



MISC 2011084282



OCT 05 2011 09:21 P 7

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COMP: BW

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
10/05/2011 09:21:42.00



2011084282

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THE ABOVE SPACE IS RESERVED FOR THE REGISTER OF DEEDS RECORDING INFORMATION

**THIS PAGE INCLUDED  
FOR INDEXING**



## POST CONSTRUCTION STORMWATER MANAGEMENT PLAN MAINTENANCE AGREEMENT AND EASEMENT

**WHEREAS**, Hy-Vee, Inc. recognizes that stormwater management facilities (hereinafter referred to as "the facility" or "facilities") must be maintained for the development called Pacific Springs Place 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 property depicted on Exhibit "A" (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, PWD Project No. OPW51916 - PCSMP, (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  
x this 10<sup>th</sup> day of August, 2011.

**INDIVIDUAL, PARTNERSHIP and/or CORPORATION**

<u>HY-VEE, INC.</u> Name of Individual, Partnership and/or Corporation
<u>DENNIS AUSEMHUS</u> Name
<u>SVP, REAL ESTATE &amp; ENGINEERING</u> Title
<u>[Signature]</u> 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

IOWA )  
State

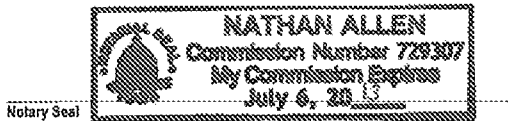
POIK )  
County

On this 10<sup>th</sup> day of August, 2011 before me, a Notary Public, in and for said County, personally came the above named: Dennis Ausehus

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.

Nathan Allen  
Notary Public



## **Exhibit "A"**

### **Real Property Depiction**

#### **PROJECT INFORMATION**

Legal Description:

PACIFIC SPRINGS PLACE, LOTS 1 THROUGH 8, AND OUTLOTS A THROUGH D

Property Address: NE Corner of 180<sup>th</sup> & Pacific

Subdivision Name: Pacific Springs Place

Section: SW ¼ S21 – T15N – R11E

#### **APPLICANT INFORMATION**

Business Name: Hy-Vee, Inc.

Business Address: 5820 Westown Pkwy.  
Des Moines, IA 50266

Representative's Name: John Brehm

Representative's Email Address: [jbrehm@hy-vee.com](mailto:jbrehm@hy-vee.com)

Representative's Phone Number: 515.267.2800

Representative's Fax Number: 515.267.2935

## Exhibit "B"

### BMP Maintenance Requirements

#### Name & Location

Project Name: HyVee – Pacific Springs  
 Address: NE Corner of 180<sup>th</sup> & Pacific  
 PCWP Project Number: OMA20100603-1088-1  
 PWD Building Permit #: OPW51916-PCSMP

#### Site Data

Total Site Area: 17.74 Acres  
 Total Disturbed Area: 17.96 Acres  
 Total Undisturbed Area: 0.00 Acres  
 Impervious Area Before Construction: 1%  
 Impervious Area After Construction: 51%

#### BMP Information

BMP ID	Type of BMP	Northing/Easting	Latitude/Longitude
BMP A	Extended Dry Detention Pond	N: 10300 E: 9065	41°15'03" N 96°11'44" W
BMP B	Extended Dry Detention Pond	N: 9900 E: 9835	41°14'59" N 96°11'34" W
BMP C	Extended Dry Detention Pond	N: 9585 E: 9590	41°14'56" N 96°11'36" W

BMP Type (Dry Detention Pond)	
Task	Schedule
Remove debris and trash from trash rack and side slopes	Monthly
Outlet/inlet inspection and cleanout	Monthly
Bank mowing and inspection/stabilization of eroded areas	Monthly
Remove woody vegetation along embankment	Annually
Inspect for structural damage	Annually
Repair broken pipes	As needed
Replace riprap choked with sediment	As needed
Security	As needed
Remove accumulated sediment	As needed

#### 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.