



MISC Inst. # 2017099606, Pg: 1 of 8 Rec Date: 12/11/2017 13:59:58.160
 Fee Received: \$52.00 Electronically Recorded By: DW
 Douglas County, NE Assessor/Register of Deeds DIANE L. BATTIATO

**POST CONSTRUCTION STORMWATER MANAGEMENT PLAN
 MAINTENANCE AGREEMENT AND EASEMENT
 OMA-20160316-3520-P**

WHEREAS, Omar-5, L.L.C., a Nebraska Limited Liability Company, recognizes that stormwater management facilities (hereinafter referred to as "the facility" or "facilities") must be maintained for the development called **Omar Bakery Building Street Parking and Sidewalks** located in the jurisdiction of the City of Omaha, Douglas County, Nebraska; and,

WHEREAS, Omar-5, L.L.C., a Nebraska Limited Liability Company, 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-20160316-3520-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 or its designee.
2. The Owner must develop and provide the "BMP Maintenance Requirements", per 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.

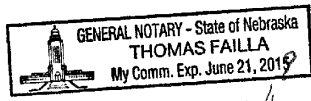
- 9. Based on such claim unless due solely to the negligence or wrongful act of the City in which event the City shall be required to defend any such suit at its own expense. Notwithstanding the foregoing, if any claims are made against both the City and the Owner, each will be required to defend any 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 27th day of DECEMBER 2017.

**Omar-5, L.L.C.,
A Nebraska Limited Liability Company**

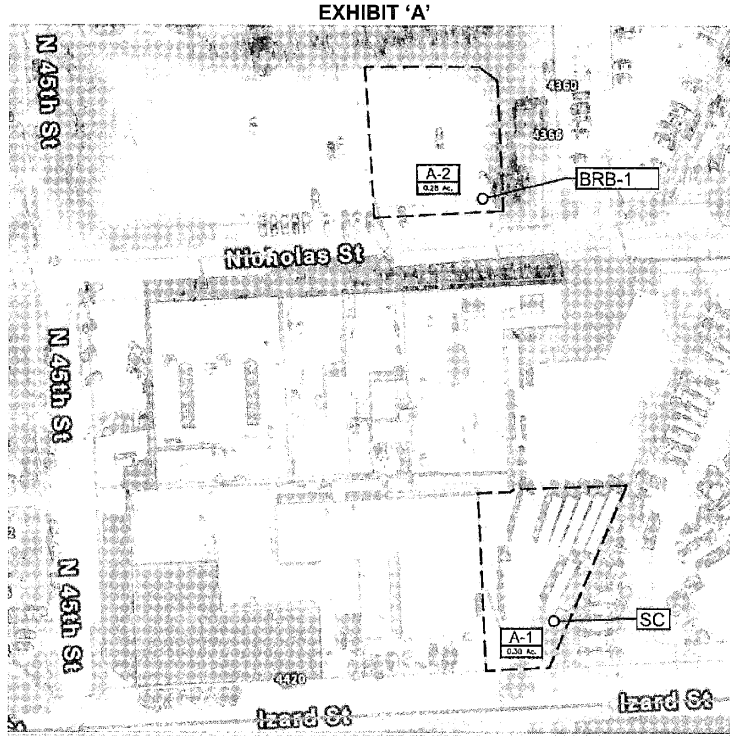
By: [Signature]
Ray Trimble, President

State of Nebraska)
)ss.
County of Douglas)



The foregoing agreement was acknowledged before me this 27th day of DECEMBER 2017 by Ray Trimble, President of Omar-5, L.L.C., a Nebraska Limited Liability Company, on behalf of said Company.

