FILED SARPY CO. NE. INSTRUMENT NUMBER 2004-28718

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LLOYD J. DOWDING

SARPY COUNTY REGISTER OF DEEDS 1210 GOLDEN GATE DRIVE, STE 1109 PAPILLION, NE 68046-2895 402-593-5773

attri Jerrifer

112 E 3rd St

28718

SCRoD Form 1, Dated 09/27/2002

A

SUBDIVISION AGREEMENT

THIS AGREEMENT made this 17th day of January, 2006, by and between Giles Road No. 2, L.L.C., a Nebraska limited liability company, (hereinafter referred to as "Developer"); SANITARY AND IMPROVEMENT DISTRICT NO. 266 OF SARPY COUNTY (hereinafter referred to as "District") and the CITY OF PAPILLION, a municipal corporation, (hereinafter referred to as "City"),

WITNESSETH:

WHEREAS, Developer is the owner of the parcel of land described in Exhibit "A" attached hereto and herein referred to as the "area to be developed", which area to be developed is within City's zoning and platting jurisdiction; and

WHEREAS, Developer has requested City to approve a specific platting of the area to be developed, said area to be developed; and

WHEREAS, Developer has requested City to forbear from annexing the area to be developed until after January 17, 2011 for public improvements through Sanitary and Improvement District No. 266 created by Developer (hereinafter referred to as the "District).

WHEREAS, Developer wishes to connect the system of sewers and water to be constructed by the District within the area to be developed with the sewer and water system of the City; and

WHEREAS, Developer and City wish to agree upon the manner and the extent to which public funds may be expended in connection with public improvements serving the area to be developed and the extent to which the contemplated public improvements specially benefit property in the area to be developed and adjacent thereto, and to what extent the cost of the same shall be specially assessed.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I.

Developer and City agree that the credit of the District created by Developer shall be used for construction of the following public improvements identified below and in Exhibit "C" attached hereto and incorporated herein by reference is the Source and Use of Funds which presents an allocation of estimated costs of certain public improvements amongst the parties hereto:

- A. Grading of street right-of-way.
- B. Construction of and concrete paying of all streets dedicated per plat (Exhibit "A").
- C. All sanitary sewers and water mains constructed on dedicated street right-of-ways or easements per plat (Exhibit "A") pursuant to sanitary sewer plans heretofore prepared by E & A Consulting Group, Inc., consulting engineers and land surveyors.
- D. All storm sewers, inlets and appurtenances constructed on dedicated street right-of-ways or easements within the area to be developed.

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- E. Contract with the Omaha Public Power District for street lighting for public streets dedicated per plat (Exhibit "A"), and underground power within the area to be developed.
- F. Contracting with a public gas company for a gas distribution system.
- G. Capital facilities charge to the City of Papillion in the amount of \$61,538 less a credit of \$15,385 for water main extension for a total of \$46,153.
- H. Improvements to 107th Street. The District shall enter into an Interlocal Cooperation Agreement satisfactory to the City with the City of La Vista, Sanitary and Improvement District #276 (Portal Ridge) and the City of Papillion to construct and improve 107th Street as shown on Exhibit "B". All costs for improvements shown in Exhibit "B" are at the expense of the Districts. Such costs shall be generally obligated and are estimated at \$118,670.00 with a fifty percent (50%) reimbursement from Sanitary and Improvement District # 276 to District.
- I. An extension of the existing 12" water main is necessary to serve the District and is at the expense of the District. The District shall enter into an Interlocal Cooperation Agreement satisfactory to the City with Sanitary and Improvement District #_____ (Portal Plaza South). Such costs shall be generally obligated and are estimated at \$308,000 with an estimated reimbursement from Sanitary and Improvement District #_____ in the amount of \$108,000 to District. The City of Papillion shall be responsible for the construction of the water main.
- J. Sanitary Sewer. The District shall enter into an Interlocal Cooperation Agreement satisfactory to the City with the City of La Vista and the City of Papillion to provide for the connection into the sanitary sewer of the City of La Vista.
- K. There shall be no changes or modifications which increase the anticipated total costs or cost allocations as reflected on Exhibit "C" by more than ten percent (10%) unless the same are approved by a majority of those persons either elected or appointed to the Papillion City Council.

II.

