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Clay J. Dowling

REGISTER OF DEEDS

COUNTER JB C.E. H
 VERIFY JB D.E. H
 PROOF _____
 FEES \$ 226.00
 CHECK # _____
 CHG COP CASH _____
 REFUND _____ CREDIT _____
 SHORT _____ NCR _____



**PINK INDUSTRIAL PARK 2
PHASE 2
SUBDIVISION AGREEMENT**

THIS SUBDIVISION AGREEMENT (hereinafter referred to as "Agreement") made this 5th day of September, 2017, by and between 120 Valley Ridge Road, LLC, a Nebraska limited liability company (hereinafter referred to as "DEVELOPER"), and the CITY OF PAPIILLION, a municipal corporation (hereinafter referred to as "CITY").

RECITALS:

DEVELOPER is the owner of the parcel of land described in Exhibit A, attached hereto, which area to be developed is within CITY's zoning and platting jurisdiction; and

DEVELOPER has requested CITY to approve a specific platting of the area to be developed, known as Phase 2 of Pink Industrial Park 2, as depicted in the Final Plat exhibit attached as Exhibit B (included within the definition of "Development Area"); and

DEVELOPER desires to provide for the construction, installation, and location of certain improvements within the Development Area to allow for the phased construction of a Convenience Storage Facility as defined in Section 1 and depicted on the conceptual site plan attached as Exhibit C (the "Conceptual Site Plan"); and

CITY entered into a subdivision agreement with Pink Family Investments, LLC and Sanitary and Improvement District No. 217 of Sarpy County, Nebraska that included obligations related to the Development Area approved by the Papillion City Council via Resolution #R16-0117 on September 6, 2016 (the "2016 Pink Industrial Park 2 Subdivision Agreement");

CITY entered into a first amendment to the 2016 Pink Industrial Park 2 Subdivision Agreement to termination all obligations identified within the 2016 Pink Industrial Park 2 Subdivision Agreement by the Papillion City Council via Resolution #R17-0153 on Sept. 5, 2017;

DEVELOPER and CITY desire to agree on the method of installation and the allocation of expenses for the Public Improvements in the Development Area; and

CITY and DEVELOPER desire to set forth in this Agreement their respective understandings and agreements regarding the development of the Development Area.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

At the City of Papillion

SECTION 1

DEFINITIONS

For the purposes of this Agreement, unless the context otherwise requires, the following words and phrases shall have the following meanings:

- A. **“Convenience Storage Facility”** shall mean the proposed development of the Development Area as a mini-storage facility, which meets the definition of Storage (Convenience) pursuant to Papillion Mun. Code, Chapter 205, Zoning, Section 205-20(EE) and as depicted on the Conceptual Site Plan.
- B. **“Cost(s)”** or **“Entire Cost”**, being used interchangeably, of each Private Improvement or Public Improvement shall mean all construction costs, engineering fees, design fees, attorneys’ fees, inspection fees, testing expenses, publication costs, financing costs (which shall include interest), and all other related or miscellaneous costs or expenses incurred by DEVELOPER in connection with said Private Improvements or Public Improvements.
- C. **“Dedicated Street(s)”** shall mean those areas, including curbing and turn lanes, to be constructed, modified, or improved within that portion of the Development Area designated as Valley Ridge Drive in Exhibit B, any other areas to be dedicated as right-of-way pursuant to any future replat(s) of the Development Area, and any abutting right(s)-of-way.
- D. **“Development Area”** shall mean the real property situated within the area identified or depicted in Exhibit A and all corresponding Dedicated Streets.
- E. **“Final Plat”** shall mean the final plan of the plat, subdivision, or dedication of land, attached as Exhibit B.
- F. **“Frontage”** shall mean the entire length of the Development Area or individual lot property line, as referenced herein, that abuts a particular public street, road, or intersection.
- G. **“Party”**, when capitalized, shall mean CITY or DEVELOPER, individually, and **“Parties”**, when capitalized, shall mean CITY and DEVELOPER, collectively.
- H. **“Private Improvement(s)”** shall mean those improvements or betterments required by or otherwise undertaken by DEVELOPER, or its successors or assigns, as applicable, pursuant to this Agreement on, to, or otherwise benefiting the Development Area other than those improvements identified as Public Improvements in Section 2.
- I. **“Proportional Cost Sharing”** or **“Proportional Cost Share”** shall mean that the responsibility for the Entire Cost of a particular public street, intersection, sidewalk, traffic signal, or other applicable Public Improvement(s), as specifically identified in this Agreement or in an amendment to this Agreement, as applicable, less any amount

contractually assumed by a local governmental entity, shall, by default, be divided among all fronting developments proportional to said developments' Frontage to said public street or intersection. The default proportionality of said division may be adjusted by a corresponding construction agreement among all requisite parties that specifically addresses the responsibility for the Entire Cost of a particular public street, intersection, traffic signal, or other applicable Public Improvements.

- J. **“Public Improvement(s)”** shall mean those acquisitions, improvements, betterments, or associated fees contemplated by this Agreement as defined in Section 2 of this Agreement.
- K. **“Street Intersection(s)”** shall mean the area of the street between the returns of the various legs of the intersection, but in no case shall said area extend in any direction beyond a straight line drawn perpendicular from the centerline of the street to the adjacent lot corner.
- L. **“Temporary Septic System”** shall mean a septic tank, or similar installation, and any corresponding components on an individual lot which utilizes an aerobic bacteriological process or equally satisfactory process for the proper and disposal of the effluent, subject to the approval of CITY and the State of Nebraska Department of Environmental Quality (NDEQ).

SECTION 2

PUBLIC IMPROVEMENTS AND RELATED TERMS

- A. Public Improvements. The following Public Improvements and associated fees shall be required for the development of the Development Area:
 - (1) Civil Defense and Storm Warning System. A civil defense and storm warning system, if necessary.
 - (2) Dedicated Street Construction. Construction of all Dedicated Streets, as shown on the Streets and Walks exhibit attached as Exhibit D including improvements within the 120th Street right-of-way.
 - (3) Dedicated Street Right-of-Way Grading. Grading of Dedicated Street right-of-way which, by this definition, excludes initial site grading. In contrast, initial site grading shall be completed and paid for privately by DEVELOPER and shall include adjacent or abutting street right-of-way.
 - (4) Dedicated Street Signage, Traffic Control Signs, and Traffic Control Devices. All Dedicated Street signage, traffic control signs, and traffic control devices required by, and meeting the standards of, the “Manual of Uniform Traffic Control Devices,” but only if first approved in writing by CITY’s Public Works Director or the City Engineer and only if located at a Street Intersection or related to the Development Area.

- (5) Electrical Power Service. The Electrical Power Service to be constructed and installed by the Omaha Public Power District (hereinafter referred to as "OPPD") within the boundaries of any Dedicated Street right-of-way or OPPD easements within the Development Area. The Electrical Power Service shall include all electrical utility lines and other devices, other than the Lighting System, so constructed and installed for the benefit of the Development Area.
- (6) Emergency Vehicle Preemption. Emergency Vehicle Preemption device(s) to be installed on traffic signal arm(s).
- (7) Gas Distribution System. The "Gas Distribution System" to be constructed and installed by Black Hills Energy, Inc. within any Dedicated Street right-of-way within the Development Area or other areas specifically approved by CITY.
- (8) Lighting System. The "Lighting System" for any Dedicated Streets to be constructed and installed by OPPD within the boundaries of any Dedicated Street right-of-way within the Development Area, including any decorative, ornamental, or other lighting not conforming to CITY standards but which has been specifically approved by CITY.
- (9) Reimbursement for 120th Street Improvements. Reimbursement from DEVELOPER to CITY for CITY's improvements to 120th Street in the amount of \$77,200 (the "Reimbursement for 120th Street Improvements").
- (10) Sanitary Sewer Lines, Water Mains, and Appurtenances. All sanitary sewer lines, water mains, and appurtenances constructed within Dedicated Street right-of-ways or easements, as shown in Exhibit E, pursuant to sanitary sewer and water plans heretofore prepared by DEVELOPER's engineer, consulting engineers, and land surveyors.
- (11) Sediment Erosion Control and Detention (or Stormwater Detention). Permanent stormwater detention basins on and off-site as shown in Exhibit F. Permanent piping for sediment basin and detention ponds.
- (12) Sidewalks and Trails. The five foot (5') sidewalk within the south side of Valley Ridge Drive right-of-way, as shown in Exhibit D.
- (13) Storm Sewers, Inlets, and Appurtenances. All storm sewers, inlets, and appurtenances constructed within Dedicated Street right-of-ways or easements within the Development Area, as shown in Exhibit F.

SECTION 3

STANDARDS, AUTHORITY, AND DOCUMENTATION

A. Standards for Private Improvements and Public Improvements. DEVELOPER, its successors, and assigns shall cause all Private Improvements and Public Improvements to be constructed and installed in accordance with the terms and conditions of this Agreement.

B. Adherence and Construction Contracts. DEVELOPER shall abide by, and incorporate into all of its construction contracts for the Private Improvements and the Public Improvements, the provisions required by the regulations of CITY pertaining to construction of the Private Improvements and the Public Improvements in developments/subdivisions and testing procedures therefore.

C. Sanitary and Wastewater Sewer System. The Parties acknowledge that, at the time of this Agreement's execution, Lots 9, 10, and 11 of the Development Area will be within the Baseball Stadium Outfall Service Area and Lot 12 of the Development Area will be within the Western Springs Outfall Service Area for the Sanitary and Wastewater Sewer System. Further, the Parties acknowledge that, at the time of the execution of this Agreement: (i) connection to the Baseball Stadium Outfall Sewer is not reasonably available, (ii) establishing service to the entire Development Area from the Baseball Stadium Outfall Sewer is preferable to the Development Area being served by both the Baseball Stadium Outfall Sewer and the Western Springs Outfall Sewer, (iii) DEVELOPER is not requesting connection of Lots 9, 10, and 11 of the Development Area to the Baseball Stadium Outfall as DEVELOPER asserts that a connection to the Baseball Stadium Outfall from said lots is not necessary because no effluent will ever be generated by the buildings to be constructed within Lots 9, 10, and 11 (also known as Phases 2, 3, and 4) of the Convenience Storage Facility, and (iv) DEVELOPER wishes to establish a Temporary Septic System within Lot 12 to service Phase 1 of the Convenience Storage Facility until such time that CITY makes one of the following alternative determinations: (1) that a connection to the Baseball Stadium Outfall Sewer is reasonably available, (2) that a connection to the Western Springs Outfall Sewer is required because a connection to the Baseball Stadium Outfall will never be reasonably available, or (3) that a connection to either the Baseball Stadium Outfall Sewer or Western Springs Outfall Sewer is necessary to promote public health, safety, or welfare. Based on the foregoing, the Parties agree as follows:

(1) Temporary Septic System Authorization. CITY hereby authorizes DEVELOPER to install and operate a Temporary Septic System within that portion of the Development Area that is within the Western Springs Outfall Service Area for the sole purpose of safe disposal of effluent that is generated by the office, living quarters, and restroom facilities associated with the Convenience Storage Facility until such time that: (i) CITY determines that a connection to the Baseball Stadium Outfall Sewer is reasonably available, a connection to Western Springs Outfall Sewer is required because connection to the Baseball Stadium will never be

reasonably available, or a connection to either the Baseball Stadium Outfall Sewer or Western Springs Outfall Sewer is necessary to promote public health, safety, or welfare and (ii) a permanent sewer connection to either the Baseball Stadium Outfall Sewer or Western Springs Outfall Sewer is constructed by DEVELOPER and approved by CITY. Prior to the construction of the Temporary Septic System, DEVELOPER shall obtain approval for the design, construction, and installation of such Temporary Septic System from CITY, or its designee, and any governmental agency with authority over septic systems, including but not limited to, the NDEQ.

