

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
MARCH 16, 2010 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
APPLICATION FOR FINAL PUD PLAN, FINAL PLAT, CUP AND SUBDIVISION AGREEMENT APPROVAL — LOT 380, CIMARRON WOODS	◆ RESOLUTION (4) ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

**SYNOPSIS**

A public hearing has been scheduled and resolutions have been prepared for Council to consider the Final PUD Plan, Final Plat, Conditional Use Permit, and Subdivision Agreement for Lot 380, Cimarron Woods (proposed as Lots 1 and 2, Cimarron Woods Replat Two) for the purpose of a multi-family residential development, generally located southwest of 96<sup>th</sup> and Harrison Street.

**FISCAL IMPACT**

None.

**RECOMMENDATION**

Approve, pending final review comments on the Subdivision Agreement and Conditional Use Permit by the City Attorney or City Engineer.

**BACKGROUND**

A public hearing has been scheduled to consider the following actions for Lot 380, Cimarron Woods:

1. Approval of a Final PUD Plan for 276 units of multi-family housing with 168 garages and 417 surface parking stalls, a clubhouse with a swimming pool, and a playground.
2. Approval of a Final Plat to subdivide Lot 380, Cimarron Woods, into two lots for phased development, to be known as Lots 1 and 2, Cimarron Woods Replat Two.
3. Approval of a Conditional Use Permit for 276 multiple family dwellings.
4. Approval of a Subdivision Agreement.

The property is located southwest of 96<sup>th</sup> and Harrison Street. The application has been submitted by Pedcor Investments, LLC, on behalf of the property owner, Torco Development, Inc.

The property is currently zoned R-3 PUD-1 with the Gateway Corridor Overlay District. The Cimarron Woods plat, PUD plan and subdivision agreement identified this lot for multi-family development and included a site plan showing 418 units. The proposed development to be known as “Cimarron Terrace” consists of 84 units in Phase I and 192 units in Phase II, for a total of 276 units; the project also includes 168 garage stalls in addition to the surface parking stalls.

The application for approval of a Final Planned Unit Development (PUD) Plan has been reviewed as to its conformity with the Preliminary PUD Plan as approved. In comparing the two, various minor changes were made (see staff report) however staff is of the opinion that the final plan is in substantial compliance with the

preliminary plan. Building design review is substantially complete and is a condition of the Conditional Use Permit however a final detailed review will occur at the time of building permit submittal.

At the Planning Commission and City Council public hearings on the preliminary plans, existing drainage and flooding issues in Cimarron Woods were discussed at length. There are homes and additional vacant properties that have experienced high water run-off conditions from upstream in the past. While the proposed development on Lot 380 cannot solve the existing problems, it has been designed in such a way that it will not add to the existing problems, and reduces them slightly. This has been achieved by not allowing peak run-off in the proposed development to exceed existing conditions (on Lot 380) for all storm events, up to a 100-year storm.

An amendment to the Subdivision Agreement has been prepared and details the responsibilities of the parties including construction of access to the development, reconstruction of existing paving and traffic signalization, median and signage modifications, construction of storm sewers and sanitary sewers, wetlands mitigation, drainage retention, trail installation, and other improvements.

The Planning Commission held a public hearing on November 19, 2009, and recommended approval of the Final Plat as well as the Final PUD because it is consistent with the preliminary plan that was reviewed, and the Conditional Use Permit, subject to resolution of the items noted in the staff report.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, DETERMINING CONDITIONS FOR APPROVAL OF FINAL PLANNED UNIT DEVELOPMENT (PUD) PLAN FOR LOT 380, CIMARRON WOODS, REPLATTED AS LOTS 1 AND 2, CIMARRON WOODS REPLAT TWO, A SUBDIVISION LOCATED IN THE NORTH ½ OF SECTION 16, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6<sup>TH</sup> P.M., SARPY COUNTY, NEBRASKA.

WHEREAS, the owners of the above described piece of property have made application for approval of final PUD plan for Lot 380, Cimarron Woods, replatted as Lots 1 and 2, Cimarron Woods Replat Two; and

WHEREAS, the City Administrator and the City Engineer have reviewed the preliminary plat and preliminary PUD plan; and

WHEREAS, on November 19, 2010, the La Vista Planning Commission held a public hearing and reviewed the final PUD plan and recommended approval subject to resolution of items identified by the city engineer and staff.

NOW THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of La Vista, Nebraska, that the final PUD plan for Lot 380, Cimarron Woods, replatted as Lots 1 and 2, Cimarron Woods Replat Two, a subdivision located in the North 1/2 of Section 16, Township 14 North, Range 12 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska, generally located southwest of 96<sup>th</sup> and Harrison Street, be, and hereby is, approved.

PASSED AND APPROVED THIS 16TH DAY OF MARCH 2010.

CITY OF LA VISTA

ATTEST:

\_\_\_\_\_  
Douglas Kindig, Mayor

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, DETERMINING CONDITIONS FOR APPROVAL OF THE FINAL PLAT OF LOTS 1 AND 2, CIMARRON WOODS REPLAT TWO, A SUBDIVISION IN THE NORTH ½ OF SECTION 16, TOWNSHIP 14N, RANGE 12E OF THE 6<sup>TH</sup> P.M., SARPY COUNTY, NEBRASKA .

WHEREAS, the owners of the above described piece of property have made application for approval of a Final Plat to be known as Lots 1 and 2, Cimarron Woods Replat Two, being a replat of Lot 380, Cimarron Woods; and

WHEREAS, the City Administrator and the City Engineer have reviewed the final plat; and

WHEREAS, on November 19, 2009, the La Vista Planning Commission held a public hearing and reviewed the final plat and recommended approval subject to resolution of items identified by the city engineer and staff.

NOW THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of La Vista, Nebraska, that the Final Plat of Lots 1 and 2, Cimarron Woods Replat Two, being a replat of Lot 380, Cimarron Woods, a subdivision located in the North ½ of Section 16, Township 14 North, Range 12 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska, generally located southwest of 96<sup>th</sup> and Harrison Street, be, and hereby is, approved subject to the resolution of the following items identified by the City Engineer and staff:

1. The necessary mylar copies of the final plat must be submitted with all required signatures.

PASSED AND APPROVED THIS 16TH DAY OF MARCH 2010.

CITY OF LA VISTA

ATTEST:

\_\_\_\_\_  
Douglas Kindig, Mayor

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF A CONDITIONAL USE PERMIT FOR THE PEDCOR INVESTMENTS LLC FOR A MULTI-FAMILY RESIDENTIAL DEVELOPMENT GENERALLY LOCATED SOUTHWEST OF 96<sup>TH</sup> AND HARRISON STREET

WHEREAS, Pedcor Investments, LLC, on behalf of the property owner, Torco Development, Inc., has applied for a conditional use permit for the purpose of having a multi-family residential development; and

WHEREAS, the La Vista Planning Commission has reviewed the application and recommends approval; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit for such purposes, subject to the following conditions:

1. The property has to be maintained and developed in accordance with the site plan, PUD Plan and Subdivision Agreement.
2. Pavement modifications to 99<sup>th</sup> Street and an as-built topographic survey of storm water detention areas is required before Certificates of Occupancy can be issued.
3. An off-site wetlands mitigation area must be acquired prior to any grading permits being issued.
4. No vehicle repair or storage of inoperable or abandoned vehicles is allowed in the parking areas.
5. A drainage study identifies that peak storm water runoff volumes are reduced after construction of the project, and the developer agrees to cooperate with the SID to take additional action if they are not reduced to the volumes shown in the study.
6. The clubhouse must be professionally staffed during open hours.

