

2015-31615

12/28/2015 10:10:02 AM

Lloyd J. Dowding

REGISTER OF DEEDS



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FOR RECORDING
INFORMATION.**

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NEXT PAGE.**

LLOYD J. DOWDING

SARPY COUNTY REGISTER OF DEEDS
 Steven J. Stastny, Deputy
 1210 GOLDEN GATE DRIVE, # 1230
 PAPIILLION, NE 68046-2842
 402-593-5773

*R & R
City of Papillion*

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SUBDIVISION AGREEMENT

THIS SUBDIVISION AGREEMENT (hereinafter referred to as "Agreement") made this 17th day of November, 2015, by and between BHI Development Inc., a Nebraska corporation (hereinafter referred to as "DEVELOPER"), and the CITY OF PAPILLION, a municipal corporation, (hereafter referred to as "CITY").

WITNESSETH:

WHEREAS, 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

WHEREAS, DEVELOPER has requested CITY to approve a specific platting of the Development Area to be developed known as Granite Falls Commercial as described in Exhibit "B", attached hereto and herein referred to as the "Development Area"; and

WHEREAS, DEVELOPER desires to construct, install and locate certain improvements within the Development Area; and

WHEREAS, DEVELOPER wishes to connect the system of sewers and water lines to be constructed by DEVELOPER within the Development Area with the sewer and water system of CITY; and

WHEREAS, DEVELOPER and CITY desire to agree on the method of installation and the allocation of expenses for the Public Improvements; and

WHEREAS, CITY and DEVELOPER desire to set forth in this Agreement their respective understandings and agreements with regard to the development of the Project.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION 1

DEFINITIONS

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

- A. **"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 and 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 the Private Improvements or the Public Improvements.
- B. **"Dedicated Street(s)"** shall mean those concrete or paved area(s), including curbing, to be constructed, modified or improved within that portion of the Development Area designated as Dedicated Street right of way on Exhibit "B".
- C. **"Development Area"** shall mean the real property situated within the area identified or depicted on Exhibit "B" and related public right-of-way.

- D. **“Party”** shall mean CITY or DEVELOPER individually, and **“Parties”** shall mean the CITY and DEVELOPER, collectively.
- E. **“Plat”** shall mean the final plan of the plat, subdivision or dedication of land prepared for filing or recording in accordance with these regulations.
- F. **“Private Improvements”** shall mean those improvements or betterments required by or otherwise undertaken by DEVELOPER pursuant to this Agreement on, to or otherwise benefiting the Development Area other than those improvements identified as **“Public Improvements”** in Section 1G.
- G. **“Public Improvements”** shall mean:
 - (1) Grading of street right-of-way.
 - (2) Construction of and concrete paving of all streets dedicated per plat as shown on Exhibit “C”.
 - (3) All Dedicated Street signage, traffic control signage, and traffic signal improvements 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 Department and only if located at a Street Intersection or related to the Development Area.
 - (4) All “Wastewater Sewers” to be constructed and installed within the boundaries of any Dedicated Street right-of-way within the Development Area or other areas specifically approved by CITY as shown on Exhibit “D”. Wastewater Sewers shall include all necessary sanitary and wastewater sewer mains, manholes, lines, pipes and related appurtenances.
 - (5) The “Water Distribution System” to be constructed and installed within the boundaries of any Dedicated Street right-of-way within the Development Area or other areas specifically approved by CITY as shown on Exhibit “D”.
 - (6) All “Storm Sewers” and “Erosion Control Measures” to be constructed in the Development Area identified on the storm sewer plan (Exhibit “E”) prepared by DEVELOPER’S engineer, including all necessary storm sewers, inlets, manholes, lines, pipes and related appurtenances.
 - (7) 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) The “Lighting System” for any Dedicated Streets to be constructed and installed by the Omaha Public Power District 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) The “Electrical Power Service” to be constructed and installed by the Omaha Public Power District within the boundaries of any Dedicated Street right-of-way within the Development Area. The Electrical Power Service shall include all electrical utility

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lines and other devices, other than the Lighting System, so constructed and installed for the benefit of the Development Area.

- H. **“Sewer System”** shall mean, collectively, all sewer systems within the Development Area.
- I. **“Street Improvements”** shall mean those Public Improvements described in paragraphs 1G(1), (2), (3) and (8).

SECTION 2

AUTHORITY AND DOCUMENTATION

- A. DEVELOPER shall cause all Private Improvements and Public Improvements to be constructed and installed in accordance with the terms and conditions of this Agreement.
- B. DEVELOPER shall abide by and incorporate into all of its construction contracts for Public Improvements the provisions required by the regulations of CITY pertaining to construction of public improvements in developments/subdivisions and testing procedures therefore.
- C. Prior to commencement of construction of Private Improvements and Public Improvements, DEVELOPER will obtain and file of record permanent easements for all sanitary, water and storm sewer lines as determined by CITY’S engineer. Said easements shall be filed with the final plat in a form satisfactory to CITY’S attorney and CITY’S engineer.
- D. At least thirty (30) working days before commencing any work in connection with the Public Improvements, DEVELOPER shall first:
 - (1) Deliver to the appropriate department(s) of CITY duly executed copies of any agreement(s) for work required for, or otherwise entered into in connection with the Public Improvements including required bonds and insurance certifications, and all plans for the Public Improvements, including the manner and means of any additional connections required by or for the Wastewater Sewers or Storm Sewers, prepared by DEVELOPER’S engineer. The specifications and technical terms of all such agreements and plans shall have been received and approved by CITY prior to DEVELOPER’S execution of any agreements for construction or installation of the Public Improvements.
 - (2) CITY and its departments agree 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.
- E. Any contracts for the construction or installation of the Public Improvements entered by DEVELOPER shall provide that the contractor or subcontractor constructing or installing the Public Improvements shall have no recourse against CITY for any claim or matter arising out of, or in any way whatsoever, including without limitation, the cost for Public Improvements,

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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.

