Michigan, and BAGS DEVELOPMENT CORP., a Michigan corporation, 1200 West Hamlin Road, Rochester, Michigan 48063, herein called the "DEVELOPER".

3/1/21

WHEREAS, the DEVELOPER is the owner of the land located in the Township of Avon, County of Oakland, and State of Michigan, described as follows:

A part of the Southeast 1/4 of Section 21, T 3 N, R 11 E, Avon Township, Oakland County, Michigan, more particularly described as: Beginning at a point on the South line of said Section 21, said point being S. 86 deg., 45' 45" W., 1260.00 feet from the Southeast corner of said Section 21; thence continuing S. 86 deg. 45' 45" W., 610.78 feet and following Hamlin Road; thence N. 00 deg. 56' 54" E. 370.97 feet; thence S. 86 deg. 45' 45" W., 380.00 feet, thence N. 03 deg. 48' 32" W., 784.44 feet; thence N. 86 deg. 11' 28" E., 462.22 feet; thence N. 01 deg. 45' 54" E., 960.13 feet; thence S. 84 deg. 57' 35" E., 749.34 feet; thence S. 02 deg. 36' 35" E., 515.85 feet; thence N. 87 deg. 23' 25" E., 78.65 feet; thence S. 02 deg. 36' 43" E., 525.90 feet; thence N. 89 deg. 21' 25" W., 260.62 feet; thence S. 01 deg. 45' 54" W., 645.15 feet; thence S. 86 deg. 45' 45" W., 63.17 feet; thence S. 02 deg 36' 35" E., 340.00 feet to the point of beginning and containing 42.393 acres, subject to all easements of record.

WHEREAS, the aforescribed property is to be platted and known as Rochester Industrial Park Subdivision; and

WHEREAS, DEVELOPER has applied for approval to the TOWNSHIP for approval of the final plat of Rochester Industrial Park Subdivision; and

WHEREAS, there is to be included within the above-

1981 APR 9 AM 9 15
LARRY D. ALLEN
REGISTER OF DEEDS

19.00

21 more words

described property, a certain area which is available for a storm water retention basin. This area is a part of Lot 22 of said Rochester Industrial Park Subdivision, and is identified on the plat thereof as "a Permanent Easement for Surface Drain and Detention", and is hereinafter referred to as "Detention Basin"; and

WHEREAS, it is now desirable that the DEVELOPER and the TOWNSHIP enter into a binding contract relative to the details of development of said subdivision and the maintenance of said Retention Basin,

NOW, THEREFORE, in consideration of the approval of the Township Board of the TOWNSHIP of the final plat of Rochester Industrial Park Subdivision, and of the mutual promises contained herein, the parties agree as follows:

1. DEVELOPER hereby dedicates and conveys to each owner of a lot in Rochester Industrial Park Subdivision a right and easement of enjoyment in and to said Detention Basin, and DEVELOPER hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Detention Basin to the Association hereinafter described, free and clear of all encumbrances and liens.

2. Control and jurisdiction over the Detention Basin shall be vested in an association of the lot owners of Rochester Industrial Park Subdivision, which association shall be known as the Rochester Industrial Park Subdivision Association and which is referred to hereinafter as the "Association". Such Association shall be organized as a non-profit corporation for a perpetual term under the laws

of the State of Michigan. Such Association shall be incorporated prior to the conveyance of any of the lots in Rochester Industrial Park Subdivision, and in any event within ninety (90) days following the recording of the final Plat of Rochester Industrial Park Subdivision. Membership in the Association shall be mandatory for each owner of a lot in Rochester Industrial Park Subdivision. For the purposes of this Agreement, the purchaser on land contract of a lot shall be deemed to be its owner. The Association shall be responsible for the proper maintenance of the Detention Basin and for compliance with the terms of this Agreement. The by-laws of the Association shall provide for a board of directors consisting of not less than three (3) persons nor more than fifteen (15) persons. Each Association member shall be entitled to one (1) vote for each lot in which he or she holds the interest required for membership. When more than one (1) person holds any such interest in a lot, all such persons shall be members and the vote for such lot shall be exercised as such owners determine among themselves, but in no event shall more than one (1) vote be cast with respect to any one lot.

