

MISC 2014034884



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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
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2014034884

POST CONSTRUCTION STORMWATER MANAGEMENT PLAN MAINTENANCE AGREEMENT AND EASEMENT

WHEREAS, WaittCorp Real Estate LLC recognizes that stormwater management facilities (hereinafter referred to as "the facility" or "facilities") must be maintained for the development called Aksarben Village Temporary Parking located in the jurisdiction of the City of Omaha, Douglas County, Nebraska; and,

WHEREAS, the Property Owner (whether one of more) is the owner of Lots 1 & 2, Aksarben Village Replat 12 (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-20140428-2522-P, (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 or its designee.
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 reasonable attorney fees shall be added to the recovery to the successful party.

6. The Property 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.
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 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 judgment 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 (s) has/ have executed this agreement this 5th day of May, 2014.

INDIVIDUAL, PARTNERSHIP and/or CORPORATION

WaittCorp Real Estate LLC

 Name of Individual, Partnership and/or Corporation

Kendra J. Pingenberg

 Name

General Counsel

 Title

Kendra J. Pingenberg

 Signature

 Name of Individual, Partnership and/or Corporation

 Name

 Title

 Signature

 Name of Individual, Partnership and/or Corporation

 Name

 Title

 Signature

 Name of Individual, Partnership and/or Corporation

 Name

 Title

 Signature

ACKNOWLEDGMENT

State Nebraska)
County Douglas)

On this 9 day of May, 2014, before me, a Notary Public, in and for said County, personally came the above named:

Kendra Rulienberg

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 for the purpose therein stated.

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

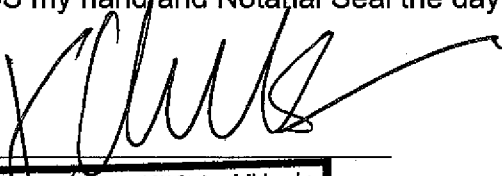

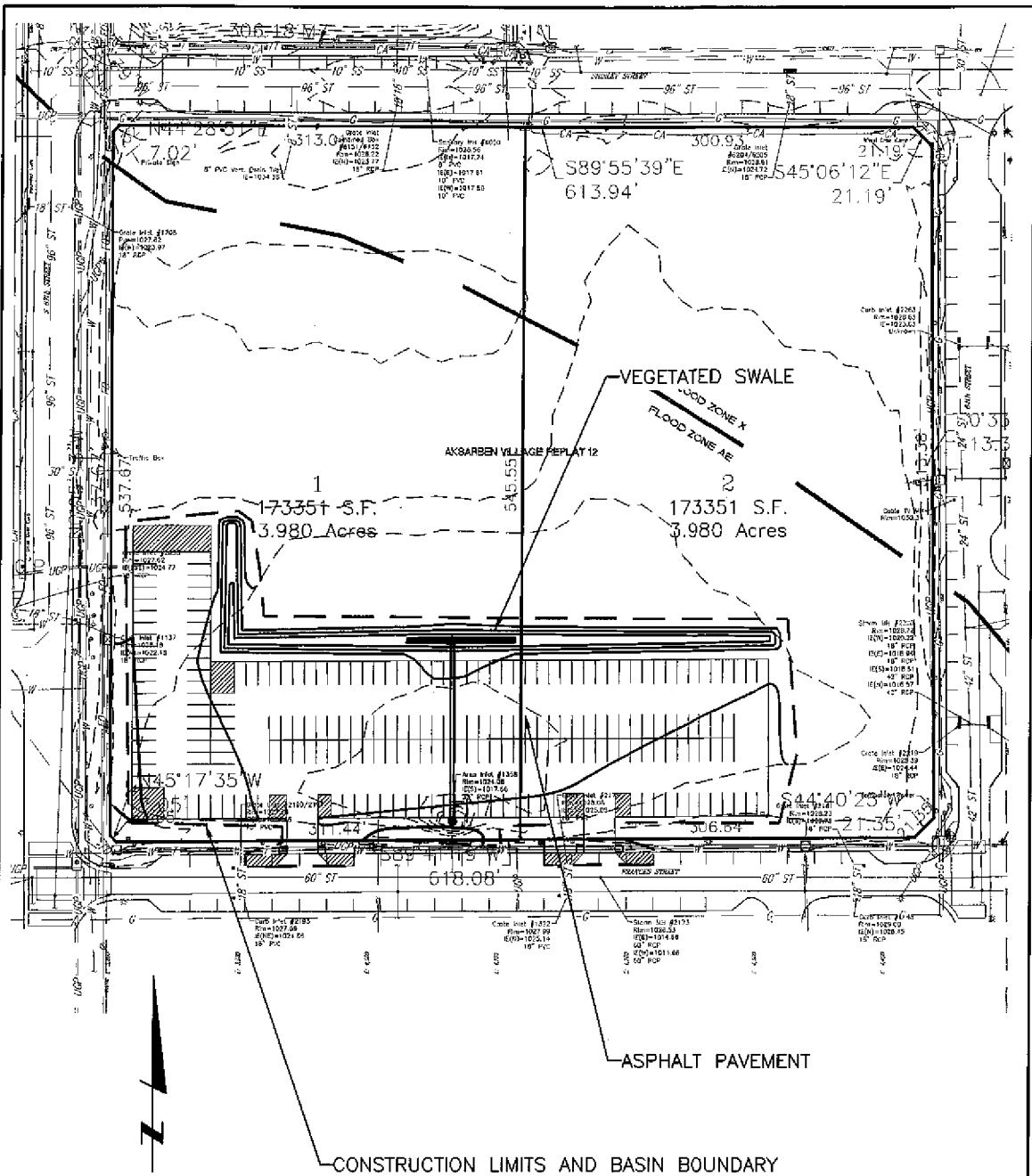

Notary Public

Notary Seal

Exhibit “A”

Insert Real Property Depiction



LEGAL DESCRIPTION

LOT 1 AND LOT 2, AKSARBEN VILLAGE REPLAT 12
 OMAHA, NEBRASKA



**LAMP RYNEARSON
 & ASSOCIATES**

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Exhibit “B”

Insert BMP Maintenance Requirements
(See Guidance Document for Information Needed)

**EXHIBIT "B" ATTACHMENT
BMP MAINTENANCE REQUIREMENTS**

Name and Location

Project Name: Aksarben Village Temporary Parking

Address: 67th and Frances, Omaha, NE 68016

PCSMP Project Number: PCSMP OMA-20140428-2522-P

Site Data

Total Study Area: 2.2 Acres

Total Disturbed Area: 2.2 Acres

BMP Information and Maintenance

Vegetate Swale	
Task	Schedule
Remove trash and debris	Monthly
Check and repair eroded areas	Monthly
Check vegetation and reseed or sod bare areas.	Monthly
Inspect for ponding, washed out areas, soil conditions	Monthly
Remove unwanted vegetation	Monthly
Inspect collection system (underdrains, cleanouts, inlets, manholes, etc.) for proper functioning	Quarterly
Repair broken pipes	As needed
Remove sediment	As needed