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SUBMITTED <u>THE SCHEMMER ASSOCIATES</u>

FILED SARPY CO. NE.
INSTRUMENT NUMBER

2014-25484

2014 Nov 14 11:26:58 AM

Lloyd J. Douciney

REGISTER OF DEEDS



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

**126th & WEST GILES DISTRIBUTION CENTER
PCSMP No. LAV-20131209-931-P**

**Return To: Matthew Hubel, PE
The Schemmer Associates, Inc
1044 North 115th Street, Suite 300
Omaha, NE 68154-4436**

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

**126th & WEST GILES DISTRIBUTION CENTER
PCSMP No. LAV-20131209-931-P**

WHEREAS, SGTS LLC (hereinafter referred to as "the Property Owner") recognizes that storm water management facilities (hereinafter referred to as "the facility" or "facilities") must be maintained for the development called 126th & West Giles Distribution Center located at 8701 South 126th Street in the jurisdiction of the City of La Vista, Sarpy County, Nebraska; and,

WHEREAS, the Property Owner (whether one of more) is the owner of the 126th & West Giles Distribution Center site, described on Exhibit "A," attached hereto and incorporated herein (hereinafter referred to as "the Property"), and,

WHEREAS, the City of La Vista (hereinafter referred to as "the City") requires the Property Owner, and its successors and assigns, to 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, PCSMP LAV-20131209-931-P, (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 or its designee.
2. The Property Owner must develop and provide the "BMP Maintenance Plan," attached hereto as Exhibit "B", which has been reviewed and accepted by the City or its designee. The BMP Maintenance Plan 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 Plan accepted by the City or its designee.

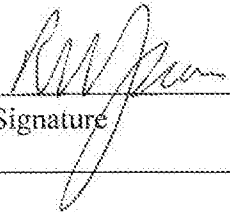
4. The Property Owner, its administrators, executors, successors, heirs, or assigns hereby grants permission to the City, its authorized agents and employees, to enter upon the property and to inspect the facilities whenever the City deems necessary. The City shall provide the Property Owner copies of 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 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 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 Plan 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 reasonably necessary. Notwithstanding the foregoing, 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.
The City or its designee shall have the right to 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 subject to the provisions of the immediately preceding sentence relating to negligence or intentional acts by 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 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 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. 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 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 to enforce any of its 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 successors, and assigns, and any other successors in interest, provided, in the event the Property Owner sells or conveys the property, the Property Owner shall be relieved of any further obligation due, except for liabilities that accrued prior to such sale or conveyance.

IN WITNESS WHEREOF, the Property Owner(s) has/ have executed this agreement this 12th day of NOVEMBER, 2014.

INDIVIDUAL, PARTNERSHIP and/or CORPORATION

SGTS LLC
<u>RAM HINGORANI</u>
Name
<u>MANAGER</u>
Title
<u></u>
Signature

ACKNOWLEDGMENTS

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

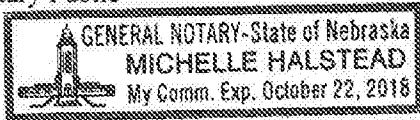
On this 12th day of November, 2014, before me, a Notary Public, in and for said County, personally came the above named:

Ram Hingorani

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.

Michelle Halstead
Notary Public



Notary Seal

Exhibit "A" (page(s) 5, inclusive)

Property Legal Description:

Lot 1, Sarpy County Industrial Park Replat 2.

