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2015098510

### SITE DEVELOPMENT AND EASEMENT AGREEMENT

This Site Development and Easement Agreement (this "Agreement") is made and entered into as of this 3 day of June, 2015, by and between J. DUBBYA LAND LLC, a Nebraska limited liability company ("J. Dubbya") and PRIME REAL ESTATE, LLC, a Nebraska limited liability company ("Prime").

#### Preliminary Statement

WHEREAS, J. Dubbya is the owner of certain real property in Douglas County, Nebraska, legally described as follows (the "J. Dubbya Property"):

Lots 2 and 3, Prime Business Park Replat One, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

WHEREAS, Prime is the owner of certain real property in Douglas County, Nebraska, legally described as follows (the "Prime Property" and collectively with J. Dubbya Property, the "Business Park Property"):

Lot 1, Prime Business Park Replat One, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

WHEREAS, J. Dubbya is undertaking the grading, installation of streets, storm sewers and other infrastructure that will benefit the Business Park Property (the "Infrastructure Improvements"); and

WHEREAS, the parties to this Agreement are desirous of entering into this Agreement to memorialize the parties understandings of J. Dubbya's and Prime's obligations in relation to the construction of the Infrastructure Improvements and other matters relating to J. Dubbya's development of the J. Dubbya Property.

NOW THEREFORE, for and in consideration of the mutual exchange of the covenants and agreements hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

Return to:  
 James D. Buser  
 Pansing Hogan Ernst & Bachman, LLP  
 10250 Regency Circle, Suite 300  
 Omaha, Nebraska 68114

✓ 5113

1. Site Development Documents. The following described documents shall constitute the "Site Development Documents":

- a. Grading Plan prepared by Thompson Dreessen and Dorner dated May 22, 2015 (the "Grading Plan");
- b. Final Plat recorded in the office of the Douglas County, Nebraska Register of Deeds as Instrument No. 2015 074120 (the "Final Plat");
- c. Subdivision Agreement between J. Dubbya and the City of Omaha, Nebraska, dated \_\_\_\_\_, 2015 (the "Subdivision Agreement");
- d. Flood Plain Development Plan prepared by Thompson Dreessen and Dorner dated May 22, 2015 (the "Development Plan"); and
- e. Road Profile prepared by Thompson Dreessen and Dorner dated April 30, 2015 (the "Road Profile").

2. Designated Infrastructure Improvements. J. Dubbya hereby covenants to and agrees with Prime that J. Dubbya will construct or caused to be constructed the Infrastructure Improvements identified on Exhibit "A" attached hereto (the "Designated Infrastructure Improvements"). The Designated Infrastructure Improvements shall be constructed in a good and workmanlike manner in accordance with the requirements of the Site Development Documents. J. Dubbya shall endeavor to have the Designated Infrastructure Improvements constructed with all due diligence and J. Dubbya shall at all times during such construction provide the Prime Property with continuous reasonable access from the Prime Property to West Maple Road, to include construction of such temporary rocked drive areas as and when necessary to provide temporary access pending completion of the Designated Infrastructure Improvements. Upon completion of the Designated Infrastructure Improvements, the owner of the Prime Property shall pay J. Dubbya the sum of Twenty Thousand Dollars (\$20,000) as its sole and complete contribution for any and all of the Designated Infrastructure Improvements.

