

159662-1

AGREEMENT TO CONSTRUCT WEATHERSTONE
COMMUNITY WASTEWATER COLLECTION, TREATMENT
AND DISPOSAL FACILITIES IN WEST VINCENI TOWNSHIP

THIS AGREEMENT (the "Agreement") is made this / ^{5th} day of July, 2002, by and between WEST VINCENI TOWNSHIP ("Township"), and WEST VINCENI ASSOCIATES, LTD. ("Developer"), hereinafter collectively referred to as the "Parties".

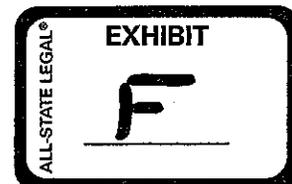
W I T N E S S E T H:

WHEREAS, land development is occurring in the Township in accordance with the Comprehensive Plan of the Township; and

WHEREAS, the Township has adopted revisions to its sewage facilities plan to reflect its determination that community collection, treatment and disposal systems are necessary to serve the needs of certain areas of the Township, including Developer's proposed subdivision known as "Weatherstone"; and

WHEREAS, in order to facilitate the construction of the community on-site spray irrigation treatment system (hereinafter "Treatment System") and collection facilities (hereinafter "Collection Facilities"), the specifications and design of which are more particularly described in the documents entitled "Hankin Tract Preliminary Plan Sewer and Water Feasibility Plan and Preferred Sewage Treatment Plan", the Parties intend to agree upon the means by which the proposed Treatment System and Collection Facilities will be designed, constructed, and operated, and the role of the Township in the approval and accepting dedication of the facilities; and

WHEREAS, the Treatment System and Collection Facilities (hereinafter "Improvements") proposed to be constructed have been further described in a report prepared by



the Developer's Engineer, titled "Sewer and Water Feasibility Study and a Preferred Sewage Treatment Plan" (hereinafter "Report"). The Improvements proposed to be constructed as set forth in the Report consist of a one hundred ten thousand gallon per day spray irrigation disposal system, which has been allocated by projection as 37,000 gpd to the commercial development and 73,000 gpd to the residential development, to accommodate the development approved by the Township's conditional use decision issued in May, 2000; and

WHEREAS, the Parties wish to enter into this Agreement for the purpose of defining the terms and conditions under which Developer will construct the Improvements and the Township will review the design and accept the ownership, operating and oversight responsibilities for the Improvements.

NOW, IHEREFORE, for good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. Submission of Documents. This Agreement shall be executed prior to the Developer receiving Final Plan approval from the Township. The Township agrees to be an applicant on the permit application to the Pennsylvania Department of Environmental Protection ("the DEP"); provided, however, that Developer shall submit all complete design drawings, reports, specifications, bid specification documents, and permit applications to the Township for its review and approval, it being expressly understood and agreed that the Township's approval of such documentation, or any revisions thereof, prior to submission of the same to the DEP, is a condition of the Township being co-applicant on the permit application. In the event of a disagreement between Developer and Township, the materials shall be submitted for resolution by DEP with both the Developer's proposal and the Township's objection thereto. It is expressly

understood and agreed that the Developer's receipt of a permit from DEP shall be a condition to receiving Final Plan Approval from the Township.

2. Engineering and Legal Review. The Developer agrees to pay for any commercially reasonable costs incurred by the Township in connection with the review by qualified professionals of design, construction, and permit documents relating to the Improvements in accordance with the Conditional Use Decision.

3. Construction. The Developer agrees to construct the Improvements in accordance with the plans and specifications as approved by the Township and DEP. All proposed revisions to the plans prior to and during construction shall be disclosed to the Township and all substantial revisions to the plans prior to or during construction shall require the prior written approval of the Township Waste Water Facilities Engineer. In the event DEP shall require changes or alterations to the Improvements, the Township shall have the right to propose alternatives to the DEP, but, in the event DEP continues to require the change or alteration, the Township shall consent to the same. The Township shall have the right to have its Waste Water Facilities Engineer inspect the construction of the Improvements and Developer shall give notice of its construction schedule to the Township.

