

2018-17185

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Clay J. Dowling

REGISTER OF DEEDS



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**STEEL RIDGE SOUTH
SUBDIVISION AGREEMENT**

THIS AGREEMENT made this 3rd day of July, 2018, by and between **DOWD GRAIN COMPANY, INC.**, a Nebraska corporation (hereinafter referred to as "DEVELOPER"), **SANITARY AND IMPROVEMENT DISTRICT NO. 322 OF SARPY COUNTY, NEBRASKA** (hereinafter referred to as "DISTRICT"), and the **CITY OF PAPIILLION**, a municipal corporation (hereinafter referred to as "CITY").

RECITALS:

DEVELOPER is the owner of the parcel of land legally 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 final platting of the area to be developed, known as Steel Ridge South, as depicted in the Final Plat exhibit attached as Exhibit B (the "Development Area") to allow the Development Area to be subdivided to create lots of record for commercial and industrial use; and

DEVELOPER proposes to plat Lots 1 – 3, inclusive, as lots of record for commercial and industrial development; and

DEVELOPER, DISTRICT, and CITY wish to agree upon the manner and the extent to which public funds may be expended in connection with the Public Improvements serving the Development Area and the extent to which the contemplated Public Improvements shall specifically benefit property in the Development Area and adjacent thereto and to what extent the Cost of the same shall be specially assessed.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

**Section 1
Definitions**

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

- (1) "Cost(s)" or "Entire Cost", being used interchangeably, of each Private Improvement or Public Improvement shall mean all construction costs, acquisition

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of off-site public easements, engineering fees, design fees, attorneys' fees, inspection fees, testing expenses, publication costs, municipal advisory fees, underwriting fees, financing costs (which shall include interest), and all other related or miscellaneous costs or expenses incurred by DISTRICT or DEVELOPER in connection with any Private Improvements or Public Improvements.

- (2) **“Dedicated Street(s)”** shall mean those areas, including curbing, turn lanes, and all corresponding concrete paving to be constructed, modified, or improved within: (1) that portion of the Development Area designated as Dedicated Street right-of-way (or similar terminology) on Exhibit B, (2) S 156th Street, (3) Shepard Street, and (4) any other areas to be dedicated as right-of-way pursuant to any future replat(s) of the Development Area.
- (3) **“Development Area”** shall mean the real property situated within the area identified or depicted as such in Exhibit B, including all Dedicated Streets.
- (4) **“Final Plat”** shall mean the final plan of the plat, subdivision, or dedication of land, attached as Exhibit B.
- (5) **“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.
- (6) **“Party”**, when capitalized, shall mean CITY, DEVELOPER, or DISTRICT, individually, and **“Parties”**, when capitalized, shall mean CITY, DEVELOPER, and DISTRICT, collectively.
- (7) **“Privately Financed Public Improvement(s)”** shall mean those improvements or betterments identified in Section 2 to be installed and constructed at the sole cost and expense of DEVELOPER, as permitted by Section 6, in lieu of DISTRICT causing the installation and construction of such improvements or betterments using the credit or funds of DISTRICT.
- (8) **“Private Improvement(s)”** 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 that shall be privately financed by DEVELOPER because they are not eligible for financing using the credit or funds of DISTRICT.
- (9) **“Property Specially Benefited”** shall mean property benefited by a particular Public Improvement and situated either: (1) within the platted area in which the Public Improvement is situated or (2) outside such platted area in which such Public Improvement is situated but within the corporate limits of DISTRICT and within 300 feet of said platted area.
- (10) **“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.

- (11) **“Public Improvements”** shall mean those acquisitions, improvements, betterments, contributions, reimbursements, or associated fees contemplated by this Agreement that are eligible for financing using the credit or funds of DISTRICT as defined in Section 2 of this Agreement.
- (12) **“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.

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) 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.
- (3) Emergency Vehicle Preemption. Emergency Vehicle Preemption device(s) to be installed on traffic signal arm(s).
- (4) Final Plat Sanitary Sewer Connection Fee. The fee collected by Sarpy County in conjunction with the Final Plat for connection to the Sarpy County Sewer (the “Final Plat Sanitary Sewer Connection Fee”).
- (5) Gas Distribution System. The “Gas Distribution System” to be constructed and installed by Black Hills Energy within any Dedicated Street right-of-way within the Development Area or other areas specifically approved by CITY.

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- (6) 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.
 - (7) Pioneer Water Main Fee. The fee remitted to the Metropolitan Utilities District (hereinafter referred to as “MUD”) for water service (the “Pioneer Water Main Fee”).
 - (8) Reimbursement for S 150th Street Reconstruction, Traffic Signal, and Associated HWY 370 Improvements to Sarpy County. Reimbursement for (i) improvements within the S 150th Street right-of-way between HWY 370 and Shepard Street, (ii) the installation of a traffic signal at the intersection of S 150th Street and HWY 370, and (iii) the associated improvements within the HWY 370 right-of-way (collectively, the “S 150th Street Reconstruction Improvements”) payable to Sarpy County pursuant to an interlocal cooperation agreement to be entered into between DISTRICT and Sarpy County (the “S 150th Street Reconstruction Reimbursement”).
 - (9) Reimbursement for Traffic Signal at S 150th Street and HWY 370 to SID 307. Reimbursement for a traffic signal located at the intersection of S 150th Street and HWY 370 payable to Sanitary and Improvement District No. 307 (hereinafter “SID 307”) pursuant to an interlocal cooperation agreement to be entered into between DISTRICT and SID 307 (the “S 150th Street Traffic Signal Reimbursement”).
 - (10) Sanitary Sewer Lines and Appurtenances. All sanitary sewer lines and appurtenances constructed within Dedicated Street right-of-ways or easements, as shown in the Sanitary Sewer Exhibit attached as Exhibit C, pursuant to sanitary sewer plans heretofore prepared by DISTRICT’s engineer, consulting engineers, and land surveyors.
 - (11) Sarpy County Commerce Lift Station Contribution. A contribution payable to Sarpy County for improvements to the Sarpy County Commerce lift station (the “Sarpy County Commerce Lift Station Contribution”) pursuant to the sewer connection agreement to be entered into between DISTRICT and Sarpy County.
- B. Public Improvements Subject to Modification and Supplementation. The Parties acknowledge that CITY may require that the Public Improvements identified in Section 2(A) be modified and supplemented at such time that the City considers the necessary applications to replat and rezone, as applicable, Outlot A into developable lots. Any such modifications or supplementations to Section 2(A) shall be either (i) identified in an amendment to this Agreement pursuant to Section 10(B) or (ii) be formalized by the Parties rescinding this Agreement and the execution of a subsequent subdivision agreement that assumes the required Public Improvements.

