

16-0289

**STORMWATER MANAGEMENT FACILITY  
MAINTENANCE AGREEMENT**

This Agreement (hereinafter "Agreement") by and between the City of Manitowoc, Wisconsin, a municipal corporation (the "City"), 900 Quay Street, Manitowoc, Wisconsin 54220-4543 and Manitowoc Lake Breeze Apartments LLC., N2757 West Town Road, Pulaski, WI 54162-7901 (hereinafter "Owner/Developer"). The City together with the Owner/Developer may be referred to individually as a "party" and collectively as the "parties".

**RECITALS**

- A. This Agreement specifically applies to the following tract of land located in the Northwest ¼ of the Southwest ¼ of Section 9, T.19N., R. 24 E., City of Manitowoc, Manitowoc County, Wisconsin, described as:

Commencing at the West ¼ corner of said Section 9, thence N89°45'34"E along the section line 45.0 feet to the East right of way of Johnston Drive, the point of real beginning, thence continue N 89°45'34"E along said ¼ section line 809.20 feet, thence S 00°14'20"E 1318.55 feet to the 1/16<sup>th</sup> section line, thence S89°53'44"W along said 1/16<sup>th</sup> section line 811.89 feet to said Johnston Drive right of way, thence N00°07'19"W along said right of way 1316.62 feet to the point of real beginning. Said tract contains 24.51 acres.

- B. The City's Planning Department (the "Department") approved a site plan for the Owner/Developer pursuant to Section 15.370(2) of the City's Municipal Code for the Property; said site plan is hereinafter identified as SP3-14 which was approved by the City on May 5<sup>th</sup>, 2014
- C. A "Site Plan Developer Performance Agreement" executed by and between the City and the Owner/Developer and dated July 8<sup>th</sup> 2014, memorializes all Site Plan responsibilities related to the project identified in SP3-14. A "Memorandum of Agreement" evidencing said Performance Agreement is dated July 8<sup>th</sup>, 2014, and recorded on July 9<sup>th</sup>, 2014 in the Manitowoc County Register of Deeds Office at V. 2887, P. 239-241 as Document No. 1145437
- D. Pursuant to a Warranty Deed dated April 9<sup>th</sup> 2014, and recorded in Volume 2872, Pages 484-485, Document No. 1142530, Manitowoc County Register of Deeds, Manitowoc Lake Breeze Apartments LLC is the fee simple owner of the following land identified as The Property.

NOW, THEREFORE, in consideration of the Recitals and the mutual promises herein made and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Owner/Developers and the City agree as follows:

1. Recitals. The Recitals are deemed to be true and correct.
2. Owner/Developer Responsibilities. The Owner/Developer jointly and severally guarantee to the City that they will perform the following related to the Site Plan:
  - A. The Owner/Developer shall be responsible for the routine and extraordinary maintenance of the stormwater facilities located on the Property which includes, but is not limited to, one stormwater detention area and other appurtenant facilities

designed to treat stormwater, or collect, channel, hold, inhibit or divert the movement of stormwater through and from the Property. Said stormwater facilities are hereinafter collectively referred to as the "Facility" identified in Exhibit "A", Owner/Developer shall perform all stormwater management practices identified in Exhibit "B"; said Exhibits "A" and "B" are attached and incorporated herein by reference.

- B. The Facility is for the benefit of the Owner/Developer, and the Owner/Developer shall maintain and inspect the Facility and all appurtenances related thereto as required under Exhibit "B", and shall comply with a maintenance plan which is on file in the City's Engineering Department. The City Engineering Department shall be defined herein as the City Engineer or designee as its authorized representative.
- C. The Owner/Developer shall submit to the City Engineering Department an Annual Facility Inspection report for each and every calendar year (hereinafter "calendar year" is defined as October 1st through and including the following September 30th) beginning with the calendar year after which the Facility has been placed in service and approved by the City. The report shall be filed with the City's Engineering Department on or before October 1st of each calendar year, and shall be in form and content as required by the City. For example, if the Facility was placed in service in calendar year 2016, the first inspection report shall be due on or before October 1, 2017. Said form is to be supplied/furnished by the City to Manitowoc Lake Breeze Apartments, LLC, no less than 30 days of due date, each and every year.
- D. The City or its designee is authorized by the Owner/Developer to access the Owner/Developer property, as necessary, to conduct inspections of the Facility to ascertain compliance with this Agreement.
- E. Upon the City providing written notification to the Owner/Developer of a problem with the Facility that requires correction, the specified corrective action(s) shall be performed by the Owner/Developer within a reasonable time frame as set forth in writing by the City Engineering Department.
- F. The City is authorized to perform the corrective action(s) identified under E. above if the Owner/Developer does not make the required corrections, or if such corrections are not implemented to the City's sole satisfaction, within a reasonable time period specified in writing by the City Engineering Department. The cost and expense of such corrections shall be expressly borne by the Owner/Developer. The City may enter such costs on the tax roll against the Property as a special assessment, which shall be paid with other taxes levied thereupon for the calendar year in which the City completed the required corrections.
- G. The City retains the express right to stop work performed by the Owner/Developer at the Facility, and to amend or alter such work being undertaken by the Owner/Developers.

