

without reservation those obligations imposed by the Condominium Act, 1998 to maintain, repair and replace common elements and establish proper reserve funds for the major repair and replacement of common elements;

- F. this Agreement is intended to replace the October 20, 1999 Agreement;
- G. the Condominium Act 1998 imposes strict requirements on the establishment and use of reserve funds of all condominiums and allows for a condominium corporation to have more than one (1) reserve fund;
- H. a reserve fund that is subject to the provisions of the Condominium Act, 1998 may only be used for the major repair and replacement of the condominium's common elements and assets for which such reserve fund is established;
- I. the Owner will require the proposed common elements condominium corporation (the "Condominium") through provisions set out in its declaration to establish a reserve fund exclusively dedicated for the major repair and replacement of the Sewage Treatment System forthwith upon the registration of the common elements condominium plan that gives rise to the related condominium corporation.

NOW THEREFORE in consideration of other good and valuable consideration and the sum of One Dollar paid by each party to the other, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Article 1 Township's Responsibilities

- 1.1 The Township agrees to the continued operation of a single family home development on the Property, serviced by the Sewage Treatment System.

Article 2 Owner's Responsibilities

- 2.1 The Sewage Treatment System has been constructed and the Owner has been responsible for all costs of the construction, operation and maintenance of the Sewage Treatment System including the sanitary sewer collection system, and the leaching bed (collectively herein referred to as the Sewage Treatment System) which receives the treated effluent and shall continue to be so responsible subject to the provisions herein.
- 2.2 The Owner further agrees that:
 - (a) The Property shall not contain more than the number of units in the current approved plan of subdivision.

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- (b) The Owner has entered and subject to the provisions hereof will maintain in good standing an Operations and Maintenance Contract with a qualified Sewage System Operator, certified as a Class 1 Operator under the Ontario Water Resources Act. The system operator must be approved in writing by the Township but such approval shall not be unreasonably withheld. The operation and maintenance of the Sewage Treatment System shall at all times be under such a contract.
- (c) The Owner has implemented and will continue by a qualified engineer (hereinafter referred to as the "Consulting Engineer") the monitoring program as set by the MOE and attached to this Agreement as Schedule "B", or as modified from time to time by the MOE or the Township.
- (d) The Owner agrees to take such measures as are necessary to ensure the Sewage Treatment System meets the effluent criteria set out in the Certificate of Approval issued by the MOE for the Sewage Treatment System and attached to this Agreement as Schedule "C" or as amended from time to time by the MOE.

2.3 Measures taken to comply with the Certificate of Approval may include but not limited to:

- (a) reducing the total number of homes permitted to be constructed ;
- (b) modifying and improving the existing system based on sound engineering principles approved by the MOE and Township, and
- (c) transport of the sewage to a suitable treatment facility

2.4 The Owner agrees to provide to the Township all test results of the monitoring program with a brief summary of the results every three months.

2.5 The Owner agrees to submit an annual Operations and Maintenance Report which will identify any problems encountered and repairs made to the Sewage Treatment System. The report shall also include:

- (a) a copy of the Operations and Maintenance Contract for the following year,
- (b) a summary of the test results from the monitoring program,
- (c) a listing of the monitored flows with a summary of average use per unit and daily flow with number of units present,
- (d) a list of equipment or components scheduled for replacement; and,
- (e) a summary of the conditions of the treatment system

all of which shall be submitted in a format acceptable to the Township.

