

STORMWATER MANAGEMENT PRACTICES MAINTENANCE AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 20____, by and between the [Community Name], a municipal corporation, with principal offices located at [Community address], hereinafter “[Community]” and _____ a _____ with principal offices located _____, hereinafter “Owner”.

[Owners Name], as “Owner(s)” of the property described below, in accordance with _____ [Community Regulations], agrees to install and maintain stormwater management practice(s) on the subject property in accordance with approved plans and conditions. The Owner further agrees to the terms stated in this document to ensure that the stormwater management practice(s) continues serving the intended function in perpetuity. This Agreement includes the following exhibits:

Exhibit A: Legal description of the real estate for which this Agreement applies (“Property”).

Exhibit B: Location map(s) showing a location of the Property and an accurate location of each stormwater management practice affected by this Agreement.

Exhibit C: Long-term Maintenance Plan that prescribes those activities that must be carried out to maintain compliance with this Agreement.

Note: After construction has been verified and accepted by the [Community Name] for the stormwater management practices, an addendum(s) to this agreement shall be recorded by the Owner showing design and construction details and provide copies of the recorded document to the [Community Name]. The addendum may contain several additional exhibits.

Through this Agreement, the Owner(s) hereby subjects the Property to the following covenants, conditions, and restrictions:

1. The Owner(s), 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 practices identified in Exhibit B and shall record them with the [Community] Register of Deeds. These easements and releases of rights-of-way shall not be altered, amended, vacated, released or abandoned without prior written approval of the [Community].
2. The Owner(s) shall be solely responsible for the installation, maintenance and repair of the stormwater management practices, drainage easements and associated landscaping identified in Exhibit B in accordance with the Maintenance Plan (Exhibit C).
3. No alterations or changes to the stormwater management practice(s) identified in Exhibit B shall be permitted unless they are deemed to comply with this Agreement and are approved in writing by the [Community].
4. The Owner(s) shall retain the services of a qualified inspector (as described in Exhibit C – Maintenance Requirement 1) to operate and ensure the maintenance of the stormwater management practice(s) identified in Exhibit B in accordance with the Maintenance Plan (Exhibit C).
5. The Owner(s) shall annually, by December 30th, provide to the [Community] records (logs, invoices, reports, data, etc.) of inspections, maintenance, and repair of the stormwater management practices and drainage easements identified in Exhibit B in accordance with the Maintenance Plan. Inspections are required at least after every major rain event.

6. The [Community] or its designee is authorized to access the property as necessary to conduct inspections of the stormwater management practices or drainage easements to ascertain compliance with the intent of this Agreement and the activities prescribed in Exhibit C. Upon written notification by the [Community] or their designee of required maintenance or repairs, the Owner(s) shall complete the specified maintenance or repairs within a reasonable time frame determined by the [Community]. The Owner(s) shall be liable for the failure to undertake any maintenance or repairs so that the public health, safety and welfare shall not be endangered nor the road improvement damaged.
7. If the Owner(s) does not keep the stormwater management practice(s) in reasonable order and condition, or complete maintenance activities in accordance with the Plan contained in Exhibit C, or the reporting required in 3 above, or the required maintenance or repairs under 4 above within the specified time frames, the [Community] is authorized, but not required, to perform the specified inspections, maintenance or repairs in order to preserve the intended functions of the practice(s) and prevent the practice(s) from becoming a threat to public health, safety, general welfare or the environment. In the case of an emergency, as determined by the [Community], no notice shall be required prior to the [Community] performing emergency maintenance or repairs. The [Community] may levy the costs and expenses of such inspections, maintenance or repairs plus a ten percent (10%) administrative fee against the Owner(s). The [Community] at the time of entering upon said stormwater management practice for the purpose of maintenance or repair may file a notice of lien in the office of the Register of Deeds of the [Community] upon the property affected by the lien. If said costs and expenses are not paid by the Owner(s), the [Community] may pursue the collection of same through appropriate court actions and in such a case, the Owner(s) shall pay in addition to said costs and expenses all costs of litigation, including attorney fees.
8. The Owner(s) hereby conveys to the [Community] an easement over, on and in the property described in Exhibit A for the purpose of access to the stormwater management practice(s) for the inspection, maintenance and repair thereof, should the Owner(s) fail to properly inspect, maintain and repair the practice(s).
9. The Owner(s) agrees that this Agreement shall be recorded and that the land described in Exhibit "A" shall be subject to the covenants and obligations contained herein, and this agreement shall bind all current and future owners of the property.
10. The Owner(s) agrees in the event that the Property is sold, transferred, or leased to provide information to the new owner, operator, or lessee regarding proper inspection, maintenance and repair of the stormwater management practice(s). The information shall accompany the first deed transfer and include Exhibits B and C and this Agreement. The transfer of this information shall also be required with any subsequent sale, transfer or lease of the Property.
11. The Owner(s) agree that the rights, obligations and responsibilities hereunder shall commence upon execution of the Agreement.
12. The parties whose signatures appear below hereby represent and warrant that they have the authority and capacity to sign this agreement and bind the respective parties hereto.
13. The Proprietor, its agents, representatives, successors and assigns shall defend, indemnify and hold the [Community] harmless from and against any claims, demands, actions, damages, injuries, costs or expenses of any nature whatsoever, hereinafter "Claims", fixed or contingent, known or unknown, arising out of or in any way connected with the design, construction, use, maintenance, repair or operation (or omissions in such regard) of the storm drainage system referred to in the permit as Exhibit "C" hereto, appurtenances, connections and attachments thereto which are the subject of this Agreement. This indemnity and hold harmless shall include any costs, expenses and attorney fees incurred by the [Community] in connection with such Claims or the enforcement of this Agreement.

