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LIBER 32633 PAGE 460
\$31.00 MISC RECORDING
\$4.00 REMONUMENTATION
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PAID RECORDED - OAKLAND COUNTY
G.WILLIAM CADDELL, CLERK/REGISTER OF DEEDS

COMMUNITY SEPTIC OPERATION AND MAINTENANCE AGREEMENT

THIS COMMUNITY SEPTIC OPERATION AND MAINTENANCE AGREEMENT ("Agreement") is made this 18 day of March, 2004, by and between Highland 43 Venture, ("Developer"), the South Highland Meadow Subdivision Association, ("Association"), and The Charter Township of Highland ("Township").

WHEREAS, a Part 41 Permit for the construction and implementation of sewer lines ("Sanitary Sewer System") to transfer untreated sanitary waste water from certain Lots within the South Highland Meadow Subdivision, a platted subdivision that is more particularly described in Exhibit A hereto ("Development"), to the community septic field ("Community Septic Field") has been applied for from the Michigan Department of Environmental Quality ("MDEQ").

WHEREAS, a permit to discharge treated sanitary wastewater from the Development to the groundwater of the State of Michigan, has been applied for from the Oakland County Health Department.

WHEREAS, the Township desires that the Sanitary Sewer System and the Community Septic Field that will treat the sanitary wastewater be operated and maintained by the Association, or its agents successors, or assigns;

NOW THEREFORE, in consideration of the mutual promises herein provided, the Developer, the Association, and the Township contract and agree as follows:

1. **Effective Date.** This Agreement shall be effective upon the acceptance by the Township of the "as built" condition of the Sanitary Sewer System and the Community Septic Field and shall terminate in accordance with Paragraph 5 hereof.

2. **Parties.** The parties to this Agreement are:

Charter Township of Highland,
a Municipal Corporation
205 N. John Street
Highland, Michigan 48357

("Township")

and:

O.K. - MH

RECEIVED

JUN 04 2004

HIGHLAND TOWNSHIP

Highland 43 Venture, (“Developer”)
a Michigan co-partnership
612 W. University Dr., Suite 201
Rochester, Michigan 48307
and:

South Highland Meadow Subdivision (“Association”)
Association,
a Michigan non-profit corporation
612 W. University Dr., Suite 201
Rochester, Michigan 48307

3. **Definitions.** The following words or phrases shall have the meaning indicated:

A. **Sanitary Sewer System.** All land and equipment described in the attached Exhibit A.

B. **Community Septic Field.** All land and equipment described in the attached Exhibit A.

C. **Facility.** Sanitary Sewer System and the Community Septic Field.

D. **Permits.** Permits issued by the Oakland County health Department and the MDEQ, any extensions or renewals thereof, amendments thereto, or successor Permits thereto, which relate or refer to the construction and operation of the Facility.

E. **Discharge.** Discharge to the groundwater of any sanitary wastewater treated by the Community Septic Field.

F. **OCHD.** Oakland County Health Department.

G. **MWRC.** Michigan Water Resource Commission.

H. **MDPH.** Michigan Department of Public Health.

I. **Agencies.** OCHD, MWRC, MDEQ, MDPH, and the Township.

J. **Maintain.** The performance of all functions necessary to assure that the Facility is maintained in accordance with the requirements and standards imposed by the Agencies.

K. **Operate.** The performance of all normal functions necessary to run the Facility and maintain the facility in accordance with the requirements and standards imposed by the Agencies.

L. **Professional Operator/Agent.** A company or person licensed by the State of Michigan to operate and maintain on-site disposal systems.

4. **Purpose of Agreement.** The purpose of this Agreement is to provide the terms and conditions related to the Association's operation and maintenance of the Facility. It is the intent of the Parties that the Township shall have the right, but not the obligation, to operate and maintain the Facility at the expense of the Association if the Association, or its agents, successors or assigns, fails to operate and maintain the Facility in accordance with the Permits and the requirements and standards imposed by the Agencies.

