

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
AUGUST 3, 2010 AGENDA

Subject:	Type:	Submitted By:
AMENDMENT TO PUD PLAN &		
AMENDMENT TO SUBDIVISION	◆ RESOLUTION	ANN BIRCH
AGREEMENT –	◆ ORDINANCE	COMMUNITY DEVELOPMENT
PORTAL RIDGE	RECEIVE/FILE	DIRECTOR

SYNOPSIS

A public hearing has been scheduled and an ordinance prepared to amend the final planned unit development plan (PUD), and a resolution has been prepared to amend the subdivision agreement to allow for 23-foot corner side yard setbacks on certain lots in the Portal Ridge subdivision.

FISCAL IMPACT

None.

RECOMMENDATION

Approval.

BACKGROUND

A public hearing has been scheduled to consider amendments proposed by the developer to allow for 23-foot corner side yard setbacks on certain lots in the Portal Ridge subdivision.

The original PUD plan for the Portal Ridge subdivision required 25-foot corner side yard setbacks. The developer has requested an amendment to the PUD plan and Subdivision Agreement to allow for 23 feet on the vacant corner lots (28 lots out of a total of 242 platted in the subdivision). The developer has stated the additional 2 feet will allow for a 3-car garage, ranch-style home to be built on some of the smaller lots. The amendment to the Subdivision Agreement also provides for a minimum square footage of each residence to be constructed on these lots (see additional detail in the staff report attached).

The Planning Commission held a public hearing on July 15, 2010, and unanimously voted to recommend denial of the amendment to the PUD plan to allow for the 23-foot corner side yard setbacks. The applicant was not present to represent the request and answer questions. Following that hearing, the applicant requested a meeting with staff. After that meeting, staff requested the applicant reduce the number of lots to the least number possible and remove those already built upon and provide further information why re-platting or other remedies are not possible. Based on the additional information (see staff report), staff is recommending approval of the proposed amendment.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LA VISTA, NEBRASKA, AMENDING ORDINANCE NO. 933 BY ESTABLISHING NEW SETBACK STANDARDS FOR CERTAIN LOTS; TO PROVIDE WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT; AND TO PROVIDE FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA:

Section 1. In accordance with Section 5.15 of the La Vista Zoning Ordinance No. 848, the final PUD plan for the Portal Ridge subdivision is amended for the following described real estate, to wit:

LEGAL DESCRIPTION

Lots 10, 30, 37, 67, 73, 91, 116, 117, 136, 140, 141, 148, 149, 155, 160, 174, 176, 184, 185, 192, 200, 216, 217, 238, 239 Portal Ridge, a sub-division as surveyed, platted and recorded in Sarpy County, Nebraska

Section 2. This document provides for the street side yard setback as established in the final PUD plan to be amended from twenty-five (25) feet to twenty-three (23) feet on the above-described lots. Said amendment does not change the underlying R-1 zoning on said real estate as authorized in the PUD plan.

Section 3. This Ordinance shall be in full force and effect after its passage, approval, and publication in pamphlet form as provided by law.

PASSED AND APPROVED THIS 3RD DAY OF AUGUST 2010.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

RESOLUTION NO._____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AN AMENDMENT TO THE RESIDENTIAL SUBDIVISION AGREEMENT FOR PORTAL RIDGE IN A FORM SATISFACTORY TO THE CITY ADMINISTRATOR AND CITY ATTORNEY.

WHEREAS, the City did on June 6, 2006, approve the Residential Subdivision Agreement for Portal Ridge and an amendment on July 3, 2007 ; and

WHEREAS, the City has proposed an amendment to allow for 23-foot corner side yard setbacks on certain lots in the Portal Ridge subdivision; and

NOW THEREFORE, BE IT RESOLVED, that an Amendment to the Residential Subdivision Agreement presented at the August 3, 2010, City Council meeting for Portal Ridge be, and hereby is approved, and the Mayor and City Clerk be and hereby are, authorized to execute same on behalf of the City with such revisions or amendments thereto that the City Administrator and City Attorney may determine necessary to carry out the intent of the City Council.

PASSED AND APPROVED THIS 3RD DAY OF AUGUST 2010.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

**CITY OF LA VISTA
PLANNING DIVISION**

RECOMMENDATION REPORT

FOR HEARING OF: August 3, 2010
Report prepared on July 27, 2010

I. GENERAL INFORMATION

A. APPLICANT:

Boyer Young Development
9719 Giles Road
La Vista, NE 68128

B. PROPERTY OWNER:

Boyer Young Development
9719 Giles Road
La Vista, NE 68128

C. LOCATION:

101st & Giles Road

D. LEGAL DESCRIPTION:

Portal Ridge, a subdivision in Section 21, Township 14N, Range 12E of the 6th P.M., Sarpy County, NE

E. REQUESTED ACTION(S):

Amendment of the Final Planned Unit Development (PUD)
Amendment to Residential Subdivision Agreement

F. EXISTING ZONING AND LAND USE:

R-1 PUD, Single-Family Residential Planned Unit Development
Subdivision partially developed.

PURPOSE OF REQUEST:

Amend the PUD to allow for 23-foot street side yard setbacks on certain vacant lots; 25 feet is currently required.

G. SIZE OF SITE:

88.532 Acres

II. BACKGROUND INFORMATION

A. EXISTING CONDITION OF SITE:

New subdivision with existing homes, homes under construction and vacant lots for development.

B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:

1. **North:** Val Vista subdivision; R-1 Single-Family Residential
2. **East:** Val Verde subdivision; R-1 Single-Family Residential
3. **South:** Portal Plaza South subdivision (City of Papillion)
4. **West:** Portal Plaza subdivision (City of Papillion)

C. REVELANT CASE HISTORY:

Ordinance No. 993 approved the PUD Overlay District on Lots 1-242 and Outlots A-F, Portal Ridge. Approved PUD allowed for 25 foot front and rear setbacks, 7 feet side yard and waived the lot width and lot area requirements. Reductions were approved in exchange for significant increases in greenspace. Amendment approved to reduce side yard setbacks to 5 feet.

D. APPLICABLE REGULATIONS:

Section 5.15, Zoning Ordinance, regarding the PUD Planned Unit Development District.

III. ANALYSIS

A. COMPREHENSIVE PLAN:

The Future Land Use Map of the Comprehensive Plan identifies this area for medium density residential development.

B. OTHER PLANS:

Not applicable.

C. TRAFFIC AND ACCESS:

Not applicable.

D. UTILITIES:

Not applicable.

IV. REVIEW COMMENTS:

1. The developer of this subdivision has requested an amendment to the final PUD plan and Subdivision Agreement to allow for 23-foot side yard setbacks on certain lots. Twenty-five is currently required. The developer has stated the additional 2 feet will allow for a larger ranch-style home to be built on some of the smaller corner lots.
2. Prior to the platting of Portal Ridge, amendments were made to the Zoning Ordinance to provide regulations for any new development to meet the following:
 - 30 foot front and rear yard setbacks
 - 10 foot side yard setback
 - Street side yard setback to match front/rear setback
 - 70 foot minimum lot width
 - 7,000 square foot minimum lot area

3. The original PUD was approved to allow for 25 foot front and rear setbacks, 7 feet side yard setback and waived the lot width and lot area requirements. This amendment was approved in exchange for significant increases in greenspace. A recent amendment approved the reduction of the side yard setback to 5 feet from 7 feet.

V. STAFF RECOMMENDATION:

1. Staff originally recommended to the Planning Commission to disapprove of the amendment as the request was excessive (requested for all corner lots, including those already built upon), vague (asked for reduction to either 23 or 20 feet), and not well justified in that it did not identify why replatting the lots to provide extra width was not possible. Additionally, the applicant did not appear at the Planning Commission meeting in time to present the request or answer questions and the Commission went along with the staff recommendation.
2. After the Planning Commission meeting the applicant narrowed the request to include only those corner lots not already built upon, focused the request to just a 2 feet reduction from 25 feet to 23 feet, and has provided information showing that replatting is not possible in approximately one-half of the vacant corner lots due to abutting existing homes and/or existing utility line conflicts.
3. Since the request has been amended to minimize the number of lots involved and has kept the setback reduction to the minimum needed staff is now recommending APPROVAL of the amendment to the final PUD plan to allow for 23-foot street side yard setbacks on the selected lots.

VI. ATTACHMENTS TO REPORTS:

1. Vicinity Map
2. Application for Amendment to Residential Subdivision Agreement and Planned Unit Development

VII. COPIES OF REPORT TO:

1. Tim Young, Boyer Young Development
2. Mark Westergard, E & A Consulting Group
3. Public Upon Request



Michael J. O'Leary
Prepared by

Community Development Director

Date

Developed
and
Marketed By

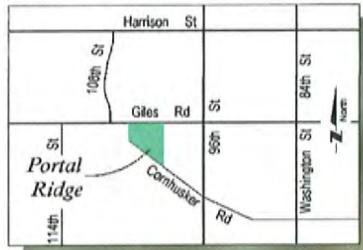
Boyer-Young



DEVELOPMENT CO.

www.boyeryoung.com
(402) 334-3690

FOR LOT DIMENSIONS,
PRICING AND AVAILABILITY
VISIT OUR WEBSITE



VICINITY MAP

Portal Ridge

- **UPPER HOME SITES**
- **MEDIUM HOME SITES**
- **PARKS AND OPEN SPACE**
- **WALKING TRAILS**

LOT SIZES ARE SUBJECT TO CHANGE.
FOR CORRECT LOT SIZE, SEE SURVEYOR'S CERTIFICATE



E&A CONSULTING GROUP, INC.
ENGINEERING • PLANNING • FIELD SERVICES

**AMENDMENT TO
RESIDENTIAL SUBDIVISION AGREEMENT
(Portal Ridge Subdivision)
PUD-1 PLANNED UNIT DEVELOPMENT**

THIS AMENDMENT TO RESIDENTIAL SUBDIVISION AGREEMENT is made and entered into by and between the CITY OF LA VISTA, NEBRASKA (hereinafter referred to as "La Vista"), SANITARY AND IMPROVEMENT DISTRICT NO. 276 OF SARPY COUNTY, NEBRASKA.

PRELIMINARY STATEMENT

SID #276 and La Vista did, on or about October 11, 2006 execute a Residential Subdivision "Agreement" to provide for a PUD-1 Planned Unit Development located on approximately 88.532 acres south of 101st and Giles Road to be known as Portal Ridge.

That the Portal Ridge, lots have had potential home buyers who have requested larger three car garage homes, particularly ranch style which cannot be accommodated on the said lots with the existing side yard restrictions resulting in lost sales and/or smaller homes with reduced valuations.

It is in the best interests and would be mutually advantageous to all parties to make certain amendments to the Agreement to accommodate such requests.

NOW THEREFORE, in consideration of, and based on the foregoing Preliminary Statement, the parties hereto agree that:

1. The corner side yard setback requirements set forth in paragraph 19 of the Agreement shall be amended from 25 to 23 feet on the following described lots, to-wit:

Lots 10, 30, 37, 67, 73, 74, 79, 80,
91, 116, 117, 140, 141, 148, 149, 155, 160,
165, 174, 176, 184, 192, 199, 200, 216, 217,
238 and 239 Portal Ridge, a sub-division as surveyed,
platted and recorded in Sarpy County, Nebraska.

2. The minimum square footage ("sf") of each residence constructed in the Portal Ridge subdivision exclusive of basements, garages and breezeways shall be as follows:

a. Ranch	1500 sf.
b. One and ½ and two story	1800 sf.

All other terms and conditions contained in the original agreement attached hereto as Exhibit "A" shall remain in full force and effect.

Executed by the City of La Vista, Nebraska, this _____ day of _____ 2010.