3. Best Management Practices (BMP). The Owner/Developer agrees to follow the State of Wisconsin Department of Natural Resources Technical Standards for erosion and sediment control and post-construction storm water management at the Facility. Owner/Developer shall comply with the standards and guidelines of the Wisconsin Department of Natural Resource (WDNR), and shall comply with any additional requirements as required by City regulation or by the City Engineering Department.
4. Representations. All representations and warranties of the Owner/Developer and the City set forth in this Agreement and in all agreements expressly referred to herein, shall at all times be true, complete and correct.
5. Obligation to Maintain and Repair. The Owner/Developer, shall, during the term of this Agreement, keep and maintain the Facility in good repair and working order, and will make or cause to be made from time to time all necessary repairs thereto, and renewals and replacements thereof so as to maintain a fully operational Facility that functions to control and manage stormwater related to the Property. Facility maintenance responsibilities are detailed in Exhibit "B".
6. Insurance. During the term of this Agreement, the Owner/Developer shall continually maintain in effect, insurance against such risks, both generally and specifically with respect to the Facility, as are customarily insured against improvements of like size and character including at least, but not limited to, Commercial General Liability Insurance, including Blanket Contractual Liability Insurance, against liability for personal injury, including the death of persons resulting from injuries occurring on or in any way related to the Facility, in the minimum amount of Two Million (\$2,000,000) Dollars per occurrence and against liability for damage to the Property occurring on, or in, or relating in any way to the Facility in the minimum amount of Two Million(\$2,000,000) Dollars per occurrence.

All insurance policies shall be purchased and maintained with insurance companies authorized to do business in the State of Wisconsin. Certificates and endorsements of all such insurance shall be filed with the City Clerk's office, with the City named as an additional insured, and shall further be subject to the review and approval of the City Attorney. Copies of said policies, certificates and endorsements listing the City as an additional insured shall be provided to the City Engineering Department within fourteen (14) consecutive calendar days after the Owner/Developer executes this Agreement. Each such policy of insurance shall contain a provision that the insurance company shall give the City at least thirty (30) consecutive calendar days prior written notice of cancellation, non renewal or material change during the term of this Agreement (or if the insurance company is unable or unwilling to provide such notification, the Owner/Developer shall provide said notice). In the event of a proposed cancellation or non renewal of any such policy by an insurance company, the Owner/Developer shall secure adequate replacement insurance policies prior to the effective date of such cancellation or non-renewal.

7. Claims and License; Injury and Property Damage. During the term of this Agreement, the Owner/Developer agrees to protect, defend, indemnify and hold the City, its officers, agents and employees free and harmless from and against any and all claims of third parties which result in losses, penalties, damages, settlements, costs, charges, professional

fees, attorney's fee, or other expenses or liabilities in connection with or arising directly or indirectly out of Owner/Developer obligations under this Agreement. In no event shall the Owner/Developer be liable for or have any indemnification obligations for any losses, damages, costs, fees, expenses, etc. arising out of the City's negligence or failure to perform its obligations under this Agreement. Without limiting the generality of the foregoing, any and all such claims, etc., relating to personal injury, death, damage to property, environmental claims, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The Owner/Developer further agrees that the City will, if the City and the Owner/Developer mutually deem it appropriate, provide any additional defense to any claim hereunder, the full costs of which shall be borne by the Owner/Developer. Furthermore, if a third party shall make claim against the City pursuant to this Agreement, the Owner/Developer at its sole option, shall have the right to participate in, or assume the defense of any such claim, provided however, the City shall remain liable for all costs including attorney fees, to the extent of the City's negligence or failure to perform its obligations.

