

POST CONSTRUCTION STORMWATER MANAGEMENT PLAN MAINTENANCE AGREEMENT AND EASEMENT

WHEREAS, The Property Owner recognizes that stormwater management facilities (hereinafter referred to as “the facility” or “facilities”) must be maintained for the development called _____; located in the jurisdiction of Sarpy County, Nebraska; and,

WHEREAS, the Property Owner (whether one or more) is the owner of real property described on Exhibit “A” (hereinafter referred to as “the Property”); and,

WHEREAS, Sarpy County (hereinafter referred to as “the County”) 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 County require that the facilities be constructed and maintained on the property; and,

WHEREAS, the Post Construction Stormwater Management Plan, (hereinafter referred to as “PCSWMP”), 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 PCSWMP, which has been reviewed and accepted by the County 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 County 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 PCSWMP and the BMP Maintenance Requirements 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 County within 24-hours of request.
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 County or its designee.
4. The Property Owner, its administrators, executors, successors, heirs, or assigns hereby grants permission to the County, its authorized agents and employees, to enter upon the property and to inspect the facilities whenever the County deems necessary. The County shall provide the Property Owner copies of the inspection findings and a directive to commence with the repairs

if necessary. The County 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 County shall provide notice prior to entry. The County shall indemnify and hold the Property Owner harmless from any damage by reason of the County'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 County or its designee in its sole discretion, the County or its designee is authorized to enter the property to make all repairs, and to perform all maintenance, construction and reconstruction as the County or its designee deems necessary. Notwithstanding the foregoing, the County shall indemnify and hold the Property Owner harmless from any damage by reason of the County's negligent or intentional acts during such entry upon the property.

The County or its designee shall have the right to recover from the Property Owner any and all reasonable costs the County 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 County. Failure to pay the County or its designee all of its expended costs, after sixty days written notice, shall constitute a breach of the agreement. The County 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 County to maintain or repair the facility or facilities, and the County 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 County and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims that may arise or be asserted against the County 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 County, its authorized agents or employees, the County 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 County in which event the County shall be required to defend any such suit at its own expense. Notwithstanding the foregoing, if any claims are made against both the County 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 County, 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 County.

- 8. The Property Owner shall not in any way diminish, limit, or restrict the right of the County to enforce any of its regulations or ordinances as authorized by law.

- 9. This Agreement shall be recorded with the Register of Deeds of Sarpy 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 day of _____, 20____.

INDIVIDUAL and/or PARTNERSHIP

Name

Title

Signature

Name

Title

Signature

Name

Title

Signature

Name

Title

Signature

ACKNOWLEDGMENT

_____)
State

_____)
County

On this _____ day of _____, 20____ before me, a Notary Public, in and for said County, personally came the above named: _____ 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.

Notary Public

Notary Seal

Exhibit "A"
Insert Real Property Description

Exhibit “B”
Insert BMP Maintenance Requirements