IN WITNESS WHEREOF, the _____ and _____ have executed this Agreement on the day and year first above written.

WITNESSES:

By: _____

Its: _____

STATE OF Indiana)
) ss.
COUNTY OF [County Name])

The foregoing instrument was acknowledged before me on this _____ day of _____, 20 ____,
by _____, the _____ of _____.

Notary Public

_____ County of Indiana My
Commission Expires On:

[Community Name]
a municipal corporation

By: _____

Its: _____

STATE OF Indiana)
) ss.
COUNTY OF [County Name])

The foregoing instrument was acknowledged before me on this _____ day of _____, 20 ____,
by _____, the _____ of _____.

Notary Public

_____ County of Indiana My
Commission Expires On:

INSTRUMENT DRAFTED BY:

WHEN RECORDED RETURN TO:
[Community Name and Address]

Exhibit A – Legal Description (Sample)

The following description and reduced copy map identifies the land parcel(s) affected by this Agreement. [Note: An example legal description is shown below. This exhibit must be customized for each site, including the minimum elements shown. It must include a reference to a Subdivision Plat, Certified Survey number, or Condominium Plat, and a map to illustrate the affected parcel(s).]

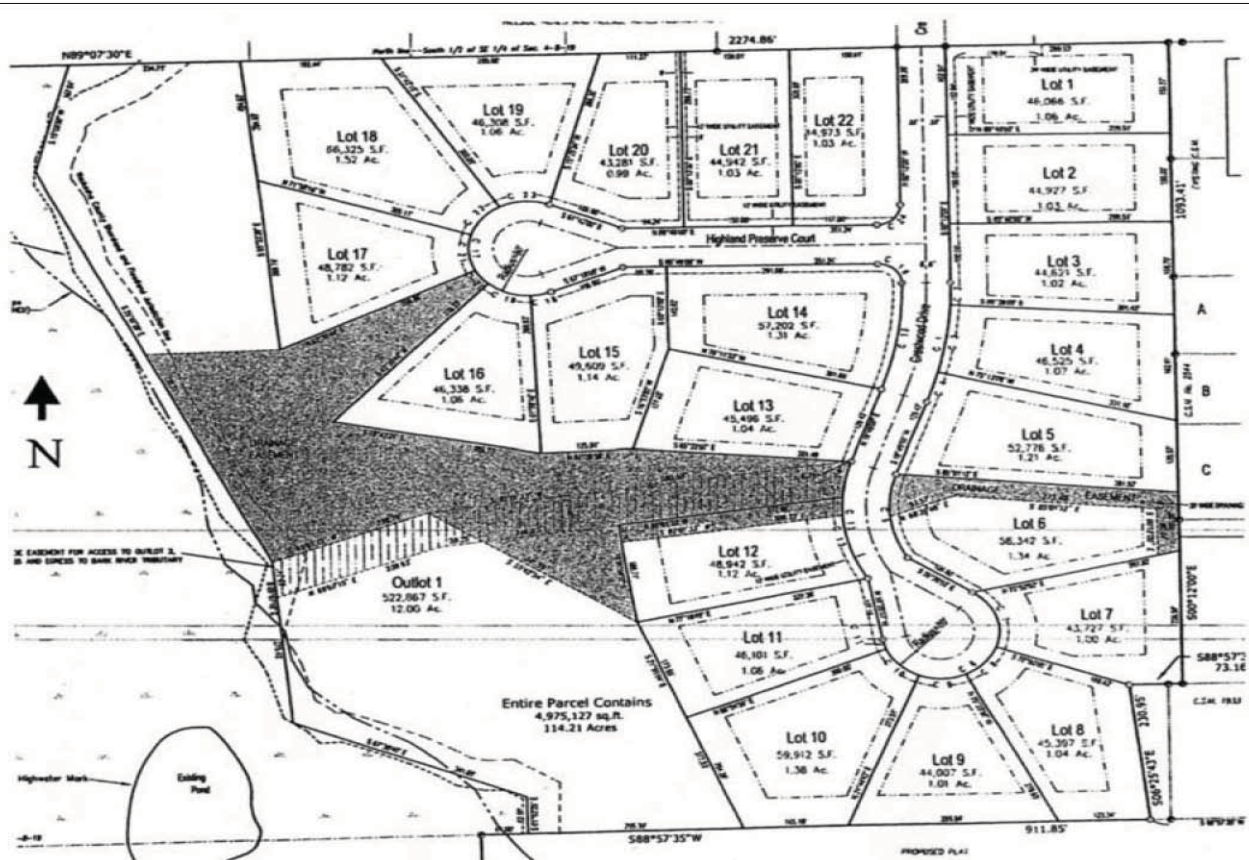
Project Identifier: Huron Preserve Subdivision

Acres: 40

Date of Recording: October 22, 2006

Map Produced by: ABC Engineering, P.O. Box 20, Green Oak Twp., MI

Legal Description: Lots 1 through 22 of Huron Preserve Subdivision, located in the Southwest Quarter (SW1/4) of Section 4, Township 8N, Range 19E (Green oak Township) Livingston County, Michigan. [If no land division is involved, enter legal description as described on the property title here.]



