

## POST CONSTRUCTION STORMWATER MANAGEMENT PLAN MAINTENANCE AGREEMENT AND EASEMENT

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

**WHEREAS**, the Property Owner (whether one of more) is the owner of real property depicted on Exhibit "A" (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, 54th and Leavenworth - Elmwood Townhomes OMA-20220203-6297-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 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.
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 or intentional 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 or intentional 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 (s) has/ have executed this agreement this day of FEB 8, 20 23.

**INDIVIDUAL and/or PARTNERSHIP**

<u>PAUL R DIETSCH</u> Name
<u>VP Elmwood Townhomes LLC</u> Title
<u>[Signature]</u> Signature

_____ Name
_____ Title
_____ Signature

_____ Name
_____ Title
_____ Signature

_____ Name
_____ Title
_____ Signature

ACKNOWLEDGMENT

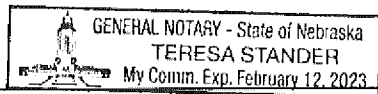
Nebraska )  
State

Douglas )  
County

On this 8 day of Feb, 2023 before me, a Notary Public, in and for said County, personally came the above named: <sup>Paul</sup>~~Dietsch~~ 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.

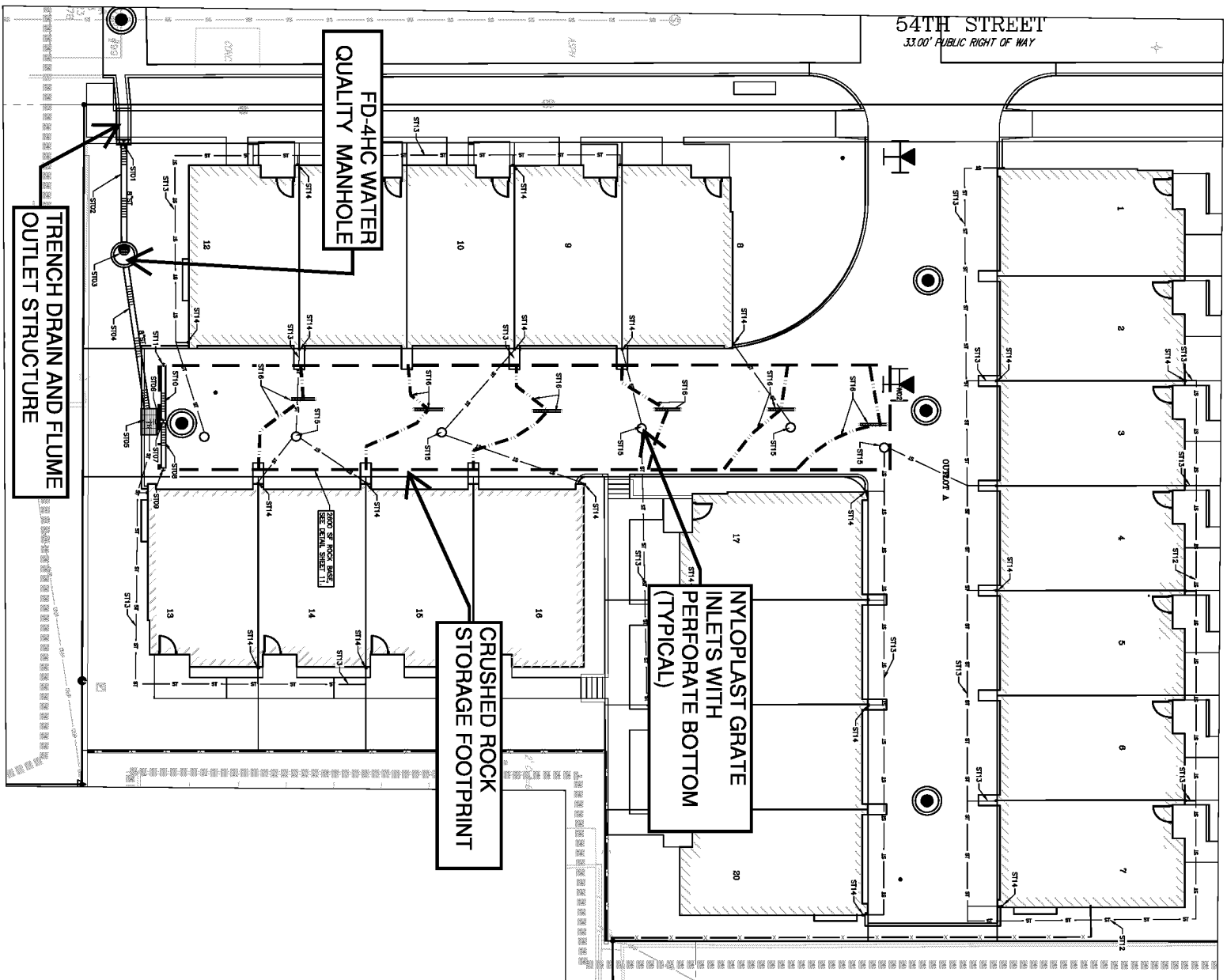
Teresa Stander  
Notary Public



Notary Seal

**Exhibit "A"**  
Insert Real Property Depiction

\\pchsmp\proj\2023\2023008662\Drawings\CONSTRUCTION\DRAWINGS\01\2140-076-01.dwg, 12/21/2023 2:45:58 PM, JOE T. FURBER, User: PCHSMP



