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**RESIDENTIAL SUBDIVISION AGREEMENT**  
**Cimarron Woods Subdivision**  
**PUD-1 Planned Unit Development**

THIS AGREEMENT, made this 7th day of April, 2004, by and between TORCO DEVELOPMENT, INC., a Nebraska corporation, (hereinafter referred to as "Torco"), and CIMARRON WOODS EAST, INC., a Nebraska corporation (hereinafter referred to as "Cimarron Woods East, Inc." and referred to for convenience as "Sudbeck", said Torco and Sudbeck being hereinafter referred to collectively as "Developer" or "Subdivider"), and SANITARY AND IMPROVEMENT DISTRICT NO. 237 OF SARPY COUNTY, NEBRASKA (hereinafter referred to as "District"), and the CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska (hereinafter referred to as "City");

WITNESSETH:

WHEREAS, Developer will develop 225.57 acres generally located southwest of 96<sup>th</sup> and Harrison Street, with boundaries as described on Exhibit "A" hereto and to be known as Cimarron Woods Subdivision; and

WHEREAS, Developer proposes to subdivide and develop the Subdivision in the manner shown on the "Cimarron Woods Final Plat" prepared by E & A Consulting Group, Inc. and Thompson, Dreessen & Dorner, Inc., a copy of which plat is attached hereto as Exhibit "B," said platted area consisting of two tracts, i.e. Tract "A" and Tract "B" as legally described on Exhibit "B" and separated by the Burlington Northern Railroad right-of-way; and

WHEREAS, Torco owns, or is to own, 186.987 acres within the Subdivision which is described as Tract "A" on the final plat (Exhibit "B") and Sudbeck owns, or is to own 36.67 acres within the Subdivision which is described as "Tract "B" on the final plat (Exhibit "B"). Tract "A" has been subdivided into 379 residential lots, one multi-family lot, plus Outlots A through E, inclusive, and Tract "B" has been subdivided into 127 single family lots, plus Outlots F and G.

WHEREAS, Developer has requested City to approve the platting of the Subdivision, as more fully shown on Exhibit "B" hereto, and to approve a connection of said Subdivision to the City's sewer and drainage systems; and

WHEREAS, the Developer and District propose that the District will build certain public improvements in or for the benefit of the Subdivision, the District being a Sanitary and Improvement District created at the request of and controlled by the Developer, Developer being Owner of all the lands within the boundaries of the Subdivision; and

WHEREAS, Torco has engaged E & A Consulting Group, Inc. as Engineer for the portion of the Subdivision to be developed by it, and Sudbeck has engaged the firm of Thompson, Dreessen & Dorner, Inc. as Engineer for the portion to be developed by it; and

WHEREAS, Developer has requested platting of the Subdivision under Section 5.15 of the La Vista Zoning Code pertaining to Planned Unit Developments (PUD-1 Planned Unit Development) and has agreed to meet all conditions of development and other requirements of said zoning as determined by the City; and

WHEREAS, the parties wish to agree upon the manner and the extent to which public funds may be expended in connection with public improvements to be constructed within the subdivision or

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serving the subdivision and the extent to which the contemplated public improvements specially benefit property within the subdivision and to what extent the cost of the same shall be specially assessed against the property of Developer, and other matters pertaining to the development of the Subdivision and the health, safety and welfare of the City, the District, their inhabitants and the public.

NOW, THEREFORE, IT IS AGREED as follows:

1. Definitions

For the purposes of this Agreement, the following words and phrases shall have the following meanings:

- A. "Improvement" or "public improvement" shall include all paving, storm sewer, sanitary sewer, culverting, water, gas, electrical, street lighting, traffic control and any other item of infrastructure, together with land acquisition and recreational improvement thereof, or other public use, interest in real estate, other capital assets, connection rights or other acquired rights which are acquired, in whole or in part, by use of District funds, obligation or credit, and shall include any of the foregoing that are placed upon public land or on land to become public or within street right-of-way or public easement regardless of the source of funding.
- B. "Construction cost" of an improvement shall mean the amount paid to the contractor, contractors' utility or persons installing the improvement or performing the work, together with all other costs incurred in or related to the construction of the improvement.
- C. "Cost" or "entire cost" of a type of improvement shall be deemed to include all construction costs, engineering fees, attorneys' fees, testing expenses, publication costs, financing costs and miscellaneous costs. In this connection, financing costs shall include all fiscal agent's warrant fees and costs, interest on warrants to date of funding by issuance of bonds and all bond fees and costs. Miscellaneous costs of the improvement shall include the pro rata share of the general unallocated costs of the District, which unallocated costs shall be prorated to each improvement on the basis that the entire cost of each improvement bears to the entire cost of all improvements constructed by the District.
- D. "Declaration of Covenants, etc." shall mean the "Declaration of Covenants, Conditions, Restrictions and Easements for Cimarron Woods Subdivision" in the form approved by City and filed by Torco Development, Inc. and Sudbeck Construction Company as owner of all lands within the subdivision (Developer herein), the recording information for which Declaration of Covenants, etc. is identified on Exhibit "H" hereto.
- E. "Corps of Engineers 404 Permit (Nationwide No. 39)" shall mean the separate United States Corps of Engineers Permit issued for Tract "A" under the authority of the Department of the Army Nationwide Permit No. 39, establishing requirements and limitations thereof, a copy of said Permit being attached as Exhibit "I-1".  
  
"Corps of Engineers 404 Permit (Individual)" establishing requirements to be performed by Developer in advance, or in conjunction with the grading of Tract "B" and ongoing requirements and limitations of said Permit, a copy of which is attached hereto as Exhibit "I-2".
- F. "General Obligation" or "general obligation of the District" shall mean the amount by which the entire cost of a particular improvement or type of improvement exceeds the

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amount of special assessments levied by the District in respect to such improvement or type of improvement.

G. "Land Utilization and Preparation Costs." Except as stated below, "Land Utilization and Preparation Costs" shall include, but not be limited to, all costs pertaining to, or arising out of, determination of feasibility, acquisition, reclamation, preparation, enhancement and/or utilization of land, and all engineering, legal, contracted or other services related thereto or to the following:

- (1) Soil and water tests, topographic surveys, geotechnical investigation and environmental studies and drainage studies, surveying, staking and testing;
- (2) Platting (preliminary and final) and replatting;
- (3) Excavation, filling, compaction and testing thereof;
- (4) Grading;
- (5) Erosion and silt control, including installation and removal thereof;
- (6) Environmental studies and permits required by Corps of Engineers or other governmental agencies having jurisdiction in the matter and costs of compliance with the terms of such permits and requirements thereof;
- (7) Buffer zones and areas to be landscaped or beautified, including trees and other plantings therein or therefor;
- (8) Traffic and other required studies;
- (9) Such other costs incurred to utilize and/or prepare land to a City approved final grade, elevation and soil condition ready for installation or construction of the public improvements authorized by this Agreement or to enhance or beautify the land.

Except as otherwise provided in this Subdivision Agreement, the costs of detailed design, testing, finish grading, staking, silt control, trenching, refill, recompaction and actual installation and/or construction of City approved public improvements occurring within dedicated right-of-way or within City approved easement shall not be a Land Utilization and Preparation Cost, but shall be costs of the specific public improvement therein being constructed.

H. "Maximum general obligation" of the District shall mean the amount by which the total indebtedness of the District incurred in respect to all improvements within or for the benefit of the subdivision exceeds the total of special assessments levied or to be levied in respect to all such improvements.

I. "Planned Unit Development" shall mean a development under Section 5.15 PUD-1 Planned Unit Development of the La Vista Zoning Code. The meaning of words therein shall control the meaning of the same words herein, except where the meaning herein is clearly intended to be otherwise.

J. "Plat" or "the Plat," unless a contrary intent is indicated, shall mean the final plat approved by the City Council, a copy of which is attached as Exhibit "B".

K. "Property benefited" shall mean property within the subdivision (Exhibit "B") which constitutes buildable sites, as defined in Subsection 5-B, infra.

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- L. "Burlington Northern Railroad" or "Railroad" shall mean the Chicago, Burlington & Quincy Railroad, now known as Burlington Northern & Santa Fe Railroad.
- M. "Cimarron Woods West Homeowners' Association" or "Tract A Homeowners' Association" shall be the property owners association for Tract "A" (herein sometimes referred to as "Tract A Property Owners Association") and shall mean the Nebraska nonprofit corporation formed pursuant to, or in furtherance of, the Cimarron Woods West Declaration of Covenants, etc. and consisting of all property owners of Tract "A" in the manner and for such purposes as are provided in the "Cimarron Woods West Declaration of Covenants, etc." prepared by the Developer and approved by the City, for the development of Tract "A" of the Subdivision.  
"Cimarron Woods South Homeowners' Association" or "Tract B Homeowners' Association" shall be the property owners association for Tract "B" (herein sometimes referred to as "Tract B Property Owners Association") and shall mean the Nebraska nonprofit corporation formed pursuant to, or in furtherance of, the Cimarron Woods South Declaration of Covenants, etc. and consisting of all property owners of Tract "B" in the manner and for such purposes as are provided in the "Cimarron Woods South Declaration of Covenants, etc." prepared by the Developer and approved by the City, for the development of Tract "B" of the Subdivision.
- Said Declarations shall, as among other subjects, provide for the Homeowners' Association to maintain and repair open space, buffer areas and recreational facilities and land in a manner consistent with this Agreement, and in default thereof, shall provide for the City's right to take such actions as needed to cause any deficiency or default therein to be assessed against lots within the Subdivision.
- N. "Storm water detention" shall mean a system of open, temporary detention of storm water temporarily relieving the flow through the storm sewer system or storm drainage system during heavy storm situations or as otherwise needed.
- O. "Subdivision Tract A" or "Tract A" shall mean the 186.987 acres to be developed by Torco, and described by metes and bounds as Tract "A" on the final plat.
- P. "Subdivision Tract B" or "Tract B" shall mean the 36.67 acres to be developed by Sudbeck and described by metes and bounds as Tract "B" on the final plat.
- Q. "Subdivision Buffer Zone" or "Buffer Zone" shall mean the exterior buffer areas shown per the Park & Boulevard Plan (Exhibit "E-1") hereto. "Industrial Buffer Zone" shall mean the thirty foot (30') easement along the borders of the Subdivision and have a common boundary with the industrial areas bordering the Subdivision on the west and on the south, including tree plantings, maintenance and replacement thereof along the entire length of said easement as located on the Park & Boulevard Plan (Exhibit "E-1") hereto, and a six foot (6') wood fence within the easement along the west edge of the Subdivision.

2. Authorized Public Improvements

Developer, District and City agree that the District may construct or install, or cause to be constructed or installed, and the credit of District shall be used for the construction of, only the following types of public improvements upon the property located within or adjacent to the boundaries

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of the District necessary connections of water, sewer, or drainage to existing or planned facilities as follows:

- A. Paving. Portland concrete paving of all streets dedicated per plat (Exhibit "B"), and illustrated on "Paving and Storm Sewer Plan" attached hereto as Exhibit "C-2," all said paving to be not less than seven (7) inches in depth and twenty-five (25) feet in width and, except where noted on Exhibit "C-2," to be of no wider width than twenty-five (25) feet.
- B. Sanitary Sewer (Collector System). All sanitary sewer mains, manholes, siphon and all related appurtenances constructed as more fully illustrated on "Sanitary Sewer Plan" attached hereto as Exhibit "C-1."
- C. Sanitary Outfall Sewer. No sanitary outfall sewer will be required. The Subdivision's internal sanitary sewer system will connect directly to the Omaha Interceptor Sewer (sometimes referred to as the "Applewood Sewer") which crosses the Subdivision.
- D. Storm Sewer. Storm sewer system, including storm sewers, inlets, manholes, junction boxes, flared end sections and related appurtenances constructed in the dedicated street right-of-way per plat (Exhibit "B") or in dedicated easementways, as more fully illustrated on Exhibit "C-2" hereto.
- E. Water (Internal). Water distribution mains located within dedicated street right-of-way per plat (Exhibit "B") to be installed by Metropolitan Utilities District.
- F. Water (External Supply). No District funding is authorized. (Note: External MUD water supply is in place adjacent to the Subdivision and there are no unamortized pioneer main charges to be recovered.)
- G. Underground Electrical. Underground electrical service to each of the lots in the Subdivision to be installed by Omaha Public Power District ("OPPD").
- H. Street Lighting. Street Lighting for public streets dedicated per plat (Exhibit "B") to be installed by Omaha Public Power District or other public provider as may be approved by the City Administrator. The cost, to the extent of cost of standard lighting poles used in the City, together with the cost of energizing, shall be general obligation. The Developer shall submit to City for review and approval all street lighting. Should the Developer opt for special design, Developer shall pay the difference in costs thereof from standard lighting used in the City, except as specifically provided herein. Within any street entrance median, from Harrison Street, the Developer may install decorative lighting, through Omaha Public Power District. Fifty percent (50%) of the cost of said lighting shall be paid by the developer at the time of installation and fifty percent (50%) shall be general obligation. In no case shall the total amount of general obligation debt attributed to Harrison Street entrance decorative street lighting exceed \$17,250.
- I. Sidewalks. Except to the extent authorized by Section 18-E, no credit or funds of the District shall be involved in the construction of sidewalks.
- J. Recreational Trails in Street Right-of-Way. The pro rata cost of six (6) feet of the ten (10) feet concrete recreational trail along Cimarron Woods Boulevard, Josephine

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Avenue and 99<sup>th</sup> Street. The Developer shall pay the pro rata cost of the four (4) remaining feet of such right-of-way trails and the full cost of the sidewalk on the opposite side of the street.

- K. Recreational Trails Not Within Street Right-of-Way. As to the extent provided for in Section 10 hereof.
- L. Recreational Facilities/Equipment, Etc. Not Within the Street Right-of-Way. To the extent provided for in Section 10 hereof.
- M. Civil Defense Siren. The cost of civil defense sirens required by City.
- N. Land Purchases. District's purchase of Outlots D and E from Developer, to the extent and on the terms provided for in Section 10 hereof.

The exact design, location and dimensions of and detailed plans and specifications for each of the afore-described improvements, as well as any improvements in street right-of-way or public easement funded by non-District funds, are subject to prior approval by the City in advance of award of contract for construction or acquisition. Except as herein expressly provided, the credit of the District shall not be used for the construction or payment of any improvement, unless first expressly approved in writing by City.

### 3. Unauthorized Expenditures of District Funds

Developer and District agree that, except to the extent specifically authorized by Section 2 hereof, supra, the credit or funds of the District shall not, without prior approval of City's City Council, be used for the planning, construction, acquisition or financing of any project, facility, utility installation or connection, or connection or use related fee, or other improvement. By way of specification and not by way of limitation, Developer and District agree that District shall not, without prior approval of City's City Council, incur any indebtedness or otherwise involve its credit or expend any of its funds in the planning, construction, acquisition, installation or financing of:

- A. Any swimming pool, golf course, park, playground, lineal trails or other recreational land or facility, or equipping thereof or improvements thereto, except as specifically authorized in Section 10 hereof.
- B. The advancement or payment of any fee, connection fee, deposit, surcharge, demand charge or similar charge, whether or not refundable, imposed by any utility or other entity providing or contemplating providing utility-type service to the area to be developed.
- C. Any Land Utilization and Preparation Costs as defined in Subsection 1-G.
- D. Sidewalks and improved pedestrian ways, except as authorized for certain residential lot perimeter sidewalks as provided in Subsection 18-E and walking trails as authorized in Section 10 hereof.
- E. Any sodding, seeding, tree and plant plantings or other landscaping, including that contemplated on street right-of-way or public property, except as provided in Section 10 hereof.

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- F. The payment of any sewer or water connection fee, sewer use or treatment fees, or water charge for lots or properties within or without the area to be developed.
  - G. Any gas distribution system or any external gas supply line.
  - H. The purchase or acquisition of real estate or interest therein, except as authorized by Section 10 hereof or as otherwise authorized by City.
  - I. Costs of abandonment, relocation, or modification of existing utilities or transmission facilities or easements, including electrical, communication, gas or petroleum product transmission lines, pipes and facilities.
  - J. Perimeter or other fencing for or within subdivision.
  - K. Cost of open drainage and/or temporary retention of storm waters.
  - L. The cost of wetland mitigation, if any, whether on site or off site.
  - M. The cost of any traffic study.
  - N. The cost of landscaping or natural screening of private property, or except as otherwise expressly authorized by this Agreement, of public property or right-of-way.
  - O. The cost of Developer's acquisition of additional street right-of-way for the west half of 104<sup>th</sup> Street Subdivision entrance as provided for in Subsection 18-L.

4. Allocation of Cost of Improvements

Developer, District and City agree that the cost of public improvements (except those constructed with private funds or to be paid by private funds) constructed by the District within the subdivision (Exhibit "B") as authorized by Section 2, supra, shall be defrayed as follows:

- A. Paving. One hundred percent (100%) of the cost of all paving of streets shown per plat (Exhibit "B") shall be paid by the special assessment against the property benefited within the area to be developed, except: (1) the cost of that portion of each of the intersections which do not abut property, as more specifically shown on the typical intersection diagrams attached hereto as Exhibit "F" may be treated as a general obligation of the District; (2) the cost of extra width paving (that exceeding 25' in width) within the Subdivision may be general obligation, but in no event shall any portion of paving less than 25' in width be treated as general obligation; and (3) fifty percent (50%) of the cost of street paving only adjacent to Outlots A and C may be treated as general obligation of the District.
- B. Storm Sewer. One hundred percent (100%) of the cost of all storm sewers within the Subdivision, or functioning as a transporter of storm water to points outside the Subdivision, including manholes, inlets and other appurtenances, for storm sewers twenty-four (24") inches in size or less shall be specially assessed. Any public storm sewer located in a public street within the subdivision, the size of which is in excess of twenty-four (24") inches in size, may be generally obligated for the difference in material and installation cost between a twenty-four (24") inch pipe and the actual size

required, which difference shall be general obligation. No portion of manholes, inlets or appurtenances may be general obligation.

- C. Sanitary Sewer (Collector System). One hundred percent (100%) of the cost of all sanitary sewers constructed within or serving the area to be developed, including manholes and other appurtenances, shall be paid by special assessment against property benefited within the subdivision. Except as may otherwise be provided in Subsection 4-D, infra, pertaining to outfall sewer, no portion of the cost of the sanitary sewer system shall be borne by general obligation of the District.
- D. Sanitary Outfall Sewer. The Subdivision's sanitary sewer system connects into the City of Omaha's Applewood sewer which transverses the Subdivision. The cost of connecting the District's collection system to the City's system shall be a cost of the collection system and shall be specially assessed. The Subdivision will not require connection, direct or indirect, to the Sarpy Industrial Sewer.
- E. Water - Internal. One hundred percent (100%) of the cost of the water distribution system serving the area to be developed shall be specially assessed against property benefited within the area to be developed, including the cost of such contract charges as are authorized to be paid to Metropolitan Utilities District by the provision of Subsection 2-E, supra. No portion of the cost of the water distribution system shall be borne by general obligation of the District.
- F. Water - External Supply. The cost, if any, of any Metropolitan Utilities District "contribution", "pioneer main charge" or other charge applicable to the Development Tract shall be specially assessed.
- G. Underground Electrical. One hundred percent (100%) of the cost of the underground electrical service serving the area to be developed including contract charges authorized to be paid by District to OPPD by the provisions of Subsection 2-G, supra, together with such other charges as fall within the definition of "cost" as defined in Subsection 1-C, supra, and are allocable to such contract charges, shall be specially assessed against property within the area to be developed. Refunds from OPPD, if any, on account thereof, shall be credited in the manner provided in Subsection 8-F.
- H. Street Lighting. The cost of the monthly contract charges paid to Omaha Public Power District or other public provider as approved by the City Administrator for furnishing lighting of public streets shall be paid from the general operating funds of the District. The cost attributable to upgrades of street lighting pole and fixtures beyond the standard street lighting fixtures in the City shall be at the expense of the Developer/Homeowners' Association except as specifically provided for under Section 2(H).
- I. Perimeter Sidewalks. To the extent authorized by Section 18-E, District funds or credit may be used for perimeter sidewalks.
- J. Walking Trails Within Street Right-of-Way. To the extent specifically authorized by Section 10 and subject to the proration of cost via special assessment as therein set forth, the cost (or proration of cost) of the initial installation of walking trails within street right-of-way of boulevard style streets within Tract "A" may be financed by the District

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and may be subject to general obligation of the District. The plans and costs for such improvement are subject to prior City Council approval.

- K. Recreational Open Space. District's funds may be used for the purchase of recreational land to the extent specifically authorized by Section 10, the cost of which shall be general obligation to the extent provided for in said Section 10. The proposed date of installation, the specific proposed equipment and the costs thereof must be approved by the City Council.
- L. Recreational Facilities and Equipment. District funds may be used for the capital expenditure and maintenance of recreational facilities and equipment to the extent authorized in Section 10 hereof.
- M. Civil Defense Siren. The cost of civil defense sirens required by City may be general obligation.
- N. Sidewalks, Landscaping, Etc. The cost of sidewalks and other improvements for which use of public money is not herein specifically authorized shall be paid by the Developer without use of District's credit or funds.
- O. Traffic Signals. To the extent authorized by Section 19-Q hereof "Traffic Control Signals", the District may expend and generally obligate funds of the District.
- P. Repair and Reconstruction. Repair or reconstruction of a public improvement shall not be a general obligation of the District nor shall construction fund warrants be issued therefor without the prior written approval of the City Administrator in consultation with the City Engineer. When approved, the cost of repair or reconstruction of improvements for which the original contractor and/or its bonding company has no further obligation may be borne by general obligation of the District. Maintenance of public improvements may be paid from District's general fund to the extent not herein provided to be an expense to be paid by the Developer or the Subdivision's Homeowners' Association.

EXCEPT TO THE EXTENT SPECIFICALLY PROVIDED FOR IN THIS AGREEMENT TO THE CONTRARY, ANY AND ALL COSTS OR OBLIGATIONS WHICH THE DISTRICT SHALL INCUR IN CONNECTION WITH ANY IMPROVEMENT, FACILITY, CONSTRUCTION, UTILITY INSTALLATION, CONNECTION FEE OR FINANCING SHALL BE ONE HUNDRED PERCENT (100%) SPECIALLY ASSESSED. THE MAXIMUM GENERAL OBLIGATION DEBT HEREIN PROVIDED FOR SHALL NOT BE EXCEEDED.

5. Special Assessments

Developer and District covenant and agree:

- A. General Requirements. District shall levy special assessments in the amount required by this Agreement and in the manner provided by law and in accordance with the provisions of this Agreement. Unless the City agrees otherwise, the Developer will levy all special assessments attributable to a particular type of improvement at one time and no buildable lot shall be exempted from such levy. Levy of special assessments shall be on a front foot basis unless City agrees otherwise. Levies attributable to particular improvements shall in no way preclude subsequent levies for enhancements or

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additional improvements, whether or not of the same kind. Unless otherwise directed by the City, the District shall cause all sums collected on special assessments to be immediately applied in payment of principal and interest on outstanding warrants of the District.

- B. Levy of Special Assessments. Except as may otherwise be agreed to by City, all said District's levy of special assessments shall be made in such a manner so as to assure that the entire burden of the levy is borne on an equitable basis by lots or parcels or portions of lots or parcels which are truly buildable sites. If any lots, parcel or part thereof, or other are within the area to be developed is not a buildable site by reason of insufficient size or dimensions or by reason of its having been acquired for any public purpose, or by reason of easement of similar burdens or by reason of floodway or flood plain restrictions, or for any other reason, then no portion of the total amount to be levied for special assessments shall be levied against said unbuildable lot, parcel, or other area, and the amount that otherwise would have been levied against same shall be spread and levied against the lots or parts thereof, within the area to be developed which are buildable sites. The City's Engineer will determine which sites, if any, are not buildable sites. Attached hereto as Exhibit "G" is Developer's determination of the lots within the subdivision which Developer considers to be buildable lots. Except as City may otherwise authorize, costs shall be allocated and special assessments shall be levied on a front footage basis.
- C. Notice to City. At least forty-five (45) days prior to setting the date of any hearing of the Board of Trustees of the District to be held for the purpose of equalizing or levying special assessments against property benefited by any improvements constructed by District, submit to City in writing the following:
- (1) A detailed statement of the costs and schedule of the proposed special assessments and the amount, if any, of proposed general obligation costs of any improvement or acquisition;
  - (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 each contractor regarding said improvement;
    - (b) an itemization of all other costs of the project, including, but not limited to, all engineering fees, attorneys' fees, testing expenses, publication costs, financing costs, including, but not limited to, interest on all warrants to date of levy or funding by issuance of bonds if later, estimated fiscal agent's warrant fees and bond fees and other fees incurred in connection with construction and/or financing of the improvements;
    - (c) an itemization of all construction related costs of the District not itemized in (a) or (b) above;

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- (d) a separate description and itemization of the costs proposed not to be levied, i.e. to be "general obligation" of the District by type of improvement and location (see Subsection 11-G);
- (e) the District engineer(s) certification required by Subsection 11-G that none of the labor and material for which District funds or credit are utilized are Land Utilization and Preparation Costs within the meaning of Subsection 1-G hereof.