CITY OF LA VISTA, NEBRASKA

By: _____

ATTEST:

APPROVED AS TO FORM:

City Clerk

By: _____
City Attorney

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA)
)ss.
COUNTY OF SARPY)

On this _____ day of _____, 2010, before me a Notary Public, duly commissioned and qualified in and for said County, appeared _____, personally known by me to be the Mayor of the City of La Vista and _____, to me personally known to be the City Clerk of the City of La Vista, and the identical persons whose names are affixed to the foregoing Amendment to Residential Subdivision Agreement, and they acknowledged the execution thereof to be their voluntary act and deed and the voluntary act and deed of said City.

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

Notary Public

CITY OF LA VISTA, NEBRASKA

By: _____

ATTEST:

APPROVED AS TO FORM:

Cite: Ch. 1

By: _____

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA)
)ss.
COUNTY OF SARPY)

On this _____ day of _____, 2010, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Douglas Kindig, 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, and the identical persons whose names are affixed to the foregoing Amendment to Subdivision Agreement

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

By: _____
Chairman

ATTEST: _____
Clerk

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA)
COUNTY OF _____)
)ss.

On this _____ day of _____, 2010, before me a Notary Public, duly commissioned and qualified in and for said County, appeared _____, personally known by me to be the Chairman of Sanitary and Improvement District No. 276 of Sarpy County, Nebraska, and _____, to me personally known to be the Clerk of said District, and the identical persons whose names are affixed to the foregoing Amendment to Subdivision Agreement, and they acknowledged the execution thereof to be their voluntary act and deed and the voluntary act and deed of said District.

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

Notary Public

RECORDED 10-12-06 INSTRUMENT No. 2006-35234

RESIDENTIAL SUBDIVISION AGREEMENT
Portal Ridge Subdivision
PUD-1 Planned Unit Development

EXHIBIT A

THIS AGREEMENT, made this 14th day of October, 2006, by and between PORTAL RIDGE DEVELOPMENT, LLC, a Nebraska limited liability company (herein referred to as "Developer") and SANITARY AND IMPROVEMENT DISTRICT NO. 276 OF SARPY COUNTY, NEBRASKA (herein referred to as "District"), and the CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska (herein referred to as "City");

WITNESSETH:

WHEREAS, Developer will develop 88.532 acres, more or less, generally located south of 101st and Giles Road, with boundaries as described on Exhibit "A" hereto and to be known as Portal Ridge Subdivision; and

WHEREAS, Developer proposes to subdivide and develop the Subdivision in the manner shown on the "Portal Ridge Final Plat" prepared by E & A Consulting Group, Inc., said platted area consisting of a single tract subdivided into 241 residential lots, together with Lot 242 to be used for expansion of City's public works facility or other public use, and six (6) Outlots A through F, inclusive, for uses hereinafter more specifically provided; and

WHEREAS, Developer has requested City to approve the platting of the Subdivision, as more fully shown on Exhibit "B" hereto, and to approve said Subdivision and its sanitary sewer and drainage systems as a part of the City's sanitary 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, Developer has engaged E & A Consulting Group, Inc. as Engineer for the Subdivision; 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 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; and

WHEREAS, the improvement and paving of 107th Street between Cornhusker Road and Giles Road and the improvement of Cornhusker Road are the subject of an Interlocal Agreement between the cities of La Vista and Papillion and SID #266 and SID #276 of Sarpy County, Nebraska, and

pertain to the method of defraying construction costs of 107th Street and of Cornhusker Road that are subject to the provisions of this Subdivision Agreement.

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 Portal Ridge Subdivision" in the form approved by City and filed by Developer 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. "Cornhusker Road Buffer" or "Bufferyard" shall mean twenty (20) feet of dedicated green space along Cornhusker Road, including plant material and plan thereof to be approved by the City.
- 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 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 hereto 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.
- L. "Portal Ridge Homeowners' Association" shall be the property owners association for the Subdivision and shall mean the Nebraska nonprofit corporation formed pursuant to, or in furtherance of, the Portal Ridge Declaration of Covenants, etc. and consisting of all property owners within the Subdivision in the manner and for such purposes as are provided in the "Portal Ridge Declaration of Covenants, etc." prepared by the Developer and reviewed and approved by the City, for the development 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.

- M. "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.
- N. "Subdivision" shall mean the 88.532 acres to be developed by Developer, and described by metes and bounds on the final plat.
- O. "Landscape Buffer" shall mean the twenty (20) feet of green space (1) adjacent to and along the north side of Cornhusker Road right-of-way, and (2) along the north boundary of Lot 242, including plant material and placement to be approved by the City.

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 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 expressly noted on Exhibit "C-2," to be of narrower or wider width than twenty-five (25) feet and/or greater thickness.
- 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 within Outlot B as shown on the final plat (Exhibit "B" hereto) and more fully on the Sanitary Sewer Plan, Exhibit "C-1" hereto.
- 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.) Any charges attributable to or by reason of the Subdivision or any part thereof shall be specially assessed.

- 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. Standard OPPD street lighting is the norm for the Subdivision. The payment of OPPD charges to the extent of such standard lighting shall be general obligation of the District.
- I. Perimeter Sidewalks. To the extent authorized by Section 18-E, the credit or funds of the District may be used for perimeter sidewalks along Giles Road and along 107th Street from Giles Road to Virginia Street and along the south side of Outlot C. There will be perimeter sidewalks along Outlots D and F south of Giles Road adjacent to 103rd Street which Developer shall install.
- J. (Intentionally Left Blank).
- K. Recreational/Open Space. District funds may be used for the purchase of recreation/open space to the extent authorized by Section 4-K, Section 10-A and Exhibit "J" hereto.
- 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 shall purchase Outlots A, B, C 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 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 La Vista'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 may be specifically authorized in Subsection 18-E hereof 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 may be provided in Section 10 hereof.
- 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. Subdivision entrance signage or monuments identifying the Subdivision.

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; and (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.
- 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, lids 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 shall connect 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 or any part thereof 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 standard 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.
- I. Perimeter Sidewalks. To the extent authorized by Section 18-E, District funds or credit may be used for perimeter sidewalks along Giles Road and sidewalk along 107th Street from Giles Road south to Virginia Street and then east along Virginia Street along the south side of Outlot C. There will be no perimeter sidewalks along Cornhusker Road.
- J. (Intentionally Left Blank).
- K. Land for Recreational/Open Space. District's funds may be used for the purchase of land for recreational/open space consistent with the provisions of Section 10-A hereof and as specifically identified and quantified in Exhibit "J" hereto. To the extent specifically authorized by Section 10, the cost thereof shall be general obligation of the District.
- L. Recreational/Open Space Facilities and Equipment. District funds may be used for the capital expenditure and maintenance of recreational/open space as specifically identified in Exhibit "J" hereto to the extent authorized by City in Section 10 hereof. The specific equipment proposed, the proposed date of installation and the cost thereof must be approved by the City Council before District makes a commitment to construct or acquire. The cost of any such approved acquisitions or installations shall be general obligation of the District.
- 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-K hereof "Traffic Control Signals", the District may expend and generally obligate funds of the District, but the cost thereof shall be borne 50% by Developer (special assessment) and 50% by general obligation 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.

Q. Contribution to MUD Pioneer Main. Any contribution required to be made to MUD in respect to pioneer main charges or other hook on charge to the MUD system shall be specially assessed.

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 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 of Buildable Sites. Except as may otherwise be agreed to by City, all of 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 lot, parcel or part thereof 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 the date of levy or the 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;
 - 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. Lot Splits. Should any of the platted lots per Exhibit "B" be split, consolidated or boundary adjusted, then in such event all special assessments levied on the lot will be paid at the time of the administrative platting or other City action approving same, 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-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 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, Fencing, Landscaping of Medians, Buffer and in Outlots D and F. Installation and maintenance of entrance signs or related fixtures and landscaping of any median (including roundabout and chicane) and related fixtures and any subdivision perimeter fencing and landscaping in required twenty (20) foot landscape buffer and in Outlots D and F 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 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 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/Open Space Improvements. As regards recreational improvements for the Subdivision:

A. Specific Authority to Purchase Land for Public Purposes. As regards the acquisition of land by the District, the parties agree:

(1) Categories of Land. District credit/funding may not be utilized for the purchase of the following categories of land:

Category of Land	Payment/Consideration
Unbuildable land by reason of being in drainageway, 100 year flood area, below minimum size for building lot, etc.	District may acquire but shall make no payment for
Land needed to satisfy Subdivision recreational set aside requirements	No payment – Acreage needed to satisfy set aside requirement
Outlots or portions thereof and other areas specified in the plat or this agreement to be platted, deeded or dedicated without compensation	No payment to Developer
Amount of compensation to be paid by District to Developer for land acquisitions	See Exhibit "J" to this Subdivision Agreement

(2) Price of Land Eligible for District Purchase. District's acquisition of land for recreational purposes beyond the foregoing number of acres eligible for District funding/credit [Section 10-A(1)] shall be purchased at Developer's average cost for purchase of land within the Subdivision, which is \$37,500.00 per acre. Any such purchase shall be subject to the approval of the City Council.

(3) Conveyance of Lands to the District shall comply with the provisions of Section 22-B hereof.

(4) The amount that District may pay Developer for herein approved land purchases shall be \$37,500 per acre or a net total of \$87,338 (see Exhibit "J").

B. Recreational/Open Space Facilities. District shall construct and install recreational/open space facilities or improvements, including facilities for the Subdivision of the type and location set forth in the Recreational/Open Space Area Plan as City may from time to time amend (see Exhibit "E"). Requests for final approval shall first be submitted to the City for its approval. If any recreational improvement involves expenditure of the District's funds or credit, it must first be submitted to and be approved by the City. The City Council's approval of this Subdivision Agreement does not constitute final authorization of any such improvement or improvements.

C. Maintenance. Pending City's annexation of the District, District shall maintain the afore-approved recreational/open space areas and improvements thereon. Following

City's annexation of the District and its merger into the City, the City shall assume responsibility for the maintenance, repair and replacement of recreational improvements on Outlot B and the trail on Outlot E. The Homeowners' Association shall continue maintenance, repair and replacement of other common area improvements (see Sections 18-I(1) and (2) hereof).

D. Grading/Required Elevation. The Developer shall, at its cost, cause any proposed 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 storm water flowing over Outlot B, assuming a storm water flow over Outlot B that will exist after complete buildout of the Subdivision and areas external to the Subdivision from which storm water flows or is anticipated to flow through Outlot B 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 Outlot B.

E. Trees and Tree Plantings. As concerns trees within Outlots, City and District agree:

- (1) Existing Trees (Outlots A and C). There exists a stand of mature trees on Outlots A and C that create a buffer between the westernmost platted residential lots of the Subdivision and Portal Plaza Subdivision, said Subdivisions being divided by 107th Street right-of-way. Developer shall sell and District shall acquire said Outlots A and C for the amount specified in Exhibit "J" hereto. District shall maintain and preserve said existing stands of trees until such time as City annexes said Outlots or until such earlier time as said Outlots may otherwise be merged into the City.
- (2) New Tree Plantings. Subject to City's approval of new tree plantings and the cost thereof, District shall acquire, plant and maintain new trees and other plant life within Outlots A, B, C and E as City may authorize. District shall maintain, or make provision for maintenance of, said new trees and plant life as may be approved by City.
- (3) Credit of the District. The District's credit may be used for meeting the requirements of this Section 10-E, which shall be general obligation of the District.

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:

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.

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 among improvements in the same ratio that the entire cost of each improvement bears to the entire cost of all improvements constructed by or for the District or for its benefit.

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 Developer 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) For completed homes, sidewalks shall be constructed as soon as weather permits.
- (2) 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 fifty percent (50%) of the abutting footage on such side have been built upon.
- (3) 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.

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.

