

TOWNSHIP OF ALGOMA
COUNTY OF KENT, MICHIGAN

Minutes of a regular meeting of the Township Board of the Township of Algoma, Kent County, Michigan, held in the Algoma Township Hall, 10531 Algoma Avenue, N.E., within the Township, on the 14th day of March, 2000 at 7:00 p.m.

PRESENT: Members: Uplinger, Walkons, Ellenwood and Bigney

ABSENT: Members: Spitsbergen

The following preamble and resolution were offered by Member Ellenwood and supported by Member Bigney.

ORDINANCE NO. 180

**AN ORDINANCE to amend the Zoning Ordinance of the
Township of Algoma**

**[Summit Breeze Site Condominium Planned Unit Development –
Site Plan #9817 (Sable Developing)]**

THE TOWNSHIP OF ALGOMA ORDAINS:

Section 1. Planned Unit Development. The Zoning Ordinance and Zoning Map of the Township of Algoma are hereby amended so as to rezone the following described lands from the R-A Rural Agricultural District to the PUD Planned Unit Development District, in accordance with the Preliminary Development Plan of the Summit Breeze Site Condominium Planned Unit Development, subject to all of the terms and conditions of this Ordinance:

The Northwest 1/4 of the Southwest 1/4 of Section 25, except the North 232 feet of the South 697 feet of the East 950 feet; and also except the North 400

feet of the South 1097 feet of the East 245 feet; and also the Northeast 1/4 of the Southeast 1/4 of Section 26, except the North 525 feet of the West 660 feet, Town 9 North, Range 11 West, Algoma Township, Kent County, Michigan.

In the event of conflict between any part of the Development Plan or notes thereon and the terms of this Ordinance, this Ordinance shall control.

Upon reviewing the preliminary development plan, the Township Board determines that the planned unit development, if developed in accordance with this Ordinance, would have the following desirable characteristics and would achieve the following land use objectives:

- (1) The development would encourage creative development of land, through the use of common open space and recreation areas, a community sewage disposal system, and other features.
- (2) The development shows a flexibility and innovation in design.
- (3) The development would promote the efficient use of land and would make possible an economic arrangement of buildings and other elements of land use.

Section 2. Rezoning. The rezoning of the above-described lands to the Planned Unit Development (PUD) District, is expressly subject to all of the following terms and conditions:

- (1) Development Plan. Summit Breeze Site Condominium Planned Unit Development (the "Development") shall comply in all respects with the Preliminary Development Plan having a last revision date of February 2, 2000, except where the Plan has been changed, revised or modified by this Ordinance, or as it may be modified during the process of final site development plan approval by the Planning Commission in accordance with Section 21.6(3) of the Zoning Ordinance.

(2) Unit Areas; Buildings; Site Access.

(a) The Development is a site condominium development. It shall have 61 residential units ("units") for one single-family, detached dwelling each. Each unit shall have the area and shall be located as shown on the Plan. The minimum unit width shall be as shown on the Plan. The minimum yard sizes shall be as follows:

Front yard – 30 feet

Rear yard – 30 feet

Side Yard – 15 feet for each side

Further, the Township Board concludes that the reduction in the minimum lot width from the minimum lot width requirement specified in the R-A District, to the various lesser widths shown on the Preliminary Development Plan, is reasonable in view of the area of usable open space otherwise provided in the Development, and in view of the other amenities shown in the Preliminary Development Plan.

(b) The areas of the units in the Development, as shown on the Preliminary Development Plan, range from 14,500 square feet up to 36,936 square feet, which results in a building density of .92 dwellings per acre, or 1.0 dwellings per acre excluding right-of-way and the private road. Under the terms of Section 21.3 of the Zoning Ordinance, the Township Board has considered the building density increase represented in the Development, as compared to the maximum permissible densities under the R-A Districts. The Township Board concludes that such increase in building density is appropriate under all of the circumstances, in view of the dedicated open space, required landscaping, natural areas and other amenities of the Development. The Township Board concludes under the terms of Section 21.3(1)(a) that such increase in building

density would not produce adverse traffic conditions or an undue burden on public facilities, in view of the maximum number of dwellings that could be constructed within the Development.

(c) Internal traffic circulation throughout the Development shall be by means of private streets to be constructed by the Developer and located as shown on the Plan. The right-of-way shall have a width of 66 feet, the travel width of the streets shall be 22 feet (26 feet including valley gutters), and the streets shall be paved with bituminous pavement and a sufficient aggregate base. The street grade shall not exceed 8%.

