

MAINTENANCE AGREEMENT

This Agreement entered into the this ___ day of _____, 20___, by and between Roger H. Zilke, Berrien County Drain Commissioner (“Drain Commissioner”), 701 Main, St. Joseph, Michigan and
(“Landowner/Developer”).

WHEREAS, Landowner/Developer is the owner of certain real property as legally described in Exhibit A attached hereto (the “Property”); and

WHEREAS, Landowner/Developer proposes the construction of a storm water management system (the “System”) to serve all or a portion of the properties to be developed on the Property; and

WHEREAS, the Drain Commissioner has reviewed the plans and specifications for the System on the Property; and

WHEREAS, the Drain Commissioner and Landowner/Developer wish to enter into this Agreement to ensure the continuing maintenance of the System so as to prevent drainage issues on the Property and surrounding parcels resulting from any lack of appropriate operation, maintenance or repair to the System.

NOW, THEREFORE, IT IS HEREBY AGREED:

1. Landowner/Developer shall be responsible for the operation, maintenance and repair of the System on the Property at Landowner/Developer’s sole cost, and shall take steps to periodically inspect the System to ensure that the System is in proper working order.
2. Landowner/Developer shall operate and maintain the System in compliance with all federal, state and local statutes, laws, ordinances, authorizations, rules, regulations and permits. If required by law, Landowner/Developer shall retain the services of a licensed operator for the System and pay all costs attendant thereto.

3. Landowner/Developer hereby grants and conveys to the Drain Commissioner the right of entry onto the Property for purposes of inspection of the System to determine the need for any maintenance or repair.
4. In the event that an inspection by the Drain Commissioner reveals the need for maintenance or repair of the System, the Drain Commissioner shall notify Landowner/Developer in writing of the need for said maintenance or repair to any part of the System. This paragraph does not alleviate any responsibilities of the Landowner/Developer to inspect, operate, maintain, and repair the System as otherwise provided in this Agreement.
5. Upon written notice as provided herein, Landowner/Developer, shall cause said maintenance or repair to be completed within 30 days, or such other time period as may otherwise be specified by the Drain Commissioner, and shall provide the Drain Commissioner with notice that the maintenance or repairs are complete.
6. In the event that the work specified by the Drain Commissioner is not completed in a timely fashion, the Drain Commissioner shall cause the work to be performed. Landowner/Developer shall be responsible for all costs incurred by the Drain Commissioner for the maintenance or repair of the System under this paragraph, including inspection and engineering costs, administration costs, and attorneys' fees and costs. Payment shall be made by Landowner/Developer within 30 days of invoice from the Drain Commissioner.
7. If payment is not made, the Drain Commissioner is authorized to seek collection by all means allowed under law or may levy special assessment against the Property where the System is located, which special assessment will be a lien against the lands until paid or collected as allowed for the collection of taxes and assessments under the laws of the State of Michigan. Landowner/Developer shall be responsible for all actual costs and attorney fees incurred by the Drain Commissioner relating to the collection of unpaid invoices under this Agreement.
8. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their respective successors, assignees and legal representatives. Landowner/Developer shall immediately notify the Drain Commissioner in writing of the name, address and telephone number of any assigned or successors in interest.
9. Landowner/Developer agrees to hold harmless, defend and indemnify the Drain Commissioner, his employees, agents and contractors and the County of Berrien from any and all liability or enforcement action arising out of the operation, maintenance or repair of the System including any and all claims for damages or injury to person or property and any and all civil and criminal sanctions, penalties, fines or costs.

10. Developer hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of Developer, and that Developer has the power and authority to enter into this Agreement.
11. If any provision of this Agreement is held invalid under any applicable law, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision and, to this end, the provisions hereof are severable.
12. Once executed this Agreement shall be recorded with the Berrien County Register of Deeds, Landowner/Developer shall pay all costs of recording and all legal fees incurred in the preparation of this Agreement.

Prepared By:

Roger H. Zilke
 Berrien County Drain Commissioner
 701 Main Street
 St. Joseph, MI 49085
 Telephone: (269) 983-7111

Return To:

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 Berrien County Drain Commissioner
 701 Main Street
 St. Joseph, MI 49085
 Telephone: (269) 983-7111

Roger H. Zilke
 Berrien County Drain Commissioner

STATE OF MICHIGAN)
)ss
 COUNTY OF BERRIEN)

On this _____ day of _____, 20__ before me, a Notary Public in and for said County, appeared Roger H. Zilke, Berrien County Drain Commissioner, to me personally known to be the person described in and who executed the foregoing instrument and acknowledged the same to be his free act and deed.

Anne S. Hendrix, Notary Public
 Berrien County, Michigan
 My Commission Expires: 04/07/2019
 Acting in the County of Berrien

By: _____
Landowner/Developer

STATE OF MICHIGAN)
)ss
COUNTY OF BERRIEN)

On this _____ day of _____, 20__ before me, a Notary Public in and for said County, appeared _____, to me personally known to be the person described in and who executed the foregoing instrument and acknowledged the same to be his free act and deed.

), Notary Public
 County, Michigan
My Commission Expires:
Acting in the County of