It is agreed that the credit or funds of the District created by Developer shall not be used for construction of any improvements or facilities within the area to be developed except those specified in Paragraph I hereof. By way of specification and not by way of limitation, the parties agree that the District shall not 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 the City Council.

III.

Developer and City agree that the cost of all public improvements constructed by the District within the area to be developed (Exhibit "A") as authorized by Paragraph I, supra, shall be defrayed as follows and as identified in Exhibit "C" attached hereto and incorporated herein by reference as the Source and Use of Funds:

A. 100% of the entire cost of grading street right-of-way including intersection shall be paid by special assessment against the property within the District.

- B. 100% of the entire cost of all sanitary sewer lines and water mains located within the District will be paid by special assessment against the property specially benefited. No portion of the cost of sanitary sewers and water mains shall be borne by general obligation of the District; provided, however, that for sanitary sewers in excess of 8 inches and water mains in excess of 8 inches the cost in excess of the cost of 8 inch sanitary sewers and/or 8 inch water mains will be borne by the general obligation of the District and any outfall sewer lines or water lines outside the District boundaries caused to be constructed by the District shall be borne by the general obligation of the District. Not less than 50% of capital facility charges paid to the City of Papillion shall be specially assessed against properties served.
- C. (1) 100% of the entire cost of all paving and street construction will be paid by special assessment against the property benefited, except that the cost of the paving and construction of street intersections shall be borne by the general obligation of the District and the cost of pavement thickness in excess of 6 inches for reinforced concrete or 7 inches for plain concrete shall be borne by the general obligation of the District and the cost of pavement width in excess of 25 feet exclusive of curb and gutters shall be borne by the general obligation of the District. The cost for curb and gutters are incidental to paving and shall not be considered separately for purposes of assessment. Street signs shall be purchased from City and installed by District. Cost of street signs and installation may be borne by the general obligation of the District.
- (2) 100% of the entire cost of all storm sewer and appurtenances shall be borne by general Obligation of the district: provided, however, that for storm sewers in excess of 48 inches inside diameter the difference in cost between the actual storm sewer constructed and a 48 inch storm sewer shall be specially assessed against the property within the District. Difference in cost shall include a proportionate share of the entire cost as hereinafter described in Paragraph IV. For improved channels, the cost of constructing the channel and appurtenances shall be considered as the cost of storm sewer in excess of 48 inches. Culvert crossings perpendicular to street center lines may be generally obligated for a length not exceeding the width of the right-of-way, plus six times the vertical distance between the centerline of the pavement and the invert elevation of the box culvert.
- D. The cost of contract charges paid to Omaha Public Power District for lighting of public streets shall be paid out of the general fund of the District.
- E. All contract charges for underground power or natural gas authorized to be paid by District to the Omaha Public Power District or to any public gas utility the provisions of Paragraph I-E and F, supra, including both the basic charges and refundable charge, together with all other charges as fall within the definition of entire cost as defined in Paragraph IV-A, including all penalties and default charges, and are allocable to such contract charges, shall be specially assessed against property within the area to be developed. Any refund of the refundable portion of the underground electrical service charge for a particular lot which shall be made by Omaha Public Power District to District or its successors shall be credited as follows:

- 1. If refund is prior to the levy of special assessments for underground electrical service, said refund shall be credited as a reduction in the total cost of the underground electrical service to be levied against said lot
- 2. If refund is after the date of levy of special assessments for underground electrical service, said refund shall be credited as a payment on the balance owing on the special assessment levied against said lot in connection with underground electrical service for said lot.
- 3. If refund is after the date of levy and payment in full of special assessment, said refund shall be repaid to persons paying the special assessment.
- F. Pursuant to Chapter 170, Subdivision of Land, Section 170-20 of the Code of the City of Papillion, fire hydrants shall be provided by the subdivider. The type of hydrant and control valves and the location of the hydrant must be approved by the fire chief.
- G. There shall be installed in the subdivision or be available, sufficient civil defense siren coverage, prior to the issuance of any occupancy permit for any structure built in said subdivision, civil defense sirens and a number, type and specifications as determined by the City Administrator in conjunction with the Director of the Sarpy County Civil Defense Agency. The siren must be capable of sounding the severe weather and attack warning. The number, type and specifications for the civil defense sirens shall be determined by the Director of the Sarpy County Civil Defense Agency. The cost for said civil defense sirens shall be treated as a general obligation cost. If existing coverage is available, subdivision will pay its pro-rata share of siren cost based on acres of coverage as determined by the City Engineer.