(d) The private streets shall be maintained, repaired, replaced and snow-plowed so as to afford continuous access and unimpeded passage for vehicles (including emergency vehicles) under all weather conditions. The Master Deed and Condominium Bylaws shall have provisions requiring maintenance of the street in accordance with this Ordinance and the other provisions of Township ordinance pertaining to public streets.

(e) The private streets shall have names approved by the Kent County Road Commission.

(3) Sanitary Sewer Service and Water Supply.

(a) Units 1 through 14 shall be served by a private septic tank and drainfield system, and all units shall be served by separate individual water wells. All septic systems and wells shall be subject to approval of the Kent County Health Department and shall be constructed in compliance with all applicable regulations. The Master Deed and Condominium Bylaws shall provide that all septic tanks shall be pumped out at least once every four years. A written certification of completion of such periodic maintenance shall be provided to the Association of owners of units in the Development; such certification shall be made available to the Township Clerk upon request.

(b) Units 15 through 61 shall be served by a privately-owned community sewage disposal system, in accordance with all State and/or local Health Department requirements. It is acknowledged that State regulations require, as a condition of approval of such a system, that the Township agree to guarantee proper operation of the system, should the private parties responsible therefor fail to do so. The approval of this Ordinance with respect to the zoning of the lands shall not require the Township Board to approve the proposed community sewage disposal system unless and until the Board is satisfied, in its sole discretion, that such undertaking is not contrary to the public interest, and that an agreement satisfactory to the Township Board has been reached with the Developer with respect to such undertaking. The Master Deed or Condominium Bylaws shall contain provisions for proper continued operation of the system, and such other conditions as are separately required by the Township Board with respect to any undertaking to agree to assume operation and responsibility for the system.

(c) The sanitary sewer system shall be subject to the matters required in the letter of the Township's consulting engineers, dated February 22, 2000.

(4) Surface Water Drainage.

(a) The drainage of surface waters shall be accomplished by leaching basins, storm sewers, designated drainage areas, culverts, and other means, as indicated in the Plan.

(b) The use of the surface water drainage system in the Development and the discharge of waters from the storm sewer system and other elements of the surface water drainage system shall be designed, engineered and carried out so as to have no significant adverse effect upon adjacent or nearby lands or surface waters, or upon wetlands or surface waters within the Development, by reason of erosion, pollution or otherwise.

(c) The Condominium Master Deed and Bylaws shall require that all facilities for storm water management be regularly maintained in proper functioning condition.

(d) The surface water drainage plan and system shall be subject to the approval of the Township Engineer. All aspects of the surface water drainage system shall comply with the requirements stated in the letter of the Township Engineer dated February 22, 2000.

(5) Soil Erosion and Sedimentation Control; Site Grading. In the construction and use of the Development, the Developer shall comply in all respects with any required soil erosion and sedimentation permit. A copy thereof shall be submitted to the Township. Soil erosion protection and stabilization techniques and procedures shall be provided continuously during all phases of construction, until lawns and other landscaped areas are established.

(6) Wetlands. Any portions of the Development which are wetlands or which have been designated as wetlands under applicable Michigan law shall not be filled, dredged or developed to any extent without the approval of the Department of Natural Resources, by means of such permits as may be required by law. The design, layout and construction of the Development shall be carried out only in such a manner as to have no serious adverse effect on the quality and the waters of any wetland areas.

(7) Utilities. All utility service within the Development shall be by means of underground facilities. The Master Deed shall reserve easements for future private and public utility service, including water and sewer, within the private road right-of-way and within 20 feet on both sides thereof.

(8) Building Floor Area.

(a) All dwellings shall be built upon a full basement and foundation. All dwellings shall have a minimum building floor area as required in the R-A District or successor

zoning district, except that a maximum of 25% of the dwellings in the Development may consist of (i) two-story dwellings with a main floor area of at least 620 square feet and a total floor area of at least 1,240 square feet, not including garages, porches and breeze ways, and (ii) one and one-half story dwellings with a minimum floor area of 864 square feet.

(9) Signs. One sign identifying the Development may be located at each of the entrances to the Development off Summit Avenue. Such signs shall be not larger than 32 square feet.

