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FILED SARPY COUNTY NEBRASKA  
INSTRUMENT NUMBER

2011-14760

06/14/2011 10:41:00 AM

*Lloyd J. Dowding*

REGISTER OF DEEDS



**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, STE 1109

PAPILLION, NE 68046-2895

402-593-5773

A

**POST CONSTRUCTION STORMWATER MANAGEMENT PLAN  
MAINTENANCE AGREEMENT AND EASEMENT  
CRESTVIEW SENIOR LIVING  
LAV-20101123-74-P**

**WHEREAS, RM9 HOLDINGS, LLC** (hereinafter referred to as Property Owner) recognizes that stormwater management facilities (hereinafter referred to as "the facility" or "facilities") must be maintained for the development located at **LOT 4, HARRISON HEIGHTS** in the zoning jurisdiction of the City of La Vista , Sarpy County, Nebraska; and,

**WHEREAS**, the Property Owner (whether one of more) is the owner of the property described on Exhibit "A" attached hereto (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, tenants 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, **LAV-20101123-74-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 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 La Vista 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 La Vista 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. Records shall be maintained for a period of three years.
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 La Vista or its designee.
4. The Property Owner, its administrators, executors, successors, heirs, tenants 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 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, tenants 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 forty-five 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 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 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 to enforce any of its ordinances as authorized by law.

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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 8<sup>th</sup> day of June, 2011.

INDIVIDUAL, PARTNERSHIP and/or CORPORATION

RM9 HOLDINGS, LLC

RM9 HOLDINGS, LLC

Name of Individual, Partnership and/or Corporation

Name of Individual, Partnership and/or Corporation

Kenneth M. Franasiak

Name

Name

Manager

Title

Title

[Signature]

Signature

[Signature]

Signature

ACKNOWLEDGEMENT

New York  
State

Niagara  
County

On this 8<sup>th</sup> day of June, 2011 before me, a Notary Public, in and for said County, personally came the above named:

Deborah Harris

Name

Executive Assistant

Position

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.

Deborah Harris

Notary Public

DEBORAH K. HARRIS  
Notary Public, State Of New York  
Qualified In Erie County  
My Commission Expires June 16, 2014

Notary Seal

# HARRISON HEIGHTS

LOT 4, HARRISON HEIGHTS, CITY OF LA VISTA, NE

**NOTES**

- ALL UTILITIES AND EASEMENTS SHOWN ON THIS PLAN ARE THE PROPERTY OF THE CITY OF LA VISTA, NE.
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**CONSTRUCTION**

THESE PLANS HAVE BEEN PREPARED BY E&A CONSULTING GROUP, INC. (E&A) FOR THE CITY OF LA VISTA, NE. THE CITY OF LA VISTA, NE IS NOT RESPONSIBLE FOR THE ACCURACY OF THESE PLANS. THE CITY OF LA VISTA, NE IS NOT RESPONSIBLE FOR THE ACCURACY OF THESE PLANS. THE CITY OF LA VISTA, NE IS NOT RESPONSIBLE FOR THE ACCURACY OF THESE PLANS.

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**FINAL PLAT**

HARRISON HEIGHTS  
LA VISTA, NEBRASKA

**HARRISON HEIGHTS**

LA VISTA, NEBRASKA

RECORDED 12-30-09 #2009-40933

LOT 4, HARRISON HEIGHTS, CITY OF LA VISTA, NE

Exhibit "A"

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**EXHIBIT "B"**  
**BMP Maintenance Plan - Crestview Senior Living**  
LAV-20101123-74-P  
LAV20101011-1129-2

I. General BMP Information

BMP ID Name	BMP Location
Basin A	Lat: N41°11'26.25" Long: W96°01'48.99"
Basin B	Lat: N41°11'22.74" Long: W96°01'45.3"

II. BMP Site Location Map (attached)

III. Routine Maintenance Tasks and Schedule for typical BMPs

<b>Bioretention Maintenance Tasks and Schedule</b>	
Task	Schedule
Remove trash and debris	Monthly
Check and repair and eroded areas	Monthly
Re-mulch any void areas	Monthly
Check vegetation and replace any damaged plan materials	Monthly
Inspect for ponding, washed out areas, soil conditions	Monthly
Perimeter mowing	Monthly
Inspect collection system for proper functioning	Quarterly
Re-seed grass swale or border	As needed
Apply for new mulch	Annually
Pruning	Annually
Perform soil test and replace soil if needed	Annually
Repair broken pipes	As needed
Replace rip rap that is chocked with sediment	As needed
Remove sediment	As needed
Replace mulch	Every three years

<b>Wet Pond Maintenance Tasks and Schedule</b>	
<b>Task</b>	<b>Schedule</b>
Remove debris from side slopes and trash rack	Monthly
Check and clear orifice of any obstructions	Monthly
Outlet/inlet inspection and cleanout	Monthly
Check pond side slopes and repair eroded areas, bank mowing	Monthly
Forebay inspection and cleanout	Monthly-remove sediment every 7 years or when sediment volume exceeds 50% of storage volume
Volume Measurement	Annually-dredging needed every 20 years or when 25% of permanent pool volume has been lost
Inspect/Exercise all mechanical devices	Annually
Inspect for structural damage/leaks	Annually
Replace broken pipes	As needed
Replace riprap that has been choked with sediment	As needed
Pest control	As needed
Security	As needed

<b>Grassed Swale/Channel Maintenance Tasks and Schedule</b>	
<b>Task</b>	<b>Schedule</b>
Trash/debris removal	Monthly
Mowing	Monthly-maintain 2-6 inches in height
Inspect for erosion and vegetative failure	Monthly, reseed as necessary
Inspect check dams and diversion devices	Monthly
Remove accumulated sediment	Semi-Annually
Repair any damaged or displaced riprap	As needed

IV. The Property Owner shall perform maintenance and inspection in accordance with the above table. A written report of all maintenance and inspections shall be prepared annually and kept on file by the Owner or Owner's Representative for a period covering the last 3 years at all times. The first report shall be prepared within one year of receiving the Certificate of Occupancy. Upon request of the City, the Owner shall provide copies of the annual maintenance inspection reports within three (3) business days.

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