



MISC 2012056516



JUN 11 2012 14:44 P 27

MISC see attached
 27 FEE 150.50 FB 01-60000
 BKP 25-15-12 ✓ 80 COMP
 31 DFL SCAN FY
 A

Received - DIANE L. BATTIATO
 Register of Deeds, Douglas County, NE
 6/11/2012 14:44:49.83



2012056516

(Space above reserved for Recorder of Deeds certification)

CONSTRUCTION, OPERATION AND MAINTENANCE AGREEMENT
 FOR THE AKSARBEN VILLAGE OPEN SPACE PROPERTY

Return to:
 Kendra J. Ringenberg
 Koley Jessen P.C., L.L.O.
 1125 South 103rd Street, Suite 800
 Omaha, NE 68124

191580

KOLEI

CONSTRUCTION, OPERATION AND MAINTENANCE AGREEMENT
FOR THE AKSARBEN VILLAGE OPEN SPACE PROPERTY

THIS CONSTRUCTION, OPERATION AND MAINTENANCE AGREEMENT FOR THE AKSARBEN VILLAGE OPEN SPACE PROPERTY ("Agreement") is made and entered into this 28th day of February, 2012 (the "Effective Date"), by and among the AK-SAR-BEN FUTURE TRUST, a Nebraska non-profit corporation ("Future Trust"); the AKSARBEN VILLAGE MASTER OWNERS ASSOCIATION, INC., a Nebraska non-profit corporation ("Master Association"); AKSARBEN APARTMENTS, L.L.C., a Nebraska limited liability company ("Broadmoor"), GEORGETOWN PROPERTIES, LLC, a Nebraska limited liability company ("Georgetown"), ZONE 5, LLC, a Nebraska limited liability company ("Zone 5"), Zone 5 ENTERTAINMENT, LLC, a Nebraska limited liability company ("Zone 5 Entertainment"), NODDLE AV2, L.L.C. ("AV2"), NODDLE AV3, L.L.C. ("AV3"), NODDLE AV4, L.L.C. ("AV4"), NODDLE AV6, L.L.C. ("AV6"), and ZONE THREE COMMONS, L.L.C. ("Commons"), each a Nebraska limited liability company (AV2, AV3, AV4, AV6 and Commons shall be collectively referred to herein as "Noddle Entities"), W & S Joint Venture, LLC, a Kansas limited liability company ("W&S"), QUADTECH, LLC, a Nebraska limited liability company ("QuadTech") and DLR GROUP INVESTMENTS, INC., a Nebraska corporation ("DLR") (Broadmoor, Georgetown, Zone 5, Zone 5 entertainment, the Noddle Entities, W&S, QuadTech and DLR, collectively, the "Owners").

WHEREAS, Future Trust and the Owners own the various parcels of real estate comprising the Aksarben Village Development;

WHEREAS, Future Trust is the record owner of that certain property located in the Aksarben Village Development, legally described on Exhibit "A" attached hereto (the "AFT Open Space Property");

WHEREAS, the City of Omaha, Nebraska, a municipal corporation (the "City"), is the record owner of that certain property located adjacent to the Aksarben Village Development, legally described on Exhibit "B" attached hereto (the "City Open Space Property");

WHEREAS, the AFT Open Space Property is anticipated to be conveyed in fee simple to the City pursuant to that certain Fourth Amendment to Redevelopment Agreement between the City and Future Trust and dated as of August 29, 2008;

WHEREAS, the parties desire and intend that the Open Space Property shall be maintained and operated as open space or for public transportation purposes and not developed for any other commercial purpose, and, therefore, wish to declare and establish certain easements, covenants and conditions with respect to the AFT Open Space Property;

WHEREAS, in furtherance of all of the foregoing, the parties hereby agree that the Open Space Property shall be held subject to the following easements, restrictions, covenants and conditions respecting certain matters relating to construction, maintenance and operation of the Open Space Property, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Open Space Property. These easements, covenants, restrictions and conditions shall run with the land and shall be binding on the parties to this Agreement, and their successors or assigns and shall inure to the benefit of each owner thereof;