(10) Outdoor Lighting. Outdoor lighting within the Development shall be provided only by means of overhead street lighting consisting of 14 light poles, with lights of not more than 100 watts each, in accordance with the schematic drawing prepared by Consumers Energy Company and submitted by the applicant at the Township Board meeting of March 14, 2000. Such lighting shall be designed and installed so as to be lighting of a minimal nature only, without excessive glare or excessive brightness.

(11) Open Space Area.

(a) Within those areas designated as "Recreation Area" on the Plan, no buildings, structures or other improvements shall be constructed, nor shall trees or vegetation be removed. The Condominium Master Deed and Bylaws shall contain provisions preserving these areas as open space in perpetuity.

(b) Stormwater detention areas shall be located as shown on the Plan. All such detention areas shall be subject to the approval of the Township's consulting engineers, with regard to design, construction and operation.

(c) Provisions for perpetual maintenance of the open space and other natural areas within the Development shall be included in the site condominium documents or in

separate restrictive covenants. Such instruments shall be subject to the approval of the Township Attorney prior to recording.

(12) Private Streets. The streets in the Development shall comply with all Township requirements for private streets.

(13) Sidewalks. Sidewalks shall be installed on both sides of all streets. Sidewalks adjacent to building sites shall be installed when the building on that unit is completed, except that sidewalks shall be completed in their entirety throughout the project when the buildings have been constructed on 75% of the condominium units. The Condominium Master Deed or Bylaws shall contain provisions ensuring that the developer or association shall construct the remaining sidewalks once that threshold is reached, and provide for a method of paying for and assessing the cost of such sidewalks.

(14) Sales Office. A single-family dwelling constructed on one of the units may be used as a temporary sales office by the Developer for providing information and soliciting sales of properties within the Development. Such office may be located and relocated at the Developer's discretion, except that only one such office shall be in use at any time. Use of any property for a sales office shall cease when 90% of the units have been sold. The dwelling in which the office is located shall in all respects have the appearance of a single-family dwelling, except that a sign of not more than 12 square feet identifying the development and the sales office may be placed on the property, and removed when the property is no longer being used for a sales office.

(15) Underlying Zoning. Except as modified herein, or in the Final Development Plan, the requirements of the R-A Zoning District shall apply to the Development.

(16) Master Deed and Bylaws. As to any requirements required herein to be included in the Master Deed and/or Condominium Bylaws, such instruments shall specifically list

such requirements and shall provide that the same shall not thereafter be amended or deleted without the written approval of the Planning Commission and Township Board. Such provisions shall be reviewed by the Township Attorney before recording, so as to verify their compliance with this subparagraph and this Ordinance.

There shall be no provisions of the Master Deed or Condominium Bylaws which are contrary to or at variance with the provisions of this Ordinance or which would in any way hinder the enforcement of this Ordinance. To the extent that any such Master Deed or Condominium Bylaw provisions may be contrary to or at variance with any of the provisions of this Ordinance, the same shall be applicable only to the extent permitted by the terms hereof. The Master Deed and Bylaws shall make express reference to this Ordinance and state that use of property within the Development is subject to this Ordinance, notwithstanding anything to the contrary in the Master Deed or Bylaws.

(17) Phasing.

(a) The Development may be constructed in three phases. The first phase shall consist of Units 1-14, the second phase shall consist of Units 15-26 and Units 52-61, and the third phase shall consist of Units 27-51.

(b) Prior to a building permit and/or certificate of occupancy being issued for any building on a unit within Phase 1, the following improvements shall be completed and approved by the Township, or a performance guaranty which complies with Township ordinance shall be furnished by the developer:

- (1) Tradewind Drive shall be completed in its entirety.
- (2) All stormwater management facilities required to provide drainage for the road and other improvements within Phase 1 shall be completed.

(c) No building permit shall be granted for a building on Units 15-61 until the community sewage disposal system is completed and approved, and the collection system is extended to that unit and ready for connection. A performance guarantee may not be provided in lieu of such completion and approval.

(d) Prior to a building permit and/or certificate of occupancy being issued for any building on a unit within Phase 2, the following improvement shall be completed and approved by the Township, or a performance guarantee which complies with Township ordinance shall be furnished by the Developer:

(1) Whirlwind Drive shall be completed from the intersection with Summit Avenue to the west boundary of Unit 26.

(2) There shall be a walking path between Units 39 and 40 and a walking path between Units 53 and 54.

(3) All stormwater management facilities required to provide drainage for the roads and other improvements in Phase 2 shall be completed.