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. Outfall Sewers. The outfall sewers within the Subdivision shall be the following:

- (1) That portion of the Subdivision Sanitary Sewer System from the junction of collection sewers at Cary Street and 103rd Street, thence south to Cornhusker Road, thence east within the Cornhusker Road right-of-way to a point of connection to Omaha's Applewood Interceptor within Outlot B; and
- (2) That portion of the Sanitary Sewer from the junction of collection sewers in Quail Ridge Drive and 101st Street, thence south to Cornhusker Road, thence west within Cornhusker Road right-of-way to a point of connection to the Omaha Applewood Interceptor;

as more fully shown on Exhibit "I" hereto, herein collectively the "Portal Ridge Outfall Sewer". The City shall reimburse District its cost for the Portal Ridge Outfall Sewer portion of the sewer system, and said outfall segment shall be exclusively owned by and be the property of La Vista and shall constitute a part of the La Vista sewerage system. La Vista shall have the responsibility for the maintenance and the repair thereof.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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 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.

- G. City Right of Disconnection. Notwithstanding any other provisions of this Agreement, City retains the right to disconnect the sewer of any industry, or other 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.
- H. 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.
- I. 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.
- J. 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 \$229,174.00 for the Development Tract, computed as follows:

241 single family and townhome lots @ \$947 per lot	\$228,227.00
Lot 242 (governmental use – exempt)	-0-
Outlots A through F (unbuildable/exempt)	<u>-0-</u>
Total	<u>\$228,227.00</u>

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.

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.

D. (Intentionally Left Blank).

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 or replats, any additional fee to be paid at time of plat or replat 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.

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 valorum years 2006-2007 and 2007-2008 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 2008-2009, 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 2008, 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.
- (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. 404 Permit. None required for Subdivision.
- D. Outlot Maintenance. See Section 10 for approval process.
- E. Perimeter Sidewalks and Landscape Buffer. Perimeter sidewalks shall be installed along Giles Road and along 107th Street from Giles Road to Virginia Street and along the south side of Outlot C, and along 103rd Street east side of Outlot F and west side of Outlot D. The Subdivision will have no perimeter sidewalks along Cornhusker Road, but will have a buffer zone along Cornhusker Road as defined in Section 1-O and landscaped Outlots D and F along Giles Road dedicated to the Portal Ridge Homeowners' Association as shown on the plat. The Homeowners' Association shall plant and maintain said buffer at Association's expense. See Exhibit "E" for buffer plantings and landscaping plan. Such landscaping plan shall be approved by City and installed by the Developer or Homeowners' Association prior to issuance of building permit for lots backing on Cornhusker Road, Giles Road or 103rd Street. All Outlots along Giles Road, i.e. Outlots B, D and F, shall include berthing, trees and turf.
- F. Walking Trails. See Section 10 for approval process.
- G. Subdivision Perimeter Fencing. Where perimeter 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 constructed/installed consistently along those portions of the Subdivision perimeter where required and at Developer expense without the use of District's funds or credit. All proposed fencing along Outlots D and F are to be non-opaque and to be located south of the Outlot landscaping and berthing. Fencing along Giles Road between Val Verde Subdivision and Outlot B shall be consistent with the white vinyl fence in Val Verde. Fencing along all Outlots and open space shall be non-opaque. There shall be no fencing in Outlots D and F along 103rd Street.
- H. Traffic Study. Developer shall provide at its cost any professional traffic study, and revisions thereto, that City may require.

I. Developer/Homeowners' Association Responsibilities. The Developer and Portal Ridge 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 common area improvements, including but not limited to, open space, perimeter fence, bufferyards, signs, landscaping street medians, including center islands, entrance medians, roundabouts, and chicanes, and Outlots D and F. Following City's annexation:
 - (a) The City shall assume responsibility for maintenance of Outlots A, B, C and E and improvements thereon that City shall have approved and that have been well maintained, together with the water retention area on Outlot B.
 - (b) The Homeowners' Association's permanent obligations will be to maintain improvements to Outlots D and F, all landscape buffer easements and bufferyards, street medians and islands, including roundabouts, chicanes, center islands, entrance medians, all open space within Outlots D and F, all perimeter sidewalks, perimeter fencing, bufferyards, signs and landscaping of street medians, including center islands, entrance medians, roundabouts and chicanes, water drainage detention facilities, other than on Outlot C, if any. The capital cost of initial erection/ placement of recreational equipment approved by the City may be paid by District credit or funds to the extent authorized in conjunction with City's approval of said recreational space and equipment. See Section 10.
- (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 aforesated 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 buildup 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 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 deposit in the amount of \$15,000.00 to secure full compliance by Developer, its contractors and subcontractors under this Section 18-J. 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 \$15,000.00, 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, District shall install traffic signalization of a design, function and at a time designated by the City at one or more of the Subdivision entrances/exits along Giles Road and Cornhusker Road. The cost of such traffic control signalization shall be 50% Developer cost and 50% District cost. The amount, if any, contributed to the cost of such signalization by parties of interest on the opposite side of the street from the Portal Ridge Subdivision shall be credited in reduction of the District's and Developer's share proportionately.

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 then levied, then by Developer's deposit of bankable funds with the District's treasurer in the appropriate amount.

L. Street Name Signs. All street name signage shall comply with all applicable City standards and guidelines and manual on uniform traffic control devices 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. Landscape Buffer Easement. See Section 18-E re twenty (20) foot buffer zone along Cornhusker Road, the requirements of which shall be included within the Subdivision's Declaration of Covenants.

N. (Intentionally Left Blank).

O. (Intentionally Left Blank).

P. (Intentionally Left Blank).

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 constituted by the plat (Exhibit "B") and this Subdivision Agreement approved by the City. Such Plan shall allow a reduction of lot width and residential setback requirements to be:

Lot width	60 feet (instead of required 70 feet)
Front yard setback	25 feet (including street side yard)
Rear yard setback	25 feet (instead of required 30 feet)
Side yard setback	7 feet (instead of required 10 feet)

20. Interlocal Paving Agreements.

La Vista and District have entered, or may enter, into Interlocal Agreements with the City of Papillion and SID #266 pertaining to the paving of 107th Street and of Cornhusker Road. The District shall participate in the funding of said two projects in an amount not exceeding the percentage therein provided for the District herein (SID #276), which share of the cost may be general obligation of the District.

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

22. Miscellaneous

- A. Engineers. As used herein "City Engineer" shall mean Thompson, Dreessen & Dorner, Inc. engineering firm.
- 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.

23. Exhibit Summary

The Exhibits proposed by E & A Consulting Group, 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 (Lots 1 through 242, plus Outlots A through F, inclusive) Portal Ridge Subdivision.

Exhibit "B": Final Plat of Portal Ridge Subdivision dated November 21, 2005, with revisions of April 25, 2006 and June 6, 2006.

Exhibit "C-1": Sanitary Sewer Plan showing location of sanitary sewer to be constructed within the Subdivision, dated November 29, 2005.

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 November 29, 2005, with revision of February 2, 2006.

Exhibit "D": Grading and Erosion Control Plan.

Exhibit "E": Proposed Recreational/Open Space Area Plan.

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": Identification of and recording information for Declaration of Restrictive Covenants for Portal Ridge Subdivision.

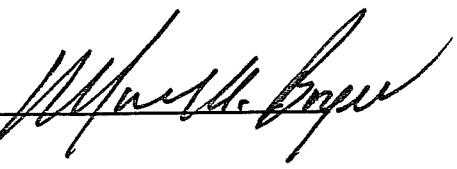
Exhibit "I": Drawing of La Vista Outfall Sewer portion of Sewer System.

Exhibit "J": Schedule of Developer's land to be transferred by Developer to District but which is not eligible for compensation from District and the net amount of compensable land transfers to District or Homeowners' Association.

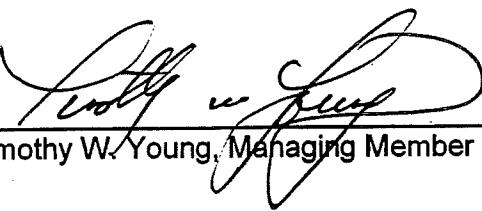
IN WITNESS WHEREOF, we, the parties hereto, by our respective duly authorized agents, hereto affix our signatures the day and year first above written.

ATTEST:

PORTAL RIDGE DEVELOPMENT, LLC, a Nebraska
limited liability company



By


Timothy W. Young, Managing Member

ATTEST:

SANITARY AND IMPROVEMENT DISTRICT NO. 276
OF SARPY COUNTY, NEBRASKA


Clerk of Said District

By

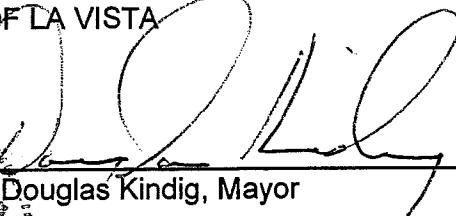

Chair of the Board of Trustees

ATTEST:

CITY OF LA VISTA



Rita M. Ramirez, City Clerk



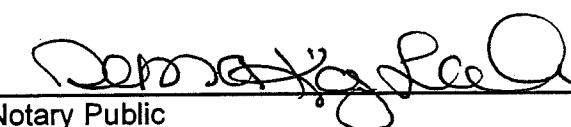
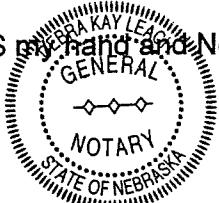
Douglas Kindig, Mayor

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA)
COUNTY OF Sarpy)

On this 5th day of October, 2006, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Timothy W. Young, personally known by me to be the Managing Member of Portal Ridge Development, LLC 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 and the voluntary act and deed of said limited liability company.

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



Notary Public

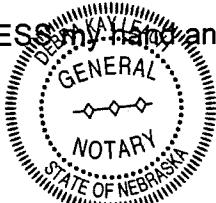
MY COMMISSION EXPIRES:
May 28, 2010

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA)
COUNTY OF Sarpy)

On this 5th day of October, 2006, before me a Notary Public, duly commissioned and qualified in and for said County, appeared timothy w young, personally known by me to be the Chair of the Board of Trustees of Sanitary and Improvement District No. 276 of Sarpy County, Nebraska, and mark Q. Boyer, to me personally known to be the Clerk of the Board of Trustees of Sanitary and Improvement District No. 276 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 and the voluntary act and deed of said District.

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



Notary Public

MY COMMISSION EXPIRES:
May 28, 2010

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA)
COUNTY OF SARPY)

On this 11 day of October, 2006, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Douglas Kindig, personally known by me to be the Mayor of the City of La Vista and Rita M. 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 and the voluntary act and deed of said City.

