



MISC 2010056796



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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
6/28/2010 14:36:50.18



2010056796

THIS PAGE INCLUDED FOR INDEXING
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Return To: Mr. Jeffrey Keating
PDM, Inc.
8805 Indian Hills Dr, Suite 210
Omaha, NE 68114

Check Number

✓ 6669

POST CONSTRUCTION STORMWATER MANAGEMENT PLAN MAINTENANCE AGREEMENT AND EASEMENT

WHEREAS, PDM, Inc. (hereinafter referred to as "the Property Owner") recognizes that stormwater management facilities (hereinafter referred to as "the facility" or "facilities") must be maintained for the development called Baker Square Shopping Center located in the jurisdiction of the City of Omaha, Douglas County, Nebraska; and,

WHEREAS, the Property Owner is the Owner of Lot 385, Blk 0 Kingswood Estates, depicted on Exhibit "A" (hereinafter referred to as "the Property"), and,

WHEREAS, the City of Omaha (hereinafter referred to as "the City") requires 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, Public Works Department project number OPW52009-PCSMP, (hereinafter referred to as "PCSMP"), be constructed and maintained by FNBO and 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 or facilities shall be constructed by the Property Owner in accordance with the PCSMP, which has been reviewed and accepted by the City or its designee.
2. The Property Owner must develop and provide the "BMP Maintenance Requirements," attached hereto as 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 includes a schedule for implementation of these practices. The BMP Maintenance Requirements indicate that the facility or facilities shall be inspected by a qualified professional at least annually to ensure that it is operating properly.
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 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. 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 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 a reasonable time frame allowed in the issuance of written notice, or shall fail to maintain the facility/ facilities 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 repairs, and to perform all maintenance, construction and reconstruction as the City or its designee deems necessary. The City or its designee shall then recover from the Property Owner any and all reasonable costs the City expends to maintain or repair the facility or facilities or to correct any operational deficiencies. 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 Property Owner to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery to the successful party.
6. The Property 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.
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 or the City. 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 and the City shall indemnify and hold harmless the Property Owner and its officials, officers, employees and agents from any and all damages, accidents, casualties, occurrences or claims that may arise or be asserted against the Property Owner or its officials, officers, employees and agents due solely to the negligence of the City. 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, if such allowed judgment or claim is due solely to the negligence of the Property Owner.
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. In case the ownership of the Property transfers, the current Property Owner shall, within 30 working days of transfer of ownership, notify the City Public Works Department of such ownership transfer. If the current owner fails to notify the City Public Works Department of ownership transfer, the responsible party in this agreement will remain liable for all stormwater management costs and maintenance. Such former Property Owner shall have no liability to the City once it has given notice and upon receipt of notice the City Public Works Department shall provide written acknowledgment of receipt of such notice from the Property Owner.
10. 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 association and any other successors in interest.

PDM, Inc.

DATED: 6-18-10

BY: 

Mr. Jeffrey M. Keating
Vice President


ACKNOWLEDGMENT

Nebraska _____)
State

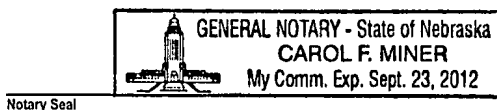
Douglas _____)
County

On this 18TH day of JUNE, 2010 before me, a Notary Public, in and for said County, personally came the above named: Jeffrey M. Keating who is personally known to me to be the identical person whose name is affixed to the above instrument and acknowledged the execution of this instrument to be his/her voluntary act and deed as the Vice President of PDM, Inc., as duly authorized agent of PDM, Inc., and for the purpose therein stated.

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



Notary Public



LEGAL DESCRIPTION

BAKER SQUARE SHOPPING CENTER

Lot Three Hundred Eighty-Five (385) in Kingswood Estates, an Addition in Douglas County, Nebraska, except such portion thereof conveyed for highway purposes subject to provisions of restricted access, and subject to easements of record inclusive of, but not limited to rights of Northwestern Bell Telephone Company, Omaha Public Power District and sewer and drainage easements of Sanitary and Improvement District No. 72 of Douglas County, Nebraska and the City of Omaha.