- i. Performance Bond Required. DEVELOPER shall obtain, and show proof to CITY of, a performance bonds equivalent to the total construction costs for removal of the Temporary Septic system and construction of a permanent connection to either the Western Springs Outfall Sewer or the Baseball Stadium Outfall Sewer.
- ii. Revocation of Temporary Septic System Authorization. CITY’s approval of the right to install a Temporary Septic System shall be deemed automatically revoked with no further action required by CITY in the event that either: (i) CITY receives a Commercial Building Permit for a use other than the Convenience Storage Facility or (ii) CITY determines that the site plan submitted with the commercial building permit is not generally consistent with the Conceptual Site Plan.

(2) Determination of Reasonable Availability. CITY shall deem connection to the Baseball Stadium Outfall Sewer to be reasonably available upon: (i) CITY’s approval of the dedication of the right-of-way for the north half of Valley Ridge Drive or, alternatively, CITY’s determination that Valley Ridge Drive will never be constructed and (ii) CITY and Sarpy County approving an amendment to the Baseball Stadium Interlocal Cooperation Agreement, adopted by Papillion as Resolution No. R10-0038 and by County as Resolution No. 2010-067 and dated March 2, 2010, to include the entire Development Area within the Baseball Stadium Outfall Sewer Area or, alternatively, CITY assuming ownership of the Baseball Stadium Outfall Sewer from Sarpy County.

- i. Notice of Reasonable Availability. CITY shall notify DEVELOPER in writing at such time that CITY deems a connection to the Baseball Stadium Outfall to be reasonably available. Within one-hundred and eighty (180) days of DEVELOPER’s receipt of said notice by CITY, but before commencing construction of any sewer line or corresponding connection, DEVELOPER shall: (i) collaborate with CITY to execute a Sewer Connection agreement with CITY and, if applicable, Sarpy County (“BBS Sewer Connection Agreement”) and (ii) submit plans to CITY for the construction of the sewer line within Valley Ridge Drive right-of-way, which plans shall be subject to CITY’s approval, unless lead agency for such Public Improvement has been assigned by mutual agreement between CITY and DEVELOPER to another party.

1. DEVELOPER as Lead Agent. In the event DEVELOPER is the lead agent for construction of the sewer line within the Valley Ridge Drive right-of-way, DEVELOPER shall, within two (2) years of the effective date of the BBS Sewer Connection Agreement: (i) construct the sewer line within the Valley Ridge Drive right-of-way, (ii) construct the private service line(s) necessary to establish sewer service, and (iii) remove any Temporary Septic System constructed within the Development Area. Additionally, if DEVELOPER makes a connection to the Baseball Stadium Outfall pursuant to this Agreement and the Baseball Stadium Outfall is still owned by Sarpy County at the time such connection is made, DEVELOPER shall provide an Engineer's Certificate of Completion to County for filing which contains a statement that the sewer connection has been constructed in accordance with the plans and specifications approved in writing by County.

2. DEVELOPER Not Lead Agent. In the event CITY and DEVELOPER agree that DEVELOPER shall not be the lead agent for construction of the sewer line within the Valley Ridge Drive right-of-way, CITY shall notify DEVELOPER, in writing, of CITY's acceptance of said sewer line upon such acceptance and DEVELOPER shall, within six (6) months of DEVELOPER's receipt of CITY's notice: (i) complete construction of the private service line(s) necessary to establish sewer service and (ii) remove any Temporary Septic System constructed within the Development Area.

- (3) Determination of No Reasonable Availability. In the event that CITY deems that a connection to the Baseball Stadium will never be reasonably available, CITY shall notify DEVELOPER in writing that a connection to Western Springs Outfall Sewer is required. Within one-hundred and eighty (180) days of DEVELOPER's receipt of said notice by CITY, but before commencing construction of any sewer line or corresponding connection, DEVELOPER shall: (i) collaborate with CITY to execute a Sewer Connection agreement with CITY ("WS Sewer Connection Agreement"), and (ii) submit plans to CITY for the construction of the sewer line within 120th Street and Valley Ridge Drive rights-of-way, which plans shall be subject to CITY's approval. DEVELOPER shall, within two (2) years of the effective date of the WS Sewer Connection Agreement: (i) construct the sewer line within 120th Street and Valley Ridge Drive right-of-way, (ii) construct the private service line(s), and (iii) remove any Temporary Septic System constructed within the Development Area.

- (4) Promotion of Public Health, Safety, and Welfare. Notwithstanding the forgoing, CITY may at any time, in writing, order DEVELOPER to enter into a Sewer Connection Agreement and establish a permanent sewer connection to either the Baseball Stadium Outfall Sewer or the Western Springs Outfall Sewer upon CITY's

determination that the termination of the use or operation of any Temporary Septic System constructed within the Development Area is necessary to promote public health, safety, and welfare. Within the timeline established in the notice from CITY, DEVELOPER shall: (i) collaborate with CITY to execute a Sewer Connection agreement with CITY and, if applicable, Sarpy County, (ii) submit plans for the construction of the sewer line to the outfall identified in the notice from CITY, which plans shall be subject to CITY's approval, (iii) construct said sewer line, (iv) construct the private service line(s), and (v) remove any Temporary Septic System constructed within the Development Area.

D. Water Distribution System. The Parties acknowledge that, at the time of this Agreement's execution, the Development Area will be within the Metropolitan Utilities District service area for the Water Distribution System. DEVELOPER shall be responsible for entering into any agreements required by those entities or their successors for such services, making payment for any applicable connection fees or service charges, and completing any improvements required for such services.

E. Storm Sewer System. The Parties acknowledge that the Development Area is within CITY's service area for the Storm Sewer System; however, DEVELOPER, or a property owners association if approved by CITY, shall be responsible for maintaining those portions of the Storm Sewer System within the Development Area that are not within the public rights-of-way or within any perpetual drainage easements dedicated to CITY for roadway improvements or for the drainage and conveyance of stormwater and other runoff.

F. Before Commencing Work on Public Improvements. Before commencing any work in connection with any specific individual Public Improvement, excluding the Water Distribution System, DEVELOPER shall first:

- (1) Deliver to the Papillion City Clerk documentation of Metropolitan Utilities District's approval for water connection for the Development Area;
- (2) Make payment for all applicable fees due to CITY and Metropolitan Utilities District in relation to said construction and installation of the respective Public Improvement and provide proof of payment to the Papillion City Clerk;
- (3) Obtain approval from CITY for the specifications and technical terms of any other agreement(s) or plan(s) for, or relating to, the construction or installation of the applicable Public Improvement(s) prior to DEVELOPER's execution of any such agreement(s) or plan(s). Once DEVELOPER obtains approval from CITY, DEVELOPER shall deliver to the Papillion City Clerk duly executed copies of any agreement(s) or plan(s) for work required for, or otherwise entered into, in connection with said Public Improvement(s). Such agreement(s) or plan(s) shall include, but not be limited to, any required bonds, insurance certifications, and all plans for the Public Improvement(s). Any such agreement(s) or plan(s) shall include details describing the manner and means of any additional connections required by

or for the Sanitary and Wastewater Sewer System or the Storm Sewer System prepared by DEVELOPER's engineer;

- (4) Obtain and file of record any permanent easements required by Sarpy County or CITY, as applicable, for the applicable Public Improvement. Public Improvements which may invoke this requirement may include, but shall not necessarily be limited to, sanitary and wastewater sewer, storm sewer, water lines, and Post-Construction Stormwater Management, including all appurtenances, as determined by the City Engineer. Said easements shall be prepared and filed in a form satisfactory to CITY;
- (5) Obtain, and show proof of, general liability insurance and performance bonds equivalent to the total construction costs for all Public Improvements within the Development Area; and
- (6) Obtain approval from CITY for the construction and installation of the applicable Public Improvement, and obtain all necessary agreements, permits, and approvals pursuant to Section 3(F) prior to the construction of the applicable Public Improvement.

G. Before Commencing Work on the Sanitary Sewer System. In addition to complying with the requirements of Section 3(F), DEVELOPER shall enter into a Sewer Connection Agreement with CITY and, if applicable, Sarpy County.

H. No Recourse Against CITY. Any contracts entered into by DEVELOPER for the construction or installation of the Public Improvements shall provide that the contractor or subcontractor constructing or installing the Public Improvements shall have no recourse against CITY for any Costs, claims, or matters arising out of, or related to in any way whatsoever, said construction or installation including, without limitation, the Cost for the Public Improvements, construction oversight of the Public Improvements, the design or preparation of plans and specifications for the Public Improvements, or the construction of the Public Improvements.

I. No Credit of CITY. The Entire Cost of all Public Improvements to be constructed within the Development Area shall be borne by, and be at the sole expense of, DEVELOPER. The credit of CITY shall not be used for engineering, procurement, or construction of any betterments or the Public Improvements, or any other Costs related to the installation and construction of the Public Improvements within the Development Area.

J. All Necessary Agreements, Permits, and Approvals. Prior to commencing any work within any public right(s)-of-way, DEVELOPER shall enter into all necessary right-of-way agreements and obtain all necessary permits and approvals from all requisite governmental entities exercising authority over said right(s)-of-way. In the event CITY requests copies of any such agreements, permits, or approvals, DEVELOPER shall provide said copies to CITY in a timely manner.

SECTION 4

REPRESENTATIONS AND ACKNOWLEDGEMENTS

A. DEVELOPER Representations and Acknowledgments. DEVELOPER represents and warrants to CITY as follows:

- (1) DEVELOPER is established under the laws of the State of Nebraska. DEVELOPER is duly authorized to transact business under the laws of the State of Nebraska.
- (2) DEVELOPER has full power and authority to enter into, deliver, and perform its obligations under this Agreement and each of the documents related hereto.
- (3) DEVELOPER has taken all necessary action to authorize DEVELOPER's execution, delivery of, and performance under this Agreement, and as such, this Agreement constitutes DEVELOPER's valid and binding obligation, enforceable against DEVELOPER in accordance with its terms.
- (4) DEVELOPER shall cause all Private Improvements and Public Improvements to be constructed and installed in accordance with the applicable terms and conditions of this Agreement and the City of Papillion Code.
- (5) DEVELOPER agrees to reasonably cooperate with Sarpy County and CITY, as applicable, for the timely and orderly installation of the Public Improvements within the Development Area following the execution of this Agreement and submittal of required documents.
- (6) DEVELOPER shall comply with the terms of this Agreement and the provisions of any agreement submitted to CITY pursuant to this Agreement, which agreements shall not be amended or assigned without prior written approval from CITY.
- (7) DEVELOPER has not employed or retained any company or person, other than a bona fide employee, contracted consultant, or attorney of DEVELOPER, to solicit or secure this Agreement and has not paid or agreed to pay any entity or person other than a bona fide employee, contracted consultant, or attorney working for DEVELOPER any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.
- (8) DEVELOPER shall cause CITY to be named as an additional insured under any policy of insurance, including all payment and performance bonds obtained by DEVELOPER (whether or not required by this Agreement) or any other person in connection with the construction or operation of the Public Improvements.