8. Notice and Right to Cure. A material default or material breach (whether material default or material breach, hereinafter referred to as a "breach") of this Agreement shall be defined as the failure of the parties to perform any material term, covenant, condition, warranty or promise of this Agreement required to be performed by the Owner/Developer or the City. In the event of any breach of this Agreement or any of its terms or conditions by any party hereto, the non-breaching party shall deliver written notice to the breaching party detailing the breach, and such non-breaching party shall, upon written notice from the other, proceed immediately to cure or remedy such breach, and in any event shall cure any such default or breach within thirty (30) consecutive calendar days of the receipt of such notice, if such breach is of a nature that can be reasonably cured within such thirty (30) day period. If such breach is of a nature that cannot be reasonably cured within such thirty (30) day period, such party shall have commenced such cure and shall be diligently pursuing the same. In the case such action is not taken or is not diligently pursued, the aggrieved party(ies) may have available the remedies provided for herein, however, it is expressly agreed that a breach of this Agreement shall not entitle the Owner/Developer to terminate this Agreement.
9. Additional Remedies. In the event of any breach of this Agreement which has not been cured in accordance with Section 8, the non-breaching party (ies) may utilize any remedies the parties may have at law or in equity. In the event that any party shall breach any of its obligations under this Agreement and shall not cure or remedy such breach, or commence to diligently pursue the same as provided in Section 8, and following notice as provided above, then the non-breaching party(ies) shall have the right to institute any other actions or proceedings as it may have available at law or equity if it deems desirable for effectuating the purposes of this Agreement, provided that any delay by the non-breaching party(ies) in instituting or prosecuting any such action or proceedings or otherwise asserting its rights under this section shall not operate as a waiver of such rights or to deprive it of, or, to limit such rights in any way (it being the intent of this provisions that the non-breaching party(ies) should not be constrained, so as to avoid the risk of being deprived of, or limited in the exercise of the remedy provided in this section because of concept of waiver, laches or otherwise, to exercise such remedy at a time

when it may still hope otherwise to resolve the breach created by the default involved); nor shall any waiver in fact made by the non-breaching party(ies) with respect to any specific default by the other party under this section be considered or treated as the waiver of the rights of the non-breaching party(ies) with respect to any other defaults by the other party under this section, or with respect to the particular default except to the extent specifically waived in writing.

10. Rights and Remedies Cumulative. The rights and remedies of the Owner/Developer and the City, whether provided at law or in equity or by this Agreement, shall be cumulative, and the exercise of any one (1) or more of such remedies shall not preclude the exercise at the same or different times of any other such remedies for the same event of breach or of any remedies for any other event of breach by the other parties. No waiver made by any party with respect to the performance or manner or time of any obligation of any party under the Agreement, shall be considered a waiver of any rights of the Owner/Developer or the City (as the case may be) to enforce any other obligations of the parties under this Agreement. A delay of any party in the enforcement of any term, covenant, condition, warranty or promise contained in this Agreement shall not be construed as a waiver of any party's right to enforce said obligations.
11. Continuing Obligations. The obligations of each of the parties shall continue until such time as this Agreement is terminated in writing by the Owner/Developer and the City.
12. Termination. This Agreement shall terminate, and become immediately null and void, upon the date of execution of a written instrument releasing the Owner/Developer and the City from all obligations hereunder.
13. Approvals in Writing. Whenever under this Agreement approvals, authorizations, determinations, satisfactions or waivers are authorized or required, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing, signed by the duly authorized officer of the City, and delivered to the party to whom it is directed at the address specified in Section 15. Wherever any approval is required by the terms of this Agreement, and request or application for such approval is duly made, such approval shall not be unreasonably withheld.
14. Inspection of Records. The City shall have the right to inspect any and all records, contracts, financial statements, ledgers or written documents which relate to and are generated by the responsibilities and obligations of the Owner/Developer under the terms of this Agreement, and which are related to verification or documentation of the activities or actions related to the Facility. This right of inspection shall apply to not only those records and documents that are within the physical control and custody of the Owner/Developer, but the Owner/Developer shall also provide copies of any contracts, agreements or other documents with third parties if so requested by the City, that are necessary to verify or document the operation of the Facility.
15. Notices and Demands. A notice, demand or other communication under this Agreement by any party to any other party shall be sufficiently given or delivered if it is dispatched by facsimile transmission, or by first class mail, or by registered or certified mail, postage prepaid, return receipt requested, or delivered personally as set forth below:

Owner/Developer: Manitowoc Lake Breeze Apartments LLC  
Gary F. Drzewiecki  
N2757 West Town Road  
Pulaski, WI 54162-7901

City: City of Manitowoc  
Attn: City Clerk  
900 Quay Street  
Manitowoc WI 54220-4543

with a copy to: City Engineer  
City of Manitowoc  
900 Quay Street  
Manitowoc WI 54220-4543

The above addresses may be changed at any time by the parties by notice given in the manner provided above.