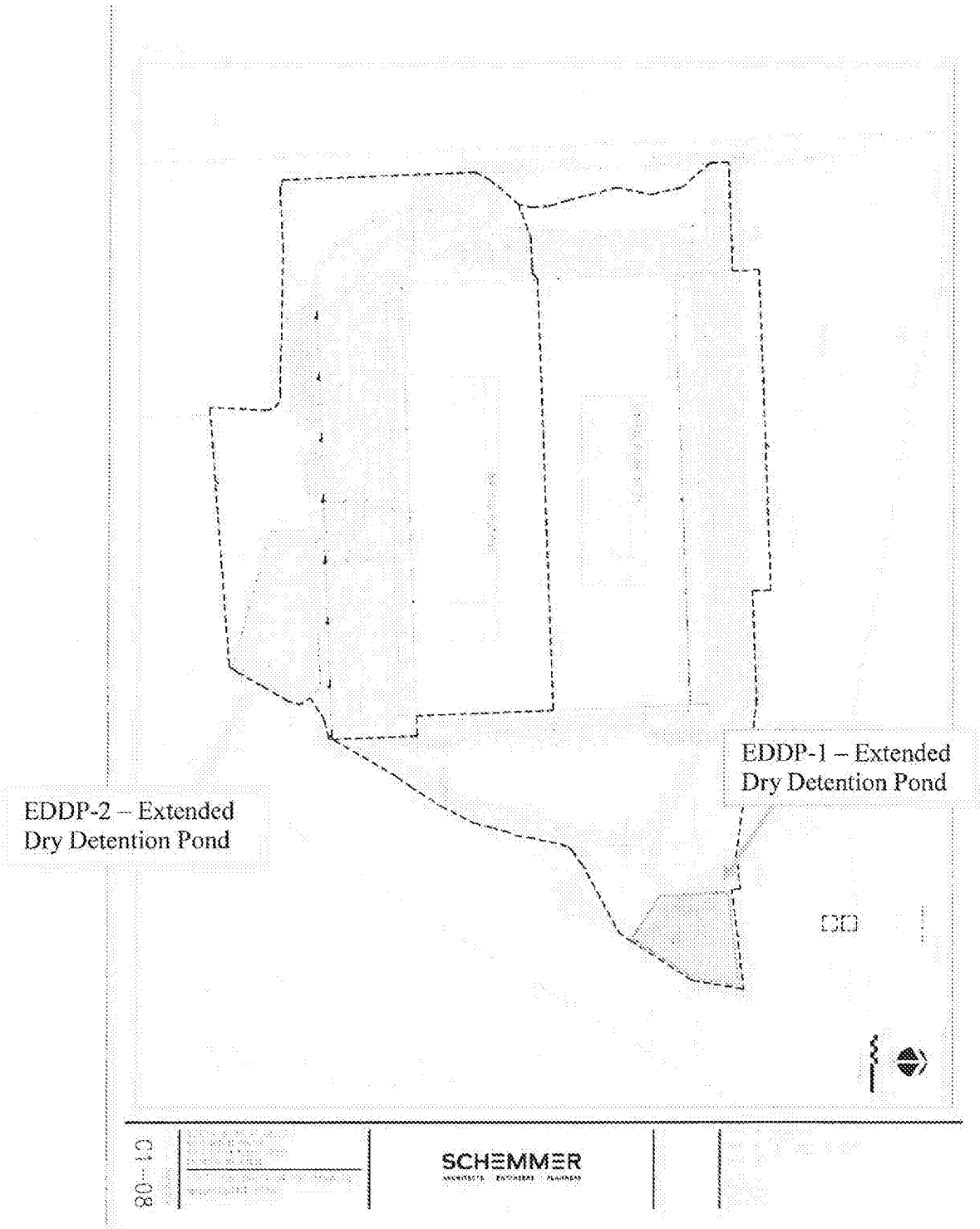
Exhibit "B" (page(s) 6-9, inclusive)