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Section 3
Standards, Authority, and Documentation

- A. Standards for Private Improvements and Public Improvements. DEVELOPER, DISTRICT, and their respective successors and assigns, as applicable, shall cause all Private Improvements and Public Improvements to be acquired, constructed, and installed, contributed, and reimbursed, as applicable, in accordance with the terms and conditions of this Agreement.
- B. Adherence and Construction Contracts. DISTRICT and DEVELOPER shall abide by, and incorporate into all of their construction contracts for the Private Improvements and Public Improvements, as applicable, the provisions required by the regulations of CITY, Sarpy County, and the Nebraska Department of Transportation (hereinafter referred to as "NDOT"), as applicable, pertaining to construction of the Private Improvements and Public Improvements in developments/subdivisions and testing procedures. Said contracts shall also provide that the contractor(s) or subcontractor(s) constructing or installing the Private Improvements and Public Improvements shall have no recourse against CITY or DISTRICT 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 Private Improvements and Public Improvements, construction oversight of the Private Improvements and Public Improvements, or the design or preparation of plans and specifications for the Private Improvements and Public Improvements.
- C. Before Commencing Work on Public Improvements. Before commencing any work in connection with any individual Public Improvement, DEVELOPER or DISTRICT, as applicable, shall first:
- (1) Make payment for all applicable fees due to CITY, Sarpy County, and Metropolitan Utilities District (hereinafter referred to as "MUD"), as applicable, in relation to said construction and installation of said individual Public Improvement;
 - (2) Deliver to the Papillion City Clerk duly executed copies of an Agreement for Sewer Connection and Wastewater Service between DISTRICT and Sarpy County;
 - (3) Obtain approval from CITY, Sarpy County, and NDOT as applicable, for the specifications and technical terms of any agreement(s) or plan(s) for, or relating to, the construction or installation of said individual Public Improvement prior to DEVELOPER's or DISTRICT's execution of any such agreement(s) or plan(s), as applicable. Once DEVELOPER or DISTRICT obtains approval from CITY, Sarpy County, and NDOT as applicable, DEVELOPER or DISTRICT 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 individual Public Improvement. Such agreement(s) or plan(s) shall include, but not be limited to, any required bonds, insurance certifications, and all plans for said individual Public Improvement. Any such agreement(s) or plan(s) shall contain details describing the manner and means of any additional connections required by or for the Wastewater

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Sewer System or the Storm Sewer System prepared by DEVELOPER's or DISTRICT's engineer;

- (4) Obtain and file of record any permanent easements required by CITY or Sarpy County, as applicable, for said individual Public Improvement, as applicable, if not located on or in dedicated public right-of-way. 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 and DISTRICT;
 - (5) For Privately Financed Public Improvements, DEVELOPER shall obtain, and show proof of, general liability insurance and payment and performance bonds equivalent to the total construction cost for said Privately Financed Public Improvement; and
 - (6) Obtain final approval from CITY to commence the construction and installation of said Public Improvement.
 - (7) Obtain final approval from Sarpy County to commence the construction and installation of any Public Improvement that relates to any sanitary sewer or storm sewer within Sarpy County's wastewater service area.
- D. All Necessary Agreements, Permits, and Approvals for Work within Public Right-of-Way. Prior to commencing any work within any public right(s)-of-way, DEVELOPER or DISTRICT, as applicable, 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 or DISTRICT, as applicable, shall provide said copies to CITY in a timely manner.
- E. No Credit of CITY. The Entire Cost of all Private Improvements and Public Improvements to be constructed within the Development Area shall be borne by, and be at the sole expense of, DEVELOPER or DISTRICT. The credit of CITY shall not be used for engineering, procurement, contributions or reimbursements towards, or construction of any betterments, Private Improvements, Public Improvements, or any other Costs related to the installation and construction of the Private Improvements or Public Improvements within the Development Area.
- F. No Final Payment Until Approved. For any Public Improvement, DISTRICT or DEVELOPER, as applicable, shall forward all weekly construction tests and observation logs for the Public Improvement to the City Engineer. No final payment shall be made to the contractor for said Public Improvement until such final payment has been approved by the City Engineer, which approval shall not be unreasonably withheld or delayed.

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Section 4
Use of DISTRICT Credit or Funds

- A. Use of DISTRICT Credit or Funds. The credit or funds of DISTRICT shall not be used for the construction of any improvements or facilities within the Development Area except those Public Improvements specified in this Agreement. By way of specification, and not by way of limitation, the Parties agree that DISTRICT shall not, other than as provided in this Agreement, incur any indebtedness or otherwise involve its credit or expend any of its funds in the construction or other acquisition or improvement of any swimming pool, golf course, park, playground, or other recreational facility without approval by Resolution of City Council.

- B. The Cost of the Public Improvements. The Cost of the Public Improvements constructed by DISTRICT within the Development Area shall be defrayed as agreed herein and as identified in the Source and Use of Funds attached as Exhibit D. In no case shall the actual total general obligation costs of DISTRICT exceed the amount shown as the approved total general obligation amount on Page 1 of Exhibit D (the "Required Amount") at the time of levy of special assessments. Special assessments shall be increased if necessary to reduce the actual total general obligation costs to the Required Amount.

- C. No Reallocation. In the event any funds allocated for Public Improvements, pursuant to Exhibit D, do not get expended by DISTRICT due to private financing by DEVELOPER, DISTRICT shall not reallocate such unexpended funds to any other Public Improvement or other expense without prior approval from CITY.

- D. Construction Overruns or Change Orders. Construction overruns, change orders, or both totaling ten percent (10%) or more of any individual contract, as described in Exhibit G, shall be submitted to CITY for approval prior to the work being started. If the work is approved by both the City Administrator and the City Engineer, the Entire Cost of the work may be added to the relevant construction contract and shall require an executed modification to this Agreement prior to the work being started on such construction overruns and/or change orders. If the work is not approved by the City Administrator and the City Engineer, the Cost of the work shall be included in the statements of cost and specially assessed evenly against DISTRICT's assessable property or the cost of the work shall be privately financed.

Section 5
Apportionment of Costs and Related Terms

- A. Apportionment of Costs and Additional Terms.
 - (1) Civil Defense Siren and Storm Warning System. If civil defense and storm warning coverage for the entire Development Area is not already available, such sirens shall be installed prior to the issuance of any occupancy permit for any structure built in the Development Area. The number, type, and specifications of said defense sirens shall be determined by the City Administrator in conjunction with the Director of the

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Sarpy County Civil Defense Agency. One hundred percent (100%) of the Cost for said civil defense sirens shall be borne by general obligation of DISTRICT or privately financed by DEVELOPER. If existing coverage is available, DISTRICT shall pay one hundred percent (100%) of its pro-rata share of the siren Cost based on the areas of coverage as determined by the City Engineer.

