

**TOWNSHIP OF MARION
LIVINGSTON COUNTY, MICHIGAN**

**DECLARATION OF STORMWATER
OPERATION AND MAINTENANCE AGREEMENT**

This declaration of Stormwater Operation and Maintenance Agreement (the "Agreement") is executed this ____ day of _____, 20____, by _____, a Michigan _____, whose address is _____, _____, Michigan _____ (the "Developer".)

RECITALS

- A. The Developer is the owner of real property located in Marion Township, the street address of which is _____, which is legally described on attached Exhibit A and incorporated by reference herein (the "Property") (Tax ID # _____) The Property comprises approximately _____ acres of land. Currently located on the Property is _____ (or vacant).
- B. The Property is zoned _____. The Developer has sought approval from the Township to [*IMPROVE THE PROPERTY BY [constructing? subdividing? other?]*] and to install [*PUBLIC UTILITIES?, ACCESS DRIVES?, ETC.?*] (the "Project").
- C. The Township has reviewed the proposed site plan, and during the Township's review of the Project, it was determined that the Developer was required to undertake certain alterations and improvements to provide for effective soil erosion control and stormwater management.
- D. The Township's Zoning Ordinance requires that a developer seeking Township approval of certain development projects and proposing a privately maintained drainage system must provide the Township with an operation and maintenance agreement ensuring the reasonable long-term maintenance of drainage facilities constructed in accordance with a development project.
- E. The purpose of this Declaration is to provide for the ongoing maintenance of the referenced stormwater drainage facilities as described and detailed in plans and easements prepared by _____ and dated _____, 20____, and which are filed with Marion Township.
- F. The Developer acknowledges and agrees that the Township relied upon the Developer's representations and this Declaration in determining to approve the _____ dated _____, 20____, (the "_____").

DECLARATION

For the reasons set forth herein, and the covenants and pledges contained herein, the Developer hereby declares and establishes the following:

Section 1: Compliance with Laws, Ordinances, Permits. Developer agrees to construct, install, and operate the Project in accordance with approvals received from the Township, applicable Township ordinances, and ordinances and regulations of other governmental entities with applicable jurisdiction. In constructing the Project, Developer agrees to comply with all state and local laws, ordinances, and regulations as well as the terms of this Declaration.

Section 2: Compliance with Township Approvals. Without limiting the provisions of Section 1, the Developer agrees to construct and operate the Project in accordance with the terms and conditions adopted by the Township for development of the Project on _____, the Township _____'s report dated _____, and the Township Engineer's letter dated _____, as well as the terms and conditions of this Declaration and its Exhibits. This paragraph should be completed on a project-by-project basis.

Section 3: Alterations or changes. No alterations or changes to the stormwater systems, as defined in this Declaration, shall be permitted unless they are approved, in writing, by the Township.

Section 4: Easements to be secured and recorded. The Developer, at its expense, shall secure from any affected owners of land all easements and releases of rights-of-way necessary for utilization of the stormwater systems, as defined in this Declaration, and shall record them with the Livingston County Register of Deeds. These easements and releases of rights-of-way will not be altered, amended, vacated, released or abandoned without prior written approval of the Township. Shrubs, trees or permanent structures shall not be located within the easements utilized by the Developer or its successors or assigns without the prior written approval of the Township.

Section 5: Operation and Maintenance of Stormwater System. As used in this Section, "stormwater system" shall mean all stormwater systems, catch basins, storage structures, drains, leaching basins, ponds, pipes and appurtenances located on the Property including, but not limited to, all pollution-control devices utilized as part of the stormwater system, as detailed in the plans prepared by _____, dated _____, 20__ and approved by Marion Township on _____, 20__. As used herein, "maintain" or "maintenance" shall mean inspecting, cleaning out, repairing, and removing accumulated sediment, leaves, weeds, debris, and obstructions from all ponds, leach basins, pollution-control devices, or similar appurtenances of the stormwater system such that failure to maintain is likely to result in impeding the functioning of the stormwater system.

- A. **Operation of Stormwater System.** The Developer, its successors or assigns, shall insure that at all times the stormwater system is operated in a manner consistent with generally accepted stormwater management practices, the requirements of this Declaration and applicable federal, state and local ordinances and regulations
- B. **Maintenance of Stormwater System.** Not less than annually, the Developer, its successors or assigns, shall maintain the stormwater system located on the Property. In the event that stormwater facilities maintenance is not conducted, the Township's Zoning Administrator shall notify the Developer, its successors or assigns, specifying the necessary maintenance. Within thirty (30) days of the notice, the Developer, its successors or assigns, shall perform the specified maintenance at his expense. Within thirty-six (36) hours of notice, the Developer, its

successors or assigns, shall perform any specified emergency maintenance as may be required in the Township's notice.

