



MISC 2013111779



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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
11/06/2013 12:26:35.00



2013111779

POST CONSTRUCTION STORMWATER MANAGEMENT PLAN MAINTENANCE AGREEMENT AND EASEMENT

WHEREAS, Mount Michael Foundation recognizes that stormwater management facilities (hereinafter referred to as "the facility" or "facilities") must be maintained for the development called **Mount Michael Benedictine** located in the jurisdiction of the City of Omaha, Douglas County, Nebraska; and,

WHEREAS, Mount Michael Foundation is the owner (hereinafter referred to as "the Owner") of the property described on Exhibit A and Exhibit A1, attached hereto and made a part hereof (hereinafter referred to as "the Property"), and,

WHEREAS, the City of Omaha (hereinafter referred to as "the City") requires and the Property Owner, or 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-20130913-888-P, (hereinafter referred to as "PCSMP"), be constructed and maintained by the Property Owner, its administrators, executors, successors, heirs, or assigns, and

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 shall be constructed by the Owner in accordance with the PCSMP, which has been reviewed and accepted by the City of Omaha or its designee.
2. The Owner must develop and provide the "BMP Maintenance Requirements", per the attached 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 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 or its designee.
4. During construction of the facilities, the 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 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 Owner harmless from any damage by reason of the City's or its employees, contractors or agents negligent acts during such entry upon the property.
5. The 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 Owner for corrective actions, or shall fail after 30 days' notice from City of Omaha to Owner, 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 reasonable repairs, and to perform all reasonable maintenance, construction and reconstruction. Notwithstanding the foregoing, the City shall indemnify and hold the Owner harmless from any damage by reason of the City's or its employees, contractors or agents negligence during such entry upon the property.
6. The City of Omaha or its designee shall have the right to recover from the 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 Owner to pay, or foreclose upon the lien hereby authorized by this agreement against the property, or both. Interest, collection costs, and reasonable attorney fees shall be added to the recovery to the successful party.
7. The Owner shall not obligate the City of Omaha to maintain or repair the facility or facilities, and the City of Omaha shall not be liable to any person for the condition or operation of the facility or facilities, unless caused by the City of Omaha or its employees, contractors or agents.
8. The 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 Owner unless caused by the City of Omaha or its employees, contractors or agents. In the event a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Owner and the Owner shall defend at its own expense any suit unless caused by the City of Omaha or its employees, contractors or agents.

9. Based on such claim unless due solely to the negligence or wrongful act 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 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 judgment or claims against the City, its authorized agents or employees shall be allowed, the Owner shall pay for all costs and expenses in connection herewith except to the extent of the negligent or wrongful act of the City.
10. The 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.
11. 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 Owner, its administrators, executors, successors, heirs, or assigns, including any homeowners or business association and any other successors in interest.

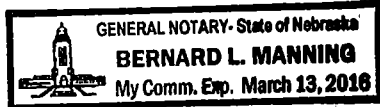
Dated this 30 day of OCTOBER, 2013.

Mount Michael Foundation

By: *Michael Liebl*
RT. REV. Michael Liebl, OSB, Manager

State of Nebraska)
) ss.
County of Douglas)

The foregoing agreement was acknowledged before me this 30th day of October, 2013, RT. REV. Michael Liebl, OSB, Manager of Mount Michael Foundation.