NOW THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of La Vista hereby authorize the execution of a Conditional Use Permit in form and content submitted at this meeting, for Pedcor Investments, LLC, for the purpose of having a multi-family residential development, subject to the conditions listed in the last recital above.

PASSED AND APPROVED THIS 16TH DAY OF MARCH 2010.

CITY OF LA VISTA

ATTEST:

\_\_\_\_\_  
Douglas Kindig, Mayor

\_\_\_\_\_  
Pamela A. Buethe, CMC  
City Clerk

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING A SUBDIVISION AGREEMENT FOR LOTS 1 AND 2, CIMARRON WOODS REPLAT TWO SUBDIVISION IN A FORM SATISFACTORY TO THE CITY ADMINISTRATOR AND CITY ATTORNEY.

WHEREAS, the City Council did on March 16 2010, approve the final plat for Lots 1 and 2, Cimarron Woods Replat Two Subdivision subject to certain conditions; and

WHEREAS, the Developer, Pedcor Investments, LLC, has agreed to execute a subdivision Agreement satisfactory in form to the City Attorney and City Engineer; and

NOW THEREFORE, BE IT RESOLVED, that the Subdivision Agreement presented at the March 16, 2010 City Council meeting for Lots 1 and 2, Cimarron Woods Replat Two Subdivision 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 16TH DAY OF MARCH 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: March 16, 2010  
Report prepared on March 11, 2010

**I. GENERAL INFORMATION**

- A. APPLICANT:**  
Pedcor Investments, LLC.  
One Pedcor Square  
770 3<sup>rd</sup> Avenue, S.W.  
Carel, IN 46032
- B. PROPERTY OWNER:**  
Torco Development, Inc.  
11205 S 150<sup>th</sup> Street, Ste 100  
Omaha, NE 68138
- C. LOCATION:**  
Southwest corner of 96<sup>th</sup> & Harrison Street
- D. LEGAL DESCRIPTION:**  
Lot 380, Cimarron Woods a subdivision in the N ½ of Section 16, Township 14N, Range 12E of the 6<sup>th</sup> P.M., Sarpy County, NE (being replatted as Lots 1 & 2, Cimarron Woods Replat Two)
- E. REQUESTED ACTION(S):**  
1. Final Planned Unit Development (PUD)  
2. Final Plat  
3. Conditional Use Permit (CUP)
- F. EXISTING ZONING AND LAND USE:**  
R-3 PUD-1, High Density Residential Planned Unit Development  
Vacant
- G. PURPOSE OF REQUEST:**  
Multi-family housing / Apartments named Cimarron Terrace
- H. SIZE OF SITE:**  
25.938 acres

**II. BACKGROUND INFORMATION**

- A. EXISTING CONDITION OF SITE:**  
Undeveloped; moderate to steeply sloping toward an open drainage channel which bisects the site from north to south. This drainage area contains mature groves of trees.

**B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**

1. **North:**  
City of Omaha; Applewood Golf Course
2. **East:**  
Cornerstone Baptist Church/TA Transitional Agriculture and R-1 Single-Family Residential
3. **South:**  
Cimarron Woods/R-1 Single-Family Residential
4. **West:**  
Cimarron Woods/R-1 Single-Family Residential

**C. RELEVANT CASE HISTORY:**

1. In October of 2002, an application was filed for approval of a Comprehensive Plan amendment, a rezoning from TA, Transitional Agriculture, to R-1 PUD and R-3 PUD; and approval of a preliminary plat for a subdivision to be known as "Shenandoah". Proposed Lot 514 (26.7 acres) was to be zoned for multi-family development.
2. On March 20, 2003, after some revisions to the layout of the plat, the Planning Commission conducted a public hearing and recommended approval of the request. The staff report and meeting minutes identify the rezoning from TA to R-1 but state "A P.U.D. designation will also allow for some mixed residential development...which will be predominantly single-family housing." And "Through the use of a P.U.D. the higher density residential has relocated to the northeast corner of this site where commercial uses have been previously discouraged." Also identified are several comments from the staff and the Acting City Engineer, Terry Atkins, including:
  - (a) A traffic signal shall be provided at 99<sup>th</sup> Street when the apartments are constructed regardless of warrants.
  - (b) Language must be incorporated into the subdivision agreement requiring approval of the final apartment plan prior to site development. The final apartment plan must have adequate internal traffic flow for police and fire, which would include a wide divided entrance.
3. On May 6, 2003, the City Council conducted a public hearing and approved Ordinance No. 907. The staff report and meeting minutes include the same comments regarding multi-family development however the ordinance rezoned the entire area of the preliminary plat to R-1.
4. In August of 2003, an application was filed for approval of a revised preliminary plat, a final plat, a final PUD plan and a waiver to two sections of the Subdivision Regulations. The name of the subdivision was changed to "Cimarron Woods". The application identifies a proposed 418 units on Lot 380.
5. On August 21, 2003 the Planning Commission conducted a public hearing and recommended approval of the request. The staff report and meeting minutes include the same comments noted above regarding the multi-family development. In addition, the debt to value analysis for the S.I.D. identifies Lot 380 will contain +400 units.
6. On September 16, 2003 the City Council conducted a public hearing and approved Ordinance No. 916 which created the PUD-1 overlay designation to the R-1 zoning which had been approved in Ordinance No. 907. The City Council also approved the revised preliminary plat, the final plat and the Subdivision Agreement. The staff report and meeting minutes include the same comments noted above regarding the multi-family development. Section 19 of the Subdivision Agreement also states "As regards Lot 380 (multi-family tract), site plan, building elevations and building design shall be subject to City approval, at which time it should become part of this Agreement and Exhibit "K"."
7. On February 19, 2008, the City Council approved Ordinance No. 1055 which rezoned Lot 380 of Cimarron Woods Subdivision from R-1 PUD-1, Single Family

Residential to R-3 PUD-1, High Density Residential.

8. On April 17, 2008 the Planning Commission reviewed a new Preliminary Planned Unit Development Plan as it differed significantly from the original Preliminary PUD Plan that was approved in 2003. Garages are not being planned for all units; the internal roadways are different; the arrangement of the apartment complexes is different; and fewer apartment units are being planned.

9. On June 2, 2009, the City Council approved Resolution No. 09-052 which approved the preliminary Planned Unit Development (PUD-1) plan subject to: 1. The property being zoned to read R-3, PUD-1 zoning; 2. A traffic signal be installed at the intersection of 99<sup>th</sup> and Harrison Streets as part of Phase I; 3. A 10-foot wide trail be installed in Phase II; 4. Revisions requested by the City Engineer, be incorporated into the Final PUD Plan and Conditional Use Permit submittal; 5. Revisions and additional information requested by the City's Design Review Architect be incorporated into the Final PUD Plan and Conditional Use Permit submittal; 6. Other revisions stated in the staff report be addressed prior to Final PUD Plan and Conditional Use Permit submittal; and 7. A preliminary assessment of the potential waterway/wetland issues be performed and all applicable Army Corps of Engineers permits be acquired by the developer prior to approval of the Final PUD plan.

10. On November 19, 2009, the Planning Commission reviewed the Final PUD Plan, Final Plat and Conditional Use Permit and recommended approval subject to the resolution of items noted in the staff report.