Drainage Easement Restrictions: Shaded area on map indicates a drainage easement for stormwater collection, conveyance, and treatment. No buildings or other structures are allowed in these areas. No grading or filling is allowed that may interrupt stormwater flows in any way. See Exhibit C for specific maintenance requirements for stormwater management practices within this area. See subdivision plat for details on location.

Exhibit B – Location Map (Sample)

Stormwater Management Practices Covered by this Agreement

[An *example* location map and the minimum elements that must accompany the map are shown below. This exhibit must be customized for each site. Map scale must be sufficiently large enough to show necessary details.]

The stormwater management practices covered by this agreement are depicted in the reduced copy of a portion of the construction plans, as shown below. The practices include on wet detention basin, two forebays, two grass swales (conveying stormwater to the forebays) and all associated pipes, earthen berms, rock chutes, and other components of these practices. All of the noted stormwater management practices are located within a drainage easement in Outlot 1 of the subdivision plat as noted in Exhibit A.

Subdivision Name: Huron Preserve Subdivision

Stormwater Practices: Wet Detention Basin #1, forebays (2), grass swales (2)

Location of Practices: All that part of Outlot 1, bounded and described in Figure G.1: [If no land division is involved, enter a metes and bounds description of the easement area.]

Titleholders of Outlot 1: Each Owner of Lots 1 through 22 shall have equal (1/22) undividable interest in Outlot 1 [For privately owned stormwater management practices, the titleholder(s) must include all new parcels that drain to the stormwater management practice.]

