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Clay J. Dowling

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REGISTER OF DEEDS



**FIRST AMENDMENT
TO
PINK INDUSTRIAL PARK 2 SUBDIVISION AGREEMENT**

This First Amendment to the Pink Industrial Park 2 Subdivision Agreement (hereinafter "First Amendment"), made this 5th day of September, 2017 ("Effective Date") by and between **PINK FAMILY INVESTMENTS, LLC**, a Nebraska limited liability company (hereinafter referred to as "DEVELOPER"), and the **CITY OF PAPILLION**, a municipal corporation (hereinafter referred to as "CITY"), (collectively the "Parties"), amends and modifies the subdivision agreement approved by the Papillion City Council via Resolution #R16-0117 on September 6, 2016 (hereinafter the "2016 Subdivision Agreement").

RECITALS

DEVELOPER, Sanitary and Improvement District No. 217 of Sarpy County, Nebraska (hereinafter referred to as "DISTRICT"), and CITY entered into the 2016 Subdivision Agreement with respect to Pink Industrial Park 2; and

The Parties acknowledge that DISTRICT, an original party to the 2016 Subdivision Agreement, has formally merged with CITY following the execution of the 2016 Subdivision Agreement, and thus is without signing authority to validly execute this First Amendment, because the land area that was previously within the boundaries of DISTRICT is now within CITY's city limits pursuant to CITY's July 2015 Annexation; and

The Parties acknowledge that DEVELOPER is no longer the owner of the parcel of land labeled as "Phase 2" in the Pink Industrial Park 2 Preliminary Plat, attached to the 2016 Subdivision Agreement as Exhibit C, and further described in the Phase 2 Legal Description, attached to the 2016 Subdivision Agreement as Exhibit D ("Phase 2"). Further, the subsequent owner of Phase 2 has requested CITY approve a specific platting of Phase 2 and wishes to enter into a separate subdivision agreement with CITY for Phase 2. Accordingly, CITY and DEVELOPER wish to terminate all obligations established for DEVELOPER related to Phase 2 to allow CITY to enter into a separate subdivision agreement for Phase 2 with said subsequent owner; and

The Parties acknowledge that the Development Area, as defined in Section 4(B) of this First Amendment, is now within CITY's city limits pursuant to CITY's July 2017 Annexation; and

*ERC
City of Papillion*

CITY and DEVELOPER wish to clarify the fees related to the Arterial Street Improvement Program (ASIP) and sewer connection; and

CITY and DEVELOPER wish to clarify the requirements for connection of sewer system to the Baseball Stadium Outfall Sewer.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

- 1. Incorporation of Recitals. The recitals set forth above are, by this reference, incorporated into and deemed part of the 2016 Subdivision Agreement as modified or amended by this First Amendment (collectively, the “Subdivision Agreement”).
- 2. Capitalized Terms. All capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them as set forth in the 2016 Subdivision Agreement.
- 3. Area of Application. This First Amendment applies to Lots 1 – 3 and 5 – 12, Pink Industrial Park 2 and Lot 1 and Outlot A, Pink Industrial Park 2 Replat 1.
- 4. Amendments.

A. Section 1(B) is hereby repealed in its entirety and amended to read:

“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 124th Street and Valley Ridge Drive in Exhibit “B”, including the 124th Street and Valley Ridge Drive Intersection, 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.

B. Section 1(C) is hereby repealed in its entirety and amended to read:

“Development Area” shall mean the real property situated within the area identified or depicted in Exhibit “A”, including all corresponding Dedicated Streets.

C. Section 1(E) is hereby repealed in its entirety and amended to read:

“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.

D. Section 1(G) is hereby repealed in its entirety and amended to read:

“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 1(I).