4. Financial Security. A bona fide contractor's bid containing cost and quantity estimates for the Improvements shall be submitted to the Township for review prior to signing of the Subdivision Escrow Agreement by the Board of Supervisors. The Township Engineer shall review the bona fide bids for the Improvements and, based thereon, shall determine the amount of financial security required of the Developer to insure completion of the Improvements, which shall be equal to 110% of the estimated cost of the Improvements estimated as of 90 days following the date scheduled for completion by the Developer, and, prior to the commencement

of the construction of the Improvements, Developer agrees to provide financial security as required by the Subdivision Escrow Agreement relating to such Improvements, the form and content of the Escrow Agreement shall be agreed upon by the Parties. In the event that construction is not completed in one (1) year, the amount of the financial security shall be reset at yearly intervals in the amount of 110% of the estimated cost of the Improvements estimated as of ninety (90) days following the date scheduled for completion by the Developer. In addition to the foregoing described security for completion of the Improvements, the Developer shall provide the following additional types of financial security:

- a. A Capital Reserve Account for the replacement of the Capital Items, which shall consist of the following: retaining or treatment tanks; blowers; the electrical equipment as associated with the mechanical and chemical components of the Improvements; the mechanical and chemical components of the Improvements; pumps; disinfection equipment; pump stations; buildings; and other similar components of the Improvements, but excluding the piping, spray head and pivot components of the collection, conveyance and disposal facilities (the excluded items shall be replaced over time through the maintenance component of the operating budget and Operating Reserve Account);
- b. A maintenance bond for eighteen (18) months following dedication; and
- c. An Operating Reserve Account for all costs and expenses of operating the Improvements, including, without limitation, amounts allocated to or collected for operating reserves and contingencies, the costs of maintenance and operator's contracts, the costs of the services of

professional consultants, and the costs of all utilities, taxes, repairs, maintenance, supplies, salaries, equipment and insurance relating to ownership, administration and operation of the Improvements (the "Operating and Maintenance Costs").

5. Final As-Built Plans. Upon completion of the Improvements, the Developer shall supply to the Township reproducible and digital as-built drawings showing, at a minimum, all sanitary sewer manhole invert and rim elevations, all sanitary sewer laterals, pump stations, pond cross-sections, fences, the sewage treatment and disposal facilities, and shall identify all revisions from the specifications approved on the original design plan. Said drawings shall be provided to the Township prior to the final escrow release for the Improvements. In addition to said drawings, any equipment manuals, operation manuals, daily logs, service records and manufacturer's warranties in Developer's possession and associated with the Improvements shall be provided to the Township.

6. Dedication.

(a) The Improvements are subject to a continuing offer of dedication from Developer to Township. The Township shall have the obligation to accept legal ownership from Developer after all of the following conditions have been satisfied, it being expressly understood and agreed that the Township may waive any of such conditions in its discretion and accept earlier dedication of the Improvements:

(1) The Improvements have been in operation for one full year without any deficiencies requiring funding by Developer pursuant to paragraph 9(c) below and with an average daily flow of at least 75,000 gallons.

(2) At least seventy-five percent (75%) of the lots for dwelling units in Weatherstone have been conveyed from Developer to an owner.

(3) The Developer has stated, in writing to the Township, as of the date of dedication, that: Developer has no knowledge of any failure of the Improvements that remains uncorrected and that any substantial defects that have been corrected have been disclosed to the Township; Developer has resolved any notices of violations or insufficiencies resulting from the operation and maintenance of the Improvements; the Improvements are, to the best of the Developer's knowledge and belief, functioning properly; and the Improvements have been, to the best of the Developer's knowledge and belief, constructed substantially in accordance with the plans and specifications.

(4) Developer has delivered to the Township a written statement by Developer's engineer, dated as of the time of completion of construction of the Improvements, that the Improvements have, to best of its knowledge, information and belief, and based upon its own inspections throughout the course of construction, been constructed substantially in accordance with the plans and specifications.

(b) Transfer of the Improvements shall be free and clear of all liens and encumbrances (provided that, to the extent that Developer is authorized to recoup any cost of bonds secured to finance the Improvements, or other costs, as part of user fees, such component of the sewer usage charge shall not be deemed a lien or encumbrance) and shall, at Developer's expense, include the following:

- (1) Monies contained in any operating account and an Operating Reserve Account for the time period stated in paragraph 9(f);

- (2) The Capital Reserve Account (described in paragraph 8), which shall be fully funded;
- (3) All As-Built plans and specifications per paragraph 5 above;
- (4) All books and records of the Developer and/or the Association (described in paragraph 7) pertaining to the Improvements;
- (5) Any permits and all correspondence issued by governmental bodies applicable to the Improvements;
- (6) An assignment of all written warranties of the Contractor, or any subcontractors, suppliers and manufacturers, which are still effective, and a site specific operation and maintenance manual prepared by Developer's engineer, updated to include the maintenance of each component of the Improvements;
- (7) A roster of the customers of the Improvements and their addresses and telephone numbers, if known;
- (8) Any employment contracts, management contracts, maintenance contracts, contracts for the supply of equipment and materials, and service contracts pertaining to operation of the Improvements;
- (9) A fee simple deed for the site area of the Improvements and a fee simple deed or easement for any required access thereto;
- (10) A deed for an easement thirty (30) feet in width, the center line of which shall be any collector pipeline that conveys sewage from lot boundaries to the sewage treatment plant;
- (11) A title insurance policy insuring Township's fee simple interest in the real estate and Improvements, and affirmatively insuring against mechanic's liens. Such title

insurance policy shall provide good and marketable title and insure the property in the amount of Three Million Three Hundred Sixty Thousand Dollars (\$3,360,000.00). The Developer shall be responsible for the payment of the title insurance premium.