(e) Prior to a building permit and/or certificate of occupancy being issued for any building or unit within Phase 3, all remaining improvements shall be completed and approved by the Township, or a performance guarantee which complies with Township ordinance shall be furnished by the Developer.

(18) Additional Requirements.

(a) All dwellings in the Development shall be numbered in reasonable numerical order, so as to promote ease of locating dwellings within the Development.

(b) The stop sign in the Development shall be shown on the site plan and installed within the Development, as indicated on the Plan.

(c) The 10-foot wide access area shown on the site plan shall be increased to a larger area, or a second access shall be provided to the recreation area.

(d) The site plan shall indicate the common easement to the north of the community utility system and shall be labeled on the plan as a common easement.

(e) The 49-foot wide driveways to Unit 11 and Unit 12 shall be maintained in the width and at the location shown on the site plan.

(19) Additional Findings. The Township Board hereby determines that planned unit development rezoning will result in recognizable and substantial benefit to the ultimate users of the project and to the community, and such benefit would otherwise be unfeasible or unlikely to be achieved. The proposed type and density of use would not result in an undue burden upon public services, facilities and utilities, will be compatible with the Master Plan of the Township, and will be consistent with the intent and spirit of Article XXI of the Zoning Ordinance. The planned unit development does not change the essential character of the surrounding area.

It is further determined that the conditions imposed herein are reasonably necessary to ensure that public services and facilities will be capable of accommodating the Development, that the natural environment and resources are preserved, that the Development is compatible with adjacent land uses, and that land be used in a socially and economically desirable manner. Furthermore, it is determined that the conditions are designed to protect natural resources, health, safety and welfare, are necessary to meet the intent and purposes of the zoning ordinance, are related to the standards established for the Development and are related to the valid exercise of the police power.

Section 3. Enforcement. The Township may enforce the provisions of this Ordinance and applicable provisions of the Township Zoning Ordinance, Building Code and other ordinances, laws and regulations to the extent and in any manner provided by law.

In the event that the applicant shall fail to carry out, either at all or on a timely basis, any provision or requirement of this Ordinance or other applicable law, ordinance or regulation, the Township may through its Building Inspector or other Township agency issue and post a stop work order at the site of any improper or noncomplying part of the Development, directing that all further construction of such part of the Development be ceased forthwith, pending the compliance with any applicable provisions of this Ordinance or of Township ordinances, regulations or State laws. Upon the issuance of such stop work order, the applicant shall comply fully therewith without delay. Upon the correction of any matters as to which the stop work order was issued, the Township shall promptly rescind and remove the stop work order, whereupon the applicant may again proceed with construction or other permissible activity as to the Development. The issuance and posting of any stop work order shall not be an exclusive remedy, but may be undertaken by the Township in addition to all other lawful means of enforcement.

Section 4. Publication/Effective Date. This Ordinance, or a summary of its provisions, shall published in a local newspaper of general circulation within the Township. This Ordinance shall take effect seven days following such publication.

AYES: Members: All
NAYS: Members: None
ABSENT: Members: One

ORDINANCE DECLARED ADOPTED.



Laural E. Walkons, Township Clerk

TOWNSHIP OF ALGOMA
COUNTY OF KENT, MICHIGAN

RESOLUTION 11-00

**RESOLUTION TO AUTHORIZE "AGREEMENT TO ASSUME
RESPONSIBILITY FOR OPERATION OF PRIVATE SEWER SYSTEM
FOR SUMMIT BREEZE SITE CONDOMINIUMS"**

At a regular meeting of the Township Board of the Township of Algoma, held at the Algoma Township Hall, in said Township, on the 11th day of April, 2000, at 7 p.m.

PRESENT: MEMBERS: Uplinger, Walkons, Ellenwood, Bigney and Spitsbergen

ABSENT: MEMBERS: None

The following preamble and resolution were offered by Member Ellenwood and seconded by Member Bigney:

WHEREAS, Sable Developing, Inc. (the "Developer") proposes to construct a 61 unit site condominium project in the Township of Algoma (the "Township") known as Summit Breeze (the "Development"); and

WHEREAS, the Developer has proposed that units 15 through 61 in the Development be served by community drainfield, collection main and appurtenances thereto (the "Sewer System"); and

WHEREAS, the Developer has proposed that the Sewer System be owned and operated initially by the Developer and subsequently by the Association of condominium co-owners to be established (the "Association"); and

WHEREAS, pursuant to Michigan Administrative Code Rule 299.2933(4), promulgated by the Michigan Department of Environmental Quality (the "MDEQ") pursuant to Part 41 of the Natural Resources and Environmental Protection Act, Public 451 of 1994, as amended, no construc-

tion permit will be issued by the MDEQ for the proposed privately-owned Sewer System unless the Township agrees to “assume responsibility for the effective and continued operation and maintenance of the proposed sewage system if the owner in any way fails to perform in this capacity”; and

WHEREAS, the Township has determined that it is in the public interest to agree to assume such responsibility, upon the terms and conditions set forth in the “Agreement to Assume Responsibility for Operation of Private Sewer System for Summit Breeze Site Condominiums” (the “Agreement”), attached hereto as Exhibit A.

