

Sample Reciprocal Access Easement

DECLARATION OF EASEMENT

This Declaration of Easement is made this _____ day of _____, 20____
by _____ [hereinafter the
“Grantor”] with reference to the following facts:

- 1.0** Grantor owns certain property in the Village of Middleville / Thornapple Township, Barry County, Michigan, more particularly described in **Exhibit A** [the “property”], which Grantor will develop.
- 2.0** Grantor intends to construct a driveway on the property for purpose of accommodating ingress/egress to public highway M-37. In connection therewith, Grantor desires to grant Thornapple Township an assignable reciprocal access easement to allow the Township and/or its assignees to use, connect to or extend the driveway and to require shared access among adjoining properties if and when these properties are developed.

NOW, THEREFORE, for value received, the following grants, agreements, covenants and restrictions are made by this Grantor:

3.0 Easement:

- 3.1** Grantor does hereby grant and reserve, for the benefit of itself and Thornapple Township, a general law township, and its successors, grantees, and assigns, an assignable, reciprocal, and nonexclusive easement for ingress and egress purposes over and across that portion of the Property more particularly described on attached **Exhibit B** (the “Easement Property”). The Easement Property may be used by Thornapple Township or its assignee(s) to lay out, gravel, pave, asphalt, maintain, repair, replace, extend, or relocate a road or roads, public or private, for the purpose of providing vehicular and pedestrian access to the Property or other adjacent properties subject to the following terms and conditions.
- 3.2** This is a reciprocal easement and it is intended that, when Thornapple Township assigns to other adjoining property owners the right to use the Easement Property pursuant to this Declaration of Easement, it will obtain reciprocal easement rights from such property owners for the benefit of the Property.

Sample Reciprocal Access Easement

4.0 Maintenance, Repair, and Relacement

- 4.1** Any roadway constructed within the Easement Property shall be constructed in a good and workmanlike manner and kept in good condition and repair and in such a way that they will not constitute a danger to the health, safety, and welfare of the occupants and invitees of any property which uses the roadway or the inhabitants of Thornapple Township. The roadway shall at all times be readily accessible to, and usable by, customers of adjoining properties and emergency vehicles in all types of weather. The surface of the private roadway shall be snowplowed when the snowfall exceeds two inches of accumulation.
- 4.2** All decisions affecting the maintenance (including snowplowing), repair, modification, or replacement of the roadway constructed with the Easement Property shall be made with the prior consent of grantor and all other property owners who hold the right to use the roadway; provided, however, that no owner shall unreasonably withhold, condition, or delay his or her consent. If the parties are unable to agree upon the need for or the selection of a contractor to perform maintenance (including snowplowing), repair, modification or replacement of the roadway, the parties shall submit the dispute to the governing body of Thornapple Township to decide the issue based upon the general criteria established in **Section 4.1** above, as well as generally accepted business practices and common sense. Notwithstanding the foregoing, the owner of the Property shall have the right to make emergency repairs to the roadway, in order to prevent death or injuries to persons or damage to property.
- 4.3** All costs of maintenance (including snowplowing), repair, modification, or replacement of the roadway located within the Easement Property shall be shared on an equal basis between the property owners who use the Easement Property, except as follows:
- a. All costs of maintenance, repair, modification, or replacement of any improvement used only by one party and located within the Easement Property shall be borne exclusively by such party;
 - b. If any existing improvements are required to be modified or enlarged due to the acts or omissions of only one of the parties using the Easement Property, then such party or parties requiring the modification or enlargement shall be exclusively

Sample Reciprocal Access Easement

responsible for the cost of the modification or enlargement, and they shall save the other owner(s) harmless therefrom, regardless of whether the other party enjoys any peripheral benefit from the modification or enlargement of the roadway improvement; and

- c. If any maintenance, repair, or replacement of the roadway or any commonly used utility is required due to the acts or neglect of only one of the property owners, or his or her tenant(s), agent(s), or invitee(s), such party shall be liable for such costs, and they shall save the other party harmless therefrom, regardless of whether the other party enjoys any peripheral benefit from the correction of the roadway.

4.4 Improvements. All new improvements and all changes to any existing improvements (other than replacements) shall be made in conformance with all applicable governmental laws and regulations. The party undertaking work in the Easement Property shall restore all property disturbed or damaged by its maintenance, repair, replacement, or relocation activities to the same (or better) condition following such activities, including, but not limited to, any disturbed parking areas or landscaping and sprinkler systems.