(c) The Township agrees that it will not accept the offer of dedication during the term of Developer's bond financing for construction of the sewer treatment plant and its conveyance system at Weatherstone and Developer shall, when all pre-conditions to acceptance of dedication have been satisfied, so notify the Township in writing and the Township shall have no obligation to consider acting on the offer of dedication until said written notice has been provided. Upon receipt of the written notice as aforesaid, the Township shall have the time period set forth in Section 510 of the Municipalities Planning Code within which to review and act upon the Developer's notice, and both parties will be governed by the provisions of Section 510.

(d) Upon dedication of the Improvements to the Township, Developer shall deliver to the Township a maintenance bond as required by the Pennsylvania Municipalities Planning Code in an amount equal to fifteen percent (15%) of the cost of the construction and installation of the Improvements, guaranteeing for a period of eighteen (18) months the structural integrity and proper functioning thereof in accordance with all permits issued, and secured by financial security acceptable to the Township and in form authorized under the Pennsylvania Municipalities Planning Code. If, during the said eighteen (18) months, 15% is inadequate, Developer shall be responsible for the difference.

7. Homeowners' Association. A Homeowners' Association ("Association") shall be formed pursuant to documents in form acceptable to the Township. The Developer shall not make the Improvements a Common Facility and they shall not be conveyed to the Homeowners'

Association. Prior to acceptance of dedication of the Improvements by the Township, the Developer shall own and operate the Improvements and shall have the authority to assess the members of the Association, and other users of the Improvements (i.e., the commercial area), for the cost of operation, maintenance and reserves for the Improvements as set forth herein.

8. Capital Reserve Account

(a) Developer shall establish and maintain a Capital Reserve Account, which shall consist of an adequate dollar amount for replacement of the Capital Items as set forth in paragraph 8(b) below (the "Replacement Cost"). The Replacement Cost shall be identified in an annual budget ("the Budget"), which shall be approved and agreed to by the Township. The Capital Reserve Account shall be established for the benefit of, and in the name of, the Township. The Budget shall be established and submitted to the Township for review and approval prior to the Developer receiving Final Plan Approval from the Township and shall be submitted to the Township for review and approval annually thereafter.

(b) The Replacement Cost shall be established as follows: ninety percent (90%) of the period of time before replacement of each Capital Item would be required shall be projected (the "Useful Life"); the initial Budget shall, to the extent possible, use the actual cost of each Capital Item, and otherwise estimated costs later to be replaced by actual costs, adjusted to reflect the cost of living increase of the nearest available preceding twelve (12) months based upon the Consumer Price Index (Philadelphia) ("CPI"), divided by the Useful Life as the Replacement Cost. For example, if a pump has an actual expected life of 11 years and, therefore, a Useful Life of 10 years, an initial cost of \$10,000, and the CPI for the nearest preceding 12 months reflects a cost of living increase of 3%, the Replacement Cost would be $\$10,000 + 3\% = \$10,300 \div 10 \text{ years} = \$1,030$. The second year, assuming the CPI reflects a cost of living

increase of 5%, the Replacement Cost would be $\$10,000 + 5\% \div 10 \text{ years} = \$1,050$ and the amount in the Capital Reserve Account would be $\$1,030 + \$1,050$ or $\$2,080$. The Capital Reserve Account shall be deemed to be one hundred percent (100%), or fully, funded for purposes of this Agreement, if the Replacement Cost for each Capital Item is both reflected in the Budget and contained within the Capital Reserve Account as provided in this subparagraph 8(b). If the CPI is compounded from year to year, then the calculation of the current contribution into the Capital Reserve Account shall be on a compounded basis. It is the purpose of this Agreement to assure that there is in the Capital Reserve Account sufficient amounts to fully replace each Capital Item at the end of its Useful Life. The parties shall make any necessary adjustment to the methodology required by this paragraph 8(b) to achieve this purpose.