- 2.6 Until the creation of the Condominium and the execution by the Condominium of an agreement assuming all obligations pursuant to this Agreement in a form satisfactory to the Township acting reasonably, the Owner agrees to continue to deposit money into a trust account (herein called the Trust Fund) with conditions of withdrawal acceptable to the Township at the rate and amounts identified in Schedule "D" or as amended by the Township and Owner from time to time (see Article 12 for circumstances allowing revisions to the required deposits to the trust account).
- 2.7 The Township requires that the following conditions control the Trust Fund or trustee:
- (a) The funds are to be used only for approved purposes for the maintenance and operation of the Sewage Treatment System as outlined in Schedule "D";
 - (b) Funds cannot be withdrawn without the approval of the Township;
 - (c) In the event of default of this Agreement, the Trust Fund held by the trustee shall become the property of the Township to be used for the repair, operation, maintenance or replacement of the Sewage Treatment System, and any site remediation, site studies and additional monitoring as may be required.
- 2.8 The Owner agrees to permit access to all areas of the Sewage Treatment System to the Township and their agents to review the general conditions of the Sewage Treatment System, and to observe maintenance operations and repairs thereof.
- 2.9 The Owner has constructed and shall operate, maintain and, if necessary, repair and/or replace all or part of the Sewage Treatment System as required in accordance with the design, construction and operating standards upon which approval for the works under the Ontario Water Resources Act and the Certificate of Approval are based, together with such additional requirements as the Municipality reasonably imposes and such additional requirements, if any, as the Consulting Engineer determines are appropriate.
- 2.10 The Owner shall retain at its expense, a Consulting Engineer to: monitor the sewage treatment system in accordance with the Certificate of Approval, as amended, and the terms of the Agreement as set out in Schedules B and C.

Article 3 Trust Fund

- 3.1 The Trust Fund has been created in a form acceptable to the Township and shall be maintained and continue subject to the provisions in 3.2. Any cost of administering the Trust Fund shall be at the expense of the Owner. Any interest earned by the Trust Fund shall

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remain in the fund and will not be deducted from the amounts the Owner is obligated to deposit into the Trust Fund.

- 3.2 If for any reason the Owner is in default of this Agreement, the Township may demand that the Trust Fund be transferred to the Township at no cost to the Township and the Township may use those funds for the operation and maintenance of the Sewage Treatment System or other items listed in Schedule "D".

Article 4 TRANSFER OF THE TRUST FUND TO THE CONDOMINIUM

4.1 Upon:

- (a) the creation of the Condominium;
- (b) confirmation that provisions have been included in the declaration of the Condominium that are acceptable to the Township with respect to the establishment, operation and maintenance of a Reserve Fund governed by the Condominium Act, 1998 that is solely dedicated and maintained for the major repair and replacement of the Sewage Treatment System (the "Sewage Treatment System Reserve Fund");
- (c) the execution by the Condominium of an agreement assuming all obligations pursuant to this Agreement in a form satisfactory to the Township acting reasonably,

all of the funds then in the Trust Fund shall be transferred to the said Sewage Treatment System Reserve Fund and all provisions in this Agreement with respect to the Trust Fund shall thereafter be at an end and replaced with the provisions below relating to the Sewage Treatment System Reserve Fund.

Article 5 Sewage Treatment System Reserve Fund Obligations

- 5.1 The Condominium shall establish and maintain the Sewage Treatment System Reserve Fund in an amount as required herein to fund the Condominium's obligations to ensure there are always sufficient funds therein to pay the costs of the major repair and replacement of the Sewage Treatment System in accordance with the projections set out in the most recent Sewage Treatment System Reserve Fund Study or update thereof for the time period in question.
- 5.2 The Condominium shall provide proof of the establishment of the Sewage Treatment System Reserve Fund and the amount of monies therein from time to time as required by the Township. Delivery to the Township of the Condominium's annual audited financial statements shall represent satisfactory evidence of the establishment of and balance in the Sewage Treatment System Reserve Fund. . Such annual audited financial statements shall be delivered to the Township forthwith upon being prepared by the Auditor and accepted by the Board of the Condominium.

