



MISC 2010043916



MAY 21 2010 15:49 P 7

Fee amount: 35.50  
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COMP: MB

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
05/21/2010 15:49:16.00



2010043916

THIS PAGE INCLUDED FOR INDEXING

**CORRECTED POST CONSTRUCTION STORMWATER MANAGEMENT PLAN**  
**MAINTENANCE AGREEMENT AND EASEMENT**

**WHEREAS**, Capitol Beauty School, Inc. recognizes that storm water management facilities (hereinafter referred to as “the facility” or “facilities”) must be maintained for the development called Capitol School of Hairstyling and Esthetics, located in the jurisdiction of the City of Omaha, Douglas County, Nebraska; and,;

**WHEREAS**, the Property Owner (whether one of more) is the owner of Capitol School of Hairstyling and Esthetics (hereinafter referred to as “the Property”), and as described on Exhibit "A" and made a part hereof and,

**WHEREAS**, the City of Omaha (hereinafter referred to as “the City”) requires and the Property Owner, and 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 Storm water Management Plan, OPW51971-PCSMP, (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 or facilities shall be constructed by the Property Owner in accordance with the PCSMP, which has been reviewed and accepted by the City of Omaha or its designee.
2. The Property Owner must develop and provide the “BMP Maintenance Requirements”, attached here to as 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 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 of Omaha 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 Property 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 Property Owner harmless from any damage by reason of the City’s negligent or intentional 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 Property 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 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 repairs, and to perform all maintenance, construction and reconstruction as the City of Omaha or its designee deems necessary. Notwithstanding the foregoing, the City shall indemnify and hold the Property Owner harmless from any damage by reason of the City's negligent or intentional acts during such entry upon the property.

The City of Omaha or its designee shall have the right to recover from the Property 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 negligence or intentional 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 Property 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.

6. The Property 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.

7. The Property 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 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 of Omaha and the Property 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 Property Owner shall pay for all costs and expenses in connection herewith except to the extent of the negligence or intentional act of the City.

8. The Property 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.

9. 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 Property Owner, its administrators, executors, successors, heirs, or assigns, including any homeowners or business association and any other successors in interest.

IN WITNESS WHEREOF, the Property Owner(s) has/ have executed this agreement this 20TH day of April 2010.

INDIVIDUAL, PARTNERSHIP and/or CORPORATION

CAPITOL BEAUTY SCHOOL, INC.

Name of Individual, Partnership and/or Corporation

Judith Joanne McCaig

Name

President

Title

Judith Joanne McCaig  
Signature

INDIVIDUAL, PARTNERSHIP and/or CORPORATION

CAPITOL BEAUTY SCHOOL, INC.

Name of Individual, Partnership and/or Corporation

Daran Scott McCaig

Name

Vice-President

Title

Daran Scott McCaig  
Signature

ACKNOWLEDGEMENT

NEBRASKA)

State

DOUGLAS)

County

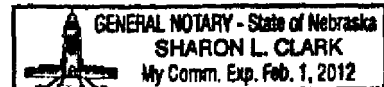
On this this 20TH day of April 2010 before me, a Notary Public, in and for said County, personally came the above named: Judith Joanne McCaig and Daran Scott McCaig.

Who is (are) personally known to me to be the identical person(s) whose name(s) is (are) affixed to the above instrument and acknowledged the instrument to be his, her (their) voluntary act and deed for the purpose therein stated.

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

Sharon L. Clark  
Notary Public

Notary Seal



# Exhibit “A”

## **PROJECT INFORMATION**

Legal Description: Lot 1, Empire Park Replat II, a subdivision in Douglas County, Nebraska

Property Address: 10803 John Galt Boulevard

Subdivision Name: Empire Park Replat II

Section:

## **APPLICANT INFORMATION**

Business Name: Capitol Schools

Business Address: 2819 S. 125th Avenue

Representative’s Name: Scott McCaig

Representative’s E-mail Address: scott@capitollook.com

Representative’s Phone Number: 402-333-3329

Representative’s Fax Number:

## **BMP INFORMATION**

<b>Name</b>	<b>Identifier</b>	<b>Nebraska State Plane Coordinates (Feet)</b>
Amended Soil Planting Bed	ASPB-1	N525722.72 E2717735.32
Amended Soil Planting Bed	ASPB-2	N525722.72 E2717625.35

POST CONSTRUCTION STORMWATER MANAGEMENT PLAN PROJECT INFORMATION

Project Name: \_\_\_\_\_  
 Location: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Designer: \_\_\_\_\_  
 City: \_\_\_\_\_