WHEREAS, pursuant to the Redevelopment Agreement, Future Trust is required to construct the Open Space Improvements and Future Trust shall secure the funding sources for the cost of construction for the Open Space Improvements; and

WHEREAS, pursuant to the Redevelopment Agreement, Future Trust is required to construct the Open Space Improvements and Future Trust shall secure the funding sources for the cost of construction for the Open Space Improvements; and

WHEREAS, the fact that Future Trust will cease to exist (following the construction of the Open Space Property and Open Space Improvements, the sale of the land Future Trust owns in the Aksarben Village Development and the satisfaction of certain other Future Trust obligations) will in no way impact the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Definitions.

a. **"Aksarben Village Development"** shall mean or refer to all the real estate described on Exhibit "C" attached to this Agreement, or any subsequent administrative subdivision, replat, revision or amendment thereof.

b. **"Open Space Improvements"** shall mean the various amenities or features located on the Open Space Property as identified in the Redevelopment Agreement or otherwise deemed reasonably necessary by Future Trust for the Open Space Property to be used as open space or for public transportation purposes.

c. **"Open Space Property"** shall mean or refer to the AFT Open Space Property and the City Open Space Property, as legally described on Exhibit "A" and Exhibit "B" attached to this Agreement, or any subsequent administrative subdivision, replat, revision or amendment thereof.

d. **"Owner"** or **"Owners"** shall mean the entities defined in the initial paragraph of this Agreement as "Owners" and any other individual, partnership, joint venture, corporation, limited liability company, trust, unincorporated association, governmental agency or other business entity that acquires a fee ownership interest in any real property contained in the Aksarben Village Development.

e. **"Redevelopment Agreement"** shall mean that certain Redevelopment Agreement recorded in the office of the Register of Deeds of Douglas County, Nebraska, at Book 1214, Page 252 of Miscellaneous Records, as amended by that certain (i) First Amendment to Redevelopment Agreement dated December 28, 2000 and approved by Omaha City Council Ordinance No. 35410 on December 19, 2000, (ii) Second Amendment to Redevelopment Agreement approved by Omaha City Council Ordinance No. 35381 on November 7, 2000, (iii) Third Amendment to Redevelopment Agreement approved by Omaha City Council Ordinance No. 32537 on November 14, 2006 and (iv) Fourth Amendment to Redevelopment Agreement approved by Omaha City Council dated as of August 26, 2008.

2. Use of Open Space Property. The AFT Open Space Property is intended to be used as open space and shall not be developed for use as office space, retail space, residential property or for any other purpose requiring a certificate of occupancy. The City Open Space Property shall be used for public transportation purposes, including, but not limited to, trail,

beautification and open space uses and shall provide permanent public trail access for Keystone Trail users.

3. Construction of Additional Improvements on the Open Space Property. Future Trust shall construct the Open Space Improvements in accordance with the Redevelopment Agreement and the terms of this Agreement. In addition to the improvements specifically defined in this Agreement as Open Space Improvements, Future Trust shall have the right to construct additional improvements on the Open Space Property, as deemed necessary by Future Trust and approved by the City. Upon the dissolution of Future Trust, the Master Association (at its sole cost and expense) shall have the right to construct additional improvements on the Open Space Property, as deemed necessary by the Master Association and approved by the City. Future Trust and the Master Association shall use their best efforts to obtain a license from the City granting Future Trust and the Master Association, and their respective agents and representatives, the right to enter upon the Open Space Property to construct, install, maintain and repair the Open Space Improvements and any additional improvements deemed necessary by the Future Trust or the Master Association and approved by the City, if required herein.