#### **D. APPLICABLE REGULATIONS:**

1. Section 5.08, Zoning Ordinance, regarding the R-3 High Density Residential District
2. Section 5.15, Zoning Ordinance, regarding the PUD-1 Planned Unit Development District
3. Section 5.17.06, Gateway Corridor District, Sub-Area Secondary Overlay
4. Article 6, Zoning Ordinance, regarding Conditional Use Permits
5. Section 3.04 and 3.05, Subdivision Regulations, regarding Final Plats

### **III. ANALYSIS**

#### **A. COMPREHENSIVE PLAN:**

The Future Land Use Map of the Comprehensive Plan identifies this site for high density residential.

#### **B. OTHER PLANS:**

1. Cimarron Woods Subdivision Agreement
2. Cimarron Woods Park and Trail Plan (Exhibit E-1 of the Subdivision Agreement)

#### **C. TRAFFIC, ACCESS AND TRAIL:**

1. Lot 380 was platted with access to 99<sup>th</sup> Street in Cimarron Woods.
2. Harrison Street abuts this lot on the north, however this roadway has controlled access and no direct access will be allowed.
3. 96<sup>th</sup> Street abuts this lot on the east. Topography of the site limits the ability to gain access to 96<sup>th</sup> Street.
4. Access from 99<sup>th</sup> Street and throughout the site as shown on the final PUD plan is consistent with the access shown on the preliminary plan.

5. The applicant has prepared a plan for geometric revisions to 99<sup>th</sup> Street that will be required with Phase 1 construction (see Exhibit "E" of the Subdivision Agreement). The City of Omaha (see attached letter from Todd Pfitzer) has stated that the signal cannot be installed until traffic volume warrants are met, which may or may not occur when the apartments are completed. The cost of the modifications to the pavement at the intersection may be a general obligation expense of the SID since this is primarily extra width paving that probably should have been constructed initially in anticipation of the traffic signal. Any pavement removal costs associated with the widening is required to be a developer expense. Regarding the signal costs, the City of Omaha has indicated that if the signal is warranted, they would purchase and install mast arms, signal heads and a controller. Any other signal costs not funded by Omaha will be borne 50 percent by the Cimarron Terrace developer and 50 percent by the SID per the original Subdivision Agreement. The cost is estimated at \$50,000; the Amendment to the Subdivision Agreement requires the apartment developer pay \$25,000 to the SID prior to recording the final plat. Any underground conduits or signal pole foundations will be installed as part of the pavement widening. The pavement modifications, underground signal work, and landscaping relocations must be completed prior to issuance of certificates of occupancy for Phase 1 of the apartment complex.
6. The existing trail in Cimarron Woods is proposed to be extended into the Cimarron Terrace project and connect to 99<sup>th</sup> Street.

**D. PARKING AND PARKING LOT LAYOUT:**

1. The proposed quantity of parking stalls (surface and garage) is the same as the prior plan and exceeds the code minimum.
2. The dumpster locations have been shown and a screening detail has been added. The screening will need architectural review to determine compliance with the design guidelines of the Gateway Corridor Overlay District. This can be done at the time of final plan review during the building permit process.

**E. UTILITIES:**

1. The PUD plan includes a notation about installing the additional line valve just north of Josephine Avenue as requested by MUD.
2. The existing and proposed fire hydrants have been shown. These locations have been approved by the Fire Department.

**F. GRADING AND DRAINAGE:**

1. Prior to the issuance of a grading permit or building permit for Phase 1, the applicant needs to demonstrate that the major storm drainage path between Buildings 8 and 10 will remain within the proposed sewer and drainage easement.
2. In response to a request from the City of La Vista, as a result of the public comments during the previous reviews on the Cimarron Terrace apartments, E&A Consulting Group, Inc. has performed an overall drainage study of the Cimarron Woods subdivision and the upstream drainage areas. A draft copy of this study was received on January of 2010, another update during February 2010, and the most recent update was received the week of March 1, 2010. This overall study has been performed in a manner substantially consistent with the procedures set forth in the Omaha Regional Storm Water Design Manual. The study has reviewed the drainage for 2-year, 10-year, 50-year, and 100-year storm events under existing conditions (without the Cimarron Terrace apartments being developed) and for the developed conditions (full build-out of the apartments). The study included obtaining surveyed

floor elevations for ten walk-out basement style homes abutting Outlot E, the park site in Cimarron Woods. Two of these were west of Cimarron Woods Drive and eight were east of Cimarron Woods Drive.

Under existing conditions, the study predicts the ponded water elevations to affect existing homes as follows:

2-year storm events	Water surface elevation below all lowest floor elevations
10-year storm events	Water surface elevation below all lowest floor elevations
50-year storm events	Water surface above three existing lowest floor elevations ranging from 0.9 feet to 1.7 feet
100-year storm events	Water surface above seven existing lowest floor elevations Ranging from 0.1 feet to 2.9 feet

In the proposed condition with the Cimarron Terrace apartments fully developed, the peak runoff flows for all events will be reduced below existing levels at the downstream limits of the apartment site. The apartment project will also include creating approximately 10 acre-feet of storm water storage. As a result, the study predicts the ponded water elevations to affect the existing homes as follows:

2-year storm events	Water surface elevation below all lowest floor elevations
10-year storm events	Water surface elevation below all lowest floor elevations
50-year storm events	Water surface above three existing lowest floor elevations ranging from 0.7 feet to 1.5 feet
100-year storm events	Water surface above seven existing lowest floor elevations Ranging from 0.4 feet to 2.6 feet

The study illustrates that the development of the apartment site will not worsen the existing drainage situation and will slightly decrease water surface elevations in Outlot E. The peak flow reduction at the downstream limits of the Cimarron Terrace apartments as presently set forth in the PUD documents, serves to reduce the problem that already exists. The study indicates the need to undertake further drainage improvements, beyond those being required on the apartment site, to lower the predicted water surface elevations.

3. An off-site wetlands mitigation site has been purchased and a copy of the purchase agreement was submitted prior to the Planning Commission hearing.
4. Prior to the issuance of a grading permit or building permit for Phase 1, the grading and erosion control permit obtained through the Papillion Creek Watershed Partnership website will need to be modified to match the revised development configuration of the site.
5. A preliminary Post Construction Stormwater Management Plan (PCSMP) has been submitted and is an exhibit to the Subdivision Agreement. A more detailed plan will be required prior to the issuance of a grading or building permit.
6. A nationwide permit has been issued by the Corps of Engineers with a contingency to obtain water quality certification from the Nebraska Department of Environmental Quality (NDEQ) before construction.

#### **G. LANDSCAPING:**

1. The property line along Harrison Street and the 96<sup>th</sup> Street right-of-way are planned to be landscaped in a manner consistent with the existing landscaping in Cimarron Woods.
2. The Landscape Plan has been reviewed as part of the design review for the Conditional Use Permit.

3. Substantial reconfiguration and removal of existing landscaping and signage in the 99<sup>th</sup> Street median will be required for the revisions to 99<sup>th</sup> Street at such time as the traffic signal is to be installed. The applicant prepared a plan for relocating the landscaping and signage (see Exhibit "G" of the Subdivision Agreement). The cost of the relocation of these improvements is required to be a private expense and is identified as such in the amendment to the Subdivision Agreement.

