



MISC 2011097058



NOV 10 2011 15:57 P 10

Fee amount: 51.00
FB: 0C-42361
COMP: SB

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
11/10/2011 15:57:17.00



2011097058

DECLARATION OF STORM WATER DETENTION FACILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That West Dundee Development Co., LLC, a Nebraska limited liability company, hereinafter referred to as "GRANTOR," for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, reserve and convey to VPP Development, LLC, a Nebraska limited liability company, the owner of Lot 1, in West Dodge Hills, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska ("LOT 1"), and to its successors and assigns in ownership of LOT 1, referred to herein as "GRANTEE", a non-exclusive easement to initially construct, and thereafter to access and use, a storm water detention facility, and the appurtenances thereto (collectively the "DETENTION FACILITY"), in and throughout, on and under a portion of the parcel of land legally described as Outlot A, in West Dodge Hills, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, as depicted on Exhibit "A" attached hereto (the "EASEMENT PARCEL") in order to detain and treat the storm water present to the extent needed to meet the detention/water quality calculations required for improvements constructed on LOT 1 and hereinafter referred to as the "DETENTION EASEMENT."

The scope and purpose of the DETENTION EASEMENT is to permit GRANTEE to (i) initially construct the DETENTION FACILITY within the EASEMENT PARCEL, at GRANTEE's sole cost and expense and pursuant to the design standards reasonably approved by GRANTOR, and (ii) operate, maintain, repair and replace the DETENTION FACILITY for the detention of storm water runoff from LOT 1, and for no other purpose.

TO HAVE AND TO HOLD unto GRANTEE, and its successors and assigns in ownership of LOT 1 in perpetuity.

GRANTOR may, following construction of the DETENTION FACILITY, continue to use the DETENTION EASEMENT subject only to the right of the GRANTEE to use the same for the purposes herein expressed.

It is further agreed as follows:

1. No buildings, improvements, or other structures shall be placed in, on, over, or across the EASEMENT PARCEL by GRANTOR, or its successors and assigns without the express approval of GRANTEE except however that landscaping, lawn irrigation systems, roads,

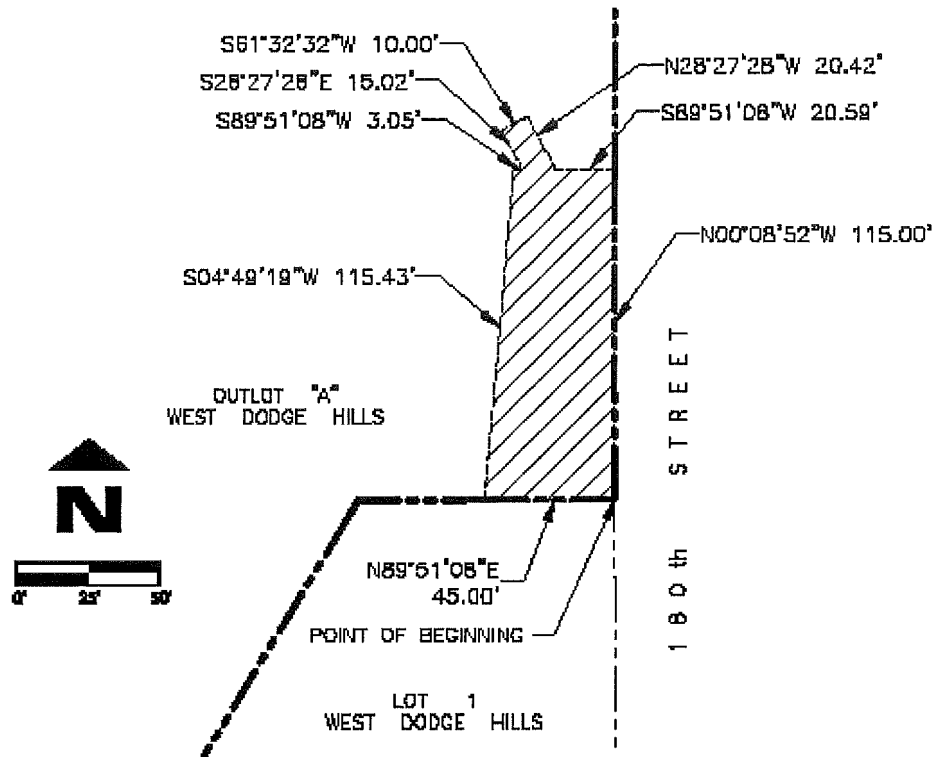
streets, sidewalks, parking area surfacing, parking lot lighting, communication duct banks, pneumatic communication tubes, sanitary sewer service crossings, water main crossings, storm sewer systems and pavement may be installed in the EASEMENT PARCEL if there is no potential storm water displacement. Such permitted improvements shall be maintained by GRANTOR and its successors and assigns.

