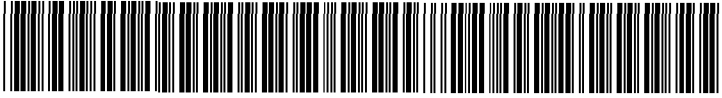




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AUG 20 2013 09:39 P 7

Fee amount: 46.00
FB: 66-42030
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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
08/20/2013 09:39:42.00



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

WHEREAS, JK Properties LLC, recognizes that stormwater management facilities (hereinafter referred to as "the facility" or "facilities") must be maintained for the development called **Solution One** located in the jurisdiction of the City of Omaha, Douglas County, Nebraska; and,

WHEREAS, JK Properties 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, 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, **OMA20130219-777-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 of Omaha 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 of Omaha 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 of Omaha 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 of Omaha 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 of Omaha or its designee in its sole discretion, the City of Omaha 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 of Omaha or its designee shall have the right to recover from the Owner any and all reasonable costs the City of Omaha 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 of Omaha or its designee all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. The City of Omaha 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 of Omaha to maintain or repair the facility or facilities, and the City of Omaha shall not be liable to any person for the condition or operation of the facility or facilities, unless caused by the City of Omaha 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 of Omaha 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 of Omaha 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 of Omaha 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 of Omaha 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 13 day of Aug., 2013.

JK Properties LLC, A Nebraska Limited Liability Company

By: John Kuchta, Pres.
John Kuchta, President

State of Nebraska)
)ss.
 County of Lancaster)

The foregoing agreement was acknowledged before me this 13 day of August 2013 by John Kuchta, President of JK Properties LLC, a Nebraska Limited Liability Company on behalf of said Limited Liability Company

Keith D. Snyder
 Notary Public

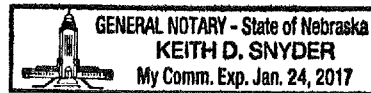
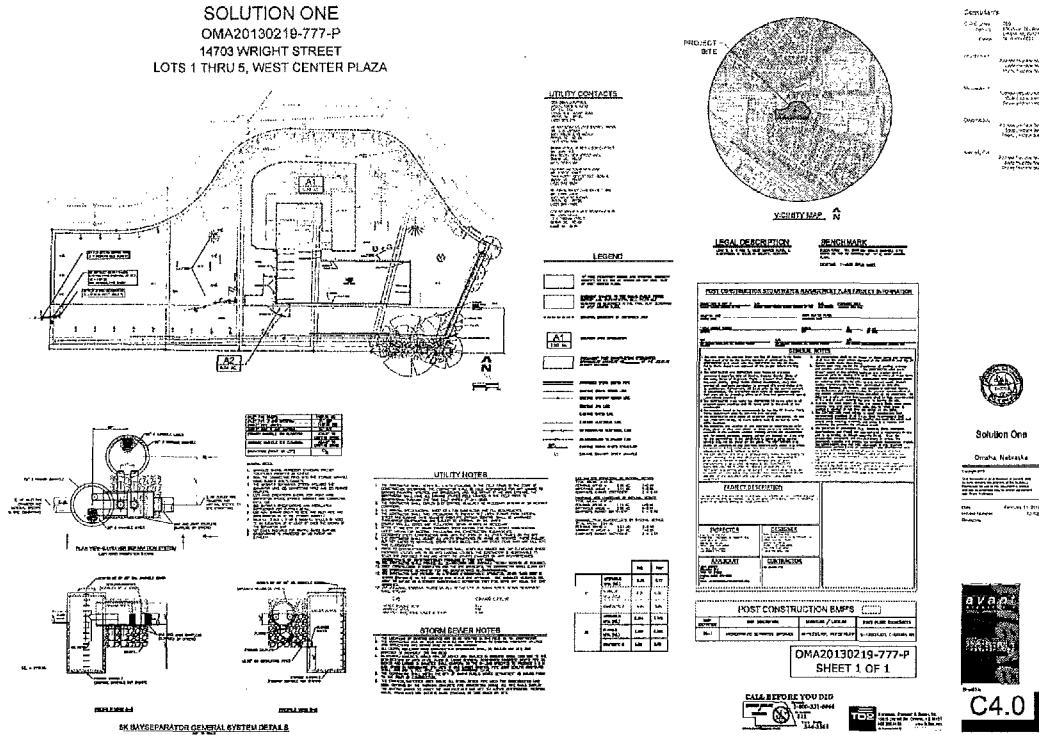