- F. The entire cost of all Public Improvements 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 Public Improvements.
- G. CITY hereby grants permission to DEVELOPER to connect its sanitary sewer system and water system to the sanitary system and water system of CITY pursuant to the remaining terms and conditions of this Agreement and the terms and conditions of a sewer and water connection agreement of even date between CITY and said DEVELOPER.

SECTION 3

REPRESENTATIONS AND ACKNOWLEDGEMENTS

A. DEVELOPER represents and warrants to the CITY as follows:

- (1) DEVELOPER is the owner of record of the Development Area and has full right and authority to make decisions affecting the Development Area and to enter into this Agreement.
- (2) DEVELOPER is duly authorized to transact business under the laws of the State of Nebraska.
- (3) DEVELOPER has full power and authority to enter into, deliver and perform its obligations under this Agreement and each of the documents related thereto.
- (4) DEVELOPER has taken all necessary action to authorize DEVELOPER'S execution, and delivery of, and its performance under, this Agreement and as such, this Agreement constitutes DEVELOPER'S valid and binding obligation, enforceable against DEVELOPER in accordance with its terms.
- (5) 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 Code of the City of Papillion.
- (6) All Public Improvements shall be constructed, installed, and approved by the appropriate city department and, except as set forth within, payment shall be made of all applicable fees due to the City of Papillion.
- (7) DEVELOPER shall comply with (a) the terms of this Agreement and (b) the provisions of any agreement submitted to CITY pursuant to this Agreement, which agreements shall not be amended or assigned without prior written approval of CITY.

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- (8) DEVELOPER shall defend, indemnify and hold CITY harmless from and against any responsibility, claim, damage, loss, liability or obligation resulting or arising from or out of or otherwise occurring in connection with this Agreement and the construction, financing and installation of the Private Improvements and Public Improvements, except to the extent the same is caused by the act, error, or omission, including gross negligence, of CITY.
- (9) DEVELOPER has not employed or retained any company or person, other than a bona fide employee or contracted consultant 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 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.
- (10) DEVELOPER shall obtain general liability insurance, as well as payment and performance bonds equivalent to the total constructions costs, for the Public Improvements within the Development Area, and shall show proof of such insurance and bonds to CITY prior to the commencement of construction.
- (11) 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.
- (12) All documents, contracts and instruments submitted to CITY now, or at any time in the future, or otherwise entered into by or on behalf of DEVELOPER shall in all material respects be fully authorized, and in all material respects shall be valid, binding and enforceable in accordance with their terms.
- (13) DEVELOPER shall cause all personal property and real estate taxes and assessments levied on the Development Area to be paid prior to the final plat approval by the CITY.

B. DEVELOPER acknowledges that neither CITY nor any of its officers, agents or employees:

- (1) is acting as attorney, architect, engineer or otherwise in the interest or on behalf of DEVELOPER in furtherance of this Agreement;
- (2) 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
- (3) 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 any of them.

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SECTION 4

APPORTIONMENT OF COSTS

- A. DEVELOPER and CITY agree that all Private Improvements and Public Improvements shall be privately financed by DEVELOPER. DEVELOPER shall be responsible for the entire cost of all Private Improvements and Public Improvements, regardless of any future annexation by CITY.
- B. CITY agrees to waive commercial building permit and plan review fees incurred by the DEVELOPER or its designee up to the amount of the construction cost of the culvert installation as a credit for the culverts required for the Street Improvements provided that such reimbursement shall not exceed \$400,000 (hereinafter referred to as the "Culvert Reimbursement"). DEVELOPER agrees to provide CITY with documentation of the construction cost of the culvert installation to establish the Culvert Reimbursement. The Parties agree that waivers will not be granted until installation of said culverts is complete. Upon completion of the installation of said culverts, all commercial building permit and plan review fee waiver requests shall be submitted in writing to the Building Department with the permit application. Such written requests must be signed by the DEVELOPER or its designee. The Parties acknowledge that the timing of the issuance of commercial building permits will be in accordance with Section 5U regardless of the approval of a waiver of commercial building permit and plan review fees.

CITY further agrees that if the total amount of the commercial building permit and plan review fee waivers for all developable lots within the Development Area is less than the amount of the Culvert Reimbursement, then the CITY will reimburse the balance of the Culvert Reimbursement from the Capital Facilities Charges collected per Section 5C provided that such reimbursement of Capital Facilities Charges shall not exceed \$263,268.20. CITY and DEVELOPER agree that DEVELOPER will request such Capital Facilities Charge reimbursement by submitting a written request to the City Administrator. Such reimbursement request shall include confirmation by DEVELOPER that commercial building permits have been issued for all developable lots within the Development Area. Upon receipt of the Capital Facilities Charge reimbursement request CITY shall forward the request to the City Council for approval.

