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FILED SARPY COUNTY NEBRASKA  
INSTRUMENT NUMBER

NEBRASKA DOCUMENTARY  
STAMP TAX

2013-32969

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10/23/2013 02:07:22 PM

*Lloyd J. Dowding*

By: counter1

REGISTER OF DEEDS



EASE



**THIS PAGE ADDED  
FOR RECORDING  
INFORMATION.**

**DOCUMENT STARTS ON  
NEXT PAGE.**

**LLOYD J. DOWDING**

SARPY COUNTY REGISTER OF DEEDS

Steven J. Stastny, Deputy

1210 GOLDEN GATE DRIVE, # 1230

PAPILLION, NE 68046-2842

402-593-5773

*R+K*

PAUL GONZALES  
E & A CONSULTING  
GROUP, INC.

330 N 117<sup>th</sup> ST

OMAHA, NE

68154

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

**WHEREAS**, The Property Owner recognizes that stormwater management facilities (hereinafter referred to as “the facility” or “facilities”) must be maintained for the development called Lot 1, Portal Plaza South Replat 1 and Lot 3, Portal Plaza South, located in the jurisdiction of the City of Papillion, Sarpy 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 Papillion (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, PAP-20131022-912-P (hereinafter referred to as “PCSMP”), shall 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 stormwater facility or facilities, located on the Property, shall be constructed by the Property Owner in accordance with the PCSMP, which has been reviewed and accepted by the City of Papillion 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 Papillion 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 BMP Maintenance Requirements 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 Papillion 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 Property 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 from the date of City's written directive, 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 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 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.

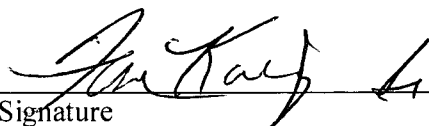
The City or its designee shall have the right to recover from the Property Owner any and all reasonable costs the City expends to maintain or repair the facility or facilities or to correct any operational deficiencies subject to the provisions of the immediately preceding sentence relating to negligence or intentional acts of the City. Failure to pay the City or its designee all of its expended costs, after sixty (60) days written notice, shall constitute a breach of the agreement. The City 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 to maintain or repair the facility or facilities, and the City 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 to 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 the both the City 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.

C

8. The Property Owner shall not in any way diminish, limit, or restrict the right of the City of Papillion to enforce any of its ordinances as authorized by law.
9. This Agreement shall be recorded with the Register of Deeds of Sarpy 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 23<sup>RD</sup> day of OCTOBER, 2013.

By: Frank Kulig, Sr.

Signature
Title

ACKNOWLEDGMENT

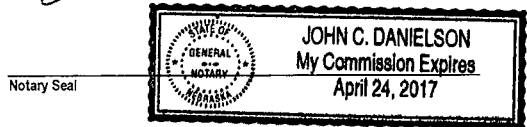
Nebraska )  
State

Douglas )  
County

On this 23 day of October, 20 13 before me, a Notary Public, in and for said County, personally came the above named: Frank Kuley 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.

