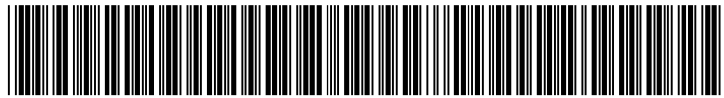




MISC 2013085706



AUG 21 2013 14:19 P 7

Fee amount: 46.00  
FB: 0c-42361  
COMP: PN

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
08/21/2013 14:19:19.00



2013085706

### POST CONSTRUCTION STORM WATER MANAGEMENT PLAN MAINTENANCE AGREEMENT

This Post Construction Storm Water Management Plan Maintenance Agreement (hereinafter referred to as the "Agreement") is entered in to as of the date set forth below by and between **Dodge Street Apartments III, L.L.C.**, a Nebraska limited liability company (hereinafter referred to as the "Property Owner") and the City of Omaha, Nebraska (hereinafter referred to as the "City"). The Property Owner and the City are sometimes referred to herein as the "Parties".

WHEREAS, the Property Owner (whether one of more) is the owner of the real property legally described on Exhibit "A" which is attached hereto and incorporated herein by this reference (hereinafter referred to as "the Property");

WHEREAS, the Parties recognize that the health, safety and welfare of the citizens of the City require that storm water management facilities (hereinafter referred to as the "Facilities") must be constructed and maintained in conjunction with the development of the Property, which Property is located in the jurisdiction of the City;

WHEREAS, reference is made to the Post Construction Storm Water Management Plan for **West Dodge Hills Lot 23 Apartments**, designated as Public Works Department project number **OMA-20130508-826-P**, hereinafter referred to as the "PCSMP", which has been prepared by the Property Owner and approved by the City, and which is attached hereto as Exhibit "B" and incorporated herein by this reference; and,

WHEREAS, the Property Owner agrees that its obligations hereunder shall be binding on present and future owners of the Property, including administrators, executors, successors, heirs, or assigns as the case may be.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt of which is hereby acknowledged by the Parties, the foregoing premises and the terms and provisions contained herein, the Property Owner agrees as follows:

1. The Facilities described in the PCSMP shall be constructed by the Property Owner in accordance with the PCSMP, which has been prepared by the Property Owner and which has been reviewed and accepted by the City or its designee. The Property Owner hereby reserves the right to continue to use the land on which the PCSMP is constructed for any uses or purposes which do not materially interfere with the use or operation of the Facilities or the BMP Maintenance Requirements (defined below).
2. The Property Owner has prepared, and the City has reviewed and accepted the "BMP

Maintenance Requirements” which are attached hereto as Exhibit “C” and which are incorporated herein by this reference. Such BMP Maintenance Requirements shall describe the specific maintenance practices to be performed for the Facilities and include a schedule for implementation of these practices. A written record of inspection results and any maintenance work shall be maintained and available for review by the City.

3. The Property Owner shall, at its sole expense, construct and perpetually operate and maintain the Facilities in strict accordance with the BMP Maintenance Requirements.
4. The Property Owner hereby grants permission to the City, its authorized agents and employees, upon reasonable notice and at reasonable times, to enter upon the Property, for inspections to ensure that the Facilities are maintained in accordance with this Agreement; provided, however, any such access by the City onto the Property shall be limited to paved areas and any pervious areas around the Facilities to the extent reasonably necessary to inspect the Facilities.
5. In the event an inspection reveals that the Facilities have not been maintained in accordance with this Agreement and corrective action is needed, the City shall provide the Property Owner with written notice specifying what corrective action is reasonably required. If the Property Owner has not completed the corrective actions within thirty (30) days of receipt of such notice, the City may perform the necessary corrective work. In the event of an emergency as determined by the City or its designee in its sole discretion, the City or its designee is authorized to enter the Property to make all repairs, and to perform all maintenance, construction and reconstruction as the City reasonably deems necessary. The City shall be entitled to recover from the Property Owner the reasonable costs the City reasonably expends to maintain or repair the Facilities or to correct operational deficiencies in accordance with this Agreement or applicable law. Failure to pay the City all of its reasonably expended costs, after forty-five days written notice, shall constitute a breach of this Agreement. The City shall thereafter be entitled to bring an action against the Property Owner to recover such costs,-including interest and attorney fees.
6. The Property Owner shall not obligate the City to maintain or repair the Facilities, and the City shall not be liable to any person for the condition or operation of the Facilities.
7. The Property Owner 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 Facilities by the Property Owner, unless such damages, accidents, casualties, occurrences or claims are caused by the negligence, gross negligence or willful misconduct of the City or its authorized agents or employees. 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 have the right to defend and settle, at its own expense, any suit based on such claim. If a final judgment is entered against the City for such a claim, the Property Owner shall pay such judgment unless such judgment is based on the negligence, gross negligence or willful misconduct of the City or its agents or employees.
8. The Property Owner shall not in any way diminish, limit or restrict the right of the City to enforce any of its ordinances as authorized by law.
9. The Property Owner shall comply with the time periods set forth in this Agreement; provided, however, that said periods shall be extended for a period or periods of time equal to any period or periods of delay caused by strikes, lockouts, fire or other casualty, the elements or acts of God, refusal or failure of governmental authorities to grant

necessary permits and approvals for the construction of the Facilities contemplated hereunder (the Parties agreeing to use reasonable diligence to procure the same), or other causes, other than financial beyond their reasonable control.

