



MISC

2009014490



FEB 19 2009 08:40 P 14

*misc*  
*14* *71.00* *61-28735*  
*2*  
*A*

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
2/19/2009 08:40:32.77



2009014490

## POST CONSTRUCTION STORMWATER MANAGEMENT PLAN MAINTENANCE AGREEMENT AND EASEMENT

This POST CONSTRUCTION STORMWATER MANAGEMENT PLAN MAINTENANCE AGREEMENT AND EASEMENT (this "Agreement") is made and entered into this 5<sup>th</sup> day of January, 2009, by and between SPORTSCENTER PROPERTIES, LLC, a Nebraska limited liability company ("Sportscenter") and BASEBALL LAND, LLC, a Nebraska limited liability company ("Baseball").

### PRELIMINARY STATEMENT

**WHEREAS**, Sportscenter is the owner of real property in Douglas County, Nebraska, legally described as follows (the "Sportscenter Property"):

Lot 1, Omaha Works Industrial Park, Replat 5 being a replat of Lot 9, Omaha Works Industrial Park, a subdivision to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

**WHEREAS**, Baseball is the owner of real property in Douglas County, Nebraska, legally described as follows (the "Baseball Property"):

Lot 2, Omaha Works Industrial Park, Replat 5 being a replat of Lot 9, Omaha Works Industrial Park, a subdivision to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

**WHEREAS**, the Sportscenter Property and the Baseball Property have three (3) common boundaries. Sportscenter intends to improve the Sportscenter Property;

Return to:

Matthew T. Payne

Pansing Hogan Ernst & Bachman LLP  
10250 Regency Circle, Ste 300  
Omaha, NE 68114

✓ 7966

**WHEREAS**, Baseball is in the process of constructing a building on the Southwest corner of the Baseball Property and improving the remainder of the Baseball Property primarily with paved parking and drive areas;

**WHEREAS**, the City (defined below) has required that Baseball and Sportscenter install and maintain the stormwater management facilities (hereinafter referred to as "the facility" or "facilities") in order for the development of the Sportscenter Property and the Baseball Property located in the jurisdiction of the City of Omaha, Douglas County, Nebraska to occur;

**WHEREAS**, the City of Omaha, a municipal corporation of the State of Nebraska ("the City") requires and Baseball and Sportscenter, or its administrators, executors, successors, heirs, or assigns, each agree that the health, safety and welfare of the citizens of the City require that the facilities be constructed and maintained on the Sportscenter Property;

**WHEREAS**, it is intended that the facilities shall benefit the Sportscenter Property and the Baseball Property;

**WHEREAS**, the Post Construction Stormwater Management Plan, Public Works Department project number OPW 51565-PCSMP (hereinafter referred to as "PCSMP"), be constructed by Baseball and maintained by the Owner of the Sportscenter Property, its administrators, executors, successors, heirs, or assigns.

**NOW, THEREFORE**, in consideration of the foregoing premises, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the covenants contained herein, and the following terms and conditions, Sportscenter and Baseball agree as follows:

## ARTICLE I. DEFINITIONS

1.1 Easement Area. The term "Easement Area" shall mean the area on the Sportscenter Property legally described and depicted on Exhibit "A" attached hereto.

1.2 Owner. The term "Owner" shall mean the legal owner(s) of fee title to either the Sportscenter Property or the Baseball Property, as reflected by the records of the Douglas County, Nebraska, Register of Deeds and as provided in this Section 1.2. If the Sportscenter Property or the Baseball Property is owned by one or more Persons, the Person or Persons holding at least fifty-one percent (51%) of the ownership interest in such property shall designate one of their number to represent all Persons owning the Sportscenter Property or Baseball Property, as applicable, and such designated Person shall be deemed the Owner of such property for purposes of this Agreement.

1.3 Permittee. The term "Permittee" shall mean all Owners, the tenants or licensees of the Sportscenter Property and Baseball Property, and each of their respective

officers, directors, employees, agents, contractors, residents, customers, vendors, suppliers, visitors, and invitees.