4. Maintenance of Open Space Property and Open Space Improvements.

a. Maintenance. The Master Association shall maintain, repair and/or replace, or cause to be maintained, repaired and/or replaced, any improvements located on the Open Space Property so as to keep the Open Space Property in first class condition consistent with other first class public use and/or open space areas in the City of Omaha, Nebraska, which shall include but not be limited to the following obligations: (i) clean the Open Space Property and keep same free of rubbish and other hazards to persons using such area, (ii) properly light the Open Space Property and any improvements located thereon, (iii) maintain, and if necessary, replace the landscaping within the Open Space Property, (iv) to the extent the Master Association deems it necessary or appropriate, in its sole and absolute discretion, arrange for security protection services for ordinary use of the Open Space Property, (v) maintain, repair and replace all of the Open Space Improvements in accordance with the terms of this Agreement, (vi) maintain, repair, repaint and replace (with an identical structure) all signage and lighting facilities located on the Open Space Property, (vii) sweep, clean, resurface and restripe all pathways or sidewalks in the Open Space Property and repair all holes or breaks in the paving in the Open Space Property within a reasonable time after the same appear, (viii) remove and treat ice and remove snow from the exposed areas in an ordinary and customary manner for similar property in Omaha, Nebraska, and (ix) maintain lawn and landscaping on the Open Space Property. In the event the City does not maintain, repair and replace all utility conduits and lines and sewers located within, and serving, the Open Space Property, the Master Association shall maintain, repair and/or replace, or cause to be maintained, repaired and/or replaced such conduits, lines and sewers. The Master Association shall be responsible for the payment of all expenses associated with the maintenance obligations set forth herein and the allocation and collection of contributions from its members pursuant to the bylaws of the Master Association.

b. Insurance.

i. Property and Liability Insurance. The Master Association shall maintain or cause to be maintained (a) property insurance on an all risk basis

covering the Open Space Property in an amount not less than the full replacement value of any improvements located thereon and (b) commercial general liability insurance written on a claims made basis covering legal liability for claims for personal injury or death or property damage incurred upon or about the Open Space Property, with minimum limits of \$1,000,000.00 per occurrence, with an annual aggregate limit of \$2,000,000.00 for personal or bodily injury and damage to property, and an umbrella policy with an annual aggregate limit of \$5,000,000.00. City shall be an additional named insured on such commercial general liability insurance policy.

ii. Insurance Standards. All policies of insurance required hereunder shall be written on a claims made basis and procured from companies rated by Best's Rating Guide not less than A-VII which are authorized to do business in the State of Nebraska. Certificates of such policies shall be delivered to any Owner requesting the same promptly after the request by any Owner. All commercial general liability and property damage policies shall be written as primary policies.

iii. Indemnification. The Master Association shall indemnify, defend and hold harmless Future Trust and the City from and against all claims and all costs, expenses, and liabilities (including reasonable attorneys' fees), damages and liabilities incurred in connection with such claims, including any action or proceedings brought thereof, arising from or as a result of: the death of or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person as may occur on or about the Open Space Property by reason of an occurrence or condition on the Open Space Property or act or omission of the Master Association; provided, however, a party shall not be entitled to such indemnity for any claims, death, accidents, injuries, loss or damages arising from or as a result of the negligent or willful act or omission of such party or its agents, servants, employees or contractors.

c. Taxes. The Master Association shall be responsible for the payment of any real estate taxes for any improvements and/or the real estate comprising the Open Space Property.

d. Utilities. The Master Association shall be responsible for the payment of all utility services required for operation of the Open Space Property. In the event City is provided a bill for such utility services, City shall have the right to forward the bill to the Master Association and the Master Association shall pay such costs to the applicable provider prior to delinquency.

e. Succession to Master Association's Obligations. The Master Association acknowledges and agrees that the Master Association has the obligation to maintain the Open Space Property and comply with the provisions of this Agreement in perpetuity. Notwithstanding the foregoing, in the event the Master Association dissolves or becomes defunct in the future, the obligations of the Master Association hereunder shall attach to and run with the title to real property contained in the Aksarben Village Development and each Owner shall share the responsibility (on a prorata basis based on the number of authorized votes held by each Owner as reflected in the Master Association's bylaws) of maintaining the Open Space Property in accordance with the terms of this Section 4.