The parties further agree that electronically reproduced signatures such as by facsimile transmission are valid for execution or amendment of this Agreement, and that electronic transmission/facsimile is an authorized form of notice as that term is used in this Agreement.

16. No Liability of the City. The City shall have no obligation or liability to any lender, architect, engineer, contractor, or subcontractors, or any other party retained by the Owner/Developer in the performance of the Owner/Developer obligations and responsibility under the terms and conditions of this Agreement. Each party specifically agrees that no representations, statements, assurances, or guaranty will be made by such party to any third party or by any third party which is contrary to the provisions of this Agreement.
17. Severability. If any provisions of this Agreement is deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to parties or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.
18. Amendments. This Agreement is the entire agreement between the parties, and can only be modified or changed in writing executed by all parties.
19. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto, as well as their respective successors, heirs, transferees and assigns. Any transfer of any party's interest under this Agreement shall not release the transferor from his or its obligations hereunder.

20. Recordation. This Agreement or at the City's sole option, a Memorandum of Agreement, and any subsequent modifications thereof or additions thereto shall be, upon being duly executed, recorded by the City at the Owner/Developer sole expense, at the Register of Deeds for Manitowoc County, Wisconsin, and shall be deemed to be and interpreted as a covenant running with the Property. The City shall, upon the parties agreement to terminate this Agreement, file and record at the Owner/Developer expense an instrument(s) at the Register of Deeds for Manitowoc County terminating the Agreement.
21. Time of Essence. Time is of the essence as to this Agreement and of every term, covenant, condition, warranty or promise to be performed by the parties.
22. Assignment. The Owner/Developer shall not assign this Agreement or any part of it, without the prior written consent of the City, which consent shall not be unreasonably withheld.
23. Applicable Law. This Agreement shall be deemed to have been made in Manitowoc County, Wisconsin, and shall be governed by, construed under, and enforced in accordance with, the law of the State of Wisconsin, except as otherwise provided herein. All actions or proceedings relating directly or indirectly to this Agreement, whether sounding in contract or tort, shall be litigated only in the circuit court located in Manitowoc County, Wisconsin. All parties to this Agreement hereby subject themselves to the jurisdiction of the circuit court for Manitowoc County, Wisconsin.
24. Headings. The section titles have been inserted in this Agreement primarily for convenience, and do not define, limit or construe the contents of such paragraphs. If headings conflict with the text, the text shall control.
25. Pronouns. Pronouns in this Agreement (including, but not limited to, those referring to the Owner/Developer and the City), importing any specific gender shall be interpreted to refer to limited liability companies, corporations, partnerships, men and women, as the identity of the parties hereto, or the parties herein referred to, may require. Pronouns, verbs, and/or other words in this Agreement importing the singular number shall be interpreted as plural and plural words as singular, as the identity of the parties hereto, or the parties or objects herein referred to, may require.
26. Integration and Conflicts. This Agreement and any special terms and conditions appended hereto at the time of execution of this Agreement, shall constitute the entire, integrated agreement of the parties hereto with respect to the matters addressed herein. This Agreement, and each and every term and condition, may be added to or amended only by the mutual written agreement of the parties as permitted in Section 18, which amendment or modification shall be executed with the same formalities as this Agreement shall have been executed. Special terms and conditions, if any, which are agreed upon by the parties hereto at the time this Agreement is executed, shall be reduced to writing in accordance with Section 13.

If the provisions of any deed, lease, agreement, contract, note, mortgage, security agreement, Site Plans or other document between the parties hereto conflicts with the provisions of this Agreement, the provisions of this Agreement shall control.

