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Lloyd J. Dowding
REGISTER OF DEEDS

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LLOYD J. DOWDING
SARPY COUNTY REGISTER OF DEEDS
1210 GOLDEN GATE DRIVE, #1109
PAPILLION, NE 68046-2895
402-593-5773

SCRoD Form 1, Dated 5-04-98

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98-16277A

BROOK VALLEY II BUSINESS PARK

DECLARATION OF COVENANTS

THIS DECLARATION OF COVENANTS (hereinafter referred to as the "Declaration") is made and executed by BROOK VALLEY II, LTD, a Nebraska limited partnership (hereinafter referred to as the "Declarant".)

WITNESSETH

WHEREAS, the Declarant will convey said lots, subject to certain protective covenants, as herein set forth.

NOW, THEREFORE, the Declarant hereby declares that all of the Lots described herein shall be held, sold and conveyed subject to the following covenants, all of which are for the purpose of enhancing and protecting value, desirability and attractiveness of said lots. These covenants shall run with said real property and be binding upon all parties having or acquiring any right, title, or interest in the above described real property, or any part thereof, and shall inure to the benefit of each Owner thereof.

I. DEFINITIONS

- (a) "Accessory" Structure shall mean a structure, which is incidental to and customarily associated with a specific principal use or building on the same site.
- (b) "Declarant" shall mean and refer to Brook Valley II, LTD, a Nebraska limited partnership whose sole general partner is Prime Realty, Inc., A Nebraska corporation.
- (c) "Lot" shall mean and refer to any plot of land platted as a Lot as shown upon the recorded initial Subdivision plat of Brook Valley II Business Park, or as any such Lot may hereafter be subdivided, replatted or reconfigured, in whole or in part.
- (d) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot within the Subdivision, including contract sellers, but excluding those persons having such interest merely as security for the performance of an obligation (including the trustee under a deed of trust). "Owner" shall include Declarant when the Owner of a Lot.

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(e) "Subdivision" shall mean Brook Valley II Business Park, as surveyed, platted and recorded, Sarpy County, Nebraska.

II. LIMITATIONS AS TO TYPE OF CONSTRUCTION

All building walls that face streets, except ancillary buildings shall be approved masonry construction such as brick, stone, painted concrete block, architectural concrete, concrete panels, or architectural plaster.

III. BUILDING SET-BACKS

There shall be a minimum front yard set-back of 50 feet from any street and a minimum side yard and rear yard set-back of 25 feet from the respective lot lines or 50 feet from any street.

The front yard and all other landscaped areas including that area between the street paving and the property line shall be planted with grass and properly maintained as a lawn area except that part used for driveways or parking. Parking shall not be permitted closer than twelve (12) feet to the property line of all streets.

The minimum distance between any two buildings on the same tract shall be 20 feet.

IV. LIMITATIONS AS TO PERCENTAGE OF LAND COVERED BY BUILDINGS

The total coverage of buildings and structures, including docks and loading platforms, shall not exceed sixty (60) percent of the area of each individual tract.

V. PARKING FACILITIES

All vehicular parking (customer, visitor, and employee) shall be off-street. The minimum number of vehicular parking spaces required shall equal at least forty (40) percent of the number of employees normally engaged at one time in the business or industry conducted on each individual tract. Parking areas shall not be used for any purpose other than the parking of automotive vehicles belonging to customers, visitors and employees. In no case shall any storage, servicing or dismantling of automobiles or other vehicles, or loading or unloading operations, be permitted in the required parking areas. All parking areas shall be hard surfaced with suitable dustless material. Automobiles, trucks and other self-propelled vehicles parked out of doors within the Subdivision must be in operation condition.

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VI. LOADING AREAS

All loading and unloading operations shall be off-street. In no case shall loading or unloading be permitted in the parking or lawn areas or in a location which will interfere with ingress or egress thereto. All loading areas shall be hard surfaced with a suitable dustless material.

VII. OUTSIDE STORAGE

No article of merchandise or other material shall be kept, stored or displayed outside the confines of a walled building unless it be so screened by fences, walls or plantings that it cannot be seen from any public street. In no event shall any part of the required parking or lawn areas be used for the storage or abandonment of any property. No area outside the confines of a walled building shall be used to display articles of merchandise held for the purpose of sale. No outside storage shall be permitted closer to any street than the building set-back requirement without prior written approval of Declarant.

VIII. ERECTION OF SIGNS

No Owner, lessee or occupant of any Lot shall use, or permit to be used, any portion of the property under his control for the erection of signs, billboards or displays, other than those directly connected with the business operated on said site. No flashing signs or lights, revolving beacons, strobe lights or similar electrical or mechanical mechanisms, whether permanent or temporary in nature, shall be permitted. No signs shall be erected or maintained on the roof of any building without written approval. Written approval is required prior to the erection or modification of any sign, other than a sign attached to a building and identifying the address and /or the occupant thereof.

IX. MAINTENANCE OF UNDEVELOPED AREAS

That portion of each tract which is not improved through the construction of building, parking facilities, loading facilities, loading facilities and lawn area, as hereinbefore provided, shall be seeded to cover planting which grows to a height not to exceed approximately eighteen (18) inches and shall be continuously and attractively maintained. In no event and at not time shall any Lot be planted to cultivated row crops. Each Lot Owner shall be responsible for the maintenance of property beyond the lot line up to the edge of the pavement of the abutting street or streets.

X. OFFENSIVE USES

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which is, becomes or produces, an annoyance, nuisance or hazard to the Owner or occupant of other property within the Subdivision, including, but not limited to, unsightliness or the emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke noise or "Hazardous Substance," as defined in 101(14) of CERCLA (42 U.S.C. 9601 (14)) or any applicable present or future state or local law, rule, regulation or ordinance, as amended from time to time.

XI. ZONING AND BUILDING REGULATIONS

In addition to the foregoing, the use and building regulations, as now or hereafter imposed by the provision of the zoning and building regulations of all governmental entities having jurisdiction shall apply throughout the Subdivision, except as such may be modified by duly constituted authority.