5. Operation of Open Space Property.

a. Merchants Association. The Owners and the Master Association shall cause the formation of the Aksarben Village Merchants Association, Inc., a Nebraska non-profit corporation ("Merchants Association") prior to use of the AFT Open Space Property for a Special Event (as hereinafter defined). The Merchants Association shall be organized for the purpose of furthering the general business interest of the merchants in the Aksarben Village Development, and, in the furtherance of such purpose, to engage in and conduct promotional programs and coordinate special events and cooperative advertising. The Merchants Association shall be responsible for the payment of all expenses associated with the maintenance obligations set forth in this Section 5 and the allocation and collection of contributions from its members pursuant to the bylaws of the Merchants Association. In the event that the Merchants Association is not formed pursuant to the terms of this Section or fails to perform its obligations under this Agreement, the Master Association shall be responsible for performing the obligations of the Merchants Association.

b. Operation. The Open Space Property shall be used for public purposes and shall be operated on a first-come, first-served basis in accordance with the Omaha Municipal Code and the procedures established and uniformly applied by the City. Notwithstanding the foregoing, the Master Association shall have the right to use the Open Space Property at least one hundred eighty (180) days out of each calendar year, provided the Master Association shall provide written notice to City of such dates at least thirty (30) days prior to such dates. The Merchants Association shall be considered the event manager of the Open Space Property and shall regulate the use of the Open Space Property as the location of certain special events and promotional programs, which events shall be first class events that are consistent with events held in first class parks in the City of Omaha, Nebraska (hereinafter referred to as a "Special Event"). The Merchants Association, at its sole cost and expense, shall be responsible for, or shall delegate such responsibility to the party organizing, performing or hosting the Special Event, the planning, advertising, coordination, setting up, hosting, tearing down and cleaning up of any Special Event. The obligations in connection with such events shall include, but not be limited to, the following obligations from the time of setting up for the Special Event until such time as the Open Space Property is returned to the condition it was in immediately prior to the setting up of the Special Event, (i) clean the Open Space Property and keep same free of rubbish and other hazards to persons using such area, (ii) properly light the Open Space Property and any improvements located thereon, (iii) maintain, and if necessary repair, the landscaping within the Open Space Property, (iv) provide adequate security protection services during the Special Event, and (v) sweep and clean, and if necessary repair, all pathways or sidewalks. In addition, the Merchants Association shall be responsible for maintaining any special insurance required in connection with the Special Event and obtaining any approvals, variances or special use permits required by the City in connection with the Special Event. The Merchants Association shall be responsible for the payment of all expenses associated with the maintenance obligations set forth in this Section 5 and the allocation and collection of contributions from members pursuant to the bylaws of the Merchants Association. In the event that the Merchants Association is not formed pursuant to the terms of this Section or fails to perform its obligations under this Agreement, the Master Association shall be responsible for performing the obligations of the Merchants Association. The Merchants Association shall maintain a calendar of all Special Events for each calendar year and shall provide a copy of such calendar to the City or the

Master Association upon receipt of a written request. Future Trust and the Master Association shall use their best efforts to obtain a license from the City granting Future Trust, the Merchants Association and the Master Association, and their respective agents and representatives, the right to enter upon the Open Space Property for the purpose of setting up, hosting, tearing down and cleaning up of any Special Event. Unless further permission or approval is specifically required under the Municipal Code or Nebraska state law, no further permission or approval shall be required for the Future Trust, the Merchants Association or the Master Association to use the Open Space Property for a Special Event so long as the Special Event complies with the terms of this Agreement. The parties to this Agreement hereby acknowledge that the Merchants Association shall have the right to delegate the responsibility in this Section 5 with respect to any Special Event to the party organizing, performing or hosting such Special Event.

6. Indemnification. The Master Association shall indemnify, defend and hold harmless the City from and against all claims and all costs, expenses, and liabilities (including reasonable attorneys' fees), damages and liabilities incurred in connection with such claims, including any action or proceedings brought thereof, arising from or as a result of the Master Association's (i) construction of the Open Space Improvements, (ii) maintenance, repair and/or replacement of any improvements located on the Open Space Property or (iii) operation of the Open Space Property; provided, however, the City shall not be entitled to such indemnity for any claims, costs, expenses, liabilities or damages arising from or as a result of the negligent or willful act or omission of the City or its agents, servants, employees or contractors. The Merchants Association shall indemnify, defend and hold harmless the City from and against all claims and all costs, expenses, and liabilities (including reasonable attorneys' fees), damages and liabilities incurred in connection with such claims, including any action or proceedings brought thereof, arising from or as a result of the Merchants Association's (i) improper denial of a request for a Special Event on the Open Space Property, or (ii) material impairment or interference with a Special Event on the Open Space Property; provided, however, the City shall not be entitled to such indemnity for any claims, costs, expenses, liabilities or damages arising from or as a result of the negligent or willful act or omission of the City or its agents, servants, employees or contractors.

7. Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party. The notice addresses of the parties are as follows:

Future Trust: Ak-Sar-Ben Future Trust
Attention: Mr. Ken Stinson
3555 Farnam Street
Omaha, Nebraska 68131

With copies to: Koley Jessen P.C., L.L.O.
Attention: Kendra J. Ringenberg
One Pacific Place, Suite 800
1125 South 103 Street
Omaha, Nebraska 68124-1079

and

McCarthy Capital Corporation
Attention: Dana C. Bradford
First National Tower, Suite 3800
1601 Dodge Street
Omaha, Nebraska 68102

Master Association: Aksarben Village Master Owners Association, Inc.
c/o Koley Jessen P.C., L.L.O.
Attention: Kendra J. Ringenberg
One Pacific Place, Suite 800
1125 South 103 Street
Omaha, Nebraska 68124-1079

8. Severability. If any term or condition of this Agreement shall, in any case, be invalid or unenforceable under applicable law, then the same and all other terms and conditions of this Agreement shall, in all other cases, not be affected thereby, and all such terms and conditions shall be valid and enforceable to the fullest extent permitted by applicable law.

9. Modification. Except as expressly provided herein, this Agreement may not be modified or amended except by a writing executed and delivered by the parties to this Agreement. In the event Future Trust shall sell any additional parcels in the Aksarben Village Development to one or more Owners (a "Purchasing Owner") or to individuals or entities not currently a party to this Agreement (an "Additional Party"), Future Trust shall make said Purchasing Owner and/or Additional Party a party to this Agreement by a written joinder agreement signed by both Future Trust and Purchasing Owner and/or Additional Party, as applicable, without the need to obtain the consent or approval of any other party to this Agreement; provided, however, that said joinder must reflect that Purchasing Developer/Additional Party agrees to be bound by all terms hereof as if it was an Owner as of the Effective Date.

10. Waiver. No waiver of, acquiescence in or consent to any breach or default of any term or condition hereof shall constitute or be construed as a waiver of, acquiescence in or consent to any other, further or succeeding breach or default of the same or any other term or condition.

11. Binding Effect. This Agreement will be binding upon the parties hereto and on their respective successors and assigns and will run with the land.

12. Rights of Parties. Nothing in this Agreement, whether express or implied, is intended to confer any benefit, right or remedy under or by reason of this Agreement on any person or entity other than the parties to this Agreement and their respective successors and permitted assigns; provided, however, that the Beneficiaries and Donors shall be deemed to be third party beneficiaries with regard to this Agreement and entitled to bring actions to enforce the provisions of this Agreement as if the Beneficiaries and Donors were parties to this Agreement. In addition, Future Trust and the Master Association agree to use reasonable best efforts to have the City become a party to this Agreement.

13. Incorporation of Exhibits. The exhibits attached hereto and referred to herein are incorporated into and are a part of this Agreement.

14. Counterpart Execution. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto.

**Remainder of Page Intentionally Left Blank.
Signature Page to Follow.]**

IN WITNESS WHEREOF, the parties hereto have signed this Agreement the day and year first above written.

AK-SAR-BEN FUTURE TRUST

By: [Signature]
Its: Ken Stinson, Chairman

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property was acknowledged before me this 28 day of February, ~~2010~~ 2012 by Ken Stinson Chairman of Ak-Sar-Ben Future Trust, a Nebraska non-profit corporation, on behalf of said corporation.

[Signature: Cheryl R. Gardner]
Notary Public

My commission expires on 3/13/13



AKSARBEN VILLAGE MASTER OWNERS ASSOCIATION, INC.