SECTION 5

OTHER OBLIGATIONS

- A. DEVELOPER shall undertake such acts, responsibilities and obligations as may be necessary or appropriate to prevent and control any adverse impact on any real estate or property beyond the Development Area directly or indirectly caused by, or attributable or related to construction and installation of the Private Improvements and Public Improvements.
- B. Review Fee. DEVELOPER shall pay to the CITY a fee of one percent (1%) of construction cost of Public Improvements to cover engineering, legal and other miscellaneous expenses incurred by the 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.

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- C. Capital Facilities Charges. DEVELOPER shall pay to CITY Capital Facilities Charges in the amount of \$263,268.20 based on 38.36 acres of Mixed Use at \$6,205 per acre (\$238,023.80) plus 4.36 acres of outlots at \$5,790 per acre (\$24,244.40). CITY shall provide DEVELOPER with an invoice for the Capital Facilities Charges after City Council approves the Final Plat. **Capital Facilities Charges shall be paid prior to issuance of any building permits.**
- D. Watershed Fee. All new building permits will be subject to the Watershed Fee as described in the Papillion Master Fee Schedule and agreed to by the Papillion Creek Watershed Partnership.
- E. Sanitary Sewer Connection Fees. DEVELOPER shall remit Sewer Connection Fees for CITY prior to the issuance of any building permit. The amount of the Sewer Connection Fees shall be calculated based on the rates established by the Master Fee Schedule in place at the time that the building permit application is made.
- F. Traffic Signals and Intersection Improvements. DEVELOPER shall be responsible for participation in the traffic signals as follows:
- (1) 114th Street and HWY 370. The Parties agree that DEVELOPER will assume Sanitary and Improvement District #275's responsibility for installation of the traffic signal at 114th Street and HWY 370, including, but not limited to, the traffic signal and any intersection improvements related to such traffic signal. DEVELOPER shall act as the lead agency for installation of said signal. CITY has, as a condition of CITY'S approval of Prairie Hills, required Sanitary and Improvement District #302 to proportionally cost share in said signal. Further, CITY, as a condition to CITY'S approval for any other Sanitary and Improvement District or any other private developer on the southeast corner or northwest corner of the Highway 370 and 114th Street intersection, shall require such Sanitary and Improvement Districts or private developers to proportionately reimburse DEVELOPER for the cost of installing and financing the 114th Street and HWY 370 traffic signal.
 - (2) 114th Street and Cumberland Drive. The Parties agree that DEVELOPER shall be responsible for 100% of the cost of the traffic signal and intersection improvements at 114th Street and Cumberland Drive, including, but not limited to, the traffic signal and any intersection improvements related to such traffic signal. DEVELOPER shall act as the lead agency for installation of said signal. In the event that the development to the west dedicates a street that extends Cumberland Drive west of 114th Street, CITY, as a condition to CITY'S approval for any other Sanitary and Improvement District or any other private developer of the property west of 114th Street, shall require such Sanitary and Improvement District or private developer to proportionately reimburse DEVELOPER for the cost of installing and financing the 114th Street and Cumberland Drive traffic signal.
 - (3) Cumberland Drive and Wittmus Drive. The Parties agree that DEVELOPER shall be responsible for 100% of the cost of the traffic signal and intersection improvements at Cumberland Drive and Wittmus Drive, including, but not limited to, the traffic signal and any intersection improvements related to such traffic signal. DEVELOPER shall act as the lead agency for installation of said signal.
 - (4) HWY 370 and Wittmus Drive. DEVELOPER shall reimburse Sanitary and Improvement District #300 for 25% of the cost of the HWY 370 and Wittmus Drive

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traffic signal and turn lane improvements as established in the Granite Falls Subdivision Agreement.

- G. Reimbursements to Sanitary and Improvement District #275. The Parties acknowledge that the Kingsbury Hills Subdivision Agreement established that the Development Area has fiscal obligations to Sanitary and Improvement District #275. The Parties further acknowledge that such reimbursement obligations met by DEVELOPER.
- H. Reimbursements to Sanitary Improvement District #300. DEVELOPER shall reimburse Sanitary and Improvement District #300 for 10.2% of the cost of the Wittmus Drive paving and storm sewers and for 6.5% of the cost of the interior water improvements as established in the Granite Falls Subdivision Agreement.
- I. HWY 370 Trail System Improvements. DEVELOPER will cooperate with CITY to install a trail system which may involve a trail connection under HWY 370. DEVELOPER agrees to enter into any agreement(s) required to construct such project and proportionally cost share in the costs up to \$100,000. DEVELOPER agrees to remit payment of the cost share to CITY at such time that an interlocal agreement for the HWY 370 Trail System Improvements is approved and executed.
- J. Granite Falls Commercial Trail System. DEVELOPER shall construct and privately finance an interior trail system that connects to the Kingsbury Hills Trail System that is consistent with the trail system depicted on the site plan approved within the Granite Falls Commercial Mixed Use Development Agreement attached hereto as Exhibit F. Such trail shall have a width that is consistent with the existing Kingsbury Hills Trail System. DEVELOPER shall install the trail system in conjunction with the Public Improvements.
- K. Sidewalks. DEVELOPER shall be responsible for the installation of sidewalks as follows:
 - (1) 114th Street. DEVELOPER shall install and privately finance the construction of the sidewalk within 114th Street right-of-way abutting the Development Area.
 - (2) Wittmus Drive. DEVELOPER shall install and privately finance the construction of the sidewalk within the Wittmus Drive right-of-way abutting the Development Area.
 - (3) Cumberland Drive. DEVELOPER shall cause the installation of the sidewalk within the southern portion of the Cumberland Drive right-of-way as a condition of building construction. Such sidewalks shall be installed at the time of building permit and shall be the private cost of each lot owner.
 - (4) Outlots. DEVELOPER shall install and privately finance the cost of any sidewalk within right-of-way abutting an outlet.
- L. Maintenance of Detention Facilities. DEVELOPER, its successors, or assigns, shall be responsible for detention facility construction and maintenance in compliance with the Post Construction Storm Water Management requirements of CITY. CITY shall not have any responsibility for maintenance or repair of any such facility located within the Development Area.
- M. Commencement of Public Improvements. CITY agrees that DEVELOPER may commence the timely and orderly installation of the Public Improvements financed by DEVELOPER