**CONTRACTOR:**  
 Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Email: \_\_\_\_\_

**OWNER:**  
 Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Email: \_\_\_\_\_

**APPROVALS:**  
 City Engineer: \_\_\_\_\_  
 Planning Director: \_\_\_\_\_  
 Public Works Director: \_\_\_\_\_

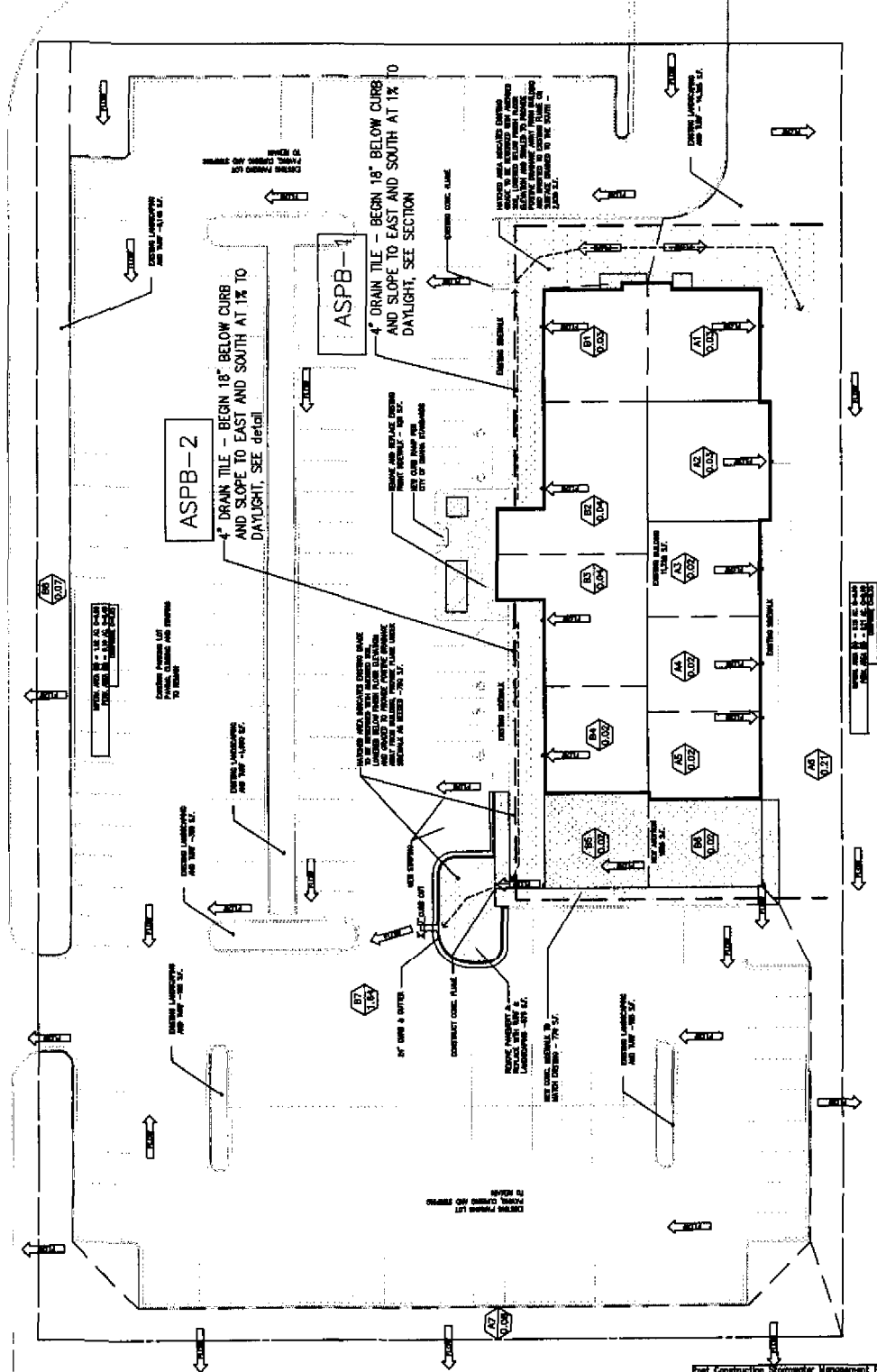
Capital Schools  
 1800 S. 10th Street  
 Lincoln, NE 68502

Project No.: \_\_\_\_\_  
 Revision: \_\_\_\_\_

**avant**  
 CIVIL CONSULTANTS

3-7-17

Call Before You Dig  
 1-800-331-5666  
 344-3565



**POST CONSTRUCTION BMPs**

IDENTIFIER	NEBRASKA STATE PLANE COORDINATES (FEET)	BMP TYPE
ASPB-1	N525722.72, E2717735.32	AMENDED SOIL PLANTING BED
ASPB-2	N525722.72, E2717651.35	AMENDED SOIL PLANTING BED

**Post Construction Conditions**  
 1. 1/2" SAND - 1/4" - 1/2"  
 2. 1/2" SAND - 1/4" - 1/2"  
 3. 1/2" SAND - 1/4" - 1/2"

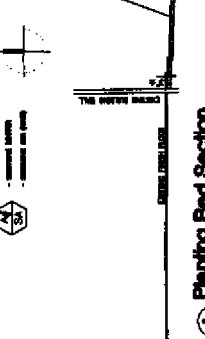


EXHIBIT A-1

# Exhibit “B”

## BMP Maintenance Plan

### OPW51917-PCSMP

I. General BMP Information

BMP ID Name	Nebraska State Plane Coordinates (Feet)
ASPB-1	N525722.72; E2717735.32
ASPB-2	N525722.72; E2717625.35

II. BMP Site Location Map (See Exhibit ‘A’)

III. Routine Maintenance Tasks and Schedule

BMP Type (Amended Soil Planting Bed)	
Task	Schedule
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 and 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)

IV. In case the ownership of the property transfers, the current owner shall, within 30 working days of transfer of ownership, notify the Public Works Department of such ownership transfer. If the current owner fails to notify the Public Works Department of ownership transfer, the responsible party in this agreement will remain liable for all Post Construction Stormwater Management Plan costs and maintenance.

V. 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 inspection reports shall be performed by a registered Nebraska professional engineer, architect, or qualified professional.