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7-24-06 effective

PRIVATE COMMUNITY WASTEWATER DISPOSAL SYSTEM ORDINANCE

ANN ARBOR CHARTER TOWNSHIP, MICHIGAN

Ordinance No. 1-2006

Ann Arbor Charter Township ordains:

SECTION 1 - GENERAL

Section 1.1 - Intent and Purpose.

- 1.1.1. The Township provides public wastewater disposal services within designated sewer service areas under a contract with the City of Ann Arbor. Those areas outside the public sewer service area are either designated as agricultural preservation areas, open space preservation areas or rural residential areas. These areas are generally to be served by individual septic systems. However, in certain cases, in order to accommodate clustering of development and to preserve significant agricultural areas or open space areas, privately owned and operated community wastewater disposal systems may be necessary.
- 1.1.2. Pursuant to M.C.L. 324.3101 et. seq., being §1994 PA 451, as amended (“Act 451”), the Michigan Department of Environmental Quality (“MDEQ”) is authorized to issue permits for private community on-site wastewater disposal systems that serve more than one property (referred to as a “Community Wastewater System” or “PWS”). While the Township recognizes that a Community Wastewater System may be in the best interests of the health, safety, and welfare of the Township and its residents in some limited circumstances, the Township requires assurance that, should the MDEQ issue an Act 451 Permit and residential development dependant on a PWS occur, the Township shall be indemnified by the owner and operator of the PWS from any costs or liability in connection with the design, construction, operation, maintenance, repair and/or replacement of that PWS.
- 1.1.3. The Township also recognizes that should the owner or operator of the PWS fail or be unable to continue to operate the PWS in accordance with its permits and applicable laws and regulations, the extension of public sewer systems to the development and/or provision of a publicly owned treatment works may not be possible. In such event an adequate replacement reserve for the PWS is essential to insure continued operation of the PWS and the protection of the health, welfare and safety of residents of the Township and nearby areas. Further, in certain circumstances, the Township may make a determination, at its sole discretion, to

take over the operation of the PWS in order to protect the health, welfare and safety of residents of the Township. For these purposes, this ordinance is intended to regulate PWS within the Township.

- 1.1.4. Pursuant to Public Act 241 of 2005, amending Act 451, the Township is not responsible for or subject to penalties or sanctions for an unauthorized discharge from a PWS unless the Township has accepted responsibility in writing for the same and has also been notified in writing by the MDEQ of such responsibility. It is the general policy of the Township to reject assumption of liability and responsibility for a PWS except in the limited circumstances described in this Ordinance.
- 1.1.5. Pursuant to Public Act 191 of 2005 amending Act 451, the activities of a PWS are subject to the provisions of local zoning and other ordinances as well as Act 451, and the construction and operation requirements of the federal water pollution control act and the national environmental policy act of 1969, 42 U.S.C. 4321, 4331 to 4335 and 4341 to 4347.
- 1.1.6. This Ordinance is adopted pursuant to the specific statutory authority described above and general authority granted to the Township to regulate land uses within the Township and to protect the public health, safety and welfare.

SECTION 2 - DEFINITIONS

Section 2.1 - Definitions

- 2.1.1. **ACT 451** means Act. No. 451 of the Michigan Public Acts of 1994, as amended, M.C.L. 324.3101 *et. seq.*
- 2.1.2. **ACT 451 Permit** means a permit issued in accordance with the provisions of Act. 451.
- 2.1.3. **APPLICABLE SEWERAGE LAWS** means all applicable laws, regulations and standards of and permits issued by the Michigan Department of Environmental Quality (“MDEQ”), the Michigan Department of Public Health (“MDPH”), the Washtenaw County Health Department (“WCHD”), the Michigan Public Service Commission (“MPSC”) and any other applicable laws and regulations of the federal government, State of Michigan, Washtenaw County, and the Township which relate or apply to the operation of public or private sewer systems.
- 2.1.4. **APPLICANT** means a person or entity having an ownership or other interest in land who proposes to construct a PWS or expand a PWS on the land. The Applicant may also be the PWS Owner.
- 2.1.5. **ASSOCIATION**, for a condominium development, shall have the same meaning as “association of co-owners” found in Act No. 59 of the Michigan Public Acts of

1978, as amended, M.C.L. 559.101 et. seq. For a subdivision or other development, Association shall mean an association of homeowners or property owners organized as a Michigan non-profit entity which is authorized pursuant to deed restrictions and/or restrictive covenants in a particular Development to govern the affairs of the Development. An Association may be the PWS Owner.

- 2.1.6. **COMMUNITY WASTEWATER SYSTEM OR SYSTEMS OR PWS** means a Sanitary Sewer System which is owned by a non-governmental entity and which is proposed to serve more than one dwelling unit or structure. The PWS shall be deemed to include any individual septic tanks, pumps, lines and appurtenances serving each dwelling unit or structure, in addition to the central treatment facility, drainfield, reserve field, any approved lift stations, lines, sewers and appurtenances that serve more than one dwelling unit.
- 2.1.7. **DEVELOPMENT** shall include a subdivision as defined by Act No. 288 of the Public Acts of 1967, as amended, M.C.L. 560.101 et. seq., a condominium pursuant to the provisions of Act No. 59 of the Public Acts of 1978, as amended, M.C.L. 559.101 et. seq., or any group of dwellings or structures that are proposed to be served by a PWS.
- 2.1.8. **DEVELOPMENT AGREEMENT** means the agreement described in Section 3.4.3.3 below.
- 2.1.9. **DEVELOPMENT DOCUMENTS** means (a) for a condominium project, the recorded master deed, bylaws and condominium subdivision plan provided by Act No. 59 of the Public Acts of 1978, as amended, M.C.L. 559.101 et. seq.; (b) for a subdivision or other Development, the recorded Plat, the documents containing the deed restrictions and/or restrictive covenants required by this Ordinance; (c) the articles of incorporation and bylaws of the Association; and (d) public utility and other easements pertaining to PWS or as otherwise required by this Ordinance.
- 2.1.10. **EXPANSION** shall mean any activity whereby additional structures, dwelling units or users are added to an existing PWS .
- 2.1.11. **PUBLIC SANITARY SEWER SYSTEM** means a Sanitary Sewer System owned by one or more governmental entities.
- 2.1.12. **PUBLIC SANITARY SEWER SERVICE AREA** means the area designated for public sanitary sewer service by the Township or through a contract between the Township and its service provider, presently the City of Ann Arbor.
- 2.1.13. **PWS OWNER** means a legal entity of perpetual duration that owns the facilities and assets of the PWS. The PWS Owner may also be the PWS Operator if it meets all of the requirements of a PWS Operator.

