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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
04/28/2016 11:18:24.00



2016031053

**POST CONSTRUCTION STORMWATER MANAGEMENT PLAN
MAINTENANCE AGREEMENT**

WHEREAS, PWC Holdings, LLC, recognizes that stormwater management facilities (hereinafter referred to as "the facility" or "facilities") must be maintained for the development called **Ellison Building Expansion** located in the jurisdiction of the City of Omaha, Douglas County, Nebraska; and,

WHEREAS, PWC Holdings, LLC, is the owner (hereinafter referred to as "the Owner") of the property described on Exhibit A and Exhibit A-1, attached hereto and made a part hereof (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, OMA-20160212-3437-P, (hereinafter referred to as "PCSMP"), be constructed and maintained by the Property Owner, its administrators, executors, successors, heirs, or assigns, and

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 of Omaha or its designee.
2. The Owner must develop and provide the "BMP Maintenance Requirements", per the attached 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 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. During construction of the facilities, the 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 or its employees, contractors or agents negligent acts during such entry upon the property.
5. The 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 after 30 days' notice from City of Omaha to Owner, 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 reasonable repairs, and to perform all reasonable maintenance, construction and reconstruction. Notwithstanding the foregoing, the City shall indemnify and hold the Owner harmless from any damage by reason of the City's or its employees, contractors or agents negligence during such entry upon the property.
6. The City of Omaha or its designee shall have the right to recover from the 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 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 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, unless caused by the City of Omaha or its employees, contractors or agents.
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 unless caused by the City of Omaha or its employees, contractors or agents. 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 unless caused by the City of Omaha or its employees, contractors or agents.

9. Based on such claim unless due solely to the negligence or wrongful act 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 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 or wrongful act of the City.
10. The 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.
11. 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, including any homeowners or business association and any other successors in interest.

Dated this 25 day of April, 2016.

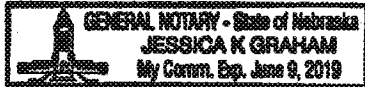
PWC Holdings, LLC.

By: [Signature]

Tracy J. Hauser, President

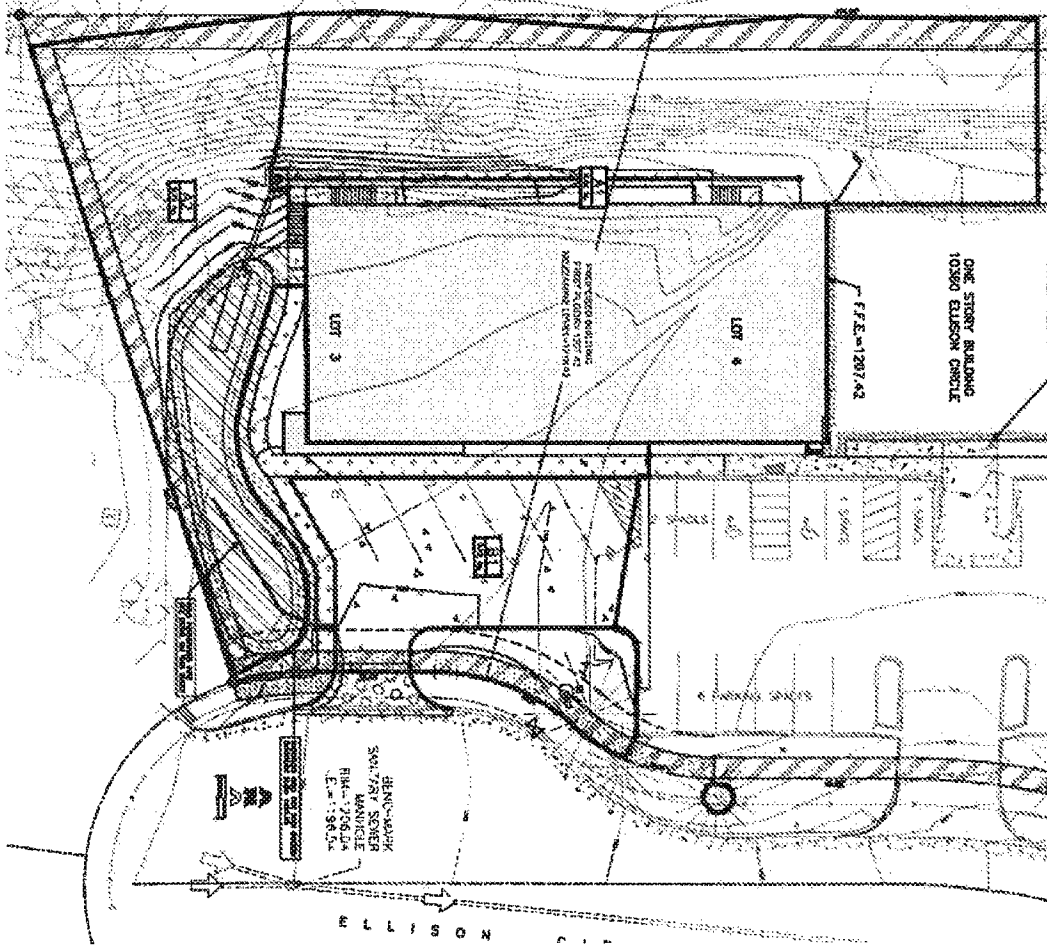
State of Nebraska)
)ss.
County of Douglas)