# ELMWOOD TOWNHOMES

LOTS 1 THROUGH 21, INCLUSIVE, AND OUTLOT A, BEING A REPLATTING OF LOTS 1 AND 2, HIMEBAUGH'S ADDITION REPLAT 1, TOGETHER WITH PART OF LOTS 32, 33, AND 34, BLOCK 1, HIMEBAUGH'S ADDITION, OMAHA, DOUGLAS COUNTY, NEBRASKA

<p><b>8</b></p> <p>Know what's below. Call before you dig.</p> <p>NEBRASKA MISSOURI KANSAS ILLINOIS IOWA MINNESOTA SOUTH DAKOTA WISCONSIN INDIANA OHIO MICHIGAN PENNSYLVANIA DELAWARE MARYLAND VIRGINIA WEST VIRGINIA NORTH CAROLINA SOUTH CAROLINA LOUISIANA ARIZONA NEW MEXICO UTAH NEVADA CALIFORNIA OREGON WASHINGTON MONTANA WYOMING IDAHO ALABAMA FLORIDA MISSISSIPPI ALASKA HAWAII</p>	<p>PCSMP STORM SEWER PLAN</p> <p>JOHN L. LAMPERTSON E.T. 2023</p>		<p><b>LAMP RYNEARSON</b></p> <p>LAMPRYNEARSON.COM</p> <p>OMAHA, NEBRASKA 14710 W. DOBBER RD., STE. 100 (609) 924-7900 FORT COLLINS, COLORADO KANSAS CITY, MISSOURI 800 378-1161 (TOLL FREE) 303 698-8144</p>
<p>CONTRACT / DRAWING NO. DATE / SCALE PROJECT NAME DATE / SHEET NO. / TOTAL SHEETS</p>	<p>ELMWOOD TOWNHOMES OMAHA, NEBRASKA</p>		

**Exhibit "B"**  
Insert BMP Maintenance Requirements

## EXHIBIT “B” ATTACHMENT BMP MAINTENANCE REQUIREMENTS

Name and Location

Project Name: Elmwood Townhomes  
 Address: S 54<sup>th</sup> Street and Leavenworth Street, Omaha, NE 68106  
 PCSMP Project Number: PCSMP OMA-20220203-6297-P

Site Data

Total Project Area Analyzed: 0.80 Acres  
 Total Water Quality Treatment Area: 0.80 Acres

BMP Information and Maintenance

The selected Best Management Practice (BMP) for water quality is a manhole with a First Defense High Capacity FD-4HC hydrodynamic separator system.

The selected BMP for detention is a layer of crushed rock storage below the site paving. The site will drain directly into the rock storage layer through downspout connections and a series of inlets.

The trench drain and flume outlet structure and the Nyloplast inlets with perforated bottoms are ancillary to the rock storage and have been added to this agreement.

Maintenance Tasks

The FD-4HC shall be maintained and inspected according to the manufacturer’s specifications.

<b>FD-4HC (LAT: 41.232890 N, LONG: -96.139050 W)</b>	
<b>Task</b>	<b>Schedule</b>
INSPECT FOR OIL ACCUMULATION	Every 12 months or as needed
INSPECT FOR SEDIMENT ACCUMULATION	Every 12 months or as needed
CLEANOUT OUT SEDIMENT AND DEBRIS	Every 6 months or as needed
CLEANOUT IF SOIL ACCUMULATION IS AT OR ABOVE 25% OF UNIT’S TOTAL STORAGE CAPACITY	Every 12 months or as needed

The crushed rock storage and inlets shall be maintained and inspected per the table below.

<b>CRUSHED ROCK STORAGE (LAT: 41.251992 N, LONG: -95.996332 W)</b>	
<b>Task</b>	<b>Schedule</b>
INSPECT FOR SEDIMENT AND DEBRIS ACCUMULATION	Every 6 months or as needed
CLEANOUT OUT SEDIMENT AND DEBRIS	Every 6 months or as needed

The crushed rock storage and inlets shall be maintained and inspected per the table below.



The trench drain and flume outlet structure shall be maintained and inspected per the table below.

<b>TRENCH DRAIN AND FLUME OUTLET (LAT: 41.251720 N, LONG: -95.996560 W)</b>	
<b>Task</b>	<b>Schedule</b>
INSPECT FOR SEDIMENT AND DEBRIS ACCUMULATION	Every 6 months or as needed
CLEANOUT OUT SEDIMENT AND DEBRIS	Every 6 months or as needed
INSPECT FOR DAMAGE AND REPAIR AS NEEDED	Every 12 months or as needed

The Nyloplast inlets shall be maintained and inspected per the table below.

<b>NYLOPLAST INLETS (LAT: 41.251992 N, LONG: -95.996332 W)</b>	
<b>Task</b>	<b>Schedule</b>
INSPECT FOR SEDIMENT AND DEBRIS ACCUMULATION	Every 6 months or as needed
CLEANOUT OUT SEDIMENT AND DEBRIS	Every 6 months or as needed

A written record of all inspections and any maintenance work will be maintained for all of the BMPs onsite and will be made available for review by the City if requested.