#### **IV. REVIEW COMMENTS**

##### **FINAL PLAT:**

1. Mylar copies of the plat will need to be provided with all required signatures after City Council approval. The plat must be recorded prior to the issuance of any building permits.
2. A staking bond has been provided.
3. An amendment to the Subdivision Agreement has been prepared and addresses the financing, timing of installation, operation and maintenance of proposed public and private improvements.

##### **FINAL PUD PLAN:**

1. Under the PUD regulations, the Planning Commission reviewed the final plan for compliance, upon review and comment by city staff, with the approved preliminary plan. In comparing the final plan to the preliminary plan, it was noted that Building Nos. 3, 7, 11, 13 and 14 were moved away from the drainageway, generally 10 feet or less. Also, a set of garages on the south side of Building 7 were relocated. Various other minor changes were made to respond to comments, such as the location of the fencing along the south property line, the proposed retaining wall location north of Building No. 2, and a surveyed location of the tree trunk perimeter in the central portion of the site. However, staff is of the opinion that the final plan is in substantial compliance with the approved preliminary plan, and the Planning Commission recommended that it be forwarded to Council for approval.
2. The setbacks were approved as part of the preliminary plan and were noted as: front yard 25'; side yard 10'; street side yard 25'; and rear yard 10'

##### **CONDITIONAL USE PERMIT:**

1. A Conditional Use Permit has been prepared and is attached to this report. It contains several conditions, including:
  - a. The property has to be maintained and developed in accordance with the site plan, PUD Plan and Subdivision Agreement.
  - b. Pavement modifications to 99<sup>th</sup> Street and an as-built topographic survey of storm water detention areas is required before Certificates of Occupancy can be issued.
  - c. An off-site wetlands mitigation area must be acquired prior to any grading permits being issued.
  - d. No vehicle repair or storage of inoperable or abandoned vehicles is allowed in the parking areas.
  - e. A drainage study identifies that peak storm water runoff volumes are reduced after construction of the project, and the developer agrees to cooperate with the SID to take additional action if they are not reduced to the volumes shown in the study.
  - f. The clubhouse must be professionally staffed during open hours.

#### **V. STAFF RECOMMENDATION:**

1. APPROVAL of the Final Plat, Final Planned Unit Development (PUD) Plan, Conditional Use

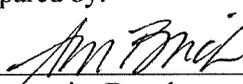
Permit and Subdivision Agreement subject to any final review comments by the City Attorney or City Engineer.

**VI. ATTACHMENTS TO REPORT:**

1. Vicinity Map
2. Letter from Cimarron Woods HOA dated August 4, 2009
3. Letter from Larry Jobeun dated October 30, 2009
4. Letter to Larry Jobeun from Todd Pfitzer dated January 29, 2010
5. Letter from John Kottmann dated March 8, 2010
5. Final Plat
6. Final Planned Unit Development (PUD) Plan
7. Conditional Use Permit
8. Subdivision Agreement

**VII. COPIES OF REPORT TO:**

1. Gerry Torczon, Torco Development Inc.
2. Mike Smith, Pedcor Investments, LLC.
3. Jennifer Smith, Pedcor Investments, LLC.
4. Larry Jobeun, Fullenkamp, Doyle & Jobeun
5. Roger Peterson, 7126 S. 100<sup>th</sup> Circle
6. Gary Kipfer, 10014 Emiline Street
7. Eileen Williamson, 10133 Edna Street
8. Public Upon Request

  
\_\_\_\_\_  
Prepared by:  
 3-11-10  
\_\_\_\_\_  
Community Development Director      Date



August 4, 2009

City of LaVista  
La Vista City Hall  
8116 Park View Blvd  
LaVista, NE 68128

Re: Cimarron Woods Terrace—Neighbor Concerns

La Vista Mayor and City Council:

Please allow this correspondence to serve as the Cimarron Woods Home Owners Association's concerns relating to the Pedcor project. We have mentioned these concerns to both the City Council and the Planning Commission at the hearings and in previous correspondence. We appreciate the City Council's recommendation that Pedcor work with the Homeowners' Association to alleviate these concerns and we are providing Pedcor with a copy of this correspondence. Our concerns are as follows:

1. **Buffers Along Fence Line.** The proposed fence and sidewalk in the southwest corner of the property, abutting the townhouses on the western edge of Cimarron Woods, does not appear to comply with Planning Commissions recommendations. In April of last year, the Planning Commission recommended a 10-foot wide trail as provided in exhibit E-1 of the Cimarron Woods Subdivision Agreement. Attachment 1 is Exhibit E-1 of the Subdivision Agreement. As you can see, the Agreement requires a significant buffer between any fencing and the sidewalk and Pedcor's current plan does not provide for a buffer of any kind. Instead, Pedcor appears to propose to put the fence along the western property line of the western Cimarron Woods' properties immediately adjacent to the proposed trail. Attachment 2.

2. **Setbacks Along Harrison Street.** Several of the proposed apartment structures will be extremely close to Harrison Street. As set forth in the attached photograph, one can clearly see the setbacks required of all other surrounding structures and Pedcor's effort to place an apartment structure just off of Harrison Street. As shown in Attachment 3, the red line represents surrounding setbacks, while the blue line shows how close these structures will be to Harrison Street. Pedcor's proposal certainly does not comport with the surrounding structures

and, as part of the gateway corridor, we believe that the proposed setbacks should be increased to be consistent with the surroundings.

3. **Landscaping.** Pedcor has indicated that they are putting in significant landscaping around the development. Our concern lies with the maintenance of that landscape. We recommend, consistent with the Mayor's comment during the June 2, 2009, City Council meeting, that Pedcor enter into a maintenance agreement for the landscaping and be required to post a bond such that the City of LaVista may draw on that bond to replace landscaping that Pedcor does not timely replace. It is our understanding that this is consistent with measures LaVista has taken with other developments.

4. **Annual Contribution to HOA.** As mentioned in the City Council meeting of June 2, 2009, we feel it appropriate that Pedcor contribute to the Homeowner's Association in order to maintain the community property. Given the number of units and the traffic volume around the island at the eastern entrance of Cimarron Woods, we feel it appropriate that Pedcor contribute \$10,000.00 to \$12,000.00 per year. This is approximately 25% of the homeowner's association's budget, but given the number of units and the traffic increase that will be created by the additional units, we feel this is appropriate. Moreover, Pedcor should be bound by any proportional increase that the homeowner's association implements. For example, should the homeowner's association due increase to \$200.00 per lot, a 100% increase, Pedcor should be bound by the same increase.

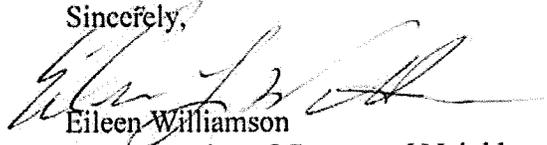
5. **Traffic Calming Devices.** Given the significant increase in traffic that is anticipated on Josephine Street and through the Cimarron Woods' neighborhood, we recommend traffic calming devices such as a chicane or speed table be placed along Josephine Street.

6. **Drainage Concerns.** We continue to have significant drainage concerns. E & A is the engineer for both Cimarron Woods and Cimarron Woods Terrance. E & A had indicated to the City Council that there would not be any drainage problems in Cimarron Woods. Obviously, this is not the case as the drainage problems continue to date. We are gravely concerned that E & A is now claiming that the proposed apartment complex will not have any detrimental affect on drainage. Yet, given E & A's inability to control the flooding problem in Cimarron Woods, we see no reason why the City Council should simply take E & A's word that there will be no drainage problems with Cimarron Woods Terrance. Moreover, Cimarron Woods Terrance is upstream from Cimarron Woods and it is an additional concern that the proposed construction will simply cause greater flooding in Cimarron Woods. Finally, Pedcor has yet to provide us with a copy of the drainage study E & A claimed was completed at the last City Council meeting—nearly 2 months ago. We certainly hope we will be provided time to review E & A's drainage study prior to the City Council's discussion.