1.4 Person. The term "Person" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or government entity.

## ARTICLE II. EASEMENT

### 2.1 City Easement.

(a) Sportscenter hereby grants and conveys to City and its successors, assigns, contractors, agents, employees and representatives, a non-exclusive, permanent easement in and throughout, on and under the Easement Area to: (i) access the facilities; (ii) inspect the facilities; and (iii) maintain, only if necessary, the facilities in the event that the Owner of the Sportscenter Property fails to maintain the facilities in accordance with Article III of this Agreement.

(b) The Owner of the Sportscenter Property may, following construction of the facilities, continue to use the surface of the Easement Area, for any and all other purposes subject only to the right of the City to use the same for the purpose herein expressed.

(c) The Owner of the Sportscenter Property shall not place any building improvements or other structures in, on, over or across the Easement Area without the express approval of the City except, however, that landscaping, lawn irrigation systems, roads, streets, sidewalks, parking area surfacing, parking lot lighting, communication duct banks, pneumatic communication tubes, sanitary sewer service crossings and pavement may be installed in the Easement Area if there is no potential storm water displacement. Such permitted improvements shall be maintained by the Owner of the Sportscenter Property and its successors and assigns.

2.2 Baseball Easement. Sportscenter hereby grants and conveys to Baseball and its successors, assigns, contractors, agents, employees or representatives, a non-exclusive, temporary easement over, under, through and upon the Sportscenter Property to construct the facilities in the Easement Area and a non-exclusive, permanent easement over, under, through and upon the Sportscenter Property to access and maintain the facilities, only if necessary, if the Owner of the Sportscenter Property fails to adequately and effectively maintain the facilities pursuant to Article III of this Agreement.

ARTICLE III.  
CONSTRUCTION, MAINTENANCE, INDEMNIFICATION  
AND INSURANCE

3.1 Construction. The facility or facilities shall be constructed by Baseball in accordance with the PCSMP, which has been reviewed and accepted by the City or its designee.

3.2 BMP Maintenance Requirements. Sportscenter has developed and provided the "BMP Maintenance Requirements", attached here to as Exhibits "B1" and "B2", which have been reviewed and accepted by the City or its designee. The BMP Maintenance Requirements describe the specific maintenance practices to be performed for the facilities and include a schedule for implementation of these practices. In accordance with the PCSMP, the BMP Maintenance Requirements require that the facility or facilities shall be inspected by a qualified professional at least annually to ensure that it is operating properly.

3.3 Construction Costs. Baseball is in the process of constructing the facilities. Baseball has submitted a copy of the construction costs and expenses to Sportscenter. Baseball and Sportscenter agree to share equally in the cost of the construction of the facilities. Upon execution of this Agreement, Sportscenter shall pay to Baseball fifty percent (50%) of such total construction costs and expenses to Baseball in immediately available funds.

3.4 Maintenance. The Owner of the Sportscenter Property, its administrators, executors, successors, heirs, or assigns, shall perpetually operate and maintain the facilities reasonably in accordance with the attached BMP Maintenance Requirements. The Owners of the Sportscenter Property and the Baseball Property shall each pay fifty percent (50%) of the cost and expense reasonably required to comply with the attached BMP Maintenance Requirements.

3.5 Expenses of Facility. The Owner of the Sportscenter Property shall fix, levy and charge the Owner of the Baseball Property an assessment (herein the "Assessment") which shall represent such property Owner's representative share of the expenses for maintenance of the facilities under this Article III, including expenses for the fixing, levying, collecting and enforcement of all Assessments. The Owner of the Sportscenter Property shall be responsible for providing the Owners a report that details the calculation of the Assessment, and will make available to the Owner of the Baseball Property such information as will permit such Owner to reasonably determine the accuracy of the costs and expenses reported in the Assessment.

3.6 Lien of Assessment. All Assessments, together with interest thereon, costs and reasonable attorney fees shall be the personal obligation of the Owner of each respective property at the time when the Assessment first becomes due and payable. The Assessments, together with interest thereon, costs and reasonable attorney fees, shall also

be a charge and continuing lien against the property for which the Assessments are charged.