5. **Termination.** This Agreement may be terminated by the Township with or without cause upon one hundred eighty (180) days advance written notice to the Association. This Agreement may be terminated by the Association upon thirty (30) days advance written notice to the Township upon the occurrence of both of the following: (a) the wastewater produced by the Association is to be discharged to a public sewer system and (b) the sanitary sewers within the development are dedicated to and accepted by the Township and/or its agents.

6. **Maintenance and Operation to Comply with Permit Requirements.** The Association, and/or its agents, successors or assigns, shall operate and maintain the Facility in accordance with the terms of the Permits.

7. **Maintenance and Operation to Comply with the Requirements and Standards Imposed by the Agencies.** The Association, and/or its agents, successors, or assigns, shall operate and maintain the Facility in accordance with the requirements and standards imposed by the Agencies.

8. **Operation, Maintenance and Replacement of the Facility.** The Association shall at all times remain responsible for the operation, maintenance and replacement of the Facility. If the Township, however, in its sole judgment, determines that the Facility is not being properly operated or maintained in accordance with the Permits and/or the requirements and standards imposed by the Agencies, then the Township shall first notify the Association in writing of the failure to maintain or operate the Facility. If within twenty (20) days of the Township's written notification such maintenance or operation defect is not cured, the Township shall notify the Association of the failure to cure and may, in its sole discretion, enter unto the property described in Exhibit A and maintain, repair, and/or replace the Facility. The cost of such repair/maintenance/replacement shall be borne solely by the Association and/or the Lots serviced by the Facility.

If the Township, in its sole judgment, determines that there is an emergency failure in the Facility, then the Township shall first notify the Association in writing of such failure. If, within twenty-four (24) hours of the Township's written notification of the emergency failure, such failure is not cured, the Township may, in its sole discretion, enter unto the property described in Exhibit A and make such repairs and/or replacements as are necessary to abate the emergency failure. The cost of such repair/maintenance/replacement shall be borne solely by the Association and/or the Lots serviced by the Facility.

9. **Facility's Performance.** The Township makes no representations that the Facility will meet the requirements of the Permits. It shall be the responsibility of the Association to provide a Facility capable of meeting the requirements of the Permits. Neither the Township, nor its agents, shall be responsible for the inability of the Facility to meet the requirements of the Permits or any additional requirements and standards imposed by the Agencies.

10. **Testing.** The Association, the Township, and their respective agents, successors or assigns, shall perform such tests on the Facility as may be required by the Agencies. The Association shall hire such consultants or Professional Operators/Agents as necessary to conduct such tests and otherwise assure that the requirements and standards of the Permits and Agencies are met. The costs of such tests shall be borne by the Association. The reports of any such testing required by the Agencies shall be immediately provided to the Township.

11. **Operation and Maintenance of Facility to be Without Cost or Liability to the Township.** It is agreed that the Township's operation or maintenance of the Facility shall be without cost or liability to the Township. The Association shall pay for all costs and expenses, including, but not limited to, all reasonable administrative expenses, incurred by the Township to maintain, operate, repair or replace the Facility pursuant to paragraph 8 above. To the extent the Township incurs liability, costs or expenses in any way related to its oversight of the Facility, the Association shall indemnify and hold the Township harmless. The Township shall have a lien against all Association property to the extent of any liability, costs or expenses incurred by the Township in such capacity, and in all Lots served by the Facility. In addition, the Association documents shall include provisions which: (1) constitute a petition for improvement, operation and maintenance of the Sewer System, binding against the Developer and all future owners of Lots to be served by the Facility, to enable the Township to levy special assessments if it is ever called upon to perform its obligations hereunder; (2) give notice that in the event the Township is required to assume responsibility for the Facility that the Township will establish rates and fees at the level necessary to provide revenues adequate for the discharge of the Township's responsibility, and that in the event that this occurs before all dwellings on Lots serviced by the Facility are occupied, such rates and charges may be proportionally higher for occupied premises; and (3) give notice of a potential statutory first lien under Public Act 178 of the Public Acts of Michigan of 1939, or other applicable law, which will attach to the individual Lots to be served by the Facility upon the expenditure of public monies for maintenance and repair of the Facility.