City of LaVista  
August 4, 2009  
Page 3

Thank you for the opportunity to present our concerns and we look forward to working with both the City Council and Pedcor to resolve these concerns.

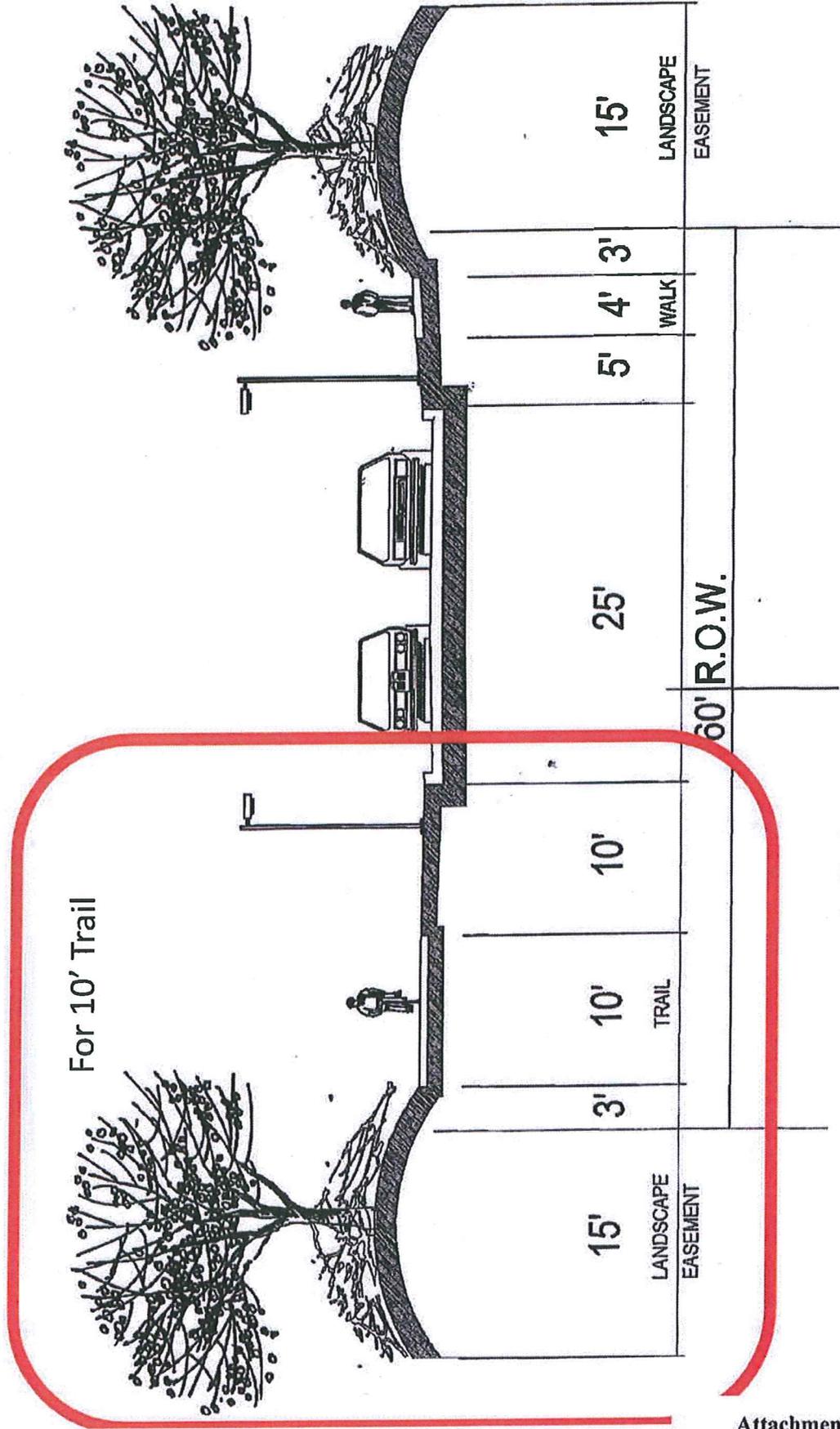
Sincerely,



Eileen Williamson  
Representative of Concerned Neighbors

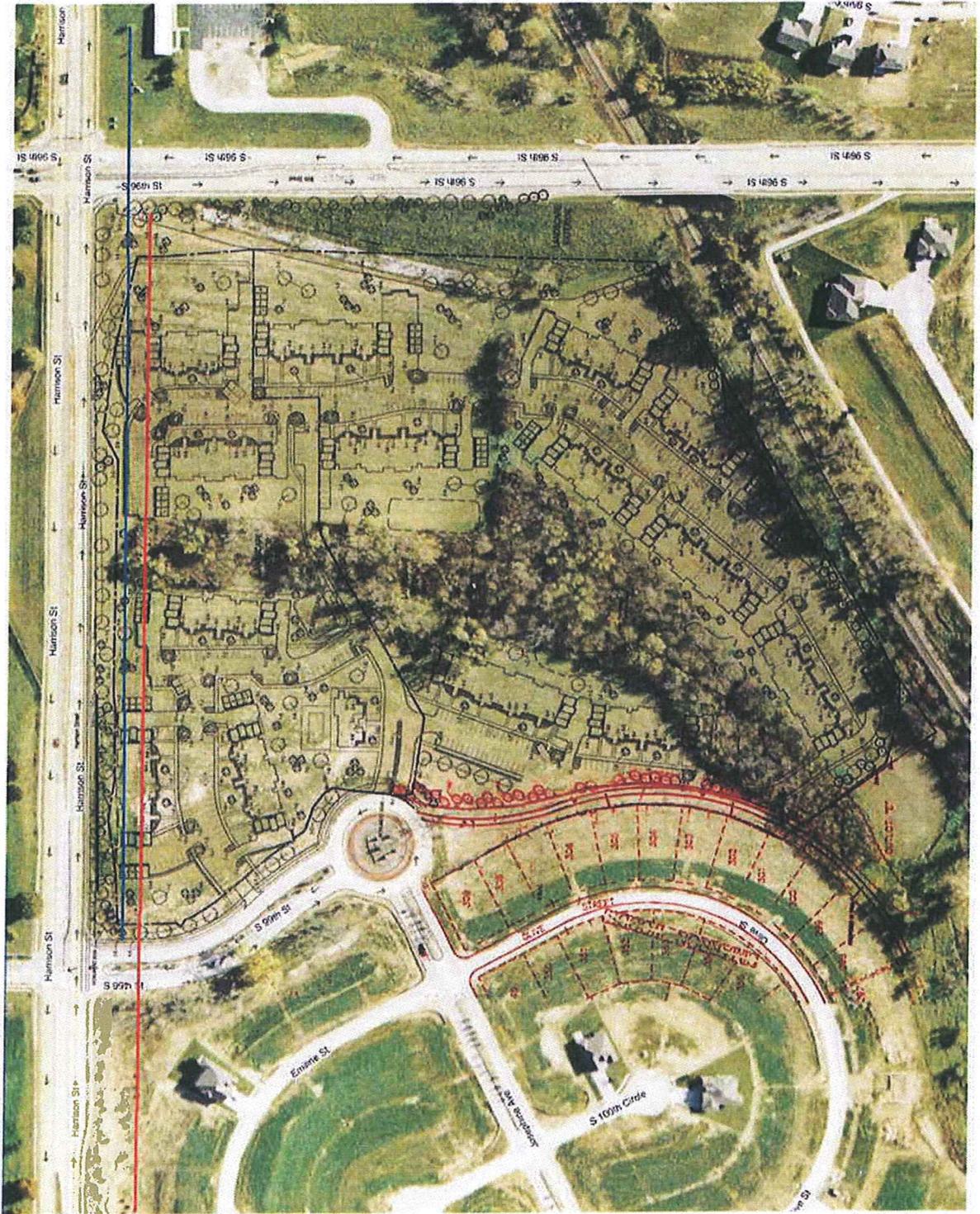
CFM:dlt/452271

# E1 – Typical Boulevard Section



TYPICAL BOULEVARD SECTION

# E1 – Walking trail, Harrison setbacks



# Harrison Street Setbacks



*Law Offices*

**FULLENKAMP, DOYLE & JOBEUN**

JOHN H. FULLENKAMP  
ROBERT C. DOYLE  
LARRY A. JOBEUN  
BRIAN C. DOYLE  
  
AIMEE J. HALEY (1970-2009)

11440 WEST CENTER ROAD  
OMAHA, NEBRASKA 68144-4482  
TELEPHONE: (402) 334-0700  
FACSIMILE: (402) 334-0815  
WRITER'S E-MAIL: BRIANNA@FDJLAW.COM  
WRITER'S DIRECT DIAL: (402) 691-5265

October 30, 2009

City of La Vista  
La Vista City Hall  
8116 Park View Blvd.  
La Vista, Nebraska 68128

Re: Cimarron Woods Terrace—Neighbor Concerns  
Lot 380, Cimarron Woods/Conditional Use Permit and Final PUD Approvals

La Vista Mayor and City Council:

This firm represents the Applicant, Pedcor Investments, LLC (the "Applicant"), in connection with the above-referenced matter. This letter is in response to the Cimarron Woods Home Owners Association's concerns set forth in a letter to the City of La Vista dated August 4, 2009.

With respect to Item 1 regarding "buffers along the fence line", it is the Applicant's believe that the City does not want a fence along the trail. The Applicant is prepared to follow the direction with the City regarding this matter. In addition, I would also point out that the reference to Exhibit E-1 of the Subdivision Agreement relates to the landscaping that would be expected to occur along a boulevard, not along the trail with no adjacent boulevard or right-of-way.

With respect to Item 2, the Applicant meets all site regulators relating to set backs. The site shows a 25 foot setback along Harrison Street. The 25 foot setback is more than sufficient to protect the health, safety and general welfare of the public. I would also point out that the drawing attached to the HOA letter is not to scale and is misleading.

With respect to Item 3, the Applicant is not aware of any other development within the City's corporate boundaries or extraterritorial zoning jurisdiction that requires a developer to post a bond to ensure that the landscaping is maintained on private property. As such, the request by the HOA is unreasonable. The Applicant has no issue with having an agreement with the City for the reasonable maintenance of any landscaping located within any public right-of-ways, but the Applicant objects to any such agreement for the maintenance of landscaping within

the boundaries of the development. Notwithstanding, please note that the Applicant has a substantial economic interest in maintaining the on-site landscaping in good conditions, and will have an extended warranty in place on all landscaping installed on the property.

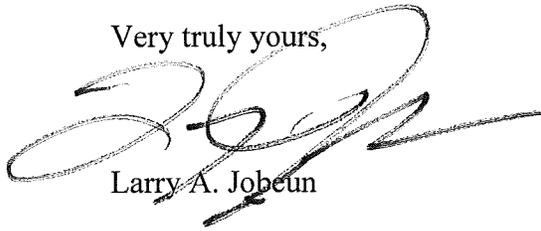
