

Lucas, Wilcomb Merica

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STORM WATER DETENTION AREA MAINTENANCE AGREEMENT APR 30 1992

This Agreement dated this 24TH day of APRIL *Lucas Merica* 1992 *Anton*
LAKE COUNTY

by and between LAKE COUNTY TRUST COMPANY as Trustee under Trust No. 1954, sometimes hereinafter designated as "Trust No. 1954" and BURNSIDE CONSTRUCTION COMPANY, an Illinois Corporation, sometimes hereinafter designated as "Burnside":

WITNESSETH:

WHEREAS, Trust No. 1954 is the owner and has title to the following described real estate located in Lake County, Indiana:

A part of the North Half of the Northwest Quarter of Section 29, Township 35 North, Range 8 West of the Second Principal Meridian, more particularly described as follows: Commencing at a point on the East line of said North Half of the Northwest Quarter that is South 00° 36' 05" East a distance of 365.00 feet from the Northeast corner of said North Half of the Northwest Quarter, thence South 89° 44' 10" West, a distance of 368.80 feet, thence South 00° 30' 24" East, a distance of 374.60 feet, thence South 89° 44' 10" West, a distance of 150.00 feet, thence South 00° 30' 24" East, a distance of 283.10 feet, to the North line of the South 300.00 feet of said North Half of the Northwest Quarter, thence North 89° 44' 38" East along said North line, a distance of 519.89 feet to the East line of said North Half of the Northwest Quarter, thence North 00° 36' 05" West, along said East line, a distance of 657.78 feet to the point of beginning, containing 6.552 Acres, more or less, in the Town of Merrillville, Lake County, Indiana.

WHEREAS, Burnside is purchasing on a Real Estate Land Contract the following described parcel which is located directly to the west of Lake County Trust No. 1954's parcel:

A part of the South Half of the Southwest Quarter of the Southwest Quarter of Section 20 and a part of the North Half of the Northwest Quarter of Section 29, both in Township 35 North, Range 8 West of the Second Principal Meridian, more particularly described as follows: Commencing at the Southwest corner of said Section 20 thence North 00° 19' 12" West along the West line thereof, a distance of 660.86 feet, thence North 89° 43' 50" East a distance of 608.22 feet, to the West line of the East 721 feet, (722.56 measured) of the South Half of the Southwest Quarter of the Southwest Quarter of said Section 20 thence South 00° 23' 21" East along said West line a distance of 660.92 feet to the south line of said Section 20 and to the North line of said Section 29, thence South 00° 36' 05" East, along the West line of the East 2049.70 feet (2054.13 measured) of the North 330.00 feet of the North Half of the Northwest Quarter of said Section 29, a distance of 330.00 feet to the South line of the North 330.00 feet of the North Half of the Northwest Quarter of said Section 29, thence North 89° 44' 10" East along said South line, a distance of 2049.70 feet (2054.13 measured) to the East Line of the Northwest Quarter of said Section 29, thence South 00° 36' 05" East along said East line a distance of 35.00 feet, thence South 89° 44' 10" West a distance of 368.80 feet, thence South 00° 30' 24" East a distance of 374.60 feet, thence South 89° 44' 10" West a distance of 150.00 feet, thence South 00° 30' 24" East, a distance of 283.10 feet to the North line of the South 300.00 feet of said North Half of the Northwest Quarter of Section 29, thence South 89° 44' 38"

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West along said North line a distance of 206.11 feet to the West line of the East 726.00 feet of the South 300.00 feet of said North Half of the Northwest Quarter of Section 29, thence South 00° 36' 05" East along said West line a distance of 300.00 feet to the South line of said North Half of the Northwest Quarter of Section 29, thence South 89° 44' 38" West along said South line a distance of 1936.33 feet to the West line of said Section 29, thence North 00° 38' 12" West along said West line a distance of 1322.43 feet to the point of beginning, containing 62.967 acres, more or less in the Town of Merrillville, Lake County, Indiana.