Bernard L. Manning
Notary Public

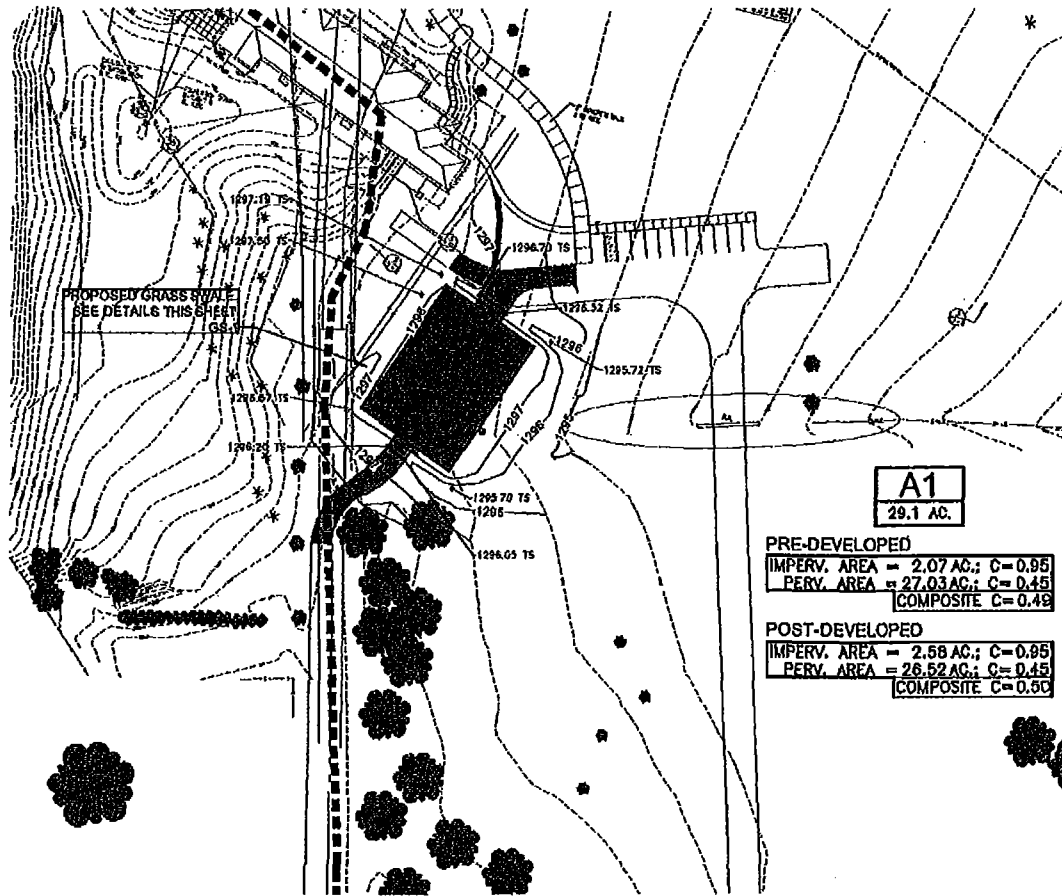


Exhibit "A"

Project Information

Legal Description: LANDS SEC-TWN-RGE 35-16-10 NW 1/4 & N 1/2 SW 1/4 & 1/2 VA COUNTY RD 23 PARTIALLY EXEMPT -AG USE- (MAY BE SUBJECT TO RECAPTURE), Douglas County, Nebraska.

Property Address: 22520 Mount Michael Road, Omaha, NE 68022

Section: 35-16-10

Applicant Information

Business Name: Mount Michael Benedictine

Business Address: 22520 Mount Michael Road
Elkhorn, NE 68022

Representatives Name: RT. REV. Michael Liebl, OSB

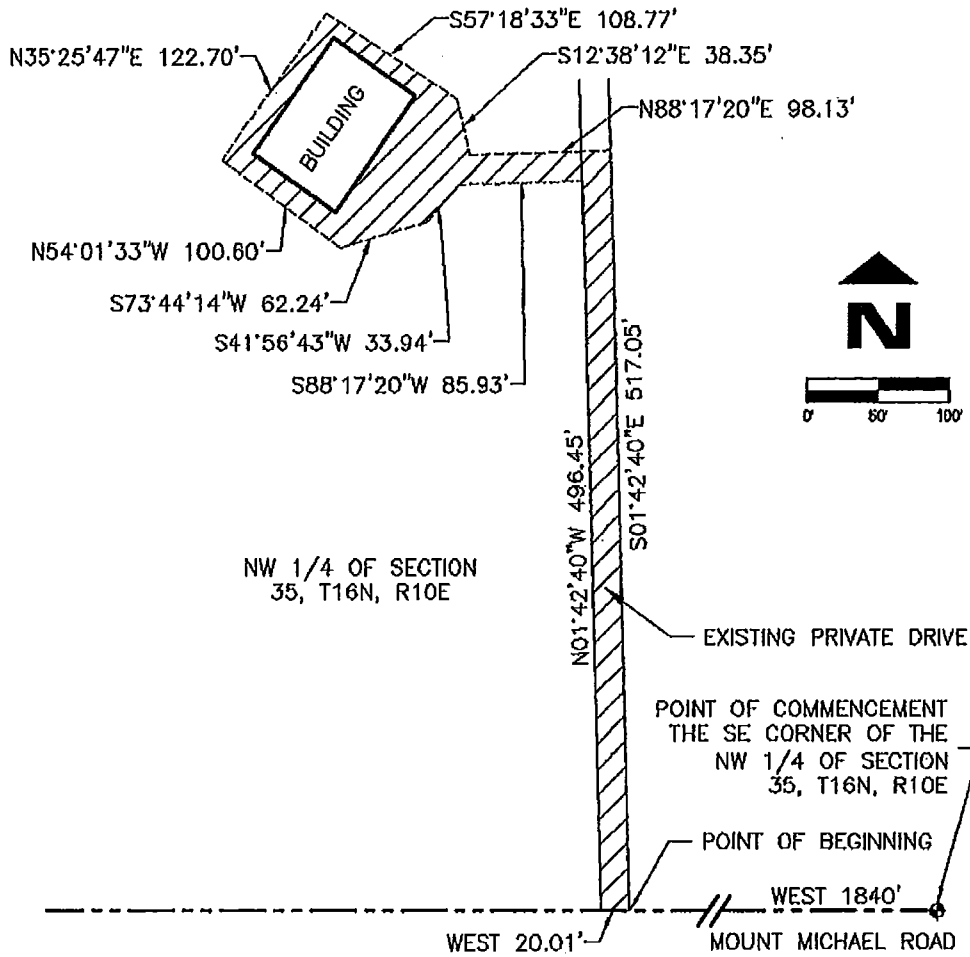
Representative's Email: mliebl@mountmichael.org

