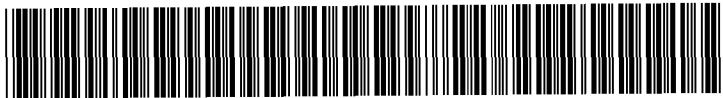


MISC 2016025145



APR 08 2016 08:37 P 6

Fee amount: 40.00
FB: 0U-31956
COMP: BW

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
04/08/2016 08:37:33.00



2016025145

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

WHEREAS, Rainwood Two, LLC, recognizes that stormwater management facilities (hereinafter referred to as "the facility" or "facilities") must be maintained for the development called **Divercon Expansion** located in the jurisdiction of City of Omaha, Nebraska; and,

WHEREAS, Rainwood Two, 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, 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, **DOU-20151217-3399-P,** (hereinafter referred to as "PCSMF"), 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 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 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 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 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 or its designee in its sole discretion, the City 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 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 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, unless caused by the City 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 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 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 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 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 March, 2016.

Rainwood Two, LLC.

By: _____

Scott Seaton, Owner

State of Nebraska)
)ss.
County of Douglas)

The foregoing agreement was acknowledged before me this 25 day of March, 2016 by Scott Seaton, Owner of Rainwood Two, LLC.

Diane R. Fields
Notary Public

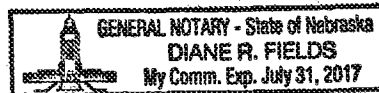


EXHIBIT 'A'

PROJECT INFORMATION

Legal Description: Lot 7 Block 0, Rainwood Pointe, A Subdivision in Douglas County, Nebraska