NOW, THEREFORE, BE IT HEREBY RESOLVED AS FOLLOWS:

1. The Township agrees to assume responsibility for the Sewer System (as defined in the Agreement) upon being ordered by the MDEQ to do so if the owner of the Sewer System fails to provide effective and continued operation and maintenance of the Sewer System, or as otherwise provided in the Agreement.

2. The Township’s agreement to do so is subject to the terms and conditions of the Agreement, the form of which is hereby approved. The Township Supervisor and Clerk are hereby authorized and directed to sign the Agreement on behalf of the Township, with any minor revisions which may be advisable and which do not change the intent of the Agreement.

3. All resolutions or parts of resolutions in conflict herewith shall be and the same are hereby rescinded.

AYES: MEMBERS: All

NAYS: MEMBERS: None

RESOLUTION DECLARED ADOPTED.


Laural E. Walkons, Township Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

I, the undersigned, the duly qualified and acting Clerk of the Township of Algoma, Kent County, Michigan (the "Township") do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Township Board at a regular meeting on April 11, 2000, the original of which is on file in my office. Public notice of said meeting was given pursuant to and in compliance with Act No. 267, Public Acts of Michigan, 1976, as amended, including in the case of a special or rescheduled meeting, notice by posting at least eighteen (18) hours prior to the time set for the meeting.

IN WITNESS WHEREOF, I have hereto affixed my official signature on this 9th day of MAY, 2000.



Laural E. Walkons, Township Clerk

EXHIBIT A

**AGREEMENT TO ASSUME RESPONSIBILITY
FOR OPERATION OF PRIVATE SEWER SYSTEM FOR
SUMMIT BREEZE SITE CONDOMINIUMS**

This Agreement is entered into as of April 11, 2000, by and between **SABLE DEVELOPING, INC.**, of 2555 14 Mile Road, Sparta, Michigan (the "Developer") and the Township of Algoma (the "Township").

WHEREAS, the Developer has proposed a 61 unit site condominium project in the Township known as Summit Breeze (the "Development") on real property legally described in the attached **Schedule I**; and

WHEREAS, the Developer has proposed that Units 15 through 61 in the Development, which are served by a common private road system, be served by a community drainfield which will be a general common element of the Development including a collection main and all appurtenances thereto (the "Sewer System"); and

WHEREAS, the Developer has proposed that the Sewer System be owned and operated initially by the Developer and subsequently by the Association of condominium co-owners to be established (the "Association"); and

WHEREAS, pursuant to Michigan Administrative Code Rule 299.2933(4), promulgated by the Michigan Department of Environmental Quality (the "MDEQ") pursuant to Public Act 98 of the Public Acts of Michigan of 1913, as amended, no construction permit will be issued by the MDEQ for the proposed privately owned Sewer System unless the Township agrees to "assume responsibility for the effective and continued operation and

maintenance of the proposed sewage system if the owner in any way fails to perform in this capacity"; and

WHEREAS, the Township has determined it is in the public interest to agree to assume such responsibilities, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. The Developer shall be responsible for the design, permitting and construction of the Sewer System at no cost to the Township and the Developer shall hold the Township harmless in this regard. The Association shall be responsible for the operation and maintenance of the Sewer System at no cost to the Township and the Association shall hold the Township harmless in this regard.

2. The Township shall not be required to assume responsibility for the Sewer System unless so ordered by the MDEQ, provided, however, the Township may elect, in its discretion, to assume responsibility for the effective and continued operation and maintenance of the Sewer System if the owner of the Sewer System fails to perform in this capacity, and such failure poses a risk of major failure of the Sewer System.