- (2) Electrical Power Service. One hundred percent (100%) of the contract charges for Electrical Power Service authorized to be paid by DISTRICT to the OPPD by this Agreement, including both the basic charges and refundable charges, together with all other charges as fall within the definition of Entire Cost, including all penalties and default charges that are allocable to such contract charges, shall be specially assessed against the Property Specially Benefited within the Development Area. One hundred percent (100%) of the Cost differential for underground installation in lieu of above ground installation shall be specially assessed against the Property Specially Benefited within the Development Area or privately financed by DEVELOPER.
- (3) Emergency Vehicle Preemption. One hundred percent (100%) of the Emergency Vehicle Preemption device(s) to be installed on traffic signal arm(s) shall be borne by general obligation of DISTRICT or privately financed by DEVELOPER.
- (4) Final Plat Sanitary Sewer Connection Fee. One hundred percent (100%) of the Final Plat Sanitary Sewer Connection Fee shall be borne by general obligation of DISTRICT or privately financed by DEVELOPER.
- (5) Gas Distribution System. One hundred percent (100%) of the contract charges for the Gas Distribution System authorized to be paid by DISTRICT to any public gas utility by this Agreement, including both the basic charges and refundable charges, together with all other charges as fall within the definition of Entire Cost, including all penalties and default charges that are allocable to such contract charges, shall be specially assessed against Property Specially Benefited within the Development Area. One hundred percent (100%) of the Cost differential for underground installation in lieu of above ground installation shall be specially assessed against the Property Specially Benefited within the Development Area or privately financed by DEVELOPER.
- (6) Lighting System. One hundred percent (100%) of the contract charges to be paid to OPPD for the Lighting System to be constructed and installed within the boundaries of any Dedicated Street, including any decorative, ornamental, or other lighting not conforming to CITY standards but which has been specifically approved by CITY, shall be borne by general obligation of DISTRICT or privately financed by DEVELOPER.
- (7) Pioneer Water Main Fee. One hundred percent (100%) of the Pioneer Water Main Fee shall be borne by general obligation of DISTRICT or privately financed by DEVELOPER.

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- (8) Reimbursement for S 150th Street Reconstruction and Associated HWY 370 Improvements. One hundred percent (100%) of the S 150th Street Reconstruction Reimbursement shall be borne by general obligation of DISTRICT or privately financed by DEVELOPER.
 - (9) Reimbursement for Traffic Signal at S 150th Street and HWY 370. One hundred percent (100%) of the S 150th Street Traffic Signal Reimbursement shall be borne by general obligation of DISTRICT or privately financed by DEVELOPER.
 - (10) Sanitary Sewer Lines and Appurtenances. One hundred percent (100%) of the Entire Cost of all sanitary sewer lines and appurtenances located within the Development Area shall be paid by special assessment against the Property Specially Benefited.
 - (11) Sarpy County Commerce Lift Station Contribution. One hundred percent (100%) of the Sarpy County Commerce Lift Station Improvement shall be borne by general obligation of DISTRICT, paid by special assessment against the Property Specially Benefited, or privately financed by DEVELOPER.
- B. Modification Contemplated. The Parties acknowledge that a modification of the apportionment of costs is contemplated should CITY approve the necessary applications to replat and rezone, as applicable, Outlot A into developable lots. This may include, but not be limited to, modifying this Apportionment of Costs section to reflect the formation of an additional sanitary and improvement district within the boundary of the Development Area.

Section 6
Privately Financed Public Improvements and Related Terms

- A. Privately Financed Public Improvements. DEVELOPER, at its sole discretion, may cause one or more of the Public Improvements to be installed and constructed at the sole Cost and expense of DEVELOPER ("Privately Financed Public Improvements" as defined in Section 1) in lieu of DISTRICT causing the installation and construction of such Public Improvements using the credit or funds of DISTRICT. In such an event, the following terms shall also apply:
- (1) Notice of Intent. DEVELOPER must provide written notice to CITY of its intent to privately install and construct the applicable Public Improvements.
 - (2) Ownership and Maintenance. All such Privately Financed Public Improvements shall become the unencumbered assets of DISTRICT immediately upon completion or installation of each Privately Financed Public Improvement and shall be maintained by DISTRICT to the same standard as the Public Improvements until such time that DISTRICT is annexed by CITY.
 - (3) Insurance. For any Privately Financed Public Improvement, 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

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or not required by this Agreement) or any other person in connection with the construction or operation of the Privately Financed Public Improvements. Additionally, DEVELOPER shall cause DISTRICT to be named as an additional insured under any policy of insurance, including all payment and performance bonds obtained by DEVELOPER in connection with the construction or operation of the Privately Financed Public Improvements.

- (4) Sole Cost of DEVELOPER. The Entire Cost of all Privately Financed Public Improvements shall be paid by, and be at the sole expense of DEVELOPER.
- (5) No Final Payment Until Approved. For any Privately Financed Public Improvement, DEVELOPER shall forward all weekly construction tests and observation logs to the City of Papillion Public Works Director and the City Engineer. No final payment shall be made to the contractor until such final payment has been approved by the City Engineer.
- (6) All Other Public Improvement Requirements Shall Apply. All other requirements contained in this Agreement, or as required by law, which relate to the acquisition, construction, and installation of the Public Improvements shall also apply unless explicitly stated otherwise.

Section 7

General Obligation Professional Services Fees

A. Professional Service Fees. Professional service fees paid on the actual general obligation construction costs of any DISTRICT project associated with the construction and maintenance of public utility lines and conduits, emergency management warning systems (including civil defense and storm warning systems), water mains, sanitary sewers (including commerce lift stations), storm sewers, flood or erosion protection systems (including dikes and levees), sidewalks/trails, streets/roads/highways and traffic signals and signage, emergency vehicle preemption devices, street lighting, power, public waterways/docks/wharfs and related appurtenances, and parks/playgrounds/recreational facilities (excluding clubhouses and similar facilities for private entities), landscaping and hardscaping shall be subject to the following:

- (1) DISTRICT's Engineer(s). DISTRICT's Engineer(s)' compensation shall be subject to the following:
 - i. For professional engineering, administration, construction, and coordinating services on projects with actual construction costs greater than one hundred and fifty thousand dollars (\$150,000), DISTRICT's Engineer shall be paid on the basis of their actual direct labor costs times their usual and customary overhead rate plus fifteen percent (15%) for profit plus reimbursable costs. In no case shall the foregoing costs paid be greater than twenty-one percent (21%) of the actual general obligation construction costs of any project. Any work performed without CITY's approval shall be paid for privately or specially assessed.

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- ii. For professional engineering, administration, construction, and coordinating services on projects with actual construction costs less than one hundred and fifty thousand dollars (\$150,000), DISTRICT's Engineer shall be paid on the basis of their actual direct labor costs times their usual and customary overhead rate plus fifteen percent (15%) for profit plus reimbursable costs. In no case shall the foregoing costs paid be greater than twenty-five percent (25%) of the actual general obligation construction costs of any project. Any work performed without CITY's approval shall be paid for privately or specially assessed.
- iii. Professional engineering, administration, construction, and coordinating services shall include, but not be limited to, the cost for all services in connection with the preliminary and final surveys, geotechnical reports, preliminary and final design, redesign, cost estimates, bid document preparation, including preparation of plans and specifications, analysis and studies, recommendation of award, preparation of progress estimates, preparation of special assessments schedules and plats, certification of final completion, utility coordination, permitting (exclusive of permit fees), testing, construction or resident observation, construction staking, as-built record drawings and surveys, easement exhibits, and legal descriptions, and specialized sub-consultants, as may be necessary for the completion of the project.
- iv. Additional service fees may be considered and approved by the Mayor and City Council for any significant redesign work that is requested by CITY but only after final construction plans and procurement documents have been approved in writing by the City Engineer.
- v. Fees shall become due no earlier than at the time services are rendered and are approved by DISTRICT's Board of Trustees.

