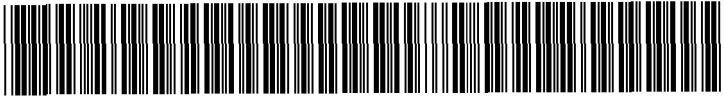


MISC 2014078875



OCT 07 2014 09:47 P 9

Fee amount: 58.00
FB: 15-04560
COMP: SB

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
10/07/2014 09:47:15.00



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THE ABOVE SPACE IS RESERVED FOR THE REGISTER OF DEEDS RECORDING INFORMATION

**THIS PAGE INCLUDED
FOR INDEXING**

MAINTENANCE AGREEMENT

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POST CONSTRUCTION STORM WATER MANAGEMENT PLAN MAINTENANCE AGREEMENT

This Post Construction Storm Water Management Plan Maintenance Agreement (hereinafter referred to as the "Agreement") is entered in to as of the date set forth below by and between Edwin R. Newman, (hereinafter referred to as the "Property Owner") and the City of Omaha, Nebraska (hereinafter referred to as the "City"). The Property Owner and the City are sometimes referred to herein as the "Parties".

WHEREAS, the Property Owner (whether one of more) is the owner of the real property legally described on Exhibit "1" which is attached hereto and incorporated herein by this reference (hereinafter referred to as "the Property");

WHEREAS, the Parties recognize that the health, safety and welfare of the citizens of the City require that storm water management facilities (hereinafter referred to as the "Facilities") must be constructed and maintained in conjunction with the development of the Property, which Property is located in the jurisdiction of the City;

WHEREAS, reference is made to the Post Construction Storm Water Management Plan, designated as Public Works Department project number OMA-20140805-2707-P, (hereinafter referred to as the "PCSMP") which has been prepared by the Property Owner and approved by the City, and which is attached hereto as Exhibit "2" and incorporated herein by this reference; and,

WHEREAS, the Property Owner agrees that its obligations hereunder shall be binding on present and future owners of the Property.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt of which is hereby acknowledged by the Parties, the foregoing premises and the terms and provisions contained herein, the Property Owner agrees as follows:

1. The Facilities shall be constructed by the Property Owner in accordance with the PCSMP, which has been prepared by the Property Owner and which has been reviewed and accepted by the City or its designee. The Property Owner hereby reserves the right to continue to use the land on which the PCSMP is constructed for any uses or purposes which do not materially interfere with the use or operation of the Facilities or the BMP Maintenance Requirements (defined below).
2. The Property Owner has prepared, and the City has reviewed and accepted the "BMP Maintenance Requirements" which are attached hereto as Exhibit "3" and which are incorporated herein by this reference.

3. The Property Owner shall, at its sole expense, construct and perpetually operate and maintain the Facilities in strict accordance with the BMP Maintenance Requirements.
4. The Property Owner hereby grants permission to the City, its authorized agents and employees, upon reasonable notice and at reasonable times, to enter upon the Property, for inspections to ensure that the Facilities are maintained in accordance with this Agreement; provided, however, any such access by the City onto the Property shall be limited to paved areas and any pervious areas around the Facilities to the extent reasonably necessary to inspect the Facilities.
5. In the event an inspection reveals that the Facilities have not been maintained in accordance with this Agreement and corrective action is needed, the City shall provide the Property Owner with written notice specifying what corrective action is reasonably required. If the Property owner has not completed the corrective actions within thirty (30) days of receipt of such notice, the City may perform the necessary corrective work. 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 reasonably deems necessary. The City shall be entitled to recover from the Property Owner the reasonable costs the City reasonably expends to maintain or repair the Facilities or to correct operational deficiencies in accordance with this Agreement or applicable law. Failure to pay the City all of its reasonably expended costs, after forty-five days written notice, shall constitute a breach of this Agreement. The City shall thereafter be entitled to bring an action against the Property Owner to recover such costs.
6. The Property Owner shall not obligate the City to maintain or repair the Facilities, and the City shall not be liable to any person for the condition or operation of the Facilities.
7. The Property Owner 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 Facilities by the Property Owner, unless such damages, accidents, casualties, occurrences or claims are caused by the negligence, gross negligence or willful misconduct of the City or its authorized agents or employees. In the event such 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 have the right to defend and settle, at its own expense, any suit based on such claim. If a final judgment is entered against the City for such a claim, the Property Owner shall pay such judgment unless such judgment is based on the negligence, gross negligence or willful misconduct of the City or its agents or employees.
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. The Property Owner shall comply with the time periods set forth in this Agreement; provided, however, that said periods shall be extended for a period or periods of time equal to any period or periods of delay caused by strikes, lockouts, fire or other casualty, the elements or acts of God, refusal or failure of governmental authorities to grant necessary permits and approvals for the construction of the Facilities contemplated