By: [Signature]
Its: President Jay B. Noddle

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property was acknowledged before me this 6th day of February, ~~2010~~ 2012 by Jay B. Noddle President of Ak-Sar-Ben Village Master Owners Association, Inc., a Nebraska non-profit corporation, on behalf of said corporation.



[Signature: Jennifer Bistline]
Notary Public

My commission expires on 9/08/2013

AKSARBEN APARTMENTS, LLC, a Nebraska
limited liability company

By: Howard M. Cooper Howard M. Cooper
Its: Manager

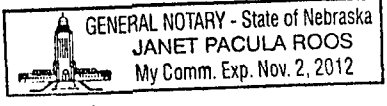
STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property was acknowledged before me this 26 day of January, 2012 by Howard M. Cooper, Manager of Aksarben Apartments, L.L.C., a Nebraska limited liability company, on behalf of said company.

[Signature]

Notary Public

My commission expires on 11/2/12



GEORGETOWN PROPERTIES, LLC, a Nebraska
limited liability company

By: Robert Hancock Robert Hancock
Its: MANAGER

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property was acknowledged before me this 2 day of September, 2010 by Robert Hancock, Manager of Georgetown Properties, LLC., a Nebraska limited liability company, on behalf of said company.

Ruth Roche
Notary Public

My commission expires on June 28, 2013.



ZONE 5, LLC, a Nebraska limited liability company

By MAGNUM DEVELOPMENT CORP, Member

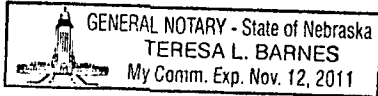
By [Signature] John Hughes
Title President

By MCNEIL COMPANY INCORPORATED,
Member

By [Signature] Patrick McNeil
Title member

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property was acknowledged before me this 7 day of October, 2010 by John Hughes, the President of Magnum Development Corp, a member of Zone 5, LLC., a Nebraska limited liability company, on behalf of said company.

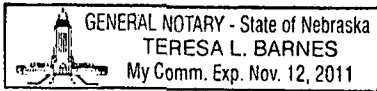


[Signature]
Notary Public

My commission expires on _____.

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

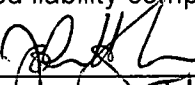
I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property was acknowledged before me this 7 day of October, 2010 by Patrick McNeil, the President of McNeil Company Incorporated, a member of Zone 5, LLC., a Nebraska limited liability company, on behalf of said company.



[Signature]
Notary Public

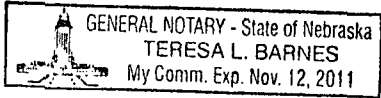
My commission expires on _____.

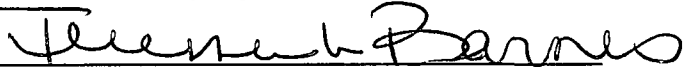
ZONE 5 ENTERTAINMENT, LLC, a Nebraska
limited liability company


By _____ John Hughes
Title ~~Member~~ Manager

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property was acknowledged before me this 7 day of October, 2010 by John Hughes the MANAGER of Zone 5 Entertainment, LLC, a Nebraska limited liability company, on behalf of said company.




Notary Public

My commission expires on _____.

NODDLE AV2, L.L.C., a Nebraska limited liability company

By: [Signature] Jay B. Noddle
Its: President

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property was acknowledged before me this 6th day of February, ~~2010~~ 2012 by Jay B. Noddle, President of Noddle AV2, L.L.C., a Nebraska limited liability company, on behalf of said company.



[Signature]
Notary Public

My commission expires on 9/08/2013.

NODDLE AV3, L.L.C., a Nebraska limited liability company

By: [Signature] Jay B. Noddle
Its: President

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property was acknowledged before me this 6th day of February, ~~2010~~ 2012 by Jay B. Noddle, President of Noddle AV3, L.L.C., a Nebraska limited liability company, on behalf of said company.



[Signature]
Notary Public

My commission expires on 9/08/2013.

NODDLE AV4, L.L.C., a Nebraska limited liability company

By: [Signature] Jay B. Noddle
Its: President

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property was acknowledged before me this 6th day of February, ~~2010~~ 2012 by Jay B. Noddle President of Noddle AV4, L.L.C., a Nebraska limited liability company, on behalf of said company.