(2) DISTRICT's Attorney(s). DISTRICT's Attorney(s)' compensation shall be subject to the following:

- i. DISTRICT's Attorney(s)' compensation for professional services shall be charged to DISTRICT at a cost no greater than five percent (5%) of the actual project construction costs for all services in connection with the commencement, planning, advertisement, meetings, construction, completion of, and levy of special assessments for the construction of Public Improvements installed within DISTRICT. The percentage legal fee may not be charged against those costs associated with engineering fees, fiscal fees, testing, permit fees, or interest payments of DISTRICT.
- ii. DISTRICT's Attorney(s)' compensation for professional services shall be charged to DISTRICT at a cost no greater than one-half of one percent (0.5%) for bond issuance or subsequent refinancing of DISTRICT on the gross amount of bonds issued.

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- iii. DISTRICT's Attorney(s)' legal fees shall become due no earlier than at the time construction fund warrants or bonds are issued for approved expenditures by DISTRICT's Board of Trustees.
 - iv. DISTRICT's Attorney(s)' compensation for professional services shall be charged to DISTRICT at a cost no greater than two percent (2%) of the actual project construction costs for all services in connection with contract charges and reimbursable charges, reimbursements or payments to other agencies or contract services for OPPD, Black Hills Energy, CenturyLink, Cox, etc. This shall include, but not be limited to, park land acquisition, capital facilities charges, and accrued interest payments on warrants issued by DISTRICT.
- (3) DISTRICT's Fiscal Agent(s). DISTRICT's underwriter(s) for the placement of warrants issued by DISTRICT, and municipal advisor(s) or other financial advisor(s) for services during construction, collectively, shall receive fees not to exceed five percent (5%) of warrants issued.
- i. Fees shall become due no earlier than at the time construction funds warrants or bonds are issued for approved expenditures by DISTRICT's Board of Trustees.
- (4) Unwarranted or Excessive Costs. All costs not described within this Agreement or otherwise approved by CITY shall be considered unwarranted or excessive and shall be paid for privately or specially assessed evenly among all the assessable lots.
- (5) Interest on Construction Fund Warrants. Interest on construction fund warrants issued prior to the professional fee schedules outlined above shall be paid for privately or specially assessed evenly among all the assessable lots.
- (6) Contracts for Professional Services. DISTRICT shall incorporate the foregoing terms within this section, as applicable, into any contract for Professional Services contemplated herein.

Section 8
Covenants, Representations, and Acknowledgments by CITY

A. Covenants by CITY. CITY covenants and agrees that:

- (1) CITY and its departments shall 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) DISTRICT may connect its sanitary sewer system and water system to the sanitary sewer system and water system of CITY pursuant to the terms and conditions of a sewer and water connection agreement between CITY and DISTRICT.

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B. Representations and Acknowledgements by CITY. CITY represents and acknowledges that:

- (1) 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 or DISTRICT in furtherance of this Agreement;
 - ii. Owes any duty to DEVELOPER, DISTRICT, or any other person or entity because of any action CITY, DEVELOPER, or DISTRICT 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, DEVELOPER, or DISTRICT to date, or at any time in the future, in furtherance of this Agreement, and, to the maximum extent permitted by law, DEVELOPER and DISTRICT hereby waive for themselves, their employees, agents, and assigns any such right, remedy, or recourse they may have against any of them.

Section 9

Covenants, Representations, and Acknowledgments by DISTRICT

A. Covenants by DISTRICT. DISTRICT covenants and agrees that:

- (1) CITY Approval. DISTRICT shall not solicit bids for Public Improvements until after the plans therefor have been approved by the City Engineer, and no construction shall begin, and no contract let until such time as CITY approves any such bids.
- (2) Invoices. DISTRICT shall attach copies of all paid invoices to the minutes of the Board of Trustees meetings where payment of such invoices is authorized.
- (3) Bid Procurement Document Formatting. DISTRICT shall format all bid procurement documents to match the format utilized in Exhibit D. No bid authorization shall be provided by CITY until the City Engineer determines that the bid procurement documents are properly formatted.
- (4) Prohibitions on Contracts and Payments. DISTRICT shall not contract or pay for any work that is performed by DEVELOPER, or is performed by any company whose principals are related to DISTRICT's Trustees or DEVELOPER.
- (5) Easements. Prior to commencement of construction of the Public Improvements, DISTRICT shall obtain and file of record permanent easements for all sanitary, water, storm sewer lines, and Post-Construction Stormwater Management requirements, including all appurtenances, as determined by the City Engineer.

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- (6) Itemization. After bids for Public Improvements are received and prior to award of said bids, DISTRICT's Engineer shall provide a document to the City Engineer that details the itemized split of DISTRICT's general obligation and special assessment costs.
- (7) Timing of Special Assessments. Special assessments of any DISTRICT project shall be levied upon all specially benefitted lots or parcels of ground within DISTRICT, as applicable, within six (6) months after the final acceptance of the Public Improvements that are subject to special assessment, by DISTRICT's Board of Trustees or Administrator. All such special assessments shall be levied within eighteen (18) months after commencement of construction or as otherwise provided by Neb. Rev Stat. § 31-751.
- (8) Outlots. No special assessments shall be assessed against any outlot or dedicated park land. Costs associated with Public Improvements adjacent to or within an outlot (not deemed to be dedicated park land) shall not be borne by general obligation cost, except as provided in Section 5. Such costs shall be specially assessed against all lots (excluding outlots) within the Development Area.
- (9) Prior to Notice of Special Assessments. Prior to publishing notice for any hearing of DISTRICT to be held for the purpose of equalizing or levying special assessments against Property Specially Benefited by any Public Improvements constructed by DISTRICT, DISTRICT shall abide by the following terms:
 - i. DISTRICT shall obtain written approval from CITY for proposed special assessment schedules. This provision shall not be construed as an obligation incumbent upon CITY to provide such approval, but rather as an obligation incumbent upon DISTRICT to obtain approval from CITY before publishing notice and equalizing or levying said special assessments.
 - ii. DISTRICT shall submit to CITY:
 - a. A schedule of the proposed special assessments;
 - b. A schedule of all general obligation costs spent by DISTRICT;
 - c. A plat of the area to be assessed;
 - d. A full and detailed statement of the Entire Cost of each type of Public Improvement, which statement or statements shall separately show:
 - e. The amount paid to the contract;
 - f. The amount paid to DISTRICT's Engineer(s) which shall include a complete and itemized log of work hours, testing expenses and all reimbursables that shall be broken down into corresponding service (design, observation, testing, surveying, etc.);