(4) Notice of the date, time and place of such meeting.

- D. Time of Levy. District will not unreasonably delay acceptance of an improvement and that District shall levy special assessments, and in any event, within six (6) months after installation of internal water for that tract of the Subdivision.
- E. Interest Rate on Levy. In setting the rate of interest for special assessments levied by the District, the District shall set same at the maximum authorized by law for special assessments.
- F. City Predetermination of Compliance. District shall not proceed with any levy of special assessments except in accordance with the terms hereof and only after City has determined the proposed special assessments to be in accordance herewith, which determination City agrees it will conclude and communicate to District at the latter of the following dates: (1) forty-five (45) days from City's receipt of the notice to be given pursuant to Section 5-C above, or (2) thirty (30) days following City's receipt of all additional information it may request for purposes of determining such compliance.
- G. Administrative Plats. Should any of the platted lots per Exhibit "B" be split, consolidated or boundary adjusted, all special assessments levied on the lot will be paid at the time of such administrative plat, unless the City otherwise agrees.
- H. Estimation of Bond Fees to be Specially Assessed. If special assessments are timely levied and unless circumstances at the time of levy shall make it apparent to the contrary, it shall be assumed in estimating the amount of specially assessed debt (non-general obligation debt) to be financed by bonds and resulting bond fees to be incurred in respect to issuance of bonds on account thereof, that by time of bond issuance, fifty percent (50%) of the total amount specially assessed shall have been collected and shall have been used to retire warrants and that the specially assessed portion (non-general obligation portion) of the debt of the District outstanding at date of bond issuance will have been reduced by a similar dollar amount.

6. Maximum General Obligation Debt

Developer and District warrant, covenant and agree that, notwithstanding any other provision of this Agreement to the contrary, the total amount of general obligation debt of the District arising from the District's activities and expenditures in connection with all phases of the construction of the improvements authorized herein shall not in the aggregate, in any event, exceed the total of the amount of general obligation authorized by Subsections 4-A, 4-B, 4-H, 4-I, 4-J, 4-K, 4-L, 4-M, 4-N, 4-O, 4-P, 18-E and Section 10 hereof, excluding any amounts not allocable to District under the Infrastructure Allocation Agreement. To the extent such general obligation of the District would have otherwise exceeded such total at date of levy of special assessments, the general obligation of the

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District shall be reduced and the amount specially assessed for paving, storm sewer and sanitary sewer improvements shall be increased.

7. Formula to be Applied by Both District and City

The method herein provided for computing special assessment and general obligation for the improvements herein authorized shall be binding on both the District and the City. City covenants and agrees that should City annex the area to be developed, or any part thereof, prior to District's levy of special assessments for the improvements authorized in Section 2 hereof, supra, and thereby succeed to said District's power to levy special assessments, that City will levy same in accordance with Sections 4 and 5 supra. All parties covenant and agree that nothing in this Agreement shall be construed so as to oblige the City to annex the Development Tract or any part thereof.

8. General Covenants of Developer and District

Developer and District covenant, warrant and agree that:

- A. Compliance with City Construction Requirements. District will abide by and incorporate into all contracts for improvements the provisions required by the regulations and standards of the City pertaining to construction of public improvements in subdivisions and within street right-of-way and testing procedures therefor.
- B. Preconstruction Contracts. District will present to the City, prior to the commencement of construction of any improvement, binding contracts between the District and contractors providing for the installation of improvements authorized herein, and a binding agreement between the District and its fiscal agent providing for the placement of warrants and/or bonds of the District to finance the cost of the improvements authorized herein, and said fiscal agent's approval as to the terms of this subdivision agreement.
- C. Easements. Prior to commencement of construction of improvements, District will obtain and file of record permanent easements for all sanitary and storm sewer lines, utilities and any other improvements authorized by Section 2 hereof, supra, which are not situated on dedicated street right-of-way. Said easements shall be granted by Developer at no cost to District or City and shall be in form satisfactory to City's Attorney and City's Engineer.
- D. Entrance Signage and Median Landscaping and Fencing. Installation and maintenance of entrance signs or related fixtures and any median landscaping and related fixtures and any subdivision perimeter fencing shall be paid for by the Developer or the subdivision's homeowners' association. Plans for such proposed improvements that are to be located in public right-of-way on public property and a proposed maintenance agreement for the improvements with the homeowners' association must be submitted to the City for review and approval prior to the installation of improvements.
- E. Utility Refunds/Rebates. That to the extent any costs of the external water supply main described in Section 2-F shall not have been specially assessed, all refunds, rebates and allowances of every kind and description received from the water utility (MUD) in respect to further water connections to such water main and all other refunds and rebates given in respect to any of the improvements financed by the District shall

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belong to the District and not the Developer, and Developer hereby assigns to District any right Developer may have thereto or therein.

- F. Underground Electrical Refund/Rebate. All contract charges for underground power authorized to be paid by District to OPPD, including both the basic charges and refundable charges, together with all other charges and costs incident thereto, 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 OPPD to District or its successors shall be credited as follows:
- (1) If the 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 services to be levied against said lot.
  - (2) If the refund is after the date of the 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 the 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 or their assignees.
- G. District Funding re Annexation Issues. The District shall not sue or fund any lawsuit to prevent any annexation of property within the District by the City, except that in the event the City annexes only a part of the District, the District does not waive its right to contest a proper division of assets and liabilities.
- H. Natural Gas Source. Developer and District may choose a qualified supplier of natural gas, whether public or private, to install natural gas distribution mains and other service lines within the Subdivision; provided, however, that the qualified natural gas supplier chosen shall agree (a) to facilitate the orderly development of the residential area; (b) to facilitate the general health, safety and welfare of residents located in the Subdivision; (c) to avoid duplication of facilities; and (d) as a precondition to installing natural gas facilities, upon annexation of the Subdivision by the City, to obtain a natural gas franchise from the City that includes jurisdiction by the City over the rates, terms and conditions of natural gas service to the same extent the City regulates other qualified natural gas suppliers franchised by the City.
- I. Administration. As regards this Agreement and its implementation:
- (1) No separate administrative entity nor joint venture, among the parties, is deemed created by virtue of this Subdivision Agreement.
  - (2) The administration of this Agreement shall be through the offices of the undersigned officers for their respective entities.
- J. Remedies. That in addition to whatever rights of enforcement of the terms hereof are herein granted to any party, each party may avail itself of all other remedies it may have to enforce the terms hereof at law or equity. By way of specification and not by way of limitation, each of the parties expressly reserve to and right to specifically

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enforce full compliance of the terms and conditions of this agreement by mandatory or prohibitory injunction.

- K. Covenants, Etc. The covenants and agreements of Developer and the District set forth in this Agreement are joint and several and shall constitute covenants running with the land and which are subject to City approval and cannot be changed without City approval.
- L. Non-Discrimination. In the performance of this contract, neither the District nor the Developer shall discriminate against any persons or third parties on account of race, national origin, sex, age, disability, political or religious affiliations in violation of federal and state laws or local ordinances.

9. Partial Annexations

The parties mutually agree that in the event City shall annex a part of the area shown on Exhibit "B" hereto and said annexation shall not include the then entire territory of the District, then a division of assets and liabilities of the District in connection with such partial annexation of the District shall be made as may be agreed by City and District, and if they are unable to agree, then in the manner provided in Section 31-766 of the Nebraska Revised Statutes, as amended and in effect at the time. All parties agree that the City shall be under no obligation to annex the area to be developed of any part thereof.

10. Recreational and Boulevard Improvements

Developer and District shall construct and install the following:

- A. Recreational Trails Within Street Right-of-Way. As shown on the final plat (Exhibit "B") and the Park & Boulevard Plan (Exhibit "E-1" and "E-3") there is to be constructed a ten (10) foot wide combination sidewalk and recreational trail within the street right-of-way of Cimarron Woods Drive, Josephine Avenue and 99<sup>th</sup> Street (herein "Boulevard Style Street"). The District shall pay sixty percent (60%) of the cost and the Developer shall pay forty percent (40%) of the cost of such trail, which Developer's forty percent (40%) of cost may be defrayed by special assessment against buildable property in the Subdivision. A typical section of a Boulevard Style Street and landscape easement is attached as Exhibit "E-2" hereto. All trees and other plantings within the landscape easement and medians of the Boulevard Style Streets required by the Plant Schedule on Exhibits "E-1" and "E-3" hereto shall be installed at Developer cost, without use of District's funds or credit.

Building Orientation. For streets shown in the Park & Boulevard Plan to be Boulevard Style Streets where there is an abutting side street that affords an opportunity for a driveway, the front of the home shall face the Boulevard Style Street where architecturally possible and the driveway shall enter from and the garage shall face the abutting side street. On corner lots abutting two Boulevard Style Streets, the homes shall face Cimarron Woods Drive where architecturally possible and the driveway/garage orientation shall be to and from the other Boulevard Style Street. These recommendations will be included with the "Declaration of Covenants, Conditions, Restrictions and Easements for Cimarron Woods Subdivision."

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Maintenance. Perpetual maintenance of trails and landscaping within the street right-of-way shall be a developer expense and shall be assumed by the Homeowners' Association.

- B. Recreational Trails and Facilities Not Within Street Right-of-Way. The District shall construct the following as depicted and described on the Park & Boulevard Plan (Exhibit "E-1"):

- (1) Within Tract "A":

Proposed ten (10) foot wide concrete recreational trail through Outlot C and across the northern part of Outlot D and through Outlot E, together with pedestrian bridges, with removable bollards, for said trail.

Proposed splash park, restroom facility, multi-use play court, playground with drinking fountain, two (2) twenty (20) foot picnic shelters with picnic tables and grills, park benches and a lighted parking lot, as tentatively shown on the Park & Boulevard Plan (Exhibit "E-1"). The trail extension to the proposed apartment complex on Lot 380 and secondary park access and supplementary parking area shall not be built unless and until City determines the need therefor and feasibility thereof.

- (2) Within Tract "B":

Proposed ten (10) foot wide concrete recreational trail along Outlot F connecting through drainage easements to 101<sup>st</sup> Street and also connecting to 96<sup>th</sup> Street, together with connection to proposed railroad underpass.

- (3) Maintenance. Maintenance of recreational trails and facilities within Outlot C (excluding boulevard trail abutting on the east) and Outlots D and E shall be performed by the District at District expense.

- (4) Phasing. Park improvements shall be completed in two phases as follows:

- (a) Construction documents and specifications for Phase 1 will be presented to the Mayor and City Council for approval within two (2) years of the date of this subdivision agreement unless otherwise agreed to by the City. Phase 1 shall consist of the following elements recommended for approval by the Park and Recreation Advisory Committee and Planning Commission (estimated construction costs \$457,000):

- Trail system
- Pedestrian bridge
- Playground
- Two shelters
- Parking Lot
- Seeding
- Landscaping
- Miscellaneous benches

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- (b) Construction documents and specifications for Phase 2 will be presented to the Mayor and City Council for approval within five (5) years of the date of this subdivision agreement unless otherwise agreed to by the City. Phase 2 shall consist of the remaining elements identified on the Park and Boulevard Plan (Exhibit "E-1"), including a splash park, public restrooms, ball field backstops, multi-use play area (basketball/tennis), and irrigation system for turf play areas.

Each of the recreational trails, facilities and items of equipment are subject to final approval of City as to size, location, design and funding thereof.

- C. Grading/Required Elevation. The Developer shall, at its cost, cause all recreational facility sites, including the future open space indicated, to be graded, and filled and compacted to a such higher elevation as needed to avoid an inundation or flooding by ground water flowing over Outlot E, assuming a storm water flow over Outlot E that will exist after complete buildout of the Subdivision and areas external to the Subdivision from which storm water flows through Outlot E using the standard of a 100 year flood. Developer's engineer shall submit for review and approval by the City's engineers' calculations and final grading plans for these purposes and the Grading and Erosion Control Plan (Exhibit "D" hereto) shall be modified accordingly. Such grading shall be completed prior to District's purchase of any portion of Outlots D or E.

- D. Trees and Plantings/Maintenance/Replacement. All trees and plantings required in any median of the Boulevard Style Streets and within the Landscape Easements within the Subdivision as provided for in the Park & Boulevard Plans (Exhibit "E-1" and "E-3"), or as may otherwise be approved by City, shall up to the sizes shown in the "Plant Schedule" of the Park & Boulevard Plan (hereafter the "Plant Schedule") shall be planted/installed/maintained and replaced if needed by Developer at Developer's expense and by the Homeowners' Association as Developer's successor in obligation. Neither the credit nor the funds of the District shall be involved therein.

Should the City direct plantings of a larger size than shown in the Plant Schedule, the cost of oversizing (being the difference between total cost, including warranty, of the larger size plantings and that of the size designated in the Plant Schedule) then in such event the cost of oversizing shall be paid by the District, and may be general obligation of the District.

- E. Tree Plantings, Etc. in Outlots C, D and E. District funds and credit may be used to pay the cost of tree plantings in Outlots C, D and E, and the maintenance thereof, said maintenance to be paid from the general fund of the District.
- F. Specific Authority to Purchase Land for Public Purposes within Tract A. As regards the acquisition of land by the District, the parties agree:

- (1) Authorization for Acquisition. The City does hereby authorize and approve District's acquisition from Developer of approximately 37.504 acres of land for green space and other public purpose. The tracts comprising such authorized acquisition are identified on Exhibit "J".

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- (2) Authorization for Payment. The 37.504 acres consist of several parcels of land which shall be transferred to the District by Developer. The consideration for the Developer's agreement to transfer said 37.504 acres to the District and the District's agreement to acquire a specified number of acres at Developer's average tract per acre cost consists of the following, less than all of which parties agree constitute adequate consideration: (1) the parties' mutual determination that certain areas of the subdivision are unbuildable or marginal for building purposes; (2) some area is in satisfaction of recreational set aside requirements applicable to the Subdivision or are needed to meet open space requirements for the PUD-1 zoning utilized by the Developer; (3) the resulting enhancement in value to the Developer and its Subdivision and in the sale of residential lots within the Subdivision; (4) the relieving Developer of certain maintenance and upkeep of unbuildable or unusable land; and (5) the parties' mutual covenants and agreements herein pertaining to the Subdivision.
- (3) Categories of Land. The agreed categories of land within 37.504 acres and acreages of land within each are:

Category of Land	No. of Acres	Payment/Consideration
Unbuildable land by reason of being in drainageway, etc.	10.262	District shall acquire but shall make no payment for
Land needed to satisfy recreational set aside requirements	9.830	No permit – Acreage needed to satisfy set aside requirement
Net cash payment	17.412*	\$696,480*

\*Estimated: Price for 17.412 acres will be Developer's per acre land purchase cost not to exceed \$40,000.00 per acre.

- (4) Land Description. A detailed breakdown of land to be acquired by District from the Developer is shown on Exhibit "J" attached hereto and made a part hereof.
- (5) Conveyance of Lands shall comply with the provisions of Section 21B hereof.
- (6) Security for Acquisition of Railroad Underpass Permit. \$50,000.00 of the purchase price shall be withheld and escrowed with the Title Company until the Developer and/or District have obtained and delivered to the City the Railroad Right-of-Way Underpass Permit required by Section 18N(1) upon City's acknowledgment to the Title Company that City has received the permit, the escrowed funds shall be first used to reimburse the City for any costs that it may incur in obtaining the required permit, after which any remaining balance shall be disbursed to the Developer.

#### 11. Construction Standards and Procedures

District and Developer further agree that, as to all improvements constructed by or on behalf of the District or Developer or under their control or direction, that:

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- A. All improvements will be constructed in strict accordance with plans and specifications and locations approved in writing by City's Engineer and in strict accordance with the City's policies and minimum standards and requirements of construction and testing procedures therefor, and directions of City Engineer, and that upon completion of construction thereof, District shall furnish to City a certificate from its consulting engineer so certifying.
  - B. District shall cause appropriate testing of materials and work finished in respect to the construction of improvements and shall furnish City's engineers with copies of test results. City's engineers may order additional paving core tests, sewer televising or other tests, the cost of which shall be paid by District to the party performing the testing procedures, which additional testing costs shall also be a cost of the improvement. Neither the Developer nor the District nor any other party shall be entitled to rely upon any inspections made by the City for any purpose whatsoever. The sole responsibility for proper inspection and certification as to completion remains with the District and its engineers.
  - C. District shall cause "As-Built plans", in reproducible form, and specifications for all such improvements that District shall have heretofore or hereafter constructed within the area to be developed to be furnished to City, in triplicate, promptly and without cost to the City. All such plans shall be submitted on reproducible mylars, except where the City agrees otherwise. The engineering costs attributable to the production of said "Construction Record Drawings" shall be an engineering cost within the meaning of Subsection 1-C, supra. District shall, prior to the District's advertising for bids for any improvement within the area to be developed, require District's Engineers to file with the City said Engineers' separate written assurance and agreement that said "Construction Record Drawings" will be prepared and filed with the City upon the completion of each improvement.
  - D. All such improvements shall comply with all applicable federal and state laws and regulations in general and with all applicable ordinances and regulations of the City in reference to construction use, operation and maintenance.
  - E. In the event that City's Engineer determine that there is anything in the construction, maintenance or operation of any such improvements which will, in the opinion of City's Engineers, be detrimental to any other improvement or utility constructed or to be constructed in the same street right-of-way or easementway, District will, on notice thereof, promptly cause its engineers to jointly review and evaluate the problem with City's engineer and formulate a plan for corrective action which shall be implemented by District at District's cost.
  - F. District shall require each contractor to furnish a performance and maintenance bond, with District and City as joint and several obligees thereon, which bond shall be satisfactory to the City as to surety, form and terms.
  - G. District shall require its engineer(s) to certify that all labor and material for which District funds or credit are utilized are not Land Utilization and Preparation Costs within the meaning of Subsection 1-G hereof. The District engineer(s) shall prepare and execute the necessary certification and issue same to the District, the Developer and the City.

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12. Administrative Fee

Developer and District agree that City will be paid an amount equal to two percent (2%) of the actual construction cost of all improvements constructed within or serving the Subdivision, including electrical and water distribution systems constructed pursuant to contracts between the District and Omaha Public Power District or Metropolitan Utilities District, as well as all other improvements authorized under Section 2, supra, as reimbursement to City for engineering, legal and administrative expenses incurred by City in connection with administration of this Agreement. An estimated payment shall be made on the basis of two percent (2%) of the construction cost estimate for the various improvements computed by the Engineer and shall be paid to the City at the time the City approves the plans and specifications of the improvements. At time of District's acceptance of the work, the actual fee shall be determined on the basis of two percent (2%) of final construction cost and any variance between the estimated fee payment and the actual fee shall be adjusted and paid by or refunded to the appropriate party, whichever the case may be.

Said fees shall be a cost of the improvements within the meaning of Subsection 1-C, supra, and shall be prorated amount improvements in the same ratio that the entire cost of each improvement bears to the entire cost of all improvements constructed by or contracted for the District. The City waives its administrative fee in connection with District's land acquisitions herein authorized (Exhibit "J").

13. Sidewalks

Developer shall construct or cause to be constructed sidewalks along all streets within and bordering the Subdivision as follows:

- A. Sidewalks Within the Subdivision. Sidewalks along both sides of all public streets within the area to be developed shall be constructed by the Subdivider without use of District funds, except as in this Section otherwise specifically authorized according to the following schedule (with the earliest applicable date to determine timing of installation):
- (1) The sidewalk equivalent within the ten (10) foot walking trails within Tract "A" specified street right-of-way will be constructed at the same time as the trail and as a part of the trail.
  - (2) Perimeter sidewalk along 96<sup>th</sup> Street shall be graded and installed in conjunction with or before the opening of Tract "B" or Tract "A" of the Subdivision to the sale of Lots, whichever shall occur earlier in point of time (see subsection 18-E).
  - (3) For completed homes, sidewalks shall be constructed as soon as weather permits.
  - (4) Sidewalks shall be constructed immediately on abutting vacant lots on either side of any residential block or cul-de-sac (i.e., circle) as soon as the lots comprising seventy-five percent (75%) of the abutting footage on such side have been built upon.
  - (5) In any event, all sidewalks shall be constructed upon both sides of any public streets within five (5) years of the recording of the subdivision plat.

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Except as otherwise specified herein, in the case of certain perimeter sidewalks in Section 18-E, sidewalks within or serving the Subdivision shall be at Developer expense and the credit of the District shall not be used in the construction thereof.

B. Recreational Walking Trails. See Section 10, supra.

14. Maintenance of Improvements

The District shall maintain and keep in good repair all improvements authorized to be constructed within the boundaries of the District pursuant to Section 2, supra. Prior to expending District credit or funds on any major repairs, District shall first make a determination that the project would not be covered by the performance bond and/or any separate maintenance bond executed by the contractor involved in the original construction of said improvement. Repairs in respect to which the District's share of the cost is reasonably estimated to be more than Five Thousand Dollars (\$5,000) shall be subject to prior approval of City.

15. Sewer Connections

The parties mutually agree as follows:

- A. Term of Connection. Subject to the conditions and provisions hereinafter specified, the City hereby grants permission to the District to connect its sewer system to the sewer system of the City for a period not to exceed twenty (20) years, in such manner and at such place or places designated on plans submitted by the District and approved by the City.
- B. City Ownership of Outfalls. Upon the completion of any Sanitary Outfall Sewer built by the District, the City shall be granted and City shall accept control and operation of the facility. The District shall convey by proper legal instrument all its rights, easements, title, and interest in such Sanitary Outfall Sewer to the City. The form of acquisition shall be upon approved City forms.
- C. Connection Permit. The City shall have exclusive control over connections to its sewer system whether inside or outside the District's boundaries, and the District shall not, without the prior written approval of the City, permit any sewer lines or sewers outside the subdivision to be connected to the sewer or sewer lines within or without the District. The District shall not collect connection charges for any sewer connections.
- D. Sewage. At all times all sewage and discharge from and through said District into the City sewer system shall be in conformity with the ordinances, regulations and conditions applicable to sewers and sewage within the City as now existing and as from time to time may be amended.
- E. Connection Permit and Fees. Before any connection from any premises to the sewer system of the District may be made, a permit shall be obtained for said premises and its connection from the proper department of the City, which permit shall be obtainable on the same terms, conditions, and requirements of the City applicable from time to time to permit property outside the City to connect to the sewer system of the City; it being expressly understood that the City reserves the right to collect all connection

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charges and fees as required by City ordinances or rules now or hereafter in force; all such connections shall comply with minimum standards prescribed by the City.

- F. City Right of Disconnection. Notwithstanding any other provisions of this Agreement, City retains the right to disconnect the sewer of any sewer user within the area to be developed which is discharging into the sewer system in violation of any applicable ordinance, statute, rule, or regulation.
- G. Compliance With City Regulations, Etc. The District and Developer expressly agree that they are and shall be:
- (1) Bound by and to any provisions of any ordinances, rules and regulations hereafter made and adopted by the City of La Vista applicable to sanitary and improvement districts whose sewers connect directly or indirectly with or into sewers or sewage systems of the City of La Vista; and
  - (2) Bound by any terms and provisions which by ordinance, resolution, or rule of the City of La Vista shall hereafter adopt or provide as being applicable to or required in contracts with sanitary and improvement districts or in order to permit or continue the discharge of any sewage from a sanitary and improvement district to flow into or through any part of the sewer or sewage system of the City of La Vista or sewer within its zoning or health jurisdiction.
- H. Easements to City. Developer and District shall, and by these presents do, grant unto City the following:
- (1) A perpetual easement and license to connect to and transmit sewage through the sewer system of District for transportation of sewage as City shall determine appropriate, for which connection or transportation City shall not be required to pay any connection fee or connection charge to District.
  - (2) A perpetual easement and license to City, its employees, representatives and agents, to enter upon and into the property, streets, roads and public ways and easements of District for the purpose of surveying, excavating, constructing, reconstructing, replacing, relocating, inspecting, maintaining, repairing, cleaning out, or otherwise improving the sewer system of the District.
- I. Separate Sewer Agreement. The use, operation and other matters pertaining to sanitary sewers and outfall sewer to be constructed pursuant to this Subdivision Agreement are governed by a separate "Sewer Agreement" entered into between the City and the District, and District, Developer and City agree to be bound by the terms of such Agreement. District and Developer do represent that the representations therein made are truthful and the agreements therein made will be faithfully performed by District and Developer.