[Signature]
Notary Public



PROJECT INFORMATION

Legal Description: Lot 18, Walnut Hill and Lot 101, Omar Baking Condos in Douglas County Nebraska

Property Address: 45th and Nicholas Street & 45th and Izard Street Omaha, NE 68131

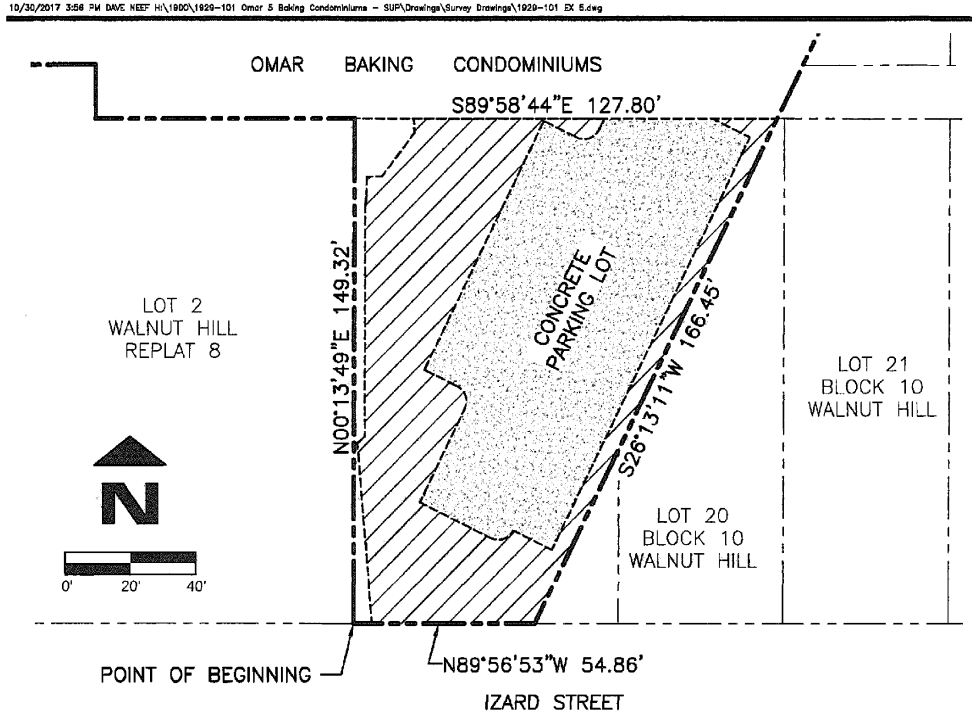
Section: SW S17 - T15N - R13E

APPLICANT INFORMATION

Business Name: Omar-5, L.L.C.
 Business Address: 4383 Nicholas St #300 Omaha, NE 68131
 Representatives Name: Ray Trimble
 Representative's Email: ray@propertybanc.com
 Representative's Phone: (402) 697-8899

BMP INFORMATION

Identifier	Name	Latitude/Longitude	State Plane Coords.
BRB-1	Bio-Retention Basin	N41.270166° W95.979144°	N 603676.139 E2967594.266
SC	Soil Conditioning	N41.269130° W95.978980°	N 603300.810 E2967654.526