3.7 Assessment Allocation. All Assessments shall be determined and assessed against the Sportscenter Property and Baseball Property equally as provided in Section 3.4 hereof, which proportion shall be multiplied times the total maintenance expenses of the facilities to be allocated among the Owners of such properties.

3.8 Due Date. Any installment of Assessments which is not paid within thirty (30) days following delivery of notice of Assessment shall be delinquent. Delinquent Assessments shall bear interest from the date when due at the rate of sixteen percent (16%) per annum. The Owner of the Sportscenter Property may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, or pursue any other legal or equitable remedy. The Owner of the Sportscenter Property shall be entitled to recover as part of the action and shall be indemnified against the interest, cost and reasonable attorney fees incurred by the Owner the Baseball Property with respect to such action. The mortgagee of any property shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Owner of the Sportscenter Property shall assign to any mortgagee who cures such a delinquency, all of its rights with respect to such lien and the right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Owner of the Sportscenter Property.

3.9 Insurance. The Owner of the Sportscenter Property shall maintain, or cause to be maintained, at its sole expense, liability insurance against claims for bodily injury, loss of life or property damage coverage in a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence that occurs on the Sportscenter Property and arises from the use of the Easement Area and exercise of rights under this Agreement.

3.10 Permission to Enter. The Owner of the Sportscenter Property, its administrators, executors, successors, heirs, or assigns hereby grants permission to the City, its authorized agents and employees, to enter upon the Sportscenter Property and to inspect the facilities whenever the City deems an emergency exists. In all other events, the City shall provide at least thirty (30) days notice prior to entry.

3.11 Failure to Maintain. The Owner of the Sportscenter Property, its administrators, executors, successors, heirs, or assigns, agree that should it fail to correct any defects in the facility or facilities within time frame allowed in the issuance of written notice, 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 Sportscenter Property to make all repairs, and to perform all maintenance, construction and reconstruction as the City or its designee deems necessary. The City or its designee shall then recover from the Owner of the Sportscenter Property any and all costs the City expends to maintain or repair the

facility or facilities or to correct any operational deficiencies. Failure to pay the City or its designee all of its expended costs, after forty-five (45) 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 Owner of the Sportscenter Property to pay, or foreclose upon the lien hereby authorized by the Agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.

3.12 No Obligation by City or Baseball. The Owner of the Sportscenter Property shall not obligate the City or Baseball to maintain or repair the facility or facilities, except as otherwise provided for in Article III herein wherein Baseball agrees to pay for the share of costs and expenses provided for therein; and neither the City nor Baseball shall be liable to any person for the condition or operation of the facility or facilities.

3.13 Indemnification.

(a) The Owner of the Sportscenter Property, its administrators, executors, successors, heirs, or assigns, hereby indemnifies and holds harmless the City and Baseball and each of its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims that may arise or be asserted against the City or Baseball from the presence, existence or maintenance of the facility or facilities. In the event a claim is asserted against the City or Baseball, or any of its authorized agents or employees, the City or Baseball, as the case may be, shall promptly notify the Owner of the Sportscenter Property, and the Owner of the Sportscenter Property shall defend at its own expense any suit based on such claim. If any judgment or claims against the City or Baseball, or any of its authorized agents or employees, shall be allowed, the Owner of the Sportscenter Property shall pay for all costs and expenses in connection herewith.

(b) Baseball and its agents or contractors have or will cause the construction of the facilities to be completed upon the Sportscenter Property and hereby indemnifies and holds harmless the City and Sportscenter and each of its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims that may arise or be asserted against the City or Sportscenter for the construction of the facility or facilities. In the event a claim is asserted against the City or Sportscenter arising out of the construction of the facility or facilities, or any of its authorized agents or employees, the City or Sportscenter, as the case may be, shall promptly notify Baseball and the owner of Baseball, and Baseball and the owner of Baseball shall defend at its own expense any suit based on such claim. If any judgment or claims against the City or Sportscenter, or any of its authorized agents or employees, shall be allowed, Baseball shall pay for all costs and expenses in connection herewith.