16. Sewer Connection Fees

- A. La Vista Special Sewer/Drainage Fee ("La Vista Fee"). The City of La Vista imposes a special sewer/drainage fee ("La Vista Fee") which is currently \$947 per single family lot. The estimated amount of this fee at current rates is \$477,288.00 for the Development Tract, computed as follows:

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Tract "A":

379 single family and townhome lots @ \$947 per lot	\$358,913.00
Lot 380 - Undetermined	_____
Outlots A through E (unbuildable/exempt)	_____ -0-
Total for Tract "A" (exclusive of Lot 380)	<u>\$358,913.00</u>

Tract "B":

125 single family lots @ \$947 per lot	\$118,375.00
Outlots F and G (unbuildable/exempt)	_____ -0-
Total for Tract "B"	<u>\$118,375.00</u>

Combined total for both Tract "A" and Tract "B" at current rates (exclusive of Lot 380 multi-family)	<u>\$477,288.00</u>
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- B. Time of Collection/Adjustment of Fee. The connection fees charged in respect to any lot at the time it becomes due shall be adjusted to reflect any and all increases in connection fee rates occurring subsequent to this Agreement and prior to the time of due date of the fee. If any lots within the Subdivision are subject to connection fees imposed by Sarpy County by reason of use of the Sarpy Industrial Sewer "Sarpy Fee", the amount of the Sarpy Fee shall be collected by the City on behalf of Sarpy County and receipt for payment for each fee issued by City.
- C. When Due. Sewer connection fees shall be collected on a per lot basis rather than on the basis of a one-time payment by the District. Fees shall become due and owing and shall be paid in full in respect to each lot or parcel upon application for a building permit or sewer connection permit for the lot. If a property is connected without benefit of the proper City permit, it shall be subject to disconnection at the cost of the owner and/or person causing such connection shall be subject to applicable penalties. In no event shall a property be served by the sewer system unless all fees and charges are paid in full.
- E. Additional Plats. In the event Developer shall plat or replat additional lots within the Development Tract, this Agreement shall be amended by the parties to provide payment of the then current fee for the additional lots, any additional fee to be paid at time of plat approval(s) and prior to issuance of any building or sewer permits by City in such additional platted or replatted area.
- F. City Sewer Tap, Inspection and Use Fees to be Paid. The City may collect, within the Development Tract, the City's sewer tap and inspection and permit fees, and its sewer use fees as now or hereafter existing. Such fees shall be in addition to the payments provided for in this Section 16.

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- G. Issue of Sewer Permit. No sewer permit will be issued by the City for any improvement or construction on any lot or parcel in the Subdivision until all sewer connection fees for such lot are paid to the City.

17. District Mill Levy.

The District and Developer agree:

- A. Annual Levy. District shall annually levy a minimum ad valorem property tax levy of no less than \$0.88 (88¢) per \$100.00 of taxable valuation for tax collection years through the year that District is capable of and pays all warrants on a cash basis or until they are funded by bonds. For the two ad valorem years 2004-2005 and 2005-2006 up to the amount of the District's full levy may be allocated to the District's general fund with whatever portion not so allocated to go to the District's bond fund. Commencing with the levy for tax year 2006-2007, unless otherwise agreed to by City, at least \$0.45 (45¢) per \$100.00 valuation of such levy shall be for debt retirement. Thereafter, District shall levy minimum debt retirement levies and general fund levies as hereinafter provided.
- B. After All Warrants are Paid. Commencing in the year following the year in which District funds (retires) its outstanding warrants through issuance of bonds, the District shall levy a mill levy determined as follows:
- (1) Cash Flow Projection. On or about June 1 of each year following the issuance of District bonds, the District's fiscal agent will deliver to the City Treasurer, for review and approval by City, a cash flow projection by year for a fifteen (15) year period ("cash flow projection"). 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 debt service fund. The projected annual debt service payments shall be based on a twenty (20) year or shorter bond principal payback, with not less than fifty percent (50%) of principal payback to occur within the first ten (10) years from date of issue, with payment of principal and interest to begin no later than one (1) year after actual bond issue date. District's fiscal agent shall, not less often than annually, cause such cash flow projection to be updated and filed with the City.
  - (2) Debt Retirement Levy. Commencing with District's levy made for the year following District's funding of all of its warrant indebtedness, the District's Board of Trustees agrees that, in addition to its general fund levy, it will levy for debt retirement purposes a levy sufficient to timely retire the existing and projected future debt obligations as revealed by the cash flow projection.
  - (3) General Fund Levy. District's Board of Trustees agrees that, commencing in the year 2003, in conjunction with and in addition to the levy for debt retirement, it shall annually levy a tax rate for its general fund purposes sufficient to pay all general operating expenses of the District, including but not limited to, street lighting, water hydrant fees, maintenance, repair and reconstruction costs required under Section 14, supra, and general administrative expenses, and to fully comply with the Nebraska Budget Act, including an amount sufficient to timely retire general fund warrants and accruing interest thereon.

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- (4) Minimum Levy. Notwithstanding any provision above to the contrary, the District's Board of Trustees agrees that until District's payment of its debt in full, the District's levy shall in no event be less than \$0.88 (88¢) per \$100.00 valuation until all of such debt is paid or converted to bonds, and thereafter the District's levy shall in no event be less than the total of the following:

- (a) A general fund levy in compliance with Subsection 17-B(3) above;
- (b) A bond levy sufficient to timely raise sufficient funds for the District to make timely payments in full of all bond principal and interest payments as they become due.

18. Additional Special Covenants and Agreements

Developer and District further covenant and agree as follows:

- A. Outfall Sewer. District's sanitary sewer system shall be connected to existing City sewer at the point identified in Section 4-D.
- B. Limited Access. Access to the Subdivision shall be limited to access points shown on Exhibit "B".
- C. Corps of Engineers' 404 Permit. Developer warrants that as of the date hereof, the Developers' Corps of Engineers 404 Permits for the Subdivision are in good standing and effect, and that no breach exists thereunder and that neither the District nor the Developer will take any action or suffer any omission that will violate or impair the privileges or use under said permits (see Exhibits "I-1" and "I-2" and Section 10).
- D. Outlot Maintenance. See Section 10.
- E. Perimeter Sidewalks – Single Family Lots Backing Onto Section Line Roads. The sidewalk along the Harrison Street side of the Subdivision is already in place. 96<sup>th</sup> Street is a section line road upon which certain single family abutting lots will have both front and rear lot street facings. District funds may be used and generally obligated to install four (4) foot wide sidewalks along the 96<sup>th</sup> Street side of Lots 409 and 410 and Lots 420 through 430, inclusive. All other sidewalk construction along 96<sup>th</sup> Street within the Subdivision shall be installed at the expense of the Developer, or its assignees, without use of District funds or credit. (See Subsection 13-A(2) supra.)
- F. Walking Trails. See Section 10.
- G. Subdivision Fencing.
  - (1) Perimeter Fencing. In Tract A, Developer may not install perimeter fencing along 96<sup>th</sup> Street and/or Harrison Street. In Tract B, Developer shall determine whether to require perimeter fencing along 96<sup>th</sup> Street. If such fencing is required or permitted, it shall be of uniform style and appearance chosen by Developer and approved by the City Administrator, and shall be a matter included in the restrictive covenants for the Subdivision, and shall be

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constructed/installed consistently along the 96<sup>th</sup> Street perimeter and at Developer expense without use of District's credit or funds.

- (2) Industrial Buffer Zones Fencing. In Tract A, Developer shall install six foot solid wood perimeter fencing that shall serve as a buffer to the existing industrial tracts on the west side of Tract A. The fencing shall be of uniform style and appearance chosen by Developer and approved by the City Administrator, and shall be a matter included in the restrictive covenants for the Subdivision, and shall be constructed/installed at Developer expense without use of District's credit or funds. (See Section 18-M re Industrial Buffer.)
- (3) Fencing on Residential Lots. Unless the City otherwise agrees, all required yards of residential lots adjacent to or directly visible from any boulevard designated in approved Park and Boulevard Plan (Exhibit "E-1") may only utilize black wrought iron or black PVC wrought iron appearing fence materials of such style and character that are not opaque and are uniform in appearance. Any waiver of this rule will require the approval of the City. All other yards on such lots and all other lots within Tract A and B may be permitted to install alternative fencing provided that all fence installation shall first be approved by the City and a permit issued for such installation, and further provided that such fence be adequately screened from any designated boulevard as indicated on Exhibit "E-3" and no chain-link fences shall be allowed unless covered with black vinyl coating.

The foregoing requirements shall be included within the "Declaration of Covenants, Conditions, Restrictions and Easements" for Cimarron Woods Subdivision.

- H. Traffic Study. Developer shall provide at its cost any professional traffic study, and revisions thereto, that the City may require.
- I. Homeowners' Association. The Developer and Cimarron Woods Homeowners' Association shall have the following financial and organizational responsibilities:
  - (1) Until the responsibilities are assumed by the Homeowners' Association, the Developer shall be responsible for the installation of subdivision signs and monuments, entrance signs, related fixtures or landscaping, and the installation of any median landscaping and related fixtures, all of which shall be paid for by the Developer. Plans for such proposed improvements that are to be located in public right-of-ways must be submitted to the City for review and approval prior to the installation of such improvements.
  - (2) The Developer, and Homeowners' Association as its successor in obligation, shall be responsible for the permanent and continuous maintenance and upkeep of all medians, street islands, Outlots F and G, all walking trails (other than walking trails on Outlots D and E), all requirements of the 404 Permit (Exhibit "I" hereto), any drainage detention facilities, subdivision signs, entrance signs, related fixtures, and including all landscaping, drainage detention facilities and recreational space and equipment. The capital cost of initial erection/placement of recreational equipment approved by the City may be paid by S.I.D. funds. See Section 10.

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- (3) The Developer shall file with the Sarpy County Register of Deeds prior to the Developer's sale of any lot within the area to be developed, covenants in form approved by City which shall provide that all owners of all lots within the area to be developed, shall be members of an incorporated property owners' association and shall be subject to the levy and payment of all charges, dues, assessments and special assessments of said incorporated property owners' association.
- (4) The Developer shall cause to be incorporated prior to the sale of any lot within the area to be developed, a permanent and continuous lot owners' association. The articles of incorporation and bylaws for such corporation shall provide that all owners of all lots within the area to be developed shall be members of such corporation and shall be subject to the levy and payment of all charges, dues, assessments and special assessments of such corporation. The articles of incorporation and bylaws for such corporation shall further provide that such corporation shall annually establish, levy and collect all charges, dues, and assessments required to pay all expenses in connection with the maintenance and upkeep of, together with all responsibilities referred to in Sections (1) and (2) above, and all common open space or areas within the area to be developed as hereinafter required, and to pay all other expenses incurred pursuant to the conduct of the business of such corporation. The articles of incorporation and bylaws for such corporation must be submitted to and approved by the City prior to execution and filing.
- (5) The Homeowners' Association corporation shall enter into a maintenance agreement with the District and the City, which obligates such corporation on a permanent and continuous basis to provide for the proper and continuous maintenance and upkeep improvements of the type described in Sections (1) and (2) above, and including all mowing, maintenance and landscaping and maintenance and repair as may be needed. Such maintenance agreement shall be incorporated in the covenants, articles of incorporation, and bylaws hereinbefore required, and shall be submitted to and approved by the City prior to execution and filing.
- (6) In the event the Developer and/or the Homeowners' Association fails or neglects to timely and fully perform the aforestated responsibilities, the City, at its option, may itself take such remedial or curative action, or cause such action to be taken, and assess the cost thereof to property owners within the subdivision.

J. Erosion Control. Developer agrees, at its expense, to establish and maintain with silt fencing barriers and such other appropriate measures to create an effective method of controlling the placement upon or a movement or flow of mud, silt, dust, construction debris and material and other matter onto or into a street right-of-way, sewers and infrastructure within the Subdivision or onto or off of lots or property within or without the Development Tract. Such control shall be effectively and continuously in effect through all of the excavation, grading, construction, development and buildout of the Subdivision up to the final time of installation of the permanent ground cover and final landscaping of lots. Before commencement of initial rough grading of the development

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tract, Developer shall present a specific plan for such erosion control in form and content satisfactory to the City Engineer. It will be the sole responsibility of the Developer to devise and implement the necessary plan to accomplish the intended objective aforesated, but City may require amendments or enhancements to such erosion control plan if in the determination of the City, the goals of the plan as aforesated have not been achieved. The City approved erosion control plan shall be incorporated into the grading contract for the development tract, which work shall be within the coverage of the Developer's performance bond.

Developer shall deposit with City a security deposits totaling \$25,000.00 to secure full compliance by Developer, its contractors and subcontractors under this Section 18-K, such deposit to be divided \$15,000 for Tract A and \$10,000 for Tract B. In the event Developer, its contractors and subcontractors should fail to maintain full compliance with the erosion plan in respect to its particular Tract, City, at its option, may take such measures as City may deem necessary to achieve such compliance and may use and expend such deposit to pay the cost of such measures taken. Should such deposit at any time become depleted prior to build out of the Subdivision, Developer shall deposit such additional funds or amounts as City shall determine necessary to restore the deposit to a balance of \$25,000.00, or to such lesser amount as City may at that time determine to be sufficient. At the conclusion of buildout, City shall return to Developer the principal amount of the deposit, less amounts, if any, City shall have expended therefrom for compliance. Said deposit shall be non-interest bearing.

- K. Traffic Control Signal. At such time as City shall determine that traffic control signalization will be necessary or appropriate, District shall install traffic signalization of a design, function and at a time designated by the City at the following locations:

99<sup>th</sup> and Harrison Street, the cost of which shall be 50% Developer cost and 50% District cost. The amount, if any, contributed by the City of Omaha or property interests on the north side of Harrison Street shall be credited in reduction of the District's and Developer's share proportionally.

The Developer agrees to pay its share by special assessment against Developer's property if the installation occurs prior to levy of special assessments against buildable property within the Subdivision, and if not so levied, then by Developer's deposit of bankable funds with the District's treasurer in the appropriate amount.

As regards the installation of traffic signalization at the intersection of 96<sup>th</sup> Street and Melissa Drive, the entire cost thereof may be funded by District funds.

- L. Street Name Signs. All street name signage shall comply with all applicable City standards and guidelines in effect at time of installation. Developer shall prepare and submit to City Administrator Developer's proposed street signage, which signage is subject to specific approval by the City Administrator.
- M. Industrial Buffer Zone. As described in Subsection 18-G(2) there exists a thirty foot (30') wide industrial buffer zone across Subdivision lots along the west boundary line and a portion of the south boundary line of the Subdivision adjacent to industrial zoning. Developer and District agree as follows:

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- (1) To construct a six foot (6') solid wood perimeter fencing along the west boundary of the Subdivision within said buffer zone.
- (2) Developer shall create and plant the treed buffer areas along the south and west industrial zoned boundaries as designed on the Park & Boulevard Plan (Exhibit "E-1).
- (3) The Developer and the Homeowners' Association, as its successor in obligation, shall maintain and replace if necessary all trees within the buffer.
- (4) All trees and fencing within the buffer zone shall be planted in such a manner as to create a passage for service vehicles along the easement and shall be approved in writing by the City.
- (5) No structures, whether portable or temporary, and no private fencing shall be allowed within the buffer zone without the prior approval of the City.
- (6) No building permit will be granted by City for lots abutting the industrial buffer zone until Developer has fulfilled all of the requirements of this Section.

The foregoing requirements shall be included within the Subdivision's Declaration of Covenants.

N. Railroad Underpass. The existing railroad underpass through the embankment of the railroad right-of-way connects Tracts "A" and "B" and is a critical element of the planned use of the Subdivision. The parties agree:

- (1) That Developers, acting together and at their own expense, shall obtain the necessary perpetual permit, license or other enforceable contractual obligation (herein "the Permit") necessary to assure the continuous right of the public to use the underpass. As a minimum, the Permit shall provide (a) the uninhibited right of pedestrian, bicycle and other commonly used individual transportation devices and (b) District, City and other governmental general use, and (c) the right of the District to construct and maintain such enhancements thereto as may be approved by the City. In the event the Developer cannot be the requesting party, the District may make the request. All costs in conjunction with obtaining of the Permit shall be costs of the Developer. Should it be necessary to acquire such underpass rights through eminent domain, District shall use its right of eminent domain to do so, in which event all costs and awards incurred in acquiring and obtaining such rights shall be reimbursed to the District by the Developers of Tract A and B in the amount of fifty percent (50%) each, or such other division as the Developers may agree upon.
- (2) Enhancements. The costs of underpass enhancements, including that portion of the recreational trail within the underpass, the plans and specifications for which and costs of which shall be subject to City approval, shall be general obligation of the District and paid with capital improvement funds of the District.

O. Additional Right-of-Way for 104<sup>th</sup> Street Entrance. Developer shall purchase sufficient additional land on the west side of the 104<sup>th</sup> Street entrance to the Subdivision as may

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be needed to make a full width two directional entrance, together with sufficient additional area needed to extend the industrial buffer to the north boundary line of the Subdivision, the design for which shall be subject to City approval. Should it be necessary to acquire such additional land through eminent domain, District shall use its right of eminent domain to do so, in which event all costs and awards incurred in acquiring said additional land shall be specially assessed against buildable property within the Subdivision.

- P. Severability of Certain Developer Liabilities. Within the District are two independent real estate developments, i.e. Tract A (Turco) and Tract B (Sudbeck). There are certain obligations of each of the Developers and their respective Homeowners' Association and individual property owners as successors in obligation to the Developer (herein collectively "Developer and successors") arising from this Agreement, the Declaration of Covenants, etc. and the Corps of Engineers permit requiring installation, maintenance and performance by each Developer and successors at their cost without use of public funds, which obligations as between the two Tracts shall be several and not joint, with obligation of performance in respect thereto to be independent of the other Tract. Such several and independent obligations shall include the installation, maintenance and replacement of Tract buffers, trees and fencing, open space and recreational improvements, tree plantings, erosion control, acquisition of additional right-of-way and other enhancements and maintenance thereof within or benefiting a particular tract and for which purposes the general obligation of the District is not herein specifically authorized. The cost of obtaining the railroad underpass permit shall be a shared cost and liability as provided in Section 18-N(1).

19. Planned Unit Development.

Developer has requested PUD-1 Planned Unit Development zoning for the Subdivision under Section 5.15 of the La Vista Zoning Ordinance No. 848, and Developer's applications and City approvals shall be thereunder, and all grading, installation of infrastructure, development and buildout shall be in strict accord with the provisions of said Section, except as shall be amended by the City Council in the required manner. R-1 Single Family Residential Zoning District regulations shall continue to be applicable, except for setback requirements and corresponding open space requirements under the PUD-1 Planned Unit Development Plan and plat (Exhibit "B") approved by the City. Such Plan shall allow a reduction of residential setback requirements to be:

Front yard	25 feet
Rear yard	25 feet
Side yard	5 feet

As regards Lot 380 (multi-family tract), site plan, building elevations and building design shall be subject to City approval, at which time it should become part of this Agreement and designated as Exhibit "K".

20. Agreements Herein Constitute Covenants Running with Land

This Subdivision Agreement and the agreements and understandings herein constitute covenants running with the land and shall be binding upon the Developer, its successors, assigns, the

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Homeowners Association, lenders, mortgagees and others gaining or claiming an interest or lien within the Subdivision tract.

21. Miscellaneous

- A. Engineers. City may employ its regular engineers or independent engineers, as it may choose for different matters or issues pertaining to the Subdivision, and as used herein, "City's Engineer" shall mean the engineer or engineering firm so employed by City in respect to the particular review, matter or issue.
- B. Conveyances to District or City. Any land, or interest in land or other real estate interest, to be conveyed by Developer to District or to City pursuant to this Subdivision Agreement shall be land owned by Developer in fee simple title absolute and conveyed by general warranty deed free and clear of all liens, taxes, mortgages, easements and encumbrances and restrictions of record, except those shown on the final plat (Exhibit "B") as verified by an ALTA commitment for title insurance underwritten by a title company with policy and ALTA survey in form acceptable to City. Developer shall present to City for City's review and approval the proposed form of deed of conveyance and title policy in advance of closing. As regards land donations to the District or City, Developer shall also provide any documentation necessary to be filed with the Internal Revenue Service concerning the gift aspect of the transaction, if there be a gift aspect. Developer shall pay all costs of such conveyances of land to District or City, including all professional services, title insurance, survey and recording fees. The credit of the District shall not be involved in conjunction with District land acquisition other than the share of District financing costs allocable to the District's net purchase price as determined above. City shall waive its administrative fee in connection with herein authorized land acquisitions (see Exhibit "J").
- C. Headings. Headings, where used herein, are inserted for convenience only and are not intended to be a part of this Subdivision Agreement or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.
- D. Remedies. That in addition to whatever rights of enforcement of the terms hereof are herein granted to any party, each party may avail itself of all other remedies it may have to enforce the terms hereof at law or equity. By way of specification and not by way of limitation, each of the parties expressly reserve to and right to specifically enforce full compliance of the terms and conditions of this agreement by mandatory or prohibitory injunction.

22. Exhibit Summary

The Exhibits proposed by E & A Consulting Group, Inc. and/or Thompson, Dreessen & Dornier, Inc., engineers for the District and for the Developer, are attached hereto and made a part hereof are as follows:

Exhibit "A":	Metes and bounds legal description for Tract "A" (Lots 1 through 380, plus Outlots A through E, inclusive) and Tract "B" (Lots 381 through 505, inclusive and Outlots F and G), Cimarron Woods Subdivision.
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- Exhibit "B": Final plat of Cimarron Woods Subdivision dated June 6, 2003, with revision of August 1, 2003, March 22, 2004 and April 6, 2004, showing Tract "A" and Tract "B," together with the Burlington Northern Railroad right-of-way situated between Tracts "A" and "B".
- Exhibit "C-1": Sanitary Sewer Plan showing location of sanitary sewer to be constructed within the Subdivision, dated June 6, 2003, with revision of April 6, 2004.
- Exhibit "C-2": Paving and Storm Sewer Plan showing type and location of paving and storm sewer improvements with delineation of areas of paving that may be general obligation, dated June 6, 2003, with revision of February 18, 2004 and April 6, 2004.
- Exhibit "D": Grading and Erosion Control Plan dated August 18, 2003, with revision of October 8, 2003, February 18, 2004, March 22, 2004 and April 6, 2004. (Note: Subject to City's review and approval as may be affected by specific portion of park facilities, recreational areas, recreational equipment and future play areas.)
- Exhibit "E-1": Park & Boulevard Plan dated January 17, 2003, with revision of September 3, 2003 and April 6, 2004, showing proposed trail system, pedestrian bridges, location of railroad underpass and recreational facilities and equipment. (Subject to final approval of City as to specifics of improvements and capital costs and funding thereof.)
- Exhibit "E-2": Typical Boulevard Section (enlarged) from Park & Boulevard Plan (Exhibit "E-1").
- Exhibit "E-3": Detailed Park and Boulevard Plan showing berming and landscape plantings along boulevards screening area between lots and side and rear of houses dated October 2, 2003 with revision of April 6, 2004.
- Exhibit "F": Illustration of typical internal street intersections, showing portions thereof to be general obligation and portions to be specially assessed.
- Exhibit "G": Developer's determination as to buildable lots within the area to be developed.
- Exhibit "H-1": Identification of and recording information for Declaration of Restrictive Covenants for Cimarron Woods West.
- Exhibit "H-2": Identification of and recording information for Declaration of Restrictive Covenants for Cimarron Woods East.
- Exhibit "I-1": Corps of Engineers 404 Permit (Nationwide No. 39) issued to Jerry Torczon (GHI Properties, Inc.) dated August 29, 2003, covering Tract "A".

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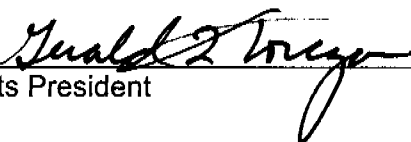
- Exhibit "I-2": Corps of Engineers 404 Permit (Individual) issued to Melvin Sudbeck, Cimarron Woods East, Inc. (formerly Shenandoah South, Inc.) dated July 24, 2003, covering Tract "B".
- Exhibit "J": Schedule of District land acquisitions and net purchase price.
- Exhibit "K": Reserved for site plan, building elevations and building design for Lot 380 (multi-family tract) to be submitted to and approved by the City.

IN WITNESS WHEREOF, we, the parties hereto, by our respective duly authorized agents, hereto affix our signatures the day and year first above written.

ATTEST:

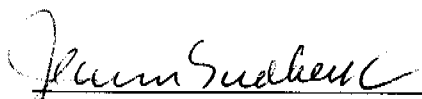
TORCO DEVELOPMENT COMPANY

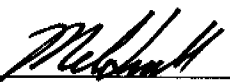
  
Secretary

By   
Its President

ATTEST:

CIMARRON WOODS EAST, INC.