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- 2.1.14. **PWS OPERATOR** means a legal entity of perpetual duration that is responsible for the day-to-day operation and maintenance of the PWS and insuring compliance with all permits and applicable laws and regulations.
- 2.1.15. **PWS PERMIT** means the permit issued by the Township pursuant to this Ordinance.
- 2.1.16. **MDEQ** means the Michigan Department of Environmental Quality, or its successors.
- 2.1.17. **RESIDENTIAL OWNER** means the owner of a fee simple interest in or a land contract purchaser of a condominium unit, lot or parcel of a Development that is served or is proposed to be served by a PWS.
- 2.1.18. **SANITARY SEWER SYSTEM** means a facility for transportation, collection, processing, or treatment of sanitary sewage. A Sanitary Sewer System may be either a Public Sanitary Sewer System as defined in Section 2.1.11 above, or a PWS owned by a non-governmental entity as defined in Section 2.1.6 above.
- 2.1.19. **TOWNSHIP** means the Charter Township of Ann Arbor, Washtenaw County, Michigan, acting through its duly elected Township Board of Trustees.

SECTION 3 - REGULATIONS

Section 3.1 - Regulations

- 3.1.1. Permit Required. No PWS shall be constructed, installed or operated in the Township without an approved PWS Permit issued in accordance with this Ordinance, approval of the PWS by all other applicable governmental authorities, and any necessary rezoning or other land use approvals required for the proposed use and construction of the Development to be served by the PWS.
- 3.1.2. Board Action; Act 451 Permit. The Township Board shall review and approve or deny the PWS Permit application pursuant to this Ordinance and authorize issuance of a PWS Permit only after the Applicant has provided all information and met all the standards contained in this Ordinance and Zoning Ordinance Section XXI pertaining to conditional land uses or, if applicable, Section 11.15 pertaining to planned unit development. The PWS Permit shall be effective only after the date on which the Act 451 Permit for the PWS becomes effective. The PWS Permit shall be deemed rescinded and canceled without further action of the Township in the event that the Act 451 Permit lapses, expires without renewal, is revoked by MDEQ or otherwise ceases to be in effect, or in the event of non-compliance with the terms and provisions of this Ordinance.
- 3.1.3. Outside Public Sanitary Sewer Service Area. A PWS shall only be allowed in areas of the Township outside of the Public Sanitary Sewer Service Area.

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- 3.1.4. Conditional Use Permit or Planned Unit Development Permit. A PWS shall be considered a conditional land use pursuant to Section 16b of the Township Zoning Act (MCL 125.286b) and Article XXI of the Township Zoning Ordinance (“Article XXI”) and shall be subject to the notice, public hearing, standards, findings, conditions and other requirements of Article XXI and this Ordinance, including the site plan standards set forth in Section 4 below. Provided, a PWS included in a Planned Unit Development under Section 11.15 of the zoning ordinance shall not require a separate conditional use permit and shall instead be subject to the notice, public hearing standards, findings, conditions and other requirements under Section 11.15 of the Township Zoning Ordinance, and this Ordinance, including the site plan standards in Section 4 below.
- 3.1.5. Preservation of Open Space. The primary purpose for and use of a PWS in the Township shall be to enhance and enable significant clustering of residences and other developmental alteration to land and to preserve significant wetlands, natural features, open spaces or agricultural lands (“Dedicated Open Space”). The percentage of permanently protected Dedicated Open Space shall meet the standards providing in the Open Space Preservation Community Ordinance (“OSPC”) (Zoning Ordinance Section 11.27, Table 1), or, where applicable, the Open Space Preservation Residential District Ordinance (“OSPRD”) (Zoning Ordinance Section 14.4). The permanent protection of the Dedicated Open Space shall be by a conservation easement as described in the OSPC or OSPRD ordinances, as applicable, and approved by the Township Board.

Section 3.2 - Qualifications For a PWS Owner

- 3.2.1. The PWS Owner shall be the Association, the Applicant or other entity of perpetual duration approved by the Township with the capacity to (a) own the PWS, and (b) to operate the PWS (or to contract with a PWS Operator for operation of the PWS) for the benefit of the Association and the Residential Owners and who meets the requirements of Section 3.5.2 of this Ordinance. The PWS Owner shall have the capacity to and shall perform all obligations of the PWS Owner under the PWS Permit, the Act 451 Permit, the Development Agreement, the agreement with the PWS Operator, and the Development Documents, including the ability to meet financial obligations and make reserve fund deposits required by this Ordinance and Applicable Sewerage Laws.

Section 3.3 - Qualifications For a PWS Operator

- 3.3.1. The PWS Operator shall employ or contract with a sufficient number of personnel who have all qualifications and certifications required under Applicable Sewerage Laws to operate the PWS to ensure availability of both regular and emergency service to the PWS.