EXHIBIT 'A'



PROJECT INFORMATION

Legal Description: Lots 1-5, West Center Plaza,
City of Omaha, Douglas County, Nebraska,

Property Address: 14703 Wright Street
Omaha, NE 68144

Subdivision Name: West Center Plaza

Section: NE-35-15-11

APPLICANT INFORMATION

Business Name: **JK Properties LLC**

Business Address: 7407 "O" Street
Lincoln, NE 68510

Representatives Name: John Kuchta

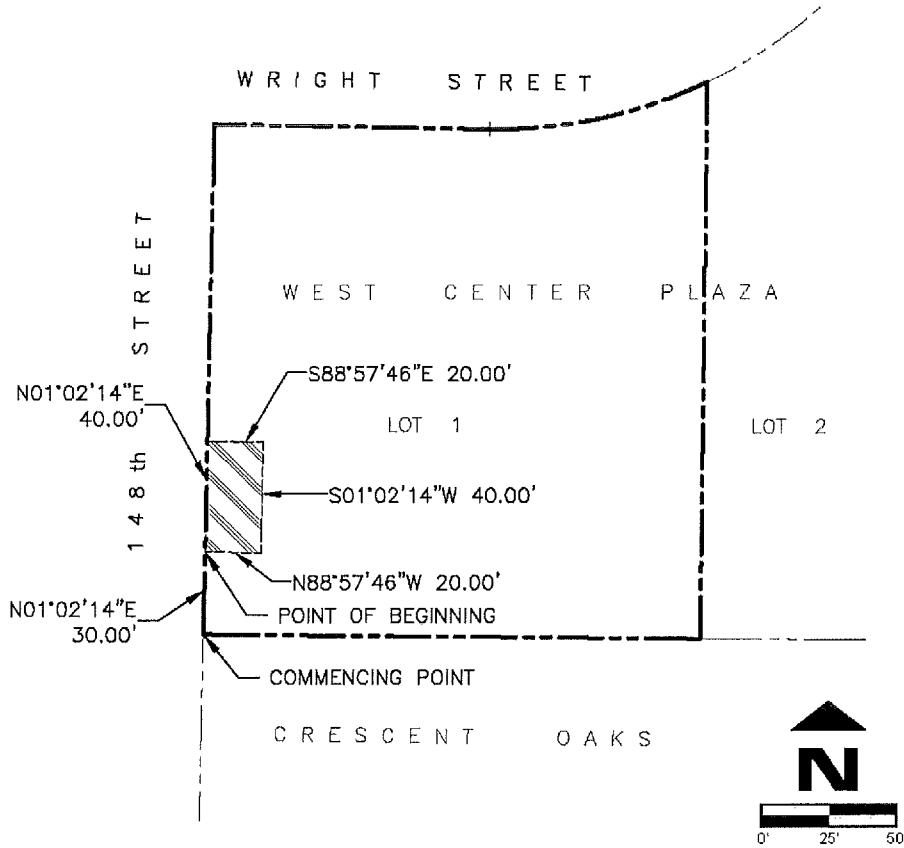
Representative's Email: jkuchta@solutiononenow.com

Representative's Phone: (402) 476-8833

Representative's Fax:

BMP INFORMATION

Name	Identifier	Latitude/Longitude	State Plane Coords.
BS-1	5K Baysaver Separation System	N41°13'58.10" W96°08'45.84"	N 162574.972 E 822894.181



LEGAL DESCRIPTION

THAT PART OF LOT 1, WEST CENTER PLAZA, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1;
 THENCE N01°02'14"E (ASSUMED BEARING) 30.00 FEET ON THE WEST LINE OF SAID LOT 1 TO THE POINT OF BEGINNING;
 THENCE CONTINUING N01°02'14"E 40.00 FEET ON THE WEST LINE OF SAID LOT 1;
 THENCE S88°57'46"E 20.00 FEET;
 THENCE S01°02'14"W 40.00 FEET;
 THENCE N88°57'46"W 20.00 FEET TO THE POINT OF BEGINNING.