27. Relationship of Parties. Nothing in this Agreement nor any act of the Owner/Developer or the City shall be deemed or construed to create any relationship of third party beneficiary, of principal or agent, of limited or general partners, of joint venture, or of any association whatsoever between the parties hereto.
28. Survival of Warranties, Representations and Agreements. Any warranty, representation or agreement herein contained shall survive the date of this Agreement.
29. Construction. All parties have contributed to the drafting of this Agreement. In the event of a controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against any party hereunder by virtue of that party having drafted this Agreement or any portion thereof.
30. Creation of New Tracts of Land from Owner/Developer Property. Unless so directed by the City, on or after the effective date of this Agreement, any land divisions creating new parcels that directly affect the or any developments occurring on these same lands under a lease or similar arrangement, and which shall be designed to drain stormwater to the Facility, shall be required to enter into an amendment to this Agreement or a similar agreement with the City on terms and conditions substantially the same as those included in this Agreement.
31. Counterparts. This Agreement may be executed in counterpart originals, each of which when duly executed and delivered shall be deemed an original and all of which when taken together shall constitute one instrument.
32. Date. This Agreement shall be dated and effective and binding as of the date of the last execution.

This instrument was drafted by: Matt Smits Engineering/Stormwater Tech  
City Engineering Department

Filename: Y:\Stormwater\Ponds\Maintenance Agreements\2014\14-01 Lake Breeze Apts\Lake Breeze Apt. Mtnc Agreement.doc

Rundate: 02/07/2016



Lake Breeze Apartments LLC

By: Gary F. Drzewiecki  
Gary F. Drzewiecki

3/18/2016  
Date

STATE OF WISCONSIN)  
)ss.  
MANITOWOC COUNTY

Personally came before me this 18 day of March, 2016, the above named Gary F. Drzewiecki to me known who executed the foregoing instrument and to me known to be such Owner, and acknowledged that he executed the foregoing instrument in such capacity of said corporation's authority.



Hallie Ostrowski  
Notary Public  
Manitowoc County, Wisconsin  
My commission (expires)(is):  
1-22-2019

CITY OF MANITOWOC, a Wisconsin Municipal Corporation

By: \_\_\_\_\_  
Justin M. Nickels, Mayor

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Jennifer Hudon, City Clerk

\_\_\_\_\_  
Date

STATE OF WISCONSIN)  
)ss.  
MANITOWOC COUNTY

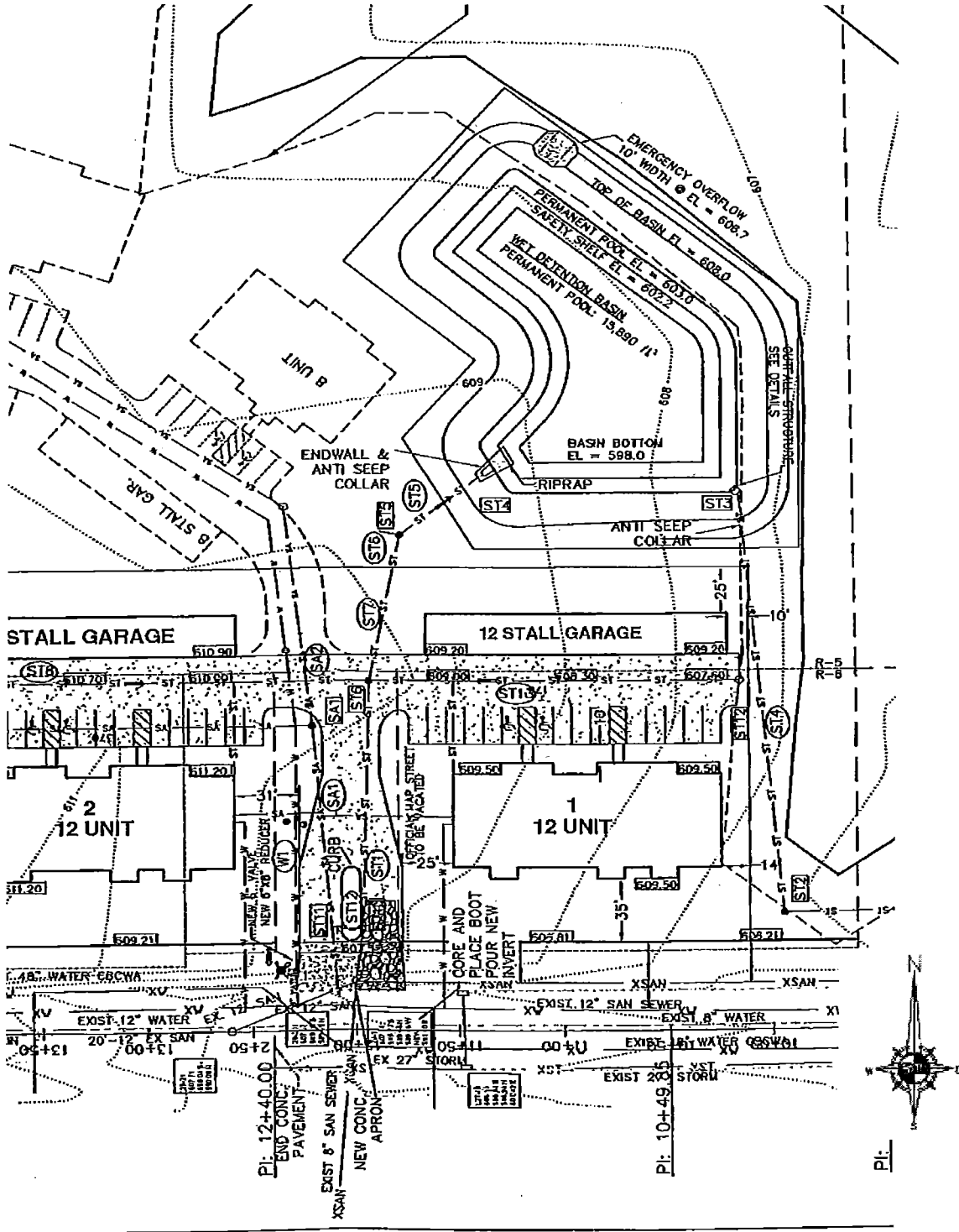
Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, the above signed Justin Nickels and Jennifer Hudon, to me known who executed the foregoing instrument and to me known to be such Mayor and City Clerk of the City of Manitowoc, WI, a Wisconsin Municipal Corporation, and acknowledged that they executed the foregoing instrument as such Officers of said City, by its authority.