The foregoing agreement was acknowledged before me this 25th day of April, 2016 by Tracy J. Hauser, President of PWC Holdings, LLC.



[Signature]
Notary Public

EXHIBIT 'A'



PROJECT INFORMATION

Legal Description: Lots 3, 4 and 5, in Fort Crest Commercial Plaza an Addition to the City of Omaha, in Douglas County, Nebraska

Property Address: 10360 Ellison Circle
Omaha, NE 68134

Subdivision Name: Fort Crest Plaza

Section: SW 33-16-12

APPLICANT INFORMATION

Business Name: PWC Holdings, LLC

Business Address: 11235 Davenport Street
Omaha, NE 68134

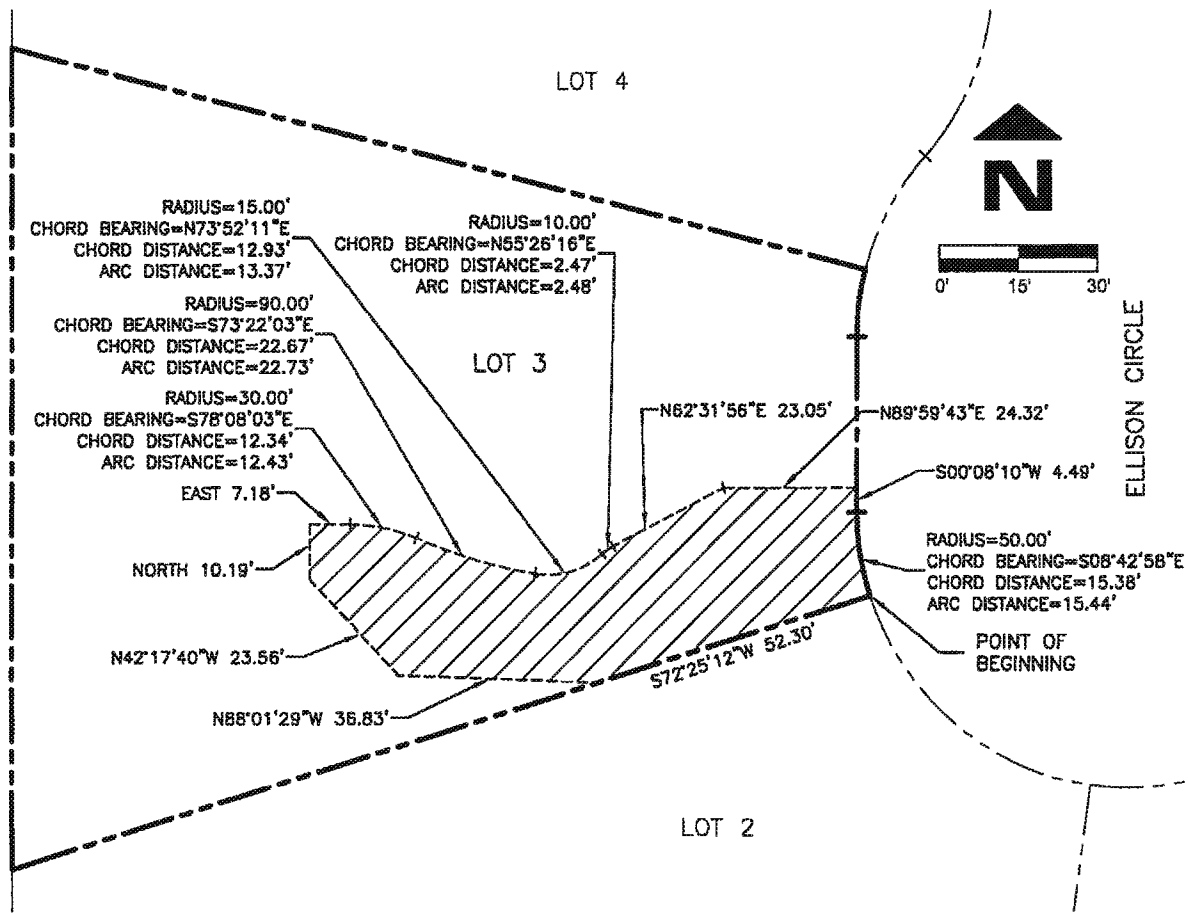
Representatives Name: Tracy J. Hauser

Representative's Email: thauser@specializedeng.com

Representative's Phone: 402-991-5520

BMP INFORMATION

Name	Description	Latitude/Longitude	State Plane Coordinates
RG-1	Rain Garden	N41.308125° W96.076192°	