2. GRANTEE and its successors and assigns do hereby agree to inspect, maintain, repair and replace the DETENTION FACILITY as needed following the initial construction by GRANTEE. In the event GRANTEE and its successors and assigns fail to maintain, repair and replace the DETENTION FACILITY as needed after receipt of ten (10) days written notice thereof from GRANTOR, weather permitting, then GRANTOR shall have the right to perform such maintenance, repair and replacement, in which event GRANTEE shall reimburse GRANTOR for the reasonable cost of maintenance, repair and replacement of the DETENTION FACILITY by GRANTOR, and GRANTOR shall have a lien on LOT 1 for such cost by filing a notice of lien with the Douglas County Register of Deeds.
3. GRANTOR and GRANTEE shall cause the EASEMENT PARCEL to be left in a reasonably neat and orderly condition if it enters the same. The DETENTION EASEMENT is also for the benefit of any contractor, agent, employee, or representative of GRANTOR and GRANTEE.
4. GRANTEE, or its successors and assigns in ownership of LOT 1, shall be solely responsible for the design and operation of the DETENTION FACILITY, notwithstanding any approval of such design by GRANTOR. GRANTEE acknowledges that GRANTOR has made no, and makes no, representations or warranties, express or implied, as to the suitability of the EASEMENT PARCEL for the purposes herein described. GRANTEE, or its successors and assigns in ownership of LOT 1, shall be responsible, at its sole cost and expense, for compliance with all federal, state and local laws, ordinances, codes, rules and regulations now or hereafter existing respecting the design, construction, operation, maintenance, repair and replacement of the DETENTION FACILITY and the owner of LOT 1 shall indemnify and hold harmless GRANTOR from any and all liabilities, costs or expenses associated with the DETENTION FACILITY including, without limitation, the Post Construction Storm Water Management Plan Maintenance Agreement attached hereto as Exhibit "B" ("MAINTENANCE AGREEMENT").
5. The execution and delivery of this instrument shall be conditioned on GRANTEE's concurrent execution, delivery and recording of the MAINTENANCE AGREEMENT.
6. This instrument contains the entire agreement of the parties with respect to the subject matter hereof.

**[Space Below Intentionally Left Blank –
Signature Page to Follow]**

EXHIBIT "A" Easement Parcel

11/2/2011 14:17 PM D201 JAMES WATSON/DAVID Wagon Field Pediatrics - 526/Engineering/2011/2011.dwg



LEGAL DESCRIPTION

THAT PART OF OUTLOT "A", WEST DODGE HILLS, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF LOT 1, SAID WEST DODGE HILLS;

THENCE N00°08'52"W (ASSUMED BEARING) 115.00 FEET ON THE EAST LINE OF SAID OUTLOT "A"

THENCE S89°51'08"W 20.59 FEET; THENCE N28°27'28"W 20.42 FEET;

THENCE S61°32'32"W 10.00 FEET; THENCE S28°27'28"E 16.02 FEET;

THENCE S89°51'08"W 3.05 FEET;

THENCE S04°49'19"W 115.43 FEET TO THE NORTH LINE OF SAID LOT 1;

THENCE N89°51'08"E 45.00 FEET ON THE NORTH LINE OF SAID LOT 1 TO THE POINT OF BEGINNING.