12. **Billing for Services Rendered.** In accordance with the terms hereof, the Association agrees to pay forthwith all sums billed to it by the Township, or its agent, for operation and maintenance of the Facility. The Association agrees to indemnify and hold the Township, or its agent, harmless for any costs or expenses incurred by the Township, or its agent, because of the Association's failure to make payment in accordance with the terms hereof.

13. **Maintenance and Replacement Escrow.** The Developer or Association shall, within thirty (30) days of the execution of this Agreement, establish at a bank acceptable to the Township, an interest bearing escrow account, in the joint names of the Association and the Township. The purpose of the escrow account is to provide a source of funding to indemnify the Township for the reasonable costs and expenses associated with the Township maintaining,

repairing and/or replacing the Facility. The Township may, without the prior approval of the Developer or Association, withdraw funds from the escrow account for the purposes set forth in Paragraphs 8, 10, 11 and 12 above. The escrow account shall be replenished by the Association quarterly within thirty (30) days of receipt of a statement from the Township detailing the withdrawals from the escrow account pursuant to the terms of this Agreement.

The Developer or the Association shall deposit an initial sum of Six Thousand Dollars (\$6,000.00) into this escrow. In addition, each lot owner in the Association, using the facility, at the time of connection to the Facility, shall deposit into the escrow account an amount not less than \$1,500.00 Dollars. The Developer or the Association shall collect One Hundred Eighty Dollars (\$180.00) per year from each lot owner using the facility and deposit such sums into this escrow on or before January 31st each year until such time as this Agreement is terminated. The balance of this escrow account shall be Twenty One Thousand Two Hundred Dollars (\$21,200.00) on or before 10 years after the effective date referred to in Paragraph 1. The annual payment shall be increased by ten (10 %) percent every five years. The Township may, without the prior approval of the Association, withdraw funds from this escrow account for the purposes set forth in Paragraphs 8, 10, 11 and 12 above. The Developer or the Association may not withdraw funds from the escrow account for the purposes set forth in Paragraphs 8, 10, 11 and 12 above, except with the written approval of the Township. The amount of the escrow and the initial and annual assessment to the lot owners shall be adjusted from time to time to reflect the actual cost of replacing the Facility or defraying a portion of the cost of connecting the Facility to a public sewer system, such determination to be made by the Township Engineer.

Except for inspection fees and as otherwise provided in this Agreement, there shall not be other charges, tap fees, user fees or other expenses charged to the Developer, Association or Lot owners for the connection, use and operation of the Facility.

14. The Township May Appoint an Agent to Operate the Facility. It is agreed that the Township may appoint an agent to carry out its responsibilities under this Agreement. The Township shall provide the Association written notification of any such appointment.

15. Recording of Agreement. This Agreement shall be recorded in the Office of the Oakland County Register of Deeds by the Developer as soon as possible after its execution and a recorded copy shall be delivered to the Township as soon as possible after recording.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered by their respective duly authorized officers, all as of the day and year first above written.

WITNESSES:

Lisa G. Burkhart
LISA G. BURKHART

**CHARTER TOWNSHIP OF HIGHLAND,
a Michigan municipal corporation**

Patricia M. Pichowski

By: Patricia M. Pichowski

Its: SUPERVISOR

“Township”

**HIGHLAND 43 VENTURE,
a Michigan co-partnership**

Lisa G. Burkhart
LISA G. BURKHART

Michael P. Foley

By: Michael P. Foley

Its: President

“Developer”

**SOUTH HIGHLAND MEADOW
SUBDIVISION ASSOCIATION, a Michigan
non-profit corporation**

Lisa G. Burkhart
LISA G. BURKHART

Michael P. Foley

By: MICHAEL P FOLEY

Its: PRESIDENT

“Association”