E. Section 1(H) is hereby repealed in its entirety.

F. Section 1(I) through Section 1(K) are hereby amended to be renumbered as Section 1(H) through Section 1(J).

G. Section 1(H), formally numbered as Section 1(I) prior to this First Amendment, is hereby renumbered as Section 1(H) and the terms of said section are repealed in their entirety and amended to read:

“Public Improvement(s)” shall mean:

- (1) All installations, modifications, or improvements of Dedicated Streets.
- (2) All concrete sidewalks to be constructed, installed, or improved along any Dedicated Streets, and lying within the boundaries of any Dedicated Street right-of-way, as contemplated in this Agreement or identified in Exhibit “E”.
- (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 Dedicated Street intersection or related to the Development Area.
- (4) All “Sanitary and Wastewater Sewers” to be constructed and installed within the boundaries of the Development Area or other areas specifically approved by Sarpy County and CITY. Sanitary and Wastewater Sewers shall include all necessary sanitary and wastewater sewer mains, manholes, lines, pipes, and related appurtenances, as shown in Exhibit “F”.

- (5) The “Water Distribution System” to be constructed by Metropolitan Utilities District and installed within the boundaries of the Development Area or other areas specifically approved by CITY.
- (6) All “Storm Sewers” and “Erosion Control Measures” to be constructed within the boundaries of the Development Area or within other areas specifically approved by CITY and prepared by DEVELOPER’s engineer, including all necessary storm sewers, inlets, manholes, lines, pipes, and related appurtenances, as shown in Exhibit “G”.
- (7) The “Gas Distribution System” to be constructed and installed by Black Hills Energy within any boundaries of the Development Area or within 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 the Development Area or within other areas specifically approved by CITY, 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 the Development Area or within other areas specifically approved by CITY. 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.

H. Section 1(I), formally numbered as Section 1(J) prior to this First Amendment, is hereby repealed in its entirety and amended to read:

“Sanitary and Wastewater Sewer System” shall mean, collectively, all sanitary and wastewater sewer system components within the Development Area including, but not limited to, all such components listed under Section 1(H)(4).

I. Section 1(J), formally numbered as Section 1(K) prior to this First Amendment, is hereby repealed in its entirety and amended to read:

“Storm Sewer System” shall mean, collectively, all storm sewer system components within the Development Area including, but not limited to, all such components listed under Section 1(H)(6).

J. Section 3(C) is hereby repealed in its entirety and amended to read:

Sanitary and Wastewater Sewer System and Water Distribution System. The Parties acknowledge that, at the time of the execution of this First Amendment, the Development Area will be within the Baseball Stadium Outfall Service Area for the Sanitary and Wastewater Sewer System and within the Metropolitan Utilities District (hereinafter referred to as “MUD”) service area for the Water Distribution System. CITY has annexed the Development Area and CITY and DEVELOPER hereby agree that the Sanitary and Waste Water Sewers are now an unencumbered asset of CITY. The Parties agree to immediately take such other further reasonable actions deemed necessary or desirable by CITY to further document that the Sanitary and Waste Water Sewers are now an unencumbered asset of CITY. For water service, DEVELOPER shall be responsible for entering into any agreements required by MUD or its successors for such service, making payment for any applicable connection fees or service charges, and completing any improvements required for such service.

K. Section 3(E)(1) is hereby repealed in its entirety and amended to read:

As a result of the Sanitary and Waste Water Sewers becoming an unencumbered asset of CITY pursuant to the First Amendment, no Sewer Connection Agreement is required;

L. Section 3(I) is hereby added:

Sanitary and Waste Water Sewers. CITY has plans according to which the Sanitary and Waste Water Sewers are to be built. Upon CITY’s determination that construction of the Sanitary and Waste Water Sewers is complete as signified by the City Engineer or his designee granting final acceptance for such sewers, DEVELOPER shall provide CITY with as-built plans for the Sanitary and Waste Water Sewers.

M. Section 4(A)(2) is hereby repealed in its entirety and amended to read:

DEVELOPER is the owner of record of the Development Area and possesses the rights and authority necessary to make decisions affecting the Development Area. At the time that the Original Parties executed the 2016 Subdivision Agreement, DEVELOPER was the owner of record of Phase 2 and possessed the rights and authority necessary to make decisions affecting Phase 2. As of the Effective Date of the First Amendment, DEVELOPER is no longer

the owner of record for Phase 2 and no longer possesses the rights and authority to make decisions affecting Phase 2.

N. Section 4(A)(12) is hereby repealed in its entirety.

O. Section 5(A) is hereby repealed in its entirety and amended to read:

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.