With respect to Item 4, the Applicant is agreeable to share in the actual costs of maintaining the landscaped areas within the 99<sup>th</sup> Street right-of-way and the round-a-bout, but the HOA's request for the Applicant to pay an amount equal to 25% of the HOA's budget is simply unreasonable. Please note that the Applicant's agreement to share in the maintenance costs of the landscaping within the 99<sup>th</sup> Street right-of-way and the round-a-bout is gratuitous on the Applicant's part because Lot 380, Cimarron Woods, is not subject to the neighborhood covenants or part of the HOA.

With respect to Item 5, the traffic study that has been reviewed and approved by the City clearly reveals that the existing street systems are more than adequate to accommodate the traffic without the need for additional traffic calming devices or improvements.

With respect to Item 6, the drainage study has been reviewed and approved by the City's engineer. The drainage study reveals that the project detains enough water on-site to benefit the downstream property owners. The drainage study is part of the client's filings with the City's Planning Department and City Engineer, thus a public record and should be available through the City of La Vista., for review

Please let us know if you have any additional questions that you may have prior to the Planning Commission or City Council meeting.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Larry A. Jobeun', written over a horizontal line.

Larry A. Jobeun

cc: Craig Martin, esq.  
Jennifer Taylor, esq.



City of Omaha  
Jim Suttle, Mayor

January 29, 2010

Mr. Larry A. Jobeun  
Fullenkamp, Doyle & Jobeun  
11440 West Center Road  
Omaha, NE 68144

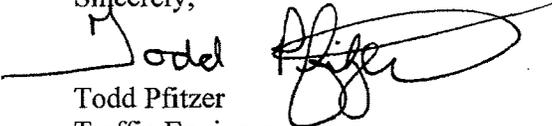
Re: 99<sup>th</sup> & Harrison Traffic Signal

Dear Mr. Jobeun,

The City of Omaha will commit to contributing to the cost to construct a traffic signal at the intersection of 99<sup>th</sup> & Harrison Streets at such time the signal is warranted based on the warrants set forth in the MUTCD. Typically in a situation such as this, the City will contribute 50 percent of the costs to construct the signal. We will provide design services as needed. The signal will have to conform to federal standards and guidelines due to the use of STP funding sources.

Please keep this letter on file. Please continue to monitor the intersection in the future to determine if warrants are met for signal installation. Thank you for your time regarding this matter.

Sincerely,

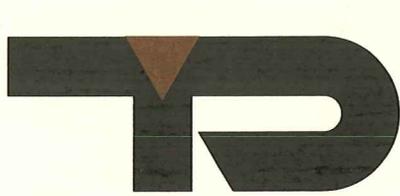
  
Todd Pfitzer  
Traffic Engineer

Cc:  
Ryan Haas - City  
Mark Westergard - E&A

**Public Works Department**

Omaha/Douglas Civic Center  
1819 Farnam Street, Suite 601  
Omaha, Nebraska 68183-0601  
(402) 444-5220  
Fax (402) 444-5248

**Robert G. Stubbe, P.E.**  
Public Works Director



# THOMPSON, DREESSEN & DORNER, INC.

Consulting Engineers & Land Surveyors

March 8 2010

Ms. Ann Birch  
Director of Community Development  
City of La Vista  
8116 Park View Boulevard  
La Vista, NE 68128

Robert E. Dreesen, P.E.  
Ka "Kip" P. Squire III, P.E., S.E.  
Douglas S. Dreesen, P.E.  
Chris E. Dorner, L.S.  
Nelson J. Hymans, P.E.  
James D. Warner, L.S.  
Charles E. Riggs, P.E.  
John M. Kottmann, P.E.  
Arthur D. Beccard, P.E.  
Dean A. Jaeger, P.E.  
Richard M. Broyles, L.S.

