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Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
2/27/2013 14:35:25.77



2013019601

When recorded, please return to:

Kutak Rock LLP  
1650 Farnam Street  
Omaha, NE 68102  
Attention: Carolyn Pasternak  
Paralegal

### NOTICE OF COVENANTS

WHEREAS, Zone 5, LLC, a Nebraska limited liability company (the “**Issuer**”), is the current owner of that certain real property located at 67<sup>th</sup> and Frances Streets in the City of Omaha, Nebraska (the “**City**”) and legally described on Exhibit A attached hereto and incorporated herein by this reference (the “**Redevelopment Site**”); and

WHEREAS, on January 13, 2009, the City Council of the City approved the Zone 5, LLC Redevelopment Plan (the “**Redevelopment Plan**”), which provided for the redevelopment of the Redevelopment Site and the use of the excess ad valorem taxes generated by such development; and

WHEREAS, the Issuer and the City entered into that certain Redevelopment Agreement, which was approved by the City as Ordinance No. 38449 on June 25, 2009, and executed by the City on June 25, 2009 (the “**Redevelopment Agreement**”), in order to implement the Redevelopment Plan and the development and construction of a redevelopment project referred to as the Zone 5, LLC Redevelopment Project; and

WHEREAS, in accordance with the Redevelopment Agreement, the City issued its Redevelopment Promissory Note payable to the Issuer (the “**TIF Note**”); and

WHEREAS, the Issuer intends to enter into that certain Trust Indenture, dated as of November 15, 2012 (the “**Indenture**”), with Bankers Trust Company, as trustee thereunder (the “**Trustee**”), and issue its Tax Increment Financing Revenue Bonds (Aksarben Village Zone 5 Project) Series 2012 (the “**Series 2012 Bonds**”); and

WHEREAS, proceeds of the Series 2012 Bonds are being used to purchase the TIF Note from the Issuer, which will be the primary source of payment and security for the Series 2012 Bonds; and

WHEREAS, in accordance with the Indenture, the Issuer desires to give notice of certain covenants contained therein;

NOW, THEREFORE, this Notice is executed and is to be recorded in the records of the Douglas County, Nebraska Register of Deeds solely for the purpose of providing record notice of the following covenants:

1. **Covenants.** The Issuer and its successor and assigns are subject to the following covenants during the period that the Indenture is in full force and effect. The Issuer and its successors and assigns shall:

(a) cause all principal of, redemption premium, if any, and interest on the Series 2012 Bonds to be paid, solely from the sources, on the dates, at the places and in the manner provided in the Indenture;

(b) make all payments required to restore the Reserve Fund (as defined in the Indenture) as provided in Sections 4.03(d) and 4.04(b) of the Indenture;

(c) not assign the Revenues (as defined in the Indenture) or create or authorize to be created any debt, lien or charge thereon, other than the assignment thereof under the Indenture;

(d) cooperate with the Trustee in the assignment and recording of the Indenture and any related instruments or documents related to the assignment;

(e) comply with and perform each of its liabilities and obligations under and in accordance with the Redevelopment Agreement;

(f) agree that on and after January 1, 2012, the tax valuation of the Redevelopment Site will be not less than \$12,255,400 in excess of the Redevelopment Project Valuation for the Redevelopment Site (as defined in the Indenture date November 15, 2012);

(g) cause all real estate taxes and assessments levied on the Redevelopment Site to be paid prior to the time such become delinquent;

(h) not protest a real estate improvement valuation on the Redevelopment Site of \$13,755,400 or less on and after January 1, 2014;

(i) not convey the Redevelopment Site or any structures thereon to any entity which would be exempt from the payment of real estate taxes or to any other person or entity which would result in the nonpayment of such real estate taxes;

(j) not apply to the Douglas County Assessor for the structures, or any portion thereof, to be taxed separately from the underlying land of the Redevelopment Site;

(k) maintain casualty insurance for 90% of the full value of the structures on the Redevelopment Site;

(l) in the event of a casualty, apply all such insurance proceeds insuring any portion of the Project (as defined in the Redevelopment Agreement) to the reconstruction of the Project;

(m) not sell, transfer, assign, convey or otherwise transfer the ownership of all or any portion of the Redevelopment Site or the Project unless the above restrictions are included in any subsequent sale, assignment, sale leaseback or other transfer of property and the Issuer, or its successors and assigns, remains obligated to pay and perform its obligations and liabilities under the Indenture;

(n) be open at all times to inspection by accountants or other agents of the Trustee which the Trustee may designate from time to time or by holders of 75% or more in principal amount of any Series 2012 Bonds then outstanding, during regular business hours, of all books, instruments and documents in the Issuer's possession relating to the Project and the Revenues;

(o) be available at reasonable times and under reasonable regulations established by the Bond Registrar, and the Bond Register may be inspected and copied by or delivered to the issuer or Trustee, by holders of 75% or more in principal amount of the Bonds then Outstanding, or a designated representative thereof; and

(p) cause the DJ's Dugout project to be completed on or before June 30, 2013.

2. **Term.** The covenants set forth herein shall terminate upon expiration or earlier satisfaction and discharge of the Indenture, as provided therein.

3. **No Amendment.** Nothing herein contained shall be construed to amend, modify or in any other way affect the terms, conditions and provisions of the Indenture or the Redevelopment Agreement. Any capitalized terms not herein defined shall have the meaning set forth in the Indenture.

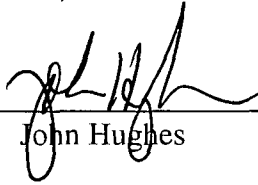
4. **Binding.** All covenants herein contained shall be construed as covenants running with the Redevelopment Site and shall bind the Issuer and its successors and assigns.

[Remainder of page intentionally left blank; signature page follows]

Dated this 15<sup>th</sup> day of November, 2012.

ZONE 5, LLC, a Nebraska limited liability company


By: Magnum Development Corp., a Nebraska corporation, as authorized manager

By:   
John Hughes

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF DOUGLAS        )

The foregoing instrument was acknowledged before me this 9 day of November, 2012, by John Hughes, the President of Magnum Development Corp., a Nebraska corporation, authorized manager of Zone 5, LLC, a Nebraska limited liability company, on behalf of the company.



  
Notary Public  
My commission expires:  
9-16-15

**EXHIBIT A**

**LEGAL DESCRIPTION**

Aksarben Village Replat 11, Lots 1 - 7, at 67<sup>th</sup> and Frances Streets, as surveyed, platted and recorded in Douglas County, Nebraska.