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Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
10/20/2009 14:43:31.59



2009113313

**THIS PAGE INCLUDED FOR INDEXING**  
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Return To: Kris Moore  
Magnum Development Corp.  
11550 "I" Street, Suite 200  
Omaha, NE 68137

Check Number  
 → 5967

## POST CONSTRUCTION STORMWATER MANAGEMENT PLAN MAINTENANCE AGREEMENT AND EASEMENT

**WHEREAS**, Zone 5, LLC recognizes that stormwater management facilities (hereinafter referred to as "the facility" or "facilities") must be maintained for the development called Aksarben Village Zone 5 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 Lots 1-6 Replat 8, Lot 1 Replat 7 (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, Aksarben Village Zone 5, (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.

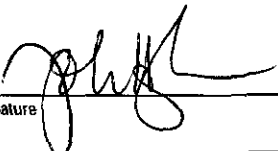
6. The Property Owner shall not obligate the City of Omaha to maintain or repair the facility or facilities, and the City of Omaha shall not be liable to any person for the condition or operation of the facility or facilities.
7. The Property Owner, its administrators, executors, successors, heirs, or 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 22 Sept, 2009.

**INDIVIDUAL, PARTNERSHIP and/or CORPORATION**

Zone 5, LLC
_____ Name of Individual, Partnership and/or Corporation
John Hughes
_____ Name
Member
_____ Title
 _____ Signature

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

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

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

**ACKNOWLEDGMENT**

Nebraska \_\_\_\_\_ )  
State

Douglas \_\_\_\_\_ )  
County

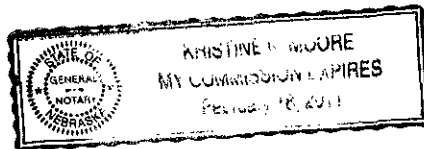
On this 22<sup>nd</sup> day of Sept., 2009 before me, a Notary Public, in and for said County, personally came the above named:

John Hughes, Member of Zone 5, LLC

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.

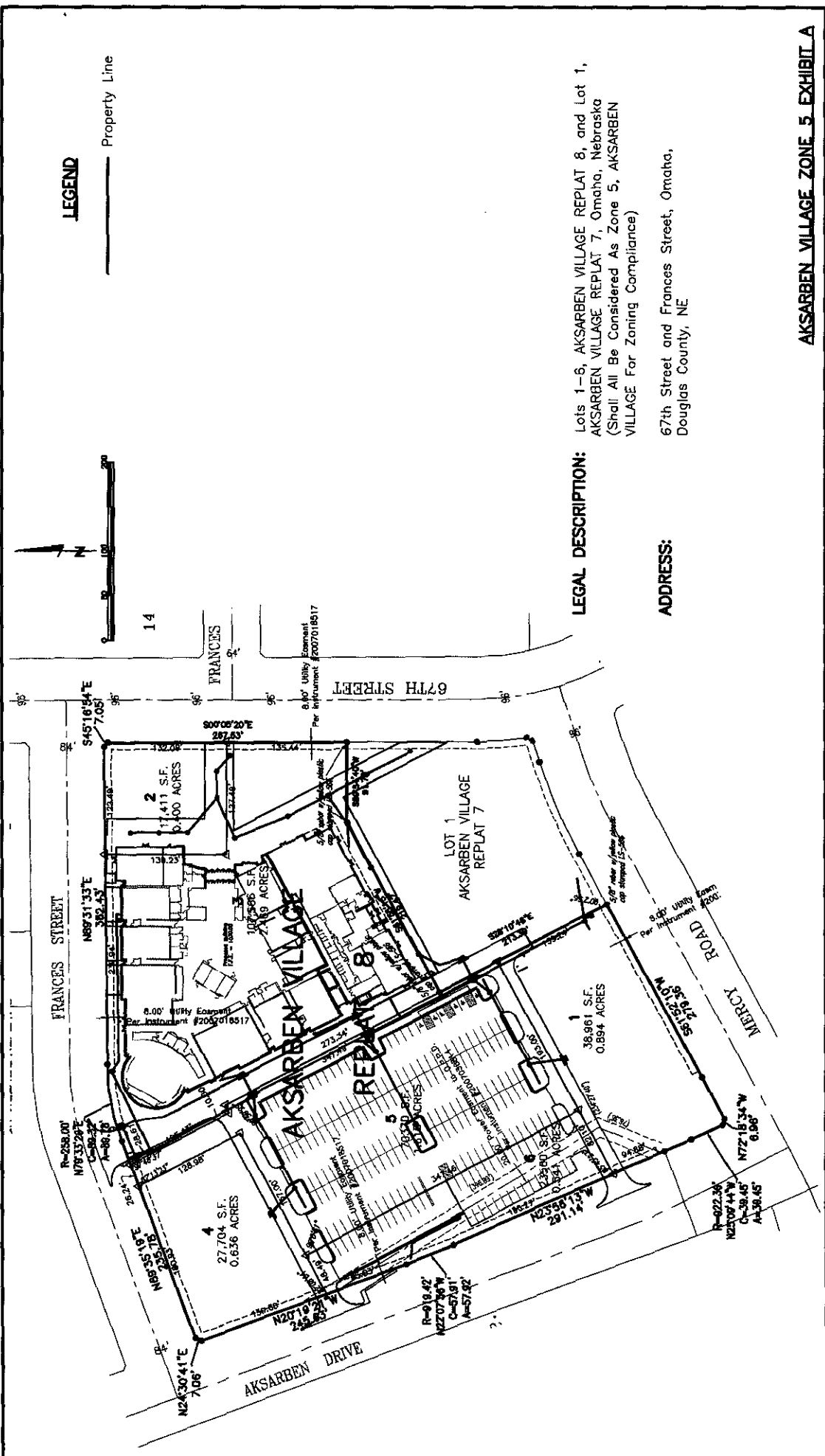
Kristine K. Moore  
Notary Public Kristine K. Moore