Drafted by: Lisa G. Burkhart
Charter Township of Highland
205 N. John Street
Highland, MI 48357

When Recorded Return to:
Charter Township of Highland
205 N. John Street
Highland, MI 48357

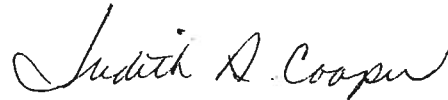
COMMUNITY SEPTIC OPERATION AND MAINTENANCE AGREEMENT

State of Michigan

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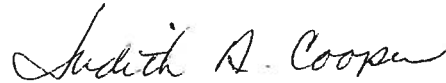
County of Oakland

The foregoing instrument was acknowledged before me this 18th day of March 2004 by Patricia M. Pilchowski, Supervisor, Charter Township of Highland, a Michigan municipal corporation, on behalf of said corporation.



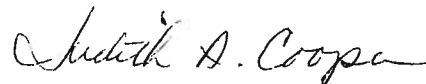
Judith A. Cooper
Notary Public, Oakland County, MI
My commission expires 9-16-06

The foregoing instrument was acknowledged before me this 18th day of March 2004 by Michael P. Foley, President, Foley Land Corp., Partner, Highland 43 Venture, a Michigan copartnership, on behalf of said copartnership.



Judith A. Cooper
Notary Public, Oakland County, MI
My commission expires 9-16-06

The foregoing instrument was acknowledged before me this 18th day of March 2004 by Michael P. Foley, President, South Highland Meadow Subdivision Association, a Michigan non-profit corporation, on behalf of said corporation.



Judith A. Cooper
Notary Public, Oakland County, MI
My commission expires 9-16-06

DESCRIPTION

Exhibit A

DESCRIPTION
HIGHLAND MEADOW
PARCEL A

PART OF THE SOUTHWEST QUARTER OF SECTION 17, T.3N., R.7E., HIGHLAND TOWNSHIP,
OAKLAND COUNTY, MICHIGAN BEING DESCRIBED AS:

BEGINNING ON THE WEST LINE OF SECTION 17, N.00°30'54"E. 193.60 FEET FROM THE
SOUTHWEST CORNER OF SECTION 17, SAID POINT BEING ON THE CENTERLINE OF HICKORY
RIDGE ROAD (66.00 FEET WIDE) THENCE CONTINUING N.00°30'54"E. 520.00 FEET ALONG
THE WEST LINE OF SECTION 17 AND THE CENTERLINE OF HICKORY RIDGE ROAD; THENCE
S.89°29'06" E. 300.00 FEET; THENCE N00°30'54"E. 435.60 FEET; THENCE
N.89°29'06"W. 300.00 FEET TO THE WEST LINE OF SECTION 17 AND THE CENTERLINE OF
HICKORY RIDGE ROAD; THENCE N.00°30'54"E. 176.71 FEET ALONG THE WEST LINE OF
SECTION 17 AND THE CENTERLINE OF HICKORY RIDGE ROAD; THENCE N.89°50'58"E.
1587.98 FEET; THENCE S.00°00'09"E. 1317.67 FEET TO THE SOUTH LINE OF SECTION 17
AND THE CENTERLINE OF WARDLOW ROAD (120.00 FEET WIDE); THENCE S.89°33'27"W.
485.00 FEET ALONG THE SOUTH LINE OF SECTION 17 AND THE CENTERLINE OF WARDLOW
ROAD; THENCE N.01°55'54"E. 193.74 FEET; THENCE S.89°33'27"W. 1119.79 FEET TO
THE POINT OF BEGINNING. CONTAINING 40.40 ACRES, MORE OR LESS.

SUBJECT TO THE RIGHTS OF THE PUBLIC IN HICKORY RIDGE ROAD AND WARDLOW ROAD AND
TO ANY AND ALL EASEMENTS AND RIGHTS OF WAY OF RECORD.

Tax Parcel No. 11-17-300-036