	Job Number: 869-312-EX1 thompson, dreessen & domer, inc. 10836 Old Mill Rd Omaha, NE 68154 p.402.330.8860 f.402.330.5866 td2co.com	Date: FEBRUARY 25, 2013 Drawn By: RJR Reviewed By: DHN Revision Date:	<h2>EXHIBIT A1</h2>	Book Page: 6

Exhibit "B"
BMP Maintenance Plan
SOLUTION ONE
Lots 1-5, West Center Plaza
OMA20130219-777-P

I. GENERAL BMP INFORMATION

BMP ID Name	Location	Legal Description
BS-1	See Exhibit 'A'	See Exhibit 'A1'

II. BMP SITE LOCATION MAP
 See Exhibit 'A'

III. ROUTINE MAINTENANCE TASKS AND SCHEDULE

BS-1: 5K BaySaver® Separation System

Inspection and Cleaning Cycle:

Inspections shall begin as soon as construction is completed and thereafter on a quarterly basis. Inspections shall include the removal of the primary and storage manhole covers to visually inspect the amount of accumulated sediment, oil, and debris. The sediment depth in each manhole shall be measured by lowering a pole into the manhole until it hits the sediment and measuring the distance from the bottom of the pole to the water line mark on the pole. If this distance is less than 6 feet, the system will need to be cleaned or when visual inspection shows a large accumulation of debris or oil.

Maintenance Instructions:

Note: For each Baysaver System, there are 2 manholes to clean; the primary manhole and storage manhole.

1. Remove the manhole covers to provide access to the pollutant storage.
2. **Storage Manhole:** Use a vacuum truck or other similar equipment to remove all water, debris, oils, and sediment.
3. **Storage Manhole:** Use a high pressure hose to clean the manhole of all remaining sediment and debris. Then, use the vacuum truck to remove the water.
4. **Primary Manhole:** Use a submersible pump to pump the bulk of the water from the primary manhole into the clean storage manhole:
 - a. Keep the pump below the water surface.
 - b. Stop pumping when the water surface is one (1) foot above the accumulated sediments.
5. **Primary Manhole:** Use a vacuum truck or other similar equipment to remove all water, debris, oils, and sediment.
6. **Primary Manhole:** Use a high pressure hose to clean the manhole of all remaining sediment and debris. Then, use the vacuum truck to remove the water.
7. **Primary Manhole:** Fill the cleaned primary manhole with water until you have a depth of 8 feet.
8. **Storage Manhole:** Top off the storage manhole with water until you have a depth of 8 feet.
9. Replace the two manhole covers.
10. Dispose of the polluted water, oils, sediment, and trash at an approved facility.
 - Local regulations prohibit the discharge of solid material into the sanitary sewer system.
 - It is the responsibility of the person providing the maintenance to the Baysaver to dispose of the pollutants in accordance with local, state, and federal regulations.

11. The maintenance and inspection reports shall at a minimum include the following information;
 - a. Date and time inspection was performed.
 - b. Visual inspection descriptions of the primary and storage manholes.
 - c. Sediment depths of the primary and storage manholes.
 - d. Date and time routine maintenance was performed on 5K BaySaver® Separation System.

Note: If any variations occur between the maintenance tasks and schedule noted above and the current BaySaver® Separation System Maintenance Manual, the current BaySaver® Separation System Maintenance Manual (www.baysaver.com) shall govern.

- IV. 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 according to Section III of Exhibit 'B' (Routine Maintenance Tasks and Schedule) as noted above, and each year thereafter. All maintenance activities and inspection reports must 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.