BAKER SQUARE SHOPPING CENTER
132nd & West Center Road
OCTOBER 2009

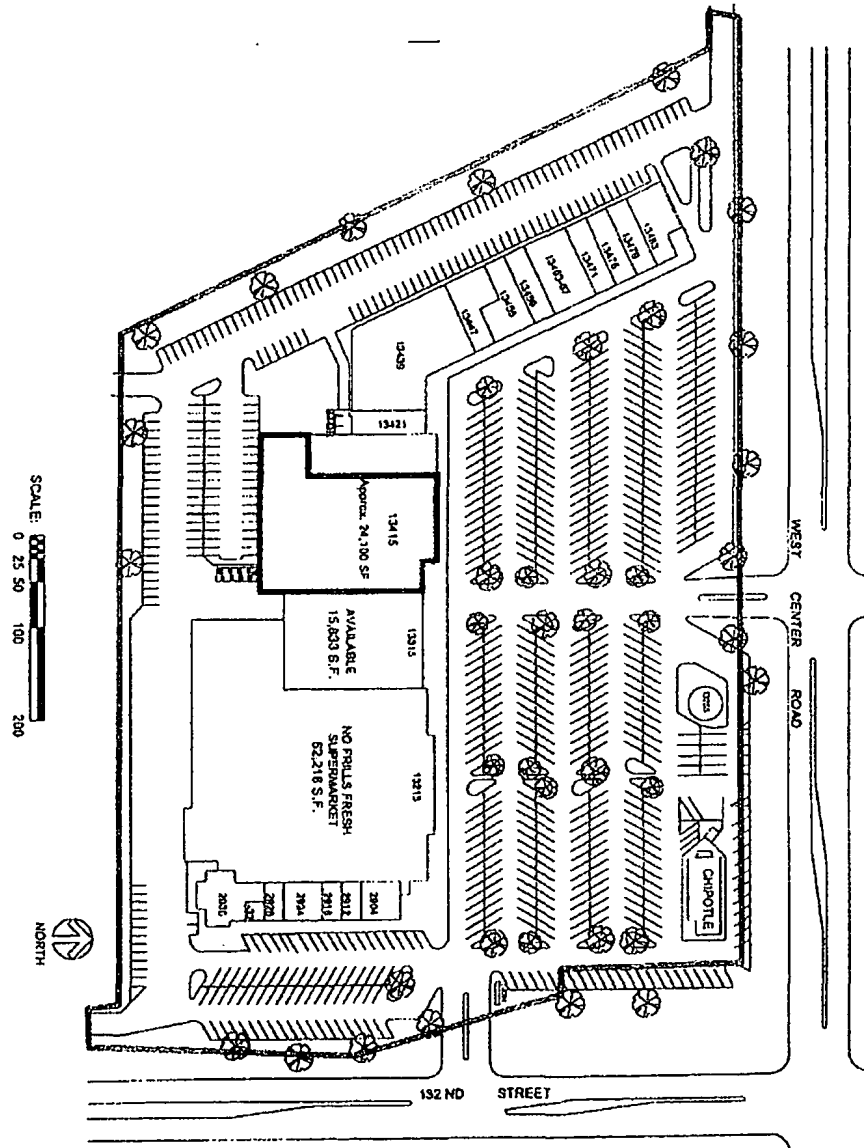


Exhibit 'B'
BMP Maintenance Plan
Baker Square Shopping Center
Kingswood Estates, Lot 385, Blk 0

