

COLLEGEVILLE TOWNSHIP

STEARNS COUNTY, MINNESOTA

27724 County Road 50
Cold Spring, MN 56320

Resolution 201207

RESOLUTION ESTABLISHING A TOWN ROAD

WHEREAS, the Town Board of Collegeville Township, Stearns County, Minnesota signed a Road Acceptance Agreement (Exhibit A) with JBA Development on the 12th Day of September;

WHEREAS, the Road Acceptance Agreement requests Collegeville Township accept roads developed in the Plat known as Conservation on Big Fish;

WHEREAS, the roads in the Plat of Conservation on Big Fish are:

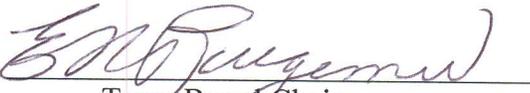
ALEXANDER LANE
SELESTE COURT
WATERS EDGE COURT

NOW, THEREFORE, BE IT RESOLVED, that the town board of Collegeville Township, Stearns County, Minnesota hereby establishes the following Township roads:

ALEXANDER LANE
SELESTE COURT
WATERS EDGE COURT

Adopted this 12th day of September 2012 by the following vote:

<u>Town Supervisor</u>	Yes	No
Craig Guggenberger	<u>X</u>	___
Eldred Ruegemer	<u>X</u>	___
Bill Fahrney	<u>X</u>	___



Town Board Chair

Attest:



Town Clerk

BOARD OF SUPERVISORS

Supervisor
Craig Guggenberger
(320)685-4343

Supervisor
Eldred Ruegemer
(320)597-3661

Supervisor
Bill Fahrney
(320)333-5183

Treasurer
Bob Simon
(320)363-7865

Clerk
Joe Pohl
(320)293-5009

Exhibit A

**COLLEGEVILLE TOWNSHIP
STEARNS COUNTY
STATE OF MINNESOTA**

ROAD ACCEPTANCE AGREEMENT

This Road Acceptance Agreement (the “Agreement”) made and entered into this 12th day of September, 2012, by and between Collegeville Township, a political subdivision of the State of Minnesota located in Stearns County referred to herein as “Township” and JBA Development, LLC, a Limited Liability Company, contract purchaser, hereinafter referred to as “Developer”.

WITNESSETH:

WHEREAS, the Developer has been in discussions with officials of Collegeville Township regarding the Plat of Conservation on Big Fish (the “plat” or “subject plat”) and the building and warranty of roadways with said plat to serve as access to the residential lots located or to be located within the development; and

WHEREAS, the Township has previously entered into a “Road Agreement for Conservation on Big Fish” dated July 18, 2012 with the Developer to reconcile the difference both physical and cost, in the change in road specifications as applied to the Subject Plat; and

WHEREAS, pursuant to the Road Agreement for Conservation on Big Fish, the Township has authorized the Township’s staff to work with the Developer to complete the roads within the Plat pursuant to the Road Agreement dated July 18, 2012; and

WHEREAS, the Town Board has now received a request from the Developer to accept the completed roads within the subject plat to be located in the Township;

WHEREAS, the Town Board desires that the Developer warranty the construction of the roads within the Plat and provide the Township with a surety in a form acceptable to the Township to guarantee the warranty.

NOW, THEREFORE, IT IS HEREBY AND HEREIN MUTUALLY AGREED, in consideration of each party's promises and considerations herein set forth, as follows:

1. **Construction and Warranty of Roads.**
 - A. Except as provided in the “Road Agreement for Conservation on Big Fish” dated July 18, 2012 which is attached hereto as Exhibit A and incorporated herein by reference, Developer at its sole expense hereby agrees to construct and build all roadways designated on said plat consistent with the standards which are attached hereto as Exhibit B and incorporated herein by reference. Such construction shall include all work

necessary to bring such roadways within standards established by Township, including road top, ditches and/or culverts.