  
Secretary

By   
Its President

ATTEST:

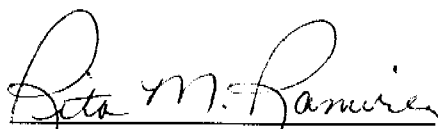
SANITARY AND IMPROVEMENT DISTRICT NO. 237  
OF SARPY COUNTY, NEBRASKA

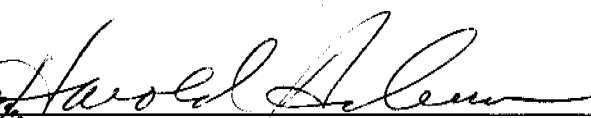
  
Clerk of Said District

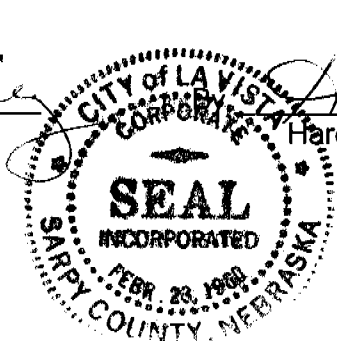
By   
Chair of the Board of Trustees

ATTEST:

CITY OF LA VISTA

  
City Clerk

  
Harold Anderson, Mayor



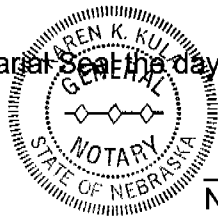
Ag

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA )  
COUNTY OF SARPY )

On this 6<sup>th</sup> day of April, 2004, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Gerald Torczon, personally known by me to be the President of Torco Development, Inc. and the identical person whose name is affixed to the foregoing Subdivision Agreement, and acknowledged the execution thereof to be his voluntary act and deed.

WITNESS my hand and Notarial Seal the day and year last above written.



Karen K. Kuea  
Notary Public

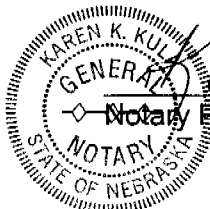
MY COMMISSION EXPIRES:  
JULY 26, 2005

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA )  
COUNTY OF SARPY )

On this 6<sup>th</sup> day of April, 2004, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Melvin Sudbeck, personally known by me to be the President of Cimarron Woods East, Inc. and the identical person whose name is affixed to the foregoing Subdivision Agreement, and acknowledged the execution thereof to be his voluntary act and deed.

WITNESS my hand and Notarial Seal the day and year last above written.



Karen K. Kuea  
Notary Public

MY COMMISSION EXPIRES:  
JULY 26, 2005

ACKNOWLEDGMENT OF NOTARY

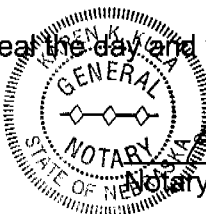
STATE OF NEBRASKA )  
COUNTY OF SARPY )

On this 6<sup>th</sup> day of April, 2004, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Gerald Torczon, personally known by me to be the Chair of the Board of Trustees of Sanitary and Improvement District No. 237 of Sarpy County, Nebraska, and Doris J. Nicholson, to me personally known to be

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the Clerk of the Board of Trustees of Sanitary and Improvement District No. 237 of Sarpy County, Nebraska, the identical persons whose names are affixed to the foregoing Subdivision Agreement, and they acknowledged the execution thereof to be their voluntary act and deed.

WITNESS my hand and Notarial Seal the day and year last above written.



Notary Public

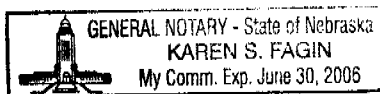
MY COMMISSION EXPIRES:  
JULY 26, 2005

#### ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA )  
COUNTY OF Sarpy )

On this 7th day of April, 2004, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Harold Anderson, personally known by me to be the Mayor of the City of La Vista and Rita Ramirez, to me personally known to be the City Clerk of the City of La Vista, the identical persons whose names are affixed to the foregoing Subdivision Agreement, and they acknowledged the execution thereof to be their voluntary act and deed.

WITNESS my hand and Notarial Seal the day and year last above written.



Notary Public

TRACT "A"  
SURVEYOR'S CERTIFICATE

I hereby certify that I have make a ground survey of the subdivision described herein and that temporary monuments have been placed on the boundary of the within plat, and that a bond has been furnished to the City of La Vista to ensure placing of permanent monuments and stakes at all corner of all lots, streets, angel point and ends of all curves in CIMARRON WOODS (the lots numbered as shown) being a platting of part of the East ½ of the NW ¼ and also together with part of the NE ¼ of Section 16, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, more particularly described as follows:

Commencing at the Southeast corner of said NE ¼ of Section 16; thence S87°31'16"W (assumed bearing) along the South line of said NE ¼ of Section 16, said line also being the North line of MAYFAIR and MAYFAIR REPLAT ONE, subdivisions located in the SE ¼ of said Section 16, said line also being the North line of VAL VISTA, a subdivision located in the South ½ of said SE ¼ of Section 16, said line also being the North line of the SE ¼ of said Section 16, a distance of 1989.48 feet to the point of intersection of the Northerly right-of-way line of the Chicago, Burlington and Quincy Railroad and said South line of the NE ¼ of section 16, said point also being the Point of Beginning; thence continuing S87°31'16"W along said South line of the NE ¼ of Section 16, said line also being said North line of the SE ¼ of Section 16, said line also being on part of said Northerly right-of-way line of the Chicago, Burlington and Quincy Railroad, said line also being the North line of said VAL VISTA, a distance of 674.14 feet to the Southwest corner of said NE ¼ of Section 16, said point also being the Southeast corner of said East ½ of the NW ¼ of Section 16, said point also being the Northeast Corner of the SW ¼ of said Section 16 and also the Northwest corner of said SE ¼ of Section 16; thence continuing S87°31'16"W along the South line of said East ½ of the NW ¼ of Section 16, said line also being said North line of VAL VISTA, said line also being the North line of said SW ¼ of Section 16, a distance of 1329.69 feet to the Southwest corner of said East ½ of the NW ¼ of Section 16, said point also being the Southeast corner of Lot 1, Oakdale Park, a subdivision located in the West ½ of said NW ¼ of Section 16; thence N02°51'56"W along the East line of said East ½ of the NW ¼ of Section 16, said line also being the East line of said West ½ of the NW ¼ of Section 16, said line also being the East line of said Lot 1, Oakdale Park, said line also being the East line of Tax lots 8C3A, 8B, 8A2, and 8A1A, said tax lots located in said West ½ of the NW ¼ of Section 16, a distance of 2600.33 feet to the South right-of-way line of Harrison Street; thence N87°32'31"E along said South right-of-way line of Harrison Street, a distance of 1334.93 feet to the point of intersection of said South right-of-way line of Harrison Street and said East line of the East ½ of the NW ¼ of Section 16, said line also being the West line of said NE ¼ of Section 16; thence N87°33'46"E along said South right-of-way line of Harrison Street, a distance of 2605.10 feet; thence S47°31'20"E along said South right-of-way line of Harrison Street, a distance of 21.24 feet to the point of intersection of the Westerly right-of-way line of 96th Street and said South right-of-way line of Harrison Street; thence Southerly along said Westerly right-of-way line of 96th Street on the following described courses; thence S02°36'27"E, a distance of 19.13 feet; thence S87°23'10"W, a distance of 15.09 feet; thence S13°42'29"W, a distance of 195.71 feet; thence S10°21'20"W, a distance of 378.74 feet; thence S05°55'02"W, a distance of 101.12 feet; thence S02°36'49"E, a distance of 100.00 feet; thence S21°49'12"E, a distance of 157.00 to the point of intersection of said Westerly right-of-way line of 96th Street and said Northerly right-of-way line of the Chicago, Burlington & Quincy Railroad; thence along said Northerly right-of-way line of the Chicago, Burlington & Quincy Railroad on the following described courses; thence S57°43'36"W, a distance of 610.65 feet; thence Southwesterly on a curve to the left with a radius of 2936.79 feet, a distance of 1303.30 feet, said curve having a long chord which bears S45°00'47"W, a distance of 1292.63 feet; thence S32°17'59"W, a distance of 557.90 feet; thence Southwesterly on a curve to the left with a radius of 2249.50 feet, a distance of 28.40 feet, said curve having a long chord which bears S32°39'41"W, a distance of 28.40 feet to the Point of Beginning.

Said tract of land contains an area of 8,145,135 square feet or 186.987 acres, more or less.

TRACT "B"  
SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE MADE A BOUNDARY SURVEY OF THE SUBDIVISION DESCRIBED HEREON AND THAT PERMANENT MARKERS HAVE BEEN FOUND OR SET AT ALL CORNERS OF SAID BOUNDARY AND THAT PERMANENT MARKERS WILL BE SET AT ALL LOT CORNERS, ANGLE POINTS AND AT THE ENDS OF ALL CURVES WITHIN SAID SUBDIVISION TO BE KNOWN AS CIMARRON WOODS, LOTS 381 THROUGH 505 AND OUTLOTS F AND G, BEING A PLATTING OF THAT PART OF THE NE 1/4 OF SECTION 16, T14N, R12E OF THE 6th P.M., SARPY COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SE CORNER OF SAID NE 1/4; THENCE S87°31'24"W (ASSUMED BEARING) 60.00 FEET ON THE SOUTH LINE OF SAID NE 1/4 TO THE POINT OF BEGINNING; THENCE CONTINUING S87°31'24"W 1718.02 FEET ON THE SOUTH LINE OF SAID NE 1/4 TO THE SOUTHEAST LINE OF THE ABANDONED MISSOURI PACIFIC RAILWAY COMPANY RIGHT-OF-WAY; THENCE NORTHEASTERLY ON THE SOUTHEASTERLY LINE OF THE ABANDONED MISSOURI PACIFIC RAILWAY COMPANY RIGHT-OF-WAY ON THE FOLLOWING DESCRIBED 3 COURSES; THENCE NORTHEASTERLY ON A NON-TANGENT 2732.29 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING N27°47'33"E, CHORD DISTANCE 544.06 FEET, AN ARC DISTANCE OF 544.96 FEET; THENCE NORTHEASTERLY ON A 2861.83 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING N45°33'10"E, CHORD DISTANCE 1168.68 FEET, AN ARC DISTANCE OF 1176.96 FEET; THENCE N57°28'09"E 546.49 FEET TO THE WEST LINE OF 96th STREET; THENCE S26°44'36"E 240.69 FEET ON THE WEST LINE OF 96th STREET AND ITS SOUTHEASTERLY EXTENSION; THENCE S02°36'21"E 1305.71 FEET ON A LINE 60.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID NE 1/4 TO THE POINT OF BEGINNING.

CONTAINING 36.57 ACRES MORE OR LESS.

EXHIBIT "A"





Sheet No.	100013
Date	08/08/2008
Drawn By	FW
Check By	CS
Scale	1" = 100'
Project No.	08-0008

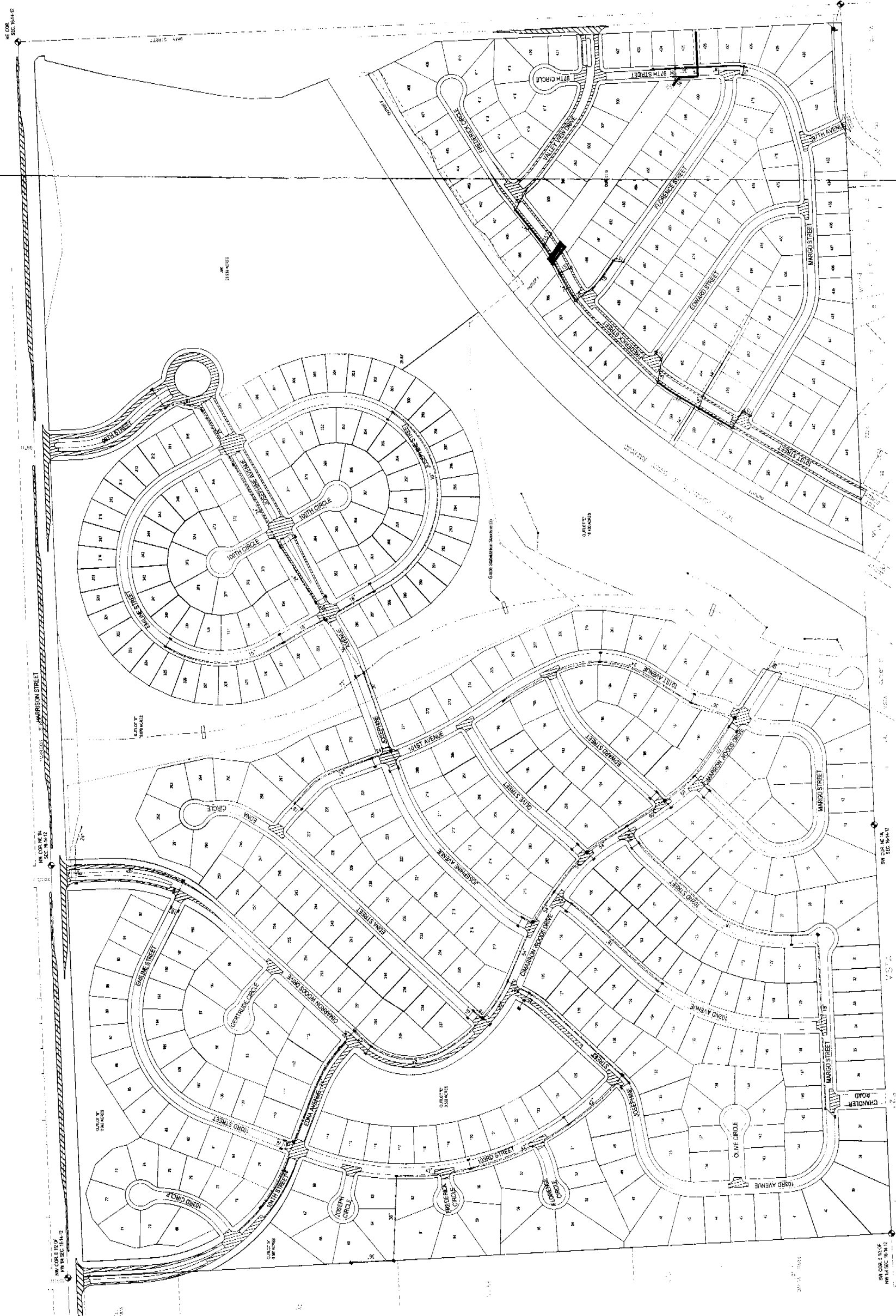
EXHIBIT "C-2"  
PAVING & STORM SEWER

CIMARRON WOODS  
SANDY COUNTY, KANSAS

**E&A CONSULTING GROUP, INC.**  
ENGINEERS • PLANNERS • SURVEYORS  
1700 SOUTH 47TH STREET, SUITE 100  
OMAHA, NE 68111  
PHONE: (402) 426-2127  
FAX: (402) 426-2124

AO

AN

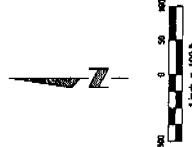
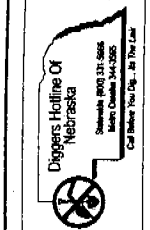
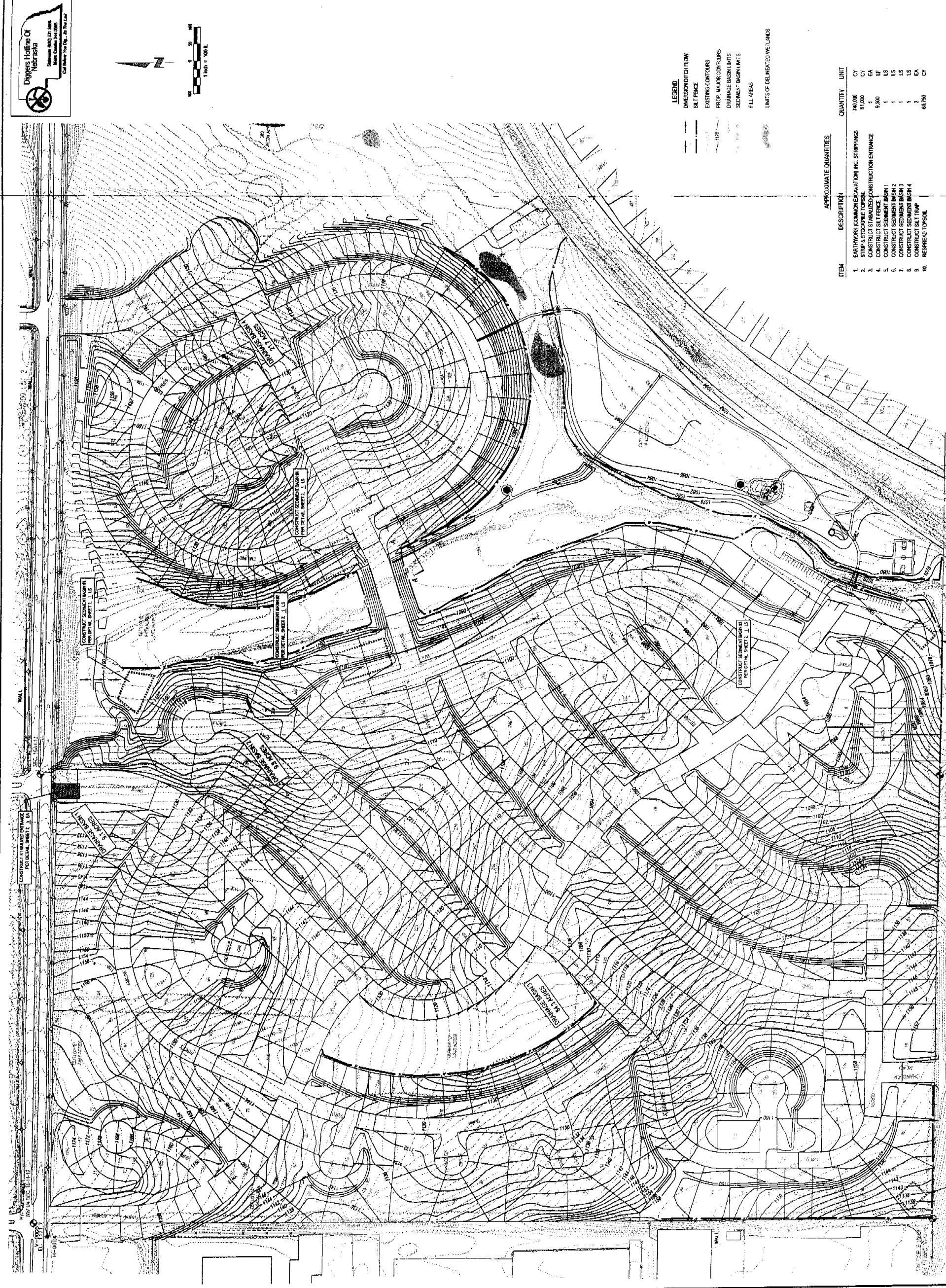


**LEGEND**  
Proposed Storm Sewer And Mainline  
Proposed Main  
Intersection Paved And Channel Treatment  
20 Standard Pavement  
14' Other Pavement

**NOTE:**  
All Paving 15' Minimum Offset From  
1 inch = 100'

AP

Ag



E&A CONSULTING GROUP, INC.  
ENGINEERS • PLANNERS • SURVEYORS  
10001 Q STREET  
LINCOLN, NE 68504  
PHONE: (402) 426-2717  
FAX: (402) 426-2718

CIMARRON WOODS  
S&L CO. NO. 100  
SABY COUNTY, NEBRASKA

GRADING & EROSION  
CONTROL PLAN

Rev.	Date	Description
1	10/05/00	Original
2	02/21/01	Revised Grading to Match 'E'
3	02/21/01	Added Pave & Final Grading
4	02/21/01	Rev. Final Grading to Match 'E'

- LEGEND
- DIMENSION DITCH FLOW
  - SILT FENCE
  - EXISTING CONTOURS
  - PROPOSED MAJOR CONTOURS
  - DRAINAGE BASIN LIMITS
  - SEDIMENT BASIN LIMITS
  - FILL AREAS
  - LIMITS OF DELIMITED WETLANDS

ITEM	DESCRIPTION	QUANTITY	UNIT
1.	EARTHWORK (COMMON ELEVATION) INC. STOPPINGS	746,000	CY
2.	STRIP & STOCKPILE TOPSOIL	81,000	CY
3.	CONSTRUCT STABILIZED CONSTRUCTION ENTRANCE	1	EA
4.	CONSTRUCT SILT FENCE	9,500	LF
5.	CONSTRUCT SEDIMENT BASIN 1	1	LS
6.	CONSTRUCT SEDIMENT BASIN 2	1	LS
7.	CONSTRUCT SEDIMENT BASIN 3	1	LS
8.	CONSTRUCT SEDIMENT BASIN 4	1	LS
9.	CONSTRUCT SILT TRAP	2	EA
10.	RESURFACING TOPSOIL	60,750	CY

EXHIBIT "D", SHEET 1 OF 2



AN

Sheet No.	1 of 1
Date	08/11/2011
Project	CIMARRON WOODS
Location	1700 NORTH 30TH STREET, SUITE 200, TAMPA, FL 33618
Client	WELLS FARGO
Design	LANDSCAPE ARCHITECTURE
Scale	AS SHOWN
Author	J. L. LEE
Checker	J. L. LEE
Approver	J. L. LEE

# EXHIBIT "E-1"

PLANT SCHEDULE (SEE NOTE RE: PLANTING LOCATIONS)

SYMBOL	QTY	BOTANICAL NAME	COMMON NAME	SIZE	TYPE
A	58	TELA COCOA	LITTLE LEAF LINDEN	2"	DB
B	32	FRAXINUS PENNSYLVANICA	PATMORSE ASH	2"	DB
C	53	ACER RUBRUM	RED SUNSET MAPLE	2"	DB
D	41	QUERCUS RUBRA	RED OAK	2"	DB
E	18	BLACK HILLS STRUCE	POCA PLANKS	6.7"	DB
F	7	SPARKLER CRAB	MAJUS SP	2"	DB
G	66	SCOTCH PINE	PINUS SYLVESTRIS	6.7"	DB
H	60	POMEROYAN PINE	PINUS POMEROYANA	6.7"	DB
I	45	GREEN MTN SUGAR MAPLE	ACER SACCCHARINUM	2"	DB
J	10	ACER GINNALA	AMUR MAPLE	2"	DB

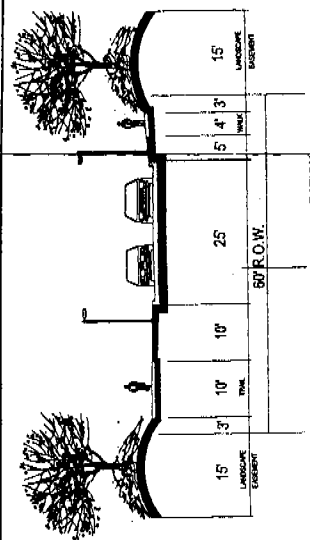
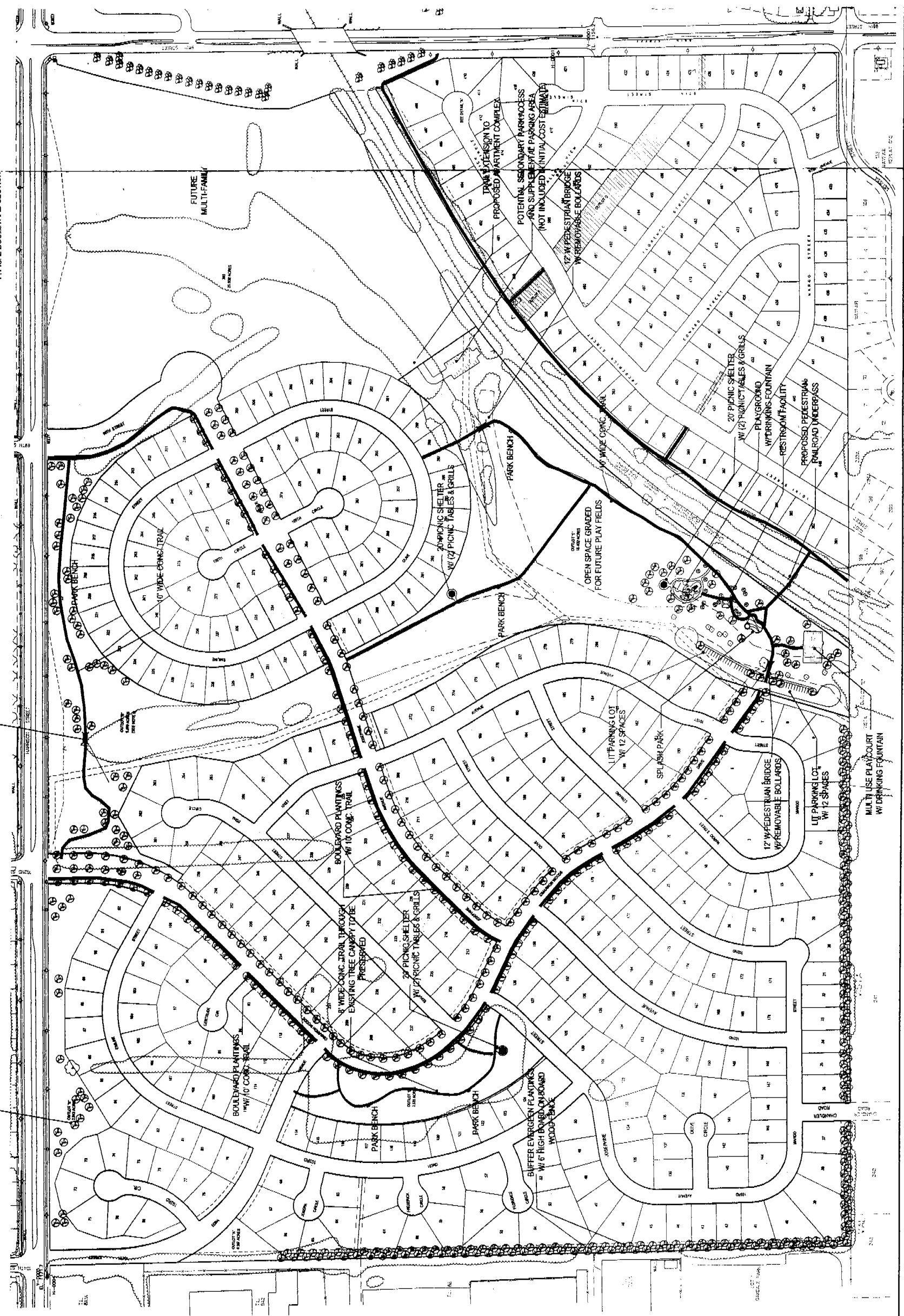
ALL TREE AREAS OF PARK AND OUTLOTS SHALL BE DRILL SEEDING WITH SUPER TURF TYPE TALL FESCUE MIXTURE SUPPLIED BY UNITED SEED AT A RATE OF 15 LBS PER 1000 SQ FT.