hereunder (the Parties agreeing to use reasonable diligence to procure the same), or other causes, other than financial, beyond their reasonable control.

10. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Parties.
11. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.
12. This Agreement contains the entire agreement between the Parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement may be modified by only written agreement of the City and the Property Owner.
13. This Agreement may be modified by written agreement of the Parties hereto.
14. Upon conveyance of the Property, the conveying owner shall thereafter be relieved of any obligations under this Agreement arising out of any act, occurrence or omission that occurs after the date of such conveyance.
15. 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, and inure to the benefit of the Property Owner, its successors and assigns.

IN WITNESS WHEREOF, the Property Owner has executed this agreement this 15th day of September, 2014.

INDIVIDUAL, PARTNERSHIP and/or CORPORATION

ERN
E.R. Newman
Name of Individual, Partnership and/or Corporation

ERN
E.R. Newman
Name
Owner
Title

E.R. Newman
Signature

Name of Individual, Partnership and/or Corporation

Name

Title

Signature

ACKNOWLEDGMENTS

See attached acknowledgment

California)
State

Monterey)
County

On this 15th day of September, 2014, before me, a Notary Public, in and for said County, personally came the above named:

EMN ^{win} EWR. Newman

BLD

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 and for the purpose therein stated.

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

Notary Public

Notary Seal

All-purpose Acknowledgment California only

State of California

County of Monterey

On 9-15-14 before me, Betty R Deacon (here insert name and title of the officer),

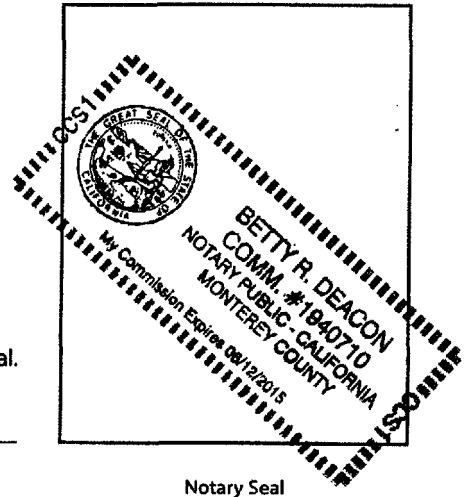
personally appeared Edwin R Newman

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Betty R Deacon



Notary Seal

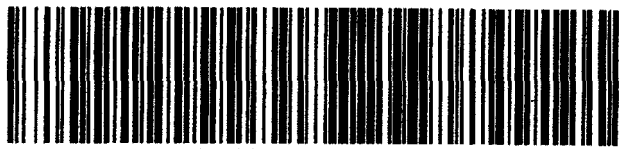


Exhibit "1"

Legal Description of the Property

PROJECT INFORMATION

Legal Description:

A TRACT OF LAND CONSISTING OF PART OF LOT 11, LOTS 12 THROUGH 16, LOTS 23 THROUGH 27 AND PART OF LOT 28, BLOCK 1 AND PART OF LOTS 11 THROUGH 16, BLOCK 4, ALL IN BRIGGS PLACE ADDITION TO THE CITY OF OMAHA, DOUGLAS COUNTY, NEBRASKA AND VACATED STREETS AND ALLEYS ADJACENT TO THE ABOVE LOTS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE WEST LINE OF LOT 16, BLOCK 4, BRIGGS PLACE ADDITION, WHICH IS 220.00 FEET NORTH OF THE SOUTHWEST CORNER OF LOT 23, BLOCK 4, BRIGGS PLACE ADDITION; THENCE NORTH ALONG THE EAST LINE OF THE OMAHA BELT LINE RAILWAY RIGHT-OF-WAY A DISTANCE OF 333.94 FEET; THENCE S89°54'E (ASSUMING SAID EAST LINE OF SAID OMAHA BELT LINE RAILWAY TO BE DUE NORTH AND SOUTH) A DISTANCE OF 312.10 FEET TO THE WEST LINE OF SADDLE CREEK ROAD; THENCE S2°13'W A DISTANCE OF 58.00 FEET; THENCE S3°22'W A DISTANCE OF 77.93 FEET; THENCE S0°22'W A DISTANCE OF 199.32 FEET; THENCE S5°35'E A DISTANCE OF 2.20 FEET, THE FOUR PREVIOUS COURSES BEING ALONG THE WEST LINE OF SADDLE CREEK ROAD; THENCE N89°16'W A DISTANCE OF 304.40 FEET TO THE POINT OF BEGINNING.

EXCEPT FOR:

A PARCEL OF LAND TAKEN BY THE CITY OF OMAHA, NEBRASKA AS SET FORTH IN PARTIAL REPORT OF APPRAISERS FILED APRIL 7, 1998 IN MISC., BOOK 1243 AT PAGE 366, RECORDS OF DOUGLAS COUNTY, NEBRASKA DESCRIBED AS FOLLOWS: A PARCEL OF LAND BEING PART OF LOT 11, BLOCK 1, BRIGGS PLACE ADDITION TO THE CITY OF OMAHA, DOUGLAS COUNTY, NEBRASKA, AND ALSO BEING PART OF VACATED DAVENPORT STREET LYING WEST OF SADDLE CREEK ROAD, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE WEST LINE OF LOT 16, BLOCK 4, BRIGGS PLACE ADDITION, WHICH IS 220.00 FEET NORTH OF THE SOUTHWEST CORNER OF LOT 23, BLOCK 4 OF SAID ADDITION; THENCE NORTH (ASSUMED BEARING) ALONG THE EAST LINE OF THE FORMER OMAHA BELT RAILWAY RIGHT-OF-WAY A DISTANCE OF 333.94 FEET, THENCE SOUTH 89°54' EAST FOR A DISTANCE OF 299.36 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°54' EAST FOR A DISTANCE OF 12.74 FEET TO THE WEST RIGHT-OF-WAY LINE OF SADDLE CREEK ROAD; THENCE SOUTH 2°13' WEST ALONG SAID WEST LINE FOR A DISTANCE OF 58.00 FEET; THENCE SOUTH 3°22'00" WEST ALONG SAID WEST LINE FOR A DISTANCE OF 4.00 FEET; THENCE NORTH 89°04'27" WEST FOR A DISTANCE OF 10.86 FEET; THENCE NORTH 0°33'36" EAST FOR A DISTANCE OF 61.80 FEET TO THE POINT OF BEGINNING.

Property Address:

344 N. Saddle Creek Rd.
Omaha, NE 68131

Subdivision Name:

Briggs Place

Section: 20-15-13

APPLICANT INFORMATION

Owner / Business Name	Edwin R. Newman
Business Address	9140 W. Dodge Road, Suite 140 Omaha, NE 68114
Representative's Name	Edwin R. Newman
Representative's Email Address	bobnew29@gmail.com
Representative's Phone Number	402.397-7554
Representative's Fax Number	

Exhibit "2"