- B. Developer warrants to the Township until June 1, 2013 that all such road improvements required by the Township have been constructed to Exhibit B standards and specifications and shall suffer no significant impairments, either to the structure or to the surface or other usable areas due to improper construction, said warranty to apply both to poor materials and faulty workmanship.
- C. No roads within the subject plat shall be accepted by the Township until such time as the Township Engineer has certified to the Township that the construction/installation of the roadways within the subject plat have been done and performed according to Exhibit B.
- D. Developer shall provide the Township with lien waivers from all contractors and subcontractors engaged to construct said road improvements on Said Plat. Should Developer fail to provide the Township with all applicable lien waivers, the Township reserves the right to draw upon Developer's surety and pay any contractors who performed work on any Infrastructure Improvements and whom Developer has failed to fully pay for the performance of said work.
- E. The Township shall, at its option, have the Township Engineer and/or designated representatives present on Said Plat for inspection purposes at all times (or such times as the Township may deem necessary) during the construction and installation of said roadways within the subject plat.
- F. Developer shall, at its own expense, also cause to be installed street signs and traffic control signs of such type and at such locations as required by the Township Engineer and in conformance with the Manual on Uniform Traffic Control Devices.

2. **Surety Requirements.**

- A. **Township Surety Requirements.** Prior to the Town Board's consideration of this Road Acceptance Agreement, the Developer will provide the Township with an irrevocable letter of credit as security that the obligations of the Developer under this Agreement shall be performed. Said letter of credit or surety shall be in the amount of \$20,000 and shall remain in effect until September 1, 2013. Said letter of credit or surety must meet the approval of the Township Attorney as to form and issuing bank.
- B. The Township may draw on the letter of credit or surety to complete repairs not performed by Developer including, but not limited to, construct the roads to be located within the subject plat, described above, erosion control, and

other such measures, to pay liens on property to be dedicated to the Township, to reimburse themselves for costs incurred in the administration or enforcement of this Agreement, to repair or correct deficiencies or other problems which occur to the improvements during the warranty period, or to otherwise fulfill the obligations of Developer under this Agreement.

- C. In the event that any cash, irrevocable letter of credit, or other surety referred to herein is ever utilized and found to be deficient in amount to pay or reimburse the Township in total as required herein, the Developer agrees that upon being billed by the Township, Developer will pay within thirty (30) days of the mailing of said billing, the said deficient amount. If said amounts are not paid within thirty (30) days, the Developer hereby agrees to allow the Township to specially assess Developer's property in said plat and/or take necessary legal action to recover such costs and for any and all costs incurred by the Township in enforcing any of the terms of this Agreement. Developer agrees that the Township shall be entitled to attorneys fees incurred by the Township as a result of such legal action. Developer knowingly and voluntarily waives all rights to appeal said special assessments under Minnesota Statutes.
- D. In the event any surety referred to herein is in the form of an irrevocable letter of credit, which by its terms may become null and void prior to the time at which all monetary or other obligations of the Developer are paid or satisfied, it is agreed that the Developer shall provide the Township with a new letter of credit or other surety, acceptable to the Township, at least forty-five (45) days prior to the expiration of the original letter of credit. If a new letter of credit is not received as required above, the Township may without notice to Developer declare a default in the terms of this Agreement and thence draw in part or in total, at the Township's discretion, upon the expiring letter of credit to avoid the loss of surety for the continued obligations. The form of any irrevocable letter of credit or other surety must be approved by the Township Attorney prior to its issuance.
- E. Any amounts not utilized from this letter of credit or surety shall be returned to the Developer, without interest, when all improvements have been completed, warranty periods have expired, all financial obligations to the Township have been satisfied.

3. **Acceptance of Roads with the Subject Plat.**

- A. The parties acknowledge that the Developer has dedicated to the Township all roads and road right-of-ways located within said plat.
- B. Acceptance by the Township of the roads within the Subject Plat shall occur upon passage of a resolution to such effect by the Town Board after the Developer has completed construction of said roadways pursuant to

the "Road Agreement for Conservation on Big Fish" dated July 18, 2012 which is incorporated herein by reference.

4. **General Provisions.**

- A. If any provision contained in this Agreement is held invalid, the validity of the remainder of the agreement shall not be affected thereby.
- B. This agreement is between the Township and Developer as the only parties and no provision of this agreement shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.
- C. Each party shall be responsible for its own liability or the liability of its employees. This agreement shall not be interpreted to constitute a waiver by the Parties of any defenses available by law including any immunity or limitations on liability under Minnesota Statutes, Chapter 466.
- D. The action or inaction of the Township shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the Township. The Township's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.
- E. This Agreement represents the full and complete understanding of the Parties and both Parties represent that neither Party is relying on any prior agreements or understandings, whether oral or written. This Agreement shall be modified, if at all, with the signed, written consent of both Parties.
- F. Developer shall maintain the streets on Said Plat until said streets are completed and accepted by the Township.
- G. Each right, power or remedy herein conferred upon the Township is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to Township, at law or in equity, or under any other Agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Township and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.
- H. The Developer hereby grants to the Township, its agents, employees, officers, and contractors a right of entry to enter Said Plat to perform any and

all work and inspections necessary or deemed appropriate by the Township during the installation of improvements by Developer or the Township, or to make any necessary corrective actions deemed necessary by the Township under this Agreement.