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- g. The amount paid to DISTRICT's Attorney(s);
 - h. The amount paid to DISTRICT's Fiscal Agent(s), including underwriter(s) for the placement of warrants and DISTRICT's municipal advisor(s) and other financial services advisor(s) for services during construction; and
 - i. The amount paid for penalties, forfeitures, or default charges; and
 - j. A complete and itemized warrant registry detailing the warrant numbers, payee name, registration date, maturity date, interest date, interest rate, the amount paid with corresponding invoice numbers to payee, and the Public Improvement project for which the warrants were issued.
- (10) Annual Tax Levy. DISTRICT shall make its annual tax levy in an amount sufficient to timely pay the indebtedness and interest thereof for Public Improvements, but in no event shall said levy be less than a minimum ad valorem property tax rate of eighty-eight cents (88¢) per one hundred dollars (\$100) of taxable valuation for the tax collection years through the year that all of DISTRICT's warrants can be paid on a cash basis and converted to bonded debt.
- (11) Cash Flow Projections. On or about October 1 of each year following the issuance of DISTRICT bonds, DISTRICT shall cause the delivery of the following information to the City Finance Director for review and approval: a cash flow projection by year for the entire term of the indebtedness. The cash flow projection shall include, but not be limited to, existing and projected taxable valuation, a projected annual debt service levy, existing and projected cash receipts, cash disbursements and available balances in the bond fund and general fund of DISTRICT. DISTRICT shall adopt tax rate levies sufficient to fund the succeeding years' general and bond fund projected obligation as required in the cash flow projections.
- (12) Notice of Annual Budget Meetings. DISTRICT shall provide CITY ten (10) days' notice of its annual budget meeting along with its tax requests.
- (13) Notice and Production of Proposed Budgets. DISTRICT shall furnish to CITY copies of all proposed budgets and published notices of meetings to consider said budget and expenditures at least ten (10) days prior to the Board of Trustee's meeting to consider and adopt a proposed budget.
- (14) Notice of Bankruptcy Filings. DISTRICT warrants that it shall provide CITY with a minimum of thirty (30) days prior written notice of the filing of any petition under Chapter 9 of the United States Bankruptcy Code and DISTRICT shall also provide to CITY actual prior notice of any hearings held in the United States Bankruptcy Court pursuant to any bankruptcy filings.

- (15) CITY Approval for Refinancing. The general obligation of DISTRICT shall not be refinanced to extend the original maturity date of the applicable bonds by more than five years without DISTRICT first receiving prior approval from CITY for said refinancing. CITY's approval may be withheld in CITY's sole discretion.
- (16) Reimbursement Delays. Any delay in satisfying a reimbursement obligation, as contemplated herein, shall only be permitted if reasonable under the totality of DISTRICT's circumstances, as determined by CITY. Any such delay shall not constitute a relief of DISTRICT's reimbursement responsibility.
- (17) ADA Ramp Curb Drops. DISTRICT shall be responsible for providing curb drops for ADA ramps at all Street Intersections as part of the final construction drawings.
- (18) As-Built Drawings. DISTRICT shall provide as-built drawings on state plane coordinates for all utilities owned and located within the Development Area to CITY. Such as-built drawings shall be provided to CITY as both PDF and Auto-CAD files in addition to hard copy.
- (19) Sarpy County Sewer Connection and Wastewater Service Agreement. DISTRICT shall enter into an Agreement for Sewer Connection and Wastewater Service with Sarpy County.
- (20) Provide Engineer's Certificate of Completion to Sarpy County. DISTRICT shall provide an Engineer's Certificate of Completion to Sarpy County for filing which contains a statement that all sewer connections to Sarpy County's sanitary sewer system have been constructed in accordance with the plans and specifications approved in writing by Sarpy County.

Section 10 Other Terms and Obligations

- A. Access to Dedicated Streets. DEVELOPER acknowledges that access driveways connecting lots within the Development Area to the Dedicated Streets shall be limited as identified on the Final Plat. Further, all access driveways for lots within the Development Area shall comply with CITY regulations at the time of building permit application for each such lot.
- B. Boundary of DISTRICT. DISTRICT shall take any action necessary to ensure that the boundary of DISTRICT shall match the boundary of the final plat depicted on Exhibit B prior to the execution of this Agreement.
- C. Building Permits and Certificates of Occupancy. Building permits shall not be issued for any building within Steel Ridge South until the construction and installation of all requisite Public Improvements to service Steel Ridge South is complete, excluding the Gas Distribution System, the Electrical Power Service, the S 150th Street Reconstruction Improvements, and the improvement to the Sarpy County Commerce Lift Station.

In the event that CITY issues a building permit for any building within Steel Ridge South prior to completion of the installation of the traffic signal identified as part of the S 150th Street Reconstruction Improvements, the corresponding certificate of occupancy shall not be issued until such time that installation of such traffic signal is complete and such traffic signal is deemed by CITY to be in operation.

D. Covenants. DEVELOPER shall establish and record with the Sarpy County Register of Deeds covenants for the Development Area that: (i) address street creep/driveway binding on curved streets, (ii) provide for over-lot drainage, (iii) acknowledge the limitations on the issuance of a certificate of occupancy for any building constructed within Steel Ridge South pursuant to Section 10(C), (iv) require Post-Construction Stormwater Management on a lot by lot basis pursuant to Section 10(J), (v) require construction of sidewalks within the Dedicate Street rights-of-way on a lot by lot basis pursuant to Section 10(K), and (vi) restrict the use of Lot 1 as identified in Section 10(L). DEVELOPER shall provide documentation that the covenants have been recorded against each and every lot within the Development Area prior to the issuance of the first building permit.

E. Easements.

(1) Recording. DEVELOPER shall be responsible for recording with the Sarpy County Register of Deeds a separate instrument contemplated within this Agreement, or otherwise required by CITY.

(2) Copies to CITY. DEVELOPER shall provide copies of all easements to CITY immediately after they are recorded.

(3) Rights and Terms. All easements shall include a prescription outlining the rights and terms of each easement and all corresponding maintenance responsibilities.

(4) To CITY's Satisfaction. All easements contemplated within this Agreement, or otherwise required by CITY, shall be prepared and filed in a form satisfactory to CITY.

(5) Separate Instruments. DEVELOPER shall dedicate all easements identified in Exhibit B by separate instruments rather than relying upon the Final Plat.

F. Fees.

(1) Arterial Street Improvement Program (ASIP) Fees. The Parties acknowledge that all new building permits shall be subject to ASIP Fees as provided for in the Papillion Master Fee Schedule.

(2) Review Fee for Improvements by DISTRICT. DISTRICT shall pay a fee of one percent (1%) of the construction cost to CITY to cover engineering, legal, and other miscellaneous expenses incurred by CITY in connection with any necessary review of plans and specifications related to the construction projects performed by DISTRICT. The Review Fee shall be allocated to special assessments and general obligation in the same proportion as the Costs of the particular construction project.

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CITY shall invoice DISTRICT the Review Fee at the time that each bid is approved for a respective construction project. DISTRICT shall authorize payment of each Review Fee at the next meeting following the date of the review fee invoice issued by CITY.