(9) DEVELOPER shall ensure that all documents, contracts, and instruments submitted to CITY now, at any time in the future, or otherwise entered into by or on behalf of DEVELOPER, shall, in all material respects, be fully authorized, valid, binding, and enforceable in accordance with their terms.

(10) DEVELOPER, or its successors or assigns, as applicable, shall cause all personal property and real estate taxes and assessments levied on the Development Area be paid prior to Final Plat approval by CITY.

B. CITY Representations and Acknowledgments. CITY represents and warrants to DEVELOPER as follows:

(1) CITY agrees to reasonably cooperate with DEVELOPER, its agents, and contractors for the timely and orderly installation of the Public Improvements following the execution of this Agreement and submittal of required documents.

(2) Neither CITY nor any of its officers, agents, or employees:

i. Is acting as attorney, architect, engineer, or otherwise in the interest or on behalf of DEVELOPER in furtherance of this Agreement;

ii. Owes any duty to DEVELOPER or any other person because of any action CITY or DEVELOPER has undertaken, or in the future will undertake in furtherance of this Agreement, including any CITY inspection or CITY approval of any matter related to the same; and

iii. Shall be liable to any person as a result of any act undertaken by CITY or DEVELOPER to date, or at any time in the future in furtherance of this Agreement, and, to the maximum extent permitted by law, DEVELOPER hereby waives for itself, its employees, agents, and assigns any such right, remedy, or recourse it may have against CITY, its officers, agents, or employees.

SECTION 5

APPORTIONMENT OF COSTS

A. Apportionment of Costs. DEVELOPER, or its successors or assigns, as applicable, shall be solely responsible for privately financing the Entire Cost of all Private Improvements and all Public Improvements within the Development Area, as contemplated herein.

B. Payment Schedule for Reimbursement for 120th Street Improvements. The payment schedule for the Reimbursement for 120th Street Improvements shall be as follows:

- (1) The first installment of one-third (1/3) of the Reimbursement for 120th Street Improvements in the amount of \$25,733.33 shall be remitted by DEVELOPER to CITY's Finance Director no later than October 1, 2020.
- (2) The second installment of one-third (1/3) of the Reimbursement for 120th Street Improvements in the amount of \$25,733.33 shall be remitted by DEVELOPER to CITY's Finance Director no later than October 1, 2021.
- (3) The third and final installment of one-third (1/3) of the Reimbursement for 120th Street Improvements in the amount of \$25,733.34 shall be remitted by DEVELOPER to CITY's Finance Director no later than October 1, 2022.

C. Reimbursement Credit for Valley Ridge Drive. Only after: (i) all three installments for the Reimbursement for 120th Street Improvements have been remitted by DEVELOPER to CITY in full and (ii) CITY has received DEVELOPER's Reimbursement Credit Notification, as defined under Section 5(D) below, CITY agrees to remit some portion of funds collected from DEVELOPER for the Reimbursement for 120th Street Improvements (the "Reimbursement Credit") to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Proportional Cost Share for Valley Ridge Drive (the "DEVELOPER's Valley Ridge Drive Cost Share"), as estimated within Exhibit G, pursuant to the schedule defined in Section 5(D) and subject to the following terms:

- (1) The Reimbursement Credit shall only be remitted to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Valley Ridge Drive Cost Share in the event DEVELOPER's Valley Ridge Drive Cost Share is greater than \$247,300 after Valley Ridge Drive is constructed and as-built costs have been determined by the City Engineer.
- (2) In the event DEVELOPER's Valley Ridge Drive Cost Share is less than or equal to \$247,300 after Valley Ridge Drive is constructed and as-built costs have been determined, CITY shall not remit any Reimbursement Credit to DEVELOPER.
- (3) In the event that DEVELOPER's Valley Ridge Drive Cost Share is less than or equal to \$324,500 after Valley Ridge Drive is constructed and as-built costs have been determined by the City Engineer, CITY shall only remit the Reimbursement Credit to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Valley Ridge Drive Cost Share up to the amount that such cost share is greater than \$247,300 but less than or equal to \$324,500.
- (4) In the event that DEVELOPER's Valley Ridge Drive Cost Share is greater than \$324,500 after Valley Ridge Drive is constructed and as-built costs have been determined by the City Engineer, CITY shall remit the total Reimbursement Credit of \$77,200 to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Valley Ridge Drive Cost Share, but the remaining balance that is greater than \$324,500 shall be financed privately by DEVELOPER.
- (5) In the event that: (i) CITY approves a final plat for the property to the north that does not include the dedication of the north half of Valley Ridge Drive right-of-

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way and (ii) CITY determines that Valley Ridge Drive will never be constructed as contemplated within this Agreement, then CITY shall not remit any Reimbursement Credit to DEVELOPER to be applied by DEVELOPER to DEVELOPER's Valley Ridge Drive Cost Share because no such cost share shall exist.

- (6) Notwithstanding the foregoing, in the event DEVELOPER fails to pay *any* installment for the Reimbursement for 120th Street Improvements to CITY by the deadlines established herein and CITY does not grant a payment extension to DEVELOPER, CITY may elect not to remit any amount of the Reimbursement Credit to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Valley Ridge Drive Cost Share.
- (7) To further illustrate the intent of this Section, and to provide additional guidance on the correct method of application, the following hypotheticals are provided:

- i. Hypothetical #1. Assume that DEVELOPER's Valley Ridge Drive Cost Share is \$230,000. CITY shall not remit any Reimbursement Credit to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Valley Ridge Drive Cost Share.

The Purpose of Hypothetical #1 is to illustrate the Parties' intent that CITY shall not remit the Reimbursement Credit to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Valley Ridge Drive Cost Share in the event DEVELOPER's Valley Ridge Drive Cost Share is less than \$247,300.

- ii. Hypothetical #2. Assume that DEVELOPER's Valley Ridge Drive Cost Share is \$350,000. CITY shall remit the entire \$77,200 amount of Reimbursement Credit to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Valley Ridge Drive Cost Share. DEVELOPER shall then privately finance DEVELOPER's Valley Ridge Drive Cost Share in the amount of \$272,800 based on DEVELOPER's responsibility to pay the first \$247,300 of DEVELOPER's Valley Ridge Drive Cost Share and the balance of \$25,500 that remains after CITY remits the Reimbursement Credit of \$77,200 to DEVELOPER.

The Purpose of Hypothetical #2 is to illustrate the Parties' intent that CITY shall only remit the entire \$77,200 amount of the Reimbursement Credit to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Valley Ridge Drive Cost Share in the event DEVELOPER's Valley Ridge Drive Cost Share is greater than or equal to \$324,500. In the event DEVELOPER's Valley Ridge Drive Cost Share is greater than \$324,500, however, DEVELOPER shall be responsible for the first \$247,300 *and* for any amount of such cost share that is greater than \$324,500.

- iii. Hypothetical #3. Assume that DEVELOPER's Valley Ridge Drive Cost Share is \$275,000. CITY shall remit a Reimbursement Credit of \$27,700 to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Valley Ridge Drive Cost Share.

The Purpose of Hypothetical #3 is to illustrate the Parties' intent that CITY shall only remit part of the Reimbursement Credit to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Valley Ridge Drive Cost Share in the event such cost share is less than \$324,500.

- iv. Hypothetical #4. Assume that the north half of Valley Ridge Drive is not dedicated and CITY determines that Valley Ridge Drive will never be constructed. CITY shall not remit any part of the Reimbursement Credit to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Valley Ridge Drive Cost Share.

The Purpose of Hypothetical #4 is to illustrate the Parties' intent that CITY shall not remit any part of the Reimbursement Credit to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Valley Ridge Drive Cost Share in the event Valley Ridge Drive is never constructed because no such cost share shall exist.

- v. Hypothetical #5. Assume that DEVELOPER's Valley Ridge Drive Cost Share is \$350,000, however, DEVELOPER failed to remit the second installment of one-third (1/3) of the Reimbursement for 120th Street Improvements to CITY by October 1, 2021 and did not obtain a payment extension from CITY, but ultimately remits such second installment as well as the third and final installment of one-third (1/3) of the Reimbursement for 120th Street Improvements to CITY by October 1, 2022. As a result of DEVELOPER's failure to remit at least one of the three installments by the deadlines established herein, CITY decides not to remit any of the \$77,200 Reimbursement Credit to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Valley Ridge Drive Cost Share. As a result, DEVELOPER shall be responsible for the entirety of DEVELOPER's Valley Ridge Drive Cost Share of \$350,000.

The Purpose of Hypothetical #5 is to illustrate the Parties' intent that, in the event DEVELOPER fails to remit at least one of the three installments of one-third (1/3) of the Reimbursement for 120th Street Improvements to CITY by the deadlines established herein, and CITY does not grant a payment extension to DEVELOPER, CITY has the discretion, based on whatever CITY deems appropriate, to choose: (i) not to remit any of the Reimbursement Credit to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Valley Ridge Drive Cost Share, (ii) to remit only a portion of the Reimbursement Credit to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Valley Ridge Drive Cost, or (iii) to remit the Reimbursement Credit to DEVELOPER as though DEVELOPER

had not failed to remit at least one of the three installments of one-third (1/3) of the Reimbursement for 120th Street Improvements to CITY by the deadlines established herein. Based on CITY's discretion described herein, CITY could have elected to remit any amount of the Reimbursement Credit from \$0.01 up to \$77,200 to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Valley Ridge Drive Cost Share or, alternatively, CITY could have elected not to remit any of the Reimbursement Credit to DEVELOPER at all.

- D. Payment Schedule and Reimbursement Schedule. DEVELOPER may submit a written request for remittal of the Reimbursement Credit to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Valley Ridge Drive Cost Share to the City Engineer and City Finance Director (the "Reimbursement Credit Notification") after all three installments for the Reimbursement for 120th Street Improvements have been paid by DEVELOPER to CITY in full. In the event that DEVELOPER chooses to request such remittal, DEVELOPER shall submit the Reimbursement Credit Notification to the City Engineer and City Finance Director at least twelve (12) months in advance of the desired payment date. CITY shall remit the Reimbursement Credit to DEVELOPER to be applied by DEVELOPER towards DEVELOPER's Valley Ridge Drive Cost Share in the amount determined by Section 5(C) no later than the date identified in the Reimbursement Credit Notification, provided that: (i) such date is at least twelve (12) months after the date of CITY's receipt of the Reimbursement Credit Notification and (ii) the City Engineer has accepted the construction of Valley Ridge Drive and determined the as-built costs.