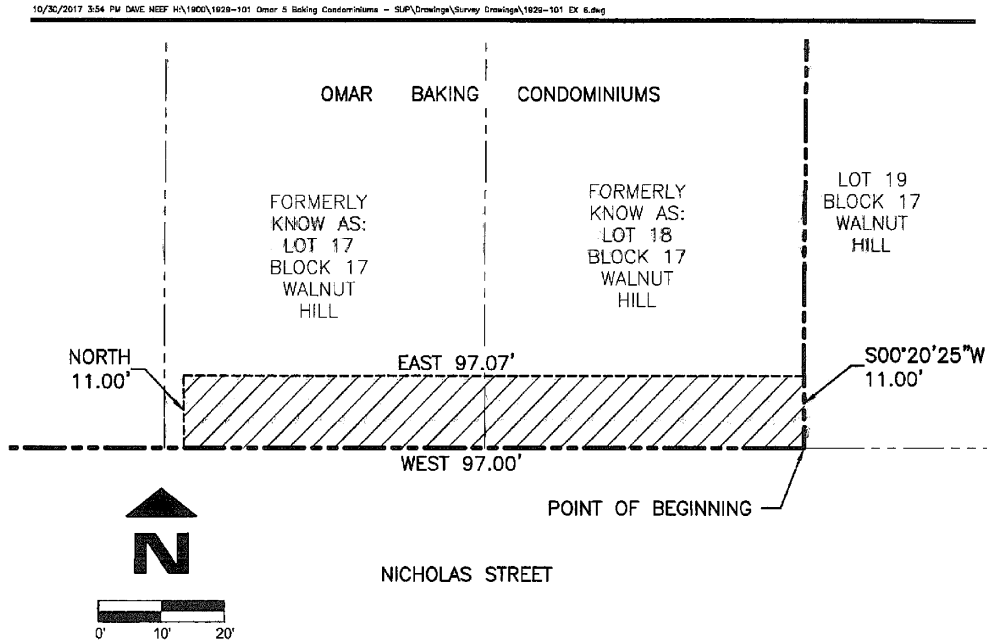


LEGAL DESCRIPTION

THAT PART OF:
 UNITS 101, UNIT 120, UNIT 200, UNIT 201, UNIT 202, UNIT 203, UNIT 204, UNIT 210, UNIT 211, UNIT 212, UNIT 220, UNIT 300, UNIT 301, UNIT 302, UNIT 303, UNIT 304, UNIT 305, UNIT 306, UNIT 307, AND UNIT 308, IN THE OMAR BAKING CONDOMINIUMS, A CONDOMINIUM PROPERTY REGIME ORGANIZED UNDER THE LAWS OF THE STATE OF NEBRASKA, IN THE CITY OF OMAHA, IN DOUGLAS COUNTY, NEBRASKA PURSUANT TO THE DECLARATION OF OMAR BAKING CONDOMINIUMS RECORDED ON MAY 18, 2017, AS INSTRUMENT NO. 2017037944 OF THE RECORDS OF DOUGLAS COUNTY, NEBRASKA (THE "DECLARATION"); TOGETHER WITH ALLOCATED INTERESTS ASSIGNED THERETO AS SET FORTH AND IN ACCORDANCE WITH THE DECLARATION, AS MAY BE AMENDED FROM TIME TO TIME IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE DECLARATION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 2, WALNUT HILL REPLAT 8, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA;
 THENCE N00°13'49"E (ASSUMED BEARING) 149.32 FEET ON THE EAST LINE OF SAID LOT 2 TO THE NORTHEAST CORNER THEREOF;
 THENCE S89°58'44"E 127.80 FEET;
 THENCE S26°13'11"W 166.45 FEET TO THE NORTH LINE OF IZARD STREET;
 THENCE N89°56'53"W 54.86 FEET ON THE NORTH LINE OF IZARD STREET TO THE POINT OF BEGINNING, EXCEPT THOSE PARTS COVERED BY CONCRETE.

	Job Number: 1929-101 EX 5 thompson, dreessen & dornier, inc. 10836 Old Mill Rd Omaha, NE 68154 p.402.330.8860 f.402.330.5866 td2co.com	Date: 10/25/2017 Drawn By: MRS Reviewed By: DHN Revision Date:	<h2>EXHIBIT "A-1"</h2>	Book Page



