

Cx 54



**STORMWATER MANAGEMENT PLAN
MAINTENANCE AGREEMENT AND EASEMENT**

14

WHEREAS, Apples Way, LLC, a Nebraska limited liability company is the owner of:
Lot 84 Irregular Tract, located in the northeast quarter of Section 36, Township 9 North,
Range 6 East of the 6th. p.m., City of Lincoln, Lancaster County, Nebraska
(collectively the "Property"); and

WHEREAS, Apples Way, LLC, a Nebraska limited liability company shall be referred to hereinafter as the "Property Owner", and its administrators, executors, successors, heirs and assigns, shall hereinafter be referred to collectively as the "Successors"; and

WHEREAS, the City of Lincoln, Nebraska (hereinafter the "City") requires and the Property Owner agrees that the health, safety and welfare of the citizens of the City require that stormwater management facilities (hereinafter referred to as the "facilities") must be constructed and perpetually maintained on the Property.

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 Property Owner shall construct the facilities at its sole expense, in strict accordance with the Iron Ridge (west side) plan attached as Exhibit A (the "Drainage Plan"), which has been reviewed and approved by the City.
2. The Property Owner and its Successors shall perpetually maintain, at their sole expense, the facilities in strict accordance with the Drainage Plan, which shall include all of the inspection and maintenance activity described in the Maintenance Form attached as Exhibit B. The Property Owner and its successors shall also comply with any requirements set forth in Lincoln Municipal Code, the City's Drainage Criteria Manual, and City's Design Standards.
3. The Property Owner and its Successors shall submit an annual maintenance report for the facilities in the form of Exhibit B to the City commencing one year from the date of this Agreement. Said report shall be sent to the City of Lincoln Watershed Management, 555 S. 10th Street, Suite 203, Lincoln, Nebraska 68508.
4. The Property Owner and its Successors hereby grant the City, its authorized agents and employees, permission to enter upon the Property and to inspect the facilities whenever the City deems necessary. The City shall provide the Property Owner copies of any inspection findings and a directive to commence repairs if necessary. If repairs to the facilities are necessary, the Property Owner must provide the City a written response within seven calendar days addressing what actions will be taken to correct any deficiencies and providing a schedule of repairs within a reasonable timeframe. Whenever possible, the City will provide notice prior to entry.

Tim Gergen
1010 Lincoln Mall #200
Lincoln NE 68502

5. The Property Owner and its Successors agree that should it fail to correct any defects in the facilities within a reasonable time frame agreed to in the response by the Property Owner for corrective actions, or shall fail to maintain the facilities in accordance with the attached Exhibit A and with the law and applicable executive regulations or, 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 or its designee deems necessary.
6. The City shall indemnify and hold the Property Owner harmless from and against any and all damages, accidents, casualties, occurrences or claims that may arise or be asserted against the Property Owner as a result of the entrance of the City, its authorized agents or employees upon the Property, except for any claim arising solely due to the negligence of the Property Owner.

The City or its designee shall have the right to recover from the Property Owner any and all reasonable costs the City expends to maintain or repair the facilities or to correct any operational deficiencies subject to the provisions of the immediately preceding sentence relating to acts of the City. Failure to pay the City or its designee all of its expended costs, after forty-five days written notice, shall constitute a breach of the Agreement. The City 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 the Agreement against the Property, or both. Interest, collection costs, and reasonable attorney fees shall be added to the recovery of the successful party.

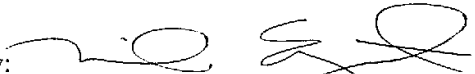
7. The Property Owner shall not obligate the City to maintain or repair the facilities, and the City shall not be liable to any person for the condition or operation of the facilities.
8. The Property Owner and its Successors hereby indemnify and hold harmless the City and its authorized agents and employees 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. 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 and the Property Owner, each will be required to defend any such suit or claim 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 therewith except to the extent of the negligence or intentional act of the City.
9. 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.

10. The Agreement shall be recorded with the Register of Deeds of Lancaster County, Nebraska and shall constitute a covenant running with the land and shall be binding on the Property Owner and its Successors, including any homeowners or business association or any other successors in interest.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates as set forth below.

“CITY”

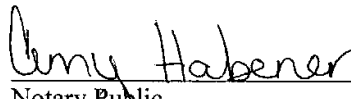
CITY OF LINCOLN, NEBRASKA,
a municipal corporation

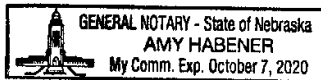
By: 
Miki Esposito, Director of Public Works and
Utilities

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 26th day of December, 2017, by Miki Esposito, Director of Public Works and Utilities of the **City of Lincoln, Nebraska**, a municipal corporation, on behalf of the municipal corporation.

(Seal)

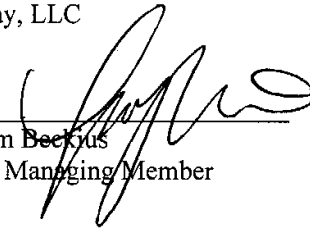

Notary Public



IN WITNESS WHEREOF, the Property Owner has executed this agreement this 21 day of December, 2017.