- (3) Review Fee for Improvements by DEVELOPER. DEVELOPER shall pay a fee of one percent (1%) of the construction cost to CITY to cover engineering, legal, and other miscellaneous expenses incurred by CITY in connection with any necessary review of plans and specifications related to the construction projects for Privately Financed Public Improvements performed by DEVELOPER. The Review Fee shall be paid at the sole expense of DEVELOPER. CITY shall invoice DEVELOPER the Review Fee at the time that each review is completed. DEVELOPER shall remit payment to CITY within 30 days of the invoice issuance date.
- (4) Sewer Connection Fees. Pursuant to Sarpy County's Sanitary Sewer Connection Fee Regulations, DISTRICT shall remit no less than the requisite Sanitary Sewer Connection Fees to Sarpy County prior to the filing of the Final Plat. Thereafter, any remaining Sanitary Sewer Connection Fees payable to Sarpy County shall be paid for privately by the individual lot owner(s) at such time that said owner(s) apply for a building permit from CITY for any structure that requires connection to Sarpy County's sanitary sewer system. The amount of the Sanitary Sewer Connection Fees remitted to Sarpy County prior to the filing of the Final Plat shall be calculated based on the rates established by Sarpy County in place at the time payment to Sarpy County is made. The amount of any remaining Sanitary Sewer Connection Fees remitted thereafter, but prior to the issuance of any building permit from CITY, shall be calculated based on the rates established by Sarpy County in place at the time the remaining payment(s) to Sarpy County are made. As part of the building permit application to CITY, DEVELOPER, its successors, or assigns shall provide written documentation from Sarpy County that all requisite Sanitary Sewer Connection Fees have been remitted for the lot for which a building permit is being sought.
- (5) Water Connection Fees. DEVELOPER, its successors, or assigns shall remit Water Connection Fees to MUD prior to the issuance of any building permit from CITY. The amount of the Water Connection Fees shall be calculated based on the rates established or otherwise agreed to by MUD. As part of the building permit application to CITY for which connection to the water system is required, DEVELOPER, its successors, or assigns shall provide written documentation from MUD that such fees have been remitted for the lot for which a building permit is being sought.
- (6) Watershed Fees. All new building permits shall be subject to the Watershed Fee as provided for in the Papillion Master Fee Schedule and as agreed to by the Papillion Creek Watershed Partnership. Such fee shall be calculated based on a per lot basis for the lot(s) for which the building permit is requested and shall be due prior to the issuance of the building permit.
- (7) Not an Exhaustive List. The Parties acknowledge that the forgoing does not constitute an exhaustive list of fees applicable to the development of the Development Area. The

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relevant fees listed in the Master Fee Schedule shall also apply. The timing of collection of such fees shall depend on the type of fee and the corresponding regulations.

- G. Future Reimbursement Agreement(s). Upon the creation of any Sanitary and Improvement District on an adjoining property, or the development of such property by a private developer, DISTRICT shall enter into any Reimbursement Agreement(s) with CITY, such Sanitary and Improvement District(s), private developer(s), and/or Sarpy County, as applicable, to provide for the reimbursement of expenses related to Public Improvements that benefit DISTRICT; provided, however, such reimbursement may be delayed until such time that DISTRICT's municipal advisor or other fiscal advisor determines that such reimbursement is fiscally responsible. Any delay of reimbursement shall be reasonable under the totality of DISTRICT's circumstances and shall not constitute a relief of DISTRICT's reimbursement responsibility. Further, DISTRICT shall be responsible for payment of any and all accrued interest incurred as a result of the delay.
- H. Interlocal Cooperation Agreement(s) for the S 150th Street Reconstruction Reimbursement. DISTRICT shall enter into interlocal cooperation agreements with Sarpy County and any interested Sanitary and Improvement District(s) to establish the terms and obligations related to the S 150th Street Reconstruction Reimbursement.
- I. Interlocal Cooperation Agreement(s) for the S 150th Street Traffic Signal Reimbursement. DISTRICT shall enter into interlocal cooperation agreements with SID 370, Sarpy County, and any other interested Sanitary and Improvement District(s), as applicable, to establish the terms and obligations related to the S 150th Street Traffic Signal Reimbursement. The Parties acknowledge that DISTRICT may satisfy this requirement by DISTRICT's execution of an Interlocal Cooperation Agreement for the S 150th Street Reconstruction Reimbursement that includes: (i) SID 307 as an executing party and (ii) provisions for the S 150th Street Traffic Signal Reimbursement.
- J. Post-Construction Stormwater Management. DEVELOPER, its successors, or assigns shall be responsible for causing detention facility construction and maintenance on an individual lot basis 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 associated with, the Development Area.
- K. Sidewalks within Dedicated Street Right-of-Way. The Parties acknowledge that the grading, construction, installation, and improvement of sidewalk(s) within the right-of-way of the Dedicated Streets shall be the responsibility of the individual lot owner(s) at the time of building permit and not the responsibility of DEVELOPER or DISTRICT. Each lot owner shall be responsible only for those portions of sidewalk(s) that abut the Dedicated Street frontage of said lot owner's lot, as applicable.
- L. Use of Lot 1. CITY and DEVELOPER recognize that limitations on the use of Lot 1 are required to provide for public health, safety, and welfare. Accordingly, DEVELOPER shall record covenants that restrict the use of Lot 1 to those permitted uses identified within Exhibit E (the "Lot 1 Permitted Uses List"). CITY and DEVELOPER acknowledge that

the inclusion of any use that requires a special use permit in the General Commercial (GC) District within the Lot 1 Permitted Uses List shall not be construed to be a waiver of the requirement to obtain a special use permit. All necessary zoning approvals shall be obtained prior to the establishment of any use identified within the Lot 1 Permitted Uses List.

DEVELOPER shall include provisions within the covenants to prohibit the amendment of the covenants with respect to the Lot 1 Permitted Uses List without the express written authorization of CITY, which shall be granted solely by an amendment to this Agreement and Exhibit E.

DEVELOPER shall not include any provision within the covenants that terminates, sunsets, or limits the duration of the covenants.

**Section 11
Annexation**

- A. Annexation Notice. Any time subsequent to when DISTRICT is put on written notice by CITY that CITY is conducting an investigation to determine the feasibility of annexing said DISTRICT, DISTRICT shall make no further expenditures for any purpose, except for those expenditures previously authorized by a duly approved budget or in the case of a bona fide emergency to prevent injury or damages, without first obtaining permission from CITY, which permission may only be granted by a majority vote of those members elected or appointed to City Council.
- B. Property Owners Association. DEVELOPER shall cause the formation of the Steel Ridge South Business Owners Association prior to the annexation of DISTRICT by CITY, regardless of whether such annexation is a complete annexation or a partial annexation, unless such requirement is waived by the City Administrator.
- C. Obligations upon Annexation. Upon annexation of the Development Area and merger of DISTRICT with CITY, the following shall occur:
 - (1) Within thirty (30) days of the merger of DISTRICT with CITY, DISTRICT shall submit to CITY a written accounting of all assets and liabilities, contingent or fixed, of DISTRICT; provided, however, DISTRICT shall not be required to provide such written accounting in the case of a partial annexation of the Development Area;
 - (2) Within sixty (60) days of the merger of DISTRICT with CITY, DISTRICT shall provide all books, records, paper, property, and property rights of every kind, as well as contracts, obligations and choses in action of every kind, held by or belonging to DISTRICT to CITY;
 - (3) Within ninety (90) days, DISTRICT shall require its agents, contractors, and consultants, including, but not limited to, DISTRICT Attorney, DISTRICT Engineer, and DISTRICT underwriter(s), municipal advisor(s), and other financial advisor(s) to provide all records of every kind pertaining to DISTRICT to CITY;