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



Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION

I HEREBY CERTIFY THAT I HAVE MADE A GROUND SURVEY OF THE SUBDIVISION DESCRIBED HEREIN AND THAT PERMANENT MONUMENTS HAVE BEEN PLACED ON THE BOUNDARY OF THE WITHIN PLAT AND AT ALL CORNERS OF ALL LOTS, STREETS, ANGLE POINTS AND ENDS OF ALL CURVES IN PORTAL RIDGE (THE LOTS NUMBERED AS SHOWN), BEING A REPLAT OF ALL OF TAX LOTS 14, 16, AND 18, TAX LOTS LOCATED IN THE NORTH 1/2 OF SECTION 21; AND ALSO PART OF TAX LOT R1, A TAX LOT LOCATED IN SAID NORTH 1/2 OF SECTION 21; AND ALSO PART OF THE EAST 1/2 OF THE NW1/4 OF SAID SECTION 21; AND ALSO PART OF THE WEST 1/2 OF THE WEST 1/2 OF THE NE1/4 OF SAID SECTION 21; ALL LOCATED IN TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NW1/4 OF SAID SECTION 21, SAID POINT ALSO BEING THE NORTHWEST CORNER OF THE NE1/4 OF SAID SECTION 21; THENCE S02°45'42"E (ASSUMED BEARING) ALONG THE EAST LINE OF SAID NW1/4 OF SECTION 21, SAID LINE ALSO BEING THE WEST LINE OF SAID NE1/4 OF SECTION 21, A DISTANCE OF 50.00 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF GILES ROAD, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE N87°30'14"E ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF GILES ROAD, A DISTANCE OF 661.53 FEET TO THE NORTHWEST CORNER OF LOT 41, VAL VERDE, A SUBDIVISION LOCATED IN THE EAST 1/2 OF SAID NE1/4 OF SECTION 21; THENCE S02°44'15"E ALONG THE WEST LINE OF SAID LOT 41, VAL VERDE, AND ALSO THE WEST LINE OF LOTS 42 THRU 58 INCLUSIVE, SAID VAL VERDE, AND ALSO THE WEST RIGHT-OF-WAY LINE OF CENTENNIAL ROAD, AND ALSO THE WEST LINE OF LOTS 235 THRU 228 INCLUSIVE, SAID VAL VERDE, AND ALSO THE WEST LINE OF TAX LOT 11B, A TAX LOT LOCATED IN SAID NE1/4 OF SECTION 21, A DISTANCE OF 2551.20 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF CORNHUSKER ROAD; THENCE NORTHWESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE OF CORNHUSKER ROAD ON THE FOLLOWING DESCRIBED COURSES; THENCE N56°44'36"W, A DISTANCE OF 185.39 FEET; THENCE N39°54'06"E, A DISTANCE OF 17.11 FEET; THENCE N56°44'36"W, A DISTANCE OF 2071.74 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT WITH A RADIUS OF 1441.47 FEET, A DISTANCE OF 197.72 FEET, SAID CURVE HAVING A LONG CHORD WHICH BEARS N60°40'22"W, A DISTANCE OF 197.56 FEET TO A POINT ON THE WEST LINE OF SAID EAST 1/2 OF THE NW1/4 OF SECTION 21, SAID LINE ALSO BEING ON THE EAST LINE OF SAID TAX LOT 16; THENCE S02°53'02"E ALONG SAID WEST LINE OF THE EAST 1/2 OF THE NW1/4 OF SECTION 21, SAID LINE ALSO BEING SAID EAST LINE OF TAX LOT 16, SAID LINE ALSO BEING SAID NORTHERLY RIGHT-OF-WAY LINE OF CORNHUSKER ROAD, A DISTANCE OF 4.29 FEET TO THE SOUTHEAST CORNER OF SAID TAX LOT 16; THENCE N56°44'36"W ALONG THE SOUTHERLY LINE OF SAID TAX LOT 16, SAID LINE ALSO BEING SAID NORTHERLY RIGHT-OF-WAY LINE OF CORNHUSKER ROAD, A DISTANCE OF 309.57 FEET TO THE POINT OF INTERSECTION OF SAID NORTHERLY RIGHT-OF-WAY LINE OF CORNHUSKER ROAD, AND THE EAST RIGHT-OF-WAY LINE OF 107TH STREET, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID TAX LOT 16; THENCE N02°53'02"W ALONG SAID EAST RIGHT-OF-WAY LINE OF 107TH STREET, SAID LINE ALSO BEING THE WEST LINE OF SAID TAX LOT 16, A DISTANCE OF 290.80 FEET TO THE NORTHWEST CORNER OF SAID TAX LOT 16, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID TAX LOT 18; THENCE N02°53'43"W ALONG SAID EAST RIGHT-OF-WAY LINE OF 107TH STREET, SAID LINE ALSO BEING THE WEST LINE OF SAID TAX LOT 18, A DISTANCE OF 104.36 FEET TO THE NORTHWEST CORNER OF SAID TAX LOT 18, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID TAX LOT 14; THENCE N02°53'21"W ALONG SAID EAST RIGHT-OF-WAY LINE OF 107TH STREET, SAID LINE ALSO BEING THE WEST LINE OF SAID TAX LOT 14, A DISTANCE OF 543.88 FEET TO THE POINT OF INTERSECTION OF SAID EAST RIGHT-OF-WAY LINE OF 107TH STREET, AND SAID SOUTHERLY RIGHT-OF-WAY LINE OF GILES ROAD, SAID POINT ALSO BEING THE NORTHWEST CORNER OF SAID TAX LOT 14; THENCE EASTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF GILES ROAD, SAID LINE ALSO BEING THE NORTHERLY LINE OF SAID TAX LOT 14 ON THE FOLLOWING DESCRIBED COURSES; THENCE N87°30'21"E, A DISTANCE OF 73.71 FEET; THENCE S81°52'25"E, A DISTANCE OF 179.67 FEET TO A POINT ON THE WEST LINE OF SAID EAST 1/2 OF THE NW1/4 OF SECTION 21, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID TAX LOT 14; THENCE N02°53'02"W ALONG SAID WEST LINE OF THE EAST 1/2 OF THE NW1/4 OF SECTION 21, SAID LINE ALSO BEING SAID SOUTHERLY RIGHT-OF-WAY LINE OF GILES ROAD, A DISTANCE OF 33.11 FEET; THENCE N87°30'21"E ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF GILES ROAD A DISTANCE OF 1323.36 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS AN AREA OF 3,856,466 SQUARE FEET, OR 88.532 ACRES, MORE OR LESS.

ERIC A. SCHABEN, LS-608

DATE



File No.	Revisions	Page No.
200504411		1
Date	1/27/2003	Date
Drawn By	TPM	Drawn By
Checked By	TPM	Checked By
Approved By	TPM	Approved By
Printed By	TPM	Printed By
Scale	1" = 100'	Scale
Sheet 1 of 1		Sheet 1 of 1

EXHIBIT C-1
SANITARY SEWER

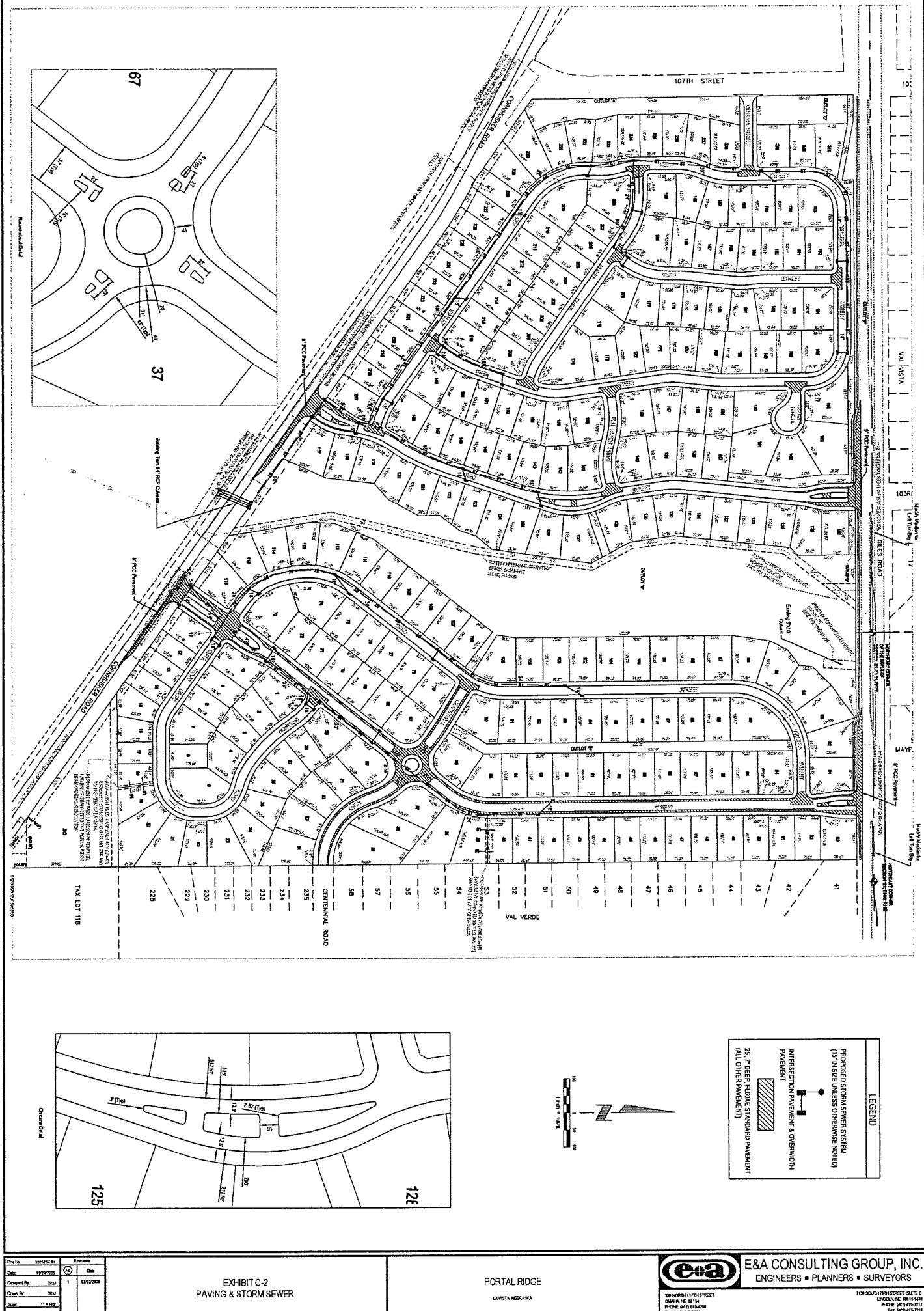
PORTAL RIDGE

LA VISTA, NEBRASKA



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

7109 SOUTH 117TH STREET, SUITE D
LINCOLN, NE 68519-5441
PHONE: (402) 464-7127
FAX: (402) 465-7114



Proj No.	100525431	P
Date:	11/27/2005	(b)
Designed By:	TM	1
Drawn By:	TM	
Scale:	1" = 120'	
Sheet	1	1

EXHIBIT C-2
PAVING & STORM SEWER

PORTAL RIDGE
LAVASTA, NEBRASKA



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

10 SOUTH 29TH STREET, SUITE 6
LINCOLN, NE 68514-5441
PHONE (402) 425-7217
FAX (402) 425-7218



File No.	200905401	Keywords
Date	19/1/2009	No.
Designed By	TBS	1
Drawn By	AMS	
Checked By		
Sheet 1 of 4		