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following execution of this Agreement pursuant to appropriate provisions of the City of Papillion Code, provided that DEVELOPER has provided proof of private financing or a bond approved by CITY for the installation of the Public Improvements.

- N. Easements. DEVELOPER shall be responsible for recording with the Sarpy County Register of Deeds a separate instrument that includes a prescription outlining the rights and terms for each easement dedicated by the final plat.
- O. 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.
- P. Fire Hydrants. Pursuant to Chapter 170, Subdivision of Land, Section 170-20 Code of the City of Papillion, fire hydrants shall be provided by DEVELOPER. The type of hydrant and control valves and the location of the hydrants must be approved by the fire chief. DEVELOPER shall require the fire hydrants to be painted yellow.
- Q. 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 occupancy permit for any structure build in said Development Area, civil defense sirens and a number, type and specifications as determined by the City Administrator in conjunction with the Director of the Sarpy County Civil Defense Agency. The siren must be capable of sounding the severe weather and attack warning. The number, type and specifications for the civil defense sirens shall be determined by the Director of the Sarpy County Civil Defense Agency. The cost for said civil defense siren shall be paid by DEVELOPER. If existing coverage is available, DEVELOPER shall pay its pro-rata share of siren cost based on the areas of coverage as determined by City Engineer.
- R. Construction Obligations. Upon the execution of this Agreement, DEVELOPER is obligated to construct all Public Improvements contemplated herein. This Agreement shall not in any way be construed as creating any obligation on the part of DEVELOPER to develop the Developed Area or construct any of the Public or Private Improvements in the event the plans envisioned by DEVELOPER are not carried out and the approvals obtained from CITY are withdrawn or terminated by the Declarant.
- S. One Call.
 - (1) The parties mutually agree that CITY will provide public water main and sanitary sewer line locating services as well as any other utilities that CITY or DEVELOPER is responsible for after DEVELOPER provides as-built drawings on state plane coordinates for all utilities owned and located within the Development Area. Such as-built drawings shall be provided as an Auto-CAD file in addition to hard copy. DEVELOPER agrees to pay to City \$40.00 per call for locates that are required within the Development Area as received over the One Call System.
 - (2) CITY will invoice DEVELOPER for the required payment for services on an annual basis and DEVELOPER will have 30 days in which to make payment after receiving invoice. CITY shall maintain records of all costs incurred within the Development

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Area for locating services and DEVELOPER shall have the right to audit and review such records at any time to assure that such records are accurate.

- T. Wastewater Service Agreement Exhibits. The DEVELOPER shall be responsible for providing all exhibits required for the amendment to the CITY'S Wastewater Sewer Agreement with the City of Omaha as requested by CITY.
- U. Discharge Permits in Papillion's Wastewater Service Area. The City of Omaha is authorized to issue discharge permits in Papillion's Waste Water Service Area, which includes the Development Area. The Parties acknowledge that the City of Omaha has the authority to enforce prohibitions and limitations as specified in Omaha Municipal Code Chapter 31 by means of discharge permits. All such enforcements will be in collaboration with and by the written approval of CITY.
- V. Maintenance of and Transfer of Title to Outlots. DEVELOPER shall be responsible for maintaining the outlots within the Development Area or transferring ownership of said outlots to an association formed to maintain the outlots. CITY shall not have any responsibility for maintenance of outlots that are not under CITY'S ownership. DEVELOPER agrees that, at least sixty (60) days prior to closing on the sale, donation or other transfer of said outlot, it will provide CITY with notice of such intended transfer and a copy of the written notice DEVELOPER provided to the transferee that no buildings can 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 said outlot from being offered at the Sarpy County tax sale.
- W. Building Permits. The Parties agree that commercial building permits will not be issued for any building within the Mixed Use Development until installation of all Public Improvements, excluding the Gas Distribution System and Electrical Power Service, to service Granite Falls Commercial is complete.

SECTION 6

MISCELLANEOUS

- A. TERMINATION OF AGREEMENT. This Agreement shall not be terminated except (1) by the written agreement between DEVELOPER and CITY; (2) by written notice of termination by CITY for any material breach or default by DEVELOPER which remains uncured thirty (30) days following notice to DEVELOPER specifying such breach or default ("Notice to Cure"), to be effective upon notice of termination; or (3) by DEVELOPER prior to the commencement of the construction of the Public Improvements, upon written notice to CITY that the economy substantially impairs the success of the development .