ARTICLE IV.  
MISCELLANEOUS

4.1 The Owner of the Sportscenter Property shall not in any way diminish, limit, or restrict the right of the City to enforce any of its ordinances as authorized by law.

4.2 In case the ownership of the Sportscenter Property transfers, the then current Owner of the Sportscenter Property shall, within thirty (30) working days of transfer of ownership, notify the City of Omaha Stormwater Department of such ownership transfer. If the current owner fails to notify the City of Omaha Stormwater Department of ownership transfer, the responsible party in this Agreement will remain liable for all stormwater management costs and maintenance until such notice of transfer is received by the City.

4.3 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 Owner of the Sportscenter Property, its administrators, executors, successors, heirs, or assigns, including any other successors in interest.

4.4 In the event of a breach or threatened breach of this Agreement, only an Owner shall be entitled to institute proceedings for full and adequate relief from consequences of such breach or threatened breach. Time is of the essence for purposes hereof.

4.5 This Agreement and the covenants, conditions, restrictions and easements shall create mutual benefits and servitudes running with the land and shall bind and inure to the benefit of the parties hereto, and their respective heirs, representatives, lessees, successors and assigns. This Agreement shall be perpetual, provided, however, that this Agreement may be modified, amended or terminated by an instrument signed by the Owners of the Baseball Property and the Sportscenter Property and recorded with the Douglas County, Nebraska, Register of Deeds.

4.6 Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

4.7 The individuals executing this Agreement warrant and represent that they are duly authorized to execute this Agreement on behalf of Baseball or Sportscenter, as the case may be, and that no other act, signature, or authorization is necessary to bind such entity to the provisions of this Agreement.

4.8 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same document.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, Sportscenter and Baseball have executed this Agreement on the date and year first above written.

SPORTSCENTER PROPERTIES, LLC, a  
Nebraska limited liability company

By: *Russell J. Kreikemeier*  
Russell J. Kreikemeier, Its Managing Member

BASEBALL LAND, LLC, a Nebraska limited  
liability company

By: \_\_\_\_\_  
Bradley J. Perreault, Co-Manager

By: \_\_\_\_\_  
Michael Williams, Co-Manager

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of December, 2008, by Bradley J. Perreault, Co-Manager of BASEBALL LAND, LLC, a Nebraska limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public



IN WITNESS WHEREOF, Sportscenter and Baseball have executed this Agreement on the date and year first above written.

SPORTSCENTER PROPERTIES, LLC, a  
Nebraska limited liability company

By: \_\_\_\_\_  
Russell J. Kreikemeier, Its Managing Member

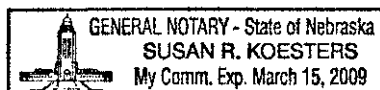
BASEBALL LAND, LLC, a Nebraska limited  
liability company

By: \_\_\_\_\_  
Bradley J. Perreault, Co-Manager

By: \_\_\_\_\_  
Michael Williams, Co-Manager

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of January, 2009, by Bradley J. Perreault, Co-Manager of BASEBALL LAND, LLC, a Nebraska limited liability company, on behalf of the company.

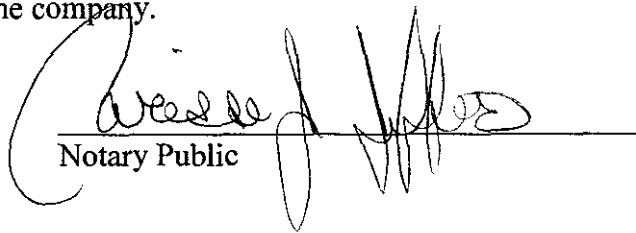


\_\_\_\_\_  
Susan R. Koesters  
Notary Public

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of January, 2009, by Michael Williams, Co-Manager of BASEBALL LAND, LLC, a Nebraska limited liability company, on behalf of the company.



