



MISC 2017019908



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Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
3/15/2017 10:12:42.58



2017019908

THIS PAGE INCLUDED FOR INDEXING  
PAGE DOWN FOR BALANCE OF INSTRUMENT

RETURN TO: First Management Inc.  
1941 S. 42nd St. Ste. 550  
Omaha NE 68105  
402-689-6478

CHECK NUMBER

CC

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## POST CONSTRUCTION STORMWATER MANAGEMENT PLAN MAINTENANCE AGREEMENT AND EASEMENT

**WHEREAS, Elkhorn Ridge LLC,** recognizes that stormwater management facilities (hereinafter referred to as “the facility” or “facilities”) must be maintained for the development called **Elkhorn Warm Shell Building**, located in the jurisdiction of the City of Omaha, Douglas County, Nebraska; and,

**WHEREAS, Elkhorn Ridge LLC,** (hereinafter referred to as “the Property Owner”) is the owner of **Elkhorn Warm Shell Building** (Exhibits A, A-1 and A-2), (hereinafter referred to as “the Property”), and,

**WHEREAS,** the City of Omaha (hereinafter referred to as “the City”) requires and the Property Owner, and 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, **OMA-20160628-03658**, (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 of Omaha or its designee.
2. The Property Owner must develop and provide the “BMP Maintenance Requirements”, attached here to as 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 within 24-hours of request.
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 of Omaha 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 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 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 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 repairs, and to perform all maintenance, construction and reconstruction as the City of Omaha or its designee deems 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 of Omaha or its designee shall have the right to recover from the Property 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 negligence or intentional 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 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 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.
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 of Omaha 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 of Omaha to enforce any of its ordinances as authorized by law.
9. 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 or business association and any other successors in interest.

IN WITNESS WHEREOF, the Property Owner has executed this agreement this day of March 15, 2017.

**INDIVIDUAL, PARTNERSHIP and/or CORPORATION**

Elkhorn Ridge LLC	
Name of Individual, Partnership and/or Corporation	Name of Individual, Partnership and/or Corporation
<i>Eric Wieseler</i>	
Name	Name
<i>Managing Member</i>	
Title	Title
	
Signature	Signature

Name of Individual, Partnership and/or Corporation	Name of Individual, Partnership and/or Corporation
Name	Name
Title	Title
Signature	Signature



**ACKNOWLEDGMENT**

STATE OF NEBRASKA )  
State

COUNTY OF DOUGLAS )  
County

On this 15 day of March, 20 17 before me, a Notary Public, in and for said County, personally came the above named Eric Wieseler, of First Management, INC. who is personally known to me to be the identical person whose name is affixed to the above instrument and acknowledged the instrument to be his voluntary act and deed for the purpose therein stated.

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

  
Notary Public  
  
Notary Seal

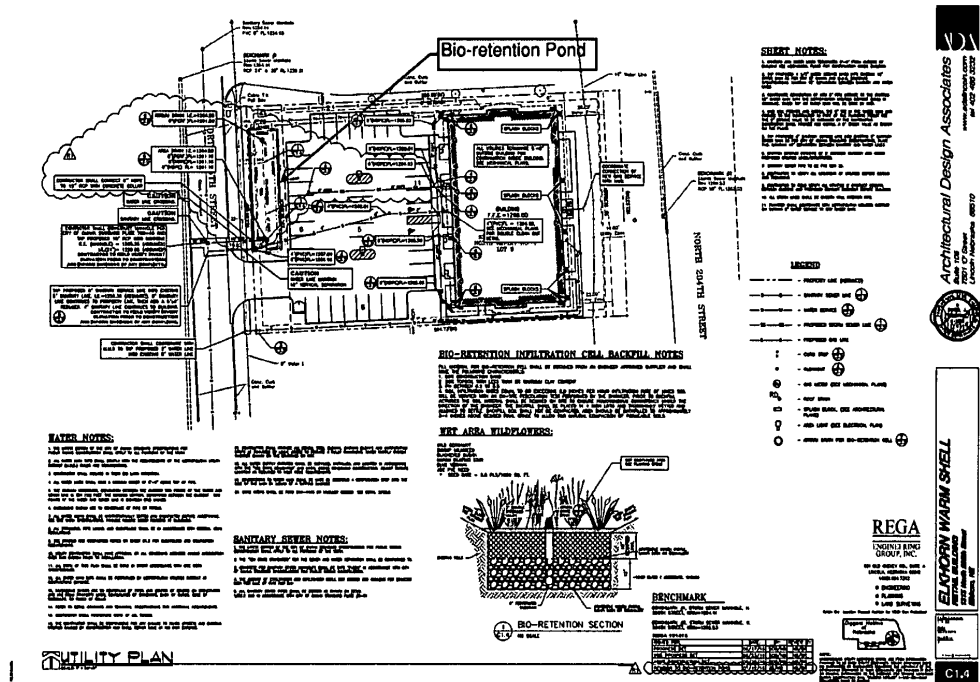
# Exhibit "A"