5. **Violation of Agreement.**

- A. Except as otherwise provided in this Agreement, upon any default by Developer, its successors or assigns, of any of the covenants and agreements herein contained, the Township shall give the defaulting party forty five (45) days mailed notice thereof (via certified mail), and if such default is not cured within said forty five (45) day period, the Township are hereby granted the right and the privilege to declare any deficiencies governed by this Agreement due and payable to the Township in full. The forty five (45) day notice period shall be deemed to run from the date of deposit in the United States Mail. Upon failure to cure by Developer, the Township may thence immediately and without notice or consent of the Developer draw on the Letter of Credit, complete the Developer's obligations under this Agreement, specially assess the costs thereof against Developer's lots within Said Plat and/or bring legal action against the Developer to collect any sums due to the Township pursuant to this Agreement, plus all costs and attorney's fees incurred in enforcing this Agreement.
- B. Notwithstanding the 45-day notice period provided for in paragraph 5A above, in the event that a default by Developer will reasonably result in irreparable harm to the environment or to public property, or result in an imminent and serious public safety hazard, or if the Letter of Credit or other security is to expire within 30 days, the Township may immediately exercise all remedies available to it under this Agreement in an effort to prevent, reduce or otherwise mitigate such irreparable harm or safety hazard, provided that the Township makes good-faith, reasonable efforts to notify the Developer as soon as is practicable of the default, the projected irreparable harm or safety hazard, and the intended actions of the Township to remedy said harm.
- C. The insolvency of Developer or the filing of a petition in Bankruptcy Court (whether voluntary or involuntary) by or against Developer in which Developer is the alleged bankrupt shall constitute a default under this Agreement. In such case, the Township may immediately draw upon the entire letter of credit or surety and the notice requirements of Paragraph 5A shall not be a prerequisite to drawing on such letter of credit or surety.

6. **Assignment of Contract.** The obligations of the Developer under this Contract cannot be assigned without the express written consent of the Township through written resolution.

Road Agreement for Conservation on Big Fish

Exhibit A

This agreement is made and entered into this 18th day of July, 2012 by and between the Town of Collegeville, hereinafter referred to as "Town" and JBA Development, LLC hereinafter referred to as "Developers" of the following described property located in Section 29, Township 124, Range 30:
Conservation on Big Fish.

- 1) Whereas, a proposed plat has been approved by the Town Board of Supervisors;
- 2) Whereas, the Town road specifications are being reviewed and updated;
- 3) Whereas, the Developers have begun construction utilizing previously approved road specifications;
- 4) Whereas, the Town wishes to upgrade the current construction to the proposed new road specifications under review.

Now therefore, in consideration of the mutual promises and agreements contained herein, the parties agree as follows:

The purpose of this agreement is to reconcile the difference both physical and cost, in the change in road specification from previous to currently under review.

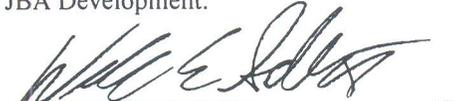
The Developers agree as follow:

- 1) The contractor will be engaged to provide an additional three inches of aggregate base, class V meeting all standard MnDOT specifications for gradation and density.
- 2) The additional material will cost \$17,500 as quoted by Knife River estimator Andy and the cost breakdown for payment of acceptable material placed and compacted shall be Developers - \$5,000 and Town - \$12,500.
- 3) The Developer shall complete the remainder of the project as planned for acceptance by the Town, meeting all County requirements and Developer engineer specifications.