NOTE: NO PLANTING SHALL BE ALLOWED WITHIN THE RIGHT-OF-WAYS, WITH THE EXCEPTION OF DESIGNATED MEDIANS. ALL OTHER PLANTINGS MUST BE WITHIN THE 15' LANDSCAPE EASEMENTS.

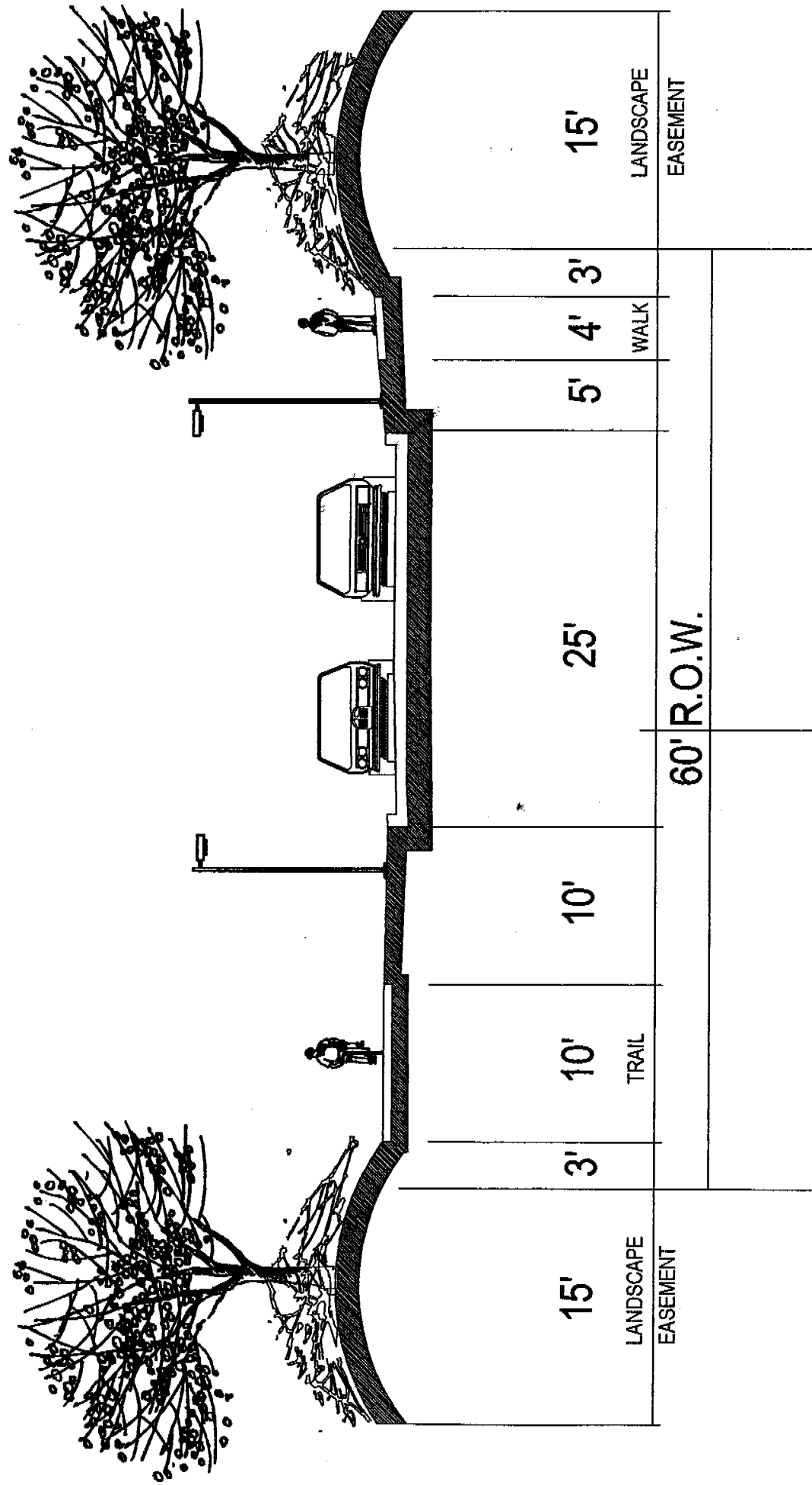
BUFFER TREE PLANTINGS

12' W PEDESTRIAN BRIDGE  
W/ REMOVABLE BOLLARDS

TYPICAL BOULEVARD SECTION



AV



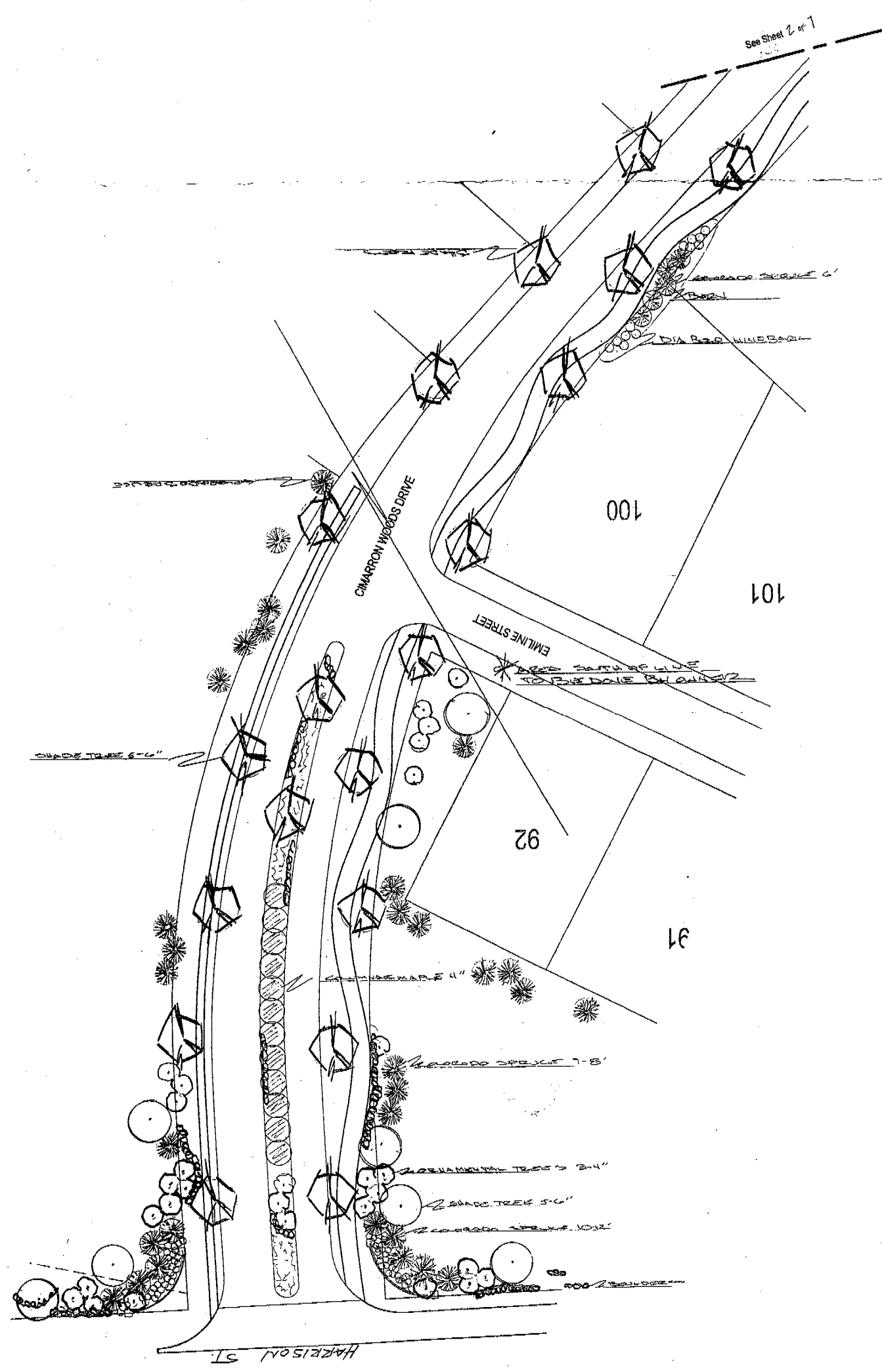
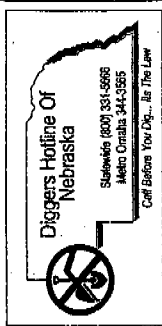
TYPICAL BOULEVARD SECTION

EXHIBIT "E-2"

AX

Aw

E&A CONSULTING GROUP, INC. ENGINEERS • PLANNERS • SURVEYORS		CIMAARRON WOODS SARPY, NEBRASKA								Project No: 2002153.01 Date: 10/02/2003 Designed By: CFS Drawn By: CFS Scale: As Shown Sheet: 1 of 7	
7130 SOUTH 29TH STREET, SUITE D LINCOLN, NE 68516-5841 PHONE: (402) 420-7217 FAX: (402) 420-7218		12001 O STREET OMAHA, NE 68137 PHONE: (402) 895-4700 FAX: (402) 895-3599									

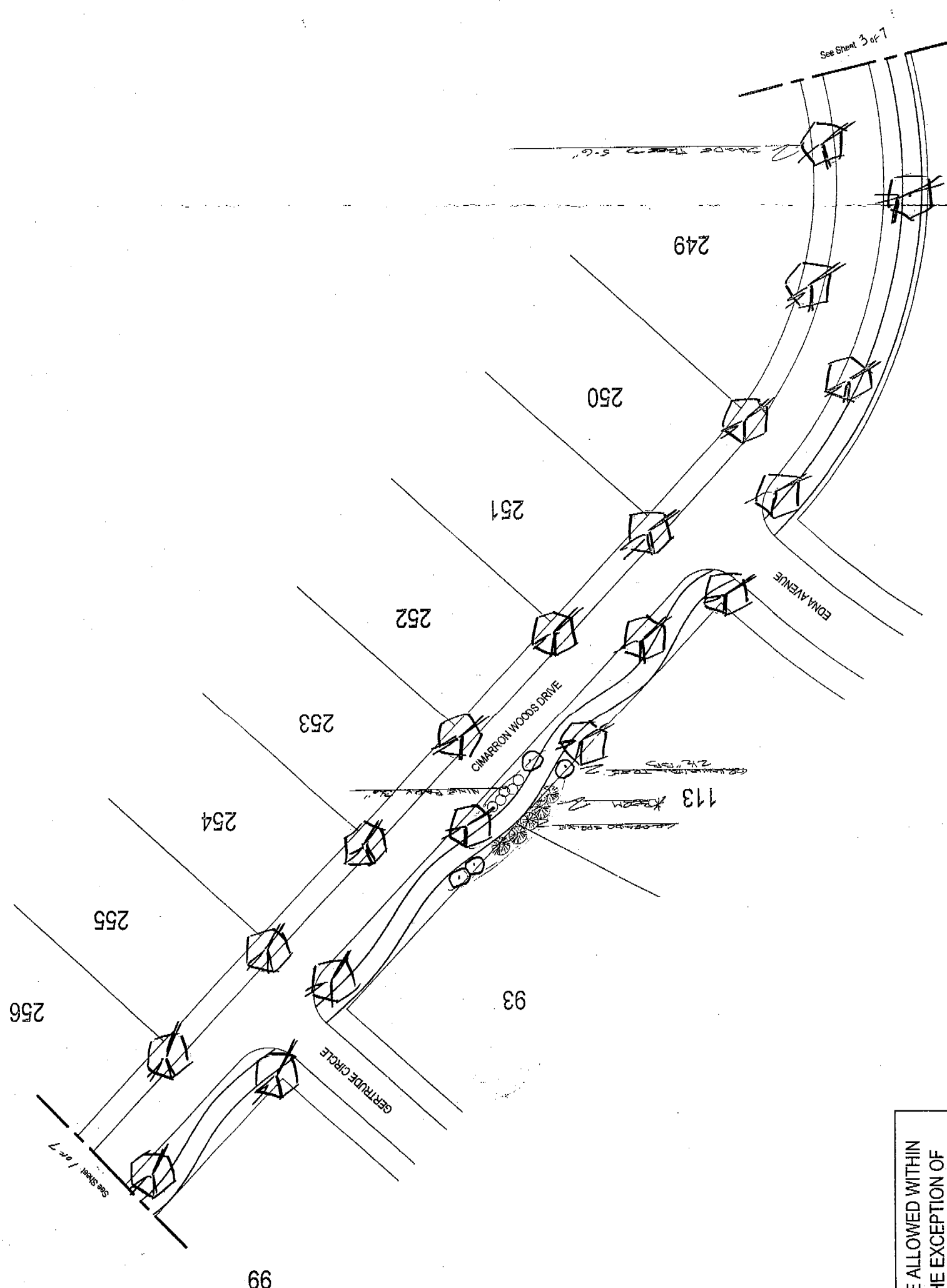
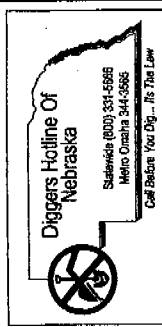


NOTE: NO PLANTING SHALL BE ALLOWED WITHIN THE RIGHT-OF-WAYS, WITH THE EXCEPTION OF DESIGNATED MEDIANS. ALL OTHER PLANTINGS MUST BE WITHIN THE 15' LANDSCAPE EASEMENTS.

EXHIBIT E-3  
BOULEVARD LANDSCAPING EXHIBIT  
SHEET 1 OF 7

Az

Ay




NOTE: NO PLANTING SHALL BE ALLOWED WITHIN THE RIGHT-OF-WAYS, WITH THE EXCEPTION OF DESIGNATED MEDIANS. ALL OTHER PLANTINGS MUST BE WITHIN THE 15' LANDSCAPE EASEMENTS.

EXHIBIT E-3  
BOULEVARD LANDSCAPING EXHIBIT  
SHEET 2 OF 7

Bb

Ba

10001 Q STREET  
OMAHA, NE 68137  
PHONE: (402) 895-4700  
FAX: (402) 895-5999


**E&A CONSULTING GROUP, INC.**  
ENGINEERS • PLANNERS • SURVEYORS

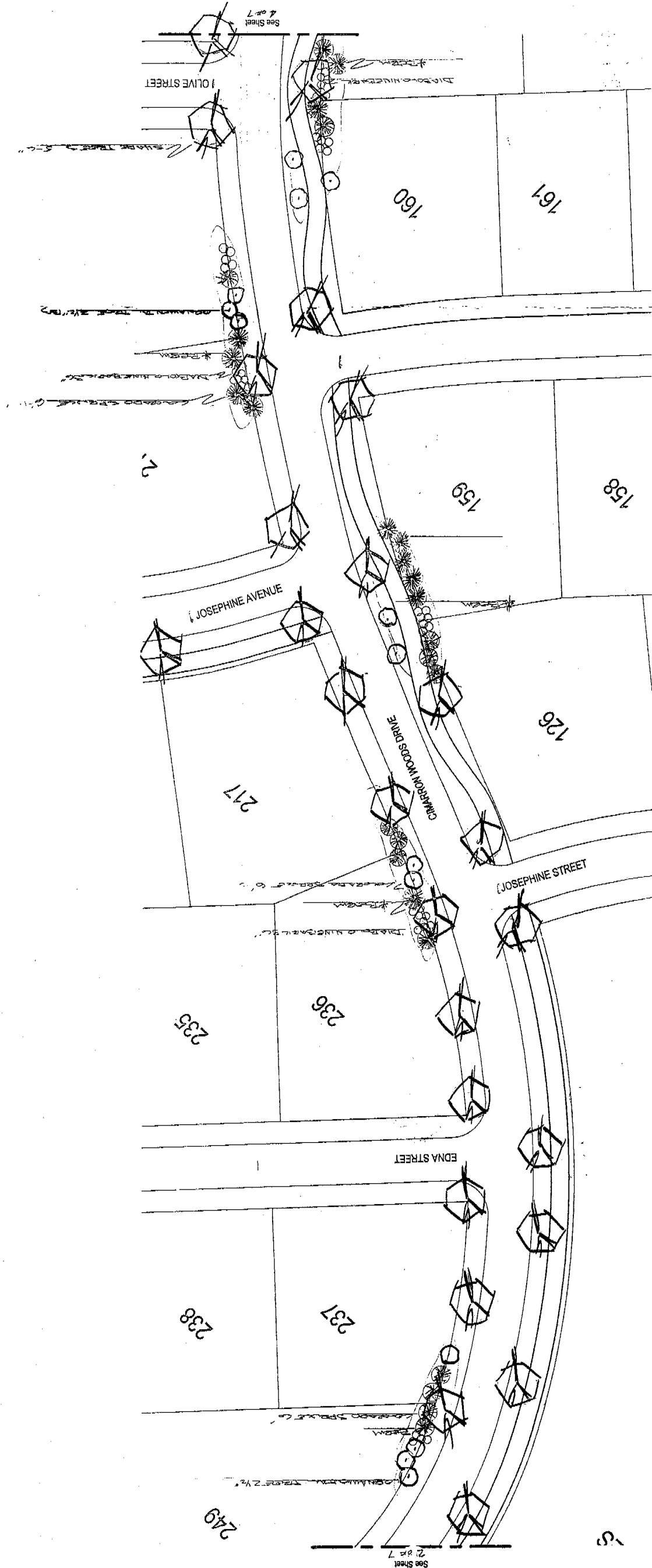
7130 SOUTH 28TH STREET, SUITE D  
LINCOLN, NE 68518-5841  
PHONE: (402) 420-7217  
FAX: (402) 420-7216

CIMARRON WOODS  
SAPY, NEBRASKA

Revisions	
No.	Description
1	4/16/04

Proj No:	2002163.01
Date:	10/02/2003
Designed By:	CFS
Drawn By:	CFS
Scale:	AS SHOWN
Sheet:	3 of 7

**Diggers Hotline Of Nebraska**  
Statewide (800) 331-5666  
PHONE: (402) 331-5666  
Metro Omaha 344-3355  
Call Before You Dig... It's The Law



NOTE: NO PLANTING SHALL BE ALLOWED WITHIN THE RIGHT-OF-WAYS, WITH THE EXCEPTION OF DESIGNATED MEDIANS. ALL OTHER PLANTINGS MUST BE WITHIN THE 15' LANDSCAPE EASEMENTS.

EXHIBIT E-3  
BOULEVARD LANDSCAPING EXHIBIT  
SHEET 3 OF 7

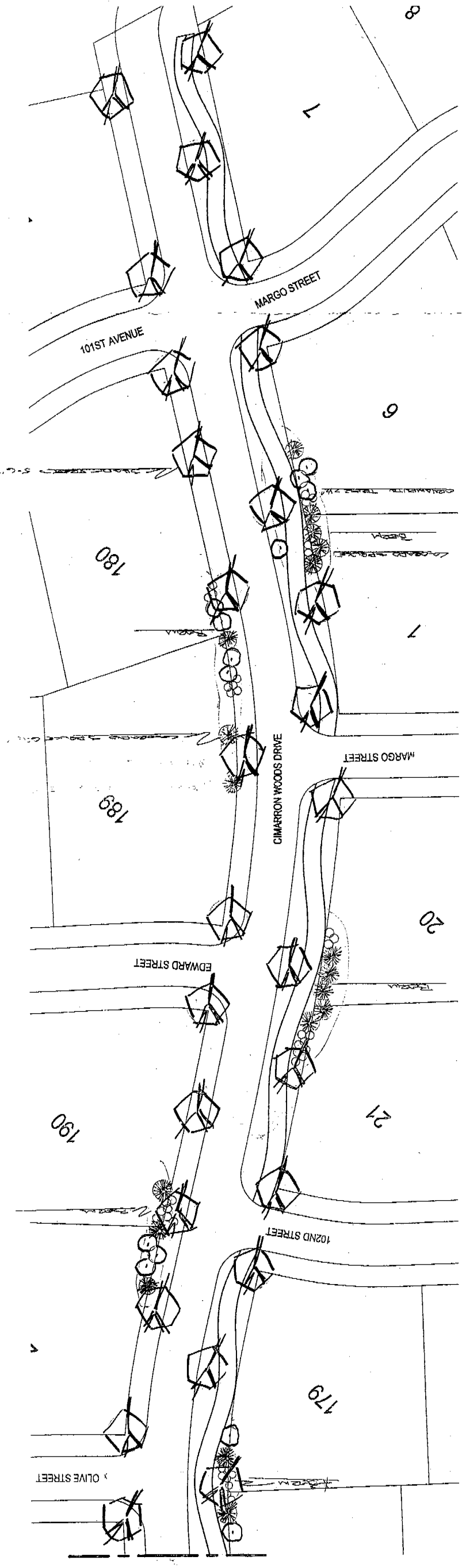

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Bc

Project No: 2002153.01		Revision		Date		Description	
Drawn By: CFS		4/6/04					
Designed By: CFS							
Scale: As Shown							
Sheet 4 of 7							

E&A CONSULTING GROUP, INC. ENGINEERS • PLANNERS • SURVEYORS		CIMAARRON WOODS SAPPI, NEBRASKA		12001 Q STREET OMAHA, NE 68137 PHONE: (402) 895-4700 FAX: (402) 895-0599		7130 SOUTH 23RD STREET, SUITE D LINCOLN, NE 68510-9041 PHONE: (402) 420-2217 FAX: (402) 420-2218	
--	--	------------------------------------	--	---	--	---	--

Diggers Hotline Of Nebraska  
Subsides (800) 331-5668  
Main Omaha 344-3505  
Call Before You Dig... It's The Law



NOTE: NO PLANTING SHALL BE ALLOWED WITHIN THE RIGHT-OF-WAYS, WITH THE EXCEPTION OF DESIGNATED MEDIANS. ALL OTHER PLANTINGS MUST BE WITHIN THE 15' LANDSCAPE EASEMENTS.


EXHIBIT E-3  
BOULEVARD LANDSCAPING EXHIBIT  
SHEET 4 OF 7

See Sheet 3 of 7

RF

be

7130 SOUTH 29TH STREET, SUITE D LINCOLN, NE 68516-5841 PHONE: (402) 420-7217 FAX: (402) 420-7218		12001 Q STREET OMAHA, NE 68137 PHONE: (402) 885-4700 FAX: (402) 885-5599		CIMARRON WOODS SARVY, NEBRASKA						Proj No: 2002153.01 Date: 10/02/2003 Designed By: CFS Drawn By: CFS Scale: As Shown Sheet 5 of 7	
E&A CONSULTING GROUP, INC. ENGINEERS • PLANNERS • SURVEYORS										4/6/04	
Description										Revisions	

 Diggers Hotline Of Nebraska  
Toll Free 1-800-331-5555  
Nebraska 1-800-331-5555  
Call Before You Dig. It's The Law.