**Project Information**

Legal Description: Lot 3  
 Address: 1315 North 205<sup>th</sup> Street  
 General Location: Northeast of N 204<sup>th</sup> St. and Veterans Drive  
 Subdivision Name: Skyline Country North Replat 1  
 Section: Section 13, Township 15 North, Range 10 East

**Application Information**

Owner Name: Elkhorn Ridge LLC  
 Owner Address: 1941 South 42<sup>nd</sup> St., Ste. 550  
 Omaha, Nebraska 68105  
 Representative's Name: Eric Wieseler  
 Representative's Email: ewieseler@firstmgt.com  
 Representative's Phone: (402) 344-4600

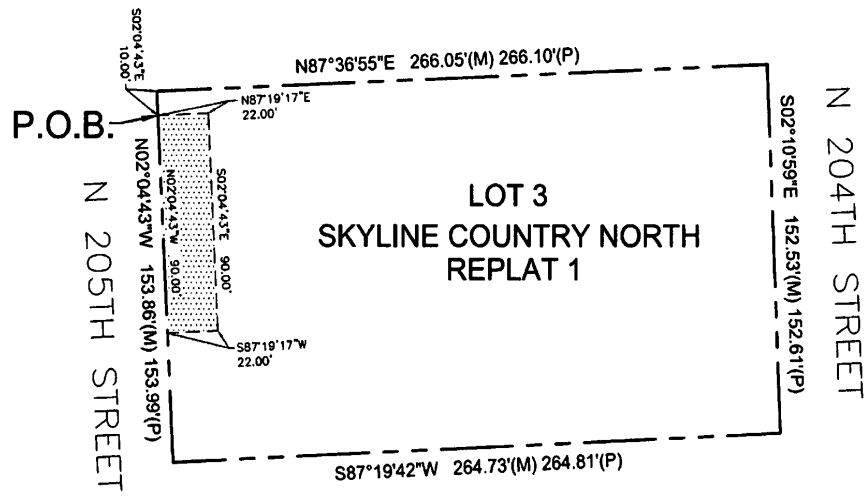


**Exhibit "A-1"**  
**Drainage Area Legal Description**

A portion of Lot 3, Skyline Country North Replat 1 a platted subdivision located in Section 13, Township 15 North, Range 10 East of the 6<sup>th</sup> P.M., Elkhorn, Douglas County, Nebraska, being more particularly described as follows:

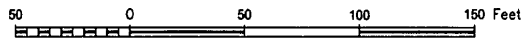
Commencing at the northwest corner of said Lot 3; Thence on the west line of said Lot 3, S02°04'43"E, a distance of 10.00 feet to the POINT OF BEGINNING; Thence N87°19'17"E, a distance of 22.00 feet; Thence S02°04'43"E, a distance of 90.00 feet; Thence S87°19'17"W, a distance of 22.00 feet to a point on the west line of said Lot 3; Thence on the west line of said Lot 3, N02°04'43"W, a distance of 90.00 feet to the POINT OF BEGINNING.

**Exhibit "A-2"**  
**Lot 3, Skyline Country North Replat 1**  
**Drainage Area**



**NORTH**

DATE: 10/06/16  
 SCALE 1" = 50'



JOB NUMBER  
 151416

<b>REGA</b>	
<b>ENGINEERING          GROUP, INC.</b>	
601 OLD CHENEY ROAD SUITE 'A' LINCOLN, NEBRASKA 68512 (402).484.7342	
<ul style="list-style-type: none"> <li>● ENGINEERING</li> <li>● PLANNING</li> <li>● SURVEYING</li> </ul>	



## Exhibit "B"

### BMP Maintenance Requirements

Project Name: Elkhorn Warm Shell Building  
 Address: 1315 North 205<sup>th</sup> Street  
 PCSMP Project Number: OMA-20160628-03658  
 PWD Grading Permit Number:

Site Data:

Total Site Area: 0.93 Acres  
 Total Disturbed Area: 0.93 Acres  
 Total Undisturbed Area: 0.00 Acres  
 Impervious Area Before Construction: 0.00%  
 Impervious Area After Construction: 64.8%

BMP Information:

BMP ID	TYPE OF BMP	Latitude	Longitude
1	Bio-retention Pond	41° 16' 18.66"	96° 14' 08.69"

Routine Maintenance and Tasks Schedule:

Inspection Reports should be completed and filed with the Inspector or Owner.

<b>Bio-retention Pond Maintenance Tasks and Schedule</b>	
Task	Schedule
Remove trash and debris	Monthly
Check and repair any eroded areas	Monthly
Remulch 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
Apply new mulch	Annually
Weeding and Pruning	Annually
Replace poorly draining soil	As needed
Reseed grass swale or border	As needed
Repair broken pipes	As needed
Replace filtration rip rap that is choked with sediment	As needed
Remove sediment	As needed
Replace mulch	Every three years