- 10. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Parties.
- 11. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.
- 12. This Agreement contains the entire agreement between the Parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement may be modified by only written agreement of the City and the Property Owner.
- 13. This Agreement may be modified by written agreement of the Parties hereto.
- 14. Upon conveyance of the Property, the conveying owner shall thereafter be relieved of any obligations under this Agreement arising out of any act, occurrence or omission that occurs after the date of such conveyance.
- 15. 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, and inure to the benefit of the Property Owner, its successors and assigns.

IN WITNESS WHEREOF, the Property Owner has executed this agreement this 19 day of August, 2013.

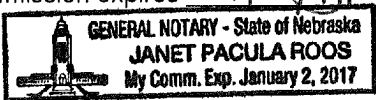
DECLARANT: **Dodge Street Apartments III, L.L.C.**

By: Howard Kooper  
Its: Member/Manager

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF DOUGLAS        )

On this 19 day of August, 2013, before me, a Notary Public in and for said County and State, personally appeared **Howard Kooper of Dodge Street Apartments III, L.L.C., Member/Manager** a Nebraska limited liability company, who executed the above and acknowledged the execution thereof to be his voluntary act and deed on behalf of said limited liability company.

Janet Pacula Roos  
NOTARY PUBLIC  
My Commission expires 1/2/17



**EXHIBIT 'A'**

**PROJECT INFORMATION**

Legal Description: Lot 23 West Dodge Hills, an Addition to the City of Omaha, Douglas County, Nebraska.

Subdivision Name: West Dodge Hills

Section: 20-15-11

**PROJECT INFORMATION**

Business Name: Dodge Street Apartments III, L.L.C.

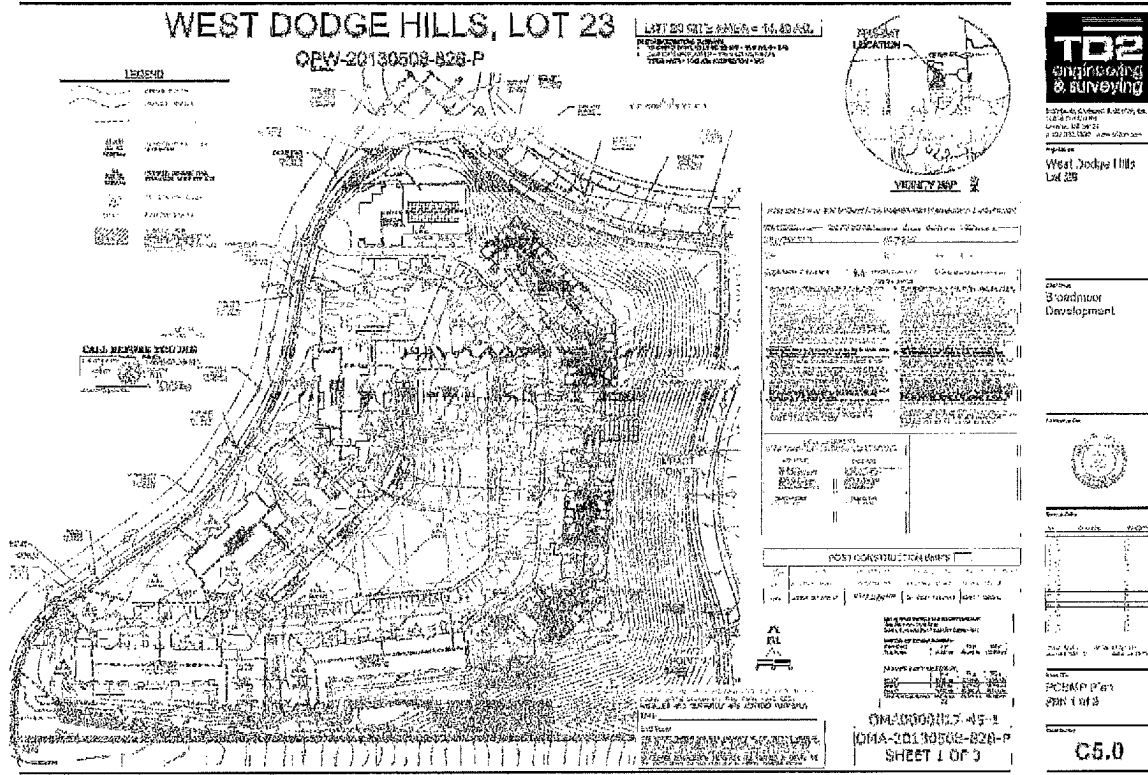
Business Address: 809 North 96<sup>th</sup> Street  
Omaha, NE 68114

