

**STORMWATER OPERATION AND MAINTENANCE AGREEMENT AND ACCESS  
EASEMENT**

This Stormwater Operation and Maintenance Agreement (the "Agreement") is executed this \_\_\_\_ day of \_\_\_\_\_ 2023 between the Village of Pinckney, a Michigan Village, whose address is 220 S. Howell, Pinckney, Michigan 48169 (the "Village") and Alan Ostlund and Jacqueline Ostlund, husband and wife, whose address is 187 Darwin Road, Pinckney, MI 48169 (the "Owners").

**RECITALS**

- A. The Owners are the owners of the real property located in the Village the street address of which is 211 W. Main St., which is legally described on attached Exhibit A and incorporated by reference herein (the "Property") (Parcel ID No. 4714-22-404-004). The property comprises approximately 0.58 acres of land.
- B. The Property is zoned CBD. The Owners have sought approval from the Village to improve property by renovating the existing building thereon and construction a parking lot (the "Project").
- C. The Village has reviewed the proposed Site Plans and during the Village of Pinckney's consideration of the Project, areas of concern were identified including the potential for stormwater drainage and stormwater detention.
- D. The Village's Zoning Ordinance requires that an owner seeking Village Final Site Plan approval must provide the Village with an Operation and Maintenance Agreement ensuring the reasonable long-term maintenance of drainage facilities constructed in accordance with a development project.
- E. The Village's Engineer has indicated that the stormwater drainage facilities and systems, as detailed in the plans prepared by Desine Inc., and dated \_\_\_\_\_, 202\_\_, are adequate, provided that the Owners execute an agreement for the ongoing maintenance of the referenced stormwater drainage facilities as described and detailed in the plans prepared Desine Inc., and dated \_\_\_\_\_, 202\_\_.
- F. Following its hearing and review, the Planning Commission approved the Final Site Plans with conditions for the Project on \_\_\_\_\_, 202\_\_.

The Owners acknowledge and agrees that the Village relied upon the Owners' representations and pledges made during the site planning process in determining to approve the Final Site Plans dated \_\_\_\_\_, 202\_\_ (the "Site Plan"). To memorialize their understanding, the parties have determined to execute this Agreement.

## **AGREEMENT**

Alan Ostlund and Jacqueline Ostlund, as "Owner(s)" of the property described below, in accordance with Village of Pinckney Ordinance Chapter 53 and Technical Standards Section 01 20 02, agrees to maintain stormwater management practice(s) on the subject property in accordance with approved plans and conditions. The Owners further agree to the terms stated in this document to ensure that the stormwater management practice(s) continues serving the intended function in perpetuity.

**Section 1. Compliance with Laws, Ordinances and Permits.** Owners agree to construct the Project on the real property described in Exhibit A, in accordance with the approvals received from the Village and other governmental entities with applicable jurisdiction. In constructing the Project, the Owners agree to comply with all state and local laws, ordinances and regulations as well as the terms of this Agreement. All landscaping, planting or other items on the site shall be placed and continually maintained so as not to interfere, impede or obstruct the flow of water and/or the purpose of said system.

**Section 2. Requirements upon Completion of Construction.** Upon completion of construction and the stormwater management practices have been verified and accepted by the Village, an addendum(s) to this Agreement shall be recorded by the Owner. The addendum shall show design and construction details. The Owners shall also provide copies of the recorded addendum to the Village. The addendum may contain additional exhibits as necessary. The addendum, including all exhibits, shall be subject to the same terms and conditions as this agreement as though it were fully set forth herein.

**Section 3. Stormwater Operation and Maintenance.** Location map showing an accurate location of each stormwater management practice subject to this Agreement is attached as Exhibit B. The Long-term Maintenance Plan is attached as Exhibit C. The activities set forth in Exhibit C must be completed in order to maintain compliance with this Agreement.