- (4) That should CITY annex the entire area of DISTRICT prior to DISTRICT's levy of special assessments for the Public Improvements, as authorized in Section 4, and thereby succeed to said DISTRICT's power to levy special assessments, CITY shall levy the same;
 - (5) CITY shall be liable for and recognize, assume, and carry out all valid contracts and obligations of DISTRICT;
 - (6) CITY shall provide inhabitants of the Development Area so annexed with substantially the services of other inhabitants of CITY as soon as practicable; and
 - (7) The laws, ordinances, powers, and government of CITY shall extend over the Development Area so annexed.
- D. Partial Annexation. In the event CITY annexes any part of the Development Area, and said annexation does not include the entire territory of DISTRICT, then a division of assets and liabilities of said DISTRICT in connection with such partial annexation of DISTRICT shall be made on the basis of an equitable apportionment of the assets and liabilities of DISTRICT attributable to the area annexed by CITY, and CITY shall not be required to assume in connection with such partial annexation any indebtedness of such DISTRICT which is attributable to Public Improvements in or expenses incurred in connection with areas other than the area so annexed by CITY.

Upon completion of a partial annexation of the Development Area, DISTRICT shall provide CITY with all books, records, paper, property and property rights of every kind, contracts, obligations and choses in action of every kind held by or belonging to DISTRICT, which are specifically related to that portion of the Development Area so annexed.

Any partial annexation of the Development Area shall comply with the provisions of Neb. Rev. Stat. § 31-766.

- E. No Limitation on CITY's Annexation Authority. The provisions contained herein shall not be construed as creating any limitations on CITY's annexation authority, but rather as obligations assumed by DEVELOPER or DISTRICT, as provided, that must be accomplished by the deadlines indicated herein, by law, or by other applicable regulation.

Section 13 Miscellaneous Provisions

- 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, DISTRICT, and CITY, subject to Section 13(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.

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- 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” 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 the state or county courts located in Sarpy County, Nebraska or the U.S. District Court located in Omaha, Nebraska, as appropriate. Accordingly, the Parties also agree to exclusive personal jurisdiction in said state and county courts located in Sarpy County, Nebraska or the U.S. District Court located in Omaha, Nebraska, as applicable.
- 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 and DISTRICT 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, DISTRICT, or DEVELOPER's or DISTRICT'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 or DISTRICT's breach, default, or failure to perform or properly perform any of DEVELOPER's or DISTRICT'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, DISTRICT, or DEVELOPER's or DISTRICT'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 caused by the negligent acts or omissions of Developer or District occurring while said individual is on any premises within the Development Area, but only so long as the alleged cause or proximate cause of such injury, loss, or damage to any such person arose prior to CITY's annexation of 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(s)-of-way or easements, by DEVELOPER or DEVELOPER's respective employees or agents, or by DISTRICT or DISTRICT's respective employees or agents pursuant to Neb. Rev. Stat. § 31-736 or any other grant of authority.

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.

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- L. Entire Agreement. This Agreement and all exhibits and documents attached hereto 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:
- (1) For DEVELOPER: Dowd Grain Company, Inc.
220 N. 89th Street, Suite 201
Omaha, NE 68114
Attn: Duane Dowd, President
- (2) For DISTRICT: Sanitary and Improvement District
No. 322 of Sarpy County, Nebraska
c/o FARNHAM, SIMPSON & GRIFFIN PC LLP
220 N. 89th Street, Suite 201
Omaha, NE 68114
Attn: Jeffrey B. Farnham
- (3) For CITY: City Clerk
City of Papillion
122 East Third Street
Papillion, NE 68046
- Such addresses 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.

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- 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.

(Signatures on following pages.)

Y

ATTEST:

CITY OF PAPILLION, a Nebraska
Municipal Corporation

Nicole L. Brown
Nicole L. Brown, City Clerk

By [Signature]
David P. Black, Mayor

CITY SEAL



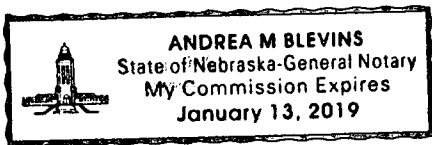
SANITARY AND IMPROVEMENT DISTRICT
NO. 322 OF SARPY COUNTY, NEBRASKA

By *Duane J. Dowd*
Duane J. Dowd, Chairman

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

Before me, a notary public, in and for said county and state, personally came Duane J. Dowd, Chairman of Sanitary and Improvement District No. 322 of Sarpy County, Nebraska, known to me to be the identical person who executed the above instrument and acknowledged the execution thereof be such person's voluntary act and deed on behalf of such District.

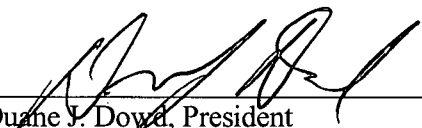
Witness my hand and Notarial Seal this 2nd day of July, 2018.



Andrea M. Blevins
Notary Public

Aa

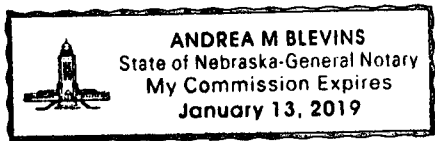
Dowd Grain Company, Inc., a Nebraska corporation

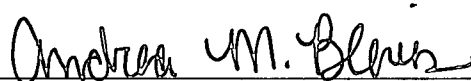
By 
Duane J. Dowd, President

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

Before me, a notary public, in and for said county and state, personally came Duane J. Dowd, President of Dowd Grain Company Inc., a Nebraska corporation, known to me to be the identical person who executed the above instrument and acknowledged the execution thereof be such person's voluntary act and deed on behalf of such corporation.

Witness my hand and Notarial Seal this 2nd day of July, 2018.




Notary Public

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LEGAL DESCRIPTION – STEEL RIDGE SOUTH

