

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
97-08422

97-08422

97 MAY -5 AM 9:52

*Stacy J. Davis*  
REGISTER OF DEEDS

County: Sarpy  
City: Papillion  
T1E: R13E  
T100F: T29N  
Fee: \$37.00  
Ck   
Cash   
Charge  CA

### DEVELOPMENT AGREEMENT

2<sup>nd</sup> day of May, 1997, by and between RALPH W. GATES as TRUSTEE of the RALPH W. GATES REVOCABLE TRUST Dated May 30, 1996 and ROYAL C. GATES, as tenants in common (hereinafter referred to collectively as "the FIRST PARTIES") and the PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT (hereinafter referred to as "the DISTRICT").

WHEREAS, the DISTRICT intends to construct flood control channel or levee improvements in, over and upon the following described tracts of land, to-wit:

Those portions of Tax Lot 3 in the NW1/4 of Sec 32; Tax Lot 2A4 in the NE1/4 of Sec 32; all in T14N, R13E, Sarpy County, Nebraska,

Those portions of Tax Lot 9 in the SE1/4 of Sec 29, T14N, R13E, Sarpy County, Nebraska, lying West of the centerline of the Papillion Creek,

Portions of Tax Lot A in the SW 1/4 of Sec 29 and the NW 1/4 of Sec. 32, T14N, R13E, Sarpy County, Nebraska,

Portions of Tax Lot B in the SE 1/4 of Sec 29, T14N, R13E, Sarpy County, Nebraska,

Those portions of Tax Lot 6 in the NW1/4 of Section 33, T14N, R13E, Sarpy County, Nebraska, lying West of the centerline of the Papillion Creek,

Those portions of Tax Lot 19 in the SW1/4 of Section 28, T14N, R13E, Sarpy County, Nebraska, lying West of the centerline of Papillion Creek,

such tracts of land hereinafter being referred to collectively as the "Construction Area;" and,

WHEREAS, the FIRST PARTIES are owners of the portions of Tax Lot 3 in the NW1/4 of Sec 32, Tax Lot 9 in the SE1/4 of Sec 29, Tax Lot 2B in the NE1/4 of Sec 32, all in T14N, R13E, Sarpy County, Nebraska, all shown in the multi-page diagram attached hereto as Exhibit "G" and incorporated herein by reference (hereinafter referred

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to as the "Earth Fill Placement Area;" and,

WHEREAS, the parties wish to provide for the disposition of excess earthen materials excavated by the DISTRICT from the Construction Area during the DISTRICT's original construction of levees and channel improvements within the Construction Area (hereinafter referred to as "the Channel Improvements"); and,

WHEREAS, the parties also desire to provide for the removal of slag materials and certain trees from a tract of land intended to be conveyed by the DISTRICT to the FIRST PARTIES, described as follows, to-wit:

All of the abandoned Union Pacific Railroad Right of Way in the NE1/4 of Sec 32, T14N, R13E, S30y County, Nebraska, except the east two hundred forty feet (E240') thereof; and,

All of the abandoned Union Pacific Railroad Right of Way in the NW1/4 of Sec 32, T14N, R13E, S30y County, Nebraska, except that part lying within Tax Lot A in said Section 32 (the former Chicago Rock Island and Pacific Railroad Right-of-Way),

hereinafter referred to as "the DISTRICT'S PROPERTY."

NOW THEREFORE, in consideration of their mutual covenants hereinafter expressed, the parties do hereby agree as follows:

1. The DISTRICT shall deposit (spoil) within the Earth Fill Placement Area all earthen materials in excess of its needs, for construction of the Channel Improvements, as such needs are determined solely by the DISTRICT, which shall be excavated by the DISTRICT from the Construction Area, all during the original construction of the Channel Improvements within the Construction Area (such materials hereafter being referred to as "the Excess Earthen Materials;") subject to the following:

a) The DISTRICT warrants that at least 30,000 cubic yards of such earthen materials will be determined to be in excess of its needs.

b) The FIRST PARTIES hereby grant to the DISTRICT the right to deposit (spoil) all Excess Earthen Materials within the Earth Fill Placement Area; the right to have ingress and egress over and across the Earth Fill Placement Area; and, the right to use the Earth Fill Placement Area for parking and maintenance of earthmoving equipment, the DISTRICT to have and exercise all such rights only during the original construction of the Channel Improvements.