SECTION 6

OTHER OBLIGATIONS

A. Access Drives.

- (1) Emergency Access Drive. DEVELOPER shall cause, at its sole cost, the dedication of a temporary access easement (the "Emergency Access Easement") between the termination of Valley Ridge Drive within Phase 1 of Pink Industrial Park 2 and 120th Street to provide an access drive to be used for emergency access to and through the Development Area (the "Emergency Access Drive"). The Emergency Access Easement shall be dedicated to the Papillion Fire Department, the Papillion Police Department, and such other law enforcement and emergency agencies as may be warranted. The Emergency Access Easement shall remain in effect until the improvement of Valley Ridge Drive is complete. A draft of said temporary access easement shall be provided to CITY for review and approval prior to DEVELOPER recording said easement with the Sarpy County Register of Deeds. The Emergency Access Drive shall have such dimensions and shall be generally located as depicted on the Conceptual Site Plan or at such other location and with such other dimensions as approved in writing by the City Engineer. The Emergency Access Drive shall be established by DEVELOPER, at the sole cost

of DEVELOPER, as provided herein, in conjunction with the first commercial building permit issued within the Development Area.

- (2) Temporary Access Drives. DEVELOPER acknowledges that the lots within the Development Area are to be developed in phases into a Convenience Storage Facility as depicted on the Conceptual Site Plan. CITY agrees that DEVELOPER may construct one temporary access drive to connect to Valley Ridge Drive and one temporary access drive to connect to S 120th Street (collectively, the "Temporary Access Drives") in the general locations depicted on the Conceptual Site Plan, provided that the Development Area is developed as a Convenience Storage Facility and the site plan submitted with the commercial building permit is deemed by CITY to be generally consistent with the Conceptual Site Plan. Prior to the commencement of construction, the exact location, dimensions, and material of the Temporary Access Drives shall be subject to the review and approval of the City Engineer. DEVELOPER shall be responsible for one hundred percent (100%) of the Entire Cost of the construction of Temporary Access Drives.

In the event that either: (i) CITY receives a Commercial Building Permit for a use other than a Convenience Storage Facility or (ii) CITY determines that the site plan submitted with the commercial building permit is not generally consistent with the Conceptual Site Plan, CITY's approval of the right to temporary access shall be deemed automatically revoked with no further action required by CITY. DEVELOPER, or its successors or assigns, may request, but shall not be guaranteed, an amendment to this Agreement to establish temporary access rights for such alternate use or site plan.

Upon removal of the Temporary Access Drives pursuant to Section 6(P)(3), the Parties acknowledge that access to 120th Street from Lot 12 shall be prohibited.

- (3) Permanent Access Drive. CITY agrees that DEVELOPER shall construct two permanent access drives to connect to Valley Ridge Drive (collectively, the "Permanent Access Drives") with the general dimensions and in the general locations depicted on the Conceptual Site Plan subject to the timing established in Section 6(P)(3) provided that the Development Area is developed as a Convenience Storage Facility and the site plan submitted with the commercial building permit is deemed by CITY to be generally consistent with the Conceptual Site Plan. Prior to the commencement of construction, the exact location, dimensions, and specifications of the Permanent Access Drives shall be subject to the review and approval of the City Engineer. DEVELOPER shall be responsible for one hundred percent (100%) of the Entire Cost of the construction of the Permanent Access Drives.

The Parties acknowledge that CITY has the right to require and/or approve alternate locations for permanent access in the event that either: (i) a use other than a Convenience Storage Facility is proposed or (ii) CITY determines that the site plan submitted with the commercial building permit is not generally consistent with the Conceptual Site Plan.

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- B. ADA Ramp Curb Drops. DEVELOPER shall be responsible for providing curb drops for ADA ramps at all intersections with sidewalks that abut the Development Area as part of the final construction drawings.
 - C. Arterial Street Improvement Program (ASIP) Fee. All new building permits for structures on individual lots shall be subject to the Arterial Street Improvement Program (ASIP) Fee, as established in the Papillion Master Fee Schedule for “New Civic, Office, and Commercial Construction Per Development Acre”, at the time of the respective building permit application.
 - D. Building Permits. Building permits shall not be issued for any building, or any other Private Improvement, within the Development Area until the installation of all Public Improvements, excluding the Gas Distribution System, Electrical Power Service System, and Public Improvements associated with Valley Ridge Drive, is complete.
 - E. Civil Defense Siren. There shall be installed in the Development Area, or be available, sufficient civil defense siren coverage prior to the issuance of any Certificate of Occupancy for any structure or building in said Development Area. The number, type, and specifications of the corresponding civil defense sirens shall be determined by the City Administrator in conjunction with the Director of the Sarpy County Civil Defense Agency. The civil defense siren coverage must be capable of sounding the severe weather and attack warning. The Cost for any new civil defense sirens required to serve the Development Area shall be paid by DEVELOPER, its successors, and assigns. If existing coverage is available, DEVELOPER, its successors, and assigns, shall pay its pro-rata share of siren Cost based on the areas of coverage as determined by City Engineer.
 - F. Commencement of Public Improvements. CITY agrees that DEVELOPER may commence the timely and orderly installation of the Public Improvements financed by DEVELOPER, following the execution of this Agreement, provided that DEVELOPER complies with all applicable obligation(s) for the specific Public Improvements as enumerated under Section 3(F) of this Agreement, entitled *Before Commencing Work on Public Improvements*.
 - G. Compliance with Statutes and Ordinances. DEVELOPER shall comply with all state statutes and CITY ordinances. DEVELOPER shall further adopt such regulations so as to require strict compliance with all state statutes and CITY ordinances by the owner, agent, occupant, or any person acquiring possession, charge, or control of any lot or ground within the Development Area, or any part of any lot within the Development Area.
 - H. Consolidation of Lots. The Parties acknowledge that DEVELOPER is proposing to consolidate Lots 9 – 12 in phases as follows:
 - (1) Lots 11 and 12 are intended to be consolidated into a single lot (“Lot 1 of Pink Industrial Park 2 Replat 1”) prior to the issuance of a Commercial Building Permit for the second phase of the Convenience Storage Facility.

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- (2) Lot 10 and Lot 1 of Replat 1 are intended to be consolidated into a single lot ("Lot 1 of Pink Industrial Park 2 Replat 2") prior to the issuance of a Commercial Building Permit for the third phase of the Convenience Storage Facility.
 - (3) Lot 9 and Lot 1 of Replat 2 are intended to be consolidated into a single lot ("Lot 1 of Pink Industrial Park 2 Replat 3") prior to the issuance of a Commercial Building Permit for the fourth phase of the Convenience Storage Facility.

In the event that (i) CITY receives a Commercial Building Permit for a use other than the Convenience Storage Facility or (ii) DEVELOPER notifies CITY in writing that the lots shall not be consolidated, CITY shall deem that the lots are not being consolidated as anticipated and CITY shall enforce all provisions of this Agreement related to the lots not being consolidated as anticipated.

I. Construction Obligations. Upon the execution of this Agreement, DEVELOPER is obligated to construct all Public Improvements according to the terms and conditions contemplated herein; however, this Agreement shall not in any way be construed to create any obligation on the part of DEVELOPER to develop the Development Area or construct any of the Public Improvements or Private Improvements in the event (i) the plans envisioned by DEVELOPER are not carried out and (ii) the approvals obtained from CITY are withdrawn or terminated.

J. Easements.

- (1) In the event that DEVELOPER plans to move forward with the construction of the Convenience Storage Facility commences, DEVELOPER shall dedicate a permanent blanket cross parking and access easement for the lots within the Development Area because access to the Development Area shall be from the Temporary Access Points until Valley Ridge Drive is constructed. Such easement shall be dedicated and recorded prior to the issuance of the first commercial building permit.
- (2) In the event that CITY deems that the lots are not being consolidated as contemplated in Section 6(H), DEVELOPER shall cause, at no expense to CITY, the owner(s) of the lots served by the future basin, as depicted on the Conceptual Site, to dedicate the necessary permanent sewer and drainage easements to allow for surface drainage to collect and flow to such future basin.
- (3) DEVELOPER shall be responsible for recording with the Sarpy County Register of Deeds a separate instrument for each easement: (1) dedicated by the Final Plat at the request of CITY or (2) otherwise contemplated herein which relates to the development of the Development Area. Prior to recording, all such instruments shall include a prescription outlining the rights, terms, and maintenance responsibilities of the corresponding easements and parties and shall be prepared in a form that must be approved by CITY prior to filing and recording.

- K. Fence on Southern Boundary. DEVELOPER, its successors, or assigns, shall, at the expense of DEVELOPER, its successors, or assigns, provide for the installation and maintenance of a six foot high opaque fence (the "Fence") along the entire length of the southern boundary that abuts the residential property to the south of the Development Area. The Fence shall be put in place after the approval of the final plat but prior to the issuance of any building permit within the Development Area. DEVELOPER shall cooperate with CITY to obtain CITY's approval to locate the Fence as close as reasonably possible to the south property line along the east six hundred and twenty feet (620') of the Development Area in order to allow greater screening for the adjacent residential property. The Fence location and installation shall be installed in a manner that does not destroy or unreasonably injure the existing trees or other vegetation along the south boundary line of the Development Area. The landscape buffer requirement shall remain as provided in Chapter 205, Zoning, Article XXXV. One hundred percent (100%) of the entire cost of the Fence along the southern edge of the Development Area shall be paid by DEVELOPER.

- L. Fire Hydrants. Pursuant to Chapter 170, Subdivision of Land, Section 170-20 of the City of Papillion Code, fire hydrants for the protection of the Development Area shall be provided by DEVELOPER. The type of hydrant and control valves and the location of the hydrants must be approved by the applicable Fire Chief.

- M. Landscape Buffers. DEVELOPER shall be responsible for one hundred percent (100%) of the Entire Cost of the installation of required landscape buffers.
 - (1) Public Right-of-Way. The Parties acknowledge that a thirty-five foot (35') landscape buffer shall be required along the lot lines adjacent to S 120th Street and Valley Ridge Drive pursuant to Chapter 205, Zoning, Section 205-202F(6) should the Development Area be developed as a Convenience Storage Facility. The Parties agree that the areas where the Permanent Access Drives will be constructed shall be maintained as turf to allow for the Permanent Access Drive to be constructed as contemplated in Section (6)(A)(3).

 - (2) Interior Side Lot Line – Lot 9. The Parties acknowledge that a twenty foot (20') landscape buffer shall be required along the western interior side lot lines of Lot 9 pursuant to Chapter 205, Zoning, Section 205-202F(6) should the Development Area be developed as a Convenience Storage Facility. Such landscape buffer shall be installed as part of the commercial building permit for Lot 9 (or however such lot may be renumbered should it be replatted in the future).