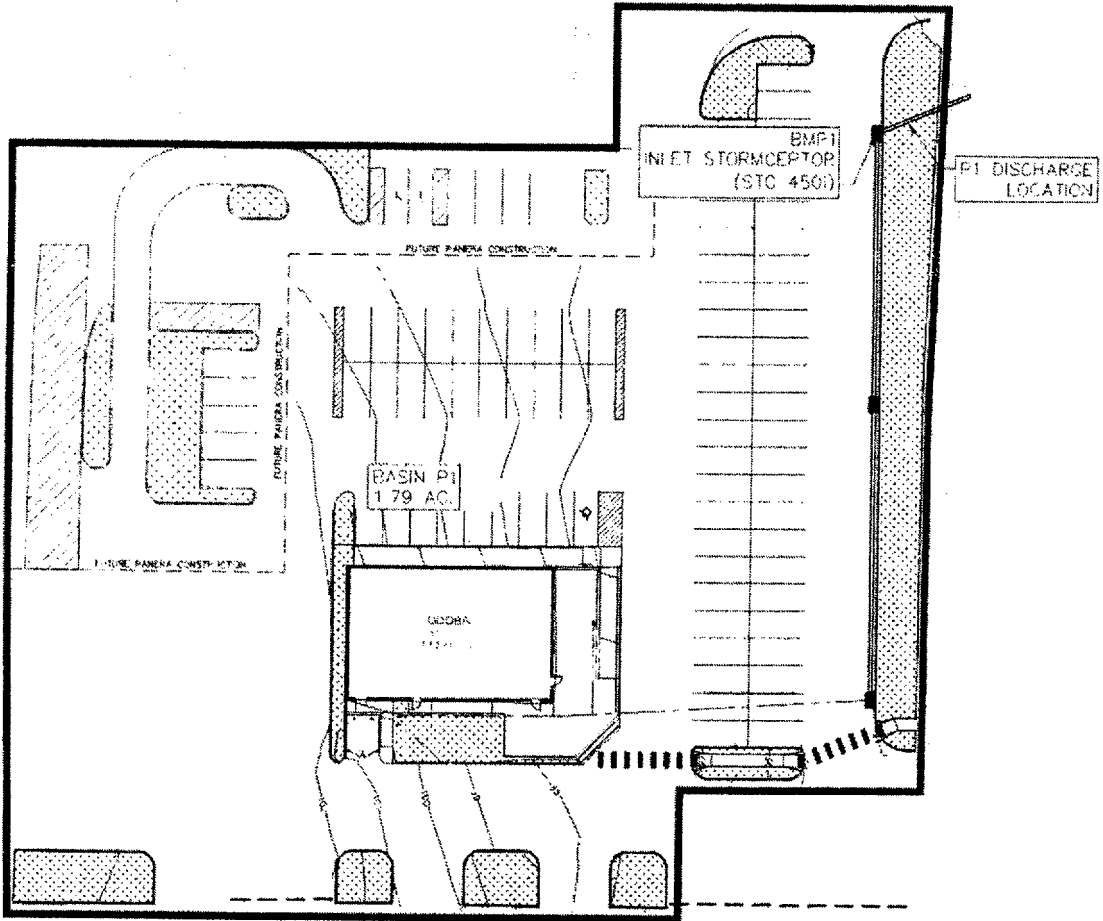


Exhibit "3"

BMP Maintenance Requirements

Name & Location

Project Name: Saddle Creek Qdoba
 Address: 344 N. Saddle Creek Rd.
 PCWP Project Number: N/A
 PWD Building Permit #: BLD-14-0 04920
 PCSMP Project Number: OMA-20140805-2707-P

Site Data

Total Site Area: 1.79 Acres
 Total Disturbed Area: 0.83 Acres
 Total Undisturbed Area: 0.96 Acres
 Impervious Area Before Construction: 100%
 Impervious Area After Construction: 88.5%

BMP Information

BMP ID	Type of BMP	Latitude/Longitude
BMP 1	Inlet Stormceptor (STC 450i)	41°15'40" N 95°58'51" W

BMP Type (Water Quality Unit)	
Task	Schedule
Inspections	Annually, or more often if sediment accumulation level is high.
Cleaning	Once sediment depth reaches 15% of capacity.*

*dispose of removed materials complying with federal, state, and local regulations

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 date of the Post Construction Stormwater 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.