3. J. Dubbya Construction Obligations.

It is understood and agreed by and between the parties that the following terms and conditions shall apply to the construction of the Designated Infrastructure Improvements that are undertaken by J. Dubbya on the Prime Property:

- a. Construction Liens. J. Dubbya shall not permit any construction liens to attach to the Prime Property on account of J. Dubbya's construction of the Designated Infrastructure Improvements. In the event that a construction lien is filed against the Prime Property as a consequence of the construction activities of J. Dubbya, its agents and contactors, J. Dubbya shall within thirty (30) days of the filing of such lien, remove the construction lien as a lien against the Prime Property. As long as a construction lien remains filed

against the Prime Property as a consequence of the construction activities undertaken by J. Dubbya, its agents or contractors, Prime shall have no obligation to remit the \$20,000 contribution, as provided in Section 2 of this Agreement.

b. Insurance.

i. J. Dubbya shall purchase and maintain such insurance to protect Prime and J. Dubbya from claims set forth below which arise out of or result from J. Dubbya's operations under and performance of this Agreement, whether such operations or performance are by J. Dubbya or any contractor, or by anyone directly or indirectly employed by J. Dubbya, or by anyone for whose acts or omissions J. Dubbya may be liable:

1. Claims under worker's or workmen's compensation disability benefits or other similar employee benefit acts;
2. Claims for damages because of bodily injury, occupational sickness, disease or death of its employees;
3. Claims for damages because of bodily injury, sickness, disease or death of any person other than employees;
4. Claims for damages other than to the Designated Infrastructure Improvements because of injury or destruction of tangible property, including loss of use resulting therefrom; and
5. Claims for damages because of bodily injury or death or any person or personal property damage arising out of the ownership, maintenance, or use of any motor vehicle.

ii. Certificates of insurance reasonably acceptable to Prime shall be provided to Prime prior to commencement of the Designated Infrastructure Improvements on the Prime Property, which insurance shall include liability insurance in an amount of no less than \$2,000,000 and property damage coverage in an amount no less than \$500,000 and shall reflect Prime as an additional insured.

4. Temporary Grading and Construction Easement. Prime hereby grants to J. Dubbya and its agents and contractors, a temporary grading and construction easement over and upon the Prime Property as reasonably necessary for construction of the Designated Infrastructure Improvements in accordance with the Site Development Documents, such easement to continue until the earlier of: (i) completion of such construction; or (ii) October 31, 2015. Any and all damage to the Prime Property caused by J. Dubbya or its agents or contractors resulting from construction of the Designated Infrastructure Improvements shall be repaired at J. Dubbya's sole cost, risk and expense. Upon termination of this temporary easement, to the extent practicable, the construction area shall be returned to the same or better condition than

existed prior to J. Dubbya's use thereof, to the extent that any change in condition has been caused by J. Dubbya or its agents or contractors. If such repairs are not made by J. Dubbya upon termination and following reasonable written notice to J. Dubbya of the claimed damage, Prime may undertake the repairs and J. Dubbya shall be liable to Prime for any ten (10) business days expenses incurred and may offset such amount against the \$20,000 contribution required by Section 2 of this Agreement.

5. Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be personally delivered, or by Federal Express, Airborne Express, or similar overnight delivery service, addressed as follows:

If to J. Dubbya:

J. Dubbya Land, LLC  
14920 A Circle, #202  
Omaha, Nebraska 68144  
Attention: John Wanninger

If to Prime:

Prime Real Estate, LLC  
22145 West Maple Road  
PO Box 131  
Elkhorn, Nebraska 68022  
Attention: Brian J. Kenkel

With copy to:

Martin P. Pelster  
Croker, Huck, Kasher, Dewitt  
Anderson & Gonderinger, L.L.C  
2120 South 72<sup>nd</sup> Street, Suite 1200  
Omaha, Nebraska 68124

With copy to:

James D. Buser  
Pansing Hogan Ernst & Bachman, LLP  
10250 Regency Circle, Suite 300  
Omaha, Nebraska 68114

Notice shall be deemed to have been given upon receipt. Refusal of delivery or undeliverable for any reason shall be deemed receipt.