Jennifer Bistline
Notary Public

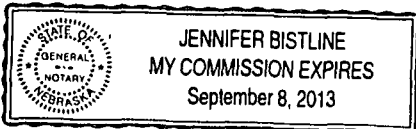
My commission expires on 9/08/2013.

NODDLE AV6, L.L.C., a Nebraska limited liability company

By: [Signature] Jay B. Noddle
Its: President

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property was acknowledged before me this 6th day of February, ~~2010~~ 2012 by Jay B. Noddle President of Noddle AV6, L.L.C., a Nebraska limited liability company, on behalf of said company.



Jennifer Bistline
Notary Public

My commission expires on 9/08/2013.

ZONE THREE COMMONS, L.L.C., a Nebraska
limited liability company

By: *Jay B. Noddle*
Its: President

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property was acknowledged before me this 6th day of February, 2010-2012 by Jay B. Noddle, President of Zone Three Commons, L.L.C., a Nebraska limited liability company, on behalf of said company.



Jennifer Bistline
Notary Public

My commission expires on 9/08/2013.

W&S JOINT VENTURE, LLC, a Kansas limited liability company

By: *Richard Wiens* Richard Wiens
Its: *General Partner*

STATE OF *Kansas*)
COUNTY OF *Johnson*) SS.

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property was acknowledged before me this *21st* day of *January*, 2010 ²⁰¹¹ by *RICHARD WIENS*, ^{GENERAL} *PARTNER* of W&S Joint Venture, LLC, a Kansas limited liability company, on behalf of said company.

Kelli L. Cupp
Notary Public - State of Kansas
My Appl. Expires *3-20-2012*

Kelli L. Cupp
Notary Public

QUADTECH, LLC, a Nebraska limited liability company

BY: TETRAD CORPORATION, MANAGER

By: W. David Scott W. David Scott
Its: PRESIDENT

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property was acknowledged before me this 25 day of April, 2010 by W. David Scott of QuadTech, LLC, a Nebraska limited liability company, on behalf of said company.



Marsha K Marron
Notary Public

My commission expires on 7/17/11.

President, Tetrad Corporation, Manager of

DLR GROUP INVESTMENTS, INC., a Nebraska corporation

By: [Signature] Dennis Wiederholt
Its: Treasurer

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property was acknowledged before me this 8th day of September, 2010 by Dennis Wiederholt, Treasurer of DLR Group Investments, Inc., a Nebraska corporation, on behalf of said company.

Nancy J. Waltke
Notary Public

My commission expires on May 1, 2012.



Exhibit A

Legal Description of AFT Open Space Property

Lot 9, Aksarben Village, a subdivision as surveyed, platted and recorded in the City of Omaha, Douglas County, Nebraska.

Exhibit B

Legal Description of City Open Space Property

That part of the Nebraska Highway No. 38 (West Center Road) right of way in the East Half of the Southwest Quarter and the West Half of the Southeast Quarter, all in Section 25, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, described as follows:

Beginning at the southwest corner of Lot 9, Aksarben Village, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska:

Thence along a curve to the left (having a radius of 306.31 feet and a long chord bearing South 64°49'20" East for (bearings referenced to the Final Plat of Ak-Sar-Ben Village) 181.15 feet) for an arc length of 183.90 feet along said north right of way line;

Thence South 89°58'23" East for 110.11 feet continuing along said north right of way line;

Thence North 87°15'04" East for 182.62 feet continuing along said north right of way line;

Thence North 00°15'21" West for 8.06 feet continuing along said north right of way line;

Thence North 89°56'42" East for 28.17 feet continuing along said north right of way line;

Thence South 28°10'47" East for 31.24 feet;

Thence along a curve to the right (having a radius of 152.00 feet and a long chord bearing South 26°18'53" East for 9.89 feet) for an arc length of 9.89 feet;

Thence South 24°16'48" West for 25.13 feet;

Thence along a curve to the left (having a radius of 1476.00 feet and a long chord bearing South 68°20'40" West for 277.74 feet) for an arc length of 278.16 feet;

Thence South 62°56'44" West for 217.10 feet;

Thence South 63°04'55" West for 95.57 feet;

Thence North 24°22'47" West for 301.30 feet to the extended south right of way line of Mercy Street;

Thence North 61°52'10" East for 190.13 feet along said extended line to the Point of Beginning.