If the type of breach is such that cure has been started and takes longer than 30 days to cure, then as long as CITY determines substantial progress is being made, then the cure period shall be extended another 30 days or as otherwise agreed to by CITY and DEVELOPER to allow it to be completed. No termination shall relieve DEVELOPER of any unperformed obligation required as of the effective date of termination nor any liability which may have then accrued, each of which shall survive such termination. Notwithstanding the foregoing, CITY may terminate this Agreement immediately upon notice without allowing any right to cure upon the recurrence of any breach or default for which CITY has given a Notice to Cure in the preceding 180 days. The provisions of this Section 6 shall survive the expiration or termination of this Agreement.

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B. **INDEMNITY.** In addition to the indemnity obligations otherwise set forth in this Agreement (which obligations shall survive the expiration or termination of this Agreement), DEVELOPER agrees to defend, indemnify and hold CITY and its respective employees, agents and assigns harmless from and against any and all claims, judgments, actions, loss, damage or injury of any nature whatsoever resulting from any gross negligence or lack of performance by DEVELOPER or its employees, agents, contractors, subcontractors or other representatives under this Agreement, including any failure to perform or properly perform as required by this Agreement, or any and all claims, judgments, actions, loss, damage or injury of any nature whatsoever which may otherwise arise from or out of or may be caused by its breach of or default in any warranty, representations, obligation, requirement, responsibility or other provision of this Agreement or from any unlawful or improper discharge by DEVELOPER and its respective employees, agents, contractors and subcontractors related to the Private Improvements and Public Improvements, and assigns into the CITY'S sewer system during the term of this Agreement. Without limiting the generality of the foregoing, such indemnity shall include and extend to any injury, loss or damage:

- (1) to any agent, employee or subcontractor of DEVELOPER or CITY occurring while they are on any premises owned, operated or controlled by CITY for any reason except to the extent such injury is caused by the act, error or omission, including gross negligence, of CITY;
- (2) to any person resulting or arising from or out of or otherwise occurring from either a construction contract entered into by (a) DEVELOPER under the terms of this Agreement, or (b) DEVELOPER on behalf of CITY;
- (3) to any person resulting or arising from or out of or otherwise occurring from a breach of any contract, covenant, representation or warranty made by DEVELOPER in this Agreement;
- (4) to CITY resulting or arising from or out of or otherwise occurring from this Agreement and the construction, financing and installation of the Private Improvements or any Public Improvements; and
- (5) to any person resulting or arising from such person's use or occupancy of any part of the Development Area, including the Private Improvements or any Public Improvements to the extent that such injury, loss or damage is caused by the negligent act, error or omission of DEVELOPER, lack of performance of the terms of this Agreement, or agreement entered into, by DEVELOPER in furtherance of this Agreement.

C. **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. This prohibition shall not apply to any assignment which has the same owners of DEVELOPER or to a successor developer which agrees to perform all of the obligations of the Agreement.

D. **WAIVER.** 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.


E. **GOVERNING LAW.** This Agreement shall be governed exclusively by its provisions and by the laws of the State of Nebraska except to the extent such provisions may be superseded by applicable federal law regulation, in which case the latter shall apply.

- I. **MISCELLANEOUS.** Unless otherwise specified, all references in this Agreement to Exhibits, numbered paragraphs or Sections shall mean those Exhibits attached to this Agreement, which are incorporated into this Agreement as if fully set out herein, and those numbered paragraphs and Sections of this Agreement.
- J. **APPROVAL OF PLAT.** DEVELOPER acknowledges that CITY'S approval of the Plat, passed and approved by the Papillion City Council on November 17, 2015, is specifically subject to and conditioned on DEVELOPER'S entering into and complying with this Agreement.
- K. **MIXED USE DEVELOPMENT AGREEMENT.** DEVELOPER acknowledges that CITY'S approval of the Mixed Use Development Agreement, passed and approved by the Papillion City Council on November 17, 2015, is specifically subject to and conditioned on DEVELOPER'S entering into and complying with this Agreement.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement as of the date and year first above written.

ATTEST:

CITY OF PAPIILLION, a municipal corporation of the first class

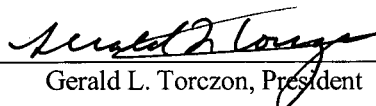

Elizabeth Butler, City Clerk

By: 
David P. Black, Mayor

CITY SEAL



BHI Development, Inc., a Nebraska corporation,

By 
Gerald L. Torczon, President

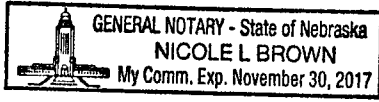
STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

Before me, a notary public, in and for said county and state, personally came, Gerald L. Torczon, President of B.H.I. Development, Inc., a Nebraska corporation, known to me to be the identical person who

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executed the above instrument and acknowledged the execution thereof be his voluntary act and deed on behalf of such corporation.

Witness my hand and Notarial Seal this 16th day of November, 2015.