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- 5.3 The Sewage Treatment System Reserve Fund shall be held for and solely used to fund the major repair and replacement of the components of the Sewage Treatment System and shall not be comingled with any other reserve fund or other fund or account maintained by the Condominium or used for any other purpose.
- 5.4 The Condominium shall conduct reserve fund studies and updates of such studies of the Sewage Treatment System in strict accordance with the requirements of the Condominium Act and its regulations with respect to conducting reserve fund studies and updates. Delivery to the Township of a copy of the completed reserve fund study and updates thereof together with correspondence from the engineers who have completed such study or updates confirming their completion shall be sufficient evidence of compliance with this requirement.
- 5.5 The Condominium shall, in the absence of any change in the reserve fund study obligations prescribed by the Condominium Act, 1998 and its regulations conduct the first of such reserve fund studies with respect to the Sewage Treatment System within one (1) year following the registration of the proposed common elements condominium plan and shall update the same every three (3) years thereafter. If the regulations to the Condominium Act 1998 or the Condominium Act 1998 change the requirements as to timing and/or content of reserve fund study updates, the provisions of this paragraph shall be deemed amended to correspond to the changed requirements as to timing and contents of reserve fund study updates.
- 5.6 The Condominium shall prepare a reserve fund plan (the "Sewage Treatment System Reserve Fund Plan") in response to each Sewage Treatment System Reserve Fund study or update which Sewage Treatment System Reserve Fund Plan shall not vary in any significant way from the recommendations of the then current Sewage Treatment System Reserve Fund study or update as the case may be. Delivery to the Township of the annual audited Financial Statements of the Condominium Corporation will constitute sufficient evidence of compliance with this requirement.
- 5.7 The Condominium shall collect from the owners of the Parcels of Tied Land to the common elements condominium plan and contribute to the Sewage Treatment System Reserve Fund sufficient funds to ensure that the Sewage Treatment System Reserve Fund has funds sufficient for the major repair and replacement of the Sewage Treatment System, when needed, calculated on the basis of the expected repair and replacement costs and the life expectancy of the Sewage Treatment System as determined by the most recent Sewage Treatment System Reserve Fund Study or update as the case may be and as implemented by the most recent Sewage Treatment System Reserve Fund Plan. Delivery to the Township of the annual audited financial statements of the Condominium shall constitute sufficient evidence of compliance with this requirement.
- 5.8 On the written request of the Condominium by the Township, the Condominium shall provide to the Township a written authorization addressed to the person conducting the most recent

Sewage Treatment System Reserve Fund Study or update to disclose to the Township all information relating to such Study or update as the case may be.

- 5.9 The Condominium shall be entitled to make expenditures from the Sewage Treatment Reserve Fund that are in accordance with the Sewage Treatment System Reserve Fund Plan and shall not be required to obtain the prior consent of the Township to such expenditures. Except where the repair or replacement is required on an urgent basis and payment is made in accordance with the Condominium Act, the Condominium shall not make any expenditure from the Sewage Treatment Reserve Fund that is not in accordance with the Sewage Treatment System Reserve Fund Plan without the written consent of the Township. The Township is entitled to require such reports and studies and documentation as the Township in its absolute discretion may require be provided to the Township at the cost of the Condominium as a prerequisite to considering any request by the Condominium to make a payment out of the Sewage Treatment System Reserve Fund for the major repair and/or replacement of any component of the Sewage Treatment System.
- 5.10 The Condominium shall deliver the Sewage Treatment System Reserve Fund to the Township on the written request of the Township in the event of default of the Condominium in performance of the terms of this Agreement pursuant to Article 11 herein.

Article 6 Condominium Budget

- 6.1 The Condominium shall include in its annual budget:
- (a) one or more line items for the day to day operation, inspection, maintenance and non major repair and replacement costs of the Sewage Treatment System and its components together with the costs of complying with regulatory changes. The amounts set out in such annual budget shall be sufficient to cover the projected costs of the foregoing based on historical costs but considering relevant inflation;
 - (b) the amount called for in such year by the then current Sewage Treatment System Reserve Fund Plan.
- 6.2 The Condominium shall in each year provide a copy of the relevant portions of its then annual current budget to the Township forthwith upon the completion of the same. Upon the written request of the Township, the Condominium shall provide such back up information, data and studies as may be reasonably required of it by the Township to support the budget figures for the day to day operation, inspection, maintenance and non major repair and replacement of the Sewage Treatment System and its components and for the Sewage Treatment System Reserve Fund Plan contribution amount.
- 6.3 If the Township reasonably requires any increase in the budgeted amount for the day to day operation, inspection, maintenance and non major repair and replacement of the Sewage

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Treatment System and its components after reviewing the back-up information, data and studies required by the Township or of the projected contribution to the Sewage Treatment System Reserve Fund, the Condominium shall increase its budget for the same as required by the Township's Engineer, acting reasonably.

- 6.4 The Condominium shall collect the monies called for in its approved budget from the owners of the Parcels of Tied Land associated with the Condominium in each year and take advantage and use all powers afforded to the Condominium by the Condominium Act, 1998 for the collection of the same
- 6.5 If there is any dispute, difference, issue or question arising between the Township, the Owner and/or the Condominium which concerns or touches upon the validity, construction, meaning, performance or effect of this Agreement or any provision thereof that is not resolved by discussion and negotiation the same shall be referred to and resolved by arbitration in accordance with the Arbitration Act, 1991, S.O. 1991, c.17. The arbitration decision shall be final and binding and shall not be subject to appeal under any circumstances.