IV.

For the purposes of Paragraph III, supra, and Paragraph VIII, infra, the following words and phrases shall have the following meanings:

- A. "Entire cost" of a type of improvement shall be deemed to include all construction costs, engineering fees, attorney fees, testing expenses, penalties, forfeitures and default charges, and miscellaneous costs such as interest on warrants to date of levy of special assessments and fiscal agent's warrant fees and bond fees.
- B. "Property benefited" shall mean property benefited from the improvement and situated either (1) within the platted area in which the improvement is situated or (2) outside such platted area in which such improvement is situated but within the corporate limits of the District and within 300 feet of said platted area. No special assessments shall be assessed against any outlot nor against any other, lot, part of lot, lands and real estate upon which cannot be built a structure compatible with the zoning regulations of said lot except to the extent of the special benefit to said lot, part of lot, lands and real estate by reason of such improvement.

E

C. "Street intersections" shall be construed to 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.

V.

City covenants and agrees:

- A. That should City annex the entire area of the District created by Developer prior to the District's levy of special assessments for the improvements authorized in Paragraph I hereof, supra, and thereby succeed to said District's power to levy special assessments, that City will levy same in accordance with Paragraph 111, hereof, supra.
- B. That the District created by Developer may connect its sanitary sewer system and water system to the sanitary system and water system of the City pursuant to the terms and conditions of a sewer and water connection agreement of even date between City and said District.
- C. Any time subsequent to when the Sanitary Improvement District is put on written notice by the City of Papillion that the City is conducting an investigation to determine the feasibility of annexing said Sanitary Improvement District boundaries, then the Sanitary Improvement District shall make no further expenditures for any purpose, except for those expenditures previously authorized by a duly approved budget, without first obtaining permission of the City of Papillion, which permission must be granted by a majority vote of those members elected or appointed to the Papillion City Council.
- D. Sanitary Improvement District shall furnish to the City of Papillion copies of all proposed budgets and published notices of meetings to consider said budget and expenditures at least thirty (30) days prior to the Board of Trustee's meeting to consider and/or adopt a proposed budget.
- E. District warrants that it will 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 the District shall also provide to the City actual prior notice of any hearings held in the United States Bankruptcy Court pursuant to any bankruptcy filings.

VI.

Developer and Board to Trustees covenant and agree that the District created by Developer will:

- A. Abide by and incorporate into all of its construction contracts the provisions required by the regulations of the City pertaining to construction of public improvements in subdivisions and testing procedures therefor.
- B. Prior to commencement of construction of improvements, said District will obtain and file of record permanent easements for all sanitary, water and storm sewer lines

F

as determined by City's engineer. Said easements shall be in form satisfactory to the City's attorney and City's engineer.

- C. Prior to the District publishing notice to levy special assessments, District agrees to submit to City:
 - 1. A schedule of the proposed special assessments.
 - 2. A plat of the area to be assessed.
 - 3. A full and detailed statement of the entire cost of each type of improvement, which statement or statements shall separately show:
 - (a) The amount paid to contractor.
 - (b) A separate itemization of all other costs of the project, including but not limited to engineering fees, attorney's fees, testing expenses, publication expenses, estimated interest on all warrants to date and the estimated fiscal agent's levy of special assessments, warrant fees and bond fees. District agrees to obtain written approval of City of proposed assessment schedules prior to advertising for any hearing of District to be held for the purpose of equalizing or levying special assessments against property benefited by any improvements constructed by District.
- D. The District shall make its annual tax levy in an amount sufficient to timely pay the indebtedness and interest thereon for public improvements but in no event shall said levy be less than the current tax levy assessed by the City of Papillion on the taxable real estate within the City limits.

VII.

It is mutually agreed that the District shall pay a fee of one percent (1%) of construction cost to the City to cover engineering, legal and other miscellaneous expenses incurred by the City in connection with any necessary review of plans and specifications in connection with the construction projects performed by Sanitary and Improvement District No. 266. The fee shall be allocated to special assessments and general obligation bonds in the same proportion as the costs of the particular construction project.