c) Excess Earthen Materials may be deposited by the DISTRICT at such locations within the Earth Fill Placement Area, in such manner, and in such lifts, as may be convenient for the DISTRICT, without regard to soil quality or composition, compaction, moisture content, or uniformity or elevation of resulting grade, provided, however, that such material be graded to drain towards Papillion Creek or West Branch Papillion Creek. There is reserved to the FIRST PARTIES the right to move, rework, sort, hydrate, spread, re-grade, level or compact the Excess Earthen Materials deposited by the DISTRICT in the Earth Fill Placement Area, provided such activities do not interfere with the rights granted to the DISTRICT by this

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Agreement.


d) The DISTRICT shall maintain, and retain for 7 years, log books showing the loads of Excess Earthen Materials which the DISTRICT shall deposit within the Earth Fill Placement Area during the original construction of the Channel Improvements, such records to be available for inspection by the FIRST PARTIES during the DISTRICT's normal business hours. Such log books shall disclose the manufacturer's rated volumetric load-carrying capacity for the truck(s) and machine(s) used by the DISTRICT to transport Excess Earthen Materials to the Earth Fill Placement Area (or the volumetric capacity determined by mutual written agreement of the parties), and, for each day of operation in such activity, the operators of the DISTRICT's earth-carrying machines shall record in the log books for their respective machines the numbers of full loads transported and deposited by such truck or machine in the Earth Fill Placement Area. For purposes of this Agreement, a truck or machine which the operator determines and records is fully-loaded shall be deemed to be carrying eighty percent (80%) of its rated or agreed volumetric capacity. For purposes of this Agreement, such log books shall be deemed to be conclusive evidence of the amounts of Excess Earthen Materials deposited by the DISTRICT in the Earth Fill Placement Area.


2. During the original construction of the Channel Improvements the DISTRICT shall remove the slag piles and railroad ballast now existing on the DISTRICT'S PROPERTY. The material comprising such slag piles and ballast shall not be deposited within the Earth Fill Placement Area.

3. During the original construction of the Channel Improvements the DISTRICT shall remove from the DISTRICT'S PROPERTY all trees and vegetation and grade the same to a uniform grade.

PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT

By   
STEVEN G. OLLMANS  
General Manager

  
RALPH W. GATES as TRUSTEE of the RALPH W. GATES REVOCABLE TRUST  
Address: 115 South Diarmore byway, Kansas 67564

  
ROYAL C. GATES  
Address: 822 Spruce Drive, Ogden, Mo 68046

97-02422C

STATE OF NEBRASKA )  
                                  ) SS.  
COUNTY OF Saline )

On this 2<sup>nd</sup> day of July, 1997, before me, a Notary Public, personally came STEVEN G. OLTMANS, General Manager of the Papio-Missouri River Natural Resources District, a subdivision of the State of Nebraska, to me personally known to be the identical person whose name is affixed to the above and foregoing instrument, and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said Natural Resources District.

WITNESS my hand and Notarial Seal the date last aforesaid.



Martin P. Cleveland  
Notary Public

STATE OF Kansas )  
                                  ) SS.  
COUNTY OF Rice )

On this 29<sup>th</sup> day of January, 1997, before me, a Notary Public in and for said County, personally came the above named RALPH W. GATES as the TRUSTEE of the RALPH W. GATES REVOCABLE TRUST, and acknowledged the execution of the above Agreement as his voluntary act and deed as said trustee.

WITNESS my hand and Notarial Seal the date last aforesaid.



Charlotte A. Smith  
Notary Public

STATE OF Nebraska )  
                                  ) SS.  
COUNTY OF Douglas )

On this 31 day of January, 1997, before me, a Notary Public in and for said County, personally came the above named ROYAL C. GATES and acknowledged the execution of the above Agreement as his voluntary act and deed.

WITNESS my hand and Notarial Seal the date last aforesaid.



Gerald G. Gowen, Jr.  
Notary Public

97-00422D

WEST BRANCH CHANNEL PROJECT  
(36TH TO 48TH STREET)

PT. I.L.A.

