JA 34

INSPECTION AND MAINTENANCE AGREEMENT

STATE OF NORTH CAROLINA
COUNTY OF IREDELL

THIS AGREEMENT is made and entered into this 8th day of March, 1996, by and between M/I Homes Inc (hereinafter the "Owner") and Tri-County Wastewater Management (hereinafter the "Contractor").

WITNESSETH

WHEREAS, the Owner owns or controls the property upon which a ground absorption sewage treatment system (hereinafter "system") is installed, such system being designated a Type IV system under the Rules for Sanitary Sewage Collection, Treatment and Disposal found at 15A N.C. Admin. Code 18A.1900 et seq.; and

WHEREAS, 15A N.C. Admin. Code 18A.1961 requires a contract to be executed between the system owner and a management entity prior to the issuance of an Operation Permit for said system; and

WHEREAS, 15A N.C. Admin. Code 18A.1961 requires that a condition of the Operation Permit for said system be that a properly executed contract between the system owner and a management entity shall be in effect for as long as the system is in use; and

WHEREAS, the Contractor is a management entity of a type authorized by 15A N.C. Admin. Code 18A.1961 to manage a Type IV system.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and promises contained in this Agreement, it is hereby agreed by and between the Owner and the Contractor as stipulated below.

1. The Contractor's Obligations. The Contractor shall have performed the following services on the Owner's system located at Lot 34, 176 Sunrise Circle, The Harbour, Mooresville, NC, 28115.

a. The Contractor shall have an inspection of the system performed twice a year in accordance with Table V(b) of 15A N.C. Admin. Code 18A.1961(b) for a Type IV System.

b. The Contractor shall have performed the following routine maintenance procedures in accordance with the conditions of the Operation Permit:

(1) [see attachments]

c. The Contractor shall report the results of its inspections to the local health department at the frequency specified in Table V(b) of 15A N.C. Admin. Code 18A.1961(b) for a Type IV System.

d. If an inspection indicates the need for system repairs, the Contractor shall notify the local health department within 48 hours of the inspection.

e. The Contractor shall notify the Owner of needed repairs which are outside of the scope of routine maintenance described in subparagraph (b) above. The Contractor shall perform necessary repairs to the system at the request of the Owner and shall be entitled to payment therefor at the Contractor's normal charge for services and materials.

f. If the Contract is terminated by the Contractor prior to both inspections being completed during a year the annual fee will be pro rated and refunded to the Owner. If any monies are owed to the Contractor by the Owner for any work performed to the system, the refund for cancellation will be deducted.

g. The Contractor shall employ or contract with a Certified Operator to perform the maintenance procedures if required by table V(b) of 15A N.C. Admin. Code 18A.1961(b) for a Type IV System.

h. If the Contractor makes a change in Certified Operators, the Contractor shall notify the local health department within 48 hours of the change and will have a replacement within thirty (30) days.

2. <u>The Owner's Obligations.</u>

a. The Owner shall pay to the Contractor the sum of $205.00 for the 1st year's inspections, routine maintenance procedures and periodic reports. The initial annual fee is payable upon the execution of the contract. Annual billings will be made thereafter and payable within fifteen (15) days of billing. The annual fee may be amended upon sixty (60) days advance notice to the Owner. The Owner shall pay to the Contractor his normal and customary fees for any work performed on the system as a result of nonscheduled service or maintenance calls. These fees are due and payable within fifteen (15) days of billing. Payments due to the Contractor and unpaid by the Owner after fifteen (15) days shall accrue interest from the due date until paid at a rate of 1.5 percent per month.

b. Within thirty (30) days of receipt of notice of needed repairs pursuant to paragraph 1.e. above, the Owner shall request the Contractor to complete needed repairs or shall provide to the Contractor evidence that the needed repairs were satisfactorily completed by another entity.

c. The Owner shall provide the Contractor with such access to the system as is reasonably necessary for the Contractor to comply with the terms of this Agreement.

3. Term. This Agreement shall remain in effect until terminated.

a. Automatic Termination.
This agreement shall automatically terminate if the Operation Permit for the system is revoked and all appeals of the revocation are exhausted or time for taking an appeal has passed.

b. Automatic Termination for Cause.
This agreement shall automatically terminate if the Owner fails to pay any fees or charges to the Contractor within the terms specified in paragraph 2.a.

c. Termination by Mutual Consent.
The Parties may mutually agree to terminate this Agreement by giving written notice of termination by mutual consent to the local health department thirty (30) days in advance of the date of termination.

d. Termination by the Owner.
The Owner may terminate this Agreement by giving written notice to the Contractor and to the local health department thirty (30) days in advance of the date of termination.

e. Termination by the Contractor.
The Contractor may terminate this Agreement by giving written notice to the Owner and to the local health department thirty (30) days in advance of the date of termination.

4. Assignment.

a. Assignment by the Owner. The Owner shall notify the Contractor of the name and address of any purchaser of the property on which the system is located. The Owner shall also notify any purchaser of the property on which the system is located of the existence of this Agreement and shall assign all rights and duties under this Agreement to said purchaser.

b. Assignment by the Contractor. The Contractor may assign its rights and duties under this Agreement to another management entity which is qualified pursuant to 15A N.C. Admin. Code 18A.1961 to manage a Type IV system upon thirty (30) days written notice to the Owner and to the local health department.