 - (3) Interior Side Lot Lines – Lots 10 – 12. The Parties acknowledge that a twenty foot (20') landscape buffer shall be required along the common interior side lot lines of Lots 10 – 12 within the Development Area pursuant to Chapter 205, Zoning, Section 205-202F(6) should the Development Area be developed as a Convenience Storage Facility. The Parties agree that such landscape buffers shall be initially maintained as turf because Lots 9 – 12 (or however such lots may be renumbered pursuant to a possible future replat) are intended to be consolidated into a single lot as contemplated in Section 6(H). In the event that CITY deems

that the lots are not to be consolidated as contemplated in Section 6(H), DEVELOPER shall install the required plant materials within any landscape buffer that is adjacent to other property lines in compliance with Chapter 205, Zoning, Sections 205-202F(6) and Article XXXV.

(4) Rear Lot Lines. The Parties acknowledge that a thirty foot (30') landscape buffer is required within the rear yards of Lots 9 – 12 (or however such lots may be renumbered pursuant to a possible future replat) pursuant to Chapter 205, Zoning, Section 205-231.

N. No Permanent Septic Systems. DEVELOPER acknowledges that no permanent septic systems, or other onsite sewage systems, shall be allowed within the Development Area. A Temporary Septic System shall be permitted pursuant to Section 3(C)(1).

O. Post-Construction Stormwater Management. DEVELOPER, its successors, or assigns shall be responsible for detention facility construction and maintenance in compliance with the Post Construction Stormwater Management requirements of CITY. CITY shall not have any responsibility for maintenance or repair of any such facility located within, or related to, the Development Area.

P. Responsibilities for Improvements to Dedicated Streets and Intersections. Upon the dedication of the approximate north half of Valley Ridge Drive right-of-way as established by the recording of either (i) a final plat for the property to the north of the Development Area that includes the dedication of Valley Ridge Drive right-of-way or (ii) a separate instrument that dedicates the approximate north half of Valley Ridge Drive with the Sarpy County Register of Deeds, DEVELOPER shall be responsible for the following:

(1) Valley Ridge Drive. DEVELOPER shall act as lead agent for the construction of Valley Ridge Drive and construct or install the modifications or improvements to be in accordance with the terms of this Agreement and any additional standards required by CITY at the time of such modifications or improvements. CITY agrees that the obligation to act as lead agent may, alternatively, be assumed by any Sanitary and Improvement District that abuts and will be served by Valley Ridge Drive or by any private developer(s) of the property that abuts and will be served by Valley Ridge Drive.

DEVELOPER shall be responsible for fifty percent (50%) of the Entire Cost of all modifications or improvements to Valley Ridge Drive. CITY shall, as a condition of approval of any subdivision agreement for the development of the property to the north, cause such Sanitary and Improvement District or developer, as applicable, to contribute the remaining fifty percent (50%) of the Entire Cost of all modifications or improvements to Valley Ridge Drive.

(2) 120th Street and Valley Ridge Drive Intersection. DEVELOPER shall act as lead agent for all modifications or improvements to the 120th Street and Valley Ridge Drive Intersection and shall construct or install the modifications or

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improvements to be in accordance with the terms of this Agreement and any additional standards required by CITY at the time of such modifications or improvements. CITY agrees that the obligation to act as lead agent may, alternatively, be assumed by any Sanitary and Improvement District that abuts and will be served by the 120th Street and Valley Ridge Drive Intersection or by any private developer(s) of the property that abuts and will be served by the 120th Street and Valley Ridge Drive Intersection.

DEVELOPER shall be responsible for fifty percent (50%) of the Entire Cost of all modifications or improvements to the 120th Street and Valley Ridge Drive Intersection. CITY shall, as a condition of approval of any subdivision agreement for the development of the property to the north, cause such Sanitary and Improvement District or developer, as applicable, to contribute the remaining fifty percent (50%) of the Entire Cost of all modifications or improvements to the 120th Street and Valley Ridge Drive Intersection.

- (3) Removal of Temporary Access Drives. Upon completion of (i) the improvement of Valley Ridge Drive, including the construction of 120th Street and Valley Ridge Drive Intersection, and (ii) the construction of the Permanent Access Drives, DEVELOPER shall relinquish the right to such Temporary Access Drives and remove the Temporary Access Drives and install curbs and gutters, as applicable. Further, DEVELOPER shall install landscaping within the area previously occupied by the Temporary Access Drives pursuant to Article XXXV of the Chapter 205 of the Municipal Code.

DEVELOPER shall be responsible for one hundred percent (100%) of the Entire Cost of the removal of the Temporary Access Drives, the construction of curbs and gutters, as applicable, and the installation of landscaping.

- Q. Review Fee. DEVELOPER shall pay to CITY a fee of one percent (1%) of the construction cost of Public Improvements to cover engineering, legal, and other miscellaneous expenses incurred by CITY in connection with any necessary review of plans and specifications in connection with the construction projects performed by DEVELOPER. Fee shall be paid prior to the issuance of any building permit.
- R. Right-of-Way Grading. All rights-of-way for Dedicated Streets and related sidewalks shall be graded full width with a two percent (2%) grade projecting from the top of curb elevation to the edge of the right-of-way.
- S. Sanitary Sewer Connection Fees. Sanitary Sewer Connection Fees shall be collected by CITY at the time of building permit application for any building application where connection to a sanitary sewer is required, except as provided herein. In the event that a Temporary Septic System is constructed within the Development Area as contemplated in Section 3(C)(1), CITY shall defer the collection of any Sanitary Sewer Connection Fees until such time that CITY and DEVELOPER execute a Sewer Connection Agreement (the "Deferred Sanitary Sewer Connection Fees"). DEVELOPER, or its successors or assigns, as applicable, shall remit the Deferred Sanitary Sewer

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Connection Fees to CITY within ninety (90) days of the effective date of the Sewer Connection Agreement by CITY and DEVELOPER, or its successor or assigns, as applicable. The amount of the Deferred Sewer Connection Fees shall be calculated based on the area of the lot identified on the building permit for which Sanitary Sewer Connection Fees were deferred.

T. Sidewalks. CITY and DEVELOPER acknowledge that the grading, construction, installation, and improvement of sidewalks shall be the responsibility of DEVELOPER as follows:

(1) DEVELOPER shall grade for, construct, install, and improve, at its sole cost, the sidewalk within the southern half of Valley Ridge Drive right-of-way in conjunction with the construction of Valley Ridge Drive.

(2) DEVELOPER shall grade for, construct, install, and improve, at its sole cost, an internal sidewalk that connects the Convenience Storage Facility office contemplated in the Conceptual Site Plan to the Valley Ridge Drive sidewalk in conjunction with the construction of Valley Ridge Drive.

U. Subsequent Replatting. In the event DEVELOPER wishes to replat any portion of the Development Area, CITY's approval of such replat(s) shall be contingent upon, but not limited to, DEVELOPER dedicating and filing of record all permanent easements necessary to provide additional access to the subdivided lots. All such easements must meet CITY's approval prior to dedication.

V. Valley Ridge Drive – Cooperation Required. The Parties acknowledge that the improvement of Valley Ridge Drive will require the cooperation of the owner or developer of the property to the north. As such, the Parties agree that DEVELOPER shall be entitled to construct Temporary Access Drives pursuant to the conditions of Section 6(A)(2) and construction of improvements to Valley Ridge Drive shall be deferred as contemplated in Section 6(P)(1), Section 6(P)(2), and Section 6(T). Further, DEVELOPER agrees to maintain the Valley Ridge Drive right-of-way in a vegetative state until the construction of Valley Ridge Drive commences.

W. Valley Ridge Drive – Improvement Not Required. In the event that: (i) CITY approves a final plat for the property to the north that does not include the dedication of the north half of Valley Ridge Drive right-of-way and (ii) CITY determines that Valley Ridge Drive will not be improved or constructed as contemplated within this Agreement, then:

(1) CITY shall cause the vacation of Valley Ridge Drive at DEVELOPER's request and shall, at no cost to DEVELOPER or the owner(s) of the Development Area, cause the transfer of said vacated right-of-way to the owner(s) of the Development Area at the time of the vacation.

(2) CITY agrees that Temporary Access Drives may be maintained at the CITY-approved locations.

- (3) DEVELOPER shall allow permanent emergency access through the Development Area and establish a permanent easement for such emergency access in accordance with the terms established in Section 6(A)(1) of this Agreement.
- (4) DEVELOPER shall be released of all obligations established in this Agreement for the construction and financing of Valley Ridge Drive. Such release may be issued in writing from CITY upon DEVELOPER's request.
- (5) DEVELOPER shall be released of its obligation to grade for, construct, install, and improve at its sole cost, the sidewalk within the southern half of Valley Ridge Drive right-of-way in conjunction with the construction of Valley Ridge Drive as contemplated in Section 6(T) of this Agreement. Such release may be issued in writing from CITY upon DEVELOPER's request.
- (6) CITY shall be released of all obligations for the Reimbursement Credit established in Section 5(C) of this Agreement.

X. Water Connection Fees. DEVELOPER, or its successors or assigns, as applicable, shall remit Water Connection Fees to Metropolitan Utilities District prior to the issuance of any building permit on individual lots from CITY. The amount of the Water Connection Fees shall be calculated based on the rates established by Metropolitan Utilities District. As part of the building permit application to CITY, DEVELOPER, or its successors or assigns, as applicable, shall provide written documentation from Metropolitan Utilities District that such fees have been remitted.

SECTION 7

OUTLOTS IN PRIVATE OWNERSHIP

Maintenance of and Transfer of Title to Outlots. DEVELOPER shall be responsible for maintaining any future outlots within the Development Area or, alternatively, DEVELOPER shall transfer ownership of said outlot(s) to a business association for maintenance. CITY shall not have any outlot maintenance responsibilities. DEVELOPER shall not construct any building(s) on said Outlot(s) and agrees that, at least sixty (60) days prior to closing on the sale, donation, or other transfer of any outlot to any entity other than a business association for maintenance formed for the Development Area, it shall provide CITY with notice of such intended transfer and a copy of the written notice DEVELOPER provided to the transferee stating that no buildings can or shall be constructed on said outlot. DEVELOPER further agrees to pay all property taxes due for any outlot owned by DEVELOPER in a timely manner to prevent outlots from being offered at the Sarpy County tax sale.