(c) The Capital Reserve Account shall be fully funded as required by paragraph 8(b) at all times after it is established. Developer shall have the right to collect a proportionate Capital Contribution in cash from each lot and from each commercial/retail area (the later based on EDU's) at the time of settlement thereof, which cash Capital Contribution shall be deposited into the Capital Reserve Account and, to that extent, Developer can reduce its security on financed Capital Items only, or can reimburse itself for its cash contributions.

(d) Payment of Capital Contributions into the Capital Reserve Account, as required by paragraphs 8(a) and 8 (b) above, shall, to the extent paid by Developer, be either directly paid in cash or secured by financial security of the same type as established by Developer for construction of the Improvements pursuant to paragraph 4 above. The initial payment shall be made by Developer immediately upon the date of final subdivision plan approval; the first year for the Capital Reserve Account shall be measured from the said final subdivision plan approval date. Said cash or security shall be maintained by Developer until

notice of the Budget, which shall be included as an attachment to the Association's budget and which Budget shall be approved each year by the Township.

(b) The assessments to be paid proportionately by the owners of improved lots pursuant to sub-paragraph (a) shall be made in accordance with any reasonable method based upon actual or estimated usage of the Improvements. Such assessments shall be made on a periodic basis no less frequently than quarterly and shall be as agreed to by the Township.

(c) Prior to dedication, the assessments against each lot connected to the Improvements shall not exceed the sum calculated as follows: (i) divide the Operating and Maintenance Costs as stated in the Budget, which shall be the estimated costs required to operate and maintain the Improvements to service all connected dwelling units and buildings by (ii) the total number of EDU's proposed by the subdivision. Developer shall promptly pay the amount by which the actual costs and expenses of operating and maintaining the Improvements exceed the assessments collected from owners of lots connected to the Improvements, calculated as above set forth. [For example, if the users are to pay 10% of the total costs, the Developer's Share would be 90% of the total costs]. If the assessments paid by the users did not equal their percentage of the actual total costs, the difference shall be deemed a Deficiency, or a surplus, as the case may be and the Budget for the succeeding year shall be adjusted accordingly.

(d) During the time before acceptance of dedication by the Township, the Developer shall be responsible for the Operating and Maintenance Costs of the Improvements and shall perform normal maintenance on the building and equipment, and shall maintain the spray irrigation fields in accordance with the crop management plan approved by DEP.

(e) In the Public Offering Statement, and, additionally, before acceptance of dedication by the Township, all users of the Improvements, other than Developer, shall be given

notice, in form acceptable to the Township, advising: 1) that the Improvements are subject to an offer of dedication to the Township; 2) that the Township intends to accept the offer of dedication; and 3) that the cost for sewage treatment may be increased due to administrative costs when the Township takes over operation and control of the Improvements.

(f) Operating Reserve Account. Immediately upon receipt of DEP permits to begin operation of the sewer treatment plant, Developer shall establish and maintain an Operating Reserve Account in an amount equal to a full year's annual budget for the Operating and Maintenance Costs for the Improvements. Such Operating Reserve Account shall be in the form of an escrow or other financial security and shall be adjusted in accordance with the annual budget for the Improvements within thirty (30) days after the preparation and adoption thereof and shall be payable to the Township upon demand immediately upon any default by Developer of any of its obligations hereunder, or upon the Developer's bankruptcy or insolvency. Such financial security shall be in addition to the budget and actual payments to operate and maintain the Improvements and shall also be in addition to the financial security to be provided to secure maintenance of the Improvements after dedication as required by the MPC. Upon acceptance of dedication of the Improvements by the Township, the fully funded Operating Reserve Account shall remain in effect for a period of at least sixty (60) days following the date of acceptance, or until the Township is receiving revenue from users of the Improvements sufficient to cover the costs of operation and maintenance, whichever is later, and shall thereafter be released to Developer. It is understood that the financial security required under this paragraph 9 and paragraph 8 shall be in addition to, and not in lieu of, Developer's obligation to maintain, as more fully described in the Subdivision Escrow Agreement to be entered into between Developer and Township, an escrow account, or other financial security in form authorized for completion

of improvements under Section 509 of the MPC, in an amount to be determined as provided for by the MPC (and, as to the Improvements by paragraph 4), to secure completion of all public and quasi-public improvements in the Weatherstone subdivision, including, without limitation, the Improvements.