The Town agrees as follows:

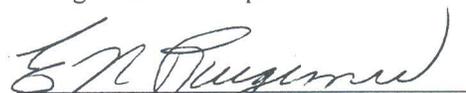
- 1) The Town Engineer, Minnesota Engineering, will work with Developers and their engineer to assure road is acceptable for Town acceptance at the completion of the 2-inch bituminous course and final turf establishment.
- 2) The Town will be responsible for placement of an additional bituminous overlay to complete the proposed standard when and if deemed necessary.
- 3) The Town agrees that the ditch slope will become slightly steeper due to 3 inches of road base added to the road after the ditch and culvert elevations were established.

JBA Development:



Bill Schnettler

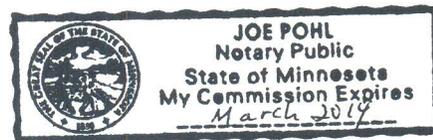
Collegeville Township:



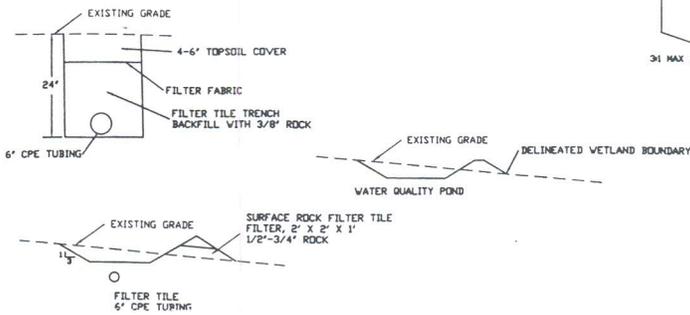
Eldred Ruegamer, Supervisor, Chair



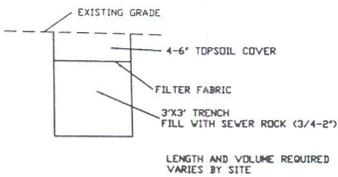
Joe Pohl, Clerk



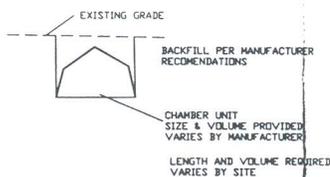
Ex. B



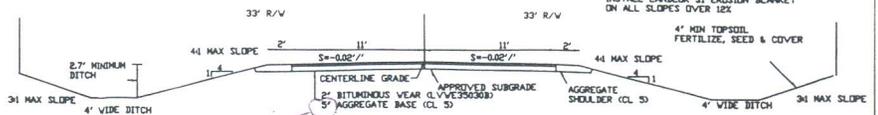
FILTER TRENCH & WATER QUALITY POND DETAILS



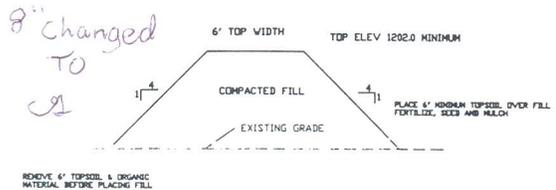
ROCK TRENCH DETAIL



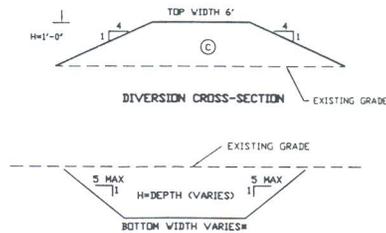
CHAMBER TRENCH DETAIL



TYPICAL TOWNSHIP ROAD SECTION



POND A BERM SECTION



WATER QUALITY POND SECTION

CONSTRUCTION NOTES:
 WATER QUALITY POND VOLUMES REQUIRED FOR IMPERVIOUS AREAS CREATED ON EACH LOT THAT DO NOT DRAIN TO POND A WILL VARY. EXPECTED VOLUME FOR EACH LOT WILL BE IN A RANGE FROM 156 CF TO 313 CF. SEE THE SWPPP FOR EXAMPLE CALCULATIONS.
 RAIN GARDENS, PONDS, ROCK TRENCHES OR INFILTRATION CHAMBERS ARE BMP'S THAT ARE AVAILABLE TO PROVIDE WATER QUALITY VOLUME. TYPICAL DETAILS ARE SHOWN ON THIS SHEET.

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A FULLY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MICHIGAN. MICHAEL M. MAYER DATE: 4/11/11 REG. NO. 19043	SUPPORT:	CONSERVATION ON BIG FISH SECTIONS
	DRAWN BY: CHECKED BY: DESIGNED BY: SCALE:	