Apples Way, LLC

By:

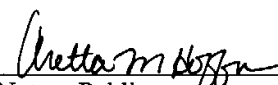

Tom Beckius
Its: Managing Member

ACKNOWLEDGMENT

Texas
State of ~~Nebraska~~)
Harris
County of ~~Lancaster~~)

The foregoing instrument was acknowledged before me this 21st day of December, 2017, by Tom Beckius the Managing Member of Apples Way, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

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



Notary Public

Notary Seal

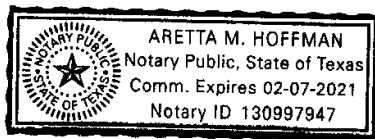
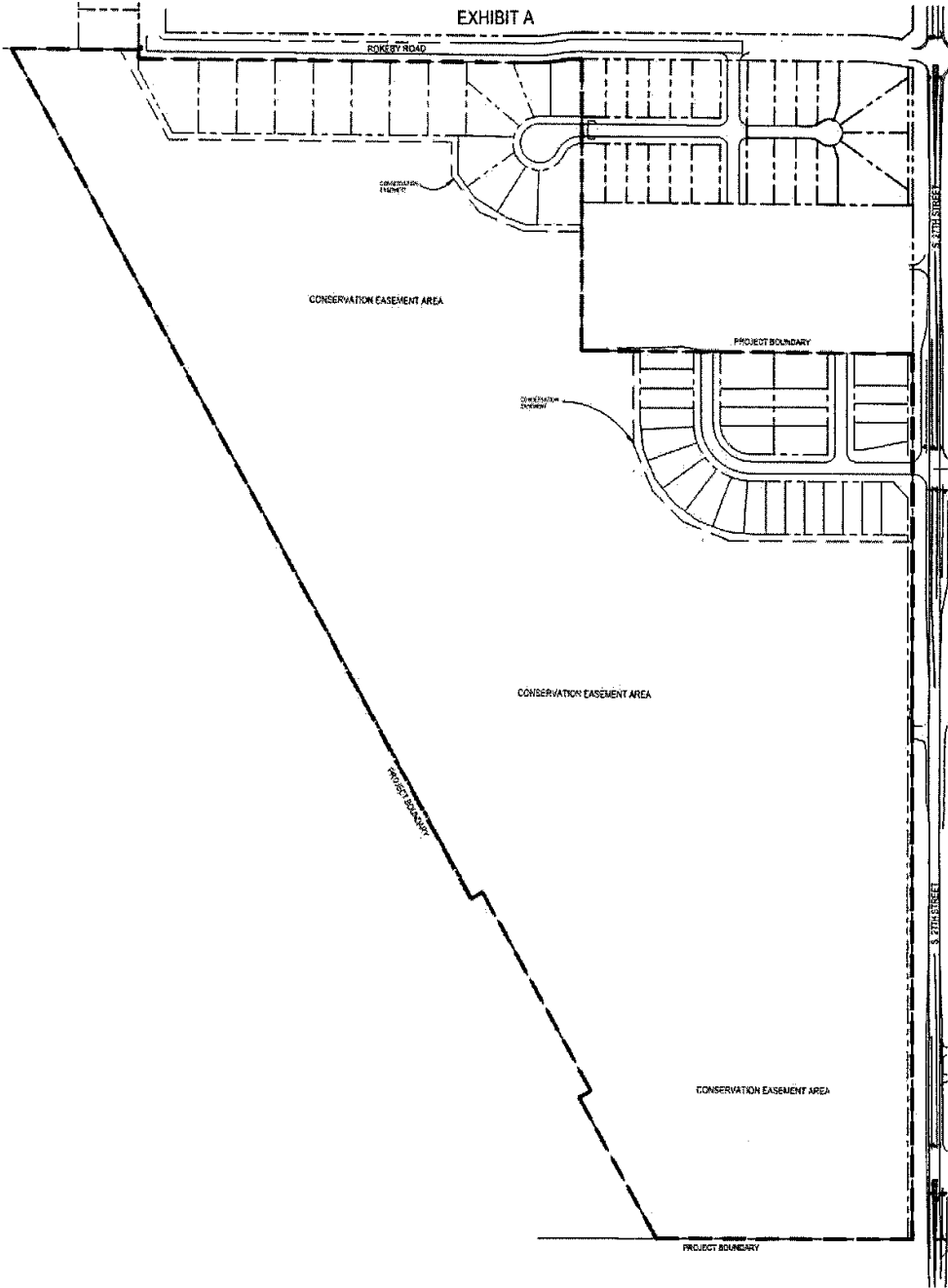


EXHIBIT A
DRAINAGE PLAN



**EXHIBIT B
MAINTENANCE FORM**

Site Name: Iron Ridge (west side)

Location: South 27th Street and Rokeby Road (southwest corner of the intersection)

Owner: Apple's Way LLC

Contact Information: Tom Beckius
 6333 Apples Way, Suite 115
 Lincoln, NE 68516
 402-435-0000
 tbeckius@theinagroup.com

Inspection Date:

Inspection By:

Site Conditions:

Date of Previous Inspection:

Inspection Activity*	Maintenance Needed	Description of Required Maintenance Activity	Date Maintenance Completed
Control Weeds (remove manually by hand or mowing)			
Remove debris			
Check for standing water issues (< 40 hrs after rainfall event)			
Check for accumulated sediment, remove as needed			
If irrigated, check for any necessary repairs (drain irrigation line in Fall)			

* Some activities such as weed control will need to be done more frequently during the first few years of establishment