XII. APPROVAL OF PLANS

- (a). No building, fence, wall, driveway or other external improvements, above or below the surface of the ground, shall be built, erected, placed, altered or otherwise maintained or permitted to remain on any Lot, nor shall any grading or excavation be commenced without the express written approval of the Declarant. "Approval of Declarant" (including disapproval) shall also mean approval (or disapproval) by another person designated by Declarant in a writing duly recorded in the Office of the Register of Deeds and indexed against the Subdivision as approving authority in lieu of Declarant.
- (b). Documents submitted for approval shall be clear, concise, complete, consistent and legible. Samples of materials to be included in the improvement may be required of the applicant at the discretion of Declarant. Submittals for approval shall be required of the applicant at the discretion of Declarant. Submittals for approval shall be made in duplicate and comments and action of Declarant will be identically marked on both copies of said submittals. One copy will be returned to the applicant and one copy will be retained as part of the permanent records of Declarant. Each applicant shall submit to Declarant the following documents, materials and/or drawings:

- (i) Site plan, indicating specific improvement and indicating Lot number, street address, grading, surface drainage and sidewalks.
- (ii) Complete construction plans, including, but not limited to, floor areas of each level, wall sections and exterior elevations clearly indicating type and extent of exterior materials and roofing.
- (c) The applicant's name, address and telephone number shall appear on each set of plans submitted to Declarant.
- (d) The approval or disapproval of Declarant, as required by these covenants, shall be in writing. Failure of Declarant to give either written approval or disapproval of submitted plans within thirty (30) days after receipt of all of the documents, by mailing such written approval or disapproval to the last known address of the applicant as shown on the submitted plans, shall operate as approval of the plans and specifications submitted.

XIII. COMPLIANCE WITH GOVERNMENT REGULATIONS, ETC.

The Owner of each Lot shall, at all times, keep the premises, buildings, improvements and appurtenances in a safe, clean, wholesome condition and in all respects in compliance with applicable rules, regulations, ordinances and statutes of all governmental authorities having jurisdiction. All lots shall be kept free of rubbish, debris, merchandise and building material; however, building materials may be placed on Lots when construction is started on the main building structure intended for such Lot. Vacant Lots shall not be used for dumping of earth or other waste materials and shall be maintained level and smooth enough for machine mowing. A building upon which construction has begun must be completed within one year from the date the foundation was dug for said building.

XIV. SIDEWALKS

Concrete sidewalks, four feet wide by four inches thick, shall be constructed by the Owner of each Lot in accordance with the sidewalk standards and regulations approved by the City Council of the City of LaVista prior to the time of completion of the main structure on said Lot.

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XIV EXCEPTIONS OR MODIFICATIONS

Exceptions to, or modifications of, these protective covenants as unusual circumstances or special situations may warrant, must be submitted to Declarant for prior written approval.

XV. DURATION

- (a) These covenants are run with and bind the land for a term of fifteen (15) years from the date this Declaration is recorded, and shall be automatically renewed and extended for successive periods of five (5) years each, unless and until the then Owners of a majority of the land within the Subdivision execute and record an instrument terminating these covenants. Hereafter, this Declaration may be amended by an instrument executed by the Owners of not less than sixty-five percent (65%) of the land within the Subdivision. For purposes of determining the "Owner of a majority of the land within the Subdivision" or "sixty-five percent (65%) of the land within the Subdivision," each Lot Owner shall be entitled to one vote for each square foot of land within the Subdivision to which fee simple title is held by such Owner.
- (b) The Declarant, or any Owner or contract purchaser of a Lot, shall have the right to enforce, by proceeding at law or in equity, all restrictions and covenants now or hereafter imposed by the provision of this Declaration, either to prevent or restrain any violation of the same, or to recover damages for such violation. Failure by Declarant, any Owner or contract purchaser to enforce any covenant or restriction herein contained shall, in no event, be deemed a waiver of the right to do so thereafter.

XVI. SEVERABILITY

If any term or provision of this Declaration, or the application of it to any person or circumstance shall, to any extent, be invalid and unenforceable, the remainder of this Declaration and the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term and provision thereof shall be valid and shall be enforced to the extent permitted by law.

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XVII. NOTICES

All notices to be given pursuant to the Declaration shall be in writing and must be given by United States mail, certified or registered, postage prepaid, properly addressed to the Owner of each Lot (and any prime lessee, where applicable) by name and address as shown on the then current property tax rolls in Sarpy County, Nebraska. All notices to Declarant shall be sent to it at the following address:

Brook Valley II, LTD
C/O James V. McCart
6410 South 120th Plaza
Omaha, Nebraska 68137-4413

XVIII. ATTORNEY'S FEES

In the event any entity which is entitled to the benefits of this Declaration brings any action at law or equity to enforce this Declaration, the prevailing party of such action shall be entitled to recover from the other party its reasonable attorney's fees and all court costs, in addition to all other appropriate relief.

XX. SUCCESSORS AND ASSIGNS

The Declaration created hereby shall inure to the benefit of, and be binding upon, the Owners of all Lots within the Subdivision and their respective successors and assigns; provided, however, that if any Owner sells any portion or all of its interest in any Lot, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising out of this Declaration after the sale and conveyance of title.

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IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date first set forth above.

BROOK VALLEY II, LTD
a Nebraska limited partnership

By: Prime Realty, Inc., general partner

By: James V. McCart
James V. McCart, President

STATE OF NEBRASKA)
) ss.
COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this 15 day of June by James V. McCart, President of Prime Realty, Inc., a Nebraska corporation, on behalf of said corporation, general partner of Brook Valley Limited Partnership, a Nebraska limited partnership, on behalf of said limited partnership.



Jean M. Lindauer
Notary Public

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LEGAL DESCRIPTION

Part of the Southwest 1/4 of Section 17 and part of the Northwest 1/4 of Section 20, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, described as follows:

Commencing at the Southwest corner of the Northwest 1/4 of Section 20; thence N87°38'59"E (assumed bearing), 33.00 feet along the south line of the Northwest 1/4 of Section 20 to the point of beginning; thence N02°21'20"W, 1957.47 feet parallel with and 33.00 feet east of the west line of the Northwest 1/4 of Section 20; thence N87°38'40"E, 17.00 feet; thence N08°35'06"E, 404.14 feet; thence N37°03'49"E 260.01 feet; thence N87°28'35"E, 746.65 feet; thence N49°30'12"E, 92.64 feet; thence N87°28'35"E 205.30 feet; thence N34°05'32"E, 180.63 feet; thence N79°00'13"E, 257.16 feet to a point of curvature; thence easterly along a curve to the right having a radius of 2201.85 feet an arc distance of 749.04 feet; thence S81°30'19"E, 82.14 feet; thence S24°34'46"E, 238.10 feet; thence S02°15'14"E, 115.00 feet; thence N87°44'46"E, 17.00 feet; thence S02°15'14"E, 2434.06 feet parallel with and 33.00 feet west of the east line of the Northwest 1/4 of Section 20 to a point on the south line of the Northwest 1/4 of Section 20; thence S87°38'59"W, 2573.61 feet along the south line of the Northwest 1/4 of Section 20 to the point of beginning;

TOGETHER WITH Lots 1 through 25 Brook Valley II Business Park, a Subdivision in Sarpy County, Nebraska

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Lloyd J. Dowding
REGISTER OF DEEDS

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LLOYD J. DOWDING
SARPY COUNTY REGISTER OF DEEDS
1210 GOLDEN GATE DRIVE, #1109
PAPILLION, NE 68046-2895
402-593-5773