Section 3.4 - Requirements for approval of a PWS

- 3.4.1. Compliance with Laws and Ordinances. The design, construction and operation of the proposed PWS shall comply with the terms of this Ordinance and Article XXI (or Section 11.15 of the Zoning Ordinance, if applicable), and all Applicable Sewerage Laws.
- 3.4.2. Plans. No new PWS or expansion of an existing PWS shall be constructed, installed or operated within the Township unless the plans for the construction, installation and operation of the PWS (“Plans”) have been approved by the Township, and all other governmental authorities having jurisdiction over the construction and maintenance of Sanitary Sewer Systems including but not limited to the WCHD, the MDPH, the MDEQ, and/or the MPSC. The Plans shall include sufficient detail to ensure compliance with this Ordinance, other applicable Township ordinances and general engineering practices and standards.
- 3.4.3. Information and Documents Required. The Applicant shall provide the following to the Township before approval of a PWS may be granted:
- 3.4.3.1 Articles and Bylaws. A copy of the Articles of Incorporation and Bylaws of the Association.
- 3.4.3.2 Restrictions and Master Deed. A copy of the form of the restrictive covenant/deed restriction/or master deed imposing upon Residential Owners the obligation to pay for all capital and operating costs and reserves associated with the PWS.
- 3.4.3.3 Development Agreement. An executed Development Agreement among the Applicant, PWS Owner (if different from the Applicant), the Association, and the Township in a form acceptable to the Township that:
- 3.4.3.3.1 Responsibility; Assignment. Provides that the Applicant, PWS Owner (if different from the Applicant), and Association are jointly and severally responsible for inspection, monitoring, repairing, replacing, operating and maintaining the PWS and retaining a PWS Operator. The Applicant shall have the right to assign such obligations to the PWS Owner and the Association after final approval of

the PWS Permit, establishment of the reserve funds described below and successful operation of the PWS for a period of 12 months after transfer of control of the Association to the Residential Owners;

3.4.3.3.2 Standards. Specifies standards for inspection, monitoring, operation, maintenance, repair and replacement of the PWS in accordance with Applicable Sewerage Laws and operating guidelines recommended by the manufacturer of all components of the PWS, and the PWS Operator. The Applicant will provide the proposed standards to the Township for review and approval and such standards shall be included in the Development Documents;

3.4.3.3.3 Township Rights; Jurisdiction; Injunction. Grants the Township the right to inspect any part of the PWS for compliance with this Ordinance, the Development Agreement and all Applicable Sewerage Laws, consenting to personal jurisdiction and venue in Washtenaw County or U.S. District Court for the Eastern District of Michigan agreeing that money damages cannot make the Township whole for damages arising out of the breach of the Development Agreement, and agreeing to injunctive remedies in any action brought by the Township to enforce the Development Agreement or enforce compliance with Applicable Sewerage Laws;

3.4.3.3.4 Indemnification. Requires indemnification of the Township by the Applicant, PWS Owner and Association, jointly and severally, from any and all loss, liability, costs and expense incurred by the Township with respect to inspection, monitoring, operation, maintenance, repair and replacement of part or all of the PWS and requires payment of such costs within 30 days of receipt of the Township's invoice for same;

3.4.3.3.5 Insurance. Requires the Applicant, PWS Owner, PWS Operator and Association to maintain during the life of the PWS policies of casualty insurance for the replacement value of the insurable components of the PWS, comprehensive general liability insurance and pollution legal liability insurance, each with limits acceptable to the Township, naming the Township as an additional insured, which policies shall be issued by an insurer registered/licensed to issue insurance in Michigan and with

an A.M. Best Rating, or similar rating, acceptable to the Township. No policy of such insurance shall be cancelled or permitted to lapse without 30 days advance written notice to the Township and without securing similar coverage;

3.4.3.3.6 Connection to Public Sewer. Grants the Township the authority in its sole discretion to require that the PWS be abandoned and all properties in the Development be connected, at the expense of the Association and Residential Owners, to any public sanitary sewer system or publicly-owned community sewer system which may be constructed in the future and accessible to the Development;

3.4.3.3.7 Purchase by Township. Grants the Township at any time, the right and option to be exercised by the Township in its sole discretion, to purchase for the sum of \$1.00 (i) marketable title to the PWS and any related lands, equipment, fixtures, appurtenances and easements, and (ii) all PWS warranties, all as reasonably deemed by the Township to be necessary in conjunction with the PWS or future publicly owned community wastewater system. In the event the Township exercises the foregoing option, the Township shall hold and operate the PWS as a public utility providing service to the Residential Owners. The Township may thereafter transfer the facilities, assets and reserves of the PWS to a new PWS Owner on the condition that such facilities, assets or reserves be used solely for providing sewer services to the Residential Owners;

3.4.3.3.8 Special Assessment District. Provides consent by the PWS Owner, the Association and Residential Owners to the establishment of a special assessment district as described in Section 3.4.9 below;

3.4.3.3.9 Township Option to Assume Ownership. Grants the Township the right, but not the obligation, to take over ownership and operation of the PWS in the event that the PWS Owner (i) becomes insolvent or goes into bankruptcy or receivership, or (ii) fails to maintain the operating, maintenance and capital reserves required by this Ordinance within 6 months after written notice from the Township that the reserves do not meet Ordinance requirements, or (iii) is unable, unwilling or fails for any

reason to operate the PWS in full compliance with Applicable Sewerage Laws where failure to meet such requirements in 6 successive months or in more than 8 months in a 12-month period shall be conclusively determined to be an inability to comply with Applicable Sewerage Laws. In the event the Township exercises its option in the Township's sole discretion to assume ownership of the PWS, the Township shall hold and operate the PWS as a public utility providing service to the Residential Owners. The Township may thereafter transfer the facilities, assets and reserves of the PWS to a new PWS Owner on the condition that such facilities, assets or reserves be used solely for providing sewer services to the Residential Owners;

3.4.3.3.10 Rejection of Assumption of Liability. Acknowledges that the Township has rejected assumption of liability for the PWS except in the event the Township, in its sole discretion, determines to take over ownership of the PWS pursuant to Section 3.4.3.3.7 or 3.4.3.3.9 above.

3.4.3.3.11 Educational Materials. Requires the Applicant, the PWS Owner and the Association to provide each Residential Owner on a regular basis no less than annually with educational materials and recommended guidelines on the proper disposal of household wastes. Information concerning such educational materials and recommended guidelines shall be included in the disclosure documents pertaining to the Development.

