

*These documents have been prepared as a guide for owners on private roads within the township, and each party is advised to seek the advise of an attorney of his or her choice respecting the rights and obligations set forth herein and in the accompanying documents. These documents may or may not be appropriate for the particular private road or Association involved. Each document is a form of document which would be generally approved by the Township attorney under the provisions of the Dexter Township Private Road Ordinance in order to obtain access permits or approval of a private road.*

*The marital status of men must be stated in the acknowledgement and on the schedule of names and addresses - such as "a single man", "husband and wife." The martial status of women need not be stated.*

*The attached list of Owners' names must state the full legal name of each individual as they sign their names, their addresses with zip codes, and the martial status of the men.*

*The attached list of parcels must be in the form of the complete legal description and include the correct tax identification of each parcel from the current assessment roll.*

*The person who drafts the document must be named as the preparer. Do not name the Dexter Township officer, attorney or agent. This person will usually be the one to respond to questions regarding the execution of the document and other details that the Register of Deeds may have.*

*Please note that these documents are not to be used for new private roads and are not a substitute for site plan review and other zoning requirements.*

*A limited liability company can be substituted for a corporation. Any other legal entity requires additional care in management and formation.*

*Every owner should consult their own counsel due the continued changes of law regarding recordings, title insurance, liability insurance and liability issues.*

**PRIVATE ROADWAY MAINTENANCE AND IMPROVEMENT AGREEMENT**

**THIS AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_, 200\_, by and between the undersigned, as set forth on the attached schedule, hereinafter referred to collectively as "Owners" or individually as "Owner"; and THE \_\_\_\_\_ ROAD ASSOCIATION OF DEXTER TOWNSHIP, WASHTENAW COUNTY, MICHIGAN, INC., a Michigan Non-Profit corporation of: \_\_\_\_\_, \_\_\_\_\_, Michigan \_\_\_\_\_, hereinafter referred to as the "Corporation";

WHEREAS, the parties are the owners of the following described real estate which is situated in the Township of Dexter, Washtenaw County, Michigan, and which is more specifically described on the attachment(s) hereto; and

WHEREAS, the parties hereto desire by recording this Agreement in the Office of the Register of Deeds for Washtenaw County to establish an easement across their parcels for purposes of ingress and egress and the installation of utilities;

NOW THEREFORE, the owners, do, upon the recording of this document, agree that THE \_\_\_\_\_ ROAD ASSOCIATION OF DEXTER TOWNSHIP, WASHTENAW COUNTY, MICHIGAN, INC., a Michigan Non-Profit Corporation, shall, have control and regulation over the private roads and easements of the Association which have been, and are hereby, established for the purpose of ingress and egress, and utilities, to and from the owners' parcels of real estate and the public roads and highways of Washtenaw County, for the benefit of the owners. The owners do hereby reserve unto themselves, individually, the right to use said roadways and easements for purposes of ingress and egress and utilities. The non-profit Corporation shall hold, improve, maintain, and repair, or in any other manner control, subject to the covenants, conditions, restrictions, uses, limitations, and affirmative obligations set forth herein, and roadways and easements, all of which shall be deemed to run with the land and shall be a burden and a benefit to the owners. Any persons acquiring or owning an interest in said real estate parcels, their grantees, successors, heirs, personal representatives, and assigns shall be subject to and bounded by this Agreement. In furtherance of this Agreement and the non-profit Corporation, it is provided as follows:

**FIRST.** Certain terms are used in this Agreement, which are or may be used in various other instruments such as, by way of example and not by limitation, the Articles of Incorporation, Corporate By-laws, and rules and regulations of the Corporation, and deeds, mortgages, liens, land contracts, easements, and other instruments effecting the establishment of or transfer of interest in the real estate described on the attachments hereto. Wherever used in such documents or other pertinent instruments, the terms set forth below shall be defined as follows:

1. "Corporation" means the non-profit Corporation organized under Michigan law of which all owners shall be members, which Corporation shall administer, operate, manage, and maintain the roadways and easements.

"Association" means the geographical area served by the Corporation, the members or the Corporation, as the context of the language provides. Any action required of or permitted to the Corporation shall be exercisable by the Board of Directors unless specifically reserved to its members by this document or the laws of the State of Michigan.