Article 7 Operation of the Sewage Treatment System

- 7.1 The Sewage Treatment System must be maintained, inspected, operated, repaired and replaced in accordance with the standards and requirements set out in Section 2.9 failing which the Township has the right to effect any maintenance, inspection, operation, repair or replacement that the Township in its sole discretion deems necessary at the cost of the Condominium with an overhead surcharge of 15 to 20% of the costs incurred.
- 7.2 The failure of the Condominium to maintain, inspect, operate, repair and replace the Sewage Treatment System as set out in Section 2.9 hereof gives rise to a right in favour of the Township to invoke the provisions of the Municipal Act that permit a municipality to charge back the costs on account of municipally operated facilities to the benefitting community (Section 326 and Part XII thereof). The benefitting community in this case would be the homes within the Property.

Article 8 Non-Compliance with Agreement

- 8.1 The Owner shall be in non-compliance of this agreement if:
- (a) The operation of the Sewage Treatment System fails to meet the requirements of the Certificate of Approval issued by the MOE;
 - (b) A valid Operations and Maintenance Contract is not in place;
 - (c) The monitoring program and reporting is thirty days behind schedule;

- (d) An annual report, acceptable to the Township, has not been submitted to the Township by April 1st of each year;
- (e) The Owner is behind schedule in making deposits to the trust fund as outlined in Schedule "D" prior to the establishment of the Sewage Treatment System Reserve Fund;
- (f) The Condominium is behind schedule in making deposits to the Sewage Treatment System Reserve Fund as required by the most recent Sewage Treatment System Reserve Fund Plan
- (g) The Sewage Treatment System is not operating to the satisfaction of the Ministry of the Environment;
- (h) The capacity of the Sewage Treatment System is being exceeded; or
- (i) The Owner fails to carry out any of the obligations of the Owner in this Agreement.

Article 9 Default

9.1 The Owner shall be in default of this Agreement if the Owner has not addressed an issue of non-compliance to the satisfaction of the Township within thirty (30) days of being notified by the Township of Puslinch of the item of non-compliance by Registered Mail.

Article 10 Response to Non-Compliance

10.1 If the Owner is in non-compliance with this Agreement, the Township may:

- (a) require that the Owner prepare a plan of how the system can be brought back into compliance in a timely fashion acceptable to the Township, or other remedy to remove the non-compliance and have the Owner implement that plan;
- (b) use the funds within the Trust Fund to make repairs, modifications or investigations to bring the system back into compliance;
- (c) use the funds within the Sewage Treatment System Reserve Fund to make any required major repairs and/or replacements to the Sewage Treatment System or any part thereof together with any investigations relating thereto.

Article 11 Response to Default

11.1 If the Owner is in default of this Agreement, the Township may:

- (a) require that the Owner prepare a plan of how the system can be brought back into compliance in a timely fashion acceptable to the Township, or other remedy to remove the default and have the Owner implement that plan;
- (b) use the funds within the Trust Fund to make repairs, modifications or investigations to remove the default;
- (c) use the funds within the Sewage Treatment System Reserve Fund to make any required major repairs and/or replacements to the Sewage Treatment System or any part thereof to remove the default together with any investigations relating thereto;
- (d) seize control of the Trust Fund to be used for the purposes outlined in Schedule "D";
- (e) seize control of the funds within the Sewage Treatment System Reserve Fund to be used for the major repairs and/or replacements of the Sewage Treatment System or any part thereof;
- (f) cease issuing building permits for the Property.

11.2 If the Owner and the Township cannot agree on a method of eliminating the default and the Township determines that it is in its interest to undertake the operation and maintenance of the Sewage Treatment System, then:

- (a) the Owner shall provide the Township with all the necessary easements to access and maintain the various portions of the Sewage Treatment System at no cost to the Township;
- (b) the Owner shall also turn over any records relating to the operation and maintenance of the Sewage Treatment System and any funds in the Trust Fund or the Sewage Treatment System Reserve Fund to the Township at no cost to the Township.