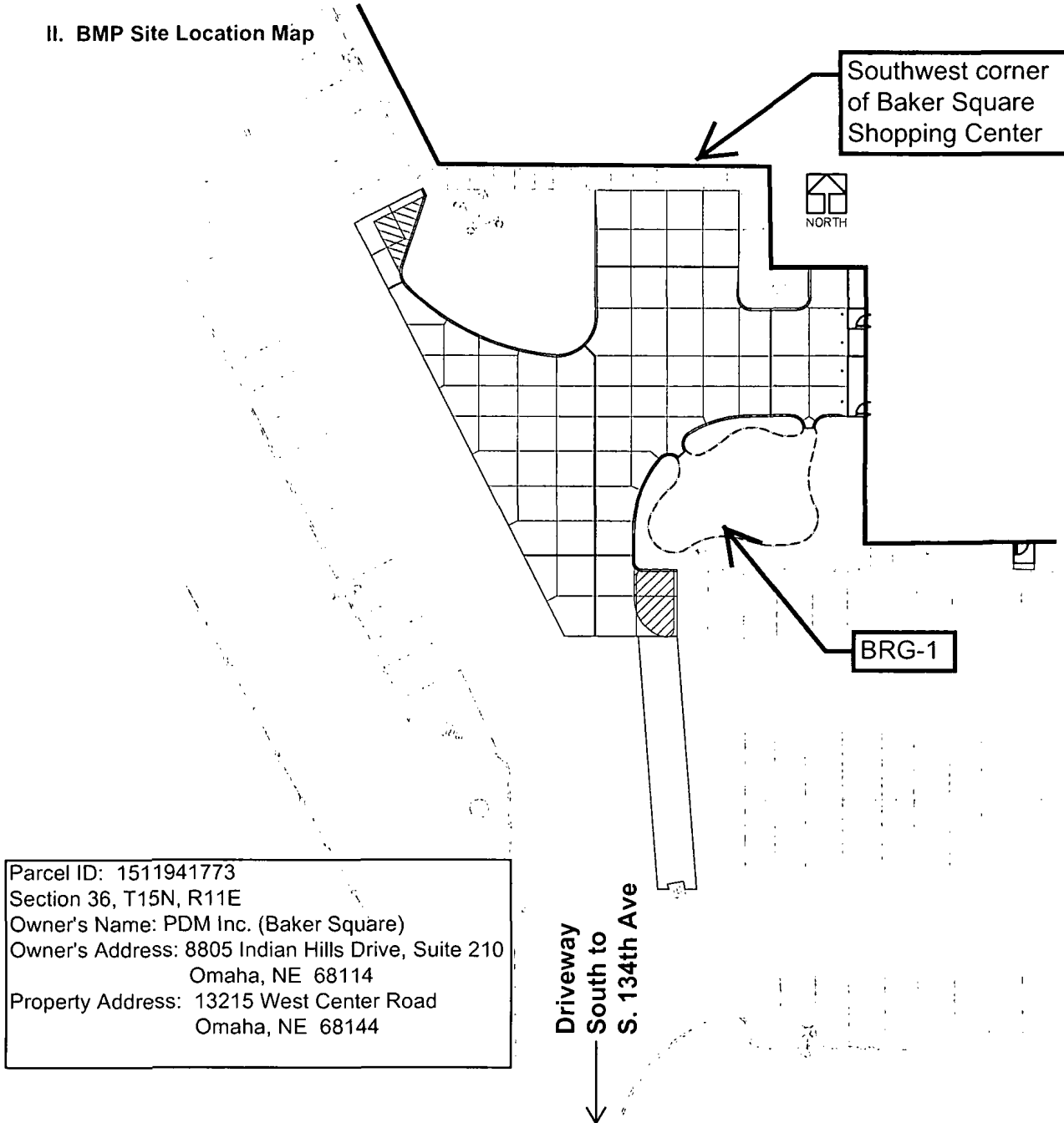
I. General Information

BMP ID Name
BRG-1

Street Address
13215 West Center Road

Parcel Tax ID
1511941773

II. BMP Site Location Map



Name	Identifier	Latitude/ Longitude
Bioretention Garden	BRG-1	N41° 13' 57" / W96° 07' 20"

III. Routine Maintenance Tasks and Schedule

Bio-Retention Cell Maintenance Tasks and Schedule	
Remove trash and debris	Monthly
Check and Repair any eroded areas	Monthly
Re-mulch any void areas	Monthly
Check Vegetation and replace any damaged plant materials	Monthly
Inspect for ponding, washed out areas, soil conditions	Monthly
Perimeter mowing	Monthly
Inspect collection system for proper functioning	Quarterly
Re-seed grass swale or border	Annually
Apply New Mulch	Annually
Pruning	Annually
Perform soil test and replace soil if needed	Annually
Repair broken pipes	As Needed
Remove sediment	As Needed
Replace Mulch	Every Three Years

IV. Transfer of Ownership

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 Storm Water 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 of the Post construction Storm Water 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.