BMP Maintenance Plan – 126th & West Giles Distribution Center, La Vista, NE

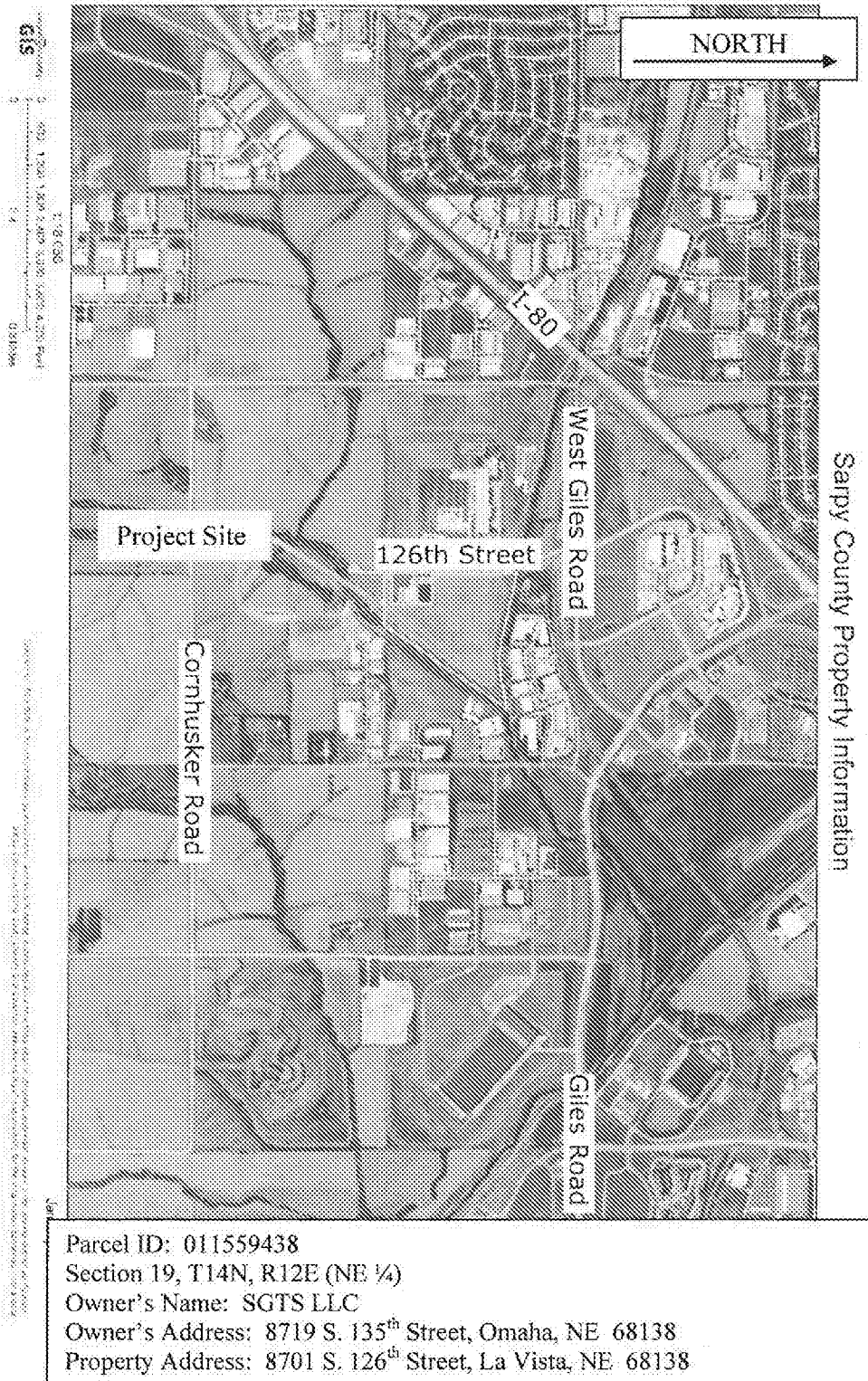
I. General Information

<u>Name</u>	<u>Identifier</u>	<u>Latitude / Longitude</u>
Extended Dry Detention Pond	EDDP-1	41°10'20.75" N / 96°06'18.30" W 41.172431° N / 96.105083° W
Extended Dry Detention Pond	EDDP-2	41°10'13.86" N / 96°06'25.20" W 41.170517° N / 96.107083° W

II. BMP Site Location Map



III. Vicinity Map



IV. Maintenance Schedule

EDDP-1 and EDDP-2: Extended Dry Detention Pond

Short Term: Year 1 – Year 3 (Post-Installation)

1. Water young plants and seedlings a minimum of weekly for the first three months. Watering may be required more frequently during the summer months (June through August) during the first year. Try to maintain at least a 70-percent vegetation density to ensure stability.
2. Eliminate weeds using spot application of herbicide throughout the first year.
3. Check for signs of erosion or instability and make sure that aesthetics are maintained throughout the BMP footprint.
4. After rainfall equaling or exceeding 0.5 inches:
 - a. Ensure that vegetation and other erosion stabilizing mechanisms are intact and check inlet/outlet structures and surrounding area for signs of erosion or instability.
 - b. Inspect all inlet/outlets and repair or restore clogged flow structures as needed.
 - c. Remove sediment and debris from pretreatment BMPs or forebay.
 - d. Confirm drainage system functions and bank stability.
5. At one year after installation, inspect vegetation and all other supporting structures. Replace dead plants and remove invasive plant species.
6. Removed sediments should be tested for toxicants and should comply with local disposal requirements.

Long Term: Year 3 – Later

1. In early spring, mow or trim vegetation to a height of no less than 6 inches. 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. At least twice a year, check for subsidence, erosion, cracking/tree growth on the embankment, sediment accumulation around the outlet, and erosion within the basin and banks.
6. Removed sediments should be tested for toxicants and should comply with local disposal requirements.

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