WHEREAS, the parties wish to make an agreement as to the payment of the cost of the maintenance of the storm water detention area which is to be constructed by Burnside directly west of the property currently owned by Lake County Trust No. 1954.

NOW, THEREFORE, for good and valuable consideration and mutual covenants and promises contained herein has agreed as follows:

1. Construction. That Burnside will construct at its sole cost and expense according to the plans and specifications of the Town of Merrillville, the Independence Hill Conservancy District and the Lake County Drainage Board the storm water detention area located adjacent to 85th Avenue and approximately 369 feet west of State Road 55 and referred to as Outlot "A" of the Burnside's Chapel Hill Farms Phase I addition to the Town of Merrillville, Lake County, Indiana as approved by the Plan Commission for the Town of Merrillville on September 16, 1991.

2. Repair and Maintenance.

The actual reasonable and necessary annual cost of repairing and maintaining the storm water detention system for Burnside's Chapel Hill Farms addition to the Town of Merrillville, Lake County, Indiana shall be separated into those costs associated with Outlot "A" and Outlot "B" as shown on the final plat of Burnside's Chapel Hill Farms, Phase I, an addition to Merrillville, Lake County, Indiana as approved by the Plan Commission of the Town of Merrillville on September 16, 1991. The costs of repairing and maintaining Outlot "B" shall be borne solely by the residential lot owners of Burnside's Chapel Hill Farms Subdivision. The costs of repairing and maintaining Outlot "A" shall be multiplied by one-half (1/2), one-half (1/2) being paid proportionally by the owners

of the commercially zoned properties, the legal description of which commercially zoned property is as follows:

A part of the North Half of the Northwest Quarter of Section 29, Township 35 North, Range 8 West of the Second Principal Meridian, more particularly described as follows: Commencing at a point on the East line of said North Half of the Northwest Quarter that is South 00° 36' 05" East a distance of 365.00 feet from the Northeast corner of said North Half of the Northwest Quarter, thence South 89° 44' 10" West, a distance of 368.80 feet, thence South 00° 30' 24" East, a distance of 374.60 feet, thence South 89° 44' 10" West, a distance of 150.00 feet, thence South 00° 30' 24" East, a distance of 283.10 feet, to the North line of the South 300.00 feet of said North Half of the Northwest Quarter, thence North 89° 44' 38" East Along said North line, a distance of 519.89 feet to the East line of said North Half of the Northwest Quarter, thence North 00° 36' 05" West, along said East line, a distance of 657.78 feet to the point of beginning, containing 6.552 Acres, more or less, in the Town of Merrillville, Lake County, Indiana.

EXCEPTING THEREFROM: Part of the North One Half of the Northwest Quarter of Section 29, Township 35 North, Range 8 West of the Second Principal Meridian, more particularly described as follows: Commencing at the Northeast corner of the Northwest Quarter of said Section 29; thence South 0° 36' 05" East along the East line of said Northwest Quarter, a distance of 729.60 feet to the point of beginning; thence South 89° 44' 10" West, parallel to the North line of said Section 29, a distance of 369.40 feet; thence South 0° 30' 24" East, a distance of 10.00 feet; thence South 89° 44' 10" West, parallel to the North line of said Section 29, a distance of 150.00 feet; thence South 0° 30' 24" East, a distance of 80.00 feet; thence North 89° 44' 10" East, parallel to the North line of said Section 29, a distance of 519.55 feet to the East line of the Northwest Quarter of said Section 29; thence North 0° 36' 05" West, a distance of 90.00 feet to the point of beginning, all in the Town of Merrillville, Lake County, Indiana.

and one-half (1/2) being paid proportionately by the residential lot owners of that portion of the Burnside's Chapel Hill Farms Subdivision legally described as follows:

A part of the South Half of the Southwest Quarter of the Southwest Quarter of Section 20 and a part of the North Half of the Northwest Quarter of Section 29, both in Township 35 North, Range 8 West of the Second Principal Meridian, more particularly described as follows: Commencing at the Southwest corner of said Section 20 thence North 00° 19' 12" West along the West line thereof, a distance of 660.86 feet, thence North 89° 43' 50" East a distance of 608.22 feet, to the West line of the East 721 feet (722.56 measured) of the South Half of the Southwest Quarter of the Southwest Quarter of said Section 20 thence South 00° 23' 21" East along said West line a distance of 660.92 feet to the south line of said Section 20 and to the North line of said Section 29, thence South 00° 36' 05" East, along the West line of the East 2049.70 (2054.13 measured) feet of the North 330.00 feet of the North Half of the Northwest Quarter of said Section 29, a distance of 330.00 feet to the South line of the North 330.00 feet of the North Half of the Northwest Quarter of said Section 29, thence North 89° 44' 10" East along said South line, a distance of 2049.70 feet (2054.13 measured) to the

East Line of the Northwest Quarter of said Section 29, thence South 00° 36' 05" East along said East line a distance of 35.00 feet, thence South 89° 44' 10" West a distance of 368.80 feet, thence South 00° 30' 24" East a distance of 374.60 feet, thence South 89° 44' 10" West a distance of 150.00 feet, thence South 00° 30' 24" East, a distance of 283.10 feet to the North line of the South 300.00 feet of said North Half of the Northwest Quarter of Section 29, thence South 89° 44' 38" West along said North line a distance of 206.11 feet to the West line of the East 726.00 feet of the South 300.00 feet of said North Half of the Northwest Quarter of Section 29, thence South 00° 36' 05" East along said West line a distance of 300.00 feet to the South line of said North Half of the Northwest Quarter of Section 29, thence South 89° 44' 38" West along said South line a distance of 1936.33 feet to the West line of said Section 29, thence North 00° 38' 12" West along said West line a distance of 1322.43 feet to the point of beginning, containing 62.967 acres, more or less, in the Town of Merrillville, Lake County, Indiana.

Ultimately, the number of single family residential lots currently proposed to be contributing to Outlot "A" and "B" is 113, but may be amended from time to time in the future, in which case the original 113 lot owners' per rata share of maintenance obligation may be adjusted accordingly.

3. Binding Effect - Duration.

This agreement shall be binding upon the parties hereto, their successors and assigns who shall agree to abide by the same until such time as the Town of Merrillville or other such governmental agency assumes the ownership and/or maintenance of said storm water detention area. It is intended by the parties to this agreement that covenants, conditions and provisions contained in this agreement shall run with the land and not be construed as a personal agreement.

4. Indemnification.

Burnside agrees during the time of the construction of the storm water detention area to indemnify and save Lake County Trust No. 1954 harmless from and against any and all damage, loss, claims, demands or costs proximately caused by the negligence of said Burnside, its agents, contractors, employees or licensees in the construction of said detention area.

5. Obligation for Maintenance. Burnside agrees that it in conjunction with the Association will be responsible for the maintenance described herein. In connection therewith, Burnside shall give written notice to Trust No. 1954 or in the event the

real estate is transferred, to the successors and assignees of said Trust No. 1954 as shown on the records of the Auditor of Lake County, Indiana on or before December 31 of each year of the proportionate amount of the liability incurred under this Agreement for the preceding year which amount shall be due and payable within thirty (30) days of said notice. Said Trust No. 1954 or its successors and assigns upon request shall be entitled to review all records regarding the cost of the repairs and maintenance incurred and the allocation of the same.

6. **Enforcement of Payment.** In the event Trust No. 1954 or its successors and assigns shall fail to make payment without legal cause for more than thirty (30) days after receipt of notice of a payment pursuant to this agreement, then Burnside or the Association, upon ten (10) days notice by certified mail, return receipt requested to Vernon Vollbrecht as agent for Trust No. 1954 or, if applicable, the successors and assigns of Trust No. 1954, shall have the right to record a lien with the office of the Recorder of Lake County in the amount lawfully due and owing by Trust No. 1954 or its successors and assigns, the payment of which lien may be enforced by suit for foreclosure of said lien. In the event payment is not made within thirty (30) days without legal cause, Burnside or its successors, shall be permitted to collect reasonable attorney fees incurred in the collection of the same plus interest at a rate of twelve percent (12%) per annum on the amount which is unpaid.