EXHIBIT D
GRADING AND EROSION
CONTROL PLAN

PORTAL RIDGE



E&A CONSULTING GROUP, INC.
ENGINEERING • PLANNING • FIELD SERVICES

100 NORTH 51ST STREET CHICAGO
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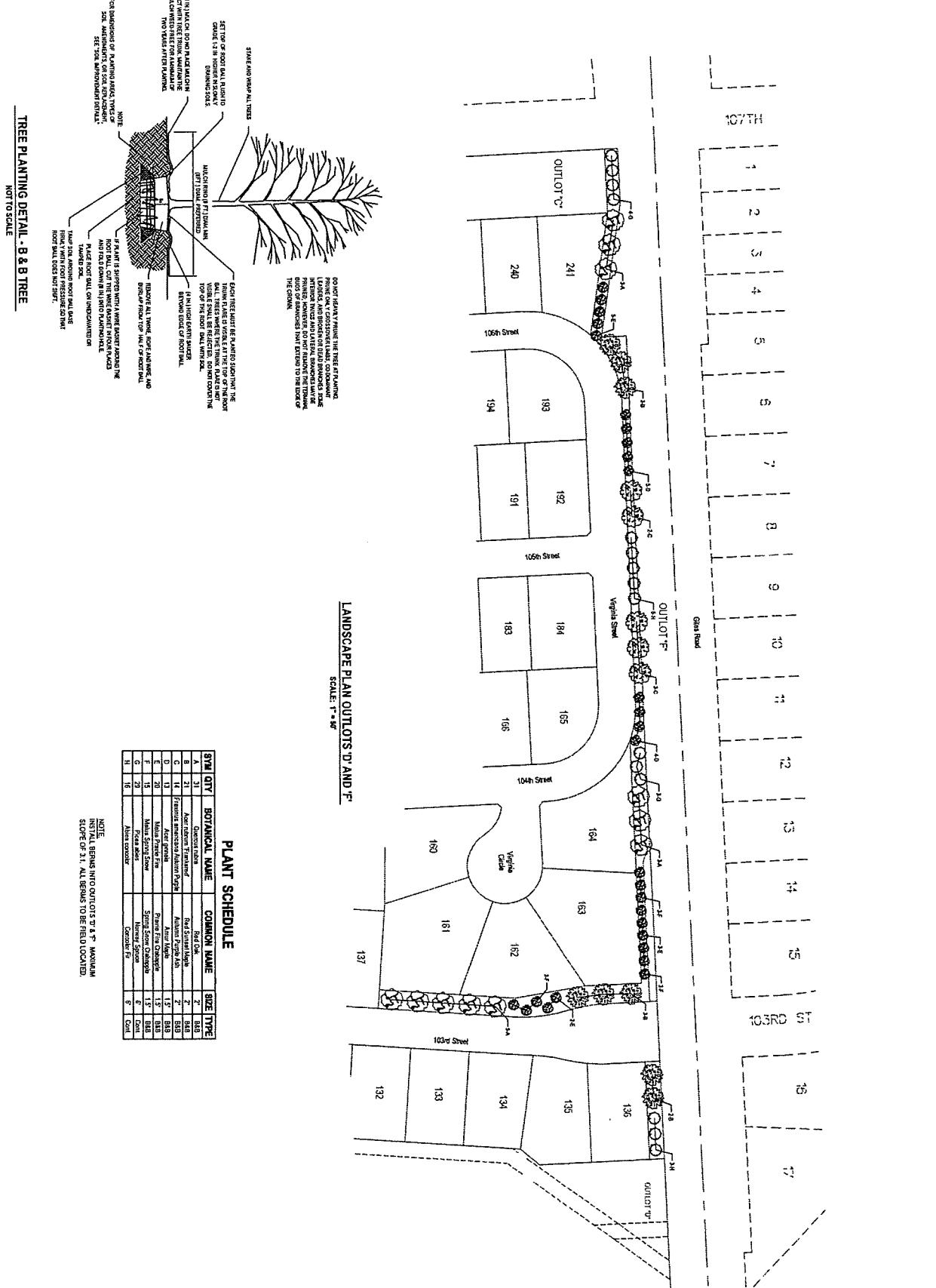
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20050541-6	100' x 100'	10,000 SF
20050541-7	100' x 100'	10,000 SF
20050541-8	100' x 100'	10,000 SF
20050541-9	100' x 100'	10,000 SF
20050541-10	100' x 100'	10,000 SF
20050541-11	100' x 100'	10,000 SF
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20050541-13	100' x 100'	10,000 SF
20050541-14	100' x 100'	10,000 SF
20050541-15	100' x 100'	10,000 SF
20050541-16	100' x 100'	10,000 SF
20050541-17	100' x 100'	10,000 SF
20050541-18	100' x 100'	10,000 SF
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20050541-89	100' x 100'	10,000 SF
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20050541-94	100' x 100'	10,000 SF
20050541-95	100' x 100'	10,000 SF
20050541-96	100' x 100'	10,000 SF
20050541-97	100' x 100'	10,000 SF
20050541-98	100' x 100'	10,000 SF
20050541-99	100' x 100'	10,000 SF
20050541-100	100' x 100'	10,000 SF

EXHIBIT 'E-1'
RECREATIONAL / OPEN SPACE AREA PLAN

PORTAL RIDGE
LA VISTA, NEBRASKA



E+A CONSULTING GROUP, INC.
ENGINEERING • PLANNING • FIELD SERVICES
208 N 111TH STREET, OMAHA, NE 68102
PHONE: (402) 494-2426 FAX: (402) 494-5209
WWW.EAEG.COM



Permit No.	2015-0544-01	Remarks
Date:	08/26/2016	100
Designated By:	PLW	1
Drawn by:	MAT	
Checked by:		
Sheet 2 of 2		

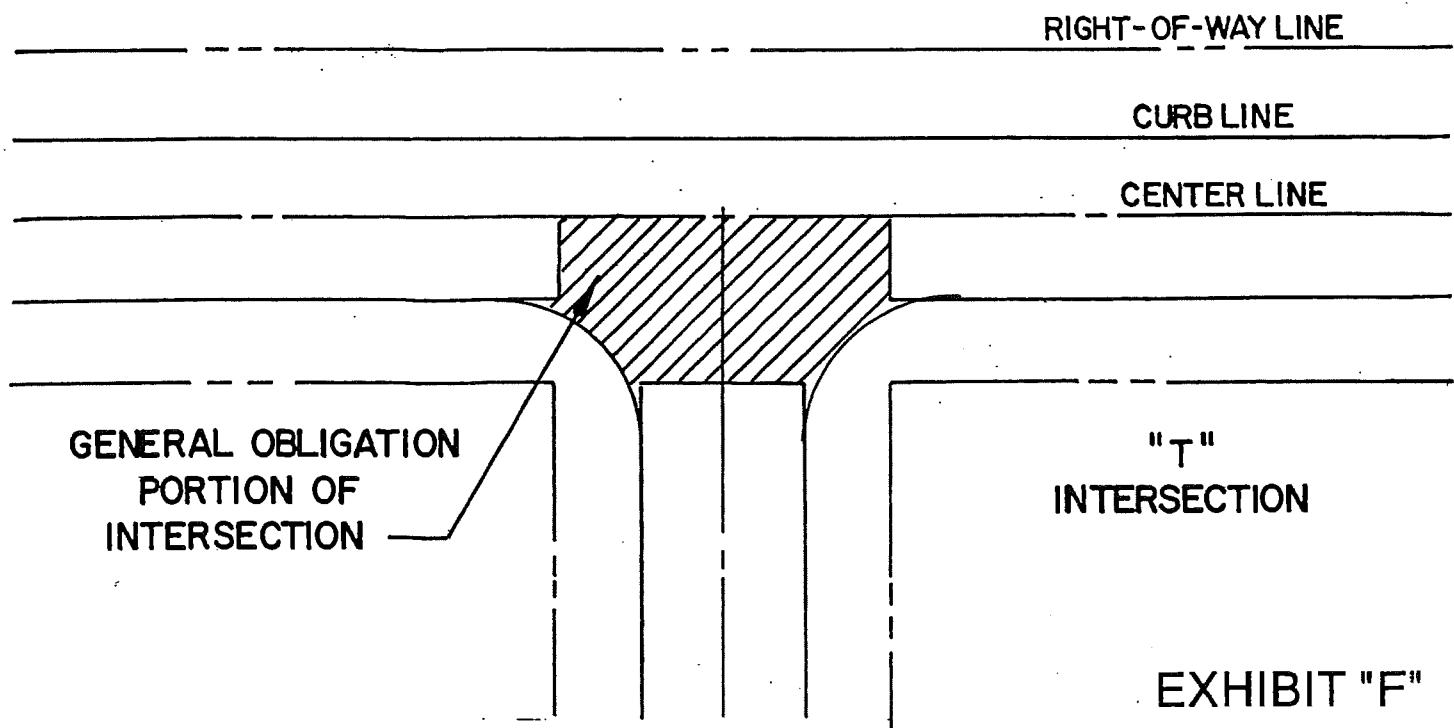
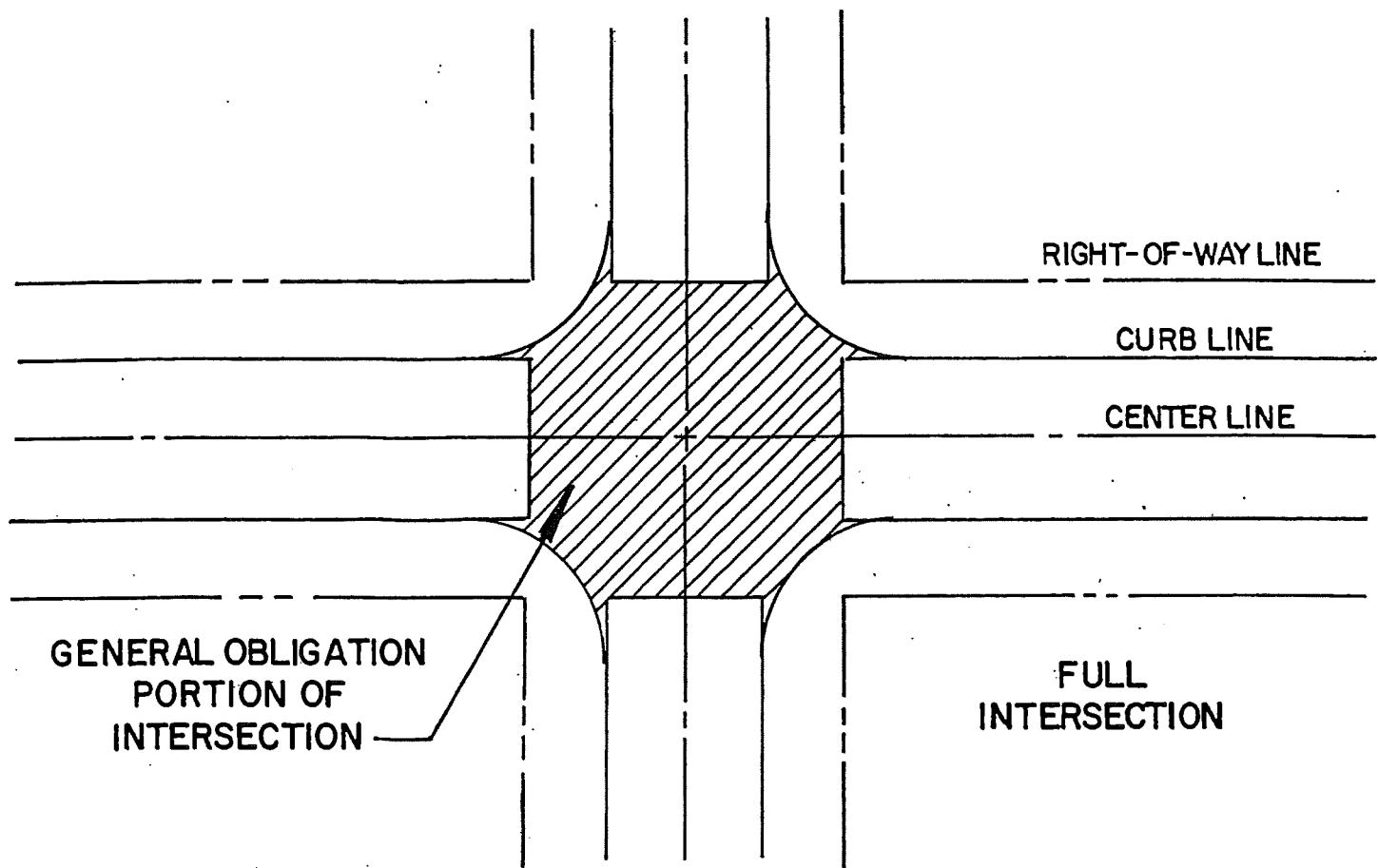
EXHIBIT 'E-2'
RECREATIONAL / OPEN SPACE AREA PLAN

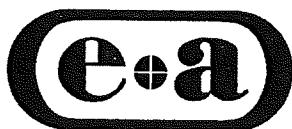
PORTAL RIDGE



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

As agent for the developer, we the engineers for Portal Ridge and SID No. 276 of Sarpy County, Nebraska, have determined that all lots in said Portal Ridge 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, drainageway, utility lines or other hindrance which would prevent any of the lots from being buildable as platted.