Job Number: 745-343-EX1
 thompson, dreesen & comar, inc.
 10838 Old Mill Rd
 Omaha, NE 68154
 p:402.330.8960 f:402.330.8968
 tcd.com

Date: SEPT. 28, 2011
 Drawn By: FJR
 Reviewed By: FMR
 Revision Date:

EXHIBIT "A"

VILLAGE POINTE PEDIATRICS

Book
Page

EXHIBIT "B"

POST CONSTRUCTION STORMWATER MANAGEMENT PLAN MAINTENANCE AGREEMENT

WHEREAS, VPP Development, LLC, a Nebraska limited liability company ("Property Owner") recognizes that stormwater management facilities (hereinafter referred to as "the facility" or "facilities") must be maintained for the development called Village Pointe Pediatric Clinic located in the jurisdiction of the City of Omaha, Douglas County, Nebraska; and,

WHEREAS, the Property Owner (whether one or more) is the owner of Lot 1, in West Dodge Hills, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska, depicted on Exhibit "A" ("Lot 1") with easement rights over a portion of Outlot A, in West Dodge Hills, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska, as depicted on Exhibit A1 (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, Village Pointe Pediatric Clinic, OMA-20110922-205P (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 shall be constructed by the Owner in accordance with the PCSMP, which has been reviewed and accepted by the City or its designee.
2. The Owner must develop and provide the "BMP Maintenance Requirements", attached here to as Exhibit "B", which have been reviewed and accepted by the City 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.


Return to:
James D. Buser
Pansing Hogan Ernst & Boehman, LLP
10250 Regency Circle, Suite 300
Omaha, Nebraska 68114

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 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 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 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 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 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. Notwithstanding the foregoing, the City shall indemnify and hold the Owner harmless from any damage by reason of the City's negligent during such entry upon the property.
6. The City or its designee shall have the right to recover from the Owner any and all reasonable costs the City 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 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 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 Property Owner shall not obligate the City to maintain or repair the facility or facilities, and the City shall not be liable to any person for the condition or operation of the facility or facilities.
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. 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 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 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 act of the City.
9. The 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. 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 to Lot 1, including any homeowners or business association and any other successors in interest.

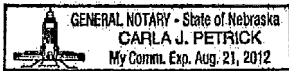
Dated this 26 day of October, 2011.

VPP DEVELOPMENT, LLC, a Nebraska limited liability company

By: 
 Thomas M. Byrne, Manager

STATE OF NEBRASKA)
) ss.
 COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this th 26 day of October, 2011, by Thomas M. Byrne, Manager of VPP Development, LLC, a Nebraska limited liability company, on behalf of the company.



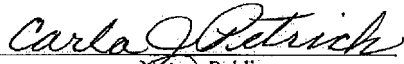
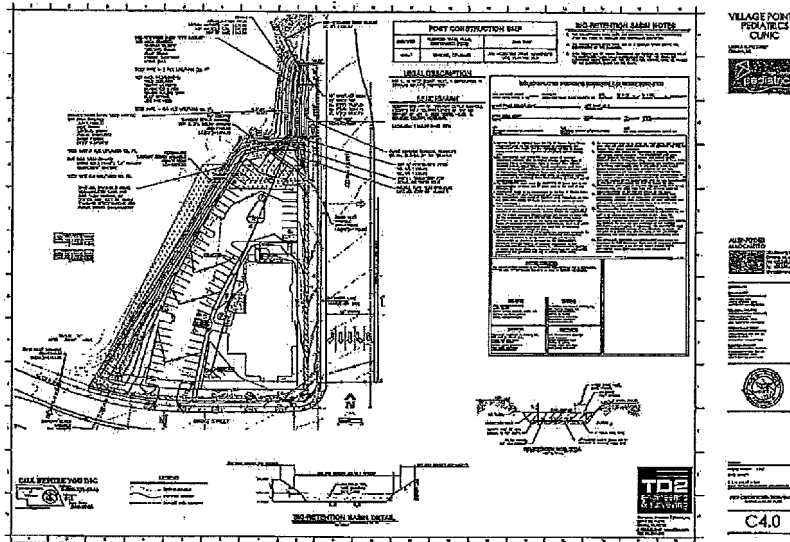

 Notary Public
my commission expires
Aug. 21, 2012

Exhibit "A"