LEGAL DESCRIPTION

THAT PART OF LOT 3, FORT CREST COMMERCIAL PLAZA, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 3; THENCE S72°25'12"W (ASSUMED BEARING) 52.30 FEET ON THE SOUTH LINE OF SAID LOT 3; THENCE N88°01'29"W 36.83 FEET; THENCE N42°17'40"W 23.56 FEET; THENCE NORTH 10.19 FEET; THENCE EAST 7.18 FEET; THENCE SOUTHEASTERLY ON A 30.00 FOOT RADIUS CURVE TO THE RIGHT CHORD BEARING S78°08'03"E, CHORD DISTANCE 12.34 FEET, AND ARC DISTANCE 12.43 FEET; THENCE SOUTHEASTERLY ON A 90.00 FOOT RADIUS CURVE TO THE LEFT CHORD BEARING S73°22'03"E, CHORD DISTANCE 22.67 FEET, AND ARC DISTANCE 22.73 FEET; THENCE NORTHEASTERLY ON A 15.00 FOOT RADIUS CURVE TO THE LEFT CHORD BEARING N73°52'11"E, CHORD DISTANCE 12.93 FEET, AND ARC DISTANCE 13.37 FEET; THENCE NORTHEASTERLY ON A 10.00 FOOT RADIUS CURVE TO THE RIGHT CHORD BEARING N55°26'16"E, CHORD DISTANCE 2.47 FEET, AND ARC DISTANCE 2.48 FEET; THENCE N62°31'56"E 23.05 FEET; THENCE N89°59'43"E 24.32 FEET TO THE EAST LINE OF SAID LOT 3; THENCE S00°08'10"W 4.49 FEET ON THE EAST LINE OF SAID LOT 3; THENCE SOUTHEASTERLY ON ON THE EAST LINE OF SAID LOT 3 ON A 50.00 FOOT RADIUS CURVE TO THE LEFT CHORD BEARING S08°42'58"E, CHORD DISTANCE 15.38 FEET, AN ARC DISTANCE OF 15.44 FEET TO THE POINT OF BEGINNING.


	Job Number: 1584-124 EX thompson, dressen & dorner, inc. 10836 Old Mill Rd Omaha, NE 68154 p.402.330.8860 f.402.330.5866 td2co.com	Date: 02/12/2016 Drawn By: MRS Reviewed By: DHN Revision Date:	<h2>EXHIBIT "A-1"</h2>	Book Page

Exhibit "B"
BMP Maintenance Plan
Ellison Building Expansion
OMA-20160212-3437-P

I. GENERAL BMP INFORMATION

BMP ID Name	Location	Legal Description
RG-1	See Exhibit 'A'	See Exhibit 'A-1'

II. BMP SITE LOCATION MAP
See Exhibit 'A'

III. ROUTINE MAINTENANCE TASKS AND SCHEDULE

RG-1 Rain Garden

Short Term 1-3 years

1. If possible route stormwater away from the garden initially until vegetation becomes established, typically for a 30 to 60 day timeframe
2. Water plants daily for the first couple of weeks depending on the weather, then 2-3 times per week for the next couple of weeks. Then water as needed. Additional watering may be required di-weekly during the summer months (June through August) through the first year.
3. Eliminate weeds using spot application of herbicide or manual removal throughout the first year.
4. After significant rain (single rainfall event equaling or exceeding 0.5 in.)
 - a. Redistribute mulch, remove trash and inspect vegetation
 - b. If sediment has accumulated, remove it and replace mulch and vegetation as needed
 - c. Check for erosion inside and around the rain garden. Repair erosion damage if it occurs
 - d. Visually monitor infiltration into rain garden. If ponding lasts longer than 48 hours, an alternative drain or modification may be required.
5. At one year after completion, inspect vegetation. Replace dead plants and remove invasive plant species as necessary.

Long Term 3 years or later

1. In early spring, mow or trim vegetation to between 6 and 8 inches above the ground. Remove accumulated debris.
2. Inspect vegetation 1 to 2 times each year and remove weeds and invasive species
3. Trim back or remove vegetation if it becomes overgrown.

Note: Per City of Omaha requirements, annual maintenance inspection reports shall be performed by a registered Nebraska professional engineer, architect, or qualified professional.