  
\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of January, 2009, by Russell J. Kreikemeier, one of the Managing Members of SPORTSCENTER PROPERTIES, LLC, a Nebraska limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public

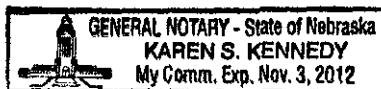
STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of December, 2008, by Michael Williams, Co-Manager of BASEBALL LAND, LLC, a Nebraska limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public

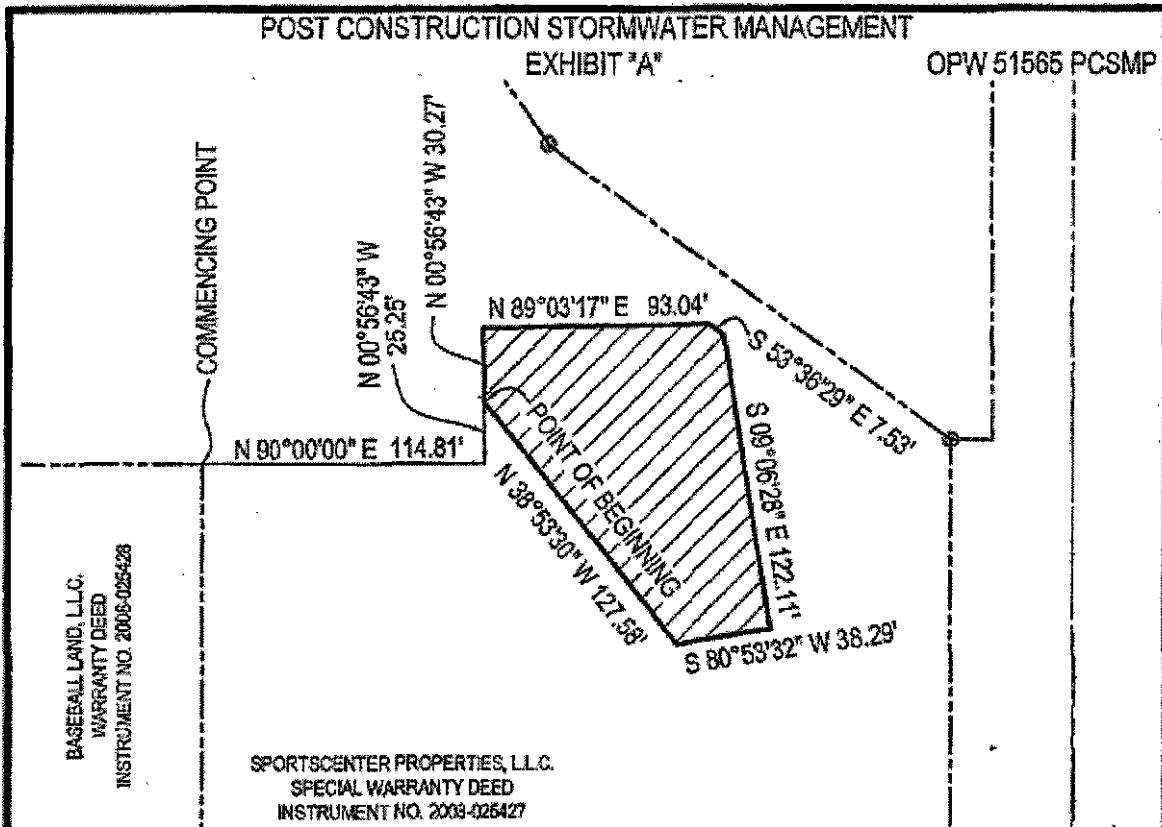
STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 31 day of December, 2008, by Russell J. Kreikemeier, one of the Managing Members of SPORTSCENTER PROPERTIES, LLC, a Nebraska limited liability company, on behalf of the company.