Nicole L. Brown
Notary Public

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**SUBDIVISION AGREEMENT
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INTRODUCTION STATEMENT

RECITALS

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	3	Representations and Acknowledgements
	4	Allocation of Funds
	5	Other Obligations
	6	Miscellaneous

EXHIBITS:

A	Plat Legal Description with Metes and Bounds
B	Final Plat
C	Streets and Walks
D	Sanitary Sewers and Water Lines
E	Erosion Controls and Storm Sewers
F	Granite Falls Commercial Mixed Use Site Plan

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EXHIBIT "A"
LEGAL DESCRIPTION

LEGAL DESCRIPTION:

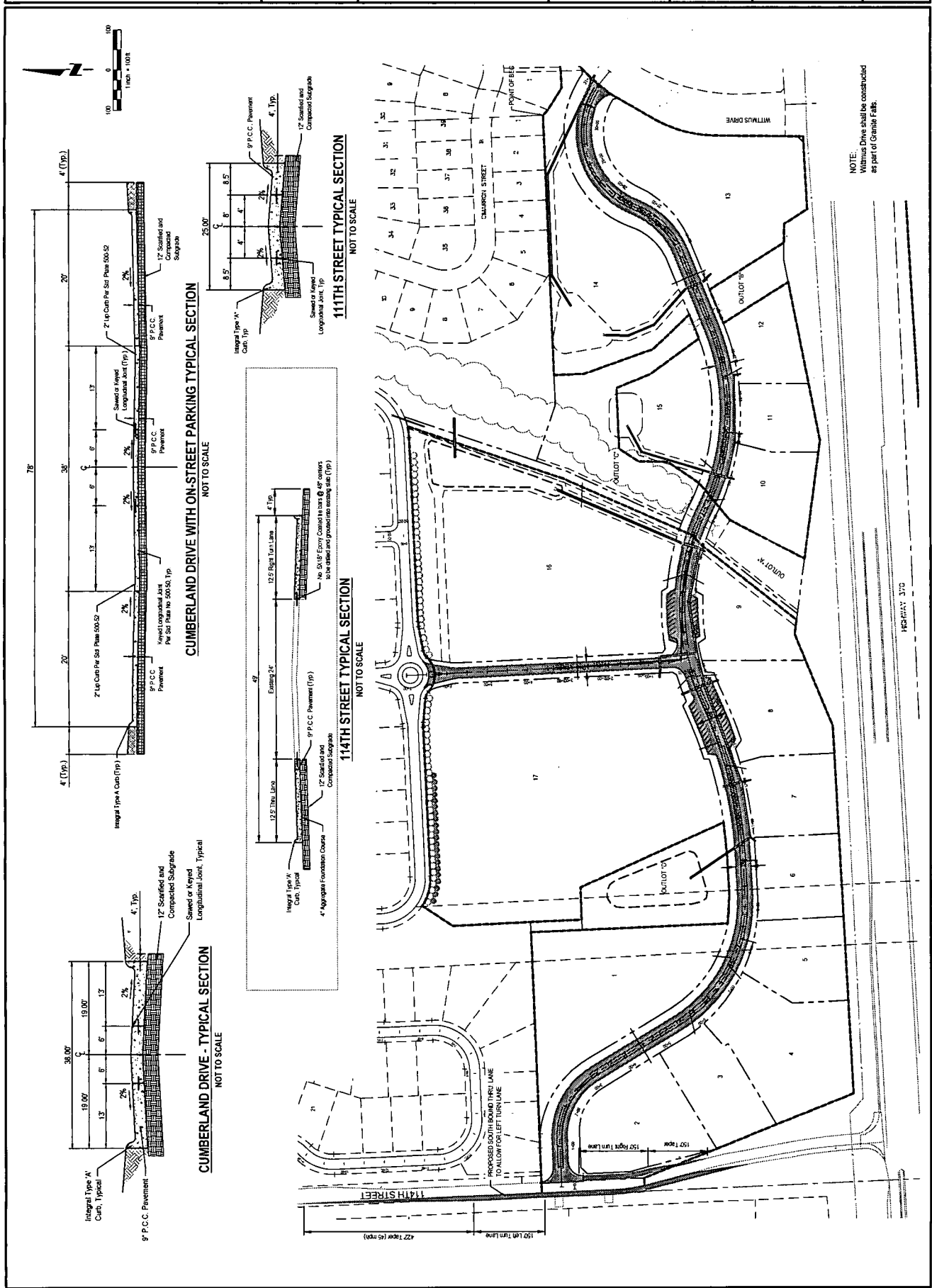
A TRACT OF LAND LOCATED IN PART OF TAX LOT 1B, A TAX LOT LOCATED IN PART OF THE SW1/4 OF THE SE1/4 ALSO PART OF THE SE1/4 OF THE SE1/4 OF SECTION 29, AND TOGETHER WITH PART OF THE SW1/4 OF THE SW1/4 OF SECTION 28, ALL LOCATED IN TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SE1/4 OF SECTION 29, SAID POINT ALSO BEING THE NORTHWEST CORNER OF THE SW1/4 OF SECTION 28; THENCE S02°25'52"E (ASSUMED BEARING) ALONG THE EAST LINE SAID OF SECTION 29, SAID LINE ALSO BEING THE WEST LINE OF SAID SECTION 28, SAID LINE ALSO BEING THE WEST RIGHT-OF-WAY LINE OF 108TH STREET, A DISTANCE OF 1791.73 FEET TO THE POINT OF INTERSECTION OF SAID WEST RIGHT-OF-WAY LINE OF 108TH STREET AND THE SOUTH RIGHT-OF-WAY LINE OF SAID 108TH STREET, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE S46°36'08"E, A DISTANCE OF 18.20 FEET; THENCE S58°07'36"E, A DISTANCE OF 64.21 FEET; THENCE N86°31'02"E, A DISTANCE OF 116.42 FEET; THENCE SOUTHWESTERLY ON A CURVE TO THE LEFT WITH AN RADIUS OF 523.32 FEET, A DISTANCE OF 113.57 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S48°51'29"W, A DISTANCE OF 113.35 FEET; THENCE S42°38'27"W, A DISTANCE OF 48.28 FEET; THENCE SOUTHWESTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 100.00 FEET, A DISTANCE OF 22.27 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S36°15'36"W, A DISTANCE OF 22.23 FEET; THENCE S29°52'45"W, A DISTANCE OF 121.89 FEET; THENCE SOUTHWESTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 323.00 FEET, A DISTANCE OF 165.28 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S15°13'13"W, A DISTANCE OF 163.48 FEET; THENCE S00°33'40"W, A DISTANCE OF 216.57 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF HIGHWAY 370; THENCE ALONG THE NORTH RIGHT-OF-WAY LINE OF HIGHWAY 370 ON THE FOLLOWING EIGHT (8) COURSES: THENCE S86°49'45"W, A DISTANCE OF 180.50 FEET; THENCE N32°02'16"W, A DISTANCE OF 67.54 FEET; THENCE N89°26'21"W, A DISTANCE OF 88.98 FEET; THENCE S78°36'45"W, A DISTANCE OF 454.51 FEET; THENCE N82°26'26"W, A DISTANCE OF 483.51 FEET; THENCE S67°26'06"W, A DISTANCE OF 246.94 FEET; THENCE S86°49'45"W, A DISTANCE OF 909.57 FEET; THENCE N21°45'24"W, A DISTANCE OF 561.37 FEET TO A POINT OF INTERSECTION OF SAID NORTH RIGHT-OF-WAY OF HIGHWAY 370 AND THE EAST RIGHT-OF-WAY LINE OF 114TH STREET; THENCE S87°29'27"W, A DISTANCE OF 33.00 FEET TO A POINT ON THE WEST LINE OF SAID SE1/4 OF SECTION 29; THENCE N02°30'33"W ALONG SAID WEST LINE OF THE SE1/4 OF SECTION 29, A DISTANCE OF 255.22 FEET; THENCE N87°29'27"E ALONG THE SOUTH LINE OF LOT 1, KINGSBURY HILLS, A SUBDIVISION LOCATED IN SAID SECTION 29 AND THE WESTERLY EXTENSION THEREOF, A DISTANCE OF 119.44 FEET; THENCE ALONG THE NORTH LINE OF SAID TAXLOT 1B, SAID LINE ALSO BEING SAID SOUTH LINE OF KINGSBURY HILLS ON THE FOLLOWING SEVENTEEN (17) COURSES: THENCE EASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 239.76 FEET, A DISTANCE OF 34.50 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S88°23'11"E, A DISTANCE OF 34.47 FEET; THENCE N87°29'27"E, A DISTANCE OF 524.28 FEET; THENCE N02°55'11"W, A DISTANCE OF 192.34 FEET; THENCE N33°05'56"E, A DISTANCE OF 90.90 FEET; THENCE EASTERLY ON A CURVE TO THE LEFT WITH A RADIUS