David H. Neef, L.S.  
Ronald M. Koenig, L.S.  
Michael J. Smith, L.S.  
Troy J. Nissen, P.E., S.E.  
Douglas E. Kellner, P.E.  
Gary A. Norton, P.E.  
Brian L. Lodes, P.E. LEED AP  
Kurtis L. Rohn, P.E.  
Jeffrey L. Thompson, P.E.  
Daren A. Konda, P.E.  
Michael T. Caniglia, L.S.  
Jeremy T. Steenhoek, P.E.  
Joshua J. Storm, P.E.

RE: Rezoning & Conditional Use Permit Reviews 2010  
Cimarron Terrace Apartments, Lots 1 & 2, Cimarron Woods Replat Two  
Summary Comments on Overall Cimarron Woods Drainage Study  
TD<sup>2</sup> File No.171-383.4

Ann:

Per your request, I am writing to provide summary comments on the overall drainage study for Cimarron Woods that has been prepared to date by E&A Consulting Group, Inc. I understand these comments will be part of the staff report to City Council for the above-referenced project.

In response to a request from the City of La Vista, as a result of the public comments during the previous reviews on the Cimarron Terrace Apartments, E&A Consulting Group, Inc. has performed an overall drainage study of the Cimarron Woods Subdivision and the upstream drainage areas. A draft copy of this study was received in January of 2010, another update during February 2010, and the most recent update was received the week of March 1, 2010. This overall study has been performed in a manner substantially consistent with the procedures set forth in the Omaha Regional Storm Water Design Manual. The study has reviewed the drainage for 2-year, 10-year, 50-year, and 100-year storm events under existing conditions (without the Cimarron Terrace Apartments being developed) and for the developed conditions (full build-out of the Cimarron Terrace Apartments). The study included obtaining surveyed floor elevations for ten walk-out basement style homes abutting Outlot E, the park site in Cimarron Woods. Two of these were west of Cimarron Woods Drive and eight of these were east of Cimarron Woods Drive.

Under existing conditions, the study predicts the ponded water elevations to affect existing homes as follows:

2-year storm events	Water surface below all lowest floor elevations
10-year storm events	Water surface below all lowest floor elevations
50-year storm events	Water surface above three existing lowest floor elevations ranging from 0.9 feet to 1.7 feet
100-year storm events	Water surface above seven existing lowest floor elevations ranging from 0.1 feet to 2.9 feet

Ms. Ann Birch  
March 8, 2010  
Page Two

In the proposed condition with the Cimarron Terrace Apartments fully developed, the peak runoff flows for all events will be reduced below existing levels at the downstream limits of the apartment site. The apartment project will also include creating approximately 10 acre-feet of storm water storage. As a result, the study predicts the ponded water elevations to affect existing homes as follows:

2-year storm events	Water surface below all lowest floor elevations
10-year storm events	Water surface below all lowest floor elevations
50-year storm events	Water surface above three existing lowest floor elevations ranging from 0.7 feet to 1.5 feet
100-year storm events	Water surface above five existing lowest floor elevations ranging from 0.4 feet to 2.6 feet

The study illustrates that the development of the apartment site will not worsen the existing drainage situation and will slightly decrease water surface elevations in Outlot E. The peak flow reduction at the downstream limits of the Cimarron Terrace Apartments ranges from 4 percent for 2-year storm events to 41 percent for 100-year events. The design of the grading and drainage for the Cimarron Terrace Apartments as presently set forth in the PUD documents, serves to reduce the problem that already exists. The study indicates the need to undertake further drainage improvements, beyond those being required on the apartment site, to lower the predicted water surface elevations.

A copy of the latest study documents are enclosed herewith for your records.

Submitted by:

THOMPSON, DREESSEN & DORNER, INC.



John M. Kottmann, P.E.

JMK/bam

Enclosure

cc: File

**City of La Vista  
Conditional Use Permit**

**Conditional Use Permit for Cimarron Terrace Apartments**

This Conditional Use Permit issued this \_\_\_\_ day of \_\_\_\_\_, 2010, by the City of La Vista, a municipal corporation in the County of Sarpy County, Nebraska ("City") to, Pedcor Investments-2008-CXVII, L.P., a \_\_\_\_\_ limited partnership authorized to do business in Nebraska ("Owner"), pursuant to the La Vista Zoning Ordinance.

WHEREAS, Owner wishes to construct and operate a multiple family dwelling complex to be known as Cimarron Terrace Apartments to be constructed in two phases upon the following described tract of land within the City of La Vista's zoning jurisdiction:

Lots 1 and 2, Cimarron Woods Replat Two, located in the N $\frac{1}{2}$  of Section 16, Township 14 North, Range 12 East of the 6th P.M. Sarpy County, Nebraska (the "Property"),

with Phase 1 to be constructed on Lot 1 and comprised of 84 units and 64 attached garages, and Phase 2 to be constructed on Lot 2 and comprised of 192 units and 104 attached garages..

WHEREAS, Owner has applied for a conditional use permit for the purpose of constructing and operating a multiple family dwelling complex as described above; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit to the Owner for such purposes, subject to certain conditions and agreements as hereinafter provided (the "Permit").

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this Permit is issued to the owner of the Property to use the Property hereto for the purposes described above, said use hereinafter being referred to interchangeably as a "Permitted Use" or "Use".

**Conditions of Permit**

The conditions to which the granting of this Permit is subject are as follows:

1. The rights granted by this Permit are transferable and any breach of any terms<sup>1</sup> hereof shall cause Permit to expire and terminate subject to the rights of the Owner to cure such default or deficiency as set forth herein.
2. In respect to the proposed Use:
  - a. A site plan showing the Property's boundaries, all existing and proposed easements, proposed structures, parking, access points, and drives shall be submitted to, and subject to approval of, the City and once approved by the City, shall be attached to and incorporated herein as Exhibit "A".
  - b. Architectural review of the building design, landscaping, and lighting has been completed and the foregoing are approved as shown on Exhibits "B" through "\_\_\_".

<sup>1</sup> Materiality is addressed in 4a below; no need to insert individually throughout the agreement.