Karen S. Kennedy  
Notary Public

**Exhibit "A"**  
**Easement Area Depiction**



**LEGAL DESCRIPTION**  
**PERMANENT STORM DETENTION AND MAINTENANCE EASEMENT**  
**LOT 1, OMAHA WORKS INDUSTRIAL PARK REPLAT 5**

**LEGAL DESCRIPTION:**

A PERMANENT STORM DETENTION AND MAINTENANCE EASEMENT LOCATED IN LOT 1, OMAHA WORKS INDUSTRIAL PARK REPLAT 5, A SUBDIVISION LOCATED IN THE NE1/4 OF SECTION 6, TOWNSHIP 14 NORTH, AND ALSO THE SE1/4 OF SECTION 31, TOWNSHIP 15 NORTH, ALL LOCATED IN RANGE 12 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 2, SAID OMAHA WORKS INDUSTRIAL PARK REPLAT 5, SAID POINT ALSO BEING ON THE WESTERLY LINE OF SAID LOT 1, OMAHA WORKS INDUSTRIAL PARK REPLAT 5; THENCE N80°00'00"E (ASSUMED BEARING), A DISTANCE OF 114.81 FEET; THENCE N00°56'43"W, A DISTANCE OF 25.25 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N00°56'43"W, A DISTANCE OF 30.27 FEET; THENCE N89°03'17"E, A DISTANCE OF 93.04 FEET; THENCE S53°36'29"E, A DISTANCE OF 7.53 FEET; THENCE S08°06'28"E, A DISTANCE OF 122.11 FEET; THENCE S80°53'32"W, A DISTANCE OF 38.29 FEET; THENCE N38°53'30"W, A DISTANCE OF 127.58 FEET TO THE POINT OF BEGINNING.

SAID PERMANENT STORM DETENTION AND MAINTENANCE EASEMENT CONTAINS AN AREA OF 10,039 SQUARE FEET OR 0.230 ACRES, MORE OR LESS.



**E&A CONSULTING GROUP, INC.**  
ENGINEERING • PLANNING • FIELD SERVICES  
350 NORTH 10TH STREET, OMAHA, NE 68102 PHONE: 402-625-4700