Representative's Phone: (402)289-2541

Representative's Fax: (402)289-4539

BMP Information

Name	Identifier	Latitude/Longitude
Grass Swale	GS-1	41.315103°N, 96.270635°W



LEGAL DESCRIPTION

THAT PART OF THE NW 1/4 OF SECTION 35, T16N, R10E OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID NW 1/4; THENCE WEST (ASSUMED BEARING) 1840 FEET MORE OR LESS ON THE SOUTH LINE OF SAID NW 1/4 TO THE EAST EDGE OF AN EXISTING PRIVATE DRIVE AND THE POINT OF BEGINNING; THENCE CONTINUING WEST 20.01 FEET ON THE SOUTH LINE OF SAID NW 1/4 TO THE WEST EDGE OF SAID EXISTING PRIVATE DRIVE; THENCE N01°42'40\"W 496.45 FEET ON THE WEST EDGE OF SAID PRIVATE DRIVE; THENCE S88°17'20\"W 85.93 FEET; THENCE S41°56'43\"W 33.94 FEET; THENCE S73°44'14\"W 62.24 FEET; THENCE N54°01'33\"W 100.60 FEET; THENCE N35°25'47\"E 122.70 FEET; THENCE S57°18'33\"E 108.77 FEET; THENCE S12°38'12\"E 38.35 FEET; THENCE N88°17'20\"E 98.13 FEET TO THE EAST EDGE OF SAID EXISTING PRIVATE DRIVE; THENCE S01°42'40\"E 517.05 FEET ON THE EAST EDGE OF SAID EXISTING PRIVATE DRIVE TO THE POINT OF BEGINNING, EXCEPT THAT PART OCCUPIED BY BUILDING.



Job Number: 539-132 EX
Thompson, Dressen & Doerner, Inc.
10836 Old Mill Rd
Omaha, NE 68154
p.402.330.8880 f.402.330.8888
td2co.com

Date: 10/24/2013
Drawn By: MRS
Reviewed By: DHN
Revision Date:

EXHIBIT "A-1"

Book
Page

Exhibit "B"

BMP Maintenance Plan
Mount Michael Garage
22520 Mount Michael Road
Elkhorn, NE 68022

OMA-20130913-888-P

I. GENERAL BMP INFORMATION

BMP ID Name	Location	Legal Description
GS-1	See Exhibit 'A'	See Exhibit 'A'

II. BMP SITE LOCATION MAP
See Exhibit 'A'

III. ROUTINE MAINTENANCE TASKS AND SCHEDULE

GS-1: Grass Swale

Grass Swale Maintenance Tasks and Schedule	
Task	Schedule
Trash/Debris Removal	Monthly
Inspect for Vegetation Failure	Monthly
Repair and Damages	As Needed

- IV. 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 inspections reports shall be performed by a registered Nebraska professional engineer, architect, or qualified professional.