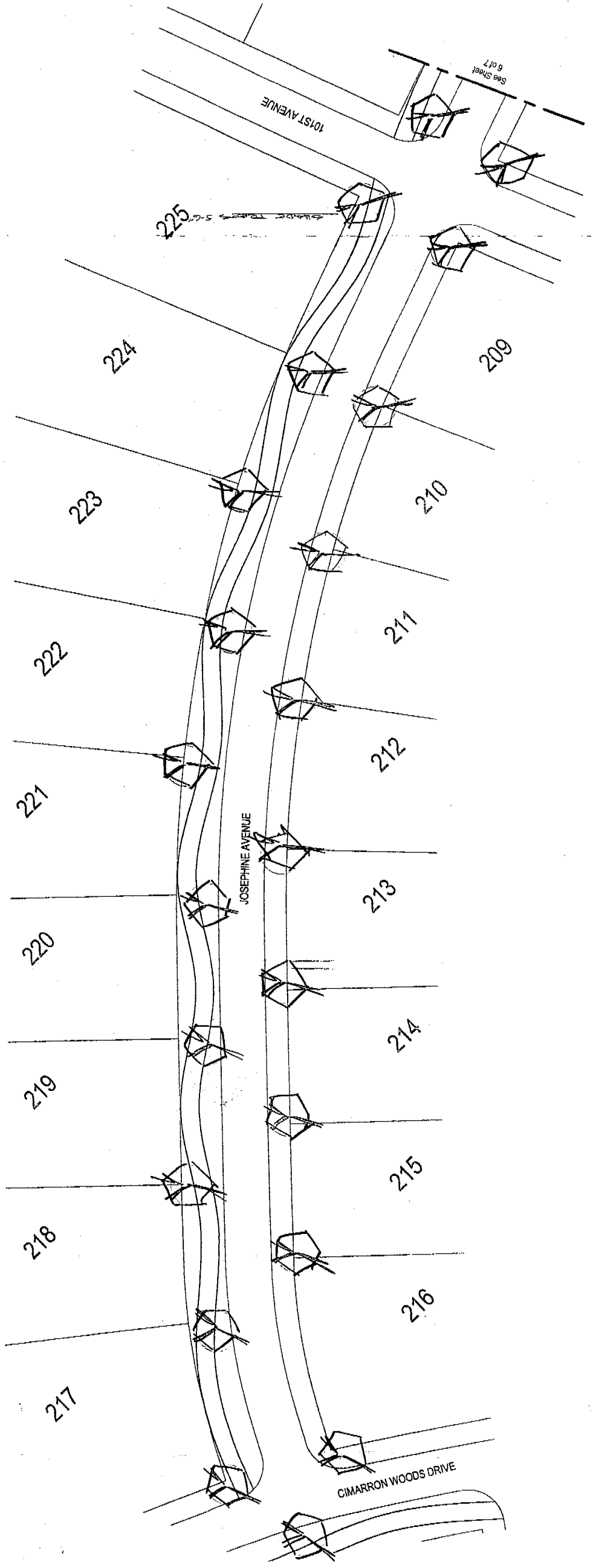
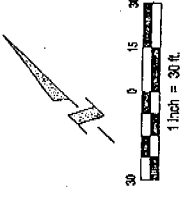


EXHIBIT E-3  
BOULEVARD LANDSCAPING EXHIBIT  
SHEET 5 OF 7




NOTE: NO PLANTING SHALL BE ALLOWED WITHIN THE RIGHT-OF-WAYS, WITH THE EXCEPTION OF DESIGNATED MEDIANS. ALL OTHER PLANTINGS MUST BE WITHIN THE 15' LANDSCAPE EASEMENTS.

**EXHIBIT E-3  
BOULEVARD LANDSCAPING EXHIBIT  
SHEET 6 OF 7**

Bj

Bj

12001 Q STREET  
OMAHA, NE 68137  
PHONE: (402) 895-4700  
FAX: (402) 895-3939


**E&A CONSULTING GROUP, INC.**  
ENGINEERS • PLANNERS • SURVEYORS

7139 SOUTH 29TH STREET, SUITE D  
LINCOLN, NE 68516-5841  
PHONE: (402) 420-7217  
FAX: (402) 420-7218

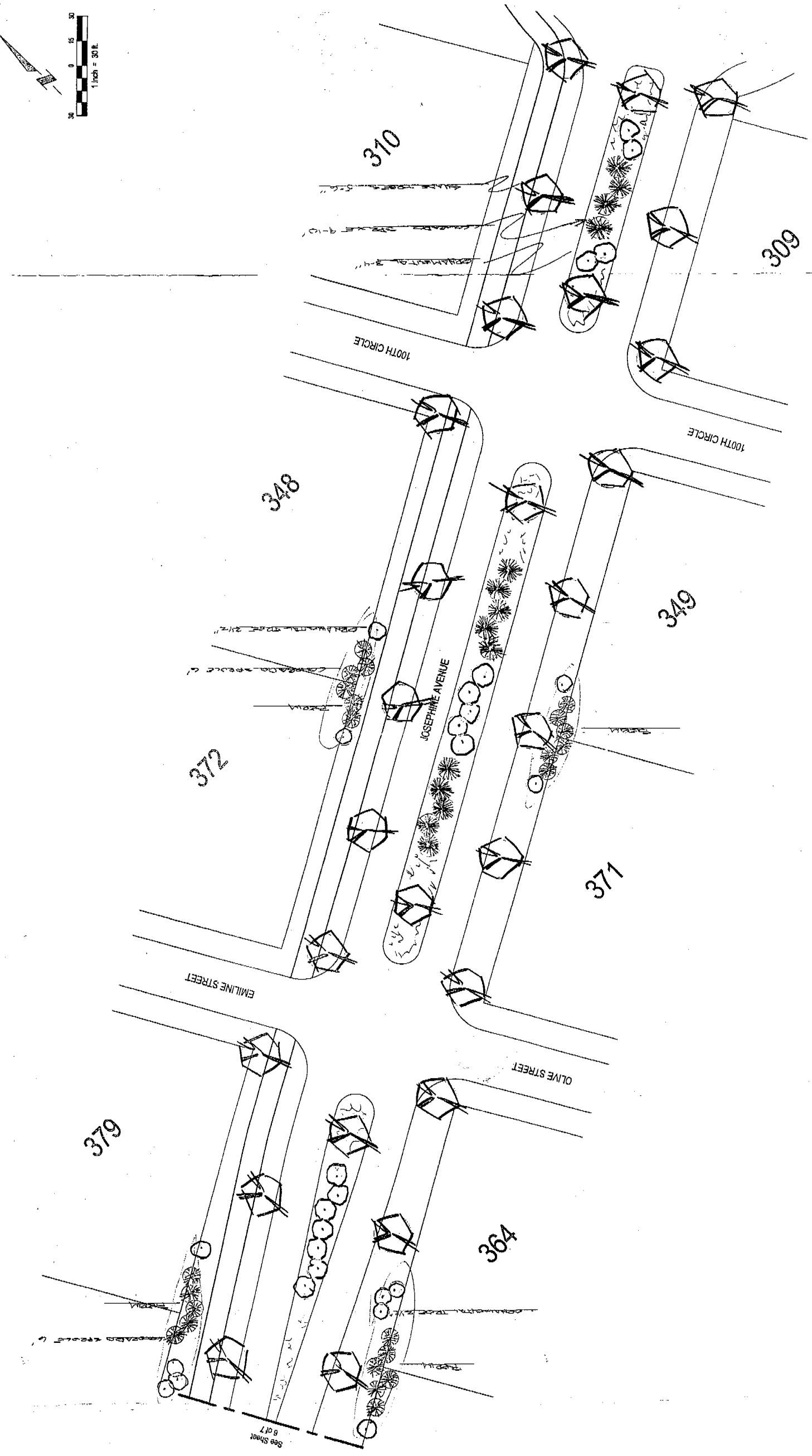
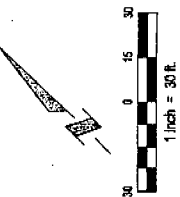
CIMARRON WOODS  
SAPPE, NEBRASKA

Proj No:	2002153.01
Date:	10/02/2003
Drawn By:	CFS
Designed By:	CFS
Scale:	AS SHOWN
Sheet 7 of 7	

Revisions	Date	Description
1	4/6/04	



Diggers Hotline Of Nebraska  
Sponsor 800.331.6586  
Radio Chain 344-3365  
Call Before You Dig... At The Law

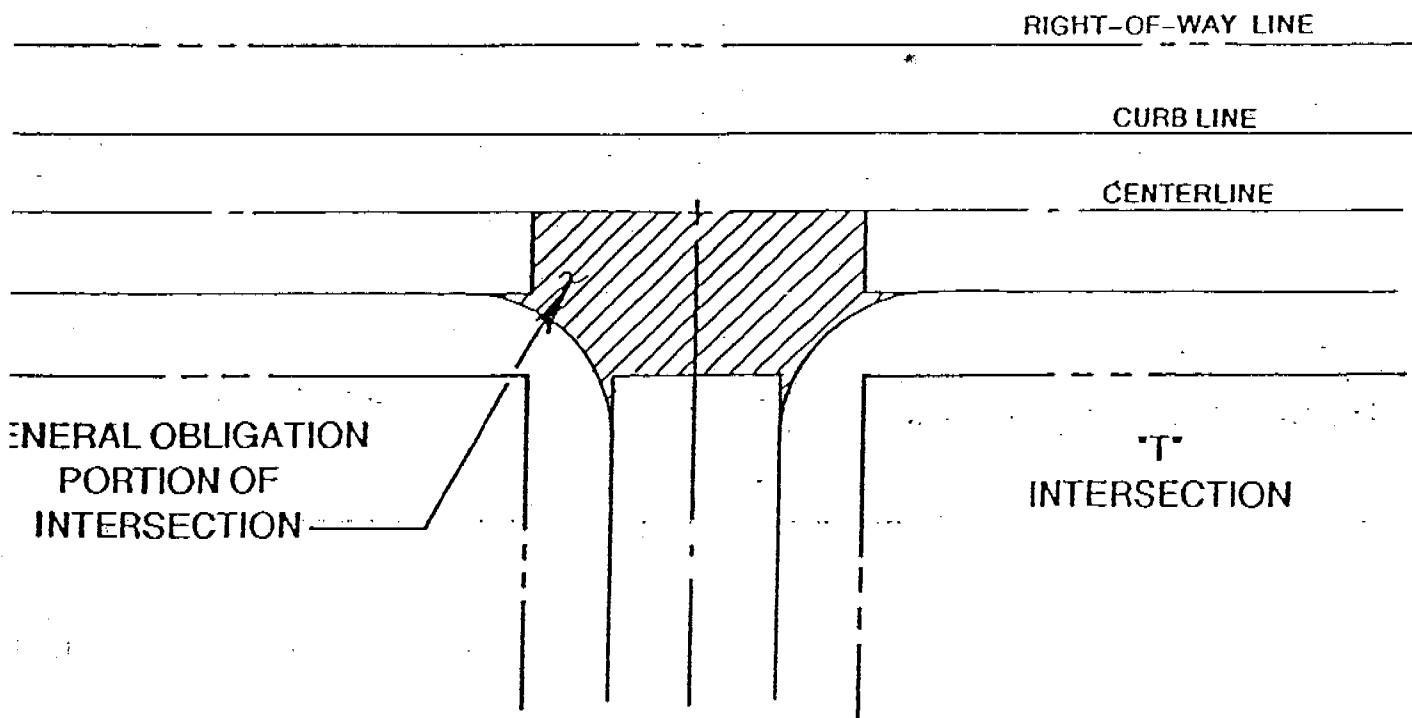
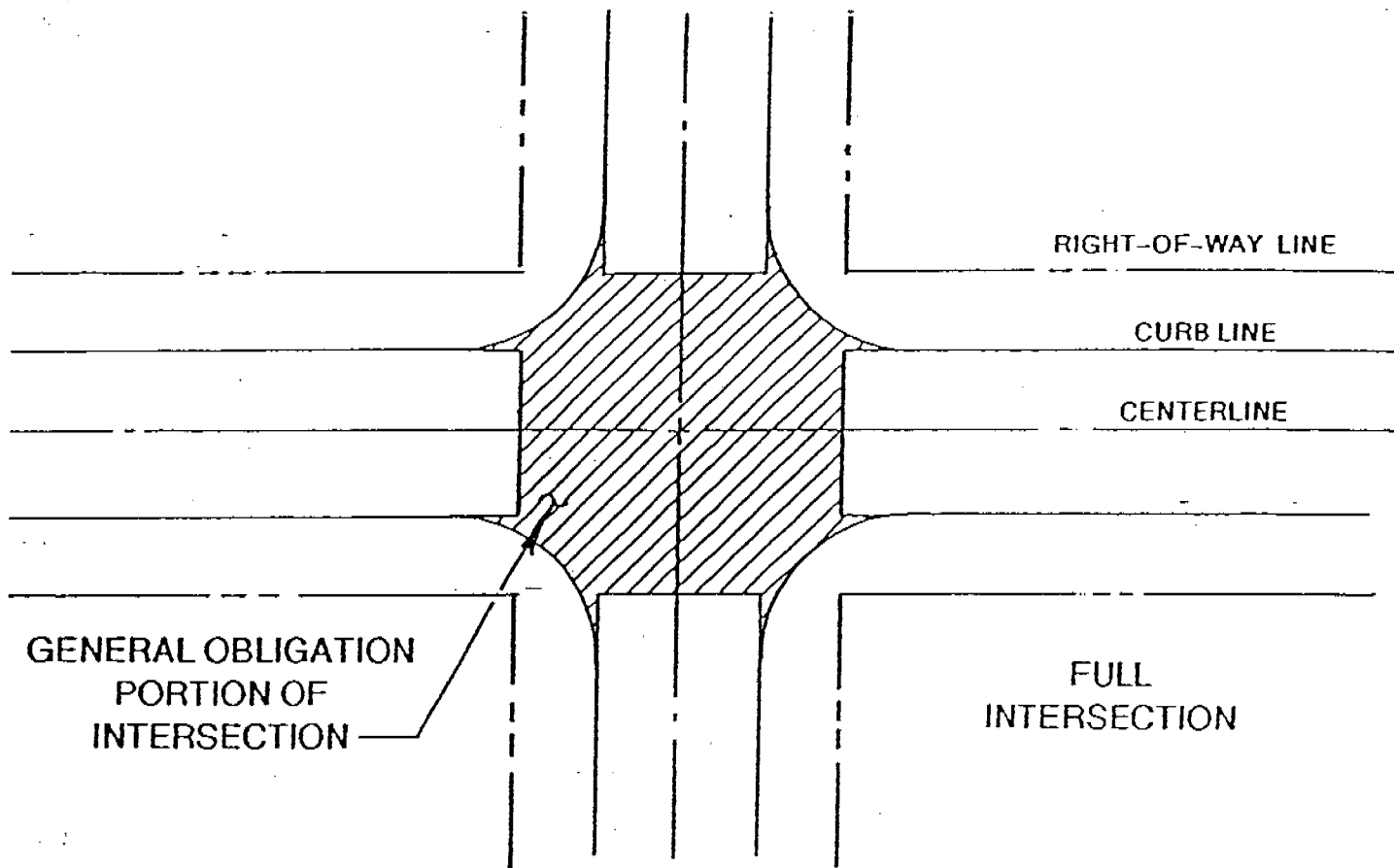


NOTE: NO PLANTING SHALL BE ALLOWED WITHIN THE RIGHT-OF-WAYS, WITH THE EXCEPTION OF DESIGNATED MEDIANS. ALL OTHER PLANTINGS MUST BE WITHIN THE 15' LANDSCAPE EASEMENTS.

EXHIBIT E-3  
BOULEVARD LANDSCAPING EXHIBIT  
SHEET 7 OF 7

# TYPICAL STREET INTERSECTION

BK



B1

## EXHIBIT "G" TO THE SUBDIVISION AGREEMENT

TO THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA:

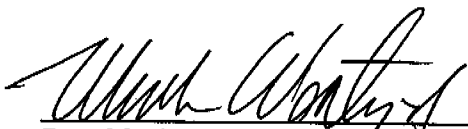
FROM: Mark Westergard, P.E., E&A Consulting Group  
Doug Kellner, P.E. Thompson Dreessen & Dornier, Inc.

As agents for the developers, we, the Engineers for the Cimarron Woods subdivision and S.I.D. #237 of Sarpy County, Nebraska, have determined that all lots in the Cimarron Woods subdivision are of sufficient size and width, and of sufficient depth from the building line to comply with the City's regulations applicable to the zoning granted by the City, and contain no easements, drainage way, utility lines or other hindrance which would prevent any of the lots from being buildable as platted.

DATED this 11<sup>th</sup> day of February, 2004.

E&A CONSULTING GROUP  
Lots 1 through 380

THOMPSON, DREESSEN & DORNER, INC.  
Lots 381 through 505

  
By: Mark A. Westergard, P.E.  
By: Douglas E. Kellner, P.E.

The City of La Vista will release Permanent Easement Instrument Number 92-017624, as filed and recorded with the Sarpy County Register of Deeds.

Bm

FILED SARPY CO. NE  
INSTRUMENT NUMBER  
2004- 30795

2004 AUG 10 A 8:39

*Steve G. Dowling*

REGISTER OF DEEDS

COUNTER Ph C.E. Ph  
VERIFY Ph D.E. Ph  
PROOF Ph  
FEES \$ 265.50  
CHECK# 1349  
CHG. \_\_\_\_\_ CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT \_\_\_\_\_ NCR \_\_\_\_\_

[This Space Above is for Recording Data]

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS OF CIMARRON WOODS WEST IN SARPY COUNTY, NEBRASKA**

THIS DECLARATION, made on the date hereinafter set forth, is made by **TORCO DEVELOPMENT, INC.**, a Nebraska corporation, hereinafter referred to as the "Declarant."

**PRELIMINARY STATEMENT**

The Declarant is the owner of certain real property located within Sarpy County, Nebraska and described as follows:

Lots 1 through 379, inclusive, and Outlots A and B, inclusive, all in Cimarron Woods, a Subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska.

Such lots are herein referred to collectively as the "Lots" and individually as each "Lot" and such lots are also referred to collectively as a neighborhood as "Cimarron Woods West."

The Declarant desires to provide for the preservation of the values and amenities of Cimarron Woods West, for the maintenance of the character and residential integrity of Cimarron Woods West and for the acquisition, construction and maintenance of Common Facilities for the use and enjoyment of the residents of Cimarron Woods West.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the residents of the Lots. These restrictions, covenants, conditions and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereof, as more fully described herein. The Lots, and each Lot are and shall be subject to all and each of the following conditions and other terms.

**ARTICLE I.  
RESTRICTIONS AND COVENANTS**

1. Residential Uses Allowed. Each Lot shall be used exclusively for single-family residential purposes, except for such Lots designated by Declarant for

Bn A

townhome or villa use, which may include but is not limited to Lots 286 - 379, inclusive, in Cimarron Woods, and except for Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Facility, or as a church, school, park, or for other nonprofit use.

2. Improvement Approvals. No residence, building, fence, wall, driveway, patio, patio enclosure, swimming pool, dog house, pool house, playground equipment, satellite receiving station or "discs" exceeding 18" in diameter, solar heating or cooling device, or other external improvement of any kind, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvements be commenced, except for Improvements which have been approved by Declarant as follows:

A. An owner desiring to erect an Improvement shall deliver two sets of construction plans, landscaping plans and plot plans to Declarant (herein collectively referred to as the "plans"). Such plans shall include a description type, quality, color, location and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, Owner shall notify the Declarant of the Owner's mailing address.

B. Declarant shall review such plans in relation to the type and exterior of improvements constructed, or approved for construction, on neighboring Lots and in the surrounding area, and any general scheme or plans formulated by Declarant. In this regard, Declarant intends that the Lots shall be developed residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Declarant to promote development of the Lots and to protect the values, character and residential quality of all Lots. If Declarant determines that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, in its sole and absolute discretion, Declarant may refuse approval of the proposed Improvement.

C. Written Notice of any approval of a proposed Improvement shall be mailed to the owner at the address specified by the owner upon submission of the plans. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the plans. If notice of approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by Declarant.

D. No Lot owner, or combination of Lot owners, or other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

Bo B

E. No structures, whether portable or temporary, and no private fencing shall be allowed within any landscape buffer easement without the prior approval of the City of La Vista.

F. A surveyor's certificate for a Lot prepared by Declarant's Engineer shall be released to an Owner of a Lot only after Declarant approval of plans for construction of the main residential structure on such Lot.

3. Building Limitations. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling which does not exceed two and one-half stories in height. For streets shown in the Park and Boulevard Plan attached to the Subdivision Agreement for Cimarron Woods to be Boulevard Style Streets where there is an abutting side street that affords an opportunity for a driveway, the front of the home shall face the Boulevard Style Street where feasible and the driveway shall enter from and the garage shall face the abutting side street. On corner lots abutting two Boulevard Style Streets, the homes shall face Cimarron Woods Drive where feasible and the driveway/garage orientation shall be to and from the other Boulevard Style Street.

4. Foundation/Exterior Walls, Etc. All foundation walls facing any street shall be covered with brick, stone or cultured stone approved by the Declarant. Each foundation wall of corner lots facing two abutting streets must comply with this provision. Fifty (50%) percent of the front elevation of any house shall be covered with brick, stone or cultured stone approved by the Declarant. The Declarant shall be the sole determinant as to whether the requirements of the prior sentence have been met. All exposed side and rear concrete or concrete block foundation walls not facing a street must be painted. All driveways must be constructed of concrete. Fireplace chimneys shall be covered with brick, stone or cultured stone approved in writing by Declarant. Unless other materials are specifically approved by Declarant, the roof of all improvements shall be covered with Heritage style asphalt shingles with color to be weathered wood.

5. Signage/Business Activities. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a lot as "For Sale." No business activities of any kind whatsoever shall be conducted on any lot; nor shall the premises be used in anyway for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. Provided, however, this Paragraph shall not apply to the business activities and signs or the construction and maintenance of buildings, if any, by Declarant, its designated builders, agents or assigns, during the construction and sale of the Lots.

6. Towers/Antennas, Etc. No outside radio, television, ham broadcasting, earth station, satellite dish or other electronic antenna or aerial shall be erected or placed on any structure or on any Lot, except, with the prior written approval of Declarant, one (1) satellite dish of 18" or less in diameter or diagonal measurement which is screened from view of any street or sidewalk will be permitted per Lot. The foregoing notwithstanding, any earth station, satellite dish or other electronic antenna or aerial specifically exempted from restriction by statute, regulation, binding order of a court or governmental agency shall be maintained in accordance with the strictest interpretation or condition for such use as may be permitted by such order. No satellite dish less than eighteen inches (18") in diameter and

Bp C

approved by Declarant, or other communications device allowed by a binding order of a court or governmental agency shall be located in front of the center line of the dwelling, or shall be visible to public view. No patio, patio enclosure, freestanding flag pole, or similar structure shall be located in front of the center line of the dwelling. No tree houses, tool sheds, doll houses, windmills, or similar structures shall be permitted on any Lot.

7. Vehicular/Watercraft, Etc. Repairs. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

8. Vehicular Storage. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure) for more than forty-eight (48) hours within a calendar year. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors or semi-tractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this section 8 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings during the period of construction. All residential Lots shall provide at least an attached three-car garage and the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the City of La Vista, Nebraska.

9. Trash/Storage and Other Outdoor Uses. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container or fuel tank shall be permitted unless completely screened from view, except for pickup purposes, and in no event shall any trash can or other receptacle be placed along any portion of any Lot facing any Boulevard Style Street, including Cimarron Woods Drive, Josephine Street and 99<sup>th</sup> Street. No garden lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Lot. No clothes line shall be permitted outside of any dwelling at any time. Produce or vegetable gardens, not more than ten feet by ten feet in area and located in as inconspicuous a manner as possible, may only be maintained in rear yards, subject to review and approval of Declarant pursuant to Paragraph 2, above.

10. Exterior Lighting. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

11. Fences/Shrubs. No fence shall be permitted to extend beyond the front line of a main residential structure. No hedges or mass planted shrubs shall be permitted more than the (10') feet in front of the front building line. Unless other materials are specifically approved in writing by Declarant and approved by the City of La Vista by issuance of a permit, fences on Lots adjacent to or directly visible from any boulevard-designated street, which shall include Cimarron Woods Drive, Josephine Avenue, and 99th Street, shall only be composed of black wrought iron or

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black PVC wrought iron (a/k/a blackline) appearing fence materials of such style and character that are not opaque and are uniform in appearance. Subject to the approval of Declarant pursuant to Paragraph 2 and the City by issuance of a fence permit, all of which shall occur prior to installation of fencing, fences on any Lot not adjacent to a boulevard-designated street may be composed of black wrought iron, black PVC wrought iron (a/k/a blackline), or six (6') foot almond vinyl overscalloped in style. Any fencing installed on Lots that are not adjacent to or directly visible from any boulevard-designated street shall be adequately screened from any boulevard-designated street as indicated in Exhibit E-3 of the Cimarron Woods Subdivision Agreement. No fences shall exceed a height of six (6) feet. No chain link fencing of any kind shall be permitted on any Lot. No waiver of the provisions of this paragraph shall be effective unless approved by the City of La Vista. No perimeter fencing shall be installed along 96th Street and/or Harrison Street. A six foot solid wood perimeter fence, approved by the City of La Vista, shall be installed by the Declarant in the rear ten feet of Lots 39-46, inclusive, Lots 54-55, Lots 59-61, inclusive, Lots 64 -66, inclusive, and Outlot A, all in Cimarron Woods, and a permanent easement is hereby retained for the benefit of Declarant and the Association for such installation and maintenance, repair and replacement of such fencing, and also for the benefit of the City in the exercise of its rights pursuant to Article IV hereof.

12. Swimming Pools. No swimming pool may extend more than one foot above ground level and must conform to all applicable state, county and city regulations.