Contains 113,439 square feet.

Exhibit C

Legal Description of Aksarben Village Development

- (55-00231) Lots One (1), Two (2), Six (6) and Nine (9), Aksarben Village, an addition to the City of Omaha, Douglas County, Nebraska.
- (55-00232) Lots One (1) and Two (2) of the Aksarben Village Replat 2, an addition to the City of Omaha, Douglas County, Nebraska.
- (55-00233) Lots One (1) and Two (2) of the Aksarben Village Replat 3, an addition to the City of Omaha, Douglas County, Nebraska.
- (55-00235) Lots One (1) and Two (2) of the Aksarben Village Replat 4, an addition to the City of Omaha, Douglas County, Nebraska.
- (55-00236) Lot One (1) of the Aksarben Village Replat 5, an addition to the City of Omaha, Douglas County, Nebraska.
- (55-00239) Lots One (1), Three (3) and Four (4) of the Aksarben Village Replat 6, an addition to the City of Omaha, Douglas County, Nebraska.
- (55-00241) Lot One (1) of the Aksarben Village Replat 9, an addition to the City of Omaha, Douglas County, Nebraska.
- (55-00242) Lot Two (2) of the Aksarben Village Replat 10, an addition to the City of Omaha, Douglas County, Nebraska.
- (55-00243) Lots One(1), Two (2), Three (3), Four (4), Five (5), Six (6) and Seven (7) of the Aksarben Village Replat 11, an addition to the City of Omaha, Douglas County, Nebraska.
- (55-00244) Lots One (1) and Two (2), Aksarben Village Replat 12, being an administrative replatting of Lot 14, Aksarben Village, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.
- (55-09430) Units AKV1, AKV2 and AKV3 in DLR AKV Condominium Property Regime, pursuant to Declaration and Master Deed of DLR AKV Condominium Property Regime recorded April 28, 2011 as Instrument No. 2011036810 in the Office of the Register of Deeds, Douglas County, all being a part of the City of Omaha, Douglas County, Nebraska.
- (55-00245) Units One (1) and Two (2), Aksarben Village Garage Condominium, condominium created by Condominium Declaration recorded in the Office of the Register of Deeds of Douglas County, Nebraska, on October 19, 2010 as Instrument No. 2010096524.

**CONSENT AND RATIFICATION OF THE
CONSTRUCTION, OPERATION AND MAINTENANCE AGREEMENT
FOR THE AKSARBEN VILLAGE OPEN SPACE PROPERTY**

The undersigned, Aksarben Hotel Partners, LLC, a Nebraska limited liability company ("AHP"), does hereby consent to and ratify in its entirety all the terms, conditions, and provisions of that certain Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property dated February 28, 2012 (the "Agreement"), which Agreement will be recorded with the Office of the Register of Deeds, Douglas County, Nebraska, affecting that certain real estate:

Lots One (1) of the Aksarben Village Replat 2, an addition to the City of Omaha, Douglas County, Nebraska.

The undersigned executes the foregoing Consent and Ratification of Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property on behalf of and with the intent to bind AHP, as well as its successors, legal representatives and assigns as of the date of recording of the Agreement.

WITNESS MY HAND this 6th day of MAY, 2012.

Aksarben Hotel Partners, LLC, a Nebraska
limited liability company

By: *Richard H. Wiens*
Its: MANAGING MEMBER

STATE OF Kansas)
) ss.
COUNTY OF Johnson)

The foregoing instrument was acknowledged before me on this 6th day of MAY 2012, by RICHARD H. WIENS, as the MANAGING MEMBER of Aksarben Hotel Partners, LLC, for and on behalf of said company.

Kelli L. Cupp
NOTARY PUBLIC

My Commission Expires: 4-9-2016