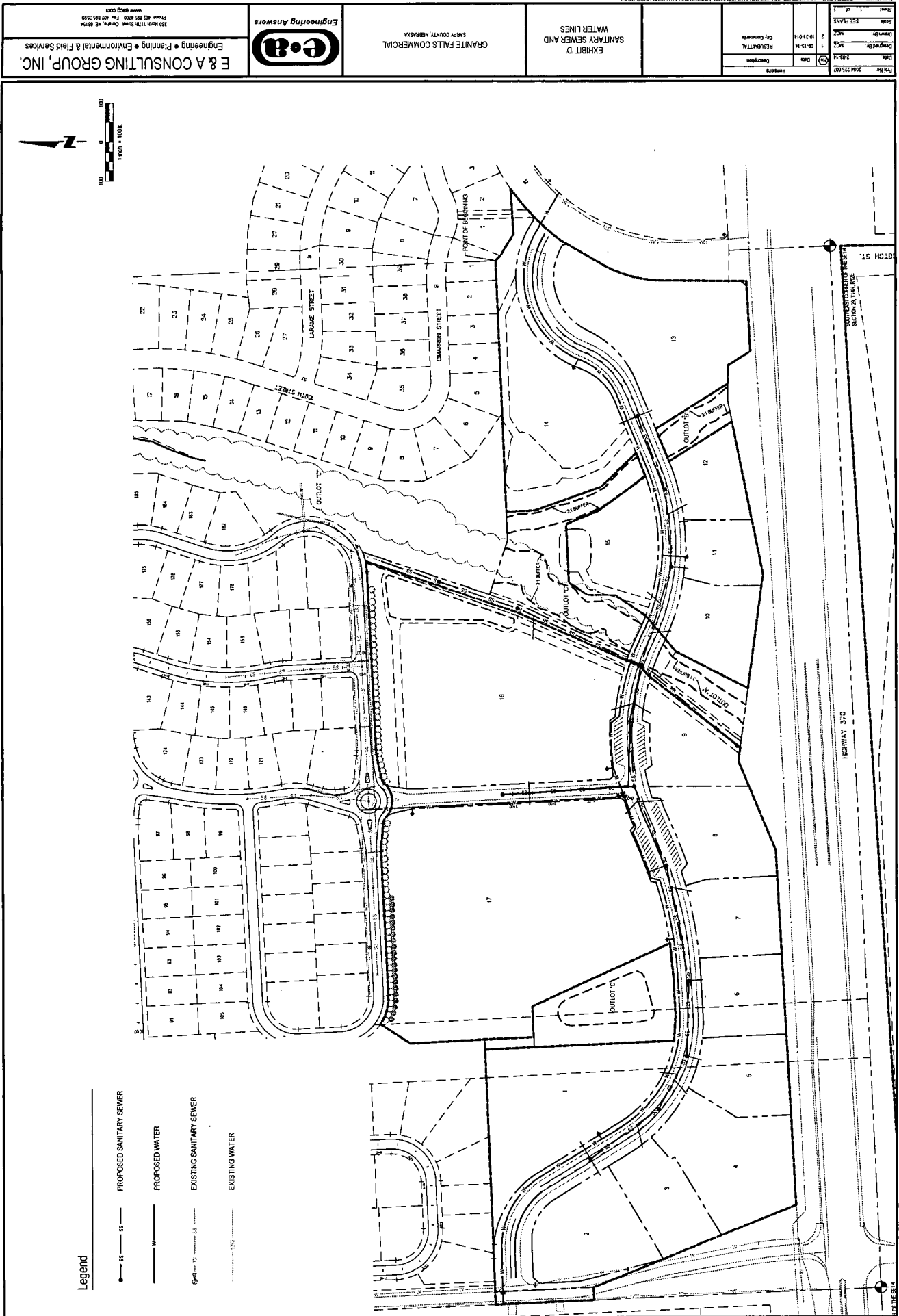
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OF 125.00 FEET, A DISTANCE OF 78.21 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S74°49'33"E, A DISTANCE OF 76.94 FEET; THENCE N87°14'59"E, A DISTANCE OF 366.59 FEET; THENCE EASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 87.50 FEET, A DISTANCE OF 12.26 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S88°44'16"E, A DISTANCE OF 12.25 FEET; THENCE S84°43'31"E, A DISTANCE OF 60.15 FEET; THENCE SOUTHEASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 27.50 FEET, A DISTANCE OF 18.07 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS S65°53'57"E, A DISTANCE OF 17.75 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 60.50 FEET, A DISTANCE OF 96.52 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N87°13'28"E, A DISTANCE OF 86.60 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 27.50 FEET, A DISTANCE OF 18.15 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N60°25'48"E, A DISTANCE OF 17.82 FEET; THENCE N79°20'15"E, A DISTANCE OF 60.73 FEET; THENCE EASTERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 87.50 FEET, A DISTANCE OF 12.08 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N83°17'37"E, A DISTANCE OF 12.07 FEET; THENCE N87°14'59"E, A DISTANCE OF 456.08 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 150.00 FEET, A DISTANCE OF 52.89 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N77°08'54"E, A DISTANCE OF 52.62 FEET; THENCE S18°38'08"W, A DISTANCE OF 345.07 FEET; THENCE S71°21'52"E, A DISTANCE OF 147.06 FEET; THENCE N87°34'08"E ALONG SAID NORTH LINE OF TAXLOT 1B, SAID LINE ALSO BEING THE SOUTH LINE OF OUTLOT "C", SAID KINGSBURY HILLS, SAID LINE ALSO BEING THE SOUTH LINE OF LOTS 9 THRU 13, KINGSBURY HILLS REPLAT 1, A SUBDIVISION LOCATED IN SAID SAID SECTION 29, SAID LINE ALSO BEING THE SOUTH RIGHT-OF-WAY LINE OF SAID 108TH STREET, A DISTANCE OF 716.21 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS AN AREA OF 2,133,989 SQUARE FEET, OR 48.990 ACRES, MORE OR LESS.