Figure G.1
Plan View of Stormwater Practices

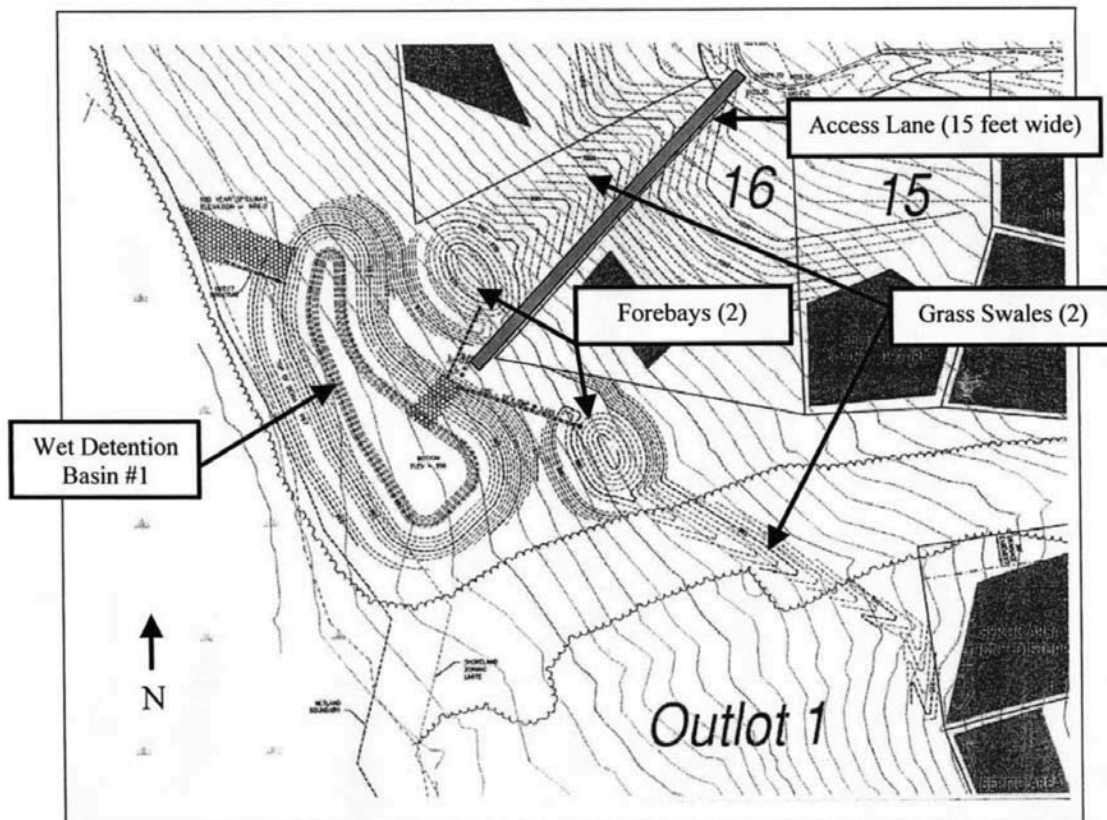


Exhibit C - Stormwater Practice Maintenance Plan

This exhibit explains the basic function of each of the stormwater practices listed in Exhibit B and provides the minimum specific maintenance activities and frequencies for each practice. The maintenance identified by the Owner should follow the maintenance activities listed in this manual, if applicable. Vehicle access to the stormwater practices is shown in Exhibit B. Any failure of a stormwater practice that is caused by lack of maintenance will subject the Owner(s) to enforcement of the provisions listed in the Agreement by the [Community].

The exhibit must be customized for each site. The minimum elements of this exhibit include: a description of the drainage area and the installed stormwater management practices, a description of the specific maintenance activities for each practice which should include in addition to specific actions:

- Employee training and duties,
- Routine service requirements,
- Operating, inspection and maintenance schedules, and
- Detailed construction drawings showing all critical components and their elevations.

References

Charter Township of Canton, Stormwater FACILITIES MAINTENANCE AGREEMENT.

Charter Township of Green Oak, AGREEMENT FOR MAINTENANCE OF STORMWATER MANAGEMENT PRACTICES

Credits and Acknowledgements

This Appendix is a modified version of a similar segment contained in “Low Impact Development Manual for Michigan: A Design Guide for Implementers and Reviewers” published in 2009 by Southeast Michigan Council of Governments (SEMCOG). A selection of material contained in the noted SEMCOG publication was copied and used, with permission, for development of this Appendix. The valuable contribution of SEMCOG through sharing of this material for use in this Appendix is hereby acknowledged.