99-24799A

**INDUSTRIAL SUBDIVISION AGREEMENT
(BROOK VALLEY II)**

THIS AGREEMENT, made this 27th day of February, 1998, by and between BROOK VALLEY II, LTD, a Nebraska limited partnership (hereinafter referred to as "Developer"), SANITARY AND IMPROVEMENT DISTRICT NO. 59 OF SARPY COUNTY, NEBRASKA (hereinafter referred to as "District"), and the CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska thereafter referred to as "City";

WITNESSETH:

WHEREAS, Developer is the legal owner of all lands within a proposed new development tract, legally described on Exhibit "A" hereto, consisting of approximately 156.7 acres; and

WHEREAS, Developer proposes to develop such tract in phases in the manner shown on the "Preliminary Plat" drawing prepared by Thompson, Dreessen & Dornier, Inc., a copy of which is attached hereto as Exhibit "B," such 145.9 acre tract being herein referred to as the "Subdivision" or "Development Tract," which tract is outside the corporate limits of the City and within the City's zoning and platting jurisdiction; and

WHEREAS, Developer intends to develop the Subdivision in phases as follows:

- Lots 1 through 22, inclusive (herein "Brook Valley II Phase I")
- Lots 23 through 31, inclusive (herein "Brook Valley II Phase II")
- Lots 32 through 41, inclusive (herein "Brook Valley II Phase III")

WHEREAS, Developer has requested City to approve a final platting of Lots 1 through 22, inclusive, of the Development Tract, as more fully shown on Exhibit "C" hereto, and a connection of said Subdivision to the sewer and drainage systems financed with public debt or owned, or to be owned, in whole or in part, by the City; and

WHEREAS, Developer has elected not to use the personal financing option for the construction of streets, storm sewers, sanitary sewers, and water and electric distribution systems within the subdivision or for tract connection charges, but instead wishes to finance same through District; and

WHEREAS, District has within its boundaries industrial areas north of Giles Road known as Oakdale Industrial Park, which is substantially built out, and Brook Valley I Industrial Park (Phases I and II) which are partially built out, and which are subject to separate subdivision agreements with City, which remain in full force and effect according to their terms, except as specifically modified by Section 20 hereof or by separate written amendments thereto; and

WHEREAS, the Developer and District propose that the District will build 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 Subdivider, which is the sole Owner(s) of all the lands within the boundaries thereof; 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 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.

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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" shall include all infrastructure, public facilities, interest in real estate, other capital assets, connection rights and other rights acquired, in whole or in part, by use of District funds or credit.
- B. The "construction cost" of an improvement shall mean the amount paid to the contractor or contractors performing the work, together with all other costs incurred in or related to the construction or installation of the improvement.
- C. The "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. "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.
- E. "Giles Road Lots" shall mean lots which abut or are in relatively close proximity to Giles Road and are identified as Lots 1 through 6, inclusive, Lots 8 and 9 and Lots 21, 23, and 24 as shown on Exhibit "B" hereto.
- F. "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 or a phase thereof may exceed the total of special assessments levied in respect to all such improvements.
- G. "Property benefited" shall mean property within the subdivision (Exhibit "B") which constitutes buildable sites, as defined in Subsection 5-B, *infra*.
- H. "Sarpy Industrial Sewer" shall mean that sewer constructed by Sarpy County pursuant to Intercal Cooperation Agreement between Sarpy County, City and City of Gretna. The "La Vista Project Area" of such sewer shall mean that portion of the sewer beginning at its point of connection to the Omaha 72" interceptor at 112th Street and extending west to 168th Street.
- I. "Subdivision" or "Development Tract" shall mean the 145.9 acre tract shown on Exhibit "B" hereto.

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2. Authorized Public Improvements

Developer, District and City agree that 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 Subdivision or improvements constituting necessary water, sewer, drainage, utility or other connections to existing or planned facilities as follows:

- A. Paving. Portland concrete paving of all dedicated streets per plats for the respective Phases of the Subdivision, as preliminarily shown on Exhibit "B" hereto, as may be from time to time amended with the approval of the City all said paving to be not less than nine (9) inches in depth and thirty (30) feet in width, except where a wider width than thirty (30) feet is approved per final plat(s). Attached as Exhibit "D" hereto is detailed "Paving and Storm Sewer" drawing prepared in conformity to the final plat for Phase I.
- B. 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 final plats or in dedicated easementways, for each phase, as more fully illustrated on detailed and City approved paving and storm sewer drawings for each phase in conformity with the final plat for such phase.
- C. Sanitary Sewer (Collector System). All sanitary sewer mains, manholes and related appurtenances constructed as more fully illustrated on "Sanitary Sewer" drawing attached hereto as Exhibit "E."
- D. Sanitary Outfall Sewer. There will be no separate sanitary outfall sewer serving the Subdivision. The Subdivision's collector system will connect directly to the Sarpy industrial sewer which runs through the Subdivision.
- E. Water (Internal). Water distribution mains located within dedicated street right-of-way per final plats to be installed by Metropolitan Utilities District.
- F. Water (External Supply). Construction of water main in Giles Road from existing water main at 109th and Giles westward to the west edge of the subdivision boundary.
- 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 final plats to be installed by Omaha Public Power District.
- I. Sarpy Industrial Sewer Platting Fee. Payment of Connection Fee provided for in Section 16-A.
- J. Civil Defense Siren. The cost of civil defense sirens required by City or Sarpy County.
- K. Paving of Perimeter Roads. The cost of paving perimeter roads of Subdivision to the extent authorized by Section 18-C.

The exact design, location and dimensions of and detailed plans and specifications for each of the afore-described improvements are subject to prior approval by the City in advance of award of

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contract for construction or acquisition. Except as herein expressly provided, the credit of the District shall not be used for the construction or payment of any improvement, unless first expressly approved in writing by City.

3. Unauthorized Expenditures of District Funds

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

- A. Any swimming pool, golf course, park, playground or other recreational facility, except as specifically authorized herein.
- 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 grading costs, except grading in street rights-of-way dedicated per plat, the cost of which right-of-way grading shall be one hundred percent (100%) specially assessed.
- D. Any sodding, seeding or other landscaping, including that contemplated on street right-of-way.
- E. Sidewalks.
- 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 Subdivision with the exception of Sarpy Industrial Sewer Platting Fee provided for in Subsection 16-A.
- G. Any gas distribution system or external gas supply line. District's credit may be used for the limited purpose of paying District's administrative costs in connection with the review and approval of supplier's contract, the cost of which to District shall be specially assessed.
- H. The purchase of real estate or interest therein.
- I. Costs of erosion control measures.
- J. Costs of abandonment, relocation, or modification of existing utilities or transmission facilities or easements, including electrical, gas or petroleum product transmission lines and facilities, except those of public utilities situated within public right-of-way, as may be approved by City Engineer.
- K. Perimeter or other fencing for subdivision.