3. The Association shall have the authority to make and enforce regulations pertaining to the use and maintenance of the Detention Basin, which regulations shall be binding upon all of the owners of lots within Rochester Industrial Park Subdivision.

4. The Detention Basin shall be used solely for storm water detention unless and until such time as TOWNSHIP may in the future provide another means for drainage. In

such event and in only such event, and only upon agreement of the TOWNSHIP, the Detention Basin may be used for such other purposes as the membership of the Association may direct.

5. An improved access road to and from the Detention Basin shall be installed by DEVELOPER along the side lot line common to Lots 21 and 22 of the Rochester Industrial Park Subdivision. Said improved access road shall be maintained in good repair by the Association. All members of the Association shall have equal access to the use of said access road and to the Detention Basin.

6. In the event the Association shall at any time fail to maintain the Detention Basin and/or the improved access road in reasonable order and condition, the TOWNSHIP may serve written notice upon the Association or upon the lot owners of Rochester Industrial Park Subdivision setting forth the manner in which the Association has failed to maintain the Detention Basin or the improved access road, and said notice shall include a demand that deficiencies of maintenance be cured within thirty (30) days thereof, and further shall state the date and place of a hearing thereon before the TOWNSHIP board or such other board, body or official to whom the TOWNSHIP board shall delegate such responsibility, which shall be held within fourteen (14) days of the notice. At such hearing, the TOWNSHIP may modify the terms of the original notice as to the deficiencies and/or may give an extension of time within which the same shall be cured. If the deficiencies set forth in the original notice or in the modifications thereof shall not be cured

within said thirty (30) days or any extension thereof, the TOWNSHIP, in order to prevent the Detention Basin and/or the access road from becoming a public nuisance, may enter upon said Detention Basin and/or access road and maintain the same for a period of one (1) year. Said maintenance by the TOWNSHIP shall not constitute a taking of the Detention Basin or the improved access road nor vest in the public any right to use the same. Before the expiration of the said year, TOWNSHIP shall upon its own initiative or upon the request of the Association, call a public hearing upon notice to the Association and to the members thereof, at which hearing such Association or the members shall show cause why such maintenance by the TOWNSHIP shall not, at the election of the TOWNSHIP, continue for a succeeding year. If TOWNSHIP shall determine that the Association is ready and able to maintain the Detention Basin and/or the improved access road in reasonable condition, TOWNSHIP shall cease to maintain the same at the end of said year. If TOWNSHIP shall determine that the Association is not ready and able to maintain the Detention Basin and/or the improved access road in a reasonable condition, TOWNSHIP may, in its discretion, continue to maintain the same during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter. The cost of maintenance by the TOWNSHIP/shall be assessed against the Association and added to the tax rolls, collected and enforced in a like manner as general township taxes are collected and enforced. TOWNSHIP shall be, at its option, subrogated to the right of the Association against its members to the extent of that cost, if TOWNSHIP shall, by an official resolution, give thirty (30) days' written notice to each member of the TOWNSHIP's election to be subrogated. Maintenance of the Detention

Basin shall include keeping the bottom of the Detention Basin free from silt and debris, removing harmful algae, maintaining a steel grating across the pond inlets and the control of erosion and such other maintenance as is reasonable and necessary to the intended functioning of the Detention Basin.

7. Notwithstanding any other provision of this Agreement, DEVELOPER reserves the right to grant easements within the Detention Basin for the installation, repair and maintenance of water mains, sewers, drainage courses, and other public utilities, subject to the approval of TOWNSHIP, provided that such utilities shall be installed in such manner as to minimize damage to said Detention Basin.

8. In the event TOWNSHIP determines, in its sole discretion, that an emergency exists, caused by or relating to said Detention Basin, which threatens the public health, safety or general public welfare, TOWNSHIP shall have the right immediately and without notice to enter upon said Detention Basin and to take corrective action, notwithstanding anything herein to the contrary. If the TOWNSHIP does take corrective action on an emergency basis, the TOWNSHIP may charge the Association for the cost thereof or collect same according to the provisions contained in Paragraph 6.

