

MISC 2012089859



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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
9/7/2012 13:17:36.78



2012089859

POST CONSTRUCTION STORM WATER MANAGEMENT PLAN
MAINTENANCE AGREEMENT

Upon Recording Return To:
Nebraska Land Title & Abstract
3910 South Street, PO Box 6577
Lincoln, Nebraska 68506

CTC 64014

✓ 11/9/11

Upon Recording Return to:
Rich Rosenblatt
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102-2486

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**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 WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware statutory trust (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 Walmart Market #3172 at Avalon designated as Public Works Department project number OMA-20120201-469-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.

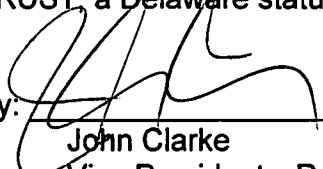
14. Upon conveyance of the Property, the conveying owner shall thereafter be relieved of any obligations under this Agreement arising out of any act, occurrence or omission that occurs after the date of such conveyance.

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 day of August 17, 2012.

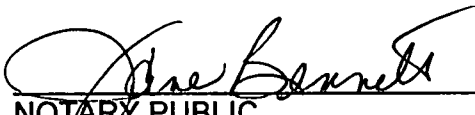
DECLARANT:

WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware statutory trust

By: 
John Clarke
Vice President—Real Estate

STATE OF ARKANSAS)
) ss.
COUNTY OF BENTON)

On this 17th day of August, 2012, before me, a Notary Public in and for said County and State, personally appeared John Clarke, Vice President—Real Estate of Wal-Mart Real Estate Business Trust, a Delaware statutory trust, who executed the above and acknowledged the execution thereof to be his voluntary act and deed on behalf of said trust.


NOTARY PUBLIC
My Commission expires 1-20-2022.

OFFICIAL SEAL
JANE BENNETT
BENTON COUNTY
NOTARY PUBLIC - ARKANSAS
MY COMMISSION EXP. JAN. 20, 2022
COMMISSION# 12386344

EXHIBIT A

Legal Description of Property

**Lots 1-4 and Outlot A, Block 4 of Avalon Replat One as recorded in Douglas County,
Nebraska.**

EXHIBIT B

(Attached)

[illegible][illegible]

ALERT TO SOUTH AFRICAN
 If you are a South African, please do not
 use the services of any of the following
 companies, as they are involved in the
 arms trade with South Africa.

AL CONTRACTORS ASSOCIATION
OF THE UNITED STATES OF AMERICA
1111 K STREET, N.W.
WASHINGTON, D.C. 20004
202/462-1234

50TH ST AND L ST
Walmart * STORE#3172-00
OMAHA

GRADING AND DRAINAGE PLAN

NAME	1. NAME OF THE PARTY
ADDRESS	2. ADDRESS OF THE PARTY
DATE	3. DATE OF THE PARTY

◀ ▶ **Display Mode**
and **Function**

— **RECALL STN2** —

EXHIBIT C

BMP Maintenance Requirements

Name & Location

Project Name: 90th and Lake Street Walmart Market Store
#3152-00
Address: 5011 L Street, Omaha, NE 68117
PCWP Project Number: TBD
PWD Grading Permit #: OMA-20120201-469-P

Site Data

Total Site Area: 9.33 AC
Total Disturbed Area: 9.33 AC
Total Undisturbed Area: 0.00 AC
Impervious Area Before Construction: 91.8%
Impervious Area After Construction: 77.7%

BMP Information

BMP ID	TYPE OF BMP	Northing/Easting
S-2	BaySaver Hydrodynamic Separator Treatment System	527,868.9 N/ 2,743,985.6 E
S-20	BaySaver Hydrodynamic Separator Treatment System	528,043.8 N/ 2,743,016.7 E

Operations and Maintenance Guidelines for Filtration Basins

Task	Schedule
Remove debris and trash from trash rack and side slopes	Monthly
Outlet/inlet inspection	Monthly
Bank mowing and inspection/stabilization of eroded areas. Re-seed or sod as necessary to maintain good vegetative cover.	Monthly
Basin inspection and cleanout	Annually – remove sediment when 25% of storage volume has been lost
Remove woody vegetation along embankment	Annually
Inspect for structural damage	Annually
Inspect, exercise all mechanical devices	Annually
Repair broken pipes	As needed
Replace/Clean filtration media, pipe, or riprap that has been choked with sediment	As needed
Security	As needed

Operations and Maintenance Guidelines for Hydrodynamic Separator Treatment Systems

Task	Schedule
Remove sediment in bottom of structures	Annually, or if 2' of sediment has accumulated in the bottom of the structures
Grate inlet inspection and cleanout	Monthly
Inspect for structural damage	Annually
Inspect, exercise all mechanical devices	Annually
Repair broken pipes or structures	As needed

Inspection Reports should be completed and kept on file with the Inspector and at the store location. Reports should be kept for a minimum of five years.