3.4.3.4 PWS Operating Agreement. An executed PWS Operating Agreement among the Applicant, PWS Owner (if different from the Applicant), the Association, and the PWS Operator governing (i) inspection, monitoring, operation, maintenance, repair and replacement of equipment and facilities of the PWS; (ii) the imposition and collection of user charges and assessments for connection to, and use of the PWS; (iii) establishment and maintenance of financial reserves for operation, maintenance and capital expenses; and (iv) compliance with all Applicable Sewerage Laws and agreements regarding the PWS, including this Ordinance. The proposed form of the PWS Operating Agreement shall be submitted for approval to the Township as part of the application for a PWS Permit to construct and operate the PWS. The PWS Operating Agreement shall expressly provide that it may not be terminated without Township approval so long as the PWS serves the Development. Provided, the PWS Operating Agreement may be

assigned to another PWS Operator in accordance with the Applicable Sewage Laws and upon prior written approval of the Township. The language of the PWS Operating Agreement shall be reviewed and approved by the Township attorney and Township engineer prior to granting of approval of the PWS by the Township Board. Any amendments, renewals, revisions or substitutions of the PWS Operating Agreement shall require prior written approval of the Township Board.

- 3.4.3.5 Engineer's Certification. A certification from a qualified engineer licensed in Michigan on behalf of the PWS Owner stating that the PWS as designed and constructed will adequately process sanitary sewage and waste as required by and in conformance and compliance with all Applicable Sewerage Laws. The Township engineer shall review and make a recommendation to the Township Board regarding the adequacy of such certification. The Township's engineer's review shall include review of plans and documents for compliance with Township Ordinances, engineering standards and general engineering practices.
- 3.4.3.6 Qualifications of PWS Operator. Evidence satisfactory to the Township Board or its designee (in accordance with standards described in Section 3.3 above) that the PWS Operator employs or contracts with a sufficient number of individuals who have all qualifications and certifications required under Applicable Sewerage Laws to operate the PWS.
- 3.4.3.7 Qualifications of PWS Owner. Evidence satisfactory to the Township Board or its designee (in accordance with standards described in Section 3.2 above) that the PWS Owner has the qualifications to own the PWS.
- 3.4.3.8 Disclosure Document. The provisions of the Development Agreement described in 3.4.3.3 above and other obligations of the Association and Residential Owners set forth in this Ordinance shall be included in a separate disclosure document and referred to in the deed conveying any portion of the Development to a Residential Owner and in the Development Documents, which shall run with the land, in the form approved by the Township attorney and shall be delivered to the prospective purchaser of a unit, lot or parcel of the Development served by a PWS prior to the execution of a purchase agreement.
- 3.4.3.9 Location of Central PWS Facilities. The central treatment system, drainfield and reserve field portions of the PWS shall be located upon a separate common area, lot or unit dedicated exclusively to operation of the PWS which shall be initially owned by the Applicant and transferred to the Association or a qualified PWS Owner in the manner

described in this Ordinance. The PWS shall be inspected, monitored, operated, maintained, repaired and replaced by the PWS Owner or Association with the right of the PWS Owner or Association to assess Residential Owners for all such costs.

3.4.3.10 Operation, Maintenance and Replacement Reserves; Assessments; Escrow Agreement. The PWS Owner shall establish and maintain operation, maintenance and replacement reserves as follows: An operation and maintenance reserve shall be established, funded and placed in escrow by the PWS Owner upon issuance of a PWS Permit in an amount sufficient to fund the cost of two years of monitoring, inspection, operation, maintenance and repair of the PWS, and within two years after issuance of the PWS Permit, must be increased to an amount sufficient to fund the cost of five years of monitoring, inspection, operation, maintenance and repair of the PWS (“O&M Reserve”). In addition, upon issuance of the PWS Permit, a replacement reserve shall be established, funded and placed in escrow by the PWS Owner in an amount sufficient to fund 50% of the anticipated total replacement costs of the PWS system and equipment, including the anticipated costs of replacement or reconstruction of the collection system and drainfield (“Replacement Reserve”). The Development Documents and PWS Operator shall provide for user fees and assessments of Residential Owners in the Project to ensure (a) perpetual funding of the O&M Reserve at the five year level, unless a larger amount is required by Applicable Sewerage Laws, including funding for required replenishment of the O&M Reserve in the event of withdrawal or use of any portion of such reserve, and (b) perpetual funding of the Replacement Reserve at the 50% level, unless a larger amount is required by Applicable Sewerage Laws, including funding for required replenishment of the Replacement Reserve in the event of withdrawal or use of any portion of such reserve. The O&M Reserve and the Replacement Reserve shall be established pursuant to an escrow agreement which shall be submitted to the Township for review and approval prior to issuance of the PWS Permit. In the event of non-performance by the PWS Owner or the PWS Operator of proper operation, maintenance or replacement of the PWS, the Association or the Residential Owners shall have the right and obligation to draw on the applicable escrow reserve fund for the purpose of undertaking proper maintenance, inspection, operation and replacement of the PWS, and payment of fees, costs and expenses of same.

3.4.3.11 Access Easements. Permanent and irrevocable easements, in recordable form, shall be granted by the Applicant, PWS Owner and Association to the Township and its employees, contractors, consultants, agents, and assigns authorizing the Township to enter on the Development and

the property upon which the PWS is located for the purpose of inspections and other purposes set forth in this Ordinance, and the PWS shall be maintained so as to be accessible at all times by the Township. No structures or landscaping within the access area shall be allowed that would unreasonably interfere with such access.

3.4.3.12 Operations and Maintenance Manual; Rates. The PWS Operations and Maintenance (“O/M”) Manual which shall include worksheets for the O&M Reserve and Replacement Reserve as described in 3.4.3.10 above similar to worksheets required for those purposes by the MDEQ. The Applicant shall provide proposed rates, fees and assessments for the first five (5) years of operation of the PWS, including a projected cash flow analysis showing the assumption of number of connections, and anticipated escrow replenishments needed to balance the expenses and revenues from the Development and to maintain the required maintenance and replacement escrows.