4.5 Relocation. Each owner of any portion of the Easement Property shall have the right to relocate the roadway or improvements located within the Easement Property, at his, her, or its expense, in order to facilitate the development of their property; provided, however, that no relocation of the roadway shall unreasonably interfere with the use and enjoyment of any easement rights previously enjoyed by the owner of the other property or properties with use of the Easement Property, and all reasonable attempts shall be made to minimize the inconvenience to the other party.

5.0 Costs.

5.1 Unless another time is agreed upon by the parties responsible for payment, or an emergency repair is involved, payment for all shared costs associated with the Easement Property shall be due and payable before any activity specified in **Section 3 or 4** is undertaken. Any request for payment shall be in a statement form which details the reimbursement sought and its manner of its calculation. Each party's share of the costs associated with the easements shall be due and payable ten(10) days after receipt of a statement therefore,

Sample Reciprocal Access Easement

which statement details the reimbursement sought, the manner of its calculation, and evidence of payment of the costs, if any.

- 5.2** If any owner(s) defaults in the full, faithful, and punctual performance of any obligation hereunder to be performed by such party, then the party or parties to be benefited by the performance of the obligations, including, without limitation, any other owner, will, in addition to all other remedies they may have at law or in equity, have the right, if such alleged default is not cured within thirty (30) days' written notice (or immediately, if an emergency), to perform such obligation on behalf of such defaulting party and be reimbursed by such defaulting party for the cost thereof.
- 5.3** Upon failure of any party to pay any sum so payable under this Declaration of Easement, interest will accrue thereon from the due date at the lesser rate of twelve percent (12%) per annum or the maximum interest rate allowed by law. The defaulting party shall also be responsible for the cost of any attorney fees or other expenses incurred to collect the delinquent amount.

6.0 Dispute Resolution

- 6.1** Unless an election to have an issue resolved by the governing body of the Thornapple Township as provided in Section 4.2 above, any disagreement, controversy, or claim between the parties arising out of or related to this Declaration of Easement, or the breach thereof, may, at the option of any party, be settled by arbitration, which shall be conducted by either the West Michigan Chapter of the Better Business Bureau or the American Arbitration Association, or their respective successors and assigns, under their respective rules which are currently in effect. Arbitration of any claim or controversy arising out of or relating to this Declaration of Easement or the breach thereof must be filed within such time as would be permitted by law for the filing of a suit on such claim in any court, and any arbitration which is filed late shall be dismissed and, if not dismissed, the late filing may be presented as a defense in any suit to enforce the arbitration award.
- 6.2** Each Party acknowledges that they give up any right to file suit and have trial by a judge or jury of any claim or controversy arising out of or relating to this Declaration of Easement or the breach thereof, except for a suit to enforce an arbitration award. Any award rendered by the arbitrator or arbitrators shall be final, and Judgement may be

Sample Reciprocal Access Easement

entered upon it in accordance with applicable law in any court having jurisdiction thereof.

- 7.0 Modification.** No waiver, alteration, or modification of any of the provisions of this Declaration of Easement shall be valid unless in writing and signed by the owner of the Property, the Thornapple Township, and any assignees of Thornapple Township. If, at any time, the roadway located within the Easement Property shall be dedicated to the use of the public, this Declaration of Easement shall terminate; provided, however, that any rights to reimbursement which arise prior to termination shall survive the termination of this instrument.
- 8.0 Assignment.** The Thornapple Township shall have the right and power to grant and assign the right to use the Easement Property to one or more adjoining property owners in exchange for a reciprocal easement over and across their respective properties for the benefit of the Property. Any assignment by Thornapple Township may be made without the further consent of Grantor or any future owner of the Property, or any mortgagee, or other person, and shall be evidenced by an appropriate written instrument recorded with the Barry County Register of Deeds. All of the owners and mortgagees of the Property and other persons interested or who become interested in the Property from time to time shall be deemed to have irrevocably and unanimously consented to such assignments and use of the Easement Property as may be required to effectuate the foregoing assignments. Only the assigns of Thornapple Township who have been specifically assigned such easement rights in writing and consented to the terms of this Declaration of Easement, and the owner of the Property, shall have any rights under this Declaration of Easement.
- 9.0 Parties Bound.** The terms and conditions of this Declaration of Easement shall bind and benefit the heirs, personal representatives, successors, and assigns of all parties who own an interest in any portion of the Easement Property or any property which is assigned the right to use the Easement Property pursuant to this Declaration of Easement. Each owner of any portion of the Easement Property, or of a property which has been assigned the right to use the Easement Property by Thornapple Township, by the acceptance of a deed or land contract to their respective properties, shall be deemed to have

