

**DECLARATION OF DRAINAGE EASEMENT  
AND DRAINAGE MAINTENANCE AGREEMENT**

This declaration made this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, whose address is \_\_\_\_\_  
("Owner or Developer").

**WHEREAS**, the Owner/Developer is the owner of all legal and equitable interest in the following property located in the Township of Marathon, County of Lapeer, State of Michigan ("Development") described as:

See legal description attached hereto as Exhibit 1 ("the Property").

**WHEREAS**, the Owner/Developer wishes to [explain the nature of the development]:

**WHEREAS**, the Owner/Developer is constructing a private road on the Development for the purpose of providing ingress and egress to the Lots and is also providing drainage for the Lots;

**WHEREAS**, the purpose of this declaration is to provide for the development and maintenance of easements and other drainage facilities to provide proper drainage for the Development;

**NOW THEREFORE**, in consideration of the mutual benefits to be derived by the Owner/Developer, its successors and assigns, and all purchasers and future owners of the various Lots comprising the Development, the Owner/Developer, for itself, its successors and assigns, hereby publishes, declares and makes known to all intending purchasers and future Owners of the Lots comprising the Development, that all Lots in the Development will and shall be used, owned, held and/or sold expressly subject to the following covenants, conditions, restrictions, easements, obligations and special assessments for the development and maintenance of Drainage Easements and Facilities as described in this Agreement.

It is further declared that the Drainage Easements and Facilities described in Exhibit \_\_ attached hereto, together with the drainage maintenance provisions contained herein shall run with the land and be binding on the Owner/Developer and purchasers of all Lots in the Development and their heirs, personal representatives, successors and assigns.

**1. DEFINITION OF TERMS.** The words and phrases following used in this Agreement are defined as follows:

- a. "Agreement" shall mean and refer to this Declaration of Drainage Easement and Drainage Maintenance Agreement as recorded in the Office of the Lapeer County Register of Deeds, State of Michigan;

- (3) A county or intercounty drainage district is established to operate and maintain the facilities and easements in accordance with Act 40 of the Public Acts of 1956, as amended, and the Rules of the Lapeer County Drain Commissioner.

3. **HOMEOWNERS ASSOCIATION. [If Applicable]** There is hereby created an Association, which consists of all the Owners of Lots located within the Development and shall be known as the \_\_\_\_\_ Homeowner's Association. Membership in the Association is mandatory for each Owner. The Owners of each Lot shall have one (1) vote in the Association (i.e., one vote per Lot, regardless of the number of Owners of the Lot). The Association shall annually elect a president, secretary, and treasurer, which together shall constitute the Board of Directors of the Association (hereafter "the Board"). In the event that such officers are not elected, the existing officers may serve until the new elections take place. In the event that an officer dies, resigns, or is unable or unwilling to carry out his/her duties during the year, the remaining offices may appoint a replacement who shall serve until a new officer is elected. The presence of two (2) members of the Board at a meeting shall constitute a quorum. If only two (2) members of the Board are present at a meeting, the affirmative vote of both is required to take action. Upon majority vote of the Owners of all of the lots in the Development (one vote per lot), the Association may choose to convert the Association to a non-profit corporation or limited liability company which shall carry out the same functions as the Association.

- a. **ASSOCIATION MEETINGS.** Each year, during the first week of \_\_\_\_\_ (or such other date as a majority of the Association member shall designate), the Association members shall meet for the purpose of electing a Board of Directors (the "Board") and officers and approving a maintenance program and budget for the coming year for the Drainage Easements and Facilities. An Owner may vote in person or by proxy authorized in writing signed by the lot Owners (or one of them). For purposes of the annual meeting and setting of the budget, it is not necessary that a majority of Owners be present in person or by proxy in order that a valid meeting is held. Owners or proxies representing at least fifty percent (50%) of the Lots in the Development shall constitute a quorum. Questions shall be approved or disapproved by a majority of Owners present in person or by proxy and voting at the annual meeting or any special meeting called for purposes of this Agreement. Written notice of the time and location of the annual meetings shall be provided to all Owners of record in the Development.

Special meetings may be called with ten (10) days prior written notice to all Owners by the President of the Board or upon request of any three (3) Owners representing (3) separate Lots.