11.3 This Agreement does not prevent the Township from establishing an area of the Township which may be restricted to or include part or all of the lands upon which any taxes or rates for the purpose of raising costs with respect to sewage or water works or services may be imposed for services provided to Property or any part thereof.

11.4 This Agreement does not prevent the Township or other public authorities from recovering costs incurred or to be incurred by them with respect to sewage and water works or services under any other means provided by statute.

11.5 If the Township determines that it or another public authority shall operate the Sewage Treatment System or any part thereof without the Township having acquired ownership of the Sewage Treatment System or the relevant part(s) thereof, the Owner shall pay quarterly such fee

as the Township determines to reimburse the Township for the costs of operating and maintaining the Sewage Treatment System or relevant part(s) thereof as the case may be.

Article 12 Trust Fund Deposit Modifications

- 12.1 The Owner and the Township acknowledge that the Trust Fund deposit schedule attached as Schedule "D" is only an estimate of the amounts required to ensure the long term maintenance and operation of the Sewage Treatment System. Either party may, from time to time, ask for a review of the Sewage Treatment System to determine if the Trust Fund is insufficient or unnecessarily large. The review will be carried out by a qualified Engineer agreed to by both parties and the deposit schedule will be adjusted according to the recommendations of such Engineer. The cost of the investigation will be paid for out of the Trust Fund. If the Township and the Owner cannot agree on the selection of an Engineer to carry out the review, then the Township's Engineer shall select one.
- 12.2 If the Trust Fund accumulates to a value of \$450,000.00, then contributions to the Trust Fund will be suspended until a report prepared by a qualified engineer identifies the condition of the Sewage Treatment System, and proposes a revised fund contribution schedule.

Article 13 Registration and Release

- 13.1 The Owner hereby agrees that this Agreement and the Schedules hereto or any part or parts thereof, may be registered upon the title of the Property at the Owner's expense.

Article 14 Owner Indemnifies Township

- 14.1 The Owner hereby indemnifies and shall keep indemnified and save harmless the Township from all loss, damage, cost and expense of every nature and kind whatsoever arising from or in consequence of the maintenance or operation of the Sewage Treatment System or any matter under this Agreement, whether such loss, damage, cost or expense is incurred by reason of negligence or without negligence on the part of the Owner and whether such loss, damage, cost or expense is sustained by the Township, the Owner or their several and respective employees, workmen, servants, agents or councillors or any other person or corporation.

Article 15 Release of Mini Lakes Residents Association

- 15.1 Upon:
- (a) the creation of the Condominium;
 - (b) confirmation that provisions have been included in the declaration of the Condominium that are acceptable to the Township with respect to the establishment, operation and maintenance of a Reserve Fund governed by the Condominium Act,

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1998 that is solely dedicated and maintained for the major repair and replacement of the Sewage Treatment System (the "Sewage Treatment System Reserve Fund");

- (c) the execution by the Condominium of an agreement assuming all obligations of the Owner pursuant to this Agreement in a form satisfactory to the Township acting reasonably; and
- (d) the transfer of all of the funds then in the Trust Fund to the Sewage Treatment System Reserve Fund;
 - (i) the Condominium shall be responsible for all covenants and obligations of the Owner under this agreement and Mini Lakes Residents Association is released from all covenants and from all liabilities and obligations arising on account of this Agreement and
 - (ii) the October 20, 1999 Agreement shall be at an end.

Article 16 Right to Enter Agreement

16.1 The Owner shall not call into question directly or indirectly in any proceedings whatsoever in law or in equity or before any administrative tribunal the right of the Township to enter into this Agreement and to enforce each and every term of this Agreement and this Agreement may be pleaded as an estoppel against the Owner in any such proceedings. Notwithstanding the foregoing, if at any time during the currency of this Agreement, it is found by any Court of competent jurisdiction, any administrative tribunal or Ministry of Government that this Agreement or any part thereof is void insofar as the Township is empowered to enter into this Agreement, then no obligation, liability or duty of any nature or kind whatsoever, whether in law or in equity, shall be imposed upon the Township to carry out any part of this Agreement found to be void.