STEEL RIDGE SOUTH, LOTS 1, 2 AND 3 AND OUTLOT A, BEING A PLATTING OF TAX LOT 7 IN THE NW 1/4 OF THE NW 1/4 OF SECTION 35, T14N, R11E OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, TOGETHER WITH PART OF THE NW 1/4 OF THE NW 1/4 OF SAID SECTION 35, TOGETHER WITH THAT PART OF THE NE 1/4 OF SECTION 34, T14N, R11E OF THE 6TH P.M., SAID SARPY COUNTY, LYING SOUTH AND EAST OF THE INTERSTATE 80 RIGHT-OF-WAY, ALL MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID NE 1/4;
THENCE N03°00'52"W (ASSUMED BEARING) 1428.62 FEET ON THE EAST LINE OF SAID NE 1/4;
THENCE NORTHEASTERLY ON A LINE 100.00 FEET NORTHWESTERLY OF AND CONCENTRIC WITH THE NORTHWEST LINE OF LOT 1, COMMERCE BUSINESS CENTRE REPLAT 5, A SUBDIVISION IN SAID SARPY COUNTY, ON A 550.00 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING N26°31'34"E, CHORD DISTANCE 94.36 FEET AN ARC DISTANCE OF 94.47 FEET;
THENCE N31°26'51"E 444.62 FEET ON A LINE 100.00 FEET NORTHWESTERLY OF AND PARALLEL WITH THE NORTHWEST LINE OF LOT 1, SAID COMMERCE BUSINESS CENTRE REPLAT 5;
THENCE NORTHEASTERLY ON A LINE 100.00 FEET NORTHWESTERLY OF AND CONCENTRIC WITH THE NORTHWEST LINE OF LOT 1, SAID COMMERCE BUSINESS CENTRE REPLAT 5 ON A 550.00 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING N39°06'02"E, CHORD DISTANCE 148.64 FEET AN ARC DISTANCE OF 149.10 FEET TO A SOUTHWEST CORNER OF LOT 1, COMMERCE BUSINESS CENTRE REPLAT SIX, A SUBDIVISION IN SAID SARPY COUNTY;
THENCE N58°39'59"W 31.37 FEET ON THE SOUTHWESTERLY LINE OF LOT 1, SAID COMMERCE BUSINESS CENTRE REPLAT SIX TO A SOUTHWEST CORNER THEREOF;
THENCE N31°20'01"E 609.03 FEET ON THE SOUTHEAST LINE OF SAID TAX LOT 7 TO THE SOUTHEAST RIGHT-OF-WAY LINE OF INTERSTATE 80;
THENCE SOUTHWESTERLY ON THE SOUTHEAST RIGHT-OF-WAY LINE OF INTERSTATE 80 ON THE FOLLOWING DESCRIBED TWENTY COURSES;
THENCE S87°47'05"W 140.75 FEET;
THENCE SOUTHWESTERLY ON A 1000.00 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING S45°11'46"W, CHORD DISTANCE 635.39 FEET AN ARC DISTANCE OF 646.59 FEET;
THENCE S65°36'15"W 108.51 FEET TO THE EAST LINE OF SAID NE 1/4;
THENCE S66°08'52"W 215.18 FEET;
THENCE SOUTHEASTERLY ON A 1045.92 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING S59°18'14"W, CHORD DISTANCE 72.86 FEET AN ARC DISTANCE OF 72.87 FEET;
THENCE S54°58'16"W 82.00 FEET; THENCE S48°24'13"W 155.00 FEET;
THENCE S41°33'09"W 96.00 FEET; THENCE S26°21'47"W 196.00 FEET;
THENCE S15°52'35"W 295.66 FEET; THENCE S31°18'22"W 249.88 FEET;
THENCE S33°30'23"W 118.00 FEET; THENCE S50°37'13"W 338.00 FEET;
THENCE S31°29'40"W 190.00 FEET; THENCE S31°12'41"W 250.00 FEET
THENCE S30°19'30"W 93.00 FEET; THENCE S28°20'25"W 83.00 FEET;
THENCE S26°22'55"W 66.00 FEET; THENCE S28°48'27"W 60.00 FEET;
THENCE S25°48'33"W 171.77 FEET TO THE SOUTH LINE OF SAID NE 1/4;
THENCE N87°09'42"E 1688.26 FEET ON THE SOUTH LINE OF SAID NE 1/4 TO THE POINT OF BEGINNING.

CONTAINING 50.22 ACRES MORE OR LESS.


	Job Number: 1237-116 thompson, dreessen & dornier, inc. 10836 Old Mill Rd Omaha, NE 68154 p.402.330.8860 f.402.330.5866 td2co.com	Date: MAY 4, 2018 Drawn By: DHN Reviewed By: DHN Revision Date:	<h1 style="text-align: center;">EXHIBIT A</h1>
			<h2 style="text-align: center;">STEEL RIDGE SOUTH</h2>

Exhibit D

Name of Addition

Steel Ridge South

SID # **322**

Source and Use of Funds: (Provide a separate sheet for the preliminary plat and for each final plat phase.)

	Quantity	Proposed Improvements Construction Cost	Total ¹ Cost	General Obligation	Special Assessed	Financing ² Reimbursable	Private
Storm Sewer							
Storm Sewer		LF					
PCSMP		AC					
Sanitary Sewer							
Outfall		LF					
Interior	3	Stub	\$26,700				\$37,600
Connection Fees	48.67	AC	\$143,300	\$181,000 ⁴			
Paving							
Interior		SY					
150th St. Imp.	4,115	SY	\$523,000	\$184,000 ⁵			
150th St Traffic Signal	1	LS	\$125,000	\$175,900 ⁶		\$175,900 ⁷	
Sidewalk							
Interior		SY					
Parks							
City Review Fee		LS	\$2,200	\$2,200			
Water							
Pioneer Main Fee		LS	\$62,600	\$74,300			
Exterior		LS					
Interior		LS					
Gas							
Interior							
Electricity ³	26.04	AC	\$93,300	\$116,500			\$116,500
Total			\$976,100	\$1,323,300	\$617,400	\$175,900	\$154,100

¹ Total cost includes engineering fees and administrative fees

² Attach a statement of assumptions as basis for preliminary projections.

³ Indicate any need to relocate on or off-site lines.

⁴ 50% of Sewer Connection Fees to be paid by the District (GO) at the time of platting (Remaining sewer connection fees to be paid for privately at the time of building permit)

⁵ 150th Street improvements shall be paid for as follows: 25% by Sarpy County, 25% by SID 322, 25% by SID 199, and 25% by SID 224

⁶ 50% of 150th Street Traffic Signal Improvements

⁷ Reimbursed by SID 307

Phase 1 G.O. Debt Less Reimbursement

\$ 441,500

Phase 1 Valuation

\$ 20,590,000

Phase 1 Debt Ratio

2.14%

Date

June 19, 2018

Ag

**EXHIBIT E
LOT 1, STEEL RIDGE SOUTH
SARPY COUNTY, NEBRASKA
PERMITTED USES LIST**

Commercial Use Types

- Agricultural sales and Services
- Automotive and Equipment Services
 - Automotive rental and sales
 - Auto services
 - Body Repair
 - Equipment rental and sales
 - Equipment repair services
 - Trucks, heavy equipment rental, sales and services
- Business Support Services
- Business or Trade School
- Cocktail Lounge
- Commercial Recreation (Controlled)
- Commercial Recreation (High Impact)
- Communication Services
- Construction Sales and Services
- Consumer Services
- Limited Food Sales
- Garden Center
- Kennels
- Lodging
- Personal Services
- Recreation Vehicle Sales and Storage
- Research Services
- Restaurants (general)
- Retail Services (Large)
- Retail Services (Limited)
- Retail Services (Mass)
- Storage (Limited Access)
- Trade Services
- Veterinary Services

Office Use Types

- Corporate Offices
- Data Center

- Financial Services¹
- General Offices
- Financial Services
- Medical Offices

Civic Use Types

- Administration
- Health Care
- Hospital
- Postal Facilities
- Religious Assembly
- Safety Services

Industrial Use Types

- Custom Manufacturing
- Light Industry
- General Industry
- Warehousing (Enclosed)

¹ Use is designated as high traffic generator; except that Financial Services shall only be considered a high traffic generator if there is a drive-through window. No high traffic generator uses shall be allowed on Lot 1, Steel Ridge South