7. **Exculpatory Clause.**

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Seller while in form purporting to be representations, covenants, undertakings and agreements of the Seller are nevertheless each and every one of them made and intended not as personal representations, covenants, undertakings and agreements by the Seller or for the purpose or with the intention of binding said Seller personally but are made

and intended for the purpose of binding the trust property, and this Storm Water Pond Maintenance Agreement is executed and delivered by said Seller not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the Lake County Trust Company or any of the beneficiaries under said Trust Agreement because of this Storm Water Pond Maintenance Agreement or as a result of representation, covenants, undertaking or agreement of the Seller in this Storm Water Pond Maintenance Agreement contained, either express or implied, all such personal liability, if any, being expressly waived and released by the Purchaser herein and by all persons claiming by, through or under said Purchaser.

Nothing contained herein shall be construed as creating any liability on Lake County Trust Company, personally under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Indiana Responsible Property Transfer Law (the Act) as amended from time to time or any other Federal, State or local law, rule or regulation. Lake County Trust Company, personally is not a "Transferor" under the Act and makes no representation concerning any possible environmental defects. In making any warranty herein the Trustee is relying solely on information furnished to it by the beneficiaries and not on its own knowledge and specifically exculpates itself from any liabilities, responsibilities or damages as a result of including any warranty in this instrument.

IN WITNESS WHEREOF, the parties have hereunto caused this Storm Water Pond Maintenance Agreement to be executed and attested to as of this 24TH day of APRIL, 1992.

LAKE COUNTY TRUST COMPANY, as Trustee under Trust Agreement dated 3/1/73 and known as Trust No. 1954

BURNSIDE CONSTRUCTION COMPANY, an Illinois Corporation

BY: Sandra L. Stiglitz
Sandra L. Stiglitz-Asst. Trust Officer

BY: [Signature]

ATTEST:

ATTEST

Laura L. Anderson
Laura L. Anderson-Asst. Secretary

[Signature]
SECL

STATE OF INDIANA)
) SS:
COUNTY OF LAKE)

Before me, the undersigned, a Notary Public, in and for said County and State, this 23rd day of ~~MARCH~~, 1992, personally appeared Sandra L. Stiglitz and April Laura L. Anderson as the Asst. Trust Officer and the Asst. Secretary of LAKE COUNTY TRUST COMPANY, organized under the laws of the State of Indiana, as Trustee under Trust Agreement dated March 1, 1973 and known as Trust No. 1954, who for each and on behalf of said LAKE COUNTY TRUST COMPANY, as Trustee under said Trust Agreement, duly acknowledged the execution of the above and foregoing Real Estate Contract Modification for and on behalf of said LAKE COUNTY TRUST COMPANY, as Trustee, as aforesaid and as its voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

Angela Newcomb
NOTARY PUBLIC
Angela Newcomb

My Commission Expires: April 2, 1994

County of Residence: Lake

STATE OF Illinois

COUNTY OF Cook

SS:

Before me, the undersigned, a Notary Public, in and for said County and State, this 24th day of April March, 1992, personally appeared George Aquilino, Jr. and George Aquilino III as the C.E.O. and the President of BURNSIDE CONSTRUCTION COMPANY, organized under the laws of the State of Illinois, duly acknowledged the execution of the above and foregoing Real Estate Contract Modification for and on behalf of said BURNSIDE CONSTRUCTION COMPANY, as aforesaid and as its voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

" OFFICIAL SEAL "
MARIBETH SCHOLL
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 7/31/94

Maribeth Scholl
NOTARY PUBLIC

My Commission Expires: 7-31-94

County of Residence: Cook

This instrument prepared by: RICHARD E. ANDERSON
ANDERSON, TAUBER & WOODWARD, P.C.
8935 Broadway
Merrillville, IN 46410