VIII.

The parties mutually agree that in the event City shall annex any part of the area to be developed and said annexation shall not include the entire territory of the District created by Developer, then a division of assets and liabilities of said District in connection with such partial annexation of the District shall be made strictly on the basis of assets and liabilities of this District attributable to the area annexed by the City, and City shall not be required to assume in connection with such partial annexation any indebtedness of such District which is attributable to improvements in or expenses incurred in connection with areas other than the area so annexed by the City.

IX.

The District, Developer and City shall simultaneously herewith enter into a Mixed Use Development Agreement, a copy of which is attached hereto and incorporated herein by reference as if fully set out herein, and the terms of said Mixed Used Development Agreement shall be considered as, and treated as, terms of this Subdivision Agreement.

CITY OF PAPILLION, A Nebraska Municipal Corporation

Ву:

Mayor

Attest:

City Cherk

SANITARY AND IMPROVEMENT DISTRICT NO. 266 OF SARPY COUNTY, NEBRASKA

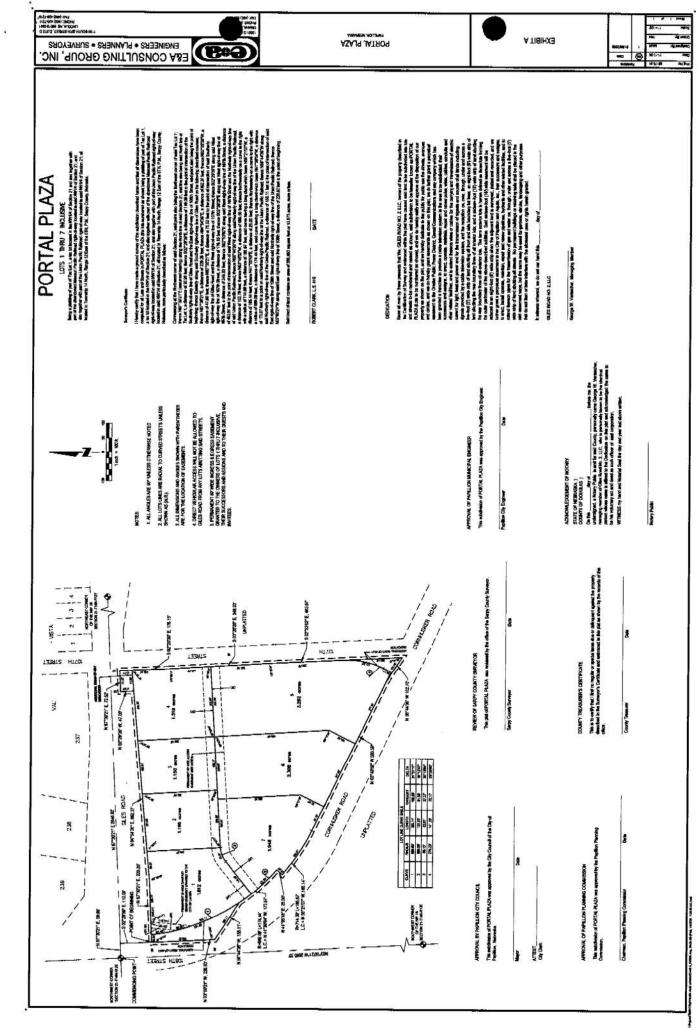
By

Attest:

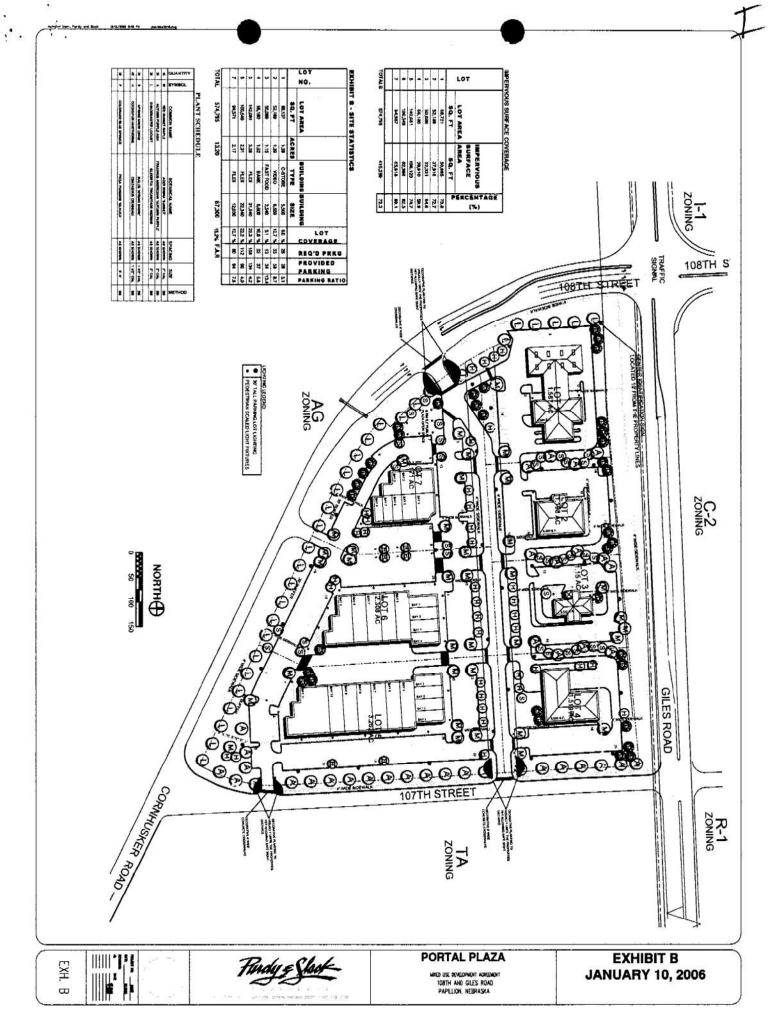
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GILES ROAD NO. 2, L.L.C., a Nebraska Limited Liability Company

By:



H



SOURCE & USE OF FUNDS SUMMARY OF COSTS ESTIMATES PORTAL PLAZA - SID # 266 January 17, 2006

Proposed Improvement	Construction Cost	Total Cost	Special Assessment	General Obligation	Private	Reimbursement Other	Total
SANITARY SEWER Interior Outfall	\$27,075	\$37,905	\$34,125	\$3,780			\$37,905
STORM SEWER	\$83,880	\$117,432	\$9,240	\$108,192			\$117,432
PAVING Minor	\$78,870	\$89,700	\$89,700				\$89,700
Major	\$118,670	\$166,138	\$111,312	\$54,826		\$83,069	\$0 \$166,138
SIDEWALKS	\$18,000	\$24,120	\$24,120				\$24,120
PARKS Acquisition Improvements							6
WATER	\$45 700	\$62 800	GE2 E00				00000
Off-Site Capital Facility Charges (revised)	\$259,146 \$61,538	\$308,000 \$308,000 \$79,999	\$40,000	\$308,000		\$108,000	\$208,000 \$308,000 \$95,384
POWER Single-Family & Commercial School	\$33,162	\$43,110	\$43,110				\$0 \$43,110 \$0
OTHER Grading & Erosion Control	\$36,500	\$36,500			\$36,500	_	\$36,500
TOTAL Less Reimbursements	\$762,541	\$965,513	\$414,216	\$514,798	\$36,500	\$206,454	\$1,171,967
NET	\$762,541	\$965,513	\$414,216	\$364,000	\$36,500	\$206,454	\$1,171,967

EXHIBIT "C"

DEBT RATIO

	al Home	ome	foot	ire foot		
ASSUMPTIONS:	Average market value per Residential Home	Average market value per Duplex Home	Commercial Land Value per square foot	Commercial Building Value per square foot	Apartment Land per square foot	Apartment Buidling per square foot

\$0.00 \$130.00 \$0.00 \$0.00 \$0.00

ASSESSABLE VALUATION:			
	Number of Units/Sq. Ft.	Unit Price	Total
Residential Home		\$0.00	0\$
Duplex Home	-	\$0.00	\$0
Commercial Land	87300	\$130.00	\$11,349,000
Commercial Building	•	\$0.00	\$0
Apartment Land	•	\$0.00	\$0
Apartment Building	~	\$0.00	\$0

3.21%

Total 100% Valuation

DEBT RATIO

\$11,349,000

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