Notary Seal

## **Exhibit "A"**

**Insert Real Property Depiction**



drawn by: DMS  
 designer: LMW  
 job number: 0107019.01-022  
 date: 09/18/09  
 book:  
 file name: 07019D04.dwg

WWW.LRA-INC.COM  
 (Ph) 402.496.2498  
 (Fax) 402.496.2730

**Landa Kynastor & Associates, Inc.**  
 14710 West Dodge Road Suite 100  
 Omaha, Nebraska 68154-2027

**AKSARBEN VILLAGE ZONE 5 EXHIBIT A**

## **Exhibit “B”**

**Insert BMP Maintenance Requirements**  
(See Guidance Document for Information Needed)



## **EXHIBIT B**

### **BMP MAINTENANCE REQUIREMENTS**

#### Name and Location

Project Name: Aksarben Village Zone 5, Entertainment District  
Address: 67<sup>th</sup> and Frances Street, Omaha, NE 68124  
OPW PCSMP Project Number: OPW51843-PCSMP  
PCWP Grading Permit Project Number: OMA20071010-686-2

#### Site Data

Total Site Area: 7.023 Acres  
Total Disturbed Area: 4.135 Acres  
Total Undisturbed Area: 2.888 Acres  
Impervious Area Before Construction: 0% (Undeveloped Site)  
Impervious Area After Construction: 63.7% (or 4.475 Acres)

BMP BaySaver BaySeparator 3K Unit:  
Latitudinal 41-14-19.44576 N, Longitudinal 96-00-55.93272 W  
Northing 1383.2044, Easting 3507.6665

#### BMP Information and Maintenance

The Best Management Practices (BMPs) to be used onsite as part of the Post Construction Stormwater Management Plan include the following:

A BaySaver BaySeparator water quality system by Advanced Drainage Systems, Hilliard, Ohio will be installed on the south side of the property as the primary, permanent water quality treatment system to provide treatment for nearly 3.22 acres of drainage area. The BaySaver BaySeparator will be constructed and operated per the manufacturer's written installation and maintenance instructions. Contact the manufacturer for the following documents: "BaySaver Stormwater Treatment Unit Specification – Online System," "BaySeparator Installation Instructions," and "BaySaver Separation System Maintenance Manual." The dual manholes of the BaySeparator system will be inspected quarterly by the Owner or someone selected by the Owner who will be familiar with how the system is to properly function. The dual manholes will be cleaned, at a minimum, on a yearly basis and when two (2) or more feet of sediment has accumulated at the bottom of either manhole structure, or when visual inspection shows a large accumulation of debris or oil.

Additionally, an oversized pipe at the downstream (south) end of the enclosed storm sewer system will provide BMP pipe storage using an orifice plate at the pipe outlet. The downstream pipe of 142 LF will be a 30" RCP (4.9 SF) with an orifice plate that reduces

the pipe size to 24" (3.1 SF). The storage provided by the pipe oversizing will be approximately 250 cubic feet of storage or 0.006 acre-feet. The orifice plate will be connected to the top of the 30" RCP at the outlet end so that the plate does not restrict low flows. The orifice plate will be annually inspected for structural integrity, and will be visually inspected quarterly for accumulation of debris.

Six rain gardens in parking lot islands will also be constructed on the west side of the property. Debris and trash will be removed monthly by the Owner or someone selected by the Owner. Inspection for erosion and vegetative failure will also occur monthly and will be repaired as needed. These rain gardens will serve as initial, temporary BMP for water quality treatment, until a parking garage is constructed in the future to replace the parking lot and rain gardens. Because the rain gardens are temporary BMP measures for this Aksarben Village Zone 5 site, the BaySaver BaySeparator has been sized to treat the first 1/2" of rainfall for all the drainage area collecting at the south end of the site (approximately 3.22 acres) under future build-out conditions (i.e. when the parking garage is constructed and the rain gardens have been removed). Therefore, while the temporary rain gardens are in-place, the BaySeparator will be essentially re-treating a portion of the stormwater runoff that will have already been treated through the rain garden systems.

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

**BMP Maintenance Summary Table**

<u>BMP Type</u>	<u>Task</u>	<u>Schedule</u>
BaySeparator	Clean primary and storage manholes.	Yearly - and when 2 or more feet of sediment has accumulated at the bottom of either manhole – and when visual inspection shows a large accumulation of debris or oil.
Orifice Plate	Inspect for structural integrity. Clean pipe outlet at orifice plate.	Yearly. Quarterly – and when visual inspection shows accumulation of debris.
Rain Garden	Remove debris and trash. Inspect for erosion and vegetative failure; Repair as necessary.	Monthly. Monthly.