

STORMWATER EASEMENT AGREEMENT

This Stormwater Easement Agreement (“**Agreement**”) is entered into on the Effective Date by and between **Nestlé Waters North America Inc.**, a Delaware corporation, whose address is 900 Long Ridge Road, Stamford, Connecticut 06902 (“**Nestlé**”) and the **City of Evart**, a Michigan municipal corporation, whose address is 5814 100th Avenue, Evart, Michigan 49631 (“**Evart**”).

Background

A. Nestlé is the owner of a parcel of land located in the City of Evart, State of Michigan containing approximately 27.15 acres of land described on attached **Exhibit A** (the “**Nestlé Parcel**”), and as shown on the site plan attached hereto as **Exhibit B** (the “**Site Plan**”).

B. Evart is the owner of 5th Street and Recreational Avenue in the City of Evart, of which the relevant portions of each are depicted on the Site Plan.

C. Nestlé and Evart mutually desire for Evart to be able to divert stormwater located on the relevant portion of 5th Street and Recreational Avenue to the Nestlé Parcel.

Agreement

Now, therefore, for good and valuable consideration of less than One Hundred Dollars (\$100) (exempt from State and County transfer taxes under MCL 207.505(a) and MCL 207.526(a)), the parties mutually agree as follows:

1. **Grant of Easement.** Nestlé hereby grants and warrants to Evart, for the benefit of the portion of 5th Street located between 95th Avenue and Recreational Avenue and the portion of Recreational Avenue extending between the two portions of 5th Street shown on the Site Plan (such portions referred to herein as the “**Benefitted Roads**”), a nonexclusive perpetual easement over, under and across the portion of the Nestlé Parcel depicted on the Site Plan (the “**Stormwater Easement Area**”) for the construction, operation, maintenance, repair, replacement and use by Evart of a stormwater discharge and retention system. Such stormwater discharge and retention system may include, without limitation, gutters, capture facilities, drain pipes, and landscaping and vegetation intended to capture, store and treat stormwater (collectively, the “**Stormwater Facilities**”). The Stormwater Facilities shall be located approximately in the areas shown on the Site Plan.

2. **Temporary Construction and Maintenance Easement.** In addition to the Stormwater Easement Area, Nestlé grants Evert a temporary easement over such other portions of the Nestlé Parcel as may be reasonably necessary for the construction, installation, maintenance, repair and replacement of the Stormwater Facilities.

3. **Restoration.** Immediately following any installation, maintenance, repair or replacement of the Stormwater Facilities, Evert shall restore the surface of areas disturbed by such activities to a similar state prior to such activities, including but not limited to seeding of grasses.

4. **Maintenance.** Evert, at its sole cost and expense, shall maintain the Stormwater Easement Area and the Stormwater Facilities thereon in good condition at all times, and Evert warrants that all construction, installation, maintenance repair and replacement will be done in a good workmanlike manner and in compliance with all applicable laws and regulations. If Evert fails to maintain the Stormwater Easement Area and/or the Stormwater Facilities as provided above, then Nestlé may give Evert written notice of Nestlé's intent to undertake such maintenance. Upon receiving such written notice, Evert shall have thirty (30) days to perform the maintenance (or commence performance of the maintenance if a longer period is reasonably needed to complete such maintenance). If Evert fails to perform the maintenance within said thirty (30) day period (or commence performance and continue the same until completion), then Nestlé shall have the right, but not the obligation, to perform the maintenance of the Stormwater Easement Area and/or the Stormwater Facilities. In such event, Evert shall reimburse Nestlé upon written demand for the cost and expense of such maintenance performed by Nestlé. Such written demand shall include reasonable documentation supporting the amount claimed to be due.