**POST CONSTRUCTION**  
**STORMWATER MANAGEMENT PLAN**

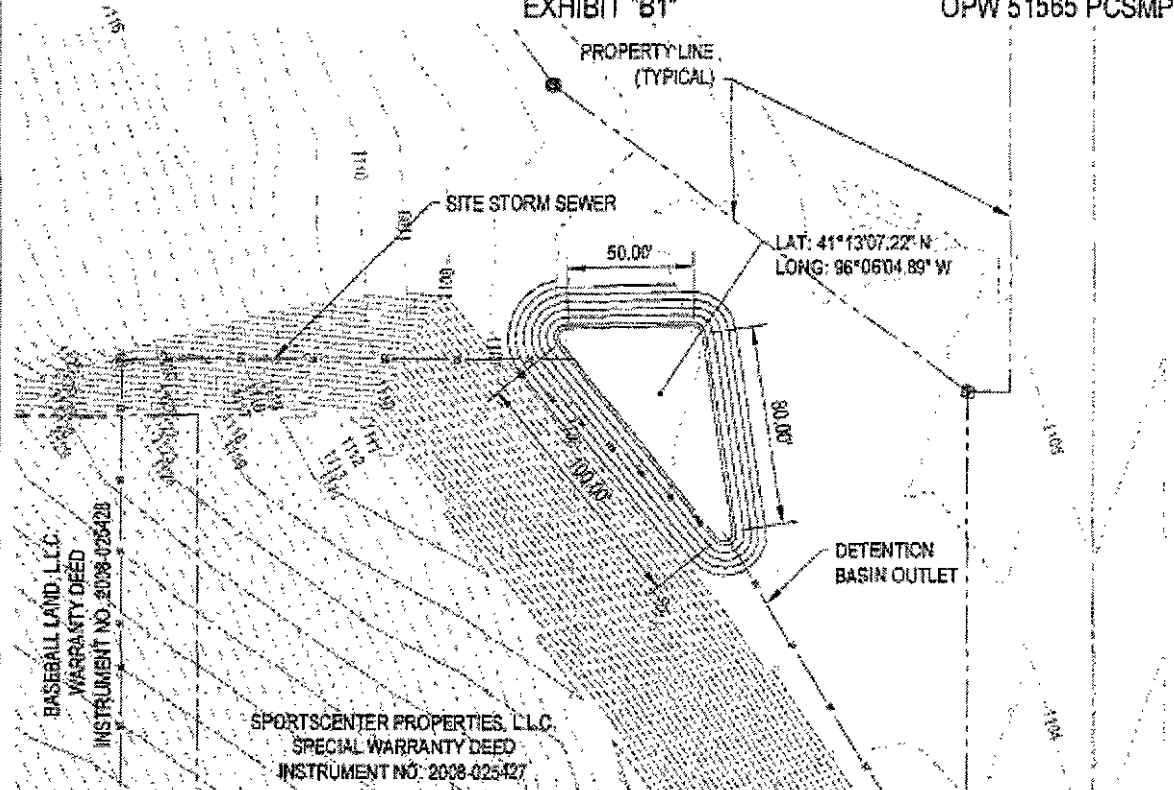
LOT 1, OMAHA WORKS INDUSTRIAL PARK REPLAT 5  
OMAHA, NEBRASKA

Drawn by: MBS Chkd by: \_\_\_\_\_ Chkd by: \_\_\_\_\_  
Job No.: P2008.216.001 Date: 11/20/2008

# POST CONSTRUCTION STORMWATER MANAGEMENT

EXHIBIT "B1"

OPW 51565 PCSMP



## BMP MAINTENANCE PLAN

### Dry Detention Basin/Pond Maintenance Tasks and Schedule

Task	Schedule
Remove debris and trash from trash rack and side slopes	Monthly
Outlet/inlet inspection and cleanout	Monthly
Bank mowing and inspection/stabilization of eroded areas	Monthly
Forebay inspection and cleanout	Monthly inspection. Remove sediment every 7 years or when sediment volume exceeds 50% of storage volume
Check pond depth	Annually-remove sediment as needed
Remove woody vegetation along embankment	Annually
Inspect for structural damage	Annually
Inspect, exercise all mechanical devices	Annually
Repair broken pipes	As needed
Replace riprap that has been choked with sediment	As needed



**E&A CONSULTING GROUP, INC.**  
ENGINEERING • PLANNING • FIELD SERVICES  
200 NORTH 10TH STREET, OMAHA, NE 68102 PH: (402) 466-0700

## POST CONSTRUCTION STORMWATER MANAGEMENT PLAN

LOT 1, OMAHA WORKS INDUSTRIAL PARK REPLAT 5  
OMAHA, NEBRASKA

Drawn by: MBS Chkd by: \_\_\_\_\_ Chkd by: \_\_\_\_\_

Job No.: P2008.216.001

Date: 11/20/2008

## EXHIBIT "B2"

### BMP MAINTENANCE PLAN – OPW 51565 Lot 1, Omaha Works Industrial Park Replat 5

#### General BMP Information:

The BMP's constructed for this project in accordance with the requirements of the Post Construction Stormwater Management Plan are as follows:

BMP ID Name	BMP Type	Location
Detention Basin 1	Extended duration detention	Northeast corner of site

#### Routine BMP Maintenance Tasks and Schedule:

The following table outlines specific maintenance tasks and their minimum frequency for each type of BMP constructed:

Extended Duration Detention Basin - Tasks and Schedule	
Remove debris and trash from trash rack and side slopes	Monthly
Outlet/inlet inspection and cleanout	Monthly
Bank mowing and inspection/stabilization of eroded areas	Monthly
Freshway inspection and cleanout	Monthly inspection. Remove sediment every 7 years or when volume exceeds 50% of design storage volume.
Check pond depth	Annually – remove sediment as needed.
Remove woody vegetation along embankment	Annually
Inspect for structural damage	Annually
Inspect/exercise all mechanical devices	Annually
Repair broken pipes	As needed
Replace riprap that has been choked with sediment	As needed

#### Maintenance Inspection Reports:

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 with the first report The first being 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.