Dated this 1ST day of JUNE, 2006

E&A Consulting Group, Inc.

By: Homer Hunt

EXHIBIT "G"

FILED: SARPY CO. NE.
INSTRUMENT NUMBER
0006-35886

2006 OCT 18 P 3:15 0

Glory J. Dowling

REGISTER OF DEEDS

COUNTER 105 G.E. 10
VERIFY 105 D.E. P
PROOF 105
FEES \$ 200.50
CHECK PRE CASH
CHG PRE CREDIT
REFUND SHORT NCR
CREDIT

EXHIBIT H

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS OF PORTAL RIDGE,
A SUBDIVISION IN SARPY COUNTY, NEBRASKA**

THIS DECLARATION, made on the date hereunder set forth, is made by PORTAL RIDGE DEVELOPMENT, LLC, a Nebraska limited liability company, 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 241, inclusive, all in Portal Ridge, a Subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska. Lot 242 will not be residential in use and is not subject to the terms of this Declaration.

Such Lots 1 through 241 are herein referred to collectively as the "Lots" and individually as each "Lot".

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

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots 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 be subject to all and each of the following conditions and other terms:

ARTICLE I.

1. Each Lot shall be used exclusively for single-family residential purposes, except for such Lots or parts thereof as may hereafter be designated by Declarant for townhome use, or conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a

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Common Facility, or as a church, school, park or for other non-profit use.

2. No residence, building, fence (other than fences constructed by the Declarant), wall, pathway, driveway, patio, patio cover enclosure, deck, rock garden, swimming pool, dog house, pool house, tennis court, flag pole, satellite receiving station or disc, solar heating or cooling, device, playground equipment or other external improvement, above or below the ground (herein collectively referred to as "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, or right-of-way abutting any Lot, nor shall any grading, excavation or tree removal for any Improvement 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 of type, quality, color 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 surrounding area, and any general scheme or plans formulated by Declarant. In this regard, Declarant intends that the Lots shall form a 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, 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 any right 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.

3. 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, except that Lots designated for townhome use may have attached townhomes not exceeding two and one-half stories in height. All Improvements on the Lots shall Comply with all requirements of the Zoning Code and Municipal Code of the applicable

B

governing authority including but not limited to set back and side yard requirements.

4. Subject to the specific requirements set forth below, all foundations shall be constructed of concrete, concrete blocks, brick or stone. The exposed front foundation walls and any exposed foundation walls of all main residential structures facing any street must be constructed of or faced with clay-fired brick or stone or other material approved by Declarant. All corner lots with exposed foundation walls facing any side street in clay-fired brick or stone or other material approved by Declarant. All exposed side and rear concrete or concrete block foundation walls not facing a street must be covered with clay-fired brick, stone, siding or shall be painted. All driveways must be constructed of concrete, brick, paving stone, or laid stone. Any fireplace chimney or enclosure of any fireplace flue which is located on the front side of a residence shall be constructed of, or finished with, clay-fired brick or stone or other material approved by Declarant. All fireplace chimneys facing any side street shall be faced with clay-fired brick or stone or other material approved by Declarant. All other fireplace chimneys, may be covered with wood or other material if approved in writing by Declarant. Unless other materials are specifically approved by Declarant, the roof of all Improvements shall be covered with asphalt shingles that are weathered wood in color, wood cedar shakes or wood shingles.

5. No streamers, posters, banners, balloons, exterior illumination or other rallying devices will be allowed on any Lot in the promotion or sale of any Lot, residential structure or property unless approved in writing by the Declarant. 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 including home occupations as defined by any applicable governing authority; nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. Provided, however, the foregoing paragraph shall not apply to the business activities, sign and billboards or the construction and maintenance of buildings, including model homes, if any, by Declarant, its agents or assigns and designated builders, during the construction and sale of the Lots.

6. No obnoxious 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. 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.

7. 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 24" 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.

C

8. No tree houses, sheds, doll houses, windmills or similar structures shall be permitted on any Lot.

9. No repair of any boats, automobiles, motorcycles, trucks, campers (trailers, van-type, auto-drawn or mounted), snowmobiles, recreational vehicles (RV), other self-propelled vehicles 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 or similar chattels 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.

10. 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 two (2) consecutive days and no more than twenty (20) days combined within any 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 semitractors/trailers or other commercial vehicles shall be stored, parked, kept or maintained in any yards, driveways, or streets. However, this Section 9 does 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 the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable ordinances of the City of La Vista, Nebraska.

11. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container or fuel tank shall be permitted to be stored outside of any dwelling unless, completely screened from view, except on a designated day each week for pickup purposes. 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 or other outside facilities for drying or airing clothes shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be maintained in rear yards in an area no larger than eight (8') feet by ten (10') feet.

12. 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 ten (10) feet in front of the front building line. Unless other materials are specifically approved in writing by Declarant, fences shall only be composed of solid vinyl (no vinyl chain link), wood or wrought iron. No fences or walls shall exceed a height of six (6) feet. No fence shall be installed less than six (6") inches above the ground except for fencing material, approved by Declarant, in writing, which does not impede the natural flow of storm and other water drainage. Any fences, hedges or mass planted shrubs installed by or at the direction of the Declarant shall not be subject to the provisions of this paragraph. Fencing on lots abutting Giles Road or Cornhusker Road shall be a minimum of six (6') feet in height and shall be vinyl in a color specified by the City of LaVista's governing ordinances.

D

13. No swimming pool may extend more than one foot above ground Level. Subject first to the provisions of paragraph 2 of this Article, any swimming pool allowed by this paragraph shall be fenced. In addition to the requirements of paragraph 2 of this Article, before any above ground swimming pool may be installed on any Lot, the Owner thereof shall first obtain written approval by Declarant of an appropriate landscaping plan.

14. 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. Any construction activities on any Lot causing damage to any adjacent lot, including but not limited to removal of vegetation, shall be immediately repaired, including but not limited to re-grading and reseeding as necessary.

15. 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 prior to the time of completion of the main structure and before occupancy thereof, provided however, this provision shall vary to comply with any requirements of the applicable governing authority, by virtue of ordinance or agreement.

16. 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.

17. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except for one dog house constructed for one (1) dog, provided always that the construction plans, specifications and the location of the proposed structure have been first approved by Declarant, or its assigns, if required by this Declaration. Dog houses shall only be allowed at the rear of the residence, attached to or immediately adjacent to the residence. Dog runs or kennels shall be permitted only with the written approval of the Declarant or its assigns; provided always that any permitted dog run or kennel shall be located immediately adjacent to the rear of the residence and hidden from view. No animals, livestock, agricultural-type animals, fowl or poultry of any kind, including, pot-bellied pigs, shall be raised, bred or kept on any Lot, except that subject to the ordinances of the applicable governing authority~ two (2) dogs, two (2) cats, or two (2) other small household pets maintained within the residential structure may be kept, provided that they are not kept, bred or maintained for any commercial purpose and, provided, that they are not left outside of the residential structure unattended and not permitted to run loose outside the Lot of the Owner. No excessive barking of any dog, or other excessive noise of any kind from any animal, shall be permitted on any Lot. Any dog or other animal that barks or makes other noise outside the home of any Lot at any time shall wear electronic collars to prevent such barking or other noise.

18. Prior to placement on any Lot, any exterior air conditioning condenser unit shall be first approved by the Declarant according to the requirements set forth in Article I, paragraph 2, and shall be placed in the rear yard or any side yards so as not to be visible from public view. No

grass, weeds or other vegetation shall be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees shall 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. Vacant Lots shall not be used for dumping of earth or any waste materials, and, except for Lots owned by Declarant, no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.

19. 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 combined into one Lot which is at least as wide as the narrowest Lot on the original plat, and is as large in area as the largest Lot in the original plat.

20. No structure of a temporary character, carport, detached garage, trailer, basement, tent, outbuilding, shed or shack or other similar structure 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 Portal Ridge to any Lot or modular home constructed on any Lot without the written approval of Declarant.

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

22. 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, and such Lot owner shall bear all costs and expenses of the same and shall hold Declarant harmless from any and all liability resulting therefrom.

23. Each Owner, other than the Declarant, shall establish drainage areas on and abutting such Owner's Lot as provided in Article IV, Paragraph 3 and Exhibit "A," attached hereto and incorporated herein by this reference. No drainage area on any Lot established in conformity with the drainage plan by the Declarant's engineer shall be changed or impeded in any way. Declarant, its representatives and agents, including its engineer, shall not incur any liability for damage due to drainage on any Lot regardless of whether such drainage was established in conformance with Declarant's drainage plan.

ARTICLE II. HOMEOWNERS ASSOCIATION

1. The Association. Declarant has caused or will cause the incorporation of PORTAL RIDGE HOMEOWNERS ASSOCIATION, a Nebraska nonprofit 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. Common Facilities may include recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks;

dedicated and nondedicated roads, paths, ways and green areas, signs and entrances for Portal Ridge Common Facilities may be situated on property owned or leased by the Association, on public property or private property subject to an easement in favor of the Association or on property dedicated to any applicable governing authority or sanitary and improvement district.

B. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. 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 Portal Ridge; and the protection and maintenance of the residential character of Portal Ridge.

2. Owners' Easements of Enjoyment and Delegation of Use. Every owner shall have a right and easement of enjoyment in and to the Common Facilities which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. the right of the Association to charge reasonable admission and other fees for the use of any Common Facility;
- b. the right of the Association to suspend the voting rights and right to use of the Common Facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- c. the right of the Association to dedicate or transfer all or any part of the Common Facilities to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of the Members has been recorded.

Any owner may delegate, in accordance with the rules and regulations of the Association, his right of enjoyment to the Common Facilities to the members of his/her family.

3. Membership and Voting. Portal Ridge is divided into two hundred forty-one (241) separate residential lots (referred to as the "Lots"), plus Lot 242 which is not a Lot within the meaning of this Declaration. The "Owner" of each Lot shall be a Member of this Association. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to 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.

Except for the Declarant, the Owner of each Lot, whether one or more persons and

6

entities, shall be entitled to one (1) vote on each matter properly before the Members of the Association. The Declarant shall be entitled to twenty (20) votes for each Lot owned on each matter properly before the Members of the Association.

4. Purposes and Responsibilities. The Association shall have the powers conferred upon nonprofit 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 landscaping, mowing, watering, repair and replacement of parks and other public property and improvements on parks or public property within or near Portal Ridge.
- C. The fixing, levying, collecting, abatement and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.
- D. The expenditure, commitment and payment of 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 serving thereunder.
- E. 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.
- F. 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.
- G. 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.
- H. The employment of professionals and consultants, including but not limited to an attorney and a property manager, to advise and assist the Officers and Board of Directors of the Association in the general administration and management of the Association, and execution of such documents and doing and performance of their duties and responsibilities for the Association.
- I. 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.