5. **Insurance.** For so long as this Agreement remains in effect, Evert shall, at its sole expense, obtain and keep in effect, public liability and property damage insurance that insures Evert and Nestlé, as their interests may appear, for all activities conducted by Evert on the Nestlé Parcel, on a comprehensive basis in an amount not less than \$3,000,000 per occurrence combined single limit liability for bodily injury and death and property damage; provided that the required amount of the insurance coverage shall be subject to adjustment at ten (10) year intervals based on any increase in the Index (as defined below) between the beginning of the ten (10) year period and one month prior to the end of the ten (10) year period. As used herein, the term "Index" means the Consumer Price Index published by the Bureau of Labor Statistics, United States Department of Labor (CPI-U), All Items Index for All Urban Consumers – U.S. City Average (1982-84 = 100). If the Index shall cease to be published, a reasonable equivalent substitute index shall be used for purposes of this Agreement. Such insurance shall name Nestlé as an additional insured and shall contain waivers of subrogation rights against Nestlé and its insurance companies, such waivers to be in form and substance reasonably acceptable to and approved by Nestlé. Evert shall provide certificate(s) of such coverage to Nestlé on the Effective Date of this Agreement, and thereafter from time to time as Nestlé may request. Each certificate shall provide that such insurance coverage will not expire or be cancelled except upon at least thirty (30) days prior written notice to Nestlé. Such insurance shall be written by insurance companies reasonably acceptable to Nestlé.

6. **Indemnification.** Each party shall indemnify, defend and hold the other harmless from and against any and all claims, causes of action, damages, liabilities, judgments costs and expenses (including attorneys' fees) arising from (a) any property damage or injury or death to any person on the Nestlé Parcel to the extent caused by the negligence or willful misconduct of

the party or its employees, contractors or agents, and/or (b) any breach of this Agreement by the other party.

7. **Interest in Realty.** The easements granted herein are for the benefit of and are appurtenant to the Benefitted Roads and are a burden on the Nestlé Parcel. The terms and provisions of this Agreement constitute covenants running with the land and shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns with interests in the Benefitted Roads or the Nestlé Parcel.

8. **Termination of Easement.** In the event all or any portion of the Benefitted Roads are vacated or abandoned by legal action, then the easements granted under this Agreement shall automatically terminate for the portions of the Benefitted Roads so vacated or abandoned, and this Agreement shall automatically fully terminate if all of the Benefitted Roads are vacated or abandoned by legal action.

9. **Notices.** Any notice required under this Agreement shall be in writing and shall be deemed to have been given (a) on the same date as the date on which such notice is delivered personally, (b) on the date that is three (3) business days after the date on which such notice is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested or (c) on the date that is one (1) business days after the date on which such notice is sent by overnight courier services (such as Federal Express or any other nationally-recognized courier service) to the party's address first set forth above in this Agreement, or such other address as a party may give written notice of.

In witness whereof, the parties have executed this Agreement to be effective as of the date on which a party last signs this Agreement (the "**Effective Date**").

Drafted by and when recorded return to:
Daniel J. Parmeter Jr.
Mika Meyers PLC
900 Monroe Ave NW
Grand Rapids, MI 49503
(616) 632-8020

Nestlé's Signature Page to the Stormwater Easement Agreement

Nestlé:
Nestlé Waters North America Inc., a Delaware
corporation

By: _____

Its: _____

Dated: _____, 2019

State of _____)

_____)

County of _____)

The foregoing Stormwater Easement Agreement was acknowledged before me, a notary public, on _____, 2019, by _____ as the _____ of Nestlé Waters North America Inc., a Delaware corporation, on behalf of the corporation.

Notary Public, _____ County, _____

Acting in _____ County, _____

My commission expires: _____

Evert's Signature Page to the Stormwater Easement Agreement

Evert:
City of Evert, a Michigan municipal corporation

By: _____

Its: _____

Dated: _____, 2019

State of _____)

_____)

County of _____)

The foregoing Stormwater Easement Agreement was acknowledged before me, a notary public, on _____, 2019, by _____ as the _____ of the City of Evert, a Michigan municipal corporation, on behalf of the City.