Until such time as all of the Lots in the Development have been sold, by the Developer, or sooner if the Developer so chooses, the Developer shall exercise all the powers and duties of the Association and its Board. However, all Owners are entitled to attend the annual meeting and give input into the setting of the forthcoming budget. The

collection including reasonable attorney fees. Additionally, the Association may file a lien against the land in the public records and foreclose the lien in the same manner as the enforcement and foreclosure of mortgages in Michigan. For any Lot in the Development whose dues remain unpaid more than four (4) months after the dues notices are mailed, the delinquent Lot owner shall lose their right to vote as a member of the Association and as a member of the Board until such time as the delinquent dues are paid.

- h. **REMEDIES.** By acceptance of title, Owner vests in the Association and/or the Drain Commissioner the right and power to take any legal action which it may deem necessary or advisable to enforce this Agreement or any of its rules or regulations. Upon violation of any restriction or breach of any covenant, the Association and/or the Drain Commissioner may enforce it by a suit for money judgment, by foreclosing of the lien securing payment, or by an action in equity seeking a mandatory injunction. If an Owner is found to be in violation of any of these restrictions, covenants, or any duly adopted rules or regulations of the Associations, the violator agrees to pay the reasonable attorney fees and other costs incurred by the Association and/or the Lapeer County Drain Commissioner in such enforcement action and authorizes the court to enter an order requiring such payment.

In addition to all other remedies, the Association and/or Drain Commissioner may enter upon any land in the Development for purposes of carrying out the provisions of this Agreement and neither the Association nor the Drain Commissioner shall be liable for trespass and shall further be held harmless for any damage or liability occurred thereon as a result of enforcing this Agreement.

The Lapeer County Drain Commissioner shall have the right, but not the obligation, to enforce all provisions of this Agreement and to require appropriate maintenance of and/or improvements to the Drainage Easements and Drainage Facilities referenced in this Agreement if the Developer or the Association fails to adequately maintain the Drainage Easements and Facilities. All costs incurred by the Drain Commissioner, including but not limited to engineering and attorney fees, shall be paid by the Developer, Owners or Association as otherwise provided in this Agreement. Failure of the Drain Commissioner to enforce any covenant or restriction herein contained shall in no event be deemed an estoppel or a waiver of the right to do so thereafter.

4. **HOLD HARMLESS PROVISION.** In addition to the provisions contained above, the Owners of all Lots in the Development agree to hold Marathon Township harmless from any loss, damages or injuries relating to the Drainage Easements and Drainage Facilities in the Development.

### Example Maintenance Plan and Budget for Development X\*

| <u>Component</u>  | <u>Maintenance Activity</u>  | <u>Frequency</u>      | <u>Estimated Cost</u> | <u>Annual Budget</u> |
|-------------------|--|-----------------------|-----------------------|----------------------|
| Catch Basin Sumps | Inspect for sediment accumulation and debris                           | Annually              | \$300                 | \$300                |
|                   | Remove sediment accumulation and debris                                | Every 5-10 years      | \$2,500               | \$500                |
| Storm Sewers      | Inspect for sediment accumulation                                      | Annually              | \$600                 | \$600                |
|                   | Remove sediment accumulation   | Every 5-10 years      | \$4,000               | \$800                |
|                   | Inspect structural elements and compare to as-built construction plans | Every 5 years         | \$800                 | \$150                |
| Detention Basin   | Mow  | At least 3 times/year | \$1,500               | \$1,500              |
|                   | Inspect for sediment accumulation and debris                           | Annually              | \$200                 | \$200                |
|                   | Remove debris  | Annually              | \$1,000               | \$1,000              |
|                   | Remove sediment accumulation   | Every 5-10 years      | \$4,000               | \$800                |
|                   | Replace gravel jacket around outlet structure                          | Every 3-5 years       | \$1,000               | \$350                |
|                   | Inspect emergency overflow for erosion                                 | Annually              | \$100                 | \$100                |
|                   | Reestablish as-built overflow elevation                                | As needed             | \$1,000 / 5 years     | \$200                |
|                   | Inspect banks for erosion  | Annually              | \$100                 | \$100                |
|                   | Reestablish vegetation on eroded slopes                                | As needed             | \$500 / 5 years       | \$100                |