5. Mandatory Duties of Association (Common Area Obligations). The Association shall continuously maintain, repair and keep in generally good and neat condition any open space, perimeter fence, bufferyards, signs, landscaping, street medians, including center islands, entrance medians, roundabouts, and chicanes, and Outlots D and F, installed by or on behalf of the Developer/Declarant of the Subdivision. The Association shall also install and maintain subdivision entrance signs, monuments and related fixtures and landscaping to serve the Portal Ridge neighborhood, including roundabouts and chicanes and subdivision perimeter fencing, if required by the Declarant and/or the Portal Ridge Subdivision Agreement, the relevant provisions of which are incorporated herein by this reference. The Association shall also plant and maintain a buffer zone along Cornhusker Road and landscape Outlots D and F along Giles Road, as required by the Portal Ridge Subdivision Agreement the relevant provisions of which are incorporated herein by this reference. In the event that Association shall fail to perform any of the mandatory duties required by this section or any relevant provision of the Portal Ridge Subdivision Agreement, then in any such event the City shall have the right of enforcement and reimbursement of costs as set forth in Article IV hereof. Following City's annexation:

A. The City shall assume responsibility for maintenance of Outlots A, B, C and E and improvements thereon that City shall have approved and that have been well maintained, together with the water retention area on Outlot B.

B. Homeowners' Association's permanent obligations will be to maintain improvements to Outlots D and F, all landscape buffer easements and bufferyards, street medians and islands, including roundabouts, chicanes, center islands, entrance medians and all perimeter fencing, bufferyards, signs and landscaping of street medians, including center islands, entrance medians, roundabouts, and chicanes.

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

7. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant or any of Declarant's designated builders.

8. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest, thereon, costs and reasonable attorney's 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

I

attorney's 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.

9. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purpose of the Association described in Section 1 of this Article, and to perform the Powers and Responsibilities of the Association described in Sections 4 and 5 of this Article.

10. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 12, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

- A. Two Hundred Fifty and no/100 Dollars (\$250.00) per Lot per year.
- B. In each calendar year beginning on January 1, 2007, one hundred twenty five percent (125%) of the aggregate dues charged in the previous calendar year.

11. 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 in each calendar year shall be limited in amount to Two Hundred and no/100 Dollars (\$200.00) per Lot.

12. Excess Dues and Assessments. With the approval of seventy-five percent of the votes of Members of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximums established in this Declaration.

13. 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 Sections 6 and 7, above.

14. 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.

15. 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 rate of sixteen percent

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(16%) per annum or the legal rate of interest, whichever is less, compounded annually. The Association may bring in 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 attorney's 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 Facilities 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 attorney's fees. 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.

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

17. Additional Lots. Declarant reserves the right, without consent or approval of any Owner or Member, to expand the Association to include additional residential lots in any subdivision which is contiguous to any of the Lots. Such expansion(s) may be affected from time to time by the Declarant or Declarant's assignee by recordation with the Register of Deeds of Sarpy County, Nebraska of an Amendment to this Declaration or separate Declaration of Covenants, Conditions, Restrictions and Easements, executed and acknowledged by Declarant or Declarant's assignee, setting forth the identity of the additional residential lots (hereinafter the "Subsequent Phase Declaration").

Upon the recording of any Subsequent Phase Declaration which expands the residential lots included in the Association, the additional lots identified in the Subsequent Phase Declaration shall be considered to be and shall be included in the "Lots" for purposes, of this Article II, and the Owners of the additional residential lots shall be Members of the Association with all rights, privileges and obligations accorded or accruing to Members of the Association.

ARTICLE III. EASEMENTS

1. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, Qwest Telephone Company, and any company which has been granted a franchise to provide a cable television system within the Lots, Peoples Natural Gas and any company allowed by law or which has been granted a franchise to provide natural gas within the Lots, and the City of Lavista, 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 lines of the Lots, an 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. A perpetual easement is further reserved for Aquila, their successors and assigns and any company allowed by law or which has been granted a franchise to provide natural gas within the Lots 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 ad across a five (5) foot wide strip of land abutting all cul-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 easementways. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in the easementways but some 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. A perpetual easement is further reserved in favor of the Association, its successors and assigns to, at its option, construct, install, repair, reconstruct, paint, maintain, and renew a bufferyard and/or fence, standards and related accessories located on, over and upon the following property: the rear ten (10) feet of each lot abutting any street running along the exterior of the Portal Ridge subdivision. Fence placement shall be within one (1) foot of the interior (home side) of said ten (10) foot easement.

4. A perpetual drainage easement is hereby reserved along a five (5') foot wide strip of land abutting all lot lines in favor of the immediately adjoining Lots and any and all upstream and downstream Lots. The owner of each Lot upon commencement of construction for Improvements on such Lot shall create drainage swales and other measures along the easement on such owner's Lot and along adjoining Lots in the easementways created hereby in accordance with the drainage plan developed by the Declarant's engineer, such plan being attached hereto as Exhibit "A" and incorporated herein by this reference.

5. An exclusive, perpetual easement, and reasonable access thereto, is hereby reserved in favor of Boyer Young Easement Holding Company, its successors and assigns, to erect, install, construct, operate, maintain, repair and renew poles, wires, cables, conduits and other related facilities, and appurtenances thereof above and below ground, and to extend thereon or therein wires or cable 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, internet access system, telephone system and/or any other communications system, and the reception related thereto, on, over, through, under and across a ten-foot (10') wide strip of land abutting all interior boundary lines of easements dedicated in the Plat of Portal Ridge, including Lots 1 - 242, inclusive, as surveyed, platted and recorded in Sarpy County, Nebraska and any replats

thereof including all dedicated easements abutting all front and/or rear boundary lines of all lots within the plat, except exterior lots of Portal Ridge; and an eighteen (18') foot wide strip of land abutting all interior boundary lines of easements dedicated in the Plat of Portal Ridge and any replats thereof, which dedicated easements abut all front and/or rear boundary lines of all exterior lots in Portal Ridge, which eighteen (18') foot wide easement on all exterior lots will be reduced to a ten (10') foot wide strip when the adjacent land is surveyed, platted and recorded if said eighteen (18') foot wide easement is not occupied by any facilities contemplated herein and if requested by the owner. The term exterior lots is herein defined as those lots forming the outer perimeter of the Plat of the Portal Ridge. 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.

6. Other easements and right-of-way dedications are indicated in the final plat of Portal Ridge which is or will be filed in the Register of Deeds of Sarpy County, Nebraska.

ARTICLE IV. CITY RIGHT TO ENFORCE COMMON AREA OBLIGATIONS

1. City Rights to Enforce. Declarant, and all owners of property and their successors and assigns of property within the subdivision do irrevocably grant to City the right and entitlement, at City's sole option, and without any obligation of City to do so, to exercise the hereinafter described rights and authority to enforce, and to cure defaults of performance of, any of the Common Area Obligations that the Declarant and the Association fail to timely perform.

A. Common Area Defined. As used herein "Common Area" or "Common Area Obligations" shall mean all of the obligations identified in this Declaration, in the Subdivision Agreement, and/or the final plat (Exhibit "B" of said Subdivision Agreement) between the Declarant as Owner of Lots 1 through 242, Portal Ridge, and Developer of Portal Ridge Subdivision, the City of La Vista and Sanitary and Improvement District No. 276 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 Portal Ridge Subdivision.

B. Declarant/Property Owner Obligations. Declarant, the Association and the Owners of the 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 or maintenance, together with other Common Area Obligations of the Declarant, Developer and the Homeowners' Association (collectively "Common Area Obligations").

C. Failure to Perform; City Rights. Should there be a failure, for whatever reason, to faithfully and fully perform such obligations, then in such event, the City, at its sole option, and without obligation or liability to do so, after ten (10) days written notice to Owners of record of the affected property, may, in whole or in part, undertake to construct, install, repair, maintain or provide upkeep and/or take such other remedial or curative action, or cause such remedial or curative action to be taken in respect to such Common Area Obligations, and may assess against the affected Lots or property the full cost

thereof, including but not limited to administrative, engineering and legal expenses incurred in respect thereto and to 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, 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 which each such assessment is made.

D. Reimbursement of Costs Incurred by City. 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 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 rate stated in Subsection C above, and if enforced through legal proceedings, to reimburse City its court costs and attorneys fees incurred in such matter;

E. City Determiner of Extent of Work and Cost. 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 in Subsection D above.

F. City Has No Obligation to Exercise or Use Powers Granted to It. City's enforcement, exercise or non-exercise of the powers derived from this Article IV shall at all times be at the sole and absolute discretion and option of the City. City shall have no obligation to exercise such powers and shall at no time be required to monitor, observe, investigate or otherwise make any assessment or take such action whatsoever as to the condition or safety of any Common Area or part thereof, nor shall City have any liability or obligation whatsoever as to the improvements within or upon Common Area whenever or by whom improved. City shall have the right, but not the obligation, to enforce the provisions of this Declaration and other instruments pertaining to the Common Area as herein in this Article IV provided.

G. Covenants Running with the Land. The rights of City and the obligations of Declarant, the Association and of land owners as 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. 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 either to 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.

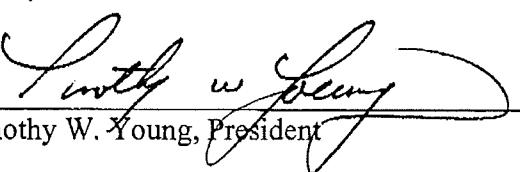
2. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date of this Declaration. Thereafter the covenants, restrictions and other provisions of this Declaration shall automatically renew for successive ten (10) year periods unless terminated or amended by the owners of not less than seventy-five (75%) percent of said Lots, which termination or amendment shall thereupon become binding upon all Lots. This Declaration may be amended by Portal Ridge Development, LLC a Nebraska limited liability company, or any person, firm, corporation, partnership or entity designated in writing by Portal Ridge Development, LLC, a Nebraska limited liability company, in any manner which it may determine in its full and absolute discretion for a period of ten (10) years from the date hereof, with the consent of the City of LaVista, which consent shall not be unreasonably withheld. 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.

3. Portal Ridge Development, LLC, a Nebraska limited liability company, or its successors or assigns, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, the rights and obligations of the Declarant shall automatically transfer to the Association and the Association may exercise such rights and obligations or appoint another entity, association or individual willing to serve as Declarant, and the Association or such appointee shall thereafter serve as Declarant with the same authority and powers and obligations as the original Declarant.

4. Invalidation of any one or more provisions of this Declaration by judgment or court order shall in no way effect 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 18 day of October 2006.