3.4.3.13 Warranties. The PWS application shall include copies of all manufacturers and contractors warranties for the PWS which shall be assignable to the PWS Owner, the Association, the Residential Owners and the Township (in the event the Township, in its sole discretion assumes ownership of the PWS).

3.4.4. Building Permits. No building permit shall be issued for any structure or dwelling unit proposed to be served by a PWS until the Township Board has approved the PWS Permit application in accordance with terms and provision of this Ordinance and Article XXI (or Section 11.15 of the Zoning Ordinance, if applicable).

3.4.5. Inspection During Construction; Certification. The PWS shall be inspected during construction by an independent engineer or consultant hired by the Township at the expense of the Applicant or PWS Owner, to ensure proper system construction and installation. All underground installations must be inspected prior to covering with as-built measurements provided to the Township. Full scale operation of the PWS (excluding pilot testing and similar preliminary operations) shall not commence until an independent engineer or consultant hired by the Township, at the expense of the Applicant or PWS Owner, has certified that the PWS has been constructed according to the approved plans and specifications.

3.4.6. Non-Responsibility of Township. Anything in this Ordinance to contrary notwithstanding, the Township shall not be responsible for or obligated to perform any needed or desired repairs, maintenance, improvement, and/or replacement of the PWS or any portion thereof except in the event the Township, in its sole discretion, determines to take over ownership of the PWS pursuant to Section 3.4.3.3.7 or 3.4.3.3.9 above. The Applicant shall acknowledge and the

Development Documents shall provide an acknowledgment that the Township has rejected assumption of liability for the PWS.

- 3.4.7. Conditions of Approval; Annual Reports. At any time approval for a PWS is granted, the Township may condition such approval upon the Applicant, the PWS Owner and current and future Residential Owners and the Association agreeing to adhere to the operational and maintenance requirements of this Ordinance. The PWS Operator, PWS Owner, and the Association shall furnish annual operating and maintenance reports in accordance with the applicable PWS operation and maintenance requirements. All such requirements shall be made a part of the Development Agreement and Development Documents.
- 3.4.8. Recording Development Agreement and Development Documents; Amendments. The Development Agreement and the Development Documents shall be recorded at the office of the Washtenaw County Register of Deeds, after approval by the Township and prior to first sale of a unit, lot or parcel of a Development. The Development Documents, as they pertain to the PWS, shall not be amended without Township approval, and shall contain language to that effect.
- 3.4.9. Special Assessment District. Prior to recording the Development Documents and sale of any unit, lot or parcel served by a PWS, Applicant shall establish a special assessment district pursuant to Act 188 of the Michigan Public Acts of 1954 or a drain district pursuant to the Drain Code of 1956, if approved by the Township Board and the Washtenaw County Drain Commission, whose boundaries coincide with the Development, for the purpose of funding the operating, maintenance and capital costs of the PWS and reasonable reserves for such costs, in the event that the PWS Owner is unable, unwilling or fails for any reason to do so. The Township, in the event that a special assessment district is established, or the Drain Board, in the event that a drain district is established, may impose assessments sufficient to meet the operating, maintenance and capital needs of the PWS together with such reserves as prudent practice dictates in the event that (i) the Township (in its sole discretion) takes over ownership and operation of the PWS, or (ii) the PWS Owner fails to impose or collect user charges or assessments sufficient to meet the normal operating, maintenance and capital needs of the PWS and/or fails to maintain the reserves required by this Ordinance or Applicable Sewer Laws.
- 3.4.10. Responsibility for Costs. The PWS Owner, the Applicant, the Association and the Residential Owners shall be responsible for all costs of the installation, operation, monitoring, inspection, maintenance, repair, and replacement of equipment and facilities of the PWS and all liability associated with the PWS. The Township may, at its option, elect to collect all costs it may incur in connection with the PWS pursuant to the provisions of this ordinance by a special assessment described above, and by direct court action against the Applicant, the PWS Owner, the PWS Operator, the Association, and/or Residential Owners.

Section 3.5 - Transfer of Ownership of the PWS

- 3.5.1. Limitations. The PWS Owner shall not transfer, convey or assign any facilities or assets of the PWS required for the ongoing operation of the PWS in compliance with this Ordinance and Applicable Sewerage Laws, except as provided in this Section 3.5.
- 3.5.2. Conditions. The PWS Owner shall not transfer, convey or assign the facilities and assets of the PWS without approval of the Township Board based on (i) a demonstration that the entity seeking to become the new PWS Owner meets all requirements of a PWS Owner under this Ordinance and can fulfill all duties and obligations of a PWS Owner under the PWS Permit, the Act 451 Permit, the Development Agreement, the Development Documents, and the agreement with the PWS Operator; (ii) a demonstration that the new PWS Owner has established or has the right to receive a transfer of all required operating, maintenance and capital reserves; and (iii) the agreement of the new PWS Owner to undertake all obligations imposed on a PWS Owner under this Ordinance, the agreement with the PWS Operator, the Development Agreement and the Development Documents.
- 3.5.3. Continuing Liability. Transfer of ownership of the PWS by a PWS Owner shall not relieve the prior PWS owner from civil or criminal liabilities arising under this Ordinance or any Applicable Sewerage Law nor from the obligation to comply with any court-ordered injunctive relief related to obtaining or enforcing compliance with this Ordinance or Applicable Sewerage Laws that accrue or arise prior to the date of Township Board approval of the transfer.