Notary Public, _____ County, _____

Acting in _____ County, _____

My commission expires: _____

EXHIBIT A

Nestlé Parcel

A parcel of land situated in the Southeast 1/4 of Section 33, T18N, R8W, Osceola Township, Osceola County, Michigan, being more particularly described as: Beginning at the Center 1/4 corner of said Section; thence S89°21'03"E along the East-West 1/4 line, 985.17 feet; thence S00°19'03"E 1317.80 feet to the South 1/8 line; thence N89°23'19"W along said line, 985.57 feet to the North-South 1/4 line; thence N00°17'50"W along said line, 466.57 feet; thence N89°34'06"E, 239.94 feet; thence N00°17'13"W, 280.00 feet; thence S89°34'06"W, 240.00 feet to said North-South 1/4 line; thence N00°17'50"W along said line, 571.87 feet to the point of beginning.

EXHIBIT B

Site Plan

See attached

EXHIBIT B

POB (OF PARCEL DESCRIPTION) E-W 1/4 LINE, S89°21'03"E 985.17'

CENTER 1/4 CORNER OF SECTION 33

STORMWATER EASEMENT DESCRIPTION:

Part of the Southeast One-quarter of Section 33, T18N-R8W, Osceola Township, Osceola County, Michigan, being more particularly described as: Beginning at the Center One-quarter Corner of said Section, thence S89°21'03"E along the East-West One-quarter line, 985.17 feet, thence S00°19'03"E, 1317.80 feet to the South One-eighth line and the Point of Beginning, thence N89°23'19"W along said line 275.00 feet, thence N00°19'03"W, 400.00 feet, thence S89°23'19"E, 275.00 feet, Thence S00°19'03"E, 400.00 feet to the Point of Beginning.

Legal description: As furnished (Liber 606 Page 164)

The West 30 Acres of the Northwest Quarter (NW¹/₄) of the Southeast Quarter (SE¹/₄) of Section Thirty-three (33), Township 18 North, Range 8 West, Michigan, EXCEPT a parcel described as Commencing at the center of said Section 33, thence North 01°21'11" East 571.87 feet along the N-5 ¹/₈ line to the true point of beginning, thence North 86°32'43" East 248.00 feet, thence North 01°21'11" East 280.00 feet along N-5 ¹/₈ line to POB

LEGAL DESCRIPTION: As surveyed

A parcel of land situated in the Southeast One-quarter of Section 33, T18N-R8W, Osceola Township, Osceola County Michigan, being more particularly described as: Beginning at the Center One-quarter Corner of said Section, thence S89°21'03"E along the East-West One-quarter line, 985.17 feet, thence S00°19'03"E, 1317.80 feet to the South One-eighth line, thence N89°23'19"W along said line, 275.00 feet to the North-South One-quarter line, thence N00°19'03"W along said line, 400.00 feet, thence S89°23'19"E, 275.00 feet, thence N00°19'03"W, 400.00 feet, thence S89°23'19"E, 275.00 feet, thence N00°19'03"W, 400.00 feet to the Point of Beginning, containing 2.15 Acres more or less

Subject to the Right-of-way for 95th Avenue Across the Westerly 33 thereof, As depicted on the Certificate of Survey.

Subject to the Right-of-way for 5th Street Across the Southerly 455 thereof, As depicted on the Certificate of Survey, And being recorded in a survey (Liber 521 Page 556)

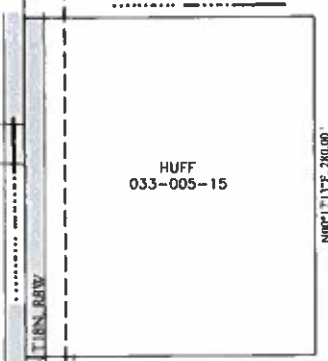
Subject to the Right-of-way and drainage line easement as described in Liber 400 Page 516, As depicted on the Certificate of Survey

Subject to Access agreement to Nestle Waters North America Inc. Liber 820 Page 81