458 AC. ±

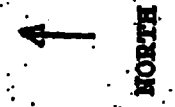
UNION PACIFIC R.R.  
EARTH FILL PLACEMENT AREA

WEST PAPILLION CREEK

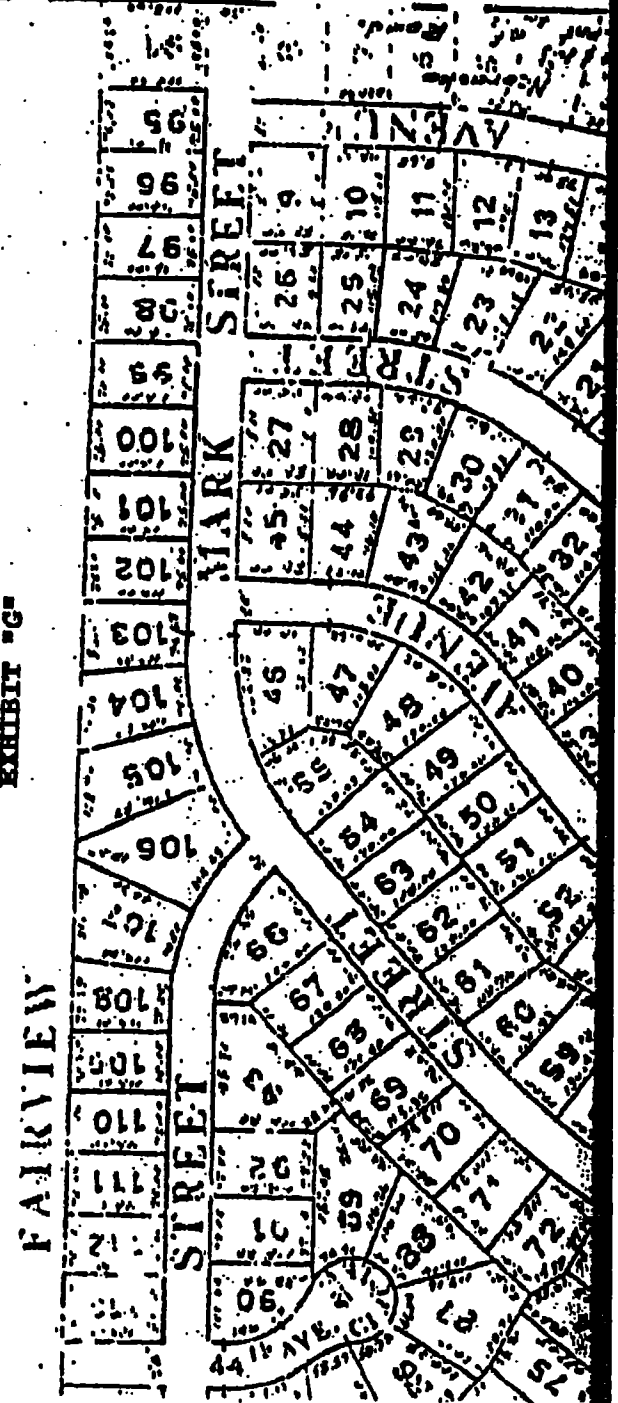
NW 1/4 SEC. 32-T14N-R13E  
SARPY COUNTY

TAX LOT 3  
50.62 Acres  
5.43 IN R.R.'S  
84.15 AC. ±

Scale: 1" = 200'



STATION STREET (PRIVATE ROAD)