Section 3.6 - Permit to Operate A PWS; Annual Reports

- 3.6.1. Permit. No PWS may be constructed, installed or operated within the Township without a PWS Permit.
- 3.6.2. Initial Approval. Township Board approval of the PWS Permit pursuant to this Ordinance and Township Zoning Ordinance Section XXI (or Section 11.15, if applicable) shall serve as the initial permit to construct, install and operate the PWS, which permit shall be effective only after the Act 451 Permit has been issued, and thereafter for an initial period of no longer than the Act 451 Permit and shall remain in effect only so long as a valid Act 451 Permit is in effect, and compliance by the PWS and the PWS Owner and PWS Operator with the requirements of this Ordinance and other applicable laws and ordinances.
- 3.6.3. Annual Reports; Information Required. In order to keep the PWS permit in effect, the PWS Owner or PWS Operator shall submit to the Township annual reports containing the following:

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- 3.6.3.1 The name of the PWS Operator and a copy of the current contract between the PWS Owner and PWS Operator, and current copies of all required certifications for individuals operating the PWS.
 - 3.6.3.2 Proof that the PWS Owner and PWS Operator meet the insurance and other requirements under this Ordinance.
 - 3.6.3.3 A certification with supporting documentation from a financial institution that the required operating, maintenance and capital reserves are maintained.
 - 3.6.3.4 The operating budget for the PWS for the most recently completed fiscal year together with a schedule of all user fees and charges.
 - 3.6.3.5 A certification from a professional engineer licensed in Michigan with expertise in wastewater systems that (i) sets forth the maintenance, repair and replacement needs or recommendations for the PWS for the 12-month period coinciding with the upcoming permit year together with an estimate of likely associated expenses, and (ii) states without exception or reservation that the condition of the PWS, together with the operating budget and the satisfaction of the maintenance, repair and replacements needs, is such that the PWS is capable of meeting all applicable requirements for operation of the PWS.
- 3.6.4. Annual Inspection. The PWS shall be inspected annually by an independent engineer or consultant hired by the Township at the expense of the PWS Owner to certify system condition, capacity and function.
- 3.6.5. Audit. The Township, in its sole discretion, may require an audit of the books and records of the PWS at the expense of the PWS Owner as part of the process of annual review of the PWS Permit.

SECTION 4 - SITE PLAN STANDARDS

In connection with the review of the PWS and the conditional use permit approval pursuant to Zoning Ordinance Article XXI or planned unit development approval under Section 11.15 of the Zoning Ordinance as required by Section 3.14 above, the Applicant shall, in addition to the information required by Article XXI or Section 11.15, as applicable, include in the site plan (for a conditional use permit) or the area plan (for a planned unit development) for the Development or in separate documents the following:

- 4.1 Buffering. Adequate buffering space from residential uses and adjacent properties to minimize process machinery noise level, maximize odor dispersal and to ensure adequate isolation distances so that drinking water wells are not adversely affected by the PWS.

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- 4.2 Fencing; Landscaping. Adequate fencing and landscaping to protect and screen the drainfield, reserve field and treatment system from adjacent uses.
- 4.3 Location of PWS. Location of the PWS in a manner to generally discourage foot traffic, park use, future illegal landscaping, fill or other uses. The location shall also minimize the impact of the PWS on existing and future homes. Fencing of the drainfield and reserve field is required.
- 4.4 Prohibited Uses. Development Documents that clearly state the PWS, drainfield and reserve field shall not be used for any purpose other than sewage disposal. Prohibited uses include active or passive uses, park uses, stormwater runoff, collection or storage, easements, maintenance activities, structures or any other uses that might be detrimental to the PWS, drainfield or reserve field. The surface of the PWS drainfield and reserve field shall be suitably landscaped and maintained in a manner designed to preserve the function of the fields and to prevent erosion.
- 4.5 Location Map. A general location map showing the proposed treatment system and the Development in relationship to prominent geographical features such as roads, rivers, lakes, and towns.
- 4.6 Legal Description. An accurate legal description of the boundaries of the Development and the central treatment system, drainfield and reserve field. The entire Development and treatment system site must be topographically mapped with a maximum contour interval of two feet. The legal description and topographic map must be prepared under the direction of a professional surveyor licensed in Michigan. The drawing must be accurate and to a scale of no more than 100 feet to one inch.
- 4.7 Soil Borings. The location of soil borings or test pits with attached soil boring logs and indicating the general nature of subsurface soils in the Development and treatment system areas, including depth to groundwater, permeable strata, and confining layers.
- 4.8 PWS Components. The major components of the proposed PWS on the drawing, including pump stations, tanks, treatment units, drainfields, buildings and other significant items.
- 4.9 Access. The means of vehicle access to the PWS with at least one paved access drive at least 10 feet wide for year round access, and paved parking and turnaround area adequate for maintenance vehicles, and buried utilities at a minimum of 10 feet from the edge of pavement.
- 4.10 Stormwater Management. Sufficient details on the drawing to illustrate the method of stormwater management, including general flow arrows for the direction of stormwater runoff, and the points of discharge from the Development.

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- 4.11 Crowning of Fields. The drainfield and reserve field which shall be crowned and which shall receive no drainage runoff for collection use.
- 4.12 Isolation Distances. Isolation of the proposed PWS from surrounding utilities and structures. The plan shall show the locations of and distances from nearby wells, existing and future structures, drains, watermains, or other utilities. In general, the preferred buffer from any dwelling to the PWS disposal area or pump station is 300 feet. There shall be a minimum of 100 feet isolation distance from any portion of the PWS disposal area or pump station to any dwelling or residential well. The PWS shall be located on a parcel of land not counted as developable area or encumbered by easements, except easements necessary for operation of the PWS.
- 4.13 Noise and Odor Buffers. Placement of the PWS to provide adequate buffer space to decrease process machinery noise levels and maximize odor dispersal, including a description of how placement of the PWS will minimize odors affecting neighboring properties.
- 4.14 Water Courses; Wetlands; Flood Plains. The locations of and distances to nearby water course, surface water, wetlands, or floodplains, including a minimum isolation distance of 100 feet from any drainage area, surface water, wetland or flood plain.
- 4.15 Screening. Details of the screening to be provided around the PWS, such as berming, trees, shrubs and fencing.
- 4.16 Feasibility of Connection to Public Sewer. A depiction or description of the proximity of the proposed PWS to the nearest public sanitary sewer and plans and specifications demonstrating feasibility or lack of feasibility of connection.
- 4.17 Adjacent Uses. Adjacent land use and zoning.
- 4.18 Compatibility with General Development Plan. A description of the compatibility of the proposed Development with local planning, including a discussion of the impact of the Development on the Township General Development Plan.
- 4.19 Water Supply. The source of water supply and its isolation from the proposed treatment and disposal system portion of the PWS, and the general direction of groundwater flow.