P. Section 6(C) is hereby repealed in its entirety and amended to read:

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, at the time of the respective building permit application.

Q. Section 6(E) is hereby repealed in its entirety and amended to read:

Sewer Connection Fees. CITY shall collect the applicable Sewer Connection Fees from individual lot owners at the time of building permit application for all new building permits for structures that require connection to the Sanitary and Waste Water Sewer system.

R. Section 6(G)(4) is hereby repealed in its entirety.

S. Section 6(M) is hereby repealed in its entirety and amended to read:

Phase 2 Assignment. The execution of a separate subdivision agreement between CITY and the subsequent successor developer(s) of Phase 2 which adequately addresses DEVELOPER’s obligations for Phase 2, as determined by CITY, and the recording of the Final Plat for Phase 2 shall constitute CITY’s approval of DEVELOPER’s request to assign its obligations for Phase 2 to such subsequent successor developer(s) through a separate agreement with the successor developer(s) of Phase 2.

T. Section 6(N) is hereby repealed in its entirety.

U. Section 6(O) is hereby repealed in its entirety.

V. Section 6(P) through Section 6(V) are hereby amended to be renumbered as Section 6(N) through Section 6(T).

W. Section 7 is hereby repealed in its entirety and amended to read:

SECTION 7

OUTLOTS IN PRIVATE OWNERSHIP

Maintenance of and Transfer of Title to Outlots. DEVELOPER shall be responsible for owning and maintaining any existing and future outlots within the Development Area or, alternatively, transferring ownership of said outlot(s) to another person, entity, or business association responsible for maintenance. CITY shall not have any responsibility for maintenance of outlots that are not under CITY's ownership.

Prohibition Against Construction and Transfer of Title to Outlots. No building(s) shall be constructed on any outlot(s) within the Development Area. If DEVELOPER intends to transfer ownership of any outlot(s) within the Development Area, DEVELOPER agrees that, at least sixty (60) days prior to closing on the sale, donation, or other transfer of said outlot(s) to any person or entity other than the aforementioned business association, DEVELOPER shall provide written notice to the transferee of the forgoing restriction which prohibits the construction of any buildings on any outlots within the Development Area. Further, DEVELOPER shall provide CITY with notice of such intended transfer and a copy of the written notice that DEVELOPER provided to the transferee that no buildings can be constructed on said outlot.

Property Taxes. DEVELOPER agrees to pay all property taxes due for any outlot(s) owned by DEVELOPER in a timely manner to prevent outlots from being offered at the Sarpy County tax sale.

X. Section 8(Q) is hereby repealed in its entirety.

- 5. No Other Amendment. Except as specifically modified or amended by this First Amendment, the 2016 Subdivision Agreement shall remain in full force and effect.
- 6. Binding Effect. This First Amendment shall be binding upon the Parties, their respective successors, and assigns.

(Signatures on following pages.)

ATTEST:

THE CITY OF PAPILLION, NEBRASKA,
A municipal corporation of the first class

Nicole L. Brown
Nicole L. Brown, City Clerk

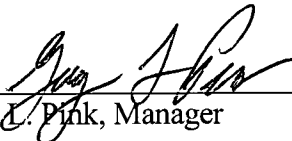
David P. Black
David P. Black, Mayor

SEAL:



DEVELOPER:

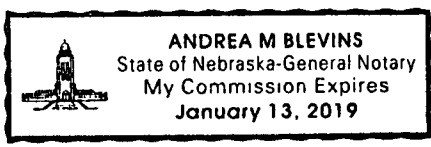
PINK FAMILY INVESTMENTS, LLC, a Nebraska limited liability company

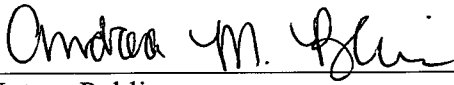
By 
Gary L. Pink, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

Before me, a notary public, in and for said county and state, personally came Gary L. Pink, Manager of PINK FAMILY INVESTMENTS, LLC, a Nebraska limited liability company, 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 limited liability company.

Witness my hand and Notarial Seal this 1st day of September, 2017.




Notary Public

**SUBDIVISION AGREEMENT AMENDMENT
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