- C. **Failure to Maintain.** In the event the Developer, its successors or assigns, does not operate and maintain the stormwater system as required under the terms of this Declaration, the Township shall be entitled, and is hereby expressly authorized by the Developer, its successors or assigns, to take one or more of the following actions (or any combination of the same):

- (1) The Township or its agent may go onto the Property and maintain the stormwater system. Not less than ten (10) days before taking such action, the Township shall provide to the Developer, its successors or assigns, and any other owners (as shown on the latest Township tax assessment roll), by first-class mail, notice of its intention. The Developer, its successors and assigns, hereby grant to the Township and its agents a non-revocable license to go onto the Property to carry out the provisions of this subsection. The Township will invoice the cost of the specified corrective or maintenance work, and the Developer, its successors and assigns, shall pay the amount of the invoice within thirty (30) days of the Township's mailing the invoice by first-class mail. All costs, fees, or expenses incurred by the Township in maintaining the stormwater system pursuant to this subsection may be, without further notice, assessed as a lien on the Property, to be collected in the same manner as ad valorem property taxes.

The costs to be assessed hereunder shall be the total amount incurred by the Township in effectuating the maintenance or repairs plus an administrative cost of 15% of the total cost.

Any failure to maintain facilities or correct problems with facilities after receiving due notice from the Township may result in criminal or civil penalties.

- (2) Require the Developer, its successors or assigns, to provide and maintain a letter of credit in an amount sufficient to ensure maintenance of the stormwater system, in a form satisfactory to the Township. The Developer, its successors or assigns, shall provide the requested letter of credit within fifteen (15) business days of receiving such a request from the Township. The letter of credit shall be of a duration not less than two (2) years, and provide that the payment to the Township shall be assured upon submission by the Township of notice that the Developer, its successors or assigns, has not maintained the stormwater system as required by this Declaration. In the event the letter of credit is drawn upon, it will have to be reissued or renewed to its original form.

Section 6: Violation of Agreement. The Developer, its successors or assigns, acknowledges that monetary damages for a breach of this Declaration would be inadequate to compensate the Township for the breach and accordingly agrees that in the event of a violation of this Declaration, the Township shall be entitled to receive specific performance of this Declaration. Nothing herein shall be deemed a waiver of the Township's rights to seek enforcement of this Declaration or zoning approvals previously granted, to the extent otherwise authorized by law. A violation of the terms and conditions of this Declaration by the Developer, its successors or assigns, subsequent to the completion of the Project, shall entitle the Township, in the event of litigation, to enforce this

Declaration, to receive reimbursement for all costs incurred by the Township including, but not limited to, its actual attorney fees, expert witness and consulting fees incurred.

Section 7: Recording. The obligations under this Declaration are covenants that run with the land, and bind successors in title of the Developer. It is the parties' intent that this Declaration shall be recorded with the Livingston County Register of Deeds. The Developer, its successors or assigns, shall be responsible for all costs associated with the recording of the Agreement.

Section 8: Miscellaneous.

- A. Severability. The invalidity or unenforceability of any provision of this Declaration shall not affect the enforceability or validity of the remaining provisions and this Declaration shall be construed in all respects as if any invalid or unenforceable provision were omitted.
- B. Notices. All notices permitted or required to be given shall be in writing and sent either by mail or by personal delivery to the address first above given unless a different notice provision is set forth herein.
- C. Waiver. No failure or delay on the part of any party in exercising any right, power, or privilege under this Declaration shall operate as a waiver thereof, not shall any single or partial exercise of any right, power, or privilege under this Declaration preclude further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies provided in this Declaration are cumulative and not exclusive of any rights and remedies provided by law.
- D. Governing Law. This Declaration is being executed and delivered and is intended to be performed in the State of Michigan and shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws thereof. In the event of any litigation regarding this agreement, venue shall be in Livingston County, Michigan.
- E. Amendment. This Agreement may only be amended in writing, signed by all parties and must receive written approval of Marion Township.

The Developer has executed this Declaration on the day and year first above written.

WITNESS:

MARION TOWNSHIP

*

By: _____

*

Its: _____

*Please print name

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20____, before me a Notary Public, personally appeared _____, the _____ of Marion Township, a Michigan township, who, being first duly sworn, did say they signed this document on behalf of the Township.

*

Notary Public, Livingston County, Michigan
My Commission Expires: _____

(Developer)

WITNESSES:

*(please print name below)

*(please print name below)

By: _____

Its: _____

PREPARED BY:

RETURN TO:

Tammy L. Beal, Clerk
Marion Township
2877 W. Coon Lake Rd.
Howell, MI 48843

EXHIBIT A

LEGAL DESCRIPTION

(Insert legal description of parcel indicated in RECITALS (A), page 1)