SECTION 5 - SELECTION OF TREATMENT SYSTEM; GRAVITY SYSTEM

- 5.1 Standards. The PWS treatment system must meet or exceed MDEQ standards and WCHD standards.

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- 5.2 Design. The PWS shall be designed with ease of maintenance and operation in mind. The Township reserves the right to retain a qualified wastewater system engineer, at the Applicant's expense, to review the plans and suggest modifications to the design, layout, or operation of the system.
 - 5.3 Gravity Flow. The PWS shall provide for gravity flow unless Applicant demonstrates to the satisfaction of the Township that gravity flow is not reasonably feasible.

SECTION 6 - BASIC DESIGN CRITERIA

- 6.1 Qualified Engineer. The PWS shall be designed by a qualified professional engineer licensed to practice in the State of Michigan with experience in the design of a PWS. The design engineer shall provide to the Township a list of similar projects designed by the engineer with location, size, construction cost, contact names and telephone numbers.
- 6.2 Residential Use. A PWS designed under this Ordinance shall consider wastewater characteristics of residential users and shall meet or exceed MDEQ standards and WCHD standards.
- 6.3 Flow. In the absence of actual flow data, the design shall be based upon the definition of one Residential Equivalent Unit (REU) equaling a minimum of 300 gallons per day.
- 6.4 Maximum Capacity. The PWS shall be limited to a maximum capacity of 20,000 gallons per day.
- 6.5 Components. PWS shall include the following general components:
 - 6.5.1 Septic tanks with effluent filters.
 - 6.5.2 Recirculation and/or surge tanks.
 - 6.5.3 Options to by-pass certain components in order to accommodate the daily flows under conditions requiring service and/or repair.
 - 6.5.4 Piping
 - 6.5.5 All pumps including, if non-gravity systems are proposed, individual residential pumps.
 - 6.5.6 A drainfield and reserve drainfield.
- 6.6 Service Life. The PWS shall be designed for a service life of at least 20 years.

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- 6.7 Expansion; Connection to Public System. The PWS shall be designed to permit ease of expansion and ultimate connection to a public sanitary sewers with a minimum of interruption of normal operation. Measures to accomplish the foregoing may include blind tees, plugs, stubs, and sleeves placed strategically to allow for future connection to a Township Public Sanitary Sewer System.
- 6.8 Compartmentalization. In order to keep the PWS operational during times of routine maintenance and/or repair, whenever possible, the treatment components shall be compartmentalized so as to allow for manual alternation of the components.
- 6.9 Required Connections. All developable sites within the proposed Development shall be connected to the PWS.
- 6.10 Minimum Number of Connections. The minimum number of homes connected to a PWS shall be 20, unless Applicant demonstrates that a lesser number of homes can support the costs associated with ongoing operation, maintenance, repair and replacement of the PWS without placing an undue burden on the homeowners.
- 6.11 Design Calculations; Response Time. The Applicant shall prepare a basis of design showing flow calculations, dosing rates, pump and tank sizing, timer settings, and other key parameters. Include an estimate of the time available for operator response under high water alarm conditions.
- 6.12 Maintenance. The PWS piping design shall allow for flushing, draining, repairing, and other maintenance activities.
- 6.13 Handling Devices. The PWS design shall provide adequate lifting and handling devices for heavy or awkward components of the system.
- 6.14 Odor Control. The PWS design shall provide gasketed aluminum access hatches to control odors.
- 6.15 Gravity Flow; Connections. The PWS design shall provide for gravity flow piping in and around tanks, up to the distribution piping at the drainfield, shall be PVC Schedule 80 solvent weld connections. Glued connections are not permitted. All fittings shall be PVC Schedule 80.
- 6.16 Monitoring Wells. Subsequent to a review of the overall data submitted, the Township may require the installation of groundwater observation wells around the disposal area. If the wells are required, the following criteria shall apply:
- 6.16.1 A minimum of three (3) monitoring wells shall be triangulated around the final disposal area with the exact locations jointly determined by the PWS design engineer and the Township.

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- 6.16.2 The wells shall be a minimum of 2” diameter and properly screened at the depth of the receiving aquifer.
- 6.16.3 Each well shall be secured in the manner consistent with requirements of applicable governmental authorities.
- 6.16.4 Sampling frequency and parameters for the PWS shall be based on recommendations of the PWS design engineer and Township engineer.
- 6.17 Paved and Landscaped Slopes. The PWS design shall provide for paved slope surfaces of a minimum of 1 % and a maximum of 6%. Landscaped or grassed areas that require routine mowing may be sloped up to a maximum of 1 vertical to 4 horizontal.
- 6.18 Grading. All elevations within the area of any component of the PWS shall be graded so as to promote runoff away from the system to a designated drainage area.
- 6.19 Reserve Field. Based on the recommendations of the PWS design engineer and the Township engineer, the reserve field may be required to be fully or partially prepared. The extent of preparation shall be subject to the following criteria:
- 6.19.1 Future availability of public sewer.
- 6.19.2 Overall site grading and/or clearing.
- 6.19.3 Depth and accessibility of proposed excavation.
- 6.19.4 Conditions observed during construction, inspection or other field inspections that vary from design assumptions, such as lack of uniform subsurface soil conditions, location of groundwater, percolation, construction methods especially those resulting in “smearing,” or any other conditions or factors that may have an impact on the optimal performance of the PWS design, as described in the Michigan Criteria for Subsurface Sewage Disposal, or other generally accepted publications regarding field conditions or other factors that may affect performance or service life.
- 6.20 Soil Erosion. The PWS design shall provide for installation, inspection and maintenance of adequate soil erosion and sedimentation control measures.
- 6.21 Construction Timing. No construction or installation of a PWS shall take place between November 1 and April 15 without the written approval of the Township and other applicable governmental authorities.