13. Completion of Improvements. Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot.

14. Zoning Ordinance Compliance, Setbacks, Sidewalks, Etc. All applicable zoning ordinances of the City of La Vista, including but not limited to Section 5.15 of the La Vista Zoning Ordinance No. 848, as the same may be amended from time to time, shall apply to all Lots, except that all Lots shall have a front yard setback of thirty (30') feet, a rear yard setback of twenty-five (25') feet, a side yard setback of five (5') feet for side yards not abutting a street, and in the case of a side yard abutting a street a setback of twenty-five (25') feet. A public sidewalk shall be constructed of concrete four (4') feet wide by four (4") inches thick in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed five (5') feet back of the street curb line and shall be constructed by the owner of the Lot at the earlier of the following events: completed construction on of 75% of Lots abutting such block on which the Lot is located, five years from the date of recording the original plat of Cimarron Woods or prior to the time of completion of the main structure and before occupancy thereof, provided, however, this sidewalk provision shall vary as needed to comply with any requirements of the City of La Vista by its ordinances or by the Residential Subdivision Agreement for Cimarron Woods.

15. Driveway Approaches. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted.

16. Animals, Shelters, Etc. No stable or other shelter for any animal, livestock, fowl or poultry or reptile shall be erected, altered, placed or permitted to remain on any Lot, except for one dog house constructed for one (1) dog; provided

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always that the construction plans, specifications and the location of the proposed structure have been first approved by Declarant, or its assigns, as required by this Declaration. Dog houses shall only be allowed at the rear of the residence, concealed from public view. No dog runs or kennels of any kind shall be allowed. No pot-bellied pigs or other exotic animals shall be allowed in Cimarron Woods West.

17. Exterior A/C Condensers, Utility Boxes, Etc. Any exterior air-conditioning condenser unit and other utility boxes or appurtenances on any Lot shall be placed in the rear yard or side yard so as not to be visible from public view. No exterior air-conditioning condenser unit or other utility boxes or appurtenances shall be allowed to be visible from any Boulevard Style Street, including Cimarron Woods Drive, Josephine Street and 99th Street and such utility units shall in no instance be placed in any side, rear or front yard abutting such Boulevard Style Street.

18. Trees and Vegetation. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Trees and shrubs along any Boulevard Style Street, including Cimarron Woods Drive, Josephine Street and 99th Street, shall be placed only in a landscape easement area, except for plantings within the boulevard medians, all as provided by the Cimarron Woods Subdivision Agreement. Vacant Lots shall not be used for dumping of earth or any building or waste materials, including grass clippings, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.

19. Full Lot Requirement. No Residence shall be constructed on a Lot unless the entire Lot, as originally platted, is owned by one owner of such Lot, except if parts of two or more platted Lots have been legally combined into one Lot which is at least as wide as the average of all Lots on the original plat, and is as large in area as the largest Lot in the original plat.

20. Detached/Temporary Structures, Etc. No structure of a temporary character, carport, detached garage, trailer, basement, tent, outbuilding or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently. No structure or dwelling shall be moved from outside the Cimarron Woods West to any Lot without the written approval of Declarant.

21. Underground Utility Requirement. All utility service lines from each Lot line to a dwelling or other Improvement shall be underground.

22. Siltation Control. Declarant does hereby reserve unto itself the right to require the installation of siltation fences or erosion control devices and measures in such location, configurations, and designs as it may determine appropriate in its sole and absolute discretion, all at the cost of the Owner. Silt fences shall be used by each Owner of an uphill Lot, as defined by Declarant, during construction. Each owner of each Lot shall control erosion on their Lot and remain responsible for any erosion resulting from construction on such owner's Lot, whether such erosion occurs on such owner's Lot or on neighboring Lots. If any Owner fails to install erosion control measures as required by the Declarant, Declarant shall have the right to enter onto such Lot and install such erosion control measures at the cost of Owner, which cost may become a lien against such Lot.

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23. Tree Planting Requirement. Except for Lots owned by the Declarant and any designated builder, all Lots shall be fully sodded within two years after closing of said Lot or within 30 days after occupancy of said Lot, whichever occurs earlier. There shall be planted on each lot a minimum of two (2) trees prior to occupancy of said Lot. At least one tree shall be planted in the front yard and at least one tree shall be planted in the rear yard. Deciduous trees shall be a minimum of two inch (2") caliper and coniferous trees shall at least six feet (6') in height.

**ARTICLE II.**  
**HOMEOWNERS' ASSOCIATION**

1. The Association. Declarant has or will cause the incorporation of the Cimarron Woods West Homeowners Association, a Nebraska not for profit corporation (hereinafter referred to as the "Association"). The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Lots, including:

A. The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members, together with the performance of the Common Area Obligations identified in the Residential Subdivision Agreement for Cimarron Woods between the Declarant, the City of La Vista and Sanitary and Improvement No. 237 as being a Common Area Obligation or an obligation of the Homeowners' Association, either directly or as a successor in obligation to the Declarant (the Developer). Common Facilities may include but are not limited to: outlots, recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks dedicated and nondedicated roads, paths, ways, green areas, landscaping, perimeter fencing, buffer areas and signs and entrances for Cimarron Woods West. Common Facilities may be situated on property owned or leased by the Association, on public property, on private property subject to an easement in favor of the Association, or on property dedicated to or owned or leased by a Sanitary Improvement District.

B. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities. The rules and regulations may permit or restrict use of the Common Facilities by Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Facility.

C. The exercise, promotion, enhancement and protection of the privileges and interests of the residents of Cimarron Woods West; and the protection and maintenance of the residential character of Cimarron Woods West.

D. The Mandatory Duties of the Association as set forth in Article IV of this Declaration.

2. Membership and Voting. The "Owner" of each Lot shall be a Member of this Association. For purposes of this Declaration, the term "Owner" of a Lot means

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and refers to the record Owner, whether one or more persons or entities, of fee simple title of a Lot, but excluding however those parties having any interest in any of such Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot. With the exception of the Class B membership set forth below, the Owner of each Lot, whether one or more, shall have one vote on all matters properly before the Association. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to twelve (12) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- a. when the total votes outstanding in the Class A membership equal three-fourths of the total votes outstanding in the Class B membership, or
- b. on June 1, 2012 or sooner at Declarant's discretion.

3. Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the Purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

A. The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

B. The maintenance, landscaping, mowing, watering, repair and replacement of parks, perimeter fencing and landscaping, open space, buffer areas and recreational facilities and land, and other public property and improvements on parks, street right-of-way, medians or public property within or near Cimarron Woods West.

C. The Mandatory Duties of the Association described in Article IV of this Declaration.

D. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

E. The expenditure, commitment and payment of

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Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Facility against property damage and casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.

F. The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

G. The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

H. The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

I. The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

J. General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

K. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

4. Mandatory Duties of Association. The Association shall install, permanently and continuously maintain, replace and repair any entranceways, entrance signs and landscaping, perimeter fencing, trails (except trails in Outlots C, D and E), any trees and landscaping in street right-of-way, medians, boulevards, buffer areas (including the industrial buffer area along the west side and the south side of Cimarron Woods) and easement areas, requirements of any 404 permit, drainage detention facilities, recreational space and equipment, and related fixtures in Cimarron Woods West and keep the same in generally good and neat condition and shall own and maintain Outlots A-B, inclusive, all in Cimarron Woods in generally good and neat condition. In complying with these mandatory duties, the Association shall comply with the requirements of the Residential Subdivision Agreement for Cimarron Woods entered into by Declarant and the City of La Vista and shall enter into any required maintenance agreement with SID 237 and the City of La Vista. In the event that Declarant and the Association fail to comply with any mandatory duty stated herein, the City of La Vista, at its option, may itself take such remedial or curative action, or cause such action to be taken, and assess the cost thereof to each Lot within Cimarron Woods West.

5. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with a dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this

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declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

6. Abatement of Dues and Assessments. Notwithstanding any other provisions of this declaration, the Board of Directors may, in individual circumstances where good cause exists, abate all or part of the dues due in respect of any Lot, and may abate all dues owing in respect to any unsold Lot during the period such Lot is owned by the Declarant. During any such time of abatement of dues on Declarant-owned lots and until the Homeowners' Association is activated and has annual income from membership dues and assessments sufficient to fully fund performance of the Common Area Obligations as defined in this Declaration or in the Subdivision Agreement, Declarant shall perform such obligations, or in the alternative fund the cost of performance of such Common Area Obligations to the extent of any shortfall in membership dues and assessments received by the Association for such purposes. Assessments for Extraordinary Costs as provided for in Section 10 hereof, may be waived only with the consent of the City.

7. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

8. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Section 1 of this Article, and to perform the Powers and Responsibilities of the Association described in Sections 3 and 4 of this Article.

9. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 11, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

A. Two Hundred and NO/100ths (\$200.00) Dollars per Lot.

B. In each calendar year beginning on January 1, 2005, one hundred twenty-five percent (125%) of the aggregate dues charged in the previous calendar year.

10. Assessments for Extraordinary Costs. In addition to the dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities. The aggregate assessments for such extraordinary cost in each calendar year shall be limited in an amount to Two Hundred and NO/100ths (\$200.00) Dollars per Lot.

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11. Excess Dues and Assessments. With the approval of seventy-five (75%) percent of votes of the Members of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximums established in this declaration.

12. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Section 6 of this Article.

13. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.

14. Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessment which is not paid when due shall be delinquent. Delinquent dues or assessment shall bear interest from the due date at the rate of sixteen percent (16%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Area or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. In such event, the Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

15. Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

### **ARTICLE III. EASEMENTS**

1. Easements - General Scope. A perpetual license and easement are hereby reserved in favor of and granted to Omaha Public Power District, Quest Communications, and any company which have been granted a franchise to provide a cable television system within the Lots; to Metropolitan Utilities District of Omaha, and Sanitary and Improvement District No. 237 of Sarpy County, Nebraska, their successors and assigns, to erect and operate, maintain, repair and renew buried or underground sewers, water and gas mains and cables, lines or conduits and other electric and telephone utility facilities for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service and for the transmission of signals and sounds of all kinds including signals provided by a cable television system and the reception on, over, through, under and across a five (5') foot wide strip of land abutting the front and the side boundary

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lines of the Lots; and eight (8') foot wide strip of land abutting the rear boundary lines of all interior Lots and all exterior lots that are adjacent to presently platted and recorded Lots; and a sixteen (16') foot wide strip of land abutting the rear boundary lines of all exterior Lots that are not adjacent to presently platted and recorded Lots. The term exterior Lots is herein defined as those Lots forming the outer perimeter of the Lots. The sixteen (16') foot wide easement will be reduced to an eight (8') foot wide strip, when such adjacent land is surveyed, platted and recorded.

2. Metropolitan Utilities District Water. A perpetual easement is further reserved for the Metropolitan Utilities District of Omaha, their successors and assigns to erect, install, operate, maintain, repair and renew pipelines, hydrants and other related facilities, and to extend thereon pipes, hydrants and other related facilities and to extend therein pipes for the transmission of gas and water on, through, under and across a five (5') foot wide strip of land abutting all cull-de-sac streets; this license being granted for the use and benefit of all present and future owners of these Lots; provided, however, that such licenses and easements are granted upon the specific conditions that if any of such utility companies fail to construct such facilities along any of such Lot lines within thirty-six (36) months of date hereof, or if any such facilities are constructed but are thereafter removed without replacement within sixty (60) days after their removal, then such easement shall automatically terminate and become void as to such unused or abandoned easement ways. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in the easement ways but same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforementioned uses or rights granted herein.

3. Telecommunications. U.S. West Communications, Inc. and/or any other telecommunications company may, upon completion of its distribution system, require a connection charge on some or all of the Lots at the time service is requested.

4. Industrial Buffer. A permanent thirty (30') foot wide industrial buffer zone a/k/a landscape buffer easement has been and is hereby reserved in favor of the Declarant and the Cimarron Woods Homeowners Association over, under, through and across the rear 30 feet of Lots 9-14, inclusive, Lots 29-39, inclusive, Lots 39-46, inclusive, Lots 54-55, Lots 59 -61, inclusive, Lots 64 -66, inclusive, and Outlot A, all in Cimarron Woods for the purpose of constructing a six (6') foot solid wood perimeter fence and installing a treed buffer area along the west and south boundary of Cimarron Woods within said buffer zone. Such installation of perimeter fencing and trees shall be performed by the Declarant or the Association, and the Association shall maintain and replace, if necessary, all perimeter fencing and trees within said buffer zone. All trees and fencing within said buffer zone shall be planted and installed in such a manner as to create a passage for service vehicles along the easement and shall be approved in writing by the City of La Vista. No structures, whether portable or temporary, and no private fencing shall be allowed within said buffer zone without the prior approval of the City Administrator. No building permit will be granted for any of the lots encumbered by said buffer zone until Declarant has fulfilled the requirements of the Residential Subdivision Agreement for Cimarron Woods relating to said buffer zone.

5. Drainage. A permanent twenty (20') foot wide storm sewer and drainageway easement has been reserved in favor of Sanitary & Improvement District No. 237 of Sarpy County, Nebraska ("SID 237") affecting portions of Lots 61

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-65, inclusive, all in Cimarron Woods, as more particularly depicted on the plat of Cimarron Woods.

6. Landscape/Sidewalk/Trail Easements. A permanent landscape and sidewalk/trail easement has been and is hereby reserved in favor of SID 237 of Sarpy County, Nebraska, the Declarant and the Cimarron Woods Homeowners Association, and utility companies noted in the dedication on the plat of Cimarron Woods, over, under, through and across a fifteen (15') foot wide strip abutting Cimarron Woods Drive, Josephine Avenue and 99<sup>th</sup> Street on Lots 1, 6-7, 20-21, 92-93, 99-100, 113, 126, 159160, 179, 180, 189-190, 201-202, 209-225, inclusive, 236-237, 249-259, inclusive, 270-271, 285-286, 309-310, 333-334, 348-349, 363-364, 371-372, 379, all in Cimarron Woods, for the installation, maintenance, repair and, if necessary, replacement of trees, berms, plantings and other landscape measures and of a concrete trail/sidewalk.

7. Other Easements. Other easements are provided for in the final plat of Cimarron Woods which is filed in the Register of Deeds of Sarpy County, Nebraska, as the same may be replatted from time to time.

8. Encroachment on Easements Prohibited. No permanent or temporary structures, buildings, trees, retaining walls, loose rock walls, or other improvement shall be placed in or made to any of said easement areas by any person or entity, but same may be used for other purposes by the Owner of such Lot so long as such use does not then or later interfere with the aforementioned uses or rights granted herein.

#### **ARTICLE IV** **CITY RIGHT TO ENFORCE COMMON AREA OBLIGATIONS**

As used herein "Common Facilities" or "Common Area Obligations" shall mean all of the obligations identified in this Declaration or in the Residential Subdivision Agreement between the Declarant as Developer of Cimarron Woods West, Cimarron Woods East, Inc. ("Sudbeck") as Developer of Cimarron Woods East, Developer, the City of La Vista and Sanitary and Improvement District No. 237 (herein the "Subdivision Agreement") as being Common Area Obligations of the Declarant or an obligation of the Homeowner's Association, either directly or as successor in obligation to the Declarant, in respect to the Cimarron Woods West Subdivision.

Declarant and the Homeowner's Association, as successor in obligation to the Declarant, and Owners of Lots as successors in obligation in the absence of a Homeowner's Association, and all of them on behalf of themselves, their grantees, successors and assigns, do hereby covenant and agree:

1. To timely perform the terms of these Declarations and of the Subdivision Agreement regarding construction, installation, repair, maintenance or upkeep of Outlots A and B and other Common Area Obligations of the Declarant and the Homeowners' Association (collectively "Common Area Obligations");

2. Should there be a failure, for whatever reason, to faithfully and fully perform such obligations, then in such event, the City, at its option, and after thirty (30) days written notice to Owners of record of the Lots, may, in whole or in part, undertake to construct, install, repair, maintain or provide upkeep and/or take such other curative action, or cause such curative action to be taken in respect to such Common Area Obligations, and may assess against the Lots the full cost thereof,

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including but not limited to administrative, engineering and legal expenses incurred in respect thereto and foreclose said lien if need be. City may assess the cost of such work to the Owners of record of the Lots in the proportionate shares as established in this Declaration and/or by the Association with City's approval, for the particular improvement involved, and if there be no established allocation, then in such proportion as City may determine. Such assessment shall bear interest at the rate of twelve percent (12%) until paid;

3. Each Owner, for itself, its successors and assigns does hereby irrevocably promise, agree and consent to City's performing any unperformed or failed work involving the Common Area Obligations and the aforementioned Outlots, and each does hereby agree that upon City's demand, to fully reimburse the City its proportionate share of the cost of performing such work, together with interest at the above stated rate, and if enforced through legal proceedings, to reimburse City its court costs and attorneys fees incurred in such matter;

4. In addition to, and not in lieu of the foregoing, the Owners, on behalf of themselves and their grantees, successors and assigns, do hereby irrevocably consent and agree that City, at its option, may expend such funds in such amounts and from such sources as City may determine to be necessary or expedient to the prosecution of such work and/or the recovery of its costs therein incurred as authorized by this Article IV; and

5. The rights of City and the obligations of Declarant and of land owners herein provided for shall be covenants running with the land and shall survive the dissolution, termination or other cause of non-existence of the Homeowners' Association.

#### **ARTICLE V. GENERAL PROVISIONS**

1. Section Headings. Article headings and section headings herein are intended only as a brief reference to the subject matter therein and do not identify all subjects within a particular section.

2. Enforcement. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this declaration to either prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

3. Covenants Running with the Land/Duration. The covenants, conditions, restrictions, easements and terms of this declaration shall run with and bind the land in perpetuity.

4. Amendments. This Declaration may be amended by Declarant, or any person, firm corporation, partnership, or entity designated in writing by Declarant, in any manner which it may determine in its full and absolute discretion for a period of ten (10) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration. Any amendment shall be subject to section 6 of this Article V.

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5. Declarant Right to Terminate Declarant's Status. Torco Development, Inc., a Nebraska corporation, or its successor or assign, may terminate its status as Declarant under this Declaration, at anytime, by filing a Notice of Termination of Status as Declarant. Upon such filing, Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

6. Amendment, Modification, Etc.; City Consent Required. Any termination, modification, suspension or waiver of enforcement of the provisions of this Declaration shall require the prior written consent of the City of La Vista.

7. Compliance with City Ordinances and Regulations. These Declarations are not in lieu of or modification of applicable City ordinances, the requirements of which ordinances are fully applicable to the lots affected by this Declaration.

8. Severability. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused these present to be executed this 5<sup>th</sup> day of August, 2004.

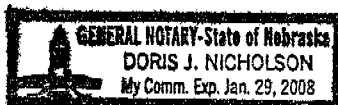
DECLARANT:

TORCO DEVELOPMENT, INC.,  
a Nebraska corporation,

By: Gerald Torzcon  
Gerald Torzcon, President

STATE OF NEBRASKA           )  
  ) ss.  
COUNTY OF SARPY           )

The foregoing instrument was acknowledged before me by Gerald Torzcon, President of Torco Development, Inc., a Nebraska corporation, known to me to be the identical person who executed the above instrument and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of said corporation. Witness my hand and Notarial Seal this 5<sup>th</sup> day of August, 2004.



Doris J. Nicholson  
Notary Public

R+R

Torco Development  
11205 S. 150<sup>th</sup> St  
Ste 100  
Omaha, NE 68138

FILED SARPY CO. NE  
 INSTRUMENT NUMBER  
2004-32418  
 2004 AUG 23 A 10:58 AM  
*[Signature]*  
 REGISTER OF DEEDS

COUNTER 9 C.E. LM  
 VERIFY AK D.E. LM  
 PROOF AS  
 FEES \$ 123.50  
 CHECK# 21738  
 CHG \_\_\_\_\_ CASH \_\_\_\_\_  
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 SHORT 1.00 NCR \_\_\_\_\_

**AMENDED AND RESTATED DECLARATION  
 OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
 FOR LOTS 381 THROUGH 505, INCLUSIVE, AND OUTLOTS F AND G,  
 CIMARRON WOODS  
 IN SARPY COUNTY, NEBRASKA**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LOTS 381 THROUGH 505, INCLUSIVE, AND OUTLOTS F AND G, CIMARRON WOODS IN SARPY COUNTY, NEBRASKA (herein "Declaration") made this 30 day of August, 2004 by Cimarron Woods East, Inc., a Nebraska corporation ("Declarant").

**RECITALS:**

WHEREAS, Cimarron Woods East, Inc., a Nebraska corporation ("Declarant") is owner of lands legally described as follows:

Lots 381 through 505, inclusive, and Outlots F and G of Cimarron Woods, a subdivision in Sarpy County, Nebraska, as surveyed, platted and recorded,

said lots and outlots being within "Tract B" as described in the surveyor's certificate of the final plat of Cimarron Woods Subdivision, and are referred to herein collectively as "Cimarron Woods East," or "Cimarron Woods East Subdivision," and individually each as "Lot" or "Lots."

WHEREAS, Declarant did on April 23, 2004 execute a Declaration pertaining to Cimarron Woods East and caused it to be recorded on April 28, 2004 in the Office of the Register of Deeds of Sarpy County, Nebraska as Instrument No. 2004-14972 and Pages A through I appended thereto; and

WHEREAS, Declarant, at date hereof, is the owner of all lots within said Tract B, Cimarron Woods Subdivision and does hereby amend and restate said Declaration as originally filed and does hereby substitute for said originally filed Declaration the following amended and restated Declaration.

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## PRELIMINARY STATEMENT

The Declarant is the owner of certain real property located within Sarpy County, Nebraska and described as follows:

Lots 381 through 505 inclusive, and Outlots F and G,  
Cimarron Woods, a subdivision in Sarpy County,  
Nebraska, as surveyed, platted and recorded,

said lots and outlots being commonly known as and are herein referred to as "Cimarron Woods East" or "Cimarron Woods East Subdivision."

Such lots are herein referred to collectively as the "Lots" and individually as each "Lot".

The Declarant desires to provide for the preservation, protection and enhancement of the values and amenities of such community and for the maintenance of the character, value, desirability, attractiveness and residential integrity of the Lots.

The Declarant desires to provide for performance of applicable provisions of the Residential Subdivision Agreement dated April 7, 2004, between Torco Development, Inc. and Cimarron Woods East, Inc., therein collectively referred to as "Developer" or "Subdivider," and Sanitary and Improvement District No. 237 of Sarpy County, Nebraska, therein and herein referred to as "District," and the City of La Vista, therein and herein referred to as "City," as are applicable to Lots 381 through 505, inclusive, Cimarron Woods Addition, herein referred to as the "Subdivision Agreement." Said Cimarron Woods East, Inc. is the Declarant herein.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements ("the Covenants"), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots. These restrictions, covenants, conditions and easements shall run with such real estate and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereof, as is more fully described herein. The Lots, and each Lot are and shall be subject to all and each of the following conditions and other terms:

Contemporaneously with the later of the filing of these Covenants or the filing of the Articles of Incorporation of Cimarron Woods East established pursuant to Article V hereof, Declarant shall convey Outlots F & G to the City of LaVista, Nebraska ("the Outlots").

## ARTICLE I TERM/LAND AFFECTED

This Declaration of Covenants, Conditions, Restrictions and Easements shall constitute covenants running with the land as to all lots identified in that portion of Cimarron Woods, a Subdivision in Sarpy County, platted as Lots 381 through 505, inclusive, and Outlots F & G, Cimarron Woods Subdivision. The term of these covenants shall be twenty (20) years from the date hereof and shall be automatically renewed for successive ten (10) year periods unless and until

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thereafter terminated or amended as provided in Article VII-4, with the City's consent as provided for in Article VII-6.

ARTICLE II  
RESTRICTIONS AND COVENANTS

1. Each Lot shall be used exclusively for residential purposes except for the Outlots which will be conveyed or dedicated by Declarant, for common or public use or purpose.

2. No residence, building, fence, wall, driveway, patio enclosure, rock garden, swimming pool, tennis court, doghouse, stable, treehouse, antenna, satellite receiving station ("dish"), flag pole, solar heating or cooling device, tool shed, windmill, wind generating equipment, or other external Improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which received the prior approval of Declarant as follows:

A. An owner desiring to erect an Improvement shall deliver two sets of construction plans, landscaping plans and plot plans to Declarant (herein collectively referred to as the "Plans"). Such Plans shall be consistent with these Covenants and reflect the type of structure, quality and use of exterior materials, exterior design, exterior color or colors (which must be earthtone colors), and location of structure proposed for such Improvement. Concurrent with submission of the Plans, owner shall notify the Declarant of the owner's mailing address.

B. Declarant shall review such Plans in relation to the type and exterior of Improvements and construction or approved for construction, on neighboring Lots and in the surrounding area and any general scheme or plans formulated by Declarant. In this regard, Declarant intends that the Lots shall form a developed residential community with homes constructed of high quality materials. If Declarant determines that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, Declarant may refuse approval of the proposed Improvement.

C. Written notice of any refusal to approve a proposed Improvement shall be mailed to the owner at the address specified by the owner upon submission of the Plans. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the Plans. If notice of refusal is not mailed within such period, the proposed Improvement shall be deemed approved by Declarant.