2. "By-laws" means the corporate By-Laws of \_\_\_\_\_ Road Association of Dexter Township, Washtenaw County, Michigan, Inc., a Michigan non-profit Corporation organized to manage, maintain, repair and improve the roadways and easements.

3. "Roadway(s)" or "easements" means the easements and rights-of-way for ingress and egress, and installation of utilities, which is granted and reserved to the owners of the real estate parcels, as described on the exhibit hereto.

4. "Owner" means a person, firm, Corporation, partnership, Association, trust, or other legal entity, or combination thereof who or which owns one or more parcels of real estate described on the attachments hereto. The term "co-owner" wherever used, shall be synonymous with the term "owner". "Owner" shall also mean a land contract vendee.

5. "Parcel" or "parcel of real estate" means one of the parcels described on the attachments hereto, or any partition or subdivided parcel included within the parcels described on the attachments hereto which have frontage upon said roadways or easements, or access thereto, whereby said parcels have the benefit of the easements of the Association. In determining whether a subdivided or future parcel, created subsequent to the date of this Agreement, shall be entitled to enjoy the benefits of and membership in the Corporation, such newly described parcel shall meet the requirements of the Dexter Township Zoning Ordinance and Dexter Township Private Road Ordinance, evidenced by a zoning permit issued by the Dexter Township zoning or ordinance enforcement officer.

6. "Member" shall mean the right of membership in the Corporation and shall refer to all of the "owners" who collectively have an interest in the fee simple title of a parcel of real estate within the Association. Each "member" shall be entitled to one (1) vote, collectively, as to each parcel of real estate owned, regardless of the number of owners with respect to any parcel.

7. Whenever any reference herein is made to the gender, the same shall include a reference to any and all genders where the same would be appropriate; similarly, whenever a reference is made herein to the singular, and reference shall also be included to the plural where the same would be appropriate.

**SECOND.** The cost of maintenance, repair, operation, improvement, or replacement of the roadways and utilities, described within, shall be borne by the owner of the unit in the following portion:

1. An equal share for each parcel of real estate which has the benefit of the roadways and easements herein described; or,
2. Apportioned among the real estate parcels on the basis of frontage of each parcel on the roadway to the total frontage of all parcels on the roadway; or
3. As the Board of Directors of the Corporation shall determine.

*[Strike out two (2) of the above subparagraphs, thereby designating the remaining subparagraph as the method of apportionment.]*

**THIRD.** Notwithstanding any other provision of this Agreement, the Corporation shall without the prior written consent of any owner or other party, execute a consent to a land contract sale or mortgage at the request of any owner as to that owner's interest in the easement and roadways, subject however, to the provisions of this Agreement. A first mortgagee, at its request, is entitled to written notification from the Corporation of any default by the owner of the parcel in the performance of the owner's obligations under this Agreement which is not cured within sixty (60) days. Any first mortgagee who obtains title to a parcel of real estate pursuant to the remedies provided in the mortgage or foreclosure or forfeiture of the land contract or mortgage in lieu of, including a deed or assignment in lieu of foreclosure, shall be liable for the parcel's unpaid dues or charges which accrue prior to the acquisition of title to such parcel by the mortgagee or land contract vendor. Each first mortgagee has the right to examine the books and records of the Corporation or Association.

**FOURTH.** All costs incurred by the Corporation in satisfaction of any liability or responsibility arising herein, caused by, or in connection with the roadway and easements or the administration of the roadway and drainage easements are expenses of administration of the corporation, and all sums dues and levies received arising in accordance with this agreement, caused by, or in connection with the administration of said roadway and easements, is income of the corporation.

**FIFTH.** Assessments shall be determined in accordance with the following provisions:

1. The Board of Directors of the Corporation shall establish an annual budget in advance for each fiscal year and such budget shall project all expenses for the forth coming year which may be required for the proper operation, maintenance, and management of the roadways and easements, including a reasonable allowance for contingencies and reserves. Upon the adoption of such annual budget by the Board of Directors, copies of the budget shall be

delivered to each owner and the assessment for each year shall be established, based upon said budget and the terms and provisions of this Agreement. Should the Board of Directors at any time determine, in the sole discretion of the Board of Directors, (1) that the assessments levied are or may prove to be insufficient to pay the costs of operation, maintenance and administration, (2) to provide repairs, or (3) in event of emergency, the Board of Directors shall have the authority to increase the general assessments or levy such additional assessments as it shall deem necessary. The Board of Directors shall also have the authority, without the owners' consent, to levy assessments pursuant to the provisions within. The discretionary authority of the Board of Directors to levy assessments pursuant to this subparagraph shall rest solely with the Board of Directors for the benefit of the Corporation and Association and the members thereof, and shall not be enforceable by any creditors of the Corporation or the members thereof. Provided, however, that additions or improvements to the entire roadway system shall not exceed \$ \_\_\_\_\_ annually, except by way of special assessments.

