



MISC 2017006223



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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
01/24/2017 15:59:04.00



2017006223

POST CONSTRUCTION STORM WATER MANAGEMENT PLAN MAINTENANCE AGREEMENT

WHEREAS, Aksarben Lodging, LLC, a Nebraska limited liability company, recognizes that stormwater management facilities (hereinafter referred to as "the facility" or "facilities") must be maintained for the development called Hilton Garden Inn Aksarben Village located in the jurisdiction of the City of Omaha, Douglas County, Nebraska; and,

WHEREAS, the Property Owner (whether one or more) is the owner of Hilton Garden Inn Aksarben Village (hereinafter referred to as "the Property"), and,

WHEREAS, the City of Omaha (hereinafter referred to as "the City") requires and the Property Owner, and its administrators, executors, successors, heirs, or assigns, agree that the health, safety and welfare of the citizens of the City require that the facilities be constructed and maintained on the property, and,

WHEREAS, the Post Construction Stormwater Management Plan, OMA-20160315-3517-P – Hilton Garden Inn Aksarben Village, (hereinafter referred to as "PCSMP"), should be constructed and maintained by the Property Owner, its administrators, executors, successors, heirs, or assigns.

NOW, THEREFORE, in consideration of the foregoing premises, the covenants contained herein, and the following terms and conditions, the property owner agrees as follows:

1. The facility or facilities shall be constructed by the Property Owner in accordance with the PCSMP, which has been reviewed and accepted by the City of Omaha or its designee.
2. The Property Owner must develop and provide the "BMP Maintenance Requirements", attached here to as Exhibit "B", which have been reviewed and accepted by the City of Omaha or its designee. The BMP Maintenance Requirements shall describe the specific maintenance practices to be performed for the facilities and include a schedule for implementation of these practices. The Plan shall indicate that the facility or facilities shall be inspected by a professional qualified in stormwater BMP function and maintenance at least annually to ensure that it is operating properly. A written record of inspection results and any maintenance work shall be maintained and available for review by the City.
3. The Property Owner, its administrators, executors, successors, heirs, or assigns, shall construct and perpetually operate and maintain, at its sole expense, the facilities in strict accordance with the attached BMP Maintenance Requirements accepted by the City of Omaha.

4. The Property Owner, its administrators, executors, successors, heirs, or assigns hereby grants permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the facilities whenever the City deems necessary. The City shall provide the Owner copies of the inspection findings and a directive to commence with the repairs if necessary. The City will require the Property Owner to provide, within 7 calendar days, a written response addressing what actions will be taken to correct any deficiencies and provide a schedule of repairs within a reasonable time frame. Whenever possible, the City shall provide notice prior to entry. The City shall indemnify and hold the Property Owner harmless from any damage by reason of the City's negligent acts during such entry upon the property.
5. The Property Owner, its administrators, executors, successors, heirs, or assigns, agrees that should it fail to correct any defects in the facility or facilities within reasonable time frame agreed to in the response by the Property Owner for corrective actions, or shall fail to maintain the structure in accordance with the attached BMP Maintenance Requirements and with the law and applicable executive regulation or, in the event of an emergency as determined by the City of Omaha or its designee in its sole discretion, the City of Omaha or its designee is authorized to enter the property to make all repairs, and to perform all maintenance, construction and reconstruction as the City of Omaha or its designee deems necessary. Notwithstanding the foregoing, the City shall indemnify and hold the Property Owner harmless from any damage by reason of the City's negligent acts during such entry upon the property.

The City of Omaha or its designee shall have the right to recover from the Property Owner any and all reasonable costs the City of Omaha expends to maintain or repair the facility or facilities or to correct any operational deficiencies subject to the provisions of the immediately preceding sentence relating to negligent acts of the City. Failure to pay the City of Omaha or its designee all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. The City of Omaha or its designee shall thereafter be entitled to bring an action against the Property Owner to pay, or foreclose upon the lien hereby authorized by this agreement against the property, or both. Interest, collection costs, and the reasonable attorney fees shall be added to the recovery to the successful party.