Article 17 Assignment

17.1 Subject to the provisions herein permitting the assumption by the Condominium of all of the Owner's obligations pursuant to this Agreement, the Owner shall not assign this Agreement without the consent of the Township, and such consent shall not be unreasonably withheld.

Article 18 Severance of Ultra Vires Terms

18.1 If any term of this Agreement shall be found to be Ultra Vires of the Township, or otherwise unlawful, such term shall conclusively be deemed severable and the remainder of this Agreement mutatis mutandis shall be and remain in full force and effect.

Article 19 Binding on Successors etc.

19.1 This Agreement is binding upon and shall enure to the benefit of the Owner and the Township, their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the Owner has hereunto affixed its Corporate Seal, attested by the hands of its respective officers duly authorized in that behalf and the Corporation of the Township of Puslinch has hereunto affixed its Corporate Seal as attested by the signatures of its Mayor and Clerk.

Mini Lakes Residents Association
per:

Name: Ivan Horvat
Office President

Name: Giuliana Round
Office Secretary
We have authority to bind the Association

THE CORPORATION OF THE TOWNSHIP OF PUSLINCH
Per:

Name: Dennis Lever
Office Mayor

Name: Karen Landry
Office CAO/Clerk
We have authority to bind the Corporation

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Schedule A

PIN 71195-0345 (LT).

PT LTS 21 & 22, CON 8, PUSLINCH, PTS 1, 2 & 3, 61R11654 & PT 1, 61R20006; SUBJECT TO AN EASEMENT AS IN LT55073; SUBJECT TO AN EASEMENT IN GROSS AS IN WC343483; SUBJECT TO AN EASEMENT AS IN WC343485; SUBJECT TO AN EASEMENT AS IN WC343487; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 1, 2 & 3, 61R11654 AS IN WC379896; SUBJECT TO AN EASEMENT AS IN ROS630436; TOWNSHIP OF PUSLINCH

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Schedule B

Monitoring Program

Monitoring, Recording and Reporting

1. The Owner shall ensure that the following monitoring program is carried out upon commencement of operation of the Sewage Treatment System:
 - (a) Average daily flow of effluent being disposed of through the subsurface disposal system shall be measured and recorded.
 - (b) **Observation wells are installed and the approved monitoring program is implemented.** Groundwater and surface water samples as required by the MOE and described in the conditions of the Certificate of Approval for the sewage treatment system;
 - (c) The sampling and analyses required by Clause (b) above shall be performed in accordance with the Ministry's publication "Protocol for the Sampling and Analysis of Industrial - Municipal Wastewater", Ministry of the Environment, August 1994; or as described in "Standard Methods for Examination of Water and Wastewater", 19th Edition, 1995, as amended from time to time by more recently published editions.
2. The Owner shall retain for a minimum of three years from the date of their creation, all records and information related to or resulting from the monitoring activities required by this certificate.

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Schedule C

Effluent Criteria

The Owner shall use best effort to operate the sewage treatment system with the objective that the concentrations of the materials named below as effluent parameters, or as amended by the MOE, are not exceeded in the effluent ahead of the subsurface disposal system:

Effluent to Subsurface

Disposal System Parameters

Concentration

CBOD ₅	< 20 mg/L
Suspended Solids	< 20 mg/L
Nitrite and Nitrate	< 5 mg/L
Total Phosphorus	< 1 mg/L

The Owner shall ensure that the flow of sewage into the sewage system does not exceed the average flow rate of 216,000 L/d in any three month period.

Schedule "D"
Schedule of Deposits to Trust Account or Trustee

The Owner shall deposit the greater of \$1,200.00/month, or \$5.00/occupied site, each month to the trust account or trustee as approved by the Township. The deposit shall be made before the 7th day of each month. The first payment shall be due on the first day of the month following the start-up of the sewage treatment plant.

These funds may be used, without the approval of the Township, for:

- unscheduled replacement of major components of the system such as pumps, control panels and valves;
- significant repairs on the sewage treatment system, sewage collection system and leaching bed as approved by the Township;
- payment for services, equipment, studies or investigation required to eliminate an issue of non-compliance, if considered appropriate by the Township;
- payment for services, equipment, studies or investigation required to eliminate an issue of default.

For the purpose of determining the amount of the monthly deposit to the trust account, an occupied site shall include both seasonal use and year round use sites which are occupied by a trailer home or mobile home.