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SECTION 8

MISCELLANEOUS

- A. Incorporation of Recitals. The recitals set forth above are, by this reference, incorporated into and deemed part of this Agreement.
- B. Termination of Agreement. This Agreement shall not be terminated except by written agreement between DEVELOPER and CITY, subject to Section 8(M) in the event a party to this Agreement or subsequent amendments dissolves, or ceases to exist by some other means, without any valid successors or assigns.
- C. Agreement Binding. The provisions of this Agreement, and all exhibits and documents attached or referenced herein, shall run with the land and shall be binding upon, and shall inure to the benefit of, the Parties, their respective representatives, successors, assigns, heirs, and estates, including all successor owners of the real estate described in the attached Exhibit A. Every time the phrase “successors and assigns”, or similar language, is used throughout this Agreement, it is to be attributed the same meaning as this “Agreement Binding” provision. No special meaning shall be attributed to any instance herein in which the name of a Party is used without the phrase “successors and assigns”, or similar language, following immediately thereafter, unless expressly stated otherwise.
- D. Non-Discrimination. In the performance of this Agreement, the Parties, their agents, contractors, subcontractors, and consultants shall not discriminate, or permit discrimination, against any person on account of disability, race, color, sex, age, political or religious opinions or affiliations, or national origin in violation of any applicable laws, rules, or regulations of any governmental entity or agency with jurisdiction over any such matter.
- E. Governing Law. The Parties to this Agreement shall conform to all existing and applicable CITY ordinances, resolutions, state and federal laws, and all existing and applicable rules and regulations. Any dispute arising from this contractual relationship shall be governed solely and exclusively by Nebraska law except to the extent such provisions may be superseded by applicable federal law, in which case the latter shall apply.
- F. Forum Selection and Personal Jurisdiction. Any lawsuit arising from this contractual relationship shall be solely and exclusively filed in, conducted in, and decided by a court of competent jurisdiction located in Nebraska. As such, the Parties also agree to exclusive personal jurisdiction in such court located in Nebraska.
- G. Related Contract(s) Voidable. No elected official or any officer or employee of CITY shall have a financial interest, direct or indirect, in any CITY contract related to this Agreement. Any violation of this subsection with the knowledge of the person or corporation contracting with CITY shall render said contract(s) voidable by the Mayor or City Council.

- H. No Waiver of Regulations. None of the foregoing provisions shall be construed to imply any waiver of any provision of the zoning or planning requirements or any other section of the Papillion Zoning Code or other Ordinances.
- I. No Continuing Waivers. A waiver by any Party of any default, breach, or failure of another shall not be construed as a continuing waiver of the same or of any subsequent or different default, breach, or failure.
- J. Indemnity. DEVELOPER shall defend, indemnify, and hold CITY and its respective employees, agents, and assigns harmless from and against any and all claims, suits, demands, penalties, court costs, attorneys' fees, other litigation costs, demands, penalties, judgments, actions, losses, damages, or injuries of any nature whatsoever, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, resulting or arising from or out of or otherwise occurring in relation to any negligence, intentional acts, lack of performance, or subdivision layout and design by DEVELOPER or DEVELOPER's employees, agents, contractors, subcontractors, or other representatives in relation to this Agreement or the financing or development of the Development Area, except to the extent such injury is caused by the gross negligence or intentional acts of CITY. Other litigation costs, as referenced herein, shall include reasonable attorneys' fees, consultants' fees, and expert witness fees. Without limiting the generality of the foregoing, such indemnity shall specifically include, but not be limited to:
 - (1) Any and all claims, suits, demands, penalties, court costs, attorneys' fees, other litigation costs, demands, penalties, judgments, actions, losses, damages, or injuries of any nature whatsoever to any person or entity which may otherwise arise from, out of, or may be caused by DEVELOPER's breach, default, or failure to perform or properly perform any of DEVELOPER's obligations required by any warranty, representation, obligation, or responsibility arising out of state, federal, or local law, or from any provision of this Agreement;
 - (2) Any and all claims, suits, demands, penalties, court costs, attorneys' fees, other litigation costs, demands, penalties, judgments, actions, losses, damages, or injuries of any nature whatsoever to any person or entity which may otherwise arise from, out of, or may be caused by any unlawful or improper discharge by DEVELOPER, or DEVELOPER's respective employees, agents, contractors, subcontractors, and assigns into any Wastewater Sewer System or Storm Sewer during the term of this Agreement;
 - (3) Any injury, loss, or damage to any person occurring while said individual is on any premises within the Development Area;
 - (4) Any claims, suits, demands, penalties, court costs, attorneys' fees, other litigation costs, demands, penalties, judgments, actions, losses, damages, or injuries of any nature whatsoever resulting or arising from or out of or otherwise occurring in relation to any means of acquisition of real or personal property, including right-

of-way or easements, by DEVELOPER or DEVELOPER's respective employees or agent.

(5) Any claims, suits, demands, penalties, court costs, attorneys' fees, other litigation costs, demands, penalties, judgments, actions, losses, damages, or injuries of any nature whatsoever resulting or arising from or out of or otherwise occurring in relation to any means of acquisition of real or personal property, including right-of-way or easements, by DEVELOPER or DEVELOPER's respective employees or agents.

K. Assignment. Neither this Agreement nor any obligations hereunder shall be assigned without the express written consent of CITY, which may be withheld in CITY's sole discretion.

L. Entire Agreement. This Agreement and all exhibits and documents attached or referenced herein, which are hereby incorporated and specifically made a part of this Agreement by this reference, express the entire understanding and all agreements of the Parties. Specifically, this Agreement supersedes any prior written or oral agreement or understanding between or among any of the Parties, whether individually or collectively, concerning the subject matter hereof.

M. Modification by Agreement. This Agreement may be modified or amended only by a written agreement executed by all Parties. In the event a party to this Agreement or subsequent amendments dissolves, or ceases to exist by some other means, without any valid successors or assigns, said party shall be considered to be without signing authority; therefore, the signature of said party shall not be required in order to validly execute subsequent modifications or amendments to this Agreement. Any modifications to this Agreement must cause this Agreement and all performance obligations hereunder to conform to the requirements of any applicable laws, rules, regulations, standards, and specifications of any governmental agency with jurisdiction over any such matter, including any amendment or change thereto, without cost to CITY.

N. Notices, Consents, and Approval. Unless expressly stated otherwise herein, all payments, notices, statements, demands, requests, consents, approvals, authorizations, or other submissions required to be made by the Parties shall be in writing, whether or not so stated, and shall be deemed sufficient and served upon the other only if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

For DEVELOPER:

120 Valley Ridge Road, LLC
12012 Roberts Road, Suite A
La Vista, NE 68128

With Copy to:

Smith Slusky Law
8712 West Dodge Road, Suite #400
Omaha, NE 68114

Danielle M. Dring

For CITY:

City Clerk
City of Papillion
122 East Third Street
Papillion, NE 68046

Such addresses, names, or titles may be changed from time to time by written notice to all other Parties.

- O. Headings. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define or limit the scope of any section.
- P. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one executed instrument.
- Q. Severability. In the event that any provision of this Agreement proves to be invalid, void, or illegal by a court of competent jurisdiction, such decision shall in no way affect, impair, or invalidate any other provisions of this Agreement, and such other provisions shall remain in full force and effect as if the invalid, void, or illegal provision was never part of this Agreement.

(Signature on following pages.)

ATTEST:

CITY OF PAPILLION, a municipal corporation of
the first class

Nicole Brown
City Clerk Nicole Brown

By: [Signature]
Mayor David P. Black

CITY SEAL



DEVELOPER:

120 Valley Ridge Road, LLC, a Nebraska limited liability company

By: [Signature]
Peter Schulz, Authorized Member

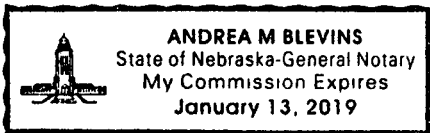
120 Valley Ridge Road, LLC, a Nebraska limited liability company

By: [Signature]
Jennifer Schulz, Authorized Member

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

Before me, a notary public, in and for said county and state, personally came Peter Schulz, as Authorized Member for 120 Valley Ridge Road, LLC, known to me to be the identical person who executed the above instrument and acknowledged the execution thereof be his voluntary act and deed on behalf of such 120 Valley Ridge Road, LLC.

Witness my hand and Notarial Seal this 28th day of August, 2017.

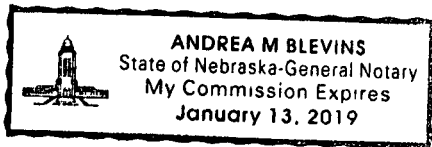


[Signature]
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

Before me, a notary public, in and for said county and state, personally came Jennifer Schulz, as Authorized Member for 120 Valley Ridge Road, LLC, known to me to be the identical person who executed the above instrument and acknowledged the execution thereof be her voluntary act and deed on behalf of such 120 Valley Ridge Road, LLC.

Witness my hand and Notarial Seal this 28th day of August, 2017.



[Signature]
Notary Public

**SUBDIVISION AGREEMENT
TABLE OF CONTENTS**

INTRODUCTION STATEMENT

RECITALS

SECTIONS:

- 1 Definitions
- 2 Public Improvements and Related Terms
- 3 Standards, Authority, and Documentation
- 4 Representations and Acknowledgements
- 5 Allocation of Funds
- 6 Other Obligations
- 7 Outlots in Private Ownership
- 8 Miscellaneous

EXHIBITS:

- A Development Area Legal Description with Metes and Bounds
- B Final Plat
- C Conceptual Site Plan
- D Streets and Walks
- E Sanitary Sewer and Water Lines
- F Erosion Controls and Storm Sewers
- G Valley Ridge Drive Estimate

EXHIBIT A

Legal Description with Metes and Bounds:

Pink Industrial Park 2, Lots 9, 10, 11 and 12.

Part of Tax Lot 5a2a1 located in the North 1/2 of the SE 1/4 of Section 19, T14N, R12E of the 6th p.m., Sarpy County, Nebraska, described as follows, beginning at SE corner of said North 1/2 and the SE corner of said Tax Lot 5a2a1; thence S87°22'34"W (assumed bearing) 1347.00 feet on the south line of said North 1/2 and on the south line of said Tax Lot 5a2a1 to the SE corner of Lot 8, Pink Industrial Park 2, a subdivision in Sarpy County; thence N02°37'34"W 330.34 feet on the east line of said Lot 8 and its northerly extension to the south line of Lot 3 in said Pink Industrial Park 2; thence N87°22'26"E 31.05 feet on the south line of said Lot 3 to the SE corner thereof and the NW corner of Tax Lot 5a2b in said North 1/2; thence S02°20'58"E 38.00 feet on the west line of said Tax Lot 5a2b to the SW corner thereof, said corner being on the north line of said Tax Lot 5a2a1; thence N87°22'26"E 1317.67 feet on the north line of said Tax Lot 5a2a1 to the NE corner thereof, said corner being on the east line of said North 1/2; thence S02°19'35"E 292.40 feet on the east line of said Tax Lot 5a2a1 and on the east line of said North 1/2 to the point of beginning.

Containing 9.073 acres.

PINK INDUSTRIAL PARK 2

LOTS 9, 10, 11 AND 12

BEING A PLATTING OF PART OF TAXLOT SAZA LOCATED IN THE NORTH 1/2 OF THE SE 1/4 OF SECTION 19, T14N, R12E OF THE 6th P.M., SARPY COUNTY, NEBRASKA

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT A BOUNDARY SURVEY OF THE SUBDIVISION DESCRIBED HEREIN WAS MADE UNDER MY DIRECT PERSONAL SUPERVISION AND THAT PERMANENT MARKERS HAVE BEEN FOUND OR SET AT ALL CORNERS OF SAID BOUNDARY AND THAT A BEARING AND DISTANCE WILL BE PROVIDED WITH THE CITY OF PAPIILLION TO INSURE THAT ALL CORNERS WILL BE PROPERLY MAINTAINED...