5. Use of Subcontractors. The Contractor may subcontract with such manufacturers, suppliers and contractors as it deems desirable to perform any of the Contractor's duties under this Agreement. The Contractor shall at all times remain responsible for the performance of and payment for all work performed by all subcontractors.

6. Representations. The Parties represent to each other that each has the power, authority and legal right to enter into and perform its obligations as set forth in this Agreement.

7. Regulatory Amendments. References in this Agreement to sections of the Administrative Code shall include such rules as they may be amended in the future.

8. No Implied Waiver. The waiver by either Party of a default of a breach by the other Party of any provision of this Agreement shall not operate or be construed to operate as a waiver of any subsequent default or breach. The failure at any time of either Party to enforce any provision of this Agreement (a) shall not be construed to be a waiver of such provisions, or of any other provision; and (b) shall not in any way affect the validity of this Agreement, or any part of this Agreement, or the right of either Party thereafter to enforce each and every provision of this Agreement.

9. Notice. Every notice required under this Agreement shall be in writing and shall be deemed sufficiently given if delivered in person or sent by certified or registered mail, return receipt requested, postage prepaid to the Party to be notified and addressed as follows:

To the Owner:
M/I Homes Inc.
1043 East Morehead Street, Suite 105, Charlotte, NC, 28204

To the Contractor:
Tri-County Wastewater Management
712 South Hayne Street, Monroe, NC 28112

To the Local Health Department:
Iredell County Environmental Health Department
412 East Center Street, Mooresville, NC 28115

The date of any Notice shall be the date of personal delivery or the date shown on the return receipt as the date of delivery or attempted delivery, as the case may be. Changes in the respective addresses to which notice may be directed may be made from time to time by either Party by notice to the other party.

10. Place of Agreement. This Agreement and any questions concerning its validity, construction or performance shall be governed by the laws of the State of North Carolina, notwithstanding the place of execution, or the order in which the signatures of the Parties are affixed.

11. Effective Date / Unoccupied Property. If the property is unoccupied at the time of the execution of this agreement, the effective date of this agreement may be changed to the date of occupancy with the mutual consent between all parties. This change resets the annual billing structure and the calender for periodic inspections. Fees that are paid upon the execution of this agreement will be held by the Contractor and applied at the date of the change. An attachment showing proof of the occupancy date must be provided by the Owner to the Contractor and the local health department at the time the change is to be made.

12. Entire Agreement and Amendment. This Agreement supersedes all prior negotiations, agreements and understandings between the Parties with respect to the subject matter hereof and constitutes the entire Agreement between the Parties with respect to the subject matter hereof. To be effective, any amendment or modification to this Agreement must be in writing and must be signed by the Parties.

13. Severability. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the Parties shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected in this Agreement, and the other provisions of this Agreement shall, as so amended, modified, supplemented or otherwise affected by such action, remain in full force and effect.

IN TESTIMONY WHEREOF, the Parties hereto have executed this Agreement in duplicate originals, one of which is retained by each of the Parties, the day and year first above written.

(Owner)

Attest:

(Contractor)

Attest:

(Certified Operator)

Attest:

Change of effective date for unoccupied property: _____ (Office use only)
(If applicable; refer to paragraph 11.)

(LPPCRNTC-05694)

MAINTENANCE PROCEDURES

1. Inspect ground cover and landscaping to insure proper water runoff over system.

2. SEPTIC TANK

a. Check sludge depths yearly (if applicable). Contractor will have tank pumped when sludge depth comes within 8 inches of the bottom of the outlet tee or the inlet becomes at risk of clogging due to scum layer.

b. Clean and inspect Zabel filters within sanitary tee.

3. PUMP TANK

a. Inspect riser connection and conduit connections to make sure they are not allowing surface water into the pump tank.

b. Activate the pump to insure that it is functional.

c. Inspect and test all float switches to insure that they are functional.

d. Activate and test all components of the alarm system including high water alarm float, control box, audible and visible alarms.

e. Add water if necessary to test pumping controls, pump, piping, and all components of the pumping system. Measure and record draw down and calculate dosing volume and running time of the pump. Adjust float controls, if necessary, to achieve specified gallons/dose.

f. Inspect pump tank for sludge. Pump tank shall be pumped out if 6 inches of sludge are present.

4. DISTRIBUTION SYSTEM

a. Activate system and check for any breaks or cracks in supply manifold, distribution manifold, pipe connections, valves or valve connections, lateral piping, and turn-ups.

b. Check lines for correct pressure head.

c. Check caps on clean-out connections and stand pipes.

d. Inspect all valve boxes and protective sleeves of turn-ups.

e. Cut off and cap turn-ups after initial six weeks of use as prescribed in permit (if applicable).

f. Adjust water flow in distribution box if needed. (Conventional system)

5. Inspect all required curtain, interceptor, or french drains to insure that they are functioning as designed to insure proper water runoff around system.

6. SPECIAL CONDITIONS:

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