3. The Township's agreement to assume responsibility is contingent upon the following conditions to which the Developer and Association consent by the execution of this Agreement and which shall be recorded as a restrictive covenant against all lands comprising the Development in the Kent County records prior to the recording of the master deed or other recorded documents necessary for the Development:

A. Capacity. The Sewer System shall provide sanitary sewer service to units 15 through 61, inclusive, in the Development. The Sewer System shall not serve more than 47 single family dwellings.

B. Governmental Approvals. The Sewer System shall receive all required approvals and permits from the MDEQ, the Kent County Health Department, and all other agencies having jurisdiction. The Township shall be provided copies of all substantive correspondence between, and reports to, any governmental agency with respect to the Sewer System.

C. Location of Sewer System. The Sewer System subject to this agreement shall be located exclusively in the General Common Elements of the Development and shall not be located within any individual unit. Accordingly, all on-site building sewers, effluent, lift or other pumps, septic tanks, piping, related electrical services and appurtenances shall be the responsibility of the individual unit owner and shall not under any circumstances be deemed part of the Sewer System for which the Township has agreed to assume responsibility.

D. Design. The Sewer System shall be designed in accordance with Kent County Department of Public Works standards and sealed by a licensed professional engineer (the "Design Engineer") pursuant to a written professional services agreement between the Developer and the Design Engineer (the "Engineering Agreement"). The Engineer shall be insured for errors and omissions pursuant to an insurance policy with limits acceptable to the Township. The Engineering Agreement shall contain language stating that:

"Engineer expressly acknowledges that (a) the Engineering Agreement is for the mutual benefit of both Developer and the Township of Algoma and (b) the Township has and will rely on Engineer's satisfactory performance of this Engineering Agreement. If the Township is required to assume responsibility or incur cost or liability including regulatory fines or penalties or undertake any activities, including repair or replacement of the Sewer System as a result of Engineer's failure in any way to properly design the Sewer System or to properly perform the Engineering Agreement, Township shall be entitled to bring an action directly against Engineer for damages or other appropriate relief, and if successful, shall be entitled to recover from Engineer the Township's actual reasonable costs and reasonable attorney fees incurred in such action."

The installation of the Sewer System shall be under the supervision of the Design Engineer or a qualified inspector ("Inspector") employed by the Design Engineer or the Developer pursuant to a written professional services agreement between the Inspector and the Design Engineer or the Developer, as the case may be (the "Inspection Agreement"). The Design Engineer or Inspector, as the case may be, shall be insured for errors and omissions pursuant to an insurance policy with limits acceptable to the Township. The Inspection Agreement shall contain language stated that:

"Inspector expressly acknowledges that (a) the Inspection Agreement is for the mutual benefit of both Developer and the Township of Algoma and (b) the Township has and will rely on Inspector's satisfactory performance of this Inspection Agreement. If the Township is required to assume responsibility or incur cost or liability, including regulatory fines or penalties, ~~(including regulatory fines or penalties)~~ or undertake any activities, including repair or replacement of the Sewer System, as a result of Inspector's failure in any way to properly inspect the Sewer System or to properly perform the Inspection Agreement, Township shall be entitled to bring an action directly against Inspector for damages or other appropriate relief, and if successful, shall be entitled to recover from Inspector the Township's actual reasonable costs and reasonable attorney fees incurred in such action."

E. Construction. The Sewer System shall be constructed and installed by a qualified contractor (the "Contractor") pursuant to a written construction agreement between the Developer and the Contractor (the "Construction Contract"). The Contractor shall be insured for errors and omissions pursuant to an insurance policy with limits acceptable to the Township. The Construction Contract shall contain language stating that:

Contractor expressly acknowledges that (a) the Construction Contract is for the mutual benefit of both Developer and the Township of Algoma and (b) the Township has and will rely on Contractor's satisfactory performance of this Construction Contract. If the Township is required to assume responsibility or incur cost or liability, including regulatory fines or penalties or undertake any activities, including repair or replacement of the Sewer System, as a result of Contractor's failure to perform the Construction Contract, the Township shall be entitled to bring an action directly against Contractor for damages or other appropriate relief, and if successful, shall be entitled to recover from Contractor the Township's actual reasonable costs and reasonable attorney fees incurred in such action.

F. Engineer's Certification. The Design Engineer shall certify to the Township that the Sewer System is designed and constructed in accordance with sound engineering practice, and includes a "set aside" area for a complete replacement of the drainfield.

G. Replacement. The Development shall contain adequate vacant land to permit the complete replacement of the Drain Field.