(g) The Township shall have the right, but not the obligation, to take over operation of the Improvements from Developer under any one of the following circumstances:

(i) DEP issues a notice of violation with regard to the Improvements and Developer fails or refuses, after fifteen (15) days' written notice from the Township, to correct the violation or, if the violation will require more than fifteen (15) days to correct, Developer fails or refuses to undertake correction within fifteen (15) days and to diligently pursue the correction;

(ii) DEP issues a second notice of violation for the same deficiency for which the Improvements were previously cited;

(iii) DEP has issued a substantial number of notices of violation for deficiencies that are unrelated to one another, or

(iv) Developer is in violation of paragraph 9(i) below.

(h) In the event that the Township wishes to exercise its right to take over operation of the Improvements, it shall, except in the event of an emergency, give written notice to the Developer of its intention to take over operation of the Improvements and the basis therefore. Within ten (10) days of the date of said notice, Developer and Township shall meet in good faith to resolve the issues raised in the notice. In the event that the Township does not withdraw its notice, the dispute shall be submitted for resolution by a civil engineer, experienced in operation of sewage treatment facilities, chosen by agreement of Developer and the Township.

The determination of the aforesaid civil engineer shall be binding. Submission and initial hearing to be within thirty (30) days and a decision shall be rendered as soon as possible thereafter.

(i) In the event that the Developer fails or refuses to operate the Improvements in compliance with the permits and this Agreement, Township shall give Developer written notice of the deficiencies in operation, which shall include failure to fund the Capital Reserve Account, the Operating Reserve Account or the operating budget in accordance with this Agreement, and, if Developer fails to correct the deficiencies within fifteen (15) days of receipt of written notice, or, if the deficiency will require more than fifteen (15) days to correct, Developer fails or refuses to undertake correction within fifteen (15) days and to diligently pursue the correction, the Township shall have the right to withhold building permits, or, in the event all building permits have already been issued, certificates of use and occupancy, until the Developer shall have complied with the notice to correct deficiencies.

10. Miscellaneous.

(a) This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

(b) All notices to be furnished to either of the Parties hereunder shall be furnished as follows:

If to the Township:

West Vincent Township
P.O. Box 163
Birchrunville, PA 19421

If to the Township Engineer:

Castle Valley Consultants, Inc.
10 South Clinton Street, Suite 302
Doylestown, PA 18901

If to Developer:

West Vincent Associates, Ltd
ATTN: Richard J. Guarini
707 Eagleview Boulevard
Exton, PA 19341

All notices shall be sent by Certified Mail, Return Receipt Requested.

(c) This Agreement together with the security documents described herein and executed pursuant hereto, and the plans, modifications, applications and permits, constitute the entire understanding between the Parties pertaining to the wastewater collection treatment and disposal plant.

(d) This Agreement may be assigned by the Developer to a person or entity, who or which complies with the financial security requirements contained herein and in the related agreements pertaining to the Weatherstone subdivision, and shall be binding upon the Parties, their heirs, successors and assigns. Provided that no assignment shall be effective without written acceptance of all Developer obligations hereof by assignee.

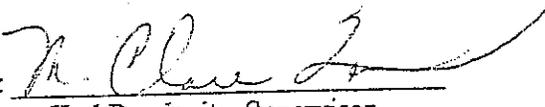
(e) This Agreement supersedes any and all prior agreements regarding the subject matter contained herein.

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(f) This Agreement shall be recorded in the Office for the Recording of Deeds in and for Chester County, Pennsylvania, no later than the date that the final plan of subdivision is recorded; if the final plan is approved in phases, this Agreement shall be recorded no later than the date on which the final subdivision plan for the first phase is recorded.

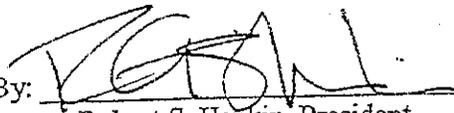
WEST VINCENT TOWNSHIP

By: 
Kenneth I. Miller, Supervisor

By: 
~~Karl Brachwitz~~, Supervisor
M. CLARE QUINN

By: 
Zoe Perkins, Supervisor

WEST VINCENT ASSOCIATES, LTD.
by WEST VINCENT ASSOCIATES, INC.,
its General Partner

By: 
Robert S. Hankin, President

ACKNOWLEDGMENT

Commonwealth of Pennsylvania)
) ss.
County of Chester)

On this 1st day of July, 2002, before me appeared
Kenneth I. Miller, to me personally known, who, being by
me duly sworn (or affirmed), did say that he is the Chairman of the Board
of Supervisors of West Vincent
Township, and that he as such Chairman of the Board
of Supervisors, being authorized to do so, executed
the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Diana L. Cline
Notary Public

My Commission Expires:

Notarial Seal
Diana L. Cline, Notary Public
Uwchlan Twp., Chester County
My Commission Expires Mar. 1, 2006