9. Each of the lots within said Rochester Industrial Park Subdivision shall be subject to an annual maintenance charge, to be paid by the respective owners thereof to the Association in advance on the first (1st) day of January in each year commencing with January 1, 1982.

10. The amount of said annual maintenance charge shall be established and may be adjusted from year to year by the Association as its board of directors shall determine, but in no event shall such maintenance charge

be less than \$25.00 nor more than \$75.00 per lot except by the approval of and consent in writing of the owners of 51% or more of the lots within the Rochester Industrial Park Subdivision, which approval and consent shall make any such additional assessment binding upon all of the owners of property in said subdivision.

11. The funds collected by the Association shall be used, as the board of directors of the Association shall determine necessary and advisable, for improving and maintaining the Detention Basin, the improved access road and any other property of the Association and for the enforcement of this Agreement or any other building restrictions applicable to the Rochester Industrial Park Subdivision or for any other purposes for which said Association is incorporated.

12. All maintenance charges which shall remain unpaid on April 1st of the year in which said charges became due shall thereafter be subject to interest at the rate of twelve (12%) percent per annum or at the highest legal rate then allowable, whichever shall be the lower.

13. It is expressly understood and agreed that the annual maintenance charges and each of them shall be a lien and encumbrance on the land with respect to which such charges made, and it is expressly agreed that each of the owners of lots within Rochester Industrial Park Subdivision from the time of acquiring title thereto shall be held to have covenanted and agreed for himself, his heirs, grantees and assigns to pay to the Association

all such charges provided for herein which were then due and unpaid to the time of acquiring title and all such charges thereafter falling due during the ownership thereof. The lien provided for herein shall be subordinate to any valid purchase money first mortgage lien. Sale or transfer of any lot shall not affect the assessment lien. The sale or transfer of any lot which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, however, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any charges thereafter becoming due or from the lien thereof. By acceptance of title, each owner shall be held to vest in the Association the right and power in said owner's name to take and prosecute all suits, legal, equitable, or otherwise, which may, in the opinion of the board of directors of the Association, be necessary or advisable for the collection of such charge or charges.

14. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns and each of them warrant that they have the authority and capacity to make and enter into this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

In the Presence of:

Doris J. Keylon
Doris J. Keylon

Beverly Ann Jasinski
Beverly Ann Jasinski

Carl Neall Schroeder
CARL NEALL SCHROEDER
Donald E. Blake
DONALD E. BLAKE

TOWNSHIP OF AVON

By Earl E. Borden
Earl E. Borden, Supervisor

By Betty Adamo
Betty Adamo, Clerk

BAGS DEVELOPMENT CORP.,
a Michigan corporation

By Gail MacDonald
Gail MacDonald, President

STATE OF MICHIGAN)
) SS:
COUNTY OF OAKLAND)

On this 25th day of November, 1981, before me, a Notary Public, in and for said county, personally appeared Earl E. Borden and Betty Adamo to me personally known, who being by me duly sworn, did each for himself say that they are respectively the Supervisor and Clerk of the Township of Avon, the municipal corporation named in and which executed the within instrument, and that the seal affixed to said instrument is the corporate seal of said municipal corporation by authority of its Township Board, and said deponents acknowledged said instrument to be the free act and deed of said municipal corporation.

Dolores M. Tilden
Notary Public, Oakland County, Michigan
Dolores M. Tilden
My Commission expires: August 7, 1983

STATE OF MICHIGAN)
) SS:
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 27th day of April, 1981, by Gail MacDonald, President of Bags Development Corp., a Michigan corporation, on behalf of said corporation.

Margaret A. Bianco
Notary Public, Oakland County, Michigan
Margaret A. Bianco
My Commission expires:

2-25-85

Drafted by: Ralph Sosin, Esq.
30100 Telegraph Road
Suite 302
Birmingham, Michigan 48010

When recorded, return to: Betty Adamo, Clerk
Avon Charter Township
1275 W. Avon Road
Rochester, MI 48063