- c. The Property shall be developed and maintained in accordance with the site plan (Exhibit "A") and all other Exhibits of this Agreement, as well as the Final Plat - Cimarron Woods Replat Two, Cimarron Terrace Planned Unit Development, and Subdivision Agreement applicable to Lots 1 and 2, Cimarron Woods Replat Two Subdivision, as approved by the City and incorporated herein by this reference. Any modifications to the site plan must be submitted to the City's Chief Building Official for approval. Modification of any of the other document or Exhibit shall be subject to approval of the City, as directed by the City Administrator, unless otherwise expressly provided in the document or Exhibit to be modified.
  - d. As-built topographic surveys of storm water detention areas shall be required before certificates of occupancy <sup>2</sup>are issued for any building in Phase 1 of the project, with a requirement that any discrepancies from the approved detention plans be corrected, or certified as inconsequential, to the satisfaction of the City Engineer in his sole discretion prior to issuing such certificates.
  - e. An off-site wetlands mitigation area has been or will be acquired. No permits shall be issued by the City to commence any grading or work on the Property until Owner demonstrates to the satisfaction of the City Administrator that Owner has purchased a sufficient off-site wetlands mitigation site.
  - f. No vehicle repair, other than emergency maintenance such as changing a tire, or inoperable, abandoned or storage of vehicles shall be allowed in the parking areas shown on Exhibit "A". The Owner shall have seventy-two (72) hours after notice to correct any violation or cause the removal of any such vehicle that is in violation. *(Can we narrow this down – what will be deemed vehicle repair?)*
  - g. Owner shall obtain all required permits for the Use from the City of La Vista and shall comply with any additional requirements as determined by the Chief Building Official, including, but not limited to, building codes, fire codes and ADA requirements.
  - h. Owner shall comply (and shall ensure that all structures, appurtenances and improvements, and all activities occurring or conducted, on the Property at any time comply) with any applicable federal, state and/or local laws, rules or regulations, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.
  - i. Owner hereby indemnifies the City against, and holds the City harmless from, any liability, loss, claim or expense whatsoever (including, but not limited to, reasonable attorney fees and court cost) arising out of or resulting from the acts, omissions or negligence of the Owner or its agents, employees, assigns, suppliers or invitees, including, but not limited to, any liability, loss, claim or expense arising out of or resulting from any violations of any applicable environmental or safety law, rule or regulation relating to the Owner's Use of the Property.
  - j. A drainage study for the Property has been completed, the results of which show that peak runoff volumes of the Property, during and after development, resulting from 2, 10, 50 or 100 year storm events will be reduced below the historic runoff rate, due to construction of the detention basins depicted on the Storm Water Detention Plan attached hereto as Exhibit D. Owner agrees to cooperate and take such further action with the District as necessary if peak runoff volumes from the Property are not reduced to levels shown in the drainage study.
  - k. Owner shall ensure that any clubhouse on the property is professionally staffed during open hours.
3. In respect to the Gateway Corridor Overlay District, building design has been approved per letter from the City's design review architect, Kevin Schluckebier, dated \_\_\_\_\_.
  4. The Owner's right to maintain the Use of the Property, as contemplated by this Permit, shall be based on the following conditions:
    - a. An annual inspection to determine compliance with the conditions of this Permit. The Permit may be revoked upon a finding by the City that there is a material violation of the terms of this Permit if the violation continues after written notice from the City to Owner and a reasonable time was given for Owner to cure such violation.

<sup>2</sup> Reference to other certificates deleted, absent indication of certificates intended.

- b. The Use authorized by this Permit must be initiated within 24 months after the date of the approval of this Permit otherwise such Permit shall become void. Notwithstanding the foregoing, it is understood and agreed that this is a phased project. As such, phase one of the project, consisting of 84 units and 64 garages and having the design, dimensions, construction and amenities set forth in Owner's application, shall be commenced within 24 months after the date of the approval of this Permit and completed with certificate of occupancy within 18 months after commencement of construction, otherwise such Permit shall become void. Phase two of the project, consisting of 192 units and 104 attached garages and having the design, dimensions, construction and amenities set forth in Owner's application, may be constructed after the completion of the first phase as economics and demand warrant and in accordance with a schedule approved by the City. In addition, it is understood and agreed that Subdivider, through administrative actions only if permitted under the zoning ordinances and regulations existing at the time, shall have the right to further subdivide the Property as necessary to create such other phases of the Property, subject to approval of the City Council.
    - c. All obsolete or unused structures, accessory facilities or materials with an environmental or safety hazard shall be abated and/or removed from the Property at Owner's expense within twelve (12) months of cessation of the Use of the Property.
5. Notwithstanding any other provision herein to the contrary, this Permit, and all rights granted hereby, shall expire and terminate as to a Permitted Use hereunder upon the first of the following to occur:
  - a. Owner's abandonment of the Permitted Use. There shall be a presumption that the project has been abandoned if the Owner fails to commence construction of phase one of the project within twenty-four (24) months after the approval of this Permit, unless otherwise approved by the City.
  - b. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use, and such cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the use is not cured within a reasonable period of time, so long as curative rights are provided under laws, rules and regulations governing said permit and Owner is diligently pursuing correction of the same.
  - c. Owner's construction or placement of a storage tank, structure or other improvement on the premises (except during construction of any phase of the project) not specified in this Permit and Owners failure to correct such breach within a reasonable period of time after City's giving notice thereof.
  - d. Owner's breach of any other term hereof and its failure to correct such breach within a reasonable period of time after City's giving notice thereof.
6. If construction of phase one has not been commenced within twenty-four (24) months from the date of this Permit, this Permit shall be null and void and all rights hereunder shall lapse; provided, however, Owner shall have the right to file for an extension of time pursuant to the La Vista Zoning Ordinance.
7. In the event the Owner fails to promptly remove any safety or environmental hazard from the Property, or upon the expiration or termination of this Permit the Owner fails to promptly remove any permitted materials or any remaining environmental or other hazard, the City may, at its option (but without any obligation to the Owner or any third party to exercise said option) cause the same to be removed at Owner's cost (including, but not limited to, the cost of any excavation and earthwork that is necessary or advisable in connection with the removal thereof) and the Owner shall reimburse the City the costs incurred to remove the same. Owner hereby irrevocably grants the City, its agents and employees the right, provided notice is furnished to the Owner along with a reasonable time to remove or cure such hazard, to enter the Property and to take whatever action as is necessary or appropriate to remove the structures or any environmental or safety hazards in accordance with the terms of this Permit, and the right of the City to enter the Property as may be necessary or appropriate to carry out any other provision of this Permit.

8. If any provision, or any portion thereof, contained in this Permit is held to be unconstitutional, invalid, or unenforceable, the remaining provisions hereof, or portions thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

**Miscellaneous**

The conditions and terms of this Permit shall be binding upon owner, its successors and assigns.

1. Delay of City to terminate this Permit on account of breach of Owner of any of the terms hereof shall not constitute a waiver of City's right to terminate this Permit, unless the City has expressly waived said breach. A waiver of the right to terminate upon any breach shall not constitute a waiver of the right to terminate upon a subsequent breach of the terms hereof, whether said breach be of the same or different nature.
2. Nothing herein shall be construed to be a waiver or suspension of, or an agreement on the part of the City to waive or suspend, any zoning law or regulation applicable to the premises except to the extent and for the duration specifically authorized by this Permit.
3. Any notice to be given by City hereunder shall be in writing and shall be sufficiently given if sent by regular mail, postage prepaid, addressed to the owner as follows:

**Contact Name and Address:** Torco Development, Inc.  
11205 South 150<sup>th</sup> Street, Suite 100  
Omaha, Nebraska 68138  
(402) 592-6942

And:

Pedcor Investments, A Limited Liability Company  
770 3<sup>rd</sup> Avenue, S.W.  
Carmel, IN 46032  
Attn: Thomas G. Crowe

**Effective Date:**

This Permit shall take effect upon the filing hereof with the City Clerk a signed original hereof.

THE CITY OF LA VISTA

By \_\_\_\_\_  
Douglas Kindig, Mayor

Attest:

\_\_\_\_\_  
Pamela A Buethe, CMC  
Deputy City Clerk

CONSENT AND AGREEMENT

The undersigned does hereby consent and agree to the conditions of this permit and that the terms hereof constitute an agreement on the part of the undersigned to fully and timely perform each and every condition and term hereof, and the undersigned does hereby warrant, covenant and agree to fully and timely perform and discharge all obligations and liabilities herein required by owner