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Legend

- PROPOSED SANITARY SEWER
- PROPOSED WATER
- EXISTING SANITARY SEWER
- EXISTING WATER

Sheet No. 2004.223.001	Project No. 2004.223.001	Revision No. 1	Scale	DATE	Drawn By	Checked By	Project No.	Project Name
1	1	1	AS SHOWN	10/15/14	RESIDENTIAL	City Engineer	2004.223.001	GRANITE FALLS COMMERCIAL SAFETY COUNTY, MINNESOTA
2	2	2	SEE PLANS	10/15/14	RESIDENTIAL	City Engineer	2004.223.001	GRANITE FALLS COMMERCIAL SAFETY COUNTY, MINNESOTA

E & A CONSULTING GROUP, INC.
 Engineering • Planning • Environmental & Field Services
 200 North 17th Street, Champlin, MN 55314
 Phone: 612.835.4900 Fax: 612.835.2008
 www.eagroup.com



GRANITE FALLS COMMERCIAL
 SAFETY COUNTY, MINNESOTA

EXHIBIT 'D'
 SANITARY SEWER AND
 WATER LINES

11

E & A CONSULTING GROUP, INC. Engineering • Planning • Environmental & Field Services 310 NORTH 17TH STREET, SUITE 400, RICHMOND, VA 23214 PHONE 804.281.2200 FAX 804.281.2204 WWW.EAGC.COM	E&A Engineering Answers	GRANITE FALLS COMMERCIAL SAFE COUNTY, VIRGINIA	EXHIBIT E EROSION CONTROLS AND STORM SEWERS	SHEET NO. 2004.225.002 DATE: 2/20/11 DRAWN BY: [Signature] CHECKED BY: [Signature] PROJECT: RESIDENTIAL CITY: GRANITE FALLS
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