Contact Representative's Name: Bob Stratton

Contact Representative's Phone Number: (402) 392-1800

Signing Representative's Name: Howard Kooper

EXHIBIT 'B'



Post Construction Storm Water Management Plan (PCSM)

## EXHIBIT 'C'

### BMP Maintenance Requirements

#### **Name & Location**

Project Name: West Dodge Hills Lot 23 Apartments  
PCSMP Project Number: OMA-20130508-826-P  
PCWP Grading Permit #: OMA0000017-45-1

#### **Site Data**

Total Site Area: 14.43 AC  
Total Disturbed Area: 14.43 AC  
Total Undisturbed Area: 0 AC  
Impervious Area Before Construction: 0%  
Impervious Area After Construction: 80%

#### **BMP Information**

BMP ID	TYPE OF BMP	Northing/Easting
BRG-1	Bio-Retention Garden	N 41.257989 E 96.203065
UGS-1	Underground Storage – StormTech MC-3500 Chambers w/ Isolator Row	N 41.258704 E 96.202535

#### **Operations and Maintenance Guidelines**

*Note: Annual maintenance inspection reports shall be performed by a registered Nebraska professional engineer, architect, or qualified professional.*

#### ➤ **UGS-1: StormTech® Isolator™ Row**

##### Inspection and Cleaning Cycle:

Inspections shall begin immediately after construction is completed and thereafter on a bi-annual basis until an understanding of the sites characteristics is developed whereas the inspection manager and owner can then revise the inspection schedule based on experience or local requirements.

##### Inspection and Maintenance Instructions:

To inspect the StormTech® Isolator™ Row for sediment, first remove the cover from the manhole at the end of the Isolator Row (note that there is a manhole located at either end of the Isolator Row). Using a flashlight, inspect down Isolator Row through the outlet pipe. Mirrors on poles or cameras may be used to avoid confined space entry. If entering the manhole, follow OSHA regulations for confined spaces. Visually inspect the sediment depth, and, if the sediment is at or above the lower row of sidewall holes (approximately 3"), follow the maintenance procedures listed below. If the sediment is at an acceptable level, replace all caps, lids and covers. Inspect and clean all inlets, catch basins, and manholes upstream of the StormTech system.

##### Maintenance Instructions:

Perform JetVac maintenance if sediment has been collected to an average depth of 3" inside the Isolator Row. The JetVac process utilizes a high pressure water nozzle to propel itself down the Isolator Row while scouring and suspending sediments. As the nozzle is retrieved, a wave of suspended sediments is flushed back into the manhole for vacuuming. Use a JetVac nozzle designed for culverts or large diameter pipe cleaning. Rear facing jets with an effective spread of at least 45" are best. Dispose of the polluted water, oils, sediment, and trash at an approved facility.

- Local regulations prohibit the discharge of solid material into the sanitary sewer system.

- It is the responsibility of the person providing the maintenance to the StormTech Chambers to dispose of the pollutants in accordance with local, state, and federal regulations.

*Note: The current StormTech Isolator Rom O & M Manual can be viewed at: [http://www.stormtech.com/download\\_files/pdf/OperationMaintenanceManual.pdf](http://www.stormtech.com/download_files/pdf/OperationMaintenanceManual.pdf)*

Annual maintenance inspection reports must be commissioned by the property owner and provided to the City upon request. The first report shall be conducted according to Exhibit 'C' (Routine Maintenance Tasks and Schedule) as noted above, and each year thereafter. All maintenance activities and inspection reports must kept on file with the property owner for a minimum of five years. The maintenance and inspection reports shall at a minimum include the following information;

- Date and time inspection was performed.
- Visual inspection of Isolator Row.
- Sediment depths.
- Date and time routine maintenance was performed on StormTech Isolator.

The following is a sample maintenance log which may be used to record this information;

Date	Stadia Rod Readings		Sediment Depth (1) - (2) (ft)	Observations / Actions	Observer
	Fixed Point to Chamber Bottom (ft)	Fixed Point to Top of Sediment (ft)			
3/15/01	6.3	none		New installation. Fixed point is CI frame at grade	BLL
9/24/01		6.2	0.1	Some grit felt	BLL
6/20/03		5.8	0.5	Mucky feel, debris visible in manhole and in Isolator row, maintenance due	BLL
7/7/03	6.3	0	0	System jetted and vacuumed	BLL

➤ **BRG-1: Bio-Retention Garden**

<b>BMP Type (Bio-retention Garden)</b>	
<b>Task</b>	<b>Schedule</b>
Inspect for accumulation of trash, leaves and other debris and remove as required	Weekly During Mowing Season (March - October)
Inspect after rainfall events to determine if system is draining properly	After rainfall events of 1" per 24 hour period or greater
Remove weeds and maintain plantings	Monthly During Mowing Season (March-October)
Remove and Replace Amended Soil	As Needed (When evidence of plugging is apparent) (if applicable)

**Ongoing Maintenance Operations**

Yearly inspections are required. Observe soil amended areas for bare or eroded areas and stabilize with grass or other landscaping. Observe plant vigor and fertilize as necessary