Property Address: 9684 N 109 Ave
Omaha, NE 68142

Subdivision Name: Rainwood Pointe
Section: NE 20-16-12

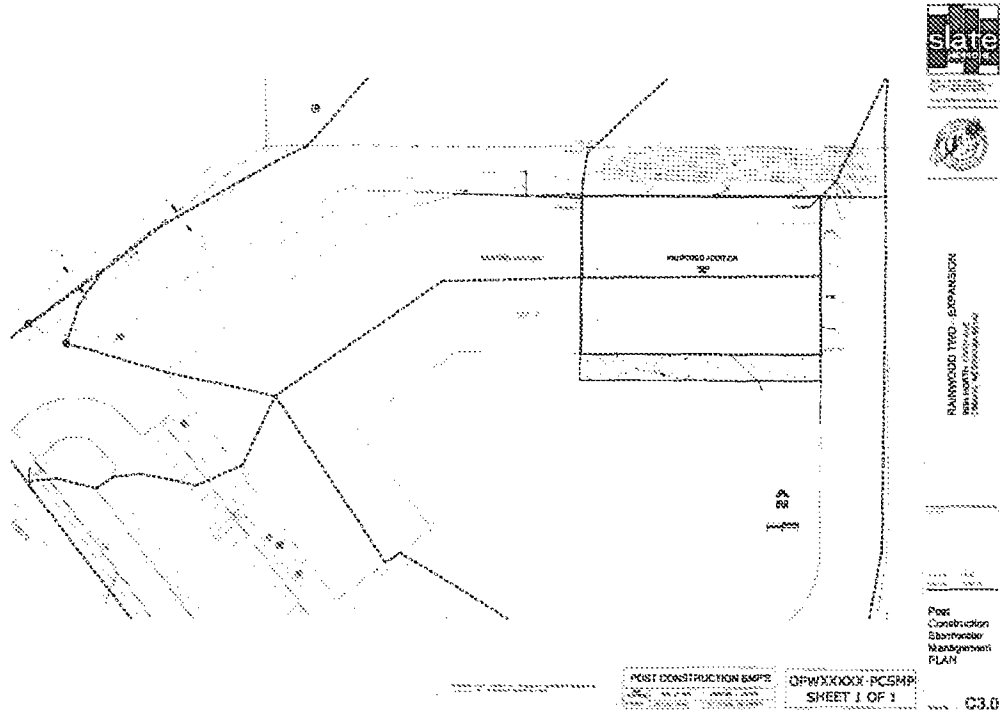
APPLICANT INFORMATION

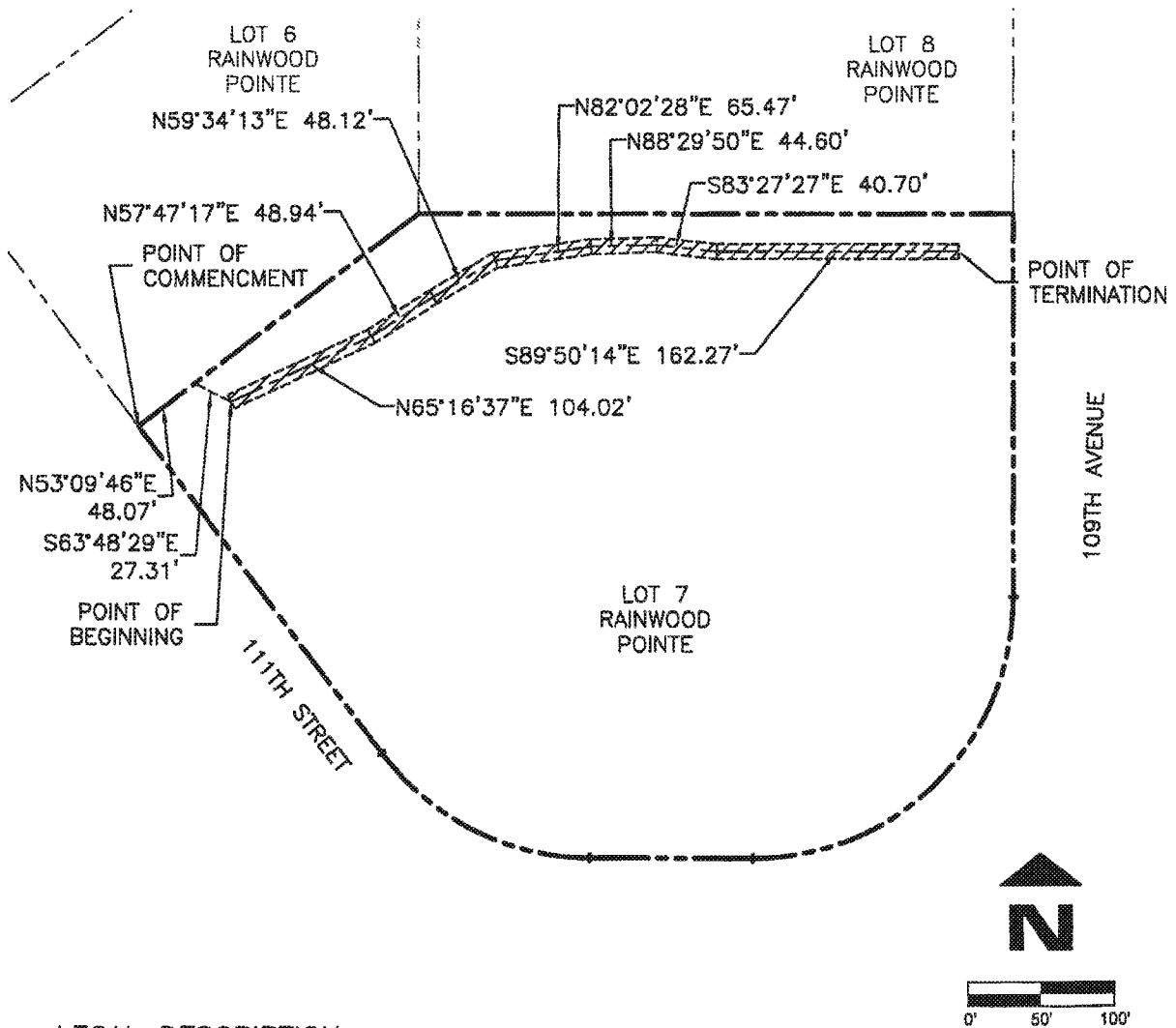
Business Name: **Rainwood Two, LLC.**
Business Address: 9684 N 109 Ave
Omaha, NE 68142

Representatives Name: Scott Seaton
Representative's Email: sseaton@divercon.com
Representative's Phone: (402) 571-5115

BMP INFORMATION

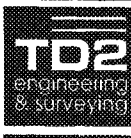
Name	Description	Latitude/Longitude
Bioswale	Grassed swale	N41.347289, W96.085667





LEGAL DESCRIPTION

A 10.00 FOOT WIDE STRIP OF LAND LYING WITHIN LOT 7, RAINWOOD POINTE, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, THE CENTERLINE OF SAID 10.00 FOOT WIDE STRIP OF LAND BEING DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 7; THENCE N53°09'46"E (ASSUMED BEARING) 48.07 FEET ON THE NORTH LINE OF SAID LOT 7; THENCE S63°48'29"E 27.31 FEET TO THE POINT OF BEGINNING; THENCE N65°16'37"E 104.02 FEET; THENCE N57°47'17"E 48.94 FEET; THENCE N59°34'13"E 48.12 FEET; THENCE N82°02'28"E 65.47 FEET; THENCE N88°29'50"E 44.60 FEET; THENCE S83°27'27"E 40.70 FEET; THENCE S89°50'14"E 162.27 FEET TO THE POINT OF TERMINATION.



Job Number: 1220-127 EX
 thompson, dreessen & dorner, inc.
 10836 Old Mill Rd
 Omaha, NE 68154
 p.402.330.8860 f.402.330.5866
 td2co.com

Date: 03/24/2016
 Drawn By: MRS
 Reviewed By: DHN
 Revision Date:

EXHIBIT "A-1"

Book
 Page

Exhibit "B"
BMP Maintenance Plan
Divercon Expansion
9684 N 109 Ave
Omaha, Ne 68142
DOU-20151217-3399-P

I. GENERAL BMP INFORMATION

BMP ID Name	Location	Legal Description
Bio-swale	Grassed Swale	See Exhibit 'A'

II. BMP SITE LOCATION MAP
 See Exhibit 'A'

III. ROUTINE MAINTENANCE TASKS, SCHEDULE AND MAINTENANCE INSPECTIONS

BMP Type (Bio-swale)	
Task	Schedule
Water young vegetation weekly, at minimum, for first 3 months.	Year 1 – Year 3
Eliminate weeds as soon as possible using spot herbicide.	Year 1 – Year 3
Remove trash and maintain plantings	After rainfall equaling or exceeding 0.5 in. (until 2 nd year growth is established)
Inspect vegetation. Replace as necessary.	After 1 year, as necessary.
Mow vegetation and Remove debris	Year 3 – Later, as needed
Repair restore inflow structure as needed	Year 3 - Later