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- 6.22 Reserve Field Slopes. The reserve drainfield area shall be designed to provide for no more than a 25% slope within the defined boundary.
- 6.23 Water Softeners; Salt. The PWS shall be designed so that recharge water from residential water softeners is not discharged into the PWS, and other sources of salt or other chemical compounds such as pavement de-icing runoff are directed away from the surface or subsurface of the drainfield, reserve field or PWS system components.
- 6.24 Gravity System; Pump Criteria. The PWS shall be designed as a gravity system unless the Applicant demonstrates that a gravity system is not feasible. Systems reliant on pumps at each home will not generally be permitted. Collection systems that require pumping shall use the minimum number of pumping or lift stations feasible. Any request to install pumps shall be accompanied by a detailed analysis of costs for the entire service life of the collection system, demonstrating no appreciable increase in cost to the user for the entire service life.
- 6.25 Compatible Design. The PWS shall be designed with consistent and compatible system components.

SECTION 7 - FEES, PENALTIES AND ENFORCEMENT

Section 7.1 - Fees

- 7.1.1. Administrative and Escrow Fees. Applications for PWS under this Ordinance shall be accompanied by a non-refundable administrative application fee in an amount specified from time to time by resolution of the Township Board. In addition, an Applicant shall pay an additional escrow fee in an amount determined by resolution of the Township Board for the estimated cost of outside consultants retained by the Township in connection with the review of the application. In the event the cost of the services of the consultants is less than the escrow fee, the Applicant shall be refunded the balance. In the event the cost of the services of the consultants exceeds the amount of the escrow fee, the Applicant shall pay the deficiency to the Township prior to the issuance of the PWS Permit. A denial of an application for a PWS Permit shall not affect the Applicant's obligation to pay the application or escrow fee provided for in this Section. In addition, all fees associated with the conditional use permit application under Article XXI or the planned unit development under Zoning Ordinance Section 11.15 shall apply.

Section 7.2 - Penalties and Enforcement

- 7.2.1. Enforcement. The Township Zoning Official, Township Utilities Director, the Township Engineer, and other Township officers, or their agents, contractors and employees shall have authority under this Ordinance to enter upon privately owned land for the purpose of administering this Ordinance and performing Township rights and duties under this Ordinance, and may make or cause to be

made such examinations, surveys or samplings as necessary for proper enforcement of this Ordinance.

7.2.2. Civil remedies. The provisions of this Ordinance shall be enforceable through any and all remedies at law or in equity in any court of competent jurisdiction.

7.2.2.1 Penalties. In addition to the rights and remedies herein provided to the Township, and except as set forth in Section 7.2.3 below, a violation of this ordinance shall be a civil infraction and subject to the following fines:

7.2.2.1.1 First violation of this Ordinance within any 36 month period: minimum fine \$50; maximum fine \$500.00.

7.2.2.1.2 Second violation of this Ordinance within any 36 month period: minimum fine \$150; maximum fine \$1,000.00.

7.2.2.1.3 Third violation of this Ordinance within any 36 month period: minimum fine \$250; maximum fine \$2,500.00.

7.2.2.1.4 Fourth or subsequent violation of this Ordinance within any 36 month period: minimum fine \$400, maximum fine \$5,000.00.

In addition, the person or entity violating this Ordinance shall be responsible for payment of all direct and indirect costs and expenses incurred by the Township in connection with such violation, including reasonable attorney's fees. Each day such violation is continued or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

7.2.2.2 Injunction; Nuisance. Any activity conducted in violation of this ordinance is declared to be a nuisance per se, and the Township may commence a civil suit in any court of competent jurisdiction for an order abating or enjoining the violation, and/or requiring restoration of the property as nearly as possible to the condition existing before the violation.

7.2.2.3 Stop-Work Order. The Township may also issue a stop-work order or withhold issuance of a Certificate of Occupancy, permits or inspection until the provisions of this Ordinance, including any conditions attached to a PWS Permit, have been fully met. Failure to obey a stop work order shall constitute a violation of this Ordinance.

7.2.2.4 Appearance Tickets. In all arrests and prosecutions for violation of this Ordinance, appearance tickets and the appropriate procedures set forth in Act 147, Michigan Public Acts of 1968, as amended, may be used.

7.2.3. Criminal remedies. A person who knowingly makes any false statements, representations or certifications in any application, records, report, plan or other document, filed or required to be maintained pursuant to this Ordinance, shall, upon conviction be punished by a fine of not more than \$500.00 or imprisonment in the county jail for a period of time not to exceed 90 days, or both such fine and imprisonment, in the discretion of the court, together with costs of prosecution.

SECTION 8 - ORDINANCE CONFLICT

Nothing in this Ordinance shall be interpreted to conflict with present or future state or federal statutes concerning the same subject matter; conflicting provisions of this Ordinance shall be abrogated to, but only to, the extent of the conflict. Moreover, the provisions of this Ordinance shall be construed, if possible, to be consistent with relevant state and federal regulations and statutes. If any part of this Ordinance is found to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision. Such holding shall not affect the validity of the remaining portions thereof, and the remainder of the Ordinance shall remain in force. Rights and duties which have matured, penalties which have been incurred, proceedings which have begun and prosecutions for violations of law occurring before the effective date of this Ordinance are not affected or abated by this Ordinance.

SECTION 9 - EFFECTIVE DATE

This Ordinance shall take full force and effect immediately upon final publication.

SECTION 10 - CERTIFICATION

I, Rena Basch, Clerk of Ann Arbor Charter Township, do hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the Ann Arbor Charter Township Board at a regular meeting on July 17, 2006.