LEGAL DESCRIPTION

THAT PART OF:
 UNITS 101, UNIT 120, UNIT 200, UNIT 201, UNIT 202, UNIT 203, UNIT 204, UNIT 210, UNIT 211, UNIT 212, UNIT 220, UNIT 300, UNIT 301, UNIT 302, UNIT 303, UNIT 304, UNIT 305, UNIT 306, UNIT 307, AND UNIT 308, IN THE OMAR BAKING CONDOMINIUMS, A CONDOMINIUM PROPERTY REGIME ORGANIZED UNDER THE LAWS OF THE STATE OF NEBRASKA, IN THE CITY OF OMAHA, IN DOUGLAS COUNTY, NEBRASKA PURSUANT TO THE DECLARATION OF OMAR BAKING CONDOMINIUMS RECORDED ON MAY 18, 2017, AS INSTRUMENT NO. 2017037944 OF THE RECORDS OF DOUGLAS COUNTY, NEBRASKA (THE "DECLARATION"); TOGETHER WITH ALLOCATED INTERESTS ASSIGNED THERETO AS SET FORTH AND IN ACCORDANCE WITH THE DECLARATION, AS MAY BE AMENDED FROM TIME TO TIME IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE DECLARATION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 19, BLOCK 17, WALNUT HILL, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA;
 THENCE WEST (ASSUMED BEARING) 97.00 FEET ON THE NORTH LINE OF NICHOLAS STREET;
 THENCE NORTH 11.00 FEET;
 THENCE EAST 97.07 FEET TO THE WEST LINE OF SAID LOT 19;
 THENCE S00°20'25"W 11.00 FEET ON THE WEST LINE OF SAID LOT 19 THE POINT OF BEGINNING.

	Job Number: 1929-101 EX 6 thompson, dreessen & dornier, inc. 10836 Old Mill Rd Omaha, NE 68154 p.402.330.8860 f.402.330.5866 td2co.com	Date: 10/25/2017 Drawn By: MRS Reviewed By: DHN Revision Date:	<h2>EXHIBIT "A-2"</h2>	Book Page
	(Empty space for book and page numbers)			

EXHIBIT "B"

**BMP Maintenance Plan
Omar-5, LLC
Lot 18 Walnut Hill & Lot 101 Omar Baking Condos
OMA-20160316-3520-P**

I. GENERAL BMP INFORMATION

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

II. BMP SITE LOCATION MAP

See Exhibit 'A'

III. INSPECTION AND MAINTENANCE**SOIL CONDITIONING****Short Term: Year 1 – Year 3**

1. Water young vegetation weekly, at a minimum, for the first three months. Watering may be required biweekly during the drier summer months (June through August) the first year.
2. Eliminate weeds as soon as possible using spot application of herbicide.
3. After rainfall equaling or exceeding 0.5 in. (until second year growth is established):
 - 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 filter strip. Repair erosion damage if it occurs.
 - d. Repair or restore clogged flow structures as needed.
4. Between two and three years after installation determine if water is draining as planned. If there are drainage problems determine cause and address the issues as soon as possible.
5. Beginning one year after installation, inspect vegetation. Replace vegetation as necessary.

Long Term: Year 3 – later

1. In early spring, mow or trim vegetation to a height greater than 6 in. Remove accumulated debris.
2. Inspect vegetation one to two times each year and remove weeds and invasive species.
3. Trim back or remove overgrown vegetation.
4. Repair or restore clogged flow structures as needed.
5. In fall, perform inspection annually to assess vegetation condition, replace vegetation as necessary.

III. INSPECTION AND MAINTENANCE (CONT)**BIO-RETENTION BASIN**

BMP Type (Bio-Retention Basin)	
Task	Schedule
Inspect for accumulation of trash, leaves, and other debris and remove as required	Weekly during mowing season (March – June)
Inspect after rainfall events to determine if system is draining properly	After rainfall events of 1" per 24 hour period or greater
Remove weeds and maintain plantings	Monthly during mowing season (March – June)
Remove and Replace Amended Soil	As Needed (When evidence of plugging is apparent) (if applicable)
Inspect Outlet Structure for clogging or blockage	Monthly

IV. MAINTENANCE INSPECTION REPORTS

The Property Owner shall perform maintenance and inspection in accordance with the above table. A written report of all maintenance and inspections shall be prepared annually and kept on file by the Owner. The first report shall be prepared within 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. Annual maintenance inspection reports shall be performed by a registered Nebraska professional engineer, architect, or qualified professional. Upon request of the City, the Owner shall provide copies of the annual maintenance inspection reports.