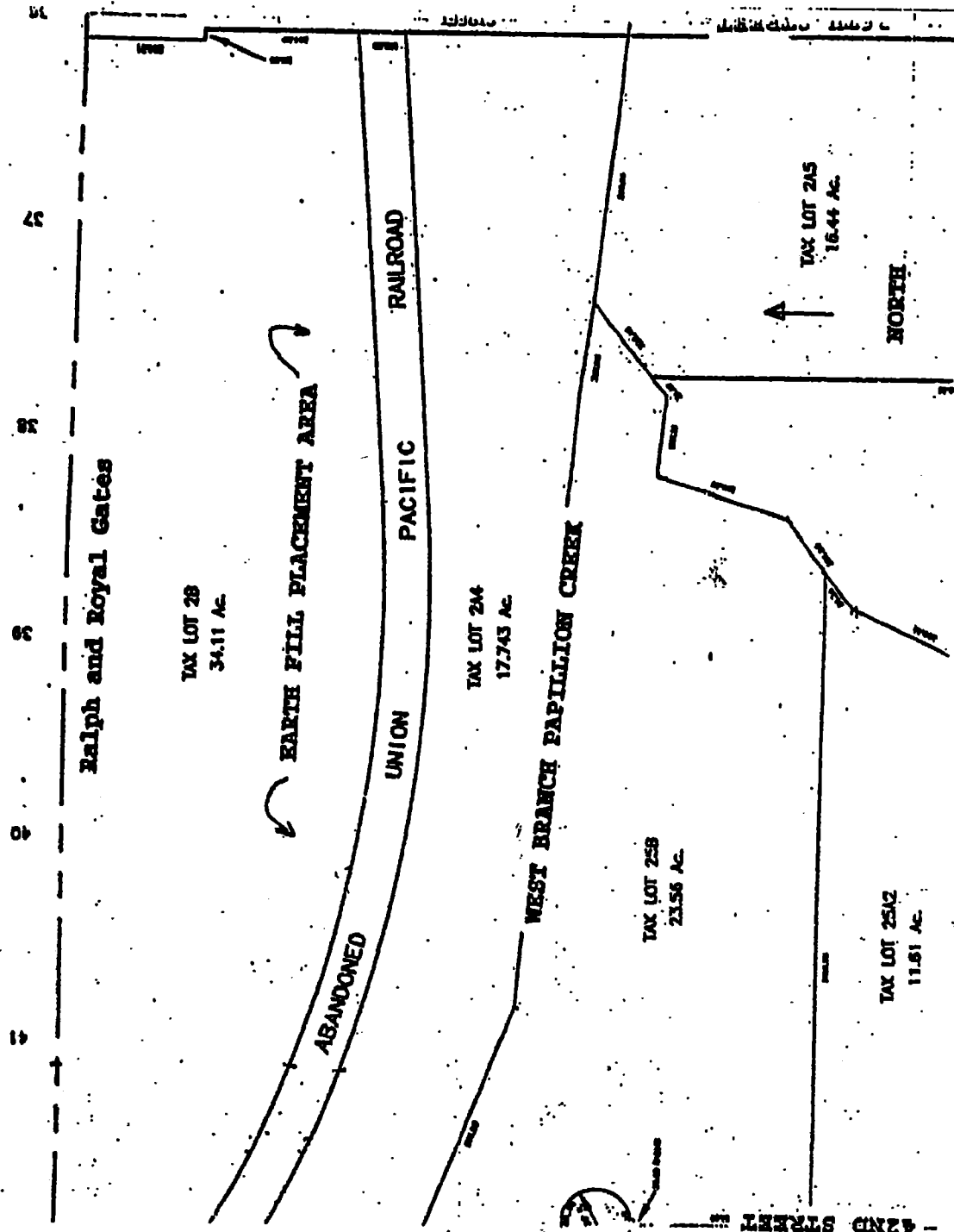
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WEST BRANCH CHANNEL PROJECT  
(36TH TO 48TH STREET)

NE1/4 SEC. 32 T14N R13E

SARPY COUNTY

187



NO SCALE

EXHIBIT "G"

WATSON'S REPLAT II  
LOTS 1 and 2

WEST BRANCH CHANNEL PROJECT  
(36TH TO 48TH STREET)

97-08422F

SW1/4 NE1/4

SE1/4 NE1/4

NW1/4 SE1/4  
BIG RAPID CREEK

Scale: 1" = 400'

NORTH

SE 1/4 SEC. 29-T14N-R13E

SARPY COUNTY

TAX LOT B  
12.00 AC.

TAX LOT C  
4.60 AC.

TAX LOT 9

109.00 AC.  
-10.25 AC. in R.R.  
97.64 AC.

EARTH FILL PLACEMENT AREA  
Ac. in R.O.W.

EXHIBIT 'G'

VEIUPK ADDITION  
3 4.33 AC.  
2 5.00 AC.  
1 5.00 AC.

36TH STREET

LOT 7  
R.R.

LOT 1/2  
R.R.

LOT 7B  
R.R.

LOT 1  
R.R.

Pc. TL 6