MARCH 17, 2017. SARPY COUNTY NEBRASKA. THIS PLAT OF PINK INDUSTRIAL PARK 2 WAS APPROVED BY THE CITY OF PAPIILLION, NEBRASKA ON THIS DAY OF 2017.

SARPY COUNTY NEBRASKA

APPROVAL BY PAPIILLION CITY ENGINEER

THIS PLAT OF PINK INDUSTRIAL PARK 2 WAS APPROVED BY THE CITY OF PAPIILLION, NEBRASKA ON THIS DAY OF 2017.

ESTREY L THOMPSON, PE PAPIILLION CITY ENGINEER

DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT PINK FAMILY INVESTMENTS, L.L.C., A NEBRASKA LIMITED LIABILITY COMPANY, BEING THE OWNERS OF THE PROPERTY DESCRIBED IN THE SURVEYORS REPORT...

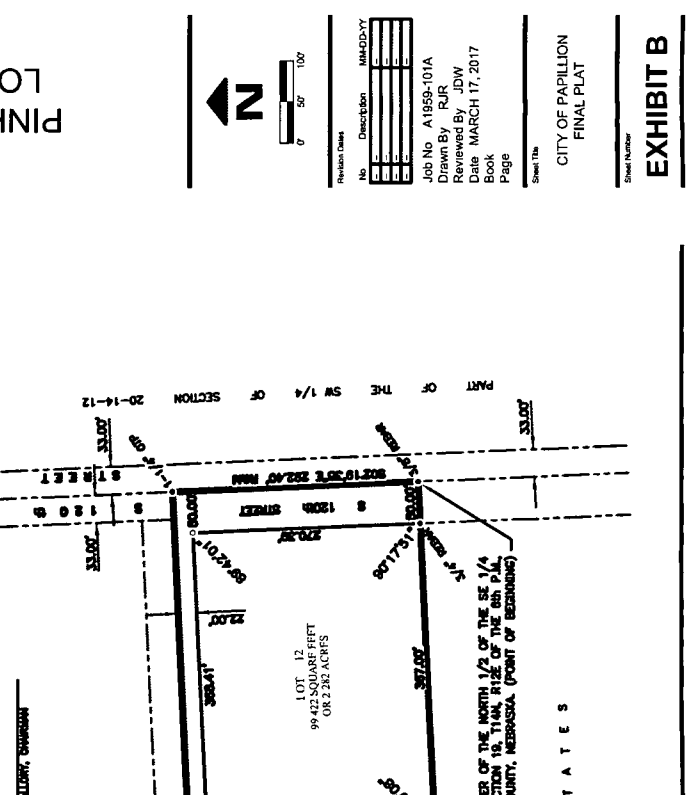
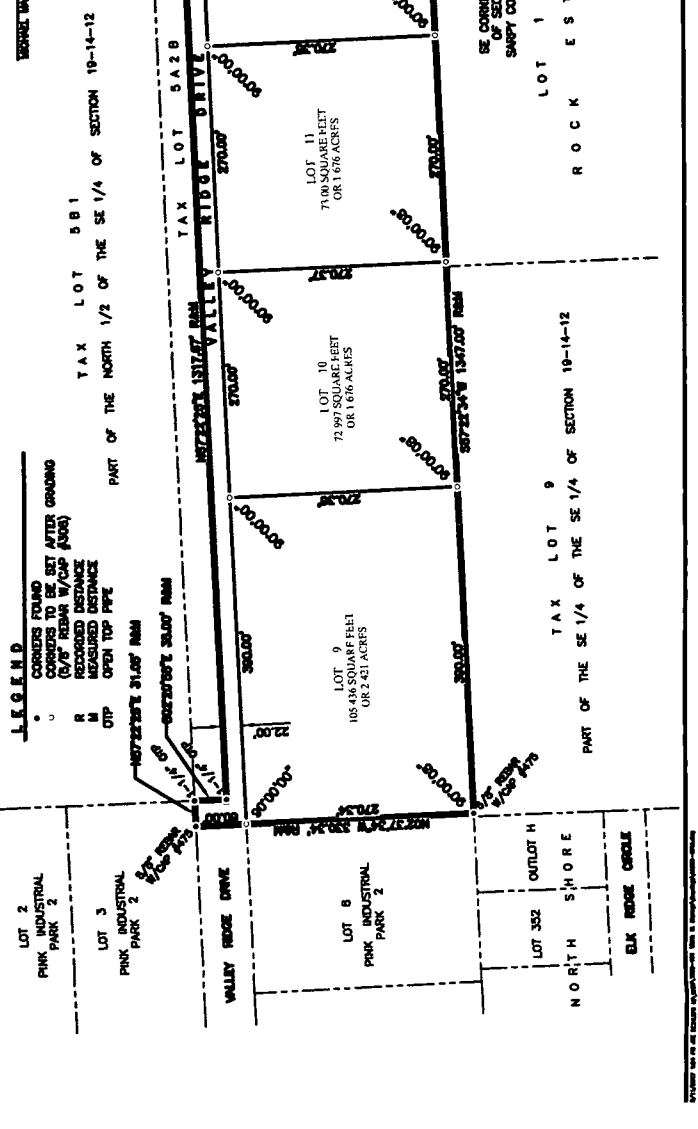
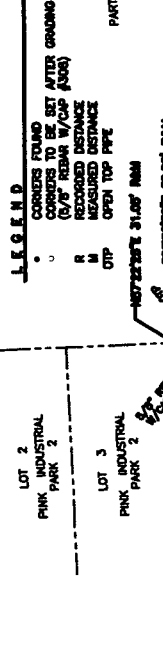
WE DO FURTHER GRANT PERPETUAL EASEMENTS TO METROPOLITAN UTILITIES DISTRICT OF OMAHA NEBRASKA TO INSTALL AND MAINTAIN OVERHEAD AND UNDERGROUND TRANSMISSION LINES AND OTHER RELATED FACILITIES AND TO EXTEND THEREON PIPES FOR THE TRANSMISSION OF GAS AND WATER...

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA) JOHN PINK, VICE PRESIDENT OF SARPY COUNTY NEBRASKA. THIS PLAT OF PINK INDUSTRIAL PARK 2 WAS APPROVED BY THE CITY OF PAPIILLION, NEBRASKA ON THIS DAY OF 2017.

APPROVAL BY PAPIILLION CITY PLANNING COMMISSION

THIS PLAT OF PINK INDUSTRIAL PARK 2 WAS APPROVED BY THE PAPIILLION CITY PLANNING COMMISSION OF THE CITY OF PAPIILLION, NEBRASKA ON THIS DAY OF 2017.



APPROVAL OF PAPIILLION CITY COUNCIL. THIS PLAT OF PINK INDUSTRIAL PARK 2 WAS APPROVED AND ACCEPTED BY THE PAPIILLION CITY COUNCIL OF THE CITY OF PAPIILLION, NEBRASKA ON THIS DAY OF 2017.

REVIEW BY THE SARPY COUNTY PUBLIC WORKS. THIS PLAT OF PINK INDUSTRIAL PARK 2 WAS REVIEWED BY THE SARPY COUNTY SURVEYORS OFFICE ON THIS DAY OF 2017.

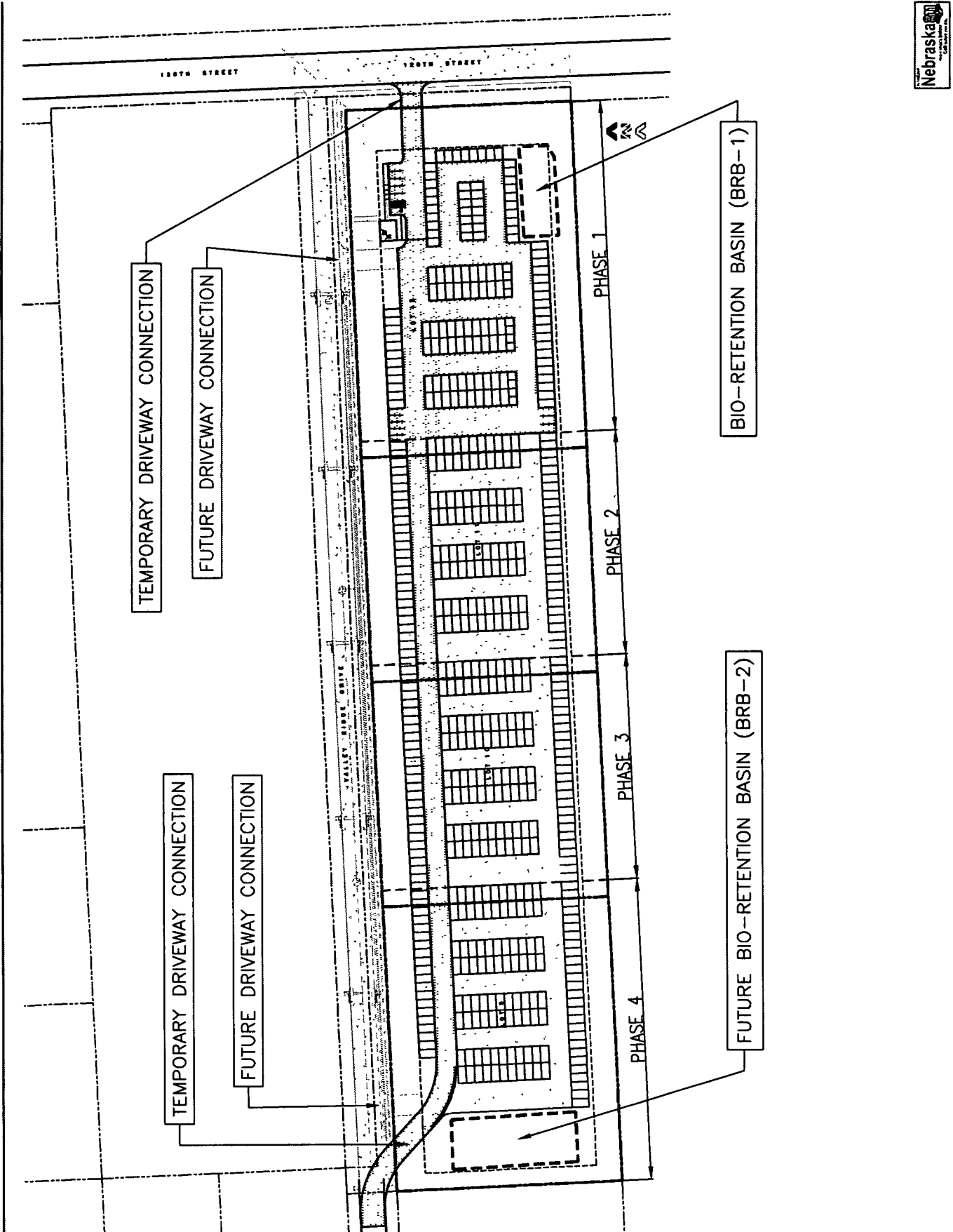
APPROVAL BY PAPIILLION CITY ENGINEER. THIS PLAT OF PINK INDUSTRIAL PARK 2 WAS APPROVED BY THE CITY OF PAPIILLION, NEBRASKA ON THIS DAY OF 2017.