H. Operator. The Developer and/or the Association shall execute a written operation contract (the "O&M Contract") with a qualified and licensed operator (the "Operator"), acceptable to the Township, to provide for the continued operation and

preventative maintenance of the Sewer System. The Operator shall be insured for errors and omissions pursuant to an insurance policy with limits acceptable to the Township. The O&M Contract shall include the following express provisions:

The Operator is an independent contractor and shall not for any purpose be considered an employee of the Township.

Operator expressly acknowledges that (a) the O&M Agreement is for the mutual benefit of both Developer/Association and the Township of Algoma and (b) the Township, has and will rely on Operator's satisfactory performance of this O&M Agreement. If the Township is required to assume operation and maintenance responsibility or incur cost or liability of any sort, including regulatory fines and penalties, or undertake any activities, including repair or replacement of the Sewer System as a result of Operator's failure in any way to properly operate and maintain the Sewer System or Operator's failure to perform the O&M Agreement the Township shall be entitled to bring an action directly against Operator for damages or other appropriate relief, including actual attorney fees and expenses incurred by the Township in connection therewith, and if successful, shall be entitled to recover from Operator the Township's actual reasonable costs and reasonable attorney fees incurred in such action.

I. Insurance. The Association shall provide for the operation, maintenance, repair and replacement of the Sewer System without cost or expense to the Township including the maintenance of a policy of casualty insurance for the replacement value of the insurable components of the Sewer System and a policy of comprehensive general liability insurance with limits acceptable to the Township. The Township shall be an additional named insured on each such policy.

J. Easements. The Developer shall grant such easements and other instruments of conveyance to the Township, reasonable and necessary in the opinion of the Township legal counsel, to provide the Township with proper ingress and egress to all components of the Sewer System and to provide adequate working areas necessary for operation and maintenance. Said easements and instruments shall be recorded in the Kent County Records prior to the recording of the Master Deed for the Development.

K. Assessments. The condominium documents shall require that the Association, upon request by the Township, impose assessments as necessary to reimburse the Township for any costs incurred in assuming responsibility for the Sewer System and cooperate fully with the Township in collecting such assessments and distributing them to the Township. The Township may demand that the assessments, regardless of amount, be collected in a single lump sum from the property owners.

L. Condominium Documents. The condominium 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 unit owners, pursuant to Public Act 188 of the Public Acts of Michigan of 1954, as amended, to enable the Township to levy special assessments if it is ever called upon to perform its obligations hereunder; (2) give notice that the Development will be subject to an appropriate Sewer Connection, Use and Rate Ordinance to be adopted by the Township in the future event the Township is required to assume responsibility for the Sewer System; (3) give notice that in the event the Township is required to assume responsibility for the Sewer System 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 this occurs before all units are occupied, such rates and charges may be proportionally higher for occupied premises; (4) give notice of a potential statutory first lien under Public Act 178 of 1939 or other applicable law which will attach to the properties upon the expenditure of public monies for maintenance and repair of the Sewer System; and (5) provide that ownership of the Sewer System's facilities and equipment, but not the land beneath same, be temporarily transferred to the Township, in the Township's discretion, in the event the Township is ever required or elects to assume responsibility for the operating and maintenance of the Sewer System .

M. Inspection. The Township, through its designated agents and representatives shall have the right to inspect the construction and operation of the Sewer System on an annual basis, and all records pertaining thereto at any time following reasonable advance notice. The Township may charge the Association for actual costs of annual inspections, and the Association shall promptly pay such charges.

N. Letter of Credit/Cash Escrow. Before a building permit shall be issued for the construction of a residence upon any unit served by the Sewer System, the Developer shall provide to the Township an irrevocable letter of credit in the amount of \$10,000.00, which letter of credit shall be restricted in use to pay for the cost of operating, maintaining, repairing, replacing, engineering and legal costs (the "Permitted Expenses"), in the event the Township is ever required or elects to assume responsibility for the operating and maintenance of the Sewer System. Such irrevocable letter of credit shall be increase to the amount of \$25,000.00 at such time as the Board of Directors for the Summit Breeze Condominium Association is controlled by a majority of non-developer co-owners, or after a period of five years from the commencement of Sewer System operations, whichever first occurs. In accordance with Paragraph P below, at such time as the Developer or the Association funds a cash escrow account in the amount of \$25,000.00 in the name of the Township (the "Sewer Escrow Fund"), the letter of credit shall be released and terminated. The Sewer Escrow Fund shall be restricted in use to reimburse the Township for Permitted Expenses. The Sewer Escrow Fund shall be held by the Township for so long as the Development is served by the Sewer System. The Sewer Escrow Fund may be invested by the Township and all investment earnings shall inure to the Sewer Escrow Fund.

