



MISC 2015082750



SEP 30 2015 14:14 P 6

Fee amount: 40.00  
FB: 23-07560  
COMP: SB

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
09/30/2015 14:14:59.00



2015082750

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

**WHEREAS**, Block 22, LLC recognizes that stormwater management facilities (hereinafter referred to as “the facility” or “facilities”) must be maintained for the development called Howard Street Flats located in the jurisdiction of the City of Omaha, Douglas County, Nebraska; and,

**WHEREAS**, Block 22, 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, Howard Street Flats, OMA-20150515-3047-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:

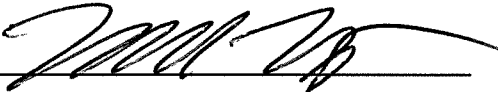
1. The facility shall be constructed by the Owner in accordance with the PCSMP, which has been reviewed and accepted by the City of Omaha or its designee.
2. The Owner must develop and provide the “BMP Maintenance Requirements”, per attached Exhibit “B”, which have been reviewed and accepted by the City 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 24 day of September, 2015.

**Block 22, LLC**

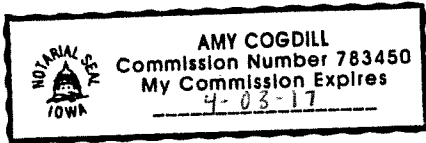
By: 

**Todd Heistand, Managing Member**

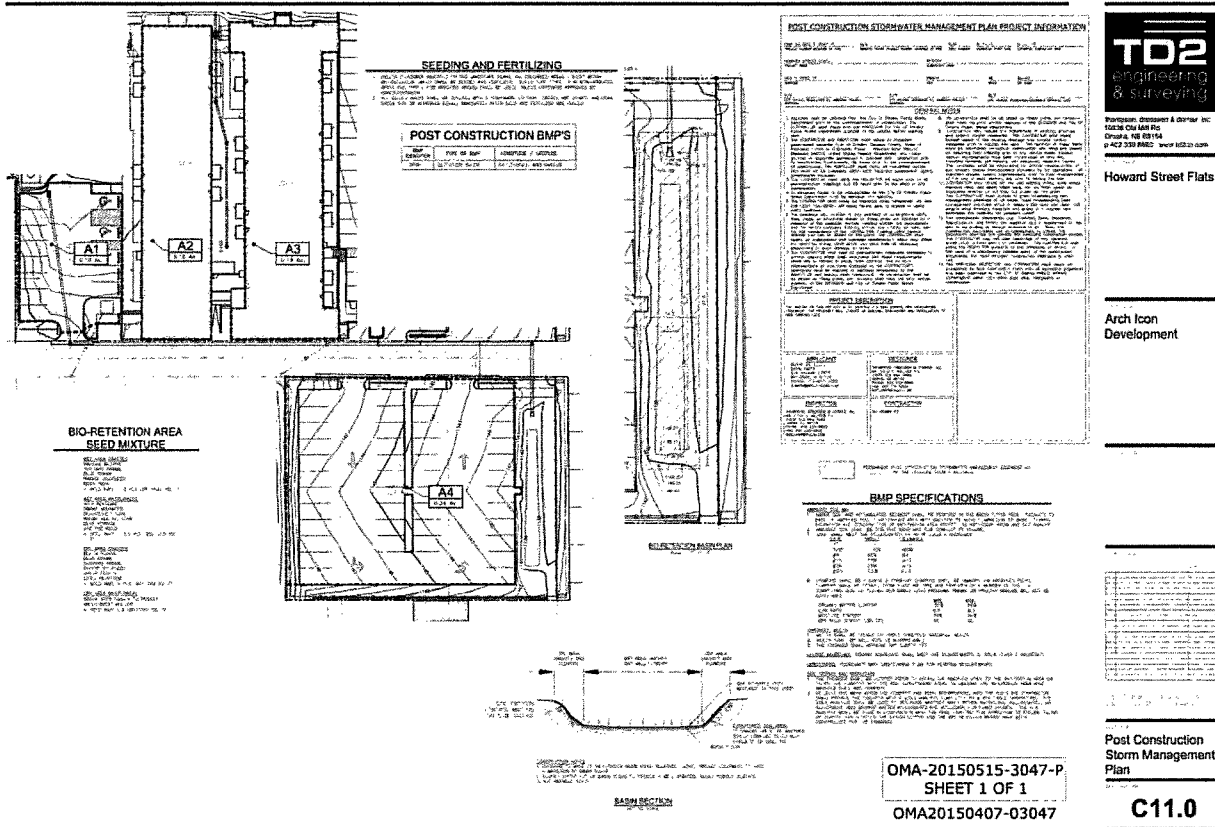
State of Iowa                            )  
                                                  )ss.  
County of Harrison                    )

The foregoing agreement was acknowledged before me this 24 day of September, 2015 by Todd Heistand, Managing Member of Block 22, LLC

  
Notary Public



# Exhibit "A"



**TD2**  
Engineering & Surveying  
Professional Engineering & Surveying, Inc.  
12218 Oak Hill Rd.  
Omaha, NE 68114  
P: 402-339-8822 www.td2inc.com

Howard Street Flats

Arch Icon Development

Post Construction Storm Management Plan

**C11.0**

Project Information

Legal Description:  
Property Address:

Cortlandt Place Lot 14 in Douglas County, Nebraska  
552 S 22<sup>nd</sup> St  
Omaha, NE 68102  
N/A  
SW 22 15 13

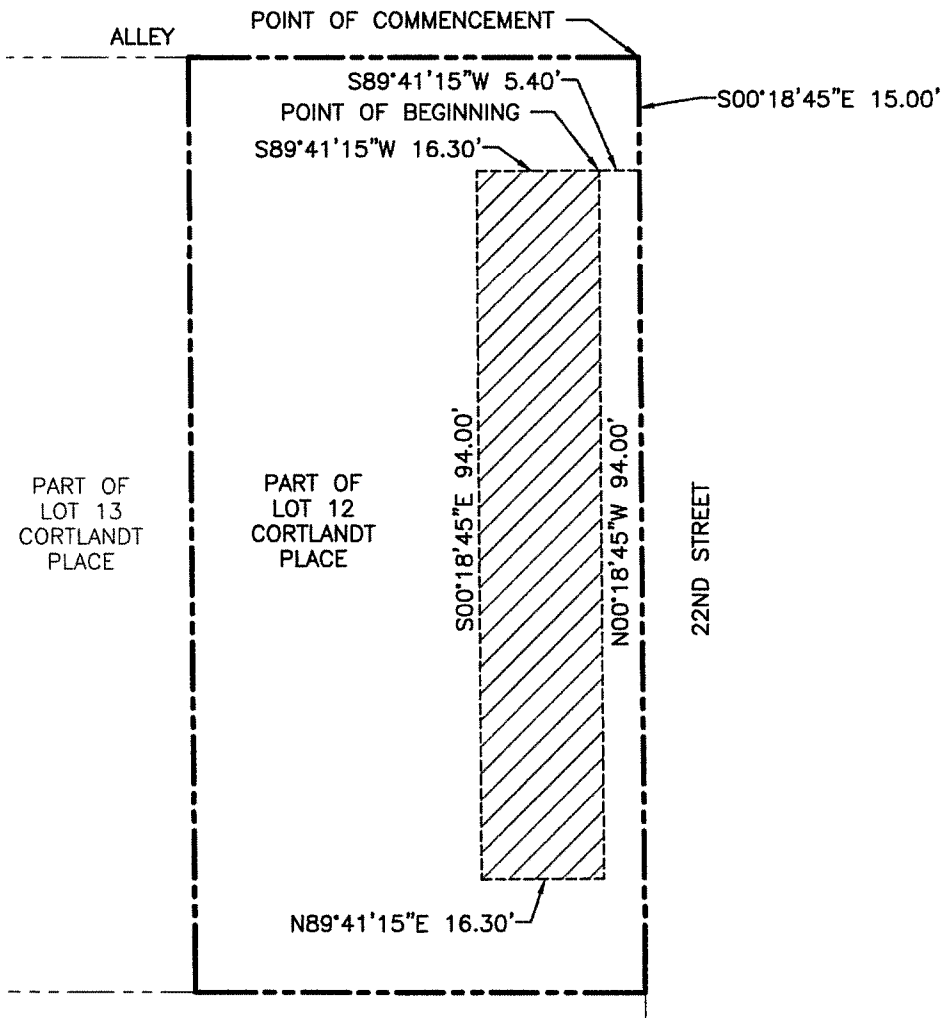
Subdivision Name:  
Section:

Applicant Information

Business Name:  
Business Address:


Block 22, LLC  
514 Walker St  
Woodbine, IA 51579  
Darin Smith  
dsmith@arch-icon.com  
712-647-3355

Representative's Name:  
Representative's Email:  
Representative's Phone:



**LEGAL DESCRIPTION**

THAT PART OF LOT 12, CORTLANDT PLACE, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 12; THENCE S00°18'45"E (ASSUMED BEARING) 15.00 FEET ON THE EAST LINE OF SAID LOT 14; S89°41'15"W 5.40 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S89°41'15"W 16.30 FEET; THENCE S00°18'45"E 94.00 FEET ON A LINE 21.70 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID LOT 14; THENCE N89°41'15"E 16.30 FEET; THENCE N00°18'45"W 94.00 FEET ON A LINE 5.40 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID LOT 12 TO THE POINT OF BEGINNING.

	Job Number: 1764-105 EX thompson, dreessen & dörner, inc. 10836 Old Mill Rd Omaha, NE 68154 p.402.330.8860 f.402.330.5866 td2co.com	Date: 09/23/2015 Drawn By: MRS Reviewed By: DHN Revision Date:	<h2>EXHIBIT "A-1"</h2>	Book Page

# Exhibit “B”

## BMP Maintenance Plan Howard Street Flats Omaha, NE 68102 OMA-20150515-3047-P

I. General BMP Information

Name	Location	Legal Description
Detention Basin	See Exhibit A	See Exhibit A1

II. BMP Site Location Map (See Exhibit A)

III. Routine Maintenance Tasks and Schedule

BMP Type (Bioretention Basin)	
Task	Schedule
Inspect for accumulation of trash, leaves, and other debris and remove as required	Weekly during mowing season (March – October)
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 – October)
Remove and Replace Amended Soil	As Needed (When evidence of plugging is apparent) (if applicable)

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.