Project Information

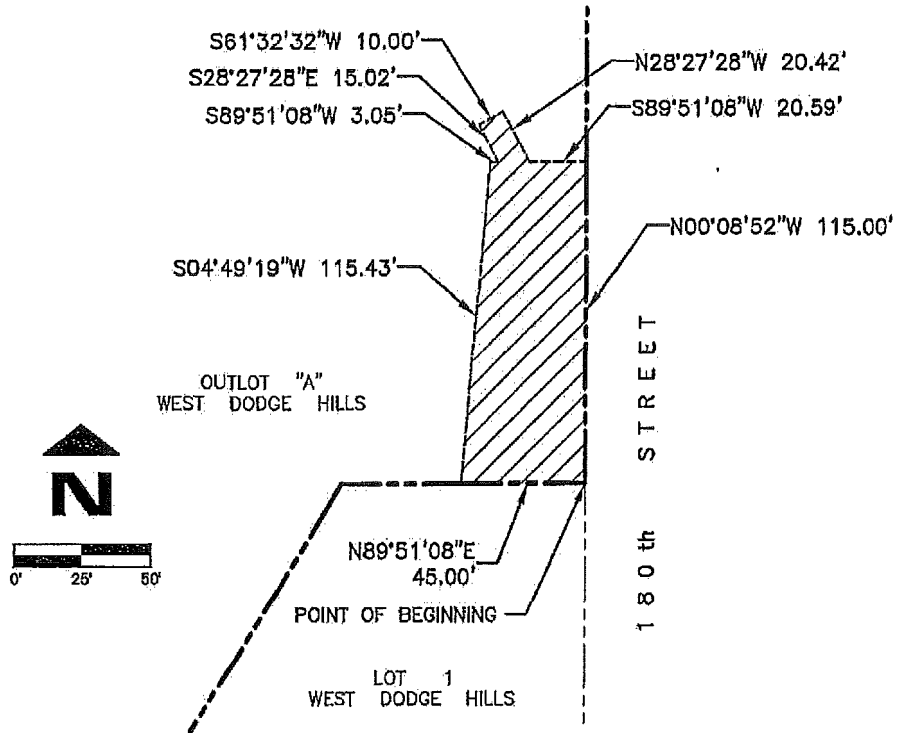
Legal Description: Lot 1, West Dodge Hills
 Property Address: 18018 Burke Street
 Omaha, NE 68022
 Subdivision Name: West Dodge Hills
 Section: S 20-15N-11E

Applicant Information

Business Name: VPP Development LLC
 Business Address: 16811 Burke Street, Suite 101
 Omaha, NE 68118
 Representatives Name: Kurt Davey
 Representative's Email: kdavey@cox.net
 Representative's Phone: (402) 573-7337

BMP Information

Name	Identifier	Latitude/Longitude
Bio-Retention Basin	BRB-1	N 41°15'31.49", W 96°11'48.91"



LEGAL DESCRIPTION

THAT PART OF OUTLOT "A", WEST DODGE HILLS, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF LOT 1, SAID WEST DODGE HILLS;

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THENCE S61°32'32"W 10.00 FEET; THENCE S28°27'28"E 15.02 FEET;

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	Job Number: 748-343-EX1 Thompson, Greesen & Dorner, Inc. 10836 Old Mill Rd Omaha, NE 68154 p.402.330.8880 f.402.330.5888 td2co.com	Date: SEPT. 22, 2011 Drawn By: RJR Reviewed By: RMB Revision Date:	<h2>EXHIBIT "A1"</h2> <p>VILLAGE POINTE PEDIATRICS</p>	Book Page

Exhibit "B"

**BMP Maintenance Plan
Village Pointe Pediatric Clinic
18018 Burke Street
Omaha, NE 68022
OMA-20110922-205-P**

I. General BMP Information

Name	Location	Legal Description
Bio-Retention Basin 1	See Exhibit A	See Exhibit A1

II. BMP Site Location Map (See Exhibit A)

III. Routine Maintenance Tasks and Schedule

Inlet Filter Maintenance Tasks and Schedule	
Task	Schedule
Trash/Debris Removal	Monthly
Inspect for Damage	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.