6. Modification. No modification or amendment of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties.

7. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the parties that this Agreement, sets forth the terms on which the parties have mutually agreed. Each party specifically agrees that it enters into this Agreement based on its own understanding of the terms hereof and does not rely, in whole or in part, on any interpretation or representation of the other party. Each party agrees that this Agreement is the result of good faith arm's length negotiations. Nothing contained in this Agreement shall give rise to duties or covenants on the part of Prime or J. Dubbya, express or implied, other than the express duties and covenants set forth herein. ANY REPRESENTATION OF EITHER PARTY'S AGENTS OR ANY THIRD PARTY WHICH IS NOT INCORPORATED IN THIS AGREEMENT SHALL NOT BE BINDING UPON SUCH PARTY AND SHOULD BE CONSIDERED AS UNAUTHORIZED.

8. No Joint Venture. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship under the laws of any state or the federal government. Any correspondence or other references to "partners" or other similar

terms will not be deemed to alter, amend or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities and obligations of the parties as to a new, specifically defined legal relationship.

9. Force Majeure. In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of unusual weather conditions, acts of terrorism or vandalism, strikes, lockouts, acts of God, failure of power, riots, insurrections, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The delayed party must give notice of the source of delay and the number of days it may impact the schedule within (fifteen) 15 days of the occurrence.

10. Binding Agreement. It is mutually understood and specifically agreed that this Agreement is binding upon the respective heirs, successors, administrators, executors, and assigns of the parties hereto.

11. Counterparts. This Agreement may be executed in any number of counterpart originals, each of which, when taken together, shall be deemed to be one and the same instrument. Executed copies of this Agreement may be delivered between the parties via telecopy or electronic mail.

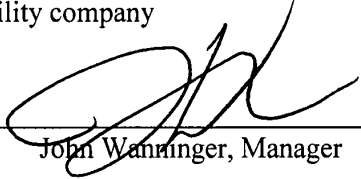
12. Miscellaneous. This Agreement shall be interpreted and construed in accordance with the laws of the State of Nebraska and any dispute with respect to it and the rights and duties thereby created shall be litigated in a court with jurisdiction in the State of Nebraska. Time is of the essence.

**[Space Below Intentionally Left Blank –  
Signature Pages to Follow]**

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

**"J. DUBBYA"**

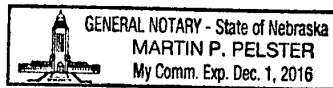
**J. DUBBYA LAND LLC**, a Nebraska limited liability company

By:   
John Wanninger, Manager

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

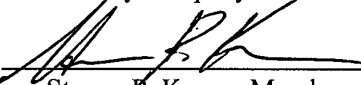
The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of June, 2015, by John Wanninger, Manager of J. Dubbya Land, LLC, a Nebraska limited liability company, on behalf of the company.

  
Notary Public



**"PRIME"**


**PRIME REAL ESTATE, LLC**, a Nebraska limited liability company

By:   
Steven P. Kanne, Member

By:   
Brian J. Kenkel, Member

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )


The foregoing instrument was acknowledged before me this 3 day of June, 2015, by Steven P. Kanne, Member of Prime Real Estate LLC, a Nebraska limited liability company, on behalf of the company.

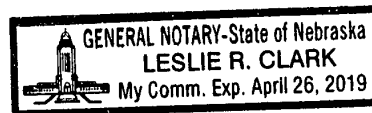
  
Notary Public



STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 3 day of June, 2015, by Brian J. Kenkel, Member of Prime Real Estate LLC, a Nebraska limited liability company, on behalf of the company.

  
Notary Public



**EXHIBIT "A"**  
Designated Infrastructure Improvements

- a. Grade subdivision as provided in the Grading Plan.
- b. Paving of all dedicated streets as shown on the Plat and as provided in the Subdivision Agreement, according to the paving plans to be prepared by Thompson Dreessen and Dorner and consistent with the Road Profile.
- c. Deconstruction and removal of existing entrance gate, pillars and related improvements.
- d. Installation of storm sewers, inlets, manholes, and related appurtenances as required by the Development Plan and Subdivision Agreement in accordance with storm sewer plans to be prepared by Thompson Dreessen and Dorner.