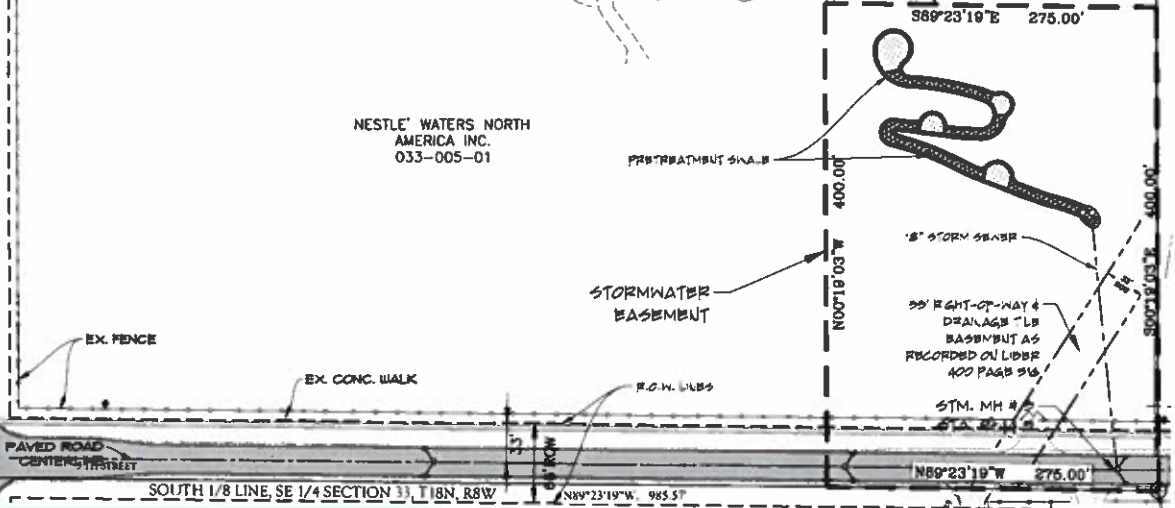
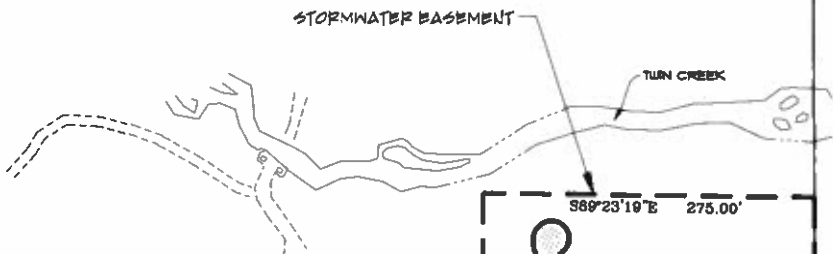
Note: The distance from the C₁ corner to the North line of the Exception is recorded as 571.87' on a survey recorded in Liber 521 Page 556. The distance from the C₁ to the North line of the Exception is recorded as 571.87' on a survey recorded in Liber 521 Page 557 and in the Deed Liber 606 Page 164. Based on occupation and existing Monumentation, I believe the correct distance should be 571.87'

N89°23'19"W, 571.87'

33' R/W



95 TH AVENUE
NORTH SOUTH 1/4 LINE, SECTION 33, T18N, R8W
N00°17'50"W, 466.57'



S00°19'03"E, 1,317.80'

CITY OF EVART
033-002-00

NESTLE' WATERS NORTH AMERICA INC.
033-005-01

CITY OF EVART
033-026-02

COUNTY FAIR
033-027-01

POB (OF EASEMENT)



STORMWATER EASEMENT

SCALE: 1" = 100'-0"



DAN VOS
CONSTRUCTION COMPANY
Building for Life.

ARCHITECTURAL SERVICES
DESIGN - BUILD
CONSTRUCTION MANAGEMENT
GENERAL CONTRACTING
JULIE FULTON
P.O. BOX 189
ADA, AR 70013-0189
W101575-0169

EASEMENT TO: CITY OF EVART
SECT./TOWN/RANGE: SEC 33, T18N; R8W
TOWNSHIP: OSCEOLA
COUNTY: OSCEOLA
DATE: 4-29-2019