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L. La Vista Special Sewer/Drainage Fee referred to in Section 16-B, infra.

4. Allocation of Cost of Improvements

Developer, District and City agree that the cost of all public improvements 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 "C") shall be paid by the special assessment against the property benefited within the area to be developed, except the following:
- (1) the cost of that portion of each of the intersections which do not abut property, as more specifically shown on the typical intersection diagrams attached hereto as Exhibit "F" may be treated as a general obligation of the District;
 - (2) the cost of the following, as may be identified on the approved detailed "Paving and Storm Sewer" drawings for a particular phase:
 - (a) the cost of that portion of paving exceeding thirty (30) feet in width, if any;
 - (b) the cost of that portion of paving depth beyond the City's industrial subdivision standard of nine (9) inches, if any;
 - (3) left turn and right turn bay on Giles at 117th Street, as illustrated on Exhibit "F" hereto.
- B. Storm Sewer. The cost of storm sewer, including manholes, inlets and other appurtenances for same, in excess of thirty inches (30") in diameter, shall be specially assessed.
- C. Sanitary Sewer (Collector System). One hundred percent (100%) of the cost of all sanitary sewers constructed within or serving the Subdivision, including manholes and other appurtenances, shall be paid by special assessment against property benefited within the subdivision. Except as provided in Subsection 4-D, infra, no portion of the cost of the sanitary sewer system shall be borne by general obligation of the District.
- D. Sanitary Outfall Sewer. There will be no separate outfall sewer serving the subdivision and all sanitary sewerage will be deemed to be a part of the collector system. The cost of the outfall sewer, including manholes and other appurtenances, needed to connect the subdivision's internal sanitary sewer system to the Sarpy Industrial Sewer shall be borne by general obligation.
- 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 entire cost of such contract charges as are authorized to be paid to Metropolitan Utilities District ("MUD") 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.

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- F. Water - External Supply Main Extension. District's credit may be utilized for external water supply main extension to the extent specifically authorized by Section 18-A(1), the cost of which shall be allocated between special assessment and general obligation as provided in Section 18-A(2).
- 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 "entire 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 for furnishing lighting of public streets shall be paid from the operating funds of the District.
- I. Sarpy Industrial Sanitary Sewer Connection Fee. The Sarpy Industrial Sewer Fee payable at platting and provided for in Subsection 16-A may be general obligation, provided District shall incur no "soft costs" or other debt or obligation in respect to its payment of this Fee, except for indebtedness in the principal amount of the fee plus warrant and interest costs incurred in respect to such indebtedness and administrative cost not to exceed one percent (1%) of the Sewer Fee.
- J. Civil Defense Siren. The cost of civil defense sirens required by City or Sarpy County may be general obligation.
- K. Sidewalks, Landscaping, Etc. The cost of sidewalks and other improvements for which use of public money is not authorized shall be paid by the Developer without use of District's credit or funds.
- L. Repair and Reconstruction. Repair and reconstruction of District's improvements and the maintenance thereof as provided for in accordance with Section 14 hereof, *infra*.
- M. Perimeter Section Line Roads. The cost of paving 120th Street, to the extent authorized by Section 18-A, may be general obligation.

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. 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 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 outstanding warrants of the District in the manner provided by law.

- B. Levy of Special Assessments. Except as may otherwise be agreed to by City, all said District's levy of special assessments shall be made in such a manner so as to assure that the entire burden of the levy is borne on an equitable basis by lots or parcels or portions of lots or parcels which are truly buildable sites. If any lots, parcel or part thereof, or other are within the area to be developed is not a buildable site by reason of insufficient size or dimensions or by reason of its having been acquired for any public purpose, or by reason of easement, lack of economically practical access or utility connection, or 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 Phase I 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 thirty (30) 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:
- 1) A detailed schedule of the proposed special assessments and the amount, if any, of 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 contractor;
 - b. a special itemization of all other costs of the project, including, but not limited to, all engineering fees, attorneys' fees, testing expenses, publication costs, financing costs, including, but not limited to, interest on all warrants to date of levy of 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. a special itemization of all costs of the District not itemized in (a) or (b) above;

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 within the following time frames:

For Phases Within this Subdivision: Within six (6) months after acceptance of the improvements within that phase.

For Brook Valley Phase I (BV North) and Phase II (BV South): Within three (3) months after execution of this Agreement.

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.

G. Lot Splits. Should any of the lots shown per Exhibit "B" be split, all special assessments levied on the lot will be paid at the time of such lot split, unless the City otherwise agrees.

H. Estimation of Bond Fees to be Specially Assessed. Issuance of District bonds shall follow levy of specials as soon as practical. 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, that only those special assessments levied against lots that have been developed with buildings at the time of levy of specials 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 only 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 for Subdivision 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-D, 4-F, 4-H, 4-I, 4-J, 4-L and 4-M, supra. 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

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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 construction contracts the provisions required by the regulations and standards of the City pertaining to construction of public improvements in subdivisions and testing procedures therefor.
- B. Preconstruction Contracts. District will present to the City, prior to the commencement of construction of any improvement, binding contracts between the District and contractors providing for the installation of improvements authorized herein, and a binding agreement between the District and its fiscal agent providing for the placement of warrants and/or bonds of the District to finance the cost of the improvements authorized herein, and said fiscal agent's approval as to the terms of this subdivision agreement.
- C. Easements. Prior to commencement of construction of improvements, District will obtain and file of record permanent easements for all sanitary and storm sewer lines, utilities and any other improvements authorized by Section 2 hereof, supra, which are not situated on dedicated street right-of-way. Said easements shall be granted by Developer at no cost to District or City and shall be in form satisfactory to City's Attorney and City's Engineer.
- D. Entrance Signage and Median Landscaping. Installation and maintenance of entrance signs or related fixtures and any median landscaping and related fixtures and any subdivision perimeter fencing shall be paid for by the Developer or the subdivision's business owners' or property owners' association. Plans for such proposed improvements that are to be located in public right-of-way and a proposed maintenance agreement for the improvements with such an association must be submitted to the City for review and approval prior to the installation of improvements.
- E. Utility Refunds. That to the extent any costs of the external water main described in Section 2-F shall not have been specially assessed, all refunds, rebates and allowances of every kind and description received from Metropolitan Utilities District 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 any right Developer may have thereto to District.
- F. Underground Electrical Refund/Rebate. All contract charges for underground power authorized to be paid by District to OPPD or to any public gas utility, 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

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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 pursue or fund any lawsuit to prevent any annexation of property within the District by the City. 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 contrary to the terms of this agreement. Developer does not waive its right to contest annexation that is in contravention of law.
- H. Equalization of City Fees in Respect to Natural Gas. Following City's annexation of the Subdivision, the City may impose a City fee or imposition in respect to natural gas delivered within the Subdivision comparable in rate to that imposed by City in respect to other gas consumers within the City. Any natural gas supplier serving this Subdivision shall agree that, to the extent not in contravention of law, that it will collect same through its billing process and remit to City.
- I. Change in District's Boundaries. District shall not annex areas to or de-annex any area from the boundaries of the District or otherwise enlarge, diminish or change boundaries of District without prior written consent of the City. In no event shall District's boundaries include area beyond City's zoning jurisdiction.
- J. Bond Call Privilege. District's bonds shall be continually callable at par commencing no later than five (5) years after issue.