PORAL RIDGE DEVELOPMENT, LLC, a
Nebraska limited liability company, "Declarant"
By: Boyer Young Development Company, Managing
Member,

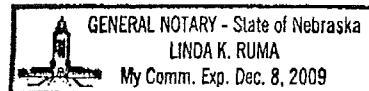
By: 
Timothy W. Young, President

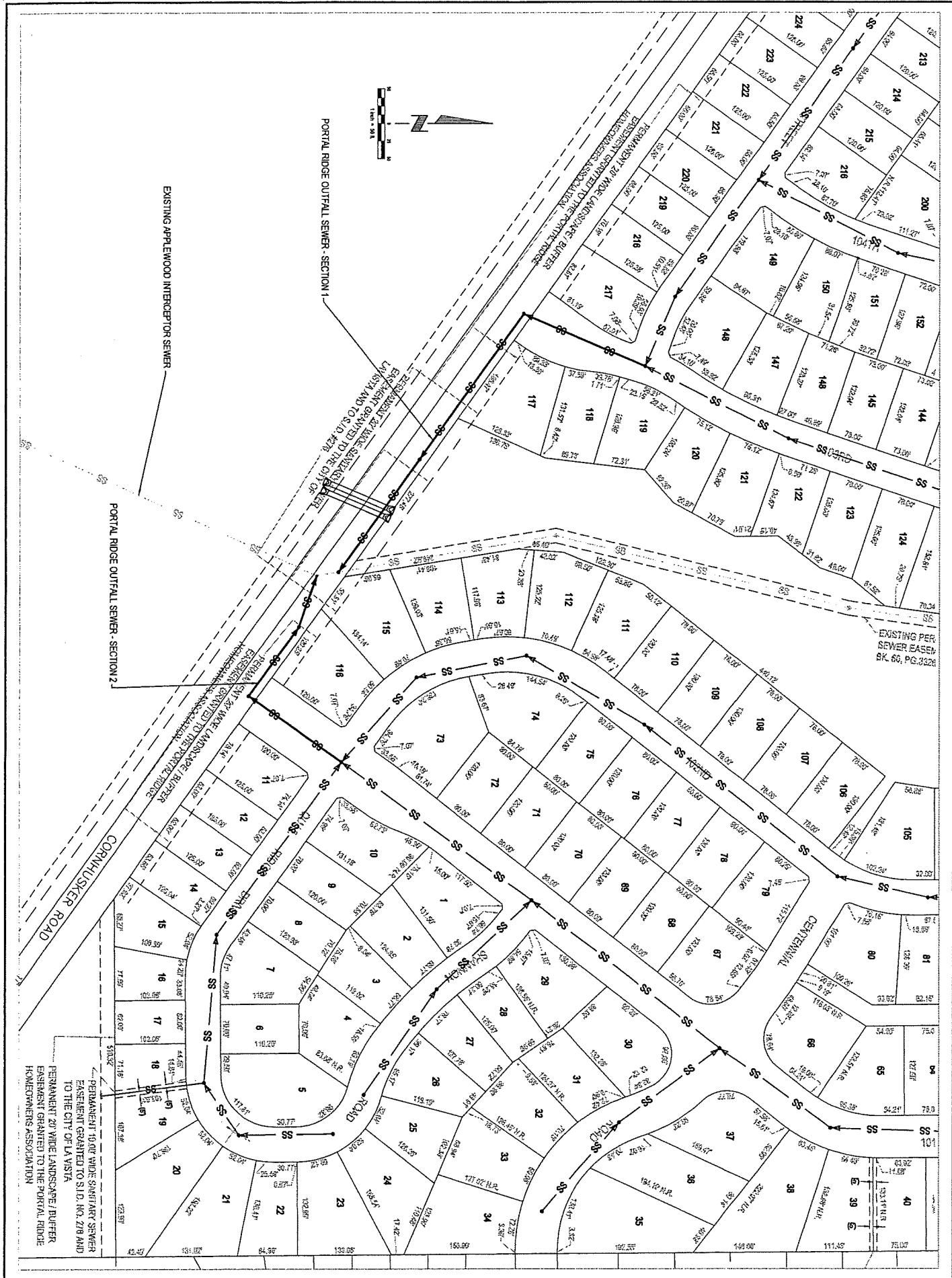
STATE OF NEBRASKA)
)
) ss.
COUNTY OF DOUGLAS)

2006-358860

The foregoing instrument was acknowledged before me this 18 day of
October 2006, by Timothy W. Young, President of Boyer Young Development
Company as Managing Member of Portal Ridge Development, LLC, a Nebraska limited liability
company, on behalf of said entity.

Linda K. Ruma
Notary Public





Proj No:	2005054.01	Reviewed
Date:	11/29/2005	By
Designed By:	TPM	1
Drawn By:	JCC	9/17-2006
Scale:	1" = 100'	
Sheet:	1 of 1	

EXHIBIT "I"
PORTAL RIDGE OUTFALL SEWER

PORTAL RIDGE
LA VISTA, NEBRASKA

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

710 SOUTH 15TH STREET, SUITE D
LINCOLN, NE 68516-5441
PHONE: (402) 475-7117
FAX: (402) 475-7718

Project: PORTAL RIDGE FINAL PLAT
 Subject: Park Land Calculations
 Date: 3/28/2006
 Total Plat: 88.53 Acres

EXHIBIT "J"

COMPUTATION OF PARK / GREEN SPACE / BUFFER WHICH MAY BE PURCHASED BY SID

<u>Legal</u>	<u>Use / Description</u>	<u>Total Area</u>	<u>Eligible for SID Purchase</u>	<u>Not Eligible for SID Purchase</u>
Outlot A	Buffer / Trees Space West Boundary	0.869	0.869	0
	MU Lot Buffer			
Outlot B	Park / Trail Corridor / Drainageway	9.871	3.569	0.00
	Park / Trail Corridor Drainageway (100 Year)		0	6.302
Outlot C	Buffer / Trees Space West, North and East Boundary	0.514	0.514	0
	MU Lot Buffer			
Outlot D	Buffer on North Side of Lot 136	0.06	0	0.06
	Ext. Street Buffer(Adjacent to Giles)			
Outlot E	Trail Corridor East Side	0.697	0.697	0.00
	Trail Corridor			
Outlot F	Buffer Along Giles & 103rd Street	0.564	0	0.366
	Exterior Street Buffer(Adjacent to Giles)		0	0.198
	Internal Street Buffer(Adjacent to 103rd St.)			
	TOTALS	12.575	5.649	6.362

COMPUTATION OF REQUIRED PARK LAND CONTRIBUTION PER LAVISTA STANDARDS

LAND USE	TOTAL ACRES	CAPITA PER UNIT / ACRE	CAPITA	REQ'D. PARK (2.5 AC. / 1000)
SING. FAM. / TOWNHOME	88.53	15	1328	3.32
			TOTAL PARK REQ'D.	<u>3.32</u>

COMPUTATION OF DEVELOPER PARK CONTRIBUTION

Standard LaVista Park Contribution	3.320 Acres
Drainageway	6.302 Acres
Exterior Street Buffer	<u>0.624</u> Acres
TOTAL	<u>10.246 Acres</u>

COMPUTATION OF PARK / BUFFER LAND TO BE PURCHASED BY SID

Eligible Park & Buffer Area	5.649 Acres
Less Std. LaVista Park Contribution	<u>(3.32)</u> Acres
TOTAL	<u>2.329 Acres</u>

2.329 ACRES X \$ 37,500 / ACRE = \$ 87,338 PAID TO DEVELOPER BY SID



E&A CONSULTING GROUP, INC.
ENGINEERING • PLANNING • FIELD SERVICES

330 NORTH 117TH STREET
OMAHA, NE 68154-2509

www.eacg.com

PHONE: (402) 895-4700
FAX: (402) 895-3599

July 22, 2010

Mr. John Kottmann
City of LaVista
9900 Cornhusker Road
LaVista, NE 68128

Re: Portal Plaza Street Side Yard Reduction
E&A File 2005.054.001

Dear John,

This letter is in response to a request made by the City of LaVista to Tim Young at a recent meeting where the matter of modifying the Portal Ridge PUD agreement to allow a 2' reduction in the street side yard. LaVista has previously approved a modification to allow a 2' reduction for the interior lot side yards, which is consistent with other subdivisions in the area of Portal Ridge.

In order to recommend approval of the request my understanding is that the City requested some documentation on why an alternative of re-platting to larger lots is not a viable alternative to the PUD modification. Generally, re-platting of a string of lots in Portal Ridge to achieve larger lots is not feasible at this stage of the Portal Ridge project due to 1) The presence of existing homes and 2) extensive utility conflicts involved in moving lot lines.

Attached is a copy of the final plat of Portal Ridge on which the locations of selected fire hydrants, curb inlets, and power lines have been sketched. Note for example the string of lots between Lots 200 and 208. A re-plat of this portion of lots to provide the additional 2' of street side yard for Lot 200 would potentially involve the relocation of two street lights, three segments of underground power, a fire hydrant and potentially a storm sewer curb inlet. Most other strings of lots also would require a similar scope of relocations. The re-platting approach is not economically feasible and we request your favorable recommendation of the PUD modification of the street side yard.

Lastly, regarding exactly which lots that the modification should apply to I have field observed corner lots that are vacant or built upon. The modification should only apply to the following lots in Portal Ridge:

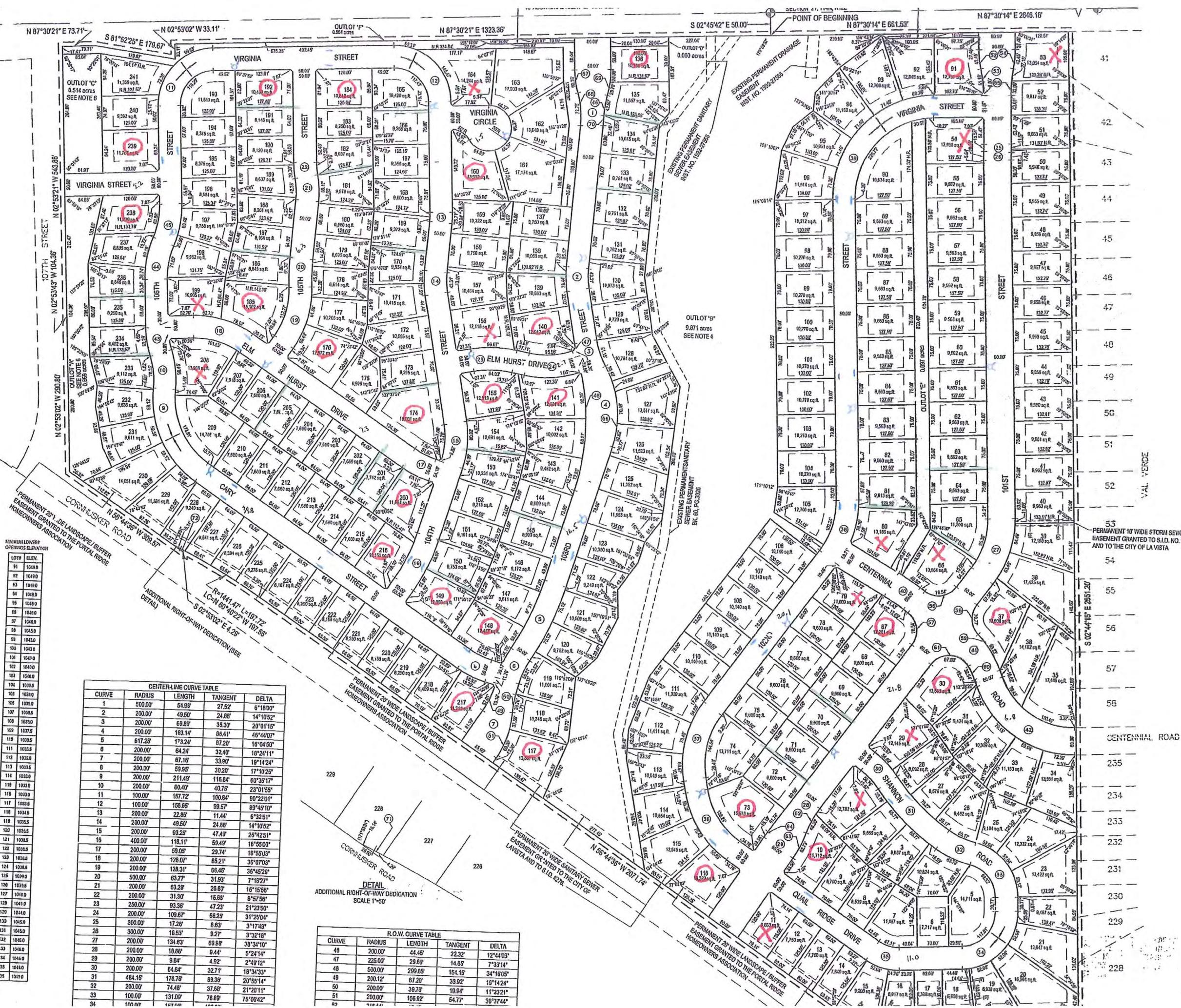
10,30,37,67,73,91,116,117,136,140,141,148,149,155,160,174,176,184,185,192, 200,216,217,238 & 239.

Sincerely,
E&A Consulting Group



Mark A. Westergard, P.E.

Cc: Tim Young, Boyer Young



X Ex. Home
O Vacant
- CURB INLET

8 HYDRANT

1 inch = 100 n.

8