6. The Property Owner shall not obligate the City to maintain or repair the facility of facilities, and the City of Omaha shall not be liable to any person for the condition or operation of the facility or facilities.
7. The Property Owner, its administrators, executors, successors, heirs, or assigns, hereby indemnifies and holds harmless the City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims that may arise or be asserted against the City from the construction, presence, existence or maintenance of the facility or facilities by the Property Owner. In the event such a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Property Owner and the Property Owner shall defend at its own expense any suit based on such claim unless due solely to the negligence of the City in which event the City shall be required to defend any such suit at its own expense. Notwithstanding the foregoing, if any claims are made against both the City of Omaha and the Property Owner, each will be required to defend any such suit or claim against it at its own expense. Each shall be responsible for payment of any recovery to the extent determined in such suit. If any judgement or claims against the City, its authorized agents or employees shall be allowed, the Property Owner shall pay for all costs and expenses in connection herewith except to the extent of the negligent act of the City.

8. The Property Owner shall not in any way diminish, limit, or restrict the right of the City of Omaha to enforce any of its ordinances as authorized by law.
9. This Agreement shall be recorded with the Register of Deeds of Douglas County, Nebraska and shall constitute a covenant running with the land and shall be binding on the Property Owner, its administrators, executors, successors, heirs, or assigns, including any homeowners or business association and any other successors in interest.

IN WITNESS WHEREOF, the Property Owner has executed this agreement this 12th day of JANUARY, 2017.

INDIVIDUAL, PARTNERSHIP and/or CORPORATION

Aksarben Lodging, LLC <hr/> <small>Name of Individual, Partnership and/or Corporation</small>
John Mountjoy <hr/> <small>Name</small>
Manager <hr/> <small>Title</small>
<div style="border: 1px solid black; height: 40px; width: 100%; display: flex; align-items: center; justify-content: center;"> </div> <hr/> <small>Signature</small>

<hr/> <small>Name of Individual, Partnership and/or Corporation</small>
<hr/> <small>Name</small>
<hr/> <small>Title</small>
<div style="border: 1px solid black; height: 40px; width: 100%; display: flex; align-items: center; justify-content: center;"> </div> <hr/> <small>Signature</small>

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ACKNOWLEDGMENTS

Nebraska)
State

Douglas)
County

On this 12 day of January, 2019, before me, a Notary Public, in and for said County, personally came the above named:

John Muentjoy

who is (are) personally known to me to be the identical person(s) whose name(s) is (are) affixed to the above instrument and acknowledged the instrument to be his, her (their) voluntary act and deed and for the purpose therein stated.

WITNESS my hand and Notarial Seal the day and year last above written.

Jessica Cooper
Notary Public

State of Nebraska - General Notary
JESSICA COOPER
My Commission Expires
January 31, 2019

Notary Seal

Exhibit "A"

Legal Description of the Property

PROJECT INFORMATION

Legal Description: Aksarben Village Replat 15, Lot 3
 Property Address: 3737 Frances Street, Omaha, NE 68106
 Subdivision Name: Aksarben Village
 Sect.-Town.-Rng.: 25-15-12

APPLICANT INFORMATION

Business Name: Aksarben Lodging, LLC
 Business Address: 209 S 19th Street, Omaha, NE 68102
 Contact Representative's Name: John Mountjoy
 Contact Representative's Phone Number: 402.932.2000
 Signing Representative's Name: John Mountjoy