\_\_\_\_\_  
Notary Public  
Manitowoc County, Wisconsin  
My commission (expires)(is):

## Exhibit A - Location Map

### Storm Water Management Practices Covered by this Agreement

The storm water management practices covered by this Agreement are depicted in the reduced copy of the construction plans, as shown below. The practices includes one (1) stormwater detention area located in the NW ¼ of the SW ¼ of Section 9, T19N R24E, City of Manitowoc, Manitowoc County, Wisconsin.



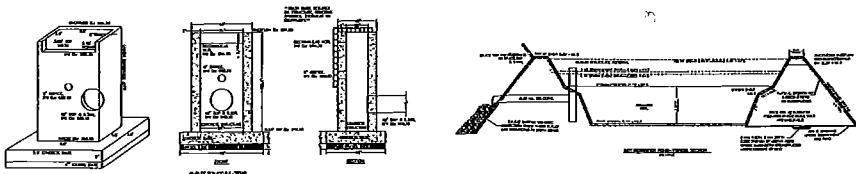
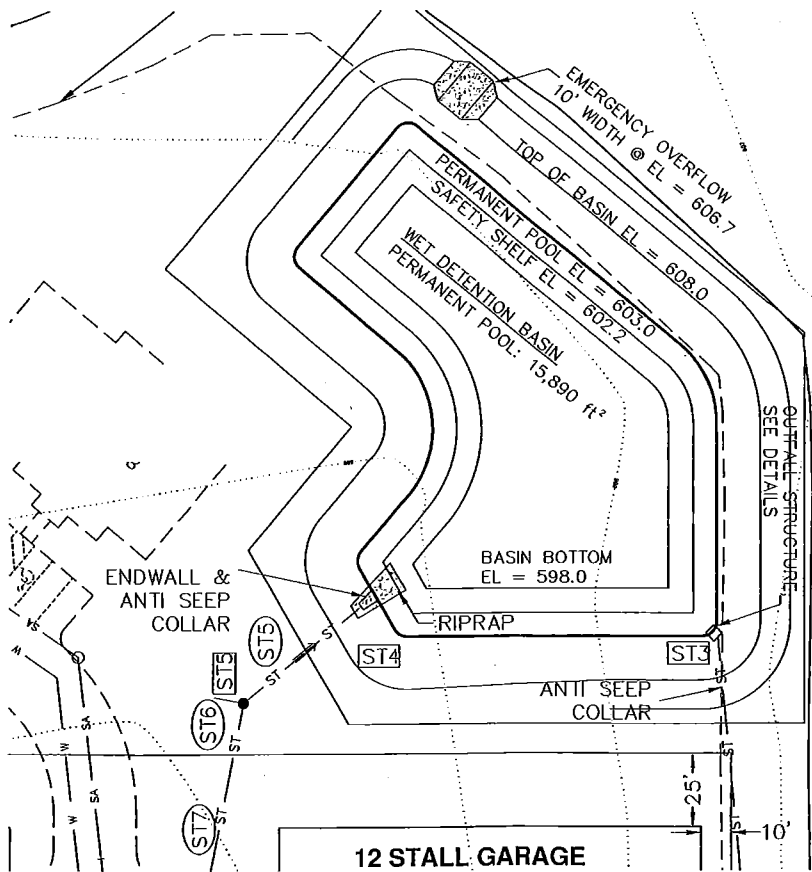
## Exhibit B Minimum Storm Water Practice Maintenance Requirements