D. The decision to approve or refuse approval of a proposed Improvement shall be exercised by the Declarant to protect the value, character and residential quality of all Lots. However, no Lot owner, or combination of Lot owners, or other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to any proposed Improvement. No responsibility, liability or

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obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

E. Upon formation of the Association as set forth in Article V below, the Declarant may delegate the design review function to the Association's Design Review Committee. Declarant shall for a period of ten (10) years retain the right to terminate any such delegation of function so long as it still is the owner of one or more Lots.

Unless earlier otherwise transferred to the Association, upon the expiration of the aforementioned ten (10) year period, Declarant's rights set forth above shall be transferred to, and administered by the Association set forth in Article V below. Upon such transfer, the Association shall succeed to all the rights of the Declarant to the extent that wherein the term Declarant is used in this Declaration the term Cimarron Woods East Association shall be substituted therefore.

### ARTICLE III RESTRICTIONS FOR RESIDENTIAL DWELLINGS

1. Single Family Lots. Lots 381 through 505, inclusive, shall be subject to the following restrictions.

A. The Lots shall be used only for residential purposes, and no lot shall contain more than one (1) single family unit.

B. No dwelling shall be created, altered, placed or permitted to remain on any Lot other than the single family dwellings referred to above, and said dwellings shall conform to the following requirements:

i. Each one story dwelling shall contain no less than 1050 square feet of living area above the basement level and exclusive of garage area on all lots.

ii. Each one and one-half story or two story dwelling shall contain no less than 1350 square feet of total living area above the basement level with a minimum of 800 square feet on the main floor, exclusive of garage area on all lots.

iii. Each split-level or split-entry dwelling shall contain no less than 1050 square feet of living area above the basement level, exclusive of garage area, on all lots.

iv. Each tri-level dwelling shall contain no less than 1200 square feet of living area above the basement level, exclusive of garage area on all lots.

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v. All buildings on all lots shall comply with the set back requirements of the Planned Unit Development and Applicable Requirements of the City of La Vista as the same may be amended from time to time.

2. General Restrictions. All dwelling units described above shall comply with the following restrictions.

A. All dwellings shall, as a minimum, have attached, built in, or enclosed, side-by-side two car garages which must contain a minimum area of 400 square feet. Other or additional garages may be permitted at the discretion of the Architectural Control Committee.

B. For the purposes of these restrictions, living area means finished habitable space, measured to the exterior of the enclosing walls, and does not include porches, stoops, breezeways, courtyards, patios, decks, basements, garages or carports. To be considered ground level the exterior elevation shall not be more than forty (40) inches above the basement floor and at least two (2) walls must be at ground level.

C. Exposed portions of the foundation on the front of each dwelling are to be covered with clay-fired brick or stone.

D. No fence shall be constructed, or permitted to be placed in front of the front building line of the main residence erected on each lot. No chain link fences shall be allowed unless covered with black vinyl coating. All fence installations shall first be approved by the City of La Vista and a permit issued for such installation. All fencing abutting 96<sup>th</sup> Street shall be of uniform construction and pre-approved by the City of La Vista.

E. No dog runs shall be constructed unless shielded from view of neighboring lots or from any street by rear yard privacy fencing not less than six (6) feet in height.

F. No structure of a temporary character, trailer, basement, tent, shack, barn or other out building shall be erected on any Lot, or used as a residence, temporarily or permanently. No prefabricated or factory built house or residential dwelling built elsewhere shall be moved onto or assembled on any of said Lots. No pre-cut dwelling shall be assembled on any of said Lots. No full or partial subterranean dwellings or log houses shall be constructed or erected on any Lot. No dwelling shall be moved from outside of the Properties onto any of said Lots.

G. No trailer, recreational vehicle, motor home, tractor or unlicensed vehicle of any type shall be permitted to be placed or parked on any portion of the properties unless in the process of loading or unloading its contents.

H. Public concrete sidewalks four feet (4') wide by four inches (4") thick shall be constructed by the then Owner of a Lot prior to the time of completion of a dwelling, or as soon as weather permits. Owners of corner lots shall construct sidewalks along each street

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side of the lot. Each dwelling unit shall have a paved driveway extending between the street and garage of not less than sixteen feet (16') in width; the driveway shall be of concrete or brick.

I. The Declarant has created a water drainage plan by grading the Properties and installing improvements and easements for storm drainage in accordance with accepted engineering principles. No building shall be placed, nor any Lot graded, to interfere with such water drainage plan nor cause damage to the building or neighboring buildings or Lots.

J. All Lots shall be kept free of rubbish, debris, merchandise and building material; however, building materials may be placed on Lots when construction is started on the main residential structure intended for such Lot. In addition, vacant Lots where capital improvements have not yet been installed shall not be used for dumping of earth or any waste materials, and shall be maintained level and smooth enough for machine mowing. Nothing herein contained shall prohibit Declarant from utilizing lots within the properties for placement of usable building materials, equipment or earth for reasonable periods of time in anticipation of construction commencement on such properties.

K. Except for the purpose of controlling erosion on vacant Lots, no field crops shall be grown upon any Lot at any time.

L. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including, but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation.

M. A dwelling on which construction has begun must be completed within one (1) year from the date the foundation was dug for said dwelling. No excavation of dirt shall be spread across any Lot in such a fashion as to materially change the grade or condition of any Lot.

N. No advertising signs or posters of any kind shall be erected or placed on any of said Lots, except the residential "For Sale" and "Sold" signs, not exceeding Twenty Four inches (24") by Thirty Six inches (36") in size, shall be permitted and, provided further, that such restriction as to sign size shall not apply to signs erected by the Declarant, or his agents, in the development of the Subdivision.

O. All driveways shall be constructed of concrete or brick.

P. No television antenna, or antenna of any kind or nature, except satellite dishes of eighteen (18") inches or less, shall be allowed on the Lots except that if they are inside the dwellings or otherwise completely concealed from view from all other Lots television antennas will be allowed.

Q. One non-metal, detached structure shall be allowed only pursuant to these

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Covenants and the existing building codes for the applicable governmental subdivision. Plans and approval for same shall be subject to the architectural control provisions of Article II, Paragraph 2 hereof, where applicable. Such detached structures shall be compatible with the dwelling unit in color, decor and dimension. In no event shall construction of such detached structure commence until the dwelling unit construction has passed inspection by the local governing body, unless construction is done by the builder in conjunction with the dwelling unit. In all events, construction of such detached structure shall be completed within sixty (60) days of commencement.

#### ARTICLE IV EASEMENTS

A perpetual license and easement is hereby granted to the Omaha Public Power District, Qwest Communications and any company which has been granted a franchise to provide a cable television system in the area to be subdivided, their successors and assigns, to erect, operate, maintain, repair and renew poles, wires, cables, conduits and other related facilities, and to extend thereon wires or cables for the carrying and transmission of electric current for light, heat and power and for the transmission of signals and sounds of all kinds including signals provided by a cable television system, and the reception on, over, through, under and across a five foot (5') wide strip of land abutting all front and side boundary lot lines, and an eight foot (8') wide strip of land abutting the rear boundary lines of all lots. A perpetual easement is hereby granted to the City of La Vista, Sarpy County, Nebraska, Metropolitan Utilities District and Aquila, Inc., their successors and assigns, to erect, install, operate, maintain, repair and renew pipelines, hydrants and other related facilities, and to extend thereon pipes for the transmission of gas and water on, through, under and across a five foot (5') wide strip of land abutting all streets. No permanent buildings or retaining walls shall be placed in the said easement ways, but the same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted. All such utility service lines from the property line to dwelling shall be underground.

#### ARTICLE V HOMEOWNERS' ASSOCIATION

1. The following definitions shall apply for the purposes of this Article:

A. "Association" shall mean and refer to the Cimarron Woods East Homeowners Association, its successors and assigns, a Nebraska nonprofit corporation, herein referred to as "Homeowners' Association."

B. "Improved Lot" shall mean and refer to any Lot within Cimarron Woods East on which a dwelling has been erected and the construction thereof is substantially complete.

All other definitions contained in Article II will likewise be applicable to this Article.

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2. Every owner of a lot shall be a member of the Association to be established for the purpose of maintaining Outlots F & G (including Corps of Engineers 404 Permit in respect thereto), any landscaping and entryway signage, or fencing, for the Cimarron Woods East Subdivision, mandatory duties of the Association as set forth in Article V of this Declaration, and to perform any other obligation specified herein. The Association shall include all of the lots in the Cimarron Woods East Subdivision as defined in this Declaration. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

3. The Declarant, for each Lot owned within the Cimarron Woods East Subdivision, hereby covenants and each owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association regular annual assessments for the charges for the purposes hereinafter set forth, which assessments, together with interest, costs, and reasonable attorneys' fees shall be and constitute until paid, a continuing charge against and a lien upon such Lot or property against which each such assessment is made.

4. The assessments levied by the Association shall be used exclusively by the Association without any part of the net earnings inuring to the private benefit of its members to fulfill the responsibility of the Association as set forth in its Articles of Incorporation, Bylaws and this Declaration, including obligations arising from the Subdivision Agreement applicable to Cimarron Woods East.

5. Before each fiscal year, the Board of Directors of the Association shall adopt and fix in reasonably itemized detail an annual budget for the then anticipated fiscal affairs and general operations for the Association for such fiscal year, and shall levy and collect annual assessments from each Lot, which shall be sufficient to fund the budgeted expenses for the fiscal year.

6. The regular annual assessments provide for herein shall commence as to all Lots on the first day of the month following the filing of this Declaration. The regular annual assessments provided herein as to all improved Lots shall commence the first day of the month following the month during which the dwelling was substantially completed. The first regular annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every owner subject thereto. The due date shall be January 1 of each year. The Association shall, upon demand, and for a reasonable charge, furnish a certification signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

7. Any assessment not paid within thirty (30) days after the due date, together with all costs, shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may foreclose the lien against the property in the same manner as provided by law for foreclosure of mortgages upon filing a Notice of Lien with the Register of Deeds of Sarpy County, Nebraska. Such Notice of Lien shall be acknowledged by Declarant or an officer of the Association and shall set forth the name(s) of the record owner(s) of the Lot, the amount of the lien and the legal description of the Lot against which the lien has attached. A copy of the Notice of Lien shall be mailed (certified mail return receipt requested) to the record owner(s) of the Lot at the Lot address.

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The amount of the lien for purposes of collection shall be the total of the unpaid dues, assessments charges, and all expenses of collection including reasonable attorneys' fees.

8. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceedings in lieu thereof shall extinguish the lien of such assessments relating to amounts which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Notwithstanding the extinguishment of the lien through a foreclosure of a prior mortgage or deed of trust, the owner of the Lot against which such assessment was made shall be and remain personally liable for all unpaid dues, charges and assessments accruing before such foreclosure was completed.

9. All Lots dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Nebraska shall be exempt from the assessments created herein. However, no land or Improvements devoted to dwelling use shall be exempt from said assessments.

10. The Association is a nonprofit corporation originally formed by the Declarant and its Articles of Incorporation and Bylaws, to the extent not inconsistent with this Declaration, are hereby incorporated herein by this reference. In the event of any conflict between the Articles and/or Bylaws of the corporation and this Declaration, this Declaration shall control.

#### ARTICLE VI CITY RIGHT TO ENFORCE COMMON AREA OBLIGATIONS

1. As used herein "Common Facilities" or "Common Area Obligations" shall mean all of the obligations identified in this Declaration or in the Residential Subdivision Agreement between the Declarant as Developer of Cimarron Woods East, Torco Development, Inc. as Developer of Cimarron Woods West, the City of La Vista and Sanitary and Improvement District No. 237 as being Common Area Obligations of the Declarant or an obligation of the Homeowners' Association, either directly or as successor in obligation to the Declarant, in respect to the Cimarron Woods East Subdivision.

Declarant and the Homeowners' Association, as successor in obligation to the Developer, and Owners of Lots as successors in obligation in the absence of a Homeowner's Association, and each of them on behalf of themselves, their grantees, successors and assigns, do hereby covenant and agree:

To timely perform the terms of these Declarations and the Subdivision Agreement regarding construction, installation, repair, replacement, maintenance or upkeep of Outlots F & G together with other Common Area Obligations of the Developer and the Homeowners' Association (collectively "Common Area Obligations");

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2. Should there be a failure, for whatever reason, to faithfully and fully perform such obligations, then in such event, the City, at its option, and after thirty (30) days written notice to Owners of record of the Lots, may, in whole or in part, undertake to construct, install, repair, maintain or provide upkeep and/or take such other curative action, or cause such curative action to be taken for such Common Area Obligations, and may assess against the Lots the full cost thereof, including but not limited to administrative, engineering and legal expenses incurred in respect thereto and foreclose said lien if need be. City may assess the cost of such work to the Owners of record of the Lots in the proportionate shares as established in this Declaration and/or by the Association with City's approval, for the particular improvement involved, and if there be no established allocation, then in such proportion as City may determine. Such assessment shall bear interest at the rate of twelve percent (12%) and shall include all costs and reasonable attorneys fees incurred by City and shall constitute until paid a continuing charge against and a lien upon such lot or property against each such lot or property against which each such assessment is made;

3. Each Owner, for itself, its successors and assigns does hereby irrevocably promise, agree and consent to City's performing any unperformed or failed work involving the Common Area Obligations and the aforementioned Outlots, and each does hereby agree that upon City's demand, to fully reimburse the City its proportionate share of the cost of performing such work, together with interest at the above stated rate, and if enforced through legal proceedings, to reimburse City its court costs and attorneys fees incurred in such matter;

4. In addition to, and not in lieu of the foregoing, the Owners, on behalf of themselves and their grantees, successors and assigns, do hereby irrevocably consent and agree that City, at its option, may expend such funds in such amounts and from such sources as City may determine to be necessary or expedient to the prosecution of such work and/or the recovery of its costs therein incurred as authorized by this Article VI; and

5. The rights of City and the obligations of Declarant and of land owners herein provided for shall be covenants running with the land and shall survive the dissolution, termination or other cause of non-existence of the Homeowners' Association.

## ARTICLE VII GENERAL PROVISIONS

1. Section Headings. Article headings and section headings herein are intended only as a brief reference to the subject matter therein and do not identify all subjects within a particular section.

2. Enforcement. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this declaration to either prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant or by any Owner to

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enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

3. Covenants Running with the Land. The covenants, conditions, restrictions, easements and terms of this declaration shall run with and bind the land.

4. Amendments. This Declaration may be amended by Declarant, or any person, firm corporation, partnership, or entity designated in writing by Declarant, in any manner which it may determine in its full and absolute discretion for a period of ten (10) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration. Any amendment, whether by Declarant, a designee of Declarant or by the owners, shall be subject to section 6 of this Article VII.

5. Declarant Right to Terminate Declarant's Status. Cimarron Woods East, Inc., a Nebraska corporation, or its successor or assign, may terminate its status as Declarant under this Declaration, at anytime, by filing a Notice of Termination of Status as Declarant. Upon such filing, Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

6. Amendment, Modification, Etc.; City Consent Required. Any termination, modification, suspension or waiver of enforcement of the provisions of this Declaration shall require the prior written consent of the City of LaVista.

7. Compliance with City Ordinances and Regulations. These Declarations are not in lieu of or modification of applicable City ordinances, the requirements of which ordinances are fully applicable to the lots and outlots affected by this Declaration.

8. Severability. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 27 day of August, 2004.

ATTEST:

CIMARRON WOODS EAST, INC., a Nebraska corporation  
Owner of Lots 381 through 505, inclusive, and Outlots F and  
G, Cimarron Woods Subdivision

Jeanne Sudbax  
Secretary

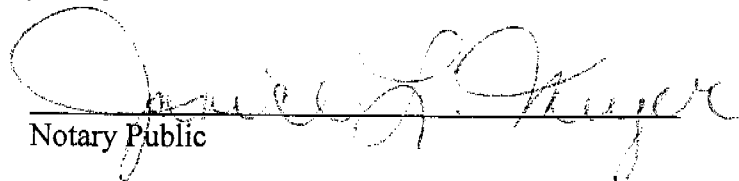
By: [Signature]  
Its: President

~~2004-3-2008~~  
Cn

STATE OF NEBRASKA ]  
COUNTY OF Sarpy ] SS:

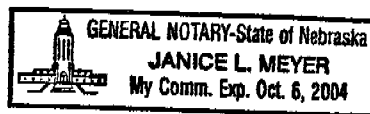
On this 20 day of August, 2004, before me, a Notary Public, duly commissioned and qualified in and for said County, appeared Melvin Sudbeck, personally known by me to be the President of Cimarron Woods East, Inc., and W. Ann Sudbeck, personally known by me to be the Secretary of said corporation, and the identical persons whose names are affixed to the foregoing instrument, and they acknowledged the execution thereof to be their voluntary act and deed.

WITNESS my hand and Notarial Seal the day and year last above written.

  
Notary Public

After recording please return to:

Robert F. Peterson  
Laughlin, Peterson & Lang  
11718 Nicholas Street, #101  
Omaha, Nebraska 68154  
402-330-1900





DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, OMAHA DISTRICT  
NEBRASKA REGULATORY OFFICE-WEHRSPANN  
8901 SOUTH 154<sup>TH</sup> STREET, SUITE 1  
OMAHA, NEBRASKA 68138-3621

CO

REPLY TO  
ATTENTION OF:

August 29, 2003

SEP 05 2003

Mr. Jerry Torczon  
BHI Properties, Inc.  
11205 South 150<sup>th</sup> Street, Suite 100  
Omaha, Nebraska 68138

Dear Mr. Torczon:

We have reviewed the request for Department of the Army authorization for the Shenandoah Development located in the North 1/2 Section 16, Township 14 North, Range 12 East, Sarpy County, Nebraska.

Based on the information provided this office has determined that your project is authorized by the Department of the Army Nationwide Permit No. 39, found in the January 15, 2002 Federal Register (Vol. 67, No. 10, Part II), Issuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide permit and lists the General Conditions that must be adhered to for this authorization to remain valid.

~~The authorization for this Nationwide Permit will include the following Special~~  
Conditions:

1. All areas disturbed by construction shall be revegetated to appropriate perennial, native grasses and forbs and maintained in this condition. Reed Canary Grass (*Phalaris arundinacea*), Purple Loosestrife (*Lythrum salicaria*) and Smooth Brome (*Bromus inermis*) are not appropriate choices of vegetation. Revegetation will be acceptable when ground cover of desirable species reaches 50%.
2. Concurrently with construction, silt curtains and other sediment control measures shall be employed as needed to protect waters of the U.S. Upon completion of the project, upland seeding of disturbed areas adjacent to the wetland and channel crossings shall be completed by September 15 of that year. If this seeding cannot be accomplished by that date, an erosion blanket must be placed on the disturbed slopes adjacent to wetland and channel crossings. The erosion blanket will remain in place until native upland vegetation is established.
3. The Wehrspamm Regulatory Office shall be notified of the construction start and end dates, as well as all appropriate documentation stating the date on which seeding of disturbed areas was completed.

EXHIBIT

I-1

Although an individual Department of the Army permit will not be required for the project, this does not eliminate the requirement that you obtain any other applicable Federal, state, tribal or local permits as required. Please note that deviations from the original plans and specifications of your project could require additional authorization from this office.

You are responsible for all work accomplished in accordance with the terms and conditions of the Nationwide Permit. If a contractor or other authorized representative will be accomplishing the work authorized by the Nationwide Permit in your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable Nationwide Permit. Any activity that fails to comply with all of the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

In compliance with General Condition 14, the attached Compliance Certification form must be signed and returned to the address listed upon completion of the authorized work and any required mitigation.

This verification will be valid until August 29, 2005.

Should you at any time become aware that either an endangered and/or threatened species or its critical habitat exists within the project area, you must immediately notify this office.

If you have any questions concerning this determination or jurisdiction, please feel free to contact John Moeschen at (402) 896-0896 and reference Nationwide Permit No. 2003-10760.

Sincerely,



for Michael Rabbe  
Nebraska State Program Manager

Enclosures

Copy Furnished:  
DEQ (Hickman)  
Sarpy County (Tex)  
E&A Consulting Group, Inc. (Meyer)



**DEPARTMENT OF THE ARMY**  
CORPS OF ENGINEERS, OMAHA DISTRICT  
NEBRASKA REGULATORY OFFICE-WEHRSPANN  
8901 SOUTH 154<sup>TH</sup> STREET, SUITE 1  
OMAHA, NEBRASKA 68138-3621

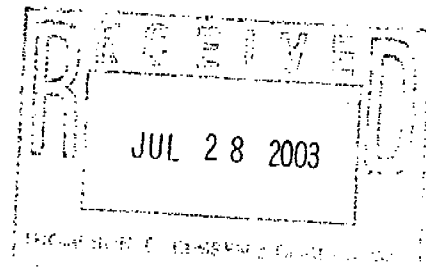
C9

**COPY**

1056-121

REPLY TO  
ATTENTION OF:

July 24, 2003



Mr. Melvin Sudbeck  
Shenandoah South, Inc.  
16255 Woodland Drive  
Omaha, Nebraska 68136

RE: Shenandoah

Dear Mr. Sudbeck:

We have reviewed your request for Department of the Army authorization for the construction of two road crossings on an unnamed tributary to West Papillion Creek. The work will be carried out in accordance with plans received on July 24, 2003. The sites are located in the NE  $\frac{1}{4}$  of Section 16, Township 14 North, Range 12 East, Sarpy County, Nebraska.

Based on the information you provided, this office has determined that your work is authorized by the Department of the Army Nationwide Permit No. 39, found in the January 15, 2002 Federal Register (Vol. 67, No. 10, Part II), Issuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General Conditions that must be adhered to for this authorization to remain valid.

Although an individual Department of the Army permit will not be required for the project, this does not eliminate the requirement that you obtain any other applicable Federal, state, tribal or local permits as required. Please note that deviations from the original plans and specifications of your project could require additional authorization from this office.

You are responsible for all work accomplished in accordance with the terms and conditions of the Nationwide Permit. If a contractor or other authorized representative will be accomplishing the work authorized by the Nationwide Permit in your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable Nationwide Permit. Any activity that fails to comply with all of the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

In compliance with General Condition 14, the attached Compliance Certification form must be signed and returned to the address listed upon completion of the authorized work and any required mitigation.

EXHIBIT I-2

Cr

**COPY**

-2-

This verification will be valid until **July 24, 2005**.

Should you at any time become aware that either an endangered and/or threatened species or its critical habitat exists within the project area, you must immediately notify this office.

If you have any questions concerning this determination or jurisdiction, please feel free to contact Matt Wray at (402) 896-0896 and reference Nationwide Permit No. **2003-10795**.

Sincerely,

*Matt Wray*  
FOR Michael Rabbe  
Nebraska State Program Manager

Enclosures

Copy Furnished:

NDEQ (Terry Hickman)  
TD<sup>2</sup> (Doug Kellner)

2005-00/01C5

EXHIBIT J

lots	lots	units	units
Torczo SF	Sudbeck SF	Townhomes	MF
285	125	94	418

**total acreage of development**

Outlot A - entrance park area NW corner  
 Outlot B - entrance park/Harrison buffer NW corner: buildable  
 Outlot B - entrance park/Harrison buffer NW corner: unbuildable  
 Outlot C - interior park  
 Outlot D - north end of central greenway park: unbuildable  
 Outlot D - north end of central greenway park: unbuildable  
 Outlot D - north end of central greenway park: buildable  
 Outlot E - south end of central greenway park: unbuildable  
 Outlot E - south end of central greenway park: buildable  
 Outlot F - south of railroad - unbuildable buffer  
 Outlot G - south of railroad - unbuildable drainageway

223.5 acres  
 0.567 acres - SID may buy less developer contribution  
 2.123 acres - SID may buy less developer contribution  
 0.82 acres - unbuildable - SID may buy, but may not pay for  
 3.533 acres - SID may buy less developer contribution  
 0.89 acres - unbuildable - SID may buy, but may not pay for  
 1.4 acres - unbuildable - SID may buy, but may not pay for  
 6.789 acres - SID may buy less developer contribution  
 14.23 acres - SID may buy less developer contribution  
 4.2 acres - unbuildable - SID may buy, but may not pay for  
 1.785 acres - unbuildable - SID may buy, but may not pay for  
 1.167 acres - unbuildable - SID may buy, but may not pay for

**total greenspace**

37.504 total of 504 SF lots  
 25.94 acres total purchase price of development 223.5 x \$40,000 = \$8,940,000 M

**amount of development to be apartments**

balance of development to be SF residential

**density of Single Family (SF)**

at 15 people/acre

**density of Multi Family (MF)**

2000 census 2.32/unit

**total population of proposed SID**

**park land requirement:**

(2.5 acres park per 1,000 people)

9.83 GO Cost to SID = @ \$40,000/acre  
 36.9937 acres - 9.83 = 27.2 x \$40,000 = \$1,088,000 M

**Developer Contribution**

9.83 acres of parkland and greenspace  
 10.262 acres of unbuildable drainageway/or buffers/adjacency requirements  
 20.092

**Total Developer Contribution**

20.092 x 40,000 = \$803,680 \*  
 \*cost per SF lot is specially assessed: \$ 1,594.60

**Total Parkland to be purchased by SID**

17.412 acres of parkland & greenspace 17.412 x 40,000 = \$696,480