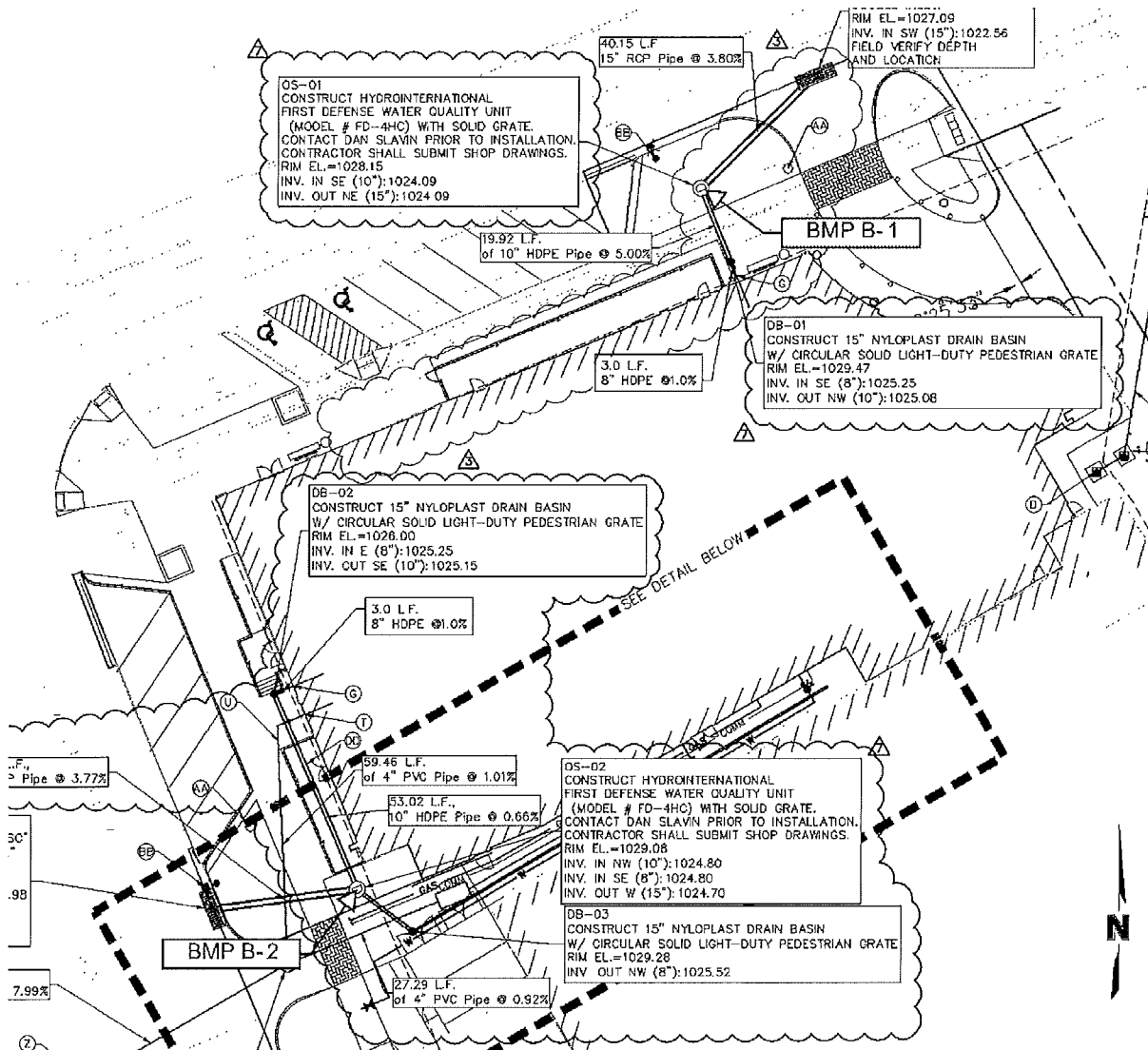


Exhibit "B"

BMP Maintenance Requirements

Name & Location

Project Name: Grandview Ridge Estates
 Address: 6737 Frances Street
 PCWP Project Number: N/A
 PWD Building Permit #: OPW-52979-PD
 PCSMP Project Number: OMA-20160315-3517-P

Site Data

Total Site Area: 0.61 Acres
 Total Disturbed Area: 0.61 Acres
 Total Undisturbed Area: 0.00 Acres
 Impervious Area Before Construction: 95%
 Impervious Area After Construction: 95% (Commercial – Hotel)

BMP Information

BMP ID	Type of BMP	Northing/Easting
BMP B-1	Hydro International (FD-4HC)	N: 537846.95 E: 2736109.25
BMP B-2	Hydro International (FD-4HC)	N: 537671.97 E: 2736024.34

BMP Type (Hydro International FD-4HC)	
Task	Schedule
Inspections	Annually, or more often if sediment accumulation level is high
Cleaning	Once sediment depth reaches 11" (15% of capacity)*

Maintenance Inspection Reports

Annual maintenance inspection reports must be commissioned by the property owner and provided to the City upon request. The first report shall be conducted one year following the final acceptance date of the Post Construction Stormwater Management Plan and each year thereafter on or before the acceptance anniversary date. All maintenance activities and inspection reports must be kept on file with the property owner for a minimum of five years. Annual maintenance inspection reports shall be performed by a registered Nebraska professional engineer, architect, or qualified professional.