This exhibit explains the basic function of each of the storm water practices listed in Exhibit A and prescribes the minimum maintenance requirements to remain compliant with this Agreement. 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 type of maintenance that can be expected for this particular site. Access to the stormwater practices for maintenance vehicles is shown in Exhibit A. Any failure of a storm water practice that is caused by a lack of maintenance will subject the responsible party to enforcement of the provisions listed in this Agreement by the City of Manitowoc.

### System Description:

For details on the stormwater pond and a complete list of Maintenance responsibilities see the Stormwater Management Plan and the Erosion Control Plan for Lake Breeze Apartments, on file at the City of Manitowoc Engineering Office.

### STORMWATER POND DETAILS:



## **Minimum Maintenance Requirements:**

To ensure the proper function of the storm water management practices described above, the following activities must be completed in April and September of every year and after each rainfall event of greater than 2 inches within any 24-hour period:

1. All outlet pipes must be cleaned to ensure there is no blockage from floating debris or ice, especially the washed stone in front of the outlet structure and the trash rack on the riser in the main basin. Any blockage must be removed immediately. The washed stone must be replaced when it becomes clogged.
2. Remove any debris or litter that has accumulated in the structure. Detention facilities tend to accumulate debris and litter. It is important to remove to ensure proper functioning of the structure.
3. Grass swales shall be preserved to allow free flowing of surface runoff in accordance with approved grading plans. No buildings or other structures are allowed in these areas. No grading or filling is allowed that may interrupt flows in any way.
4. Grass swales, inlets and outlets must be checked after heavy rains (minimum of annually) for signs of erosion. Any eroding areas must be repaired immediately to prevent premature sediment build-up in the downstream forebay or basin. Erosion matting is recommended for repairing grassed areas.
5. NO trees are to be planted or allowed to grow on the earthen berms. Tree root systems can reduce soil compaction and cause berm failure. The berms must be inspected annually and any woody vegetation removed.
6. If floating algae or weed growth becomes a nuisance (decay odors, etc.), it must be removed from the basin or the forebay and deposited where it cannot drain back into the basin. Removal of the vegetation from the water reduces regrowth the following season (by harvesting the nutrients). Wetland vegetation must be maintained along the waters edge for safety and pollutant removal purposes.
7. When sediment in the forebay or the basin has accumulated to an elevation of three feet below the outlet elevation, it must be removed. All removed sediment must be placed in an appropriate upland disposal site and stabilized (grass cover) to prevent sediment from washing back into the basin. The forebay will likely need sediment removal first. Failure to remove sediment from the forebay will cause resuspension of previously trapped sediments and increase downstream deposition.
8. Periodic mowing of the grass swales will encourage rigorous grass cover and allow better inspections for erosion. Waiting until after August 1st will avoid disturbing nesting wildlife. Mowing around the basin or the forebay may attract nuisance populations of geese to the property and is not necessary or recommended.
9. The application of EPA/State Registered Chemicals to detention basins/ponds or lakes is regulated by the WDNR. With few exceptions, a permit must be filed with and approved by the WDNR, prior to chemical treatment.
10. Any other repair or maintenance needed to ensure the continued function of the storm water practices or as ordered by the City of Manitowoc under the provisions listed in this Agreement.