Project Data table, North arrow, Scale bar (0 to 100 feet), and Exhibit B title block for the City of Papillion Final Plat.

**NOT FOR
CONSTRUCTION**

No.	Description	AM DD YY

AF





thompson dresen & conner inc
 10838 Old Mill Rd
 Omaha, NE 68114
 P: 402-330-8869 www.td2co.com
 Project Name

120th Street Storage Facility

Sheet Name

Professional Seal

NOT FOR
 CONSTRUCTION

Revised Dates

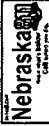
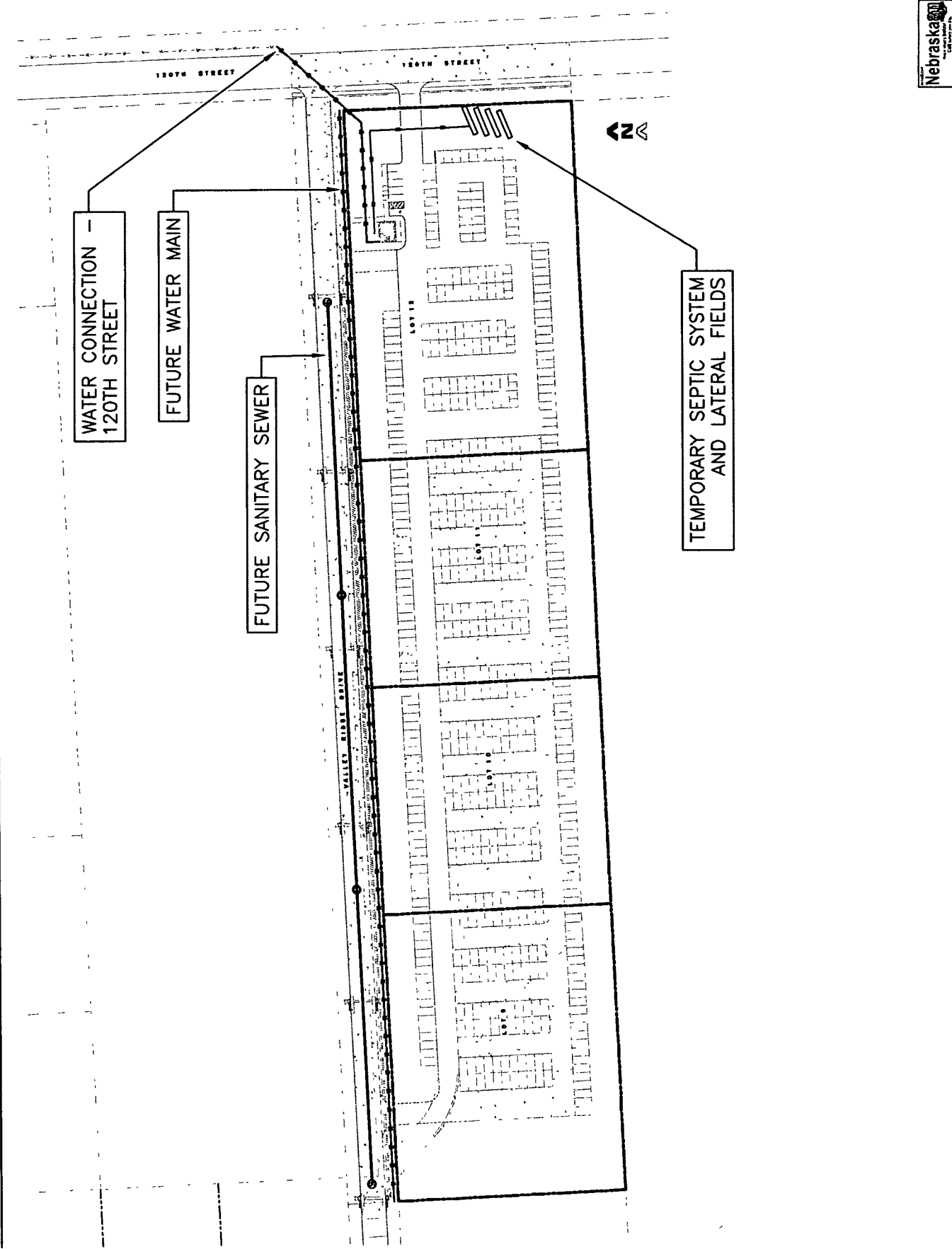
No.	Description	Date

Drawn By JAD Reviewed By DEK
 Job No. 1659-101 Date 08-22-17

Sanitary Sewer and Water Lines

EXHIBIT E

An



A3



EXHIBIT F

Erosion Controls
and Storm Sewers

Drawn By: JAD
Job No.: 1959-101
Date: 08-22-17

Revision Table:

No.	Description	M.D./Y.Y.
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NOT FOR
CONSTRUCTION

Professional Seal

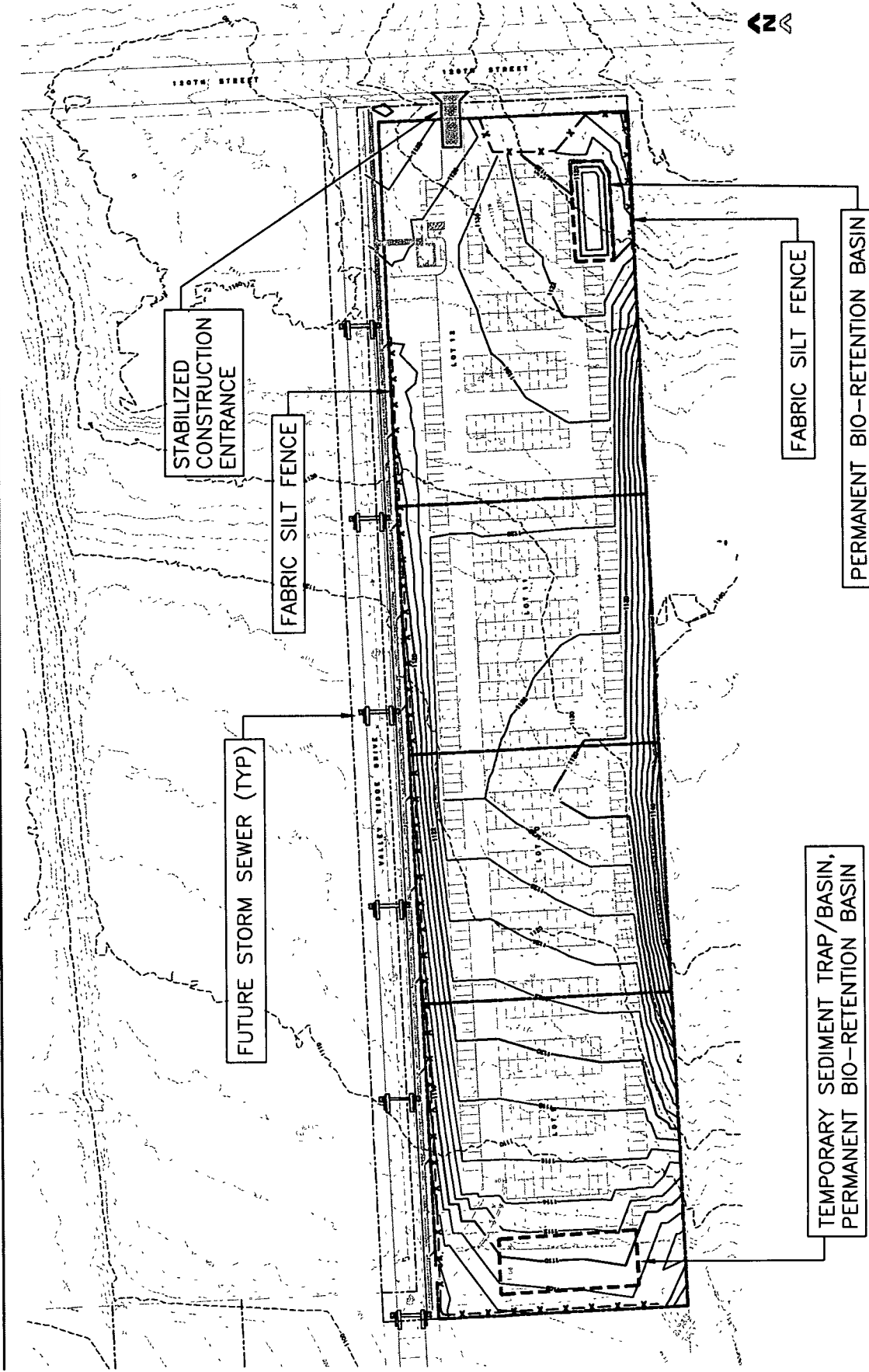
Client Name

120th Street
Storage Facility

Project Name

10836 Old Mill Rd
Omaha, NE 68154
P: 402-330-8680, www.td2e.com

TD2
engineering
& surveying



TEMPERARY SEDIMENT TRAP/BASIN,
PERMANENT BIO-RETENTION BASIN

FUTURE STORM SEWER (TYP)

FABRIC SILT FENCE

STABILIZED
CONSTRUCTION
ENTRANCE

FABRIC SILT FENCE

PERMANENT BIO-RETENTION BASIN

Sheet Number



CONSTRUCTION
& SURVEY

Thompson, Dreesen & Dornier, Inc.

Professional Engineers

Quality Engineers

602-341-1100

EXHIBIT G

May 19, 2017

Diversified Construction, Inc.
Mr. Pete Schulz
12012 Roberts Road, Suite A
LaVista, NE 68128

RE: Valley Ridge Drive Improvements
Engineer's Estimate
TD2 File No. 1959-101.5

Mr. Schulz:

The following is an Engineer's Estimate for the above described work.

Item	Description	Approx. Quantity	Unit	Unit Price	Amount
1	Common Excavation	4,800	C.Y.	\$ 2.00	\$ 9,600.00
2	9" PCC Pavement, in place	4,400	S.Y.	\$ 50.00	\$220,000.00
3	5" PCC Sidewalk, in place	6,500	S.F.	\$ 5.00	\$ 32,500.00
4	ADA Ramps, Landing and Detectable Warning, in place	4	EA.	\$ 1,500.00	\$ 6,000.00
5	Storm Sewer Curb Inlets, in place	10	EA.	\$ 3,500.00	\$ 35,000.00
6	Storm Sewer Pipe, in place	1,185	L.F.	\$ 60.00	\$ 71,100.00
7	Sanitary Sewer Manhole, in place	3	EA.	\$ 6,000.00	\$ 18,000.00
8	Sanitary Sewer Pipe, in place	1,050	L.F.	\$ 35.00	\$ 36,750.00
9	Water Main, in place	1,300	L.F.	\$ 100.00	\$130,000.00
Total Estimated Construction Cost					\$558,950.00
Engineering, Testing, & Survey Cost					\$ 90,050.00
Total Estimated Cost					\$649,000.00

Sincerely,

THOMPSON, DREESSEN & DORNER, INC.

Joe Dethlefs, P.E.