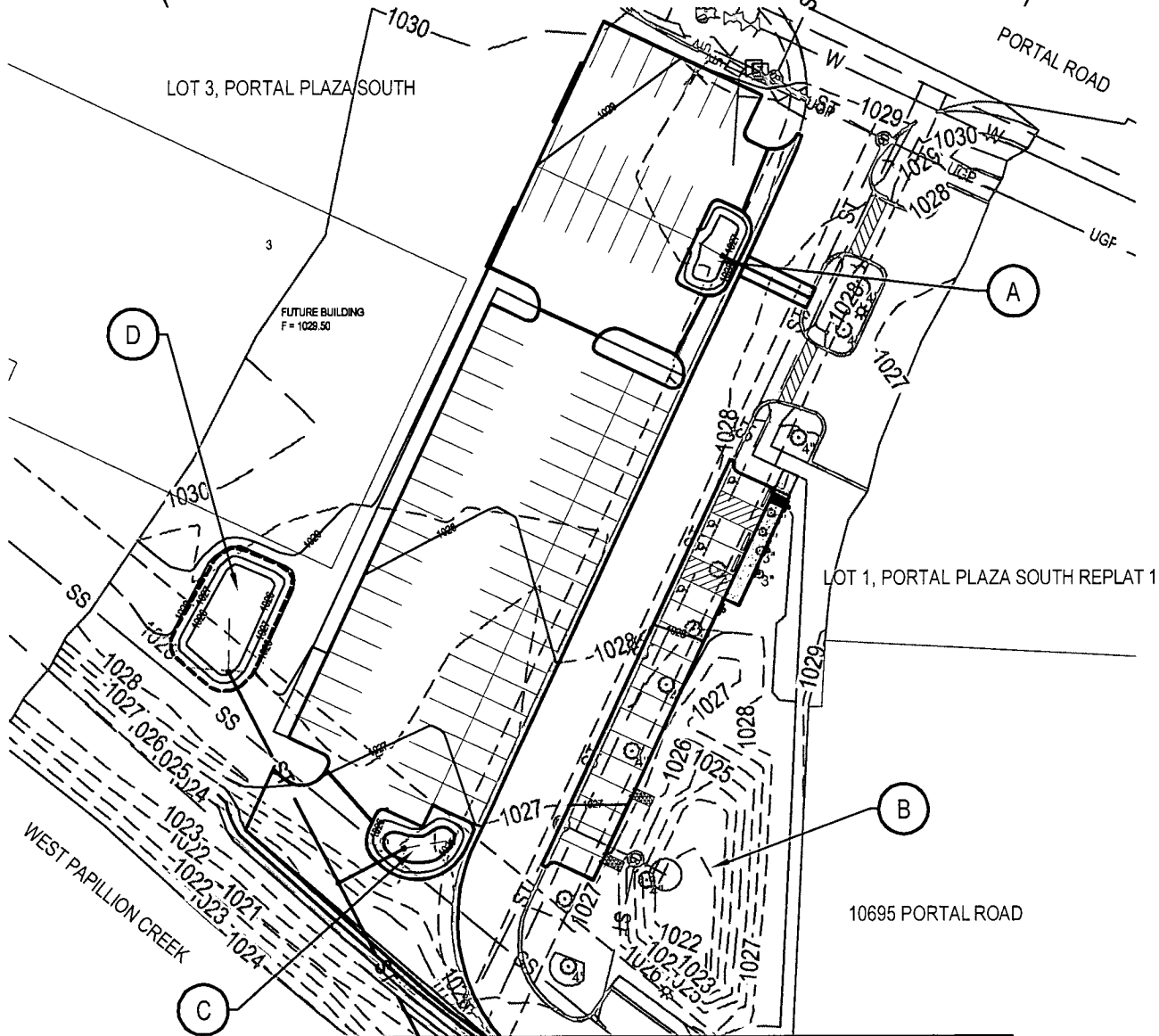
WITNESS my hand and Notarial Seal the day and year last above written.

[Signature]  
Notary Public



# EXHIBIT "A"

## (PCSMP MAINTENANCE AND EASEMENT AGREEMENT)



### BMP TABLE

BMP ID	DESCRIPTION	LOCATION
A	BIORETENTION POND (PROPOSED)	41°10'23.3"N / 96°04'40.8"W
B	BIORETENTION POND (EXISTING)	41°10'20.8"N / 96°04'41.1"W
C	BIORETENTION POND (PROPOSED)	41°10'21.2"N / 96°04'42.3"W
D	BIORETENTION POND (PROPOSED)	41°10'21.9"N / 96°04'43.2"W



### E & A CONSULTING GROUP, INC.

Engineering • Planning • Environmental & Field Services  
 330 North 117th Street Omaha, NE 68154 Phone: 402.895.4700 Fax: 402.895.3599

Job No.: P1999.175.069

Date: 2013/10/21

Drawn by: BJW

Scale: NA'

Sht: 1 of 1

### PORTAL PLAZA

LA VISTA, SARPY COUNTY, NEBRASKA

**Exhibit B****Name and Location:**

Project Name: Parking Lot Addition  
 Address: 10695 Portal Road, Papillion, NE 68128  
 PCWP Project Number: PAP-20131022-912-P  
 PWD Grading Permit #: Not Applicable

**Site Data**

Total Site Area: 1.4 Acres  
 Total Disturbed Area: 0.8 Acres  
 Total Undisturbed Area: 0.6 Acre  
 Impervious Area before Construction: 33%  
 Impervious Area after Construction: 80%

**BMP Information**

BMP ID	Type of BMP	Latitude / Longitude
A	Bioretention Basin	41°10'23.3"N / 96°04'40.8"W
B	Bioretention Basin	41°10'20.8"N / 96°04'41.1"W
C	Bioretention Basin	41°10'21.2"N / 96°04'42.3"W
D	Bioretention Basin	41°10'21.9"N / 96°04'43.2"W

**Routine Maintenance and Tasks**

<b>Bioretention Maintenance and Tasks Schedule</b>	
<b>Task</b>	<b>Schedule</b>
Remove Trash and Debris	Monthly
Check and Repair Eroded Areas	Monthly
Re-mulch 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
Remove sediment	As Needed
Replace mulch	Every three years

\* Basin needs to drain down within 40 hours after the end of a rain event