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, except in respect to a limited annexation within the definition of Sections 13 and 18-D hereof, 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 or any part thereof.

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10. Recreational/Open Space

The Subdivision will have no residential development. There are no recreational/open space requirements.

11. Construction Standards and Procedures

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

- A. All such 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 linens, except where the City agrees otherwise. The engineering costs attributable to the production of said "As-Built plans" 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 "As-Built plans" 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.

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- 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.

12. Administrative Fee

District agrees that it will pay to City an amount equal to one percent (1%) of the actual construction cost of all improvements constructed by or for the District for 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 one percent (1%) 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 one percent (1%) of final construction cost and any variance between the estimated fee payment and the actual fee shall be adjusted and paid by District or refunded to District, 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 the District.

13. Giles Road Lots.

City shall have the uncontested rights to annex the area to be developed in whole or in part at any time, except when such action is in contravention of law. As regards separate (partial) annexation of the Giles Road lots as defined in Section 1-E, or any portion thereof, the parties agree that such lots are, as a practical matter, severable from the rest of the Subdivision and that City may annex any Giles Road lots, or portions thereof, at any time separate from the remainder of the Subdivision and the District in accordance herewith and regardless of the stage of development and assessed valuation of the Giles Road lots, the Subdivision or the balance of the District. District shall cause its fiscal agent to file its written agreement to the provisions hereof prior to the filing of a final plat.

In the event of City's partial annexation of the Giles Road lots, or any of them, the parties agree that the allocation of District's net indebtedness on account of such partial annexation shall not exceed an amount computed as follows:

- A. an amount equal to the balance of special assessments levied and outstanding and those assessments yet to be levied against said lots in accordance with this Agreement, which are to become the assets of the City;
- B. An amount of general obligation (unassessable general obligation indebtedness) of the District that is the same proportion that the assessed valuation of such lots, or portions thereof, so annexed by City bears to the total assessed valuation of the entire District at time of annexation.

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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) and less than Twenty-five Thousand Dollars (\$25,000) shall be approved by the City Engineer. Those exceeding Twenty-five Thousand Dollars shall be subject to prior approval of the City Council.

15. Sewer Connections

The parties mutually agree as follows:

- A. Term of Connection. Subject to the conditions and provisions hereinafter specified, the City hereby grants permission to the District to connect its sewer system to the sewer system of the City for a period not to exceed twenty (20) years, in such manner and at such place or places designated on plans submitted by the District and approved by the City.
- B. City Ownership of Outfalls. Upon the completion of any Sanitary Outfall Sewer built by the District, the City shall be granted and it shall accept control and operation of the facility. The District shall convey by proper legal instrument all its rights, easements, title, and interest in such Sanitary Outfall Sewer to the City. The form of acquisition shall be upon approved City forms.
- C. Connection Permit. The City shall have control over connections to sanitary sewer and drainage systems 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 presently described boundaries of the Subdivision to be connected to the sewer or sewer lines within or without the District. The connection of the Subdivision to the Sarpy Industrial Sewer shall be under the auspices and authority of City's connection rights to said sewer, and connection fees collected in respect thereto may be paid to City for the benefit of the County. The District shall not collect connection charges for any sewer connections, except as authorized in Subsection 16-A(2).
- D. Sewage. At all times all sewage and discharge from and through said District into the City sewer system shall be in conformity with the ordinances, regulations and conditions applicable to sewers and sewage within the City as now existing and as from time to time may be amended.
- E. Property 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

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in force; all such connections shall comply with minimum standards prescribed by the City.

F. City Right of Disconnection. Notwithstanding any other provisions of this Agreement, City retains the right to disconnect the sewer of any industry, or other sewer user within the Development Tract, which is discharging into the sewer system in violation of any applicable ordinances, statute, rule, or regulation.

G. Compliance With City Regulations, Etc. The District and Developer expressly agree that they are and shall be:

(1) Bound by and to any provisions of any ordinances, rules and regulations hereafter made and adopted by the City of La Vista applicable to sanitary and improvement districts whose sewers connect directly or indirectly with or into sewers or sewage systems owned or controlled by the City of La Vista or within its zoning or health jurisdiction; and

(2) Bound by any terms and provisions which by ordinance, resolution, or rule of the City of La Vista shall hereafter adopt or provide as being applicable to or required in contracts with sanitary and improvement districts or in order to permit or continue the discharge of any sewage from a sanitary and improvement district to flow into or through any part of the sewer or sewage system of the City of La Vista or sewer within its zoning or health jurisdiction.



H. Easements to City. Developer and District shall, and by these presents do, grant unto City the following:

(1) A perpetual easement and license to connect to and transmit sewage through the sewer system of District for transportation of sewage as City shall determine appropriate, for which connection or transportation City shall not be required to pay any connection fee or connection charge to District.

(2) A perpetual easement and license to City, its employees, representatives and agents, to enter upon and into the property, streets, roads and public ways and easements of District for the purpose of surveying, excavating, constructing, reconstructing, replacing, relocating, inspecting, maintaining, repairing, cleaning out, or otherwise improving the sewer system of the District.

I. Separate Sewer Agreement. The use, operation and other matters pertaining to sanitary sewers and outfall sewer to be constructed pursuant to this Subdivision Agreement are governed by a separate "Sewer Agreement" entered into between the City and the District, and District, Developer and City agree to be bound by the terms of such Agreement. District and Developer do represent that the representations therein made are truthful and the agreements therein made will be faithfully performed by District and Developer.

16. Sewer Connection Fees.

Developer and District agree that the following charges and fees and contractual terms shall be applicable to connection of any lots or parts thereof within the Subdivision:

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A. Sarpy Industrial Sewer Platting Fee.

(1) Amount payable at platting. The District shall, at time of final platting of each of the development phases of the Subdivision, or at such different times as Sarpy County shall require, make payment to Sarpy County, or to City on behalf of Sarpy County, for connections to the Sarpy Industrial Sewer. This fee is computed for the three phases of the Subdivision as follows:

Phase I - 82.0 acres at \$3,878.16 per acre	\$318,009.12
Phase II - 39.4 acres at \$3,878.16 per acre	\$152,799.50 (estimated)
Phase III - 24.5 acres at \$3,878.16 per acre	<u>\$ 95,014.92</u> (estimated)
TOTAL FOR SUBDIVISION	\$565,823.54

Upon City's approval of the final plat for each Phase, the District shall make payment in cash or warrants immediately convertible into cash in the amount stated above, reduced by the amount of any full or partial waiver of hookup or connection fees applicable to the Subdivision by reason of sewer easements granted or rights otherwise acquired in conjunction with construction of the sewer.