O. Connection to Publicly Owned Sewer System. In the event that the Sewer System has failed and requires substantial repair or replacement and a publicly owned sewer system has been constructed in Summit Avenue abutting the Development or in an easement abutting the Development, the Township may, at its sole discretion, require that the Sewer System be abandoned and all properties in the Development be connected to the publicly owned sewer system.

P. Guarantee. The Developer shall guarantee to insure proper operation, repair and maintenance of the Sewer System, and if it fails to do so, shall pay all Permitted Expenses incurred by the Township. The Township may seek such reimbursement in lieu of levying condominium assessments or special assessments against property owners as provided herein. The obligations of the Developer under this subparagraph shall survive any assignment of the Developer's rights to the Association or any assumption of the Developer's obligations with respect to the Development by the Association. The Developer shall be released from responsibility under this paragraph if (1) the balance in the Sewer Escrow Fund identified in Paragraph N above is increased to the amount of \$25,000, or, alternatively, the Township accepts, in its discretion, other security which is the functional equivalent of cash security in the amount of \$25,000.00, and (2) the Sewer System has been operated by the Developer and/or Association for a minimum of two consecutive years in full compliance with the provisions hereof and all permit and regulatory requirements.

The Developer and/or the Association are primarily responsible for operation, maintenance, repair, and replacement of the Sewer System. This Agreement is intended only to provide the assurance required by Michigan Administrative Code Rule 299.2933. In the event the Township is ever called upon to operate and maintain the Sewer System, it is understood that the Township shall take actions necessary to return the Sewer System to proper operating condition, at which point the Association shall again assume responsibility for the Sewer System.

5. This Agreement shall be recorded in the Kent County Records.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day
and year first above written.

WITNESSES:

TOWNSHIP OF ALGOMA

Julie M. Sjogren
(Julie M. Sjogren)

By: Leon J. Uplinger
Its: Supervisor

Julie M. Sjogren
(Julie M. Sjogren)

By: James E. Walkons
Its: Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF Kent)

On this 12th day of April, 2000, before me, a Notary Public in and
for said County, appeared Supervisor Uplinger and Clerk Walkons, to me
personally known, who being by me duly sworn, did say that they are Supervisor and Clerk,
respectively, of Algoma Township, and that said instrument was signed and sealed on behalf of
said Township, by authority of its Township Board, and acknowledged said instrument to be
the free act and deed of said Township.

Candis Bronkema
Notary Public, Kent County, MI
My Commission Expires: 01/15/01

SABLE DEVELOPING, INC., a Michigan
corporation

()

By: _____
Kelly Powell
Its: President

()

By: _____
John Bitely
Its: Secretary

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

WITNESSES:

TOWNSHIP OF ALGOMA

Julie M. Sjogren
(Julie M. Sjogren)

By: Leon J. Uplinger
Its: Supervisor

Julie M. Sjogren
(Julie M. Sjogren)

By: Edward E. Walkers
Its: Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF Kent)

On this 12th day of April, 2000, before me, a Notary Public in and for said County, appeared Supervisor Uplinger and Clerk Walkers, to me personally known, who being by me duly sworn, did say that they are Supervisor and Clerk, respectively, of Algoma Township, and that said instrument was signed and sealed on behalf of said Township, by authority of its Township Board, and acknowledged said instrument to be the free act and deed of said Township.

Cardis Bronkema

Notary Public, Kent County, MI
My Commission Expires: 01/15/01

SABLE DEVELOPING, INC., a Michigan corporation

Renee A. English
(Renee A. English)

By: Kelly Powell
Its: President

Douglas Wood
(Douglas Wood)

By: John Bitely V.P.
Its: Secretary

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

On this 12TH day of APRIL, 2000, before me, a Notary Public in and for said County, appeared Kelly Powell, to me personally known, who being by me duly sworn, did say that he is the President of Sable Developing, Inc., and John Bitely, who being by me duly sworn, did say that he is the Secretary of Sable Developing, Inc., the Developer of Summit Breeze, which executed the within instrument; and further acknowledged said instrument to be of their free act and deed.

Renee A English
RENEE A. ENGLISH
Notary Public, Kent County, MI
My Commission Expires: 9-16-02