- A. The Owners shall be solely responsible for the installation, maintenance and repair of the stormwater management practices in accordance with the Maintenance Plan attached as Exhibit C.
- B. The parties acknowledge that the Owners are responsible for the maintenance of the facility and will ensure that site maintenance will minimize the use of fertilizers that contain phosphorous and eliminate the use of any coal tar sealants.
- C. No alterations or changes to the stormwater management practice(s) identified in Exhibit C shall be permitted unless they are deemed to comply with this Agreement and are approved in writing by the Village.
- D. The Owners shall annually, by December 30<sup>th</sup>, provide to the Village records including, but not limited to, logs, invoices, reports, and other data of inspections, maintenance, and repair of the stormwater management practices and drainage easements and in accordance with the Maintenance Plan attached as Exhibit C. Inspections are required at a minimum at least once a year. The Village 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.

- E. The Owner will be responsible for the cost of all Owner conducted inspections required under this Section 3 and Exhibit C, but will not be charged by the Village for inspections by the Village unless those inspections are pursuant to Section 4 below, or the inspections relate to a review of Owner proposed alterations or changes under Section 3, C, above.

**Section 4. Violation of the Agreement.** If the Owners do 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 subsection 3, D above, or the required maintenance or repairs within the specified time frames, the Village 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.

- A. The Village will give the Owners 30 days' written notice before performing work with a copy to Owners' counsel, as designated in writing by the Owner, and currently being Cooper & Riesterer, PLC, 7900 Grand River Road, Brighton, MI 48114.
- B. In the case of an emergency, as determined by the Village, no notice shall be required prior to the Village performing emergency maintenance or repairs.
- C. The Village may levy the costs and expenses of such inspections, maintenance or repairs plus a ten percent (10%) administrative fee against the Owner(s).
- D. The Village will invoice the cost of the specified maintenance, and the Owners shall pay the amount of the invoice within thirty (30) days of the mailing the invoice by first class mail. If the Owners shall fail to pay the amount of the invoice, then all costs, fees, or expenses incurred by the Village in maintaining the devices pursuant to this subsection may be, without further notice, assessed as provided in Pinckney Code Sections 52.35 and 32.23.

**Section 5. Easement.** The Owners hereby grant the Village a non-revocable easement to enter the Property as many times as necessary to complete the inspections and, if necessary, for maintenance of the devices and for review and copying of the required logs and records, and such easement to enter the Property shall extend to any Village inspectors, employees, agents, contractors, consultants, or other Village representatives. This easement shall constitute a burden upon the land and shall run with the land, and any sale shall be subject to the easements granted herein.

**Section 6. Recording.** The Owners agree 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 run with the land and bind all current and future owners of the property. The Owners are responsible for all costs associated with the recording of this Agreement.

**Section 7. Owners Obligations upon Transfer of Property.** The Owners agree 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.

**Section 8. Effective date of Agreement.** The Owners agree that the rights, obligations and responsibilities hereunder shall commence upon execution of the Agreement.

**Section 9. Miscellaneous.**

- A. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the enforceability or validity of the remaining provisions and this Agreement 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 personal delivery to the address provided in this Agreement.
- C. Waiver. No failures or delay on the part of any party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any partial exercise of any right, power or privilege under this Agreement preclude further exercise thereof or the exercise of any other right, power, or privilege. The rights, powers and privileges provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.
- D. Governing Law. This Agreement 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.
- E. Amendment. This Agreement may only be amended in writing, signed by all parties.

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.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals on the day and year first above written.

**THE VILLAGE OF PINCKNEY**

\_\_\_\_\_ By \_\_\_\_\_  
Linda E. Lavey, President

\_\_\_\_\_ By \_\_\_\_\_  
Jill Chapman, Clerk

**OWNERS**

\_\_\_\_\_ By \_\_\_\_\_  
Alan Ostlund, Owner

\_\_\_\_\_ By \_\_\_\_\_  
Jacqueline Ostlund, Owner

STATE OF MICHIGAN        )  
                                          ) ss.  
COUNTY OF LIVINGSTON )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me appeared Linda E. Lavey, President of the Village of Pinckney, and Jill Chapman, Clerk of the Village of Pinckney, to me known to be the persons described in and who executed the foregoing document and acknowledged the same to be true and accurate.

\_\_\_\_\_  
\*, Notary Public  
Livingston County, Michigan  
Acting in the County of Livingston  
My Commission Expires:

\*Please print name

STATE OF MICHIGAN        )  
                                          ) ss.  
COUNTY OF LIVINGSTON )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me appeared Alan Ostlund and Jacqueline Ostlund, to me known to be the person described in and who executed the foregoing document and acknowledged the same to be true and accurate.

\_\_\_\_\_  
\*, Notary Public  
Livingston County, Michigan  
Acting in the County of Livingston  
My Commission Expires:

\*Please print name

When recorded return to:

The Village of Pinckney  
220 South Howell Street  
Pinckney, Michigan 48169

PREPARED BY:

David Stoker, Esq.  
COHL, STOKER & TOSKEY, P.C.  
601 North Capitol Avenue  
Lansing, Michigan 48933

### **EXHIBIT A – Legal Description**

The Property referred to in the Agreement is real property located in the Village of Pinckney, County of Livingston, State of Michigan, to-wit:

Lots 7 and 8, Block 4 of Range 3 and the East 37 feet of Lot 1, Block 4 of Range 3, THE ORIGINAL PLAT OF THE VILLAGE OF PINCKNEY, as duly laid out, platted and recorded in Liber 2, Page 64, Livingston County Records.

Commonly known as: 211 W. Main St., Pinckney, MI  
Parcel ID No: 4714-22-404-004

Reference: Commitment for Title Insurance prepared by Cislo Title Company, agents for First American Title Insurance Company, Commitment No. 11-35430, Effective Date: April 1, 2011 at 8: 00 a.m.

## **EXHIBIT B – Location Map**

A site plan identifying the stormwater practices is on the following page.





## EXHIBIT C – Storm Water Practice Maintenance Plan

This exhibit explains the basic function of each of the stormwater practices detailed in Exhibit B and below, and this exhibit provides the minimum specific maintenance activities and frequencies for each practice. The maintenance activities listed below are aimed to ensure these practices continue serving their intended functions in perpetuity. The list of activities is not all inclusive, but rather indicates the minimum maintenance that is expected to be performed for these practices. 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 Village.

The on-site storm sewer system for 211 Main Street consists of an infiltration area collecting water via sheet flow from the adjacent on-site parking area. Storm runoff is collected in the parking area in curb and gutter and directed towards two concrete spillways into the infiltration area. The infiltration area contains perforated underdrain to collect infiltrating run off and direct it to an overflow yard basin at the edge of the infiltration area. The overflow structure is connected to village storm sewer via a 12" concrete pipe to a new structure constructed over the existing village storm sewer line. Storm runoff broadly flows from the northeast towards the southwest. No storm water management system existed on the site prior to development.

### Maintenance Requirements

The following activities will be completed to ensure the proper function of the stormwater practices described above:

1. An inspection and maintenance schedule is attached in Exhibit C-1 and a log will be kept of all inspections, maintenance activities, and repairs. The log will provide the date of the activity, the name of the person providing the service and a description of the activity.
2. The vegetation in and around the infiltration area will be inspected annually to assess growth, survival and percent cover. Plants will be replaced, and areas will be seeded as appropriate.
3. No grading or filling will be done that will interrupt flows.
4. Grass and spillways will be checked periodically for signs of erosion. Eroding areas will be repaired immediately. Appropriate erosion control blankets will be utilized in repairing grassed areas.
5. No trees or woody plants will be planted or allowed to grow in the infiltration area. The infiltration area will be inspected annually, and any woody plants will be removed.
6. The infiltration area shall be inspected monthly for standing water to ensure that proper infiltration is taking place. If standing water is observed for multiple months, infiltration area will need to be scraped and proper infiltration soils will be replaced. Any removed accumulated sediment will be removed from the site in an appropriate manner.

## EXHIBIT C-1 – Storm Water Maintenance Schedule

### 211 W Main, Pinckney Storm Water Maintenance Schedule

Maintenance Plan (Post Construction)

Annual	COMPONENTS			SCHEDULE	
	As Required	Infiltration Area	Spillways		Single Pipe (Off-Site; Perforated)
TASKS					
					AS REQUIRED
					AS REQUIRED
				N/A	ANNUALLY
				N/A	ANNUALLY
			N/A	N/A	ANNUALLY
			N/A	N/A	AS REQUIRED
					ANNUALLY
					ANNUALLY
					ANNUALLY
					ANNUALLY