District shall pay to Sarpy County, or to City for the benefit of Sarpy County, the Sarpy Industrial Sewer Fee for the lots involved in each such final platting, said fee to be paid at time of plat approval(s) and prior to issuance of any building or sewer permits by City.

(2) Collection from property owners at time of property connection. The District, Developer and City agree that payments made under Section 16-A of this agreement shall be recovered through collection by the District, or City on behalf of District, as a Sewer Connection Fee in like amount or greater amount at time of connection of lots to the sewer system or the cost thereof shall be levied as a Special Assessment against the real estate connected as follows:

- (a) Amount of Fee. The real estate shall, on a per acre basis, be charged the special sewer and drainage fee paid by District pursuant to Subsection 16-A for each lot or parcel in the Subdivision.
- (b) Time of Collection. The Sarpy Connection Fee shall be collected by the District, or the City on District's behalf, from the owner of each lot or parcel of real estate or the cost thereof levied as a Special Assessment in the per lot or per acre amounts as paid by District pursuant to Subsection 16-A prior to the time of any such lot or parcel is built upon and before the premises are connected to the Sanitary Sewer System of the District or other Sanitary Sewer System.

(3) Extent of collection. The Sarpy Connection Fee will be collected in respect to each lot from the date of this Agreement until the District has collected by such payment, including collections made by City on its behalf or through Special

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Assessment, the entire Sarpy Connection Fee paid by the District to Sarpy County, as described in Subsection 16-A. The entire proceeds collected by District, whether by fee collection or by special assessment collection, shall immediately be used by the District to retire warrants of the District.

- (4) Proof of property owner payment required for issuance of permit. No building permit or sewer permit will be issued by the City for any connection or construction on any lot or tract of land within the Subdivision until proof is furnished to the City of payment to the District of the Sarpy Industrial Sewer Connection Fee or levy of the Special Assessment for that particular lot as called for in Section 16-A. In the absence of such proof of payment, City will collect from the lot owner such Sarpy Fee at time of City's issuance of permit and remit such fee to District. Sarpy Fees so collected by City shall be remitted to District no less often than quarterly.
- (5) Separate account; audit access. All Sarpy Platting Sewer Connection Fees received by District shall be separately accounted for by District. The City shall have access at all times to the District records and the fund balances maintained by the County Treasurer in respect thereto for the purpose of auditing such accounts.
- (6) City Not Liable for Failed Collection. City shall not be liable to District, Developer or any third party for failure to collect any or other fee, charge or sum on behalf of District, provided City shall be liable for failure to account to District for sums actually collected by City on behalf of District.

B. La Vista Special Sewer/Drainage Fee.

- (1) Time of collection; credit for Sarpy Industrial Sewer Fee. The City's Special Sewer/Drainage Fee ("La Vista Fee"), as from time to time set by City, shall be applicable to property within the Subdivision and shall be paid to City at time of application for connection of property within the subdivision to the sewer system of the District. However, in respect to properties for which the District shall have paid the Sarpy Industrial Sewer Connection Fee ("Sarpy Fee") to Sarpy County, or to City on Sarpy County's behalf, there shall be credited as a deduction against the La Vista Fee a percentage of the Sarpy Fee paid for such lot or parcel as follows:
 - (a) For property connections within two (2) years from time of District's payment of the Sarpy platting fee – 100% credit;
 - (b) For property connections more than two (2) years after the time of District's payment of the Sarpy platting fee – Credit as set by City, but not less than seventy-five percent (75%) of the amount of the Sarpy Fee paid.
 - (c) Where credit equals or exceeds amount of the La Vista Fee, there is no La Vista Fee due and there is no refund of any excess credit.

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- C. 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 Subsections 16-A and 16-B herein.

17. District Mill Levy.

The District and Developer agree:

- A. Levies in Years 1998 and 1999. District shall annually levy a minimum ad valorem property tax levy of no less than \$0.43 (43¢) per \$100.00 of taxable valuation in 1998 and shall levy in 1999 a levy of no less than \$0.48 (48¢) per \$100.00 of taxable valuation. Unless otherwise agreed to by City, not less than \$0.40 (40¢) 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. Levies in Years 2000 and Subsequent Years.
- (1) Cash Flow Projection. On or before June 1, 1998, 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 twenty (20) 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 thirty-five percent (35%) 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 issue date. District's fiscal agent shall, not less often than every two (2) years or more often as City may request, cause such cash flow projection to be updated and filed with the City.
 - (2) Debt Retirement Levy. Commencing with District's levy made in the year 2000, 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 2000, in conjunction with and in addition to the aforementioned levy for debt retirement, it shall annually levy a tax rate for its general fund purposes of not less than the amount required to fully comply with the Nebraska Budget Act, including an amount sufficient to 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 prior to and for the ten (10) year period following the date of issue of bonds in respect to the Subdivision improvements, the District's levy shall in no event be less than the following per \$100.00 valuation:

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1998 levy \$0.43 (43¢)
1999 and succeeding years \$0.48 (48¢)

- (5) Bond Issue. All outstanding warrants in respect to Brook Valley Phase I (BV North) and Phase II (BV South) shall be funded by District bond issue no later than December 31, 1998.

18. Additional Special Covenants and Agreements

Developer and District further covenant and agree as follows:

A. External Water Supply. As regards external water supply, the parties agree:

- (1) Authorization. Subject to City's approval of costs, rebates and special assessments, the credit of the District may, in conjunction with the platting and development of the several phases of the Subdivision, be utilized to pay that portion of the cost which MUD will not subsidize, pay or provide, of extending external water supply from MUD's existing water main at approximately 109th Street and Giles Road, as follows:
- (a) In conjunction with final platting of Phase I:
 - (i) In Giles Road from existing main at 109th Street westward to the west edge boundary of Lot 8;
 - (ii) In 114th Street from Giles south to the south line of Lot 4.
 - (b) In conjunction with final platting of Phase II: In 120th Street from Giles Road south the least distance along the west boundary of the Subdivision that is permitted by MUD and in Giles Road from Lot 8 to 120th Street.
 - (c) In conjunction with final platting of Phase III: In 114th Street south of Lot 4 the least distance along the east boundary of the Subdivision that is permitted by MUD.
- (2) How Costs Deferred. That portion of cost of extending MUD water service needed to serve the Subdivision shall be a Developer cost and specially assessed, except for the following:
- (a) Floodway Segment. Net cost, after rebate and other MUD allowance, of that portion of the main in Giles Road crossing the West Papillion Creek and South Papillion Creek floodways, as computed by the City Engineer, being 600 feet in Phase I for the West Papillion Creek floodway and 300 feet in Phase II for the South Papillion Creek floodway, or a total of 900 feet of the 4,400 foot main in Giles Road extending from 109th Street to the west end of the Subdivision, as more fully shown on Exhibit "H" (herein "Floodway Segment"); and

- (b) Non-Floodway Segments. That portion of the cost allocable to the remaining portions (non-Floodway Segments) of the MUD mains that are recoverable by District through MUD pioneer main rebate from parcels or tracts outside the District, but only to the extent such rebates are computed in respect to buildable property and are to be rebated to District and deposited to District's bond fund. In no event shall the potential rebate from property benefited by non-Floodway Segment be presumed to be more than fifty percent (50%) of the cost of such non-Floodway Segment.
- B. Property Lighting, Etc. of Giles Road Lots. Developer agrees to cooperate with the City for the purpose of creating an area of environmentally pleasing appearance along Giles Road. City will develop general standards with input from Developer and others. Developer and District agree to implement the reasonable requirements of such standards in respect to street lighting, parking lighting and exterior building facade for Giles Road lots, and Developer agrees to incorporate them into the protective covenants for the Developer's Subdivision.
- C. Perimeter Roads.
- (1) Limited access. Giles Road on the north border of the Subdivision shall, for purposes of this subsection, be considered a section line road and shall have limited access other than the entrances for 117th Street shown per Exhibit "B" hereto. This road is fully improved.
- (2) 120th Street on the west border of the Subdivision is a section line road, and it is anticipated that it will be limited access except for Portal Road and Centennial Road entrances, plus a future access for Lot 23. Sarpy County is constructing a new bridge over the South Branch of the Papillion Creek at 120th Street and is constructing two lanes of concrete from Giles Road to a point north of said new bridge. The S.I.D. will construct two lanes of pavement from the end of Sarpy County's project southward in 114th Street to its intersection with Centennial Road.
- Should the street not be designated limited access, fifty percent (50%) of the cost of District's paving on 120th Street shall be specially assessed.
- (3) Non-section line road. 114th Street is not a section line road. It may be extended as shown on Exhibit "F", Page 3. It's improvement south of Virginia Street shall be delayed pending participation in construction cost by the tract east of 114th Street, or other cost allocation acceptable to City.
- D. Limited Road Frontage Annexations. Notwithstanding the provisions of Section 9 hereof, the City may annex land adjacent to Giles Road to a depth no greater than the required building set back from said roadways, without necessitating the allocation of District debt or an assumption of a portion thereof. Allocation and assumption of District debt, if any, otherwise attributable to such limited road frontage annexations shall be deferred until more substantial annexation shall have occurred, unless this deferral shall be finally determined to be in contravention of law by a court of competent jurisdiction..

- E. Special Right-of-Way Requirements. 114th Street and 120th Street are to be 100 foot right-of-ways. No part of the subdivision shall be platted within fifty feet (50') of the centerline of either street. Developer agrees, at no cost to the District or City, to dedicate seventeen (17) additional feet of right-of-way for each Street.
- F. Perimeter Access. All street connections to individual properties shall be at private expense.
- G. Perimeter Fencing. Developer shall determine whether to require or permit fencing along Giles Road. If such fencing is required or permitted, it shall be of uniform style in appearance chosen by Developer and approved by the City Administrator, and shall be a matter included in restrictive covenants for the Subdivision.
- H. Sidewalks. The parties mutually agree that at this time public sidewalks are not necessary, but City reserves the right to require sidewalks in the future in accordance with its sidewalk policies as they may from time to time exist, including, but not limited to, sidewalks along Giles Road, 114th Street and 120th Street, which, if required, shall be at the cost of the Developer or its successor in interest.
19. General Provisions. The parties hereby mutually agree as follows:
- A. 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.
- B. 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 the right to specifically enforce full compliance of the terms and conditions of this agreement by mandatory or prohibitory injunction.
- C. 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.
- D. Non-Discrimination. In the performance of this contract, no party shall discriminate against any person on account of race, national origin, sex, age, disability, political or religious affiliations in violation of federal and state laws or local ordinances.
20. Amendment to Subdivision Agreements for Brook Valley I, Phases I and II Subdivisions. In consideration of the agreements reached herein and other valuable consideration, the parties further agree that they have settled upon amendments to be made to the terms of the Subdivision Agreement dated February 23, 1993, pertaining to Brook Valley Business Park Phase I (BV North) and Subdivision Agreement dated September 21, 1994, pertaining to Brook Valley Business Park Phase II (BV South) and do ratify said agreements, as hereinafter

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specifically amended, and do agree that said agreements shall remain in full force and effect in accordance with their original terms and conditions as hereby amended, including but not limited to, methods of allocation between special assessments and general obligation as set forth therein, notwithstanding such provisions may be different from and/or less beneficial to Developer and/or District than the provisions herein applicable to the Subdivision or to other developments of City. The parties agree that said earlier two agreements are deemed to be amended only in the following respects:

A. Brook Valley Business Park Phase I (BV North) Subdivision Agreement Dated February 23, 1993:

- (1) Section 11. "Administrative Fee" - the administrative fee shall remain two percent (2%), but District and Developer need only allocate one-half thereof to cost of improvements to be allocated in the manner provided in said Section.
- (2) Section 13 "Maintenance of Improvements" shall be amended to read the same as Section 14 of this Subdivision Agreement.
- (3) Section 14-B pertaining to District's mill levy is amended to read the same as Section 17 of this Subdivision Agreement.
- (4) A new Section 8-J is added to read as follows: "District shall levy special assessments within three (3) months following the execution of the Subdivision Agreement for Brook Valley II Subdivision, which execution date is February 21, 1998."
- (5) A new Section 8-K is added to read as follows: "District shall, on or before December 31, 1998, issue bonds in an amount no greater than that which, together with funds otherwise available to District, is necessary to retire outstanding construction warrants and accrued interest thereon."
- (6) The replat of Lots 7 through 11, inclusive, into Lots 47 through 50, and the replat of Lot 30 into Lots 51 through 61, both being replats of part of Brook Valley Business Park Phase I (BV North) shall continue to be subject to the same terms and conditions, including but not limited to, method of allocation between special assessment and general obligation, as set forth in the February 23, 1993 Subdivision Agreement, as amended hereby, taking into account, where applicable, variation in quantity of approved infrastructure items resulting from such replatting.

B. Brook Valley Business Park Phase II (BV South) Subdivision Agreement Dated September 21, 1994:

- (1) Section 4-I pertaining to traffic control signal system at 108th Street entrance to Phase II - the cost may be general obligation rather than specially assessed.
- (2) Section 6. "Maximum General Obligation Debt". The reference in subsection (b) to the sum of \$550,000 shall be increased by a sufficient amount to include the 108th Street traffic control device, when and if such device is constructed.

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- (3) Section 11. "Administrative Fee" - the administrative fee shall remain two percent (2%), but District and Developer need only allocate one-half thereof to cost of improvements to be allocated in the manner provided in said Section.
- (4) Section 13 "Maintenance of Improvements" shall be amended to read the same as Section 14 of this Subdivision Agreement.
- (5) Section 14-E pertaining to District's mill levy is amended to read the same as Section 17 of this Agreement.
- (6) Section 14-J is amended to read: "District shall levy special assessments within three (3) months following the execution of the Subdivision Agreement for Brook Valley II Subdivision, which execution date is February 21, 1998."
- (7) A new Section 8-K is added to read as follows: "District shall, on or before December 31, 1998, issue bonds in an amount no greater than that which, together with funds otherwise available to District, is necessary to retire outstanding construction warrants and accrued interest thereon."

21. Exhibit Summary

The Exhibits attached hereto and made a part hereof are as follows:

- | | |
|---------------------------|---|
| Exhibit "A": | Metes and bounds legal description of Development Tract (156.7 acres) |
| Exhibit "B": | Preliminary plat of Subdivision showing boundaries of Phases I, II and III, streets, sanitary sewer and storm sewer |
| Exhibit "C": | Phase I - final plat |
| Exhibit "D":
(2 pages) | Phase I - plat drawing showing type and location of paving and storm sewer |
| Exhibit "E": | Phase I - plat drawing showing type and location of sanitary sewer |
| Exhibit "F":
(3 pages) | Illustration of typical internal street intersections, showing portions thereof to be general obligation and portions to be specially assessed; left turn/right turn bay on Giles Road at 117th Street; and extension of existing 114th Street paving |
| Exhibit "G": | Developer's engineer's determination as to buildable lots within the area to be developed |
| Exhibit "H": | Portions of water main in Giles Road to be general obligation by reason of extraordinary adverse floodway impact |
| Exhibit "I": | Replat of Lots 7 through 11, inclusive, into Lots 47 through 50, being a replat of part of Brook Valley Business Park Phase I (BV North) |

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Exhibit "J": Replat of Lot 30 into Lots 51 through 61, being a replat of part of Brook Valley Business Park Phase I (BV North)

The final plats, paving and storm sewer drawings and sanitary sewer drawings for Phases II and III, in form finally approved by the City, will be added as future exhibits to this Agreement prior to installation of improvements.

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:

BROOK VALLEY II, LTD, a Nebraska limited partnership
Prime Realty, Inc., General Partner

Debra J. McCurt
Secretary

By *James V. McCurt*
Its President

ATTEST:

SANITARY AND IMPROVEMENT DISTRICT NO. 59 OF
SARPY COUNTY, NEBRASKA

Ann Medemeyer
Clerk of Said District

By *Thomas H. Parks*
Chair of the Board of Trustees

ATTEST:

CITY OF LA VISTA.

Rita M. Ramirez
Rita Ramirez, City Clerk

By *Harold Anderson*
~~Harold Anderson, Mayor~~
Terrilyn Quick, Acting Mayor

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
COUNTY OF SARPY)

On this 25th day of FEBRUARY, 1998, before me a Notary Public, duly commissioned and qualified in and for said County, appeared JAMES V. McCURT, personally known by me to be the President of Brook Valley II, LTD and the identical person whose name is affixed to the foregoing Subdivision Agreement, and acknowledged the execution thereof to be his voluntary act and deed.

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



J. Michael Price
Notary Public

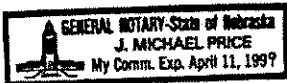
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ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
COUNTY OF SARPY)

On this 25th day of FEBRUARY, 1998, before me a Notary Public, duly commissioned and qualified in and for said County, appeared RONALD K. PARKS, personally known by me to be the Chair of the Board of Trustees of Sanitary and Improvement District No. 59 of Sarpy County, Nebraska, and WILLIAM J. WIENEMEYER, to me personally known to be the Clerk of the Board of Trustees of Sanitary and Improvement District No. 59 of Sarpy County, Nebraska, the identical persons whose names are affixed to the foregoing Subdivision Agreement, and they acknowledged the execution thereof to be their voluntary act and deed.

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



J. Michael Price
Notary Public

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
COUNTY OF SARPY)

On this 27th day of FEBRUARY, 1998, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Harold Anderson, personally known by me to be the Mayor of the City of La Vista and Rita Ramirez, to me personally known to be the City Clerk of the City of La Vista, and the identical persons whose names are affixed to the foregoing Subdivision Agreement, and they acknowledged the execution thereof to be their voluntary act and deed.

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



Sharon F. Paulsen
Notary Public

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EXHIBIT A

LEGAL DESCRIPTION

PART OF THE SOUTHWEST 1/4 OF SECTION 17 AND PART OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF SECTION 20; THENCE N 87°38'59" E (ASSUMED BEARING), 33.00 FEET ALONG THE SOUTH LINE OF THE NORTHWEST 1/4 OF SECTION 20 TO THE POINT OF BEGINNING; THENCE N 02°21'20" W, 1957.47 FEET PARALLEL WITH AND 33.00 FEET EAST OF THE WEST LINE OF THE NORTHWEST 1/4 OF SECTION 20; THENCE N 87°38'40" E, 17.00 FEET; THENCE N 08°35'06" E, 404.14 FEET; THENCE N 37°03'49" E, 260.01 FEET; THENCE N 87°28'35" E, 746.65 FEET; THENCE N 49°30'12" E, 92.64 FEET; THENCE N 87°28'35" E, 205.30 FEET; THENCE N 34°04'32" E, 180.63 FEET; THENCE N 79°00'13" E, 257.16 FEET TO A POINT OF CURVATURE; THENCE EASTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 2201.85 FEET AN ARC DISTANCE OF 749.04 FEET; THENCE S 81°30'19" E, 82.14 FEET; THENCE S 24°34'46" E, 238.10 FEET; THENCE S 02°15'14" E, 115.00 FEET; THENCE N 87°44'46" E, 17.00 FEET; THENCE S 02°15'14" E, 2434.06 FEET PARALLEL WITH AND 33.00 FEET WEST OF THE EAST LINE OF THE NORTHWEST 1/4 OF SECTION 20 TO A POINT ON THE SOUTH LINE OF THE NORTHWEST 1/4 OF SECTION 20; THENCE S 87°38'59" W, 2573.61 FEET ALONG THE SOUTH LINE OF THE NORTHWEST 1/4 OF SECTION 20 TO THE POINT OF BEGINNING.

Containing 156.77 Acres