2. Special assessments, in addition to those required in paragraph 1 above, may be made by the board of Directors from time to time and approved by the owners as hereinafter provided to meet other needs or requirements of the Association, including but not limited to assessments for additions in the form of improvements to the easements and roadways, costs exceeding \$ \_\_\_\_\_ annually for the entire roadway system, or to collect assessments which have been levied by Dexter Township or other municipality in a manner prescribed by law. Special assessments referred to in this subparagraph 2 shall not be levied without the prior approval of at least sixty percent (60%) of all members of the Corporation and Association. The authority to levy assessments pursuant to this subparagraph is solely for the benefit of the Association and Corporation and the members thereof and shall not be enforceable by any creditors of the Corporation or of the members thereof.

3. No owner may exempt himself from liability for his contribution towards the expenses of administration by waiver of the use or enjoyment of the roadway or easement or by abandonment of his parcel.

**SIXTH.** In addition to all other remedies available to it, the Corporation may enforce collection of delinquent assessments by suit at law for a money judgment or by foreclosure of a lien that secures payment of the assessment. Each owner, and every other person who shall from time to time have an interest in the parcel, shall be deemed to have granted to the Corporation the unqualified right to elect to foreclose such lien either by judicial action or by advertisement. Each owner and party to this Agreement does hereby grant to the Corporation a lien to collect assessments. The provisions of Michigan law pertaining to foreclosure or mortgages by judicial action and by advertisement, as the same may be amended from time to time, are incorporated herewith by reference for the purpose of establishing the alternative procedures to be followed in lien foreclosure action and the rights and obligations of the parties to such action. Further, each owner and every other person who from time to time has an interest in a parcel shall be deemed to have authorized and empowered the Corporation to sell or cause to be sold the parcel with respect to which the assessment is or may become delinquent,

and to receive, hold and distribute the proceeds of such sale in accordance with the priorities established by Michigan law. Each owner of a parcel acknowledges that at the time of acquiring title to such parcel, he was notified of the provisions of this section and that he voluntarily, intelligently and knowingly waived notice of any proceedings brought by the Corporation to foreclose by advertisement the lien for non-payment of assessments and a hearing on the same prior to the sale of the parcel. Notwithstanding the foregoing, neither a judicial foreclosure action nor a suit at law for money judgment shall be commenced, nor shall any suit for foreclosure by advertisement be published, until the expiration of ten (10) days after mailing, by ordinary mail addressed to the delinquent owner, at his or their last known address, the written notice required herein, to be filed by the Corporation, of a written notice that one or more installments of the annual assessment levied against the parcel is or has become delinquent and that the Corporation may invoke any of its remedies hereof if the default is not cured within ten (10) days after the date of mailing. Such written notice shall be accompanied by a written affidavit of an officer of the Corporation that sets forth (1) the deponent's capacity to make the affidavit, (2) the statutory or other authority for the lien, (3) the amount outstanding, (4) the legal description of the parcel, and (5) the name of the owner according to the files and records of the Corporation. Such affidavit shall be recorded in the office of the Register of Deeds for Washtenaw County prior to commencement of any foreclosure proceedings, but it need not have been recorded as of the date of mailing as aforesaid. If the delinquency is not cured within the ten (10) day period, the Corporation may take such remedial action as it elects hereunder or under Michigan law. In the event the corporation elects to foreclose the lien by advertisement, the Corporation shall so notify the owner that he may request a judicial hearing by bringing suit against the Corporation. The expenses incurred in collecting unpaid assessments, including interest, costs, actual attorney fees (not limited to statutory fees), and advances or other liens paid by the Corporation to protect its lien, shall be chargeable to the owner in default and shall be secured by the lien on said parcel. In the event of default by any owner in the payment of any installment of an annual assessment levied against his parcel, the corporation shall have the right to declare all unpaid installments of the annual assessment for the pertinent fiscal year immediately due and payable. An owner in default shall not be entitled to a vote as a member of the Corporation and his percentage or membership shall not be taken into consideration in determining the quorum requirements for meetings of the Corporation, so long as default continues. All of these remedies shall be cumulative and not alternative and shall not preclude the Corporation from exercising such other remedies as may be available at law or in equity.

Upon sale or conveyance of a parcel, all unpaid assessments against the parcel shall be paid out of the sale price or by the purchaser in preference over other assessments or charges of whatever nature, except amounts to the state, the county, or any subdivision for taxes and special assessments, payments due under a first mortgage or land contract vendor's lien having priority, and a purchaser is entitled to a written statement from the Corporation setting forth the amount of the unpaid assessment against the seller or grantor, and the purchaser or grantee is not liable for the parcel conveyed or granted subject to a lien for any unpaid assessments against the seller or grantor in excess of the amount set forth in the written statement. Unless the purchaser or grantee requests a written statement from the Corporation at

least five days prior to the sale, the purchaser or grantee shall be liable for the unpaid assessments together with interest, costs, and attorney fees incurred thereof. If the Association does not give the written statement, then the purchaser or grantee may receive the conveyance by deed or assignment free and clear of unpaid assessments.

Sums assessed to an owner of the Corporation which are unpaid constitute a lien on the parcel owned by the owner at the time of the assessment before any other lien, except tax lien, and past due assessments which are evidenced by a notice of lien.

**SEVENTH.** Disputes, claims or grievances arising out of or relating to the interpretation or application of this documents or the administration, if any, and all disputes among the owners or between the owners and the corporation shall, upon the election and written consent of the parties to such dispute, claim or grievance, and written notice to the Corporation, be submitted to arbitration, and the parties thereto shall accept the arbitrators' decision as final and binding, provided, that no question affecting the title or claim of title to a fee simple interest or life estate in the real estate is involved. The commercial arbitration rules of the American Arbitration Association, as amended and in effect from time to time hereafter, shall be applicable to such arbitration.

**EIGHTH.** The Corporation shall carry liability insurance pertinent to the improvement, repair, use and maintenance of the roadway and easement areas, insuring the Corporation, but not the members thereof.

**NINTH.** No parcel shall be used for other than single family residential purposes.

**TENTH.** This agreement shall not be construed as a consent by an owner to any public dedication of the easements, roadways, or rights-of-way granted herein, and the Corporation shall not undertake to apply or cause the roadways to be dedicated to the public. The roadways and easements are for the use of the owners of the parcels, their family, friends, invitees, and emergency, fire, police, medical, service providers, contractors, and suppliers to the individual parcels. Provided, however, that upon prior written consent of two-thirds of the owners, roadways and/or easements may be dedicated to the public, to the extent and as limited by said written consent.

**ELEVENTH.** Time is of the essence of this Agreement.

**TWELFTH.** In the event that any of the terms, provisions, or covenants of this document are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holdings shall not affect, alter, modify or impair in any other manner whatsoever the other terms, provisions and covenants of this documents.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

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STATE OF MICHIGAN )  
COUNTY OF WASHTENAW)<sup>SS</sup>

On \_\_\_\_\_, 200\_\_, before me a Notary Public appeared  
\_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, who acknowledged  
this Declaration to be their free act and deed.

\_\_\_\_\_, Notary Public  
Washtenaw County, Michigan  
My commission expires: \_\_\_\_\_

THE \_\_\_\_\_ ROAD ASSOCIATION



OF DEXTER TOWNSHIP, WASHTENAW  
COUNTY, MICHIGAN, INC.

By: \_\_\_\_\_

STATE OF MICHIGAN )  
COUNTY OF WASHTENAW)<sup>ss</sup>

On \_\_\_\_\_, 200\_\_, \_\_\_\_\_ appeared  
before me as \_\_\_\_\_, of THE \_\_\_\_\_ ROAD ASSOCIATION OF  
DEXTER TOWNSHIP, WASHTENAW COUNTY, MICHIGAN, INC., and that this  
Declaration was signed in behalf of the Corporation, by authority of its Board of Directors, and  
the official acknowledges this Declaration to be the free act and deed of the Corporation.

\_\_\_\_\_  
, Notary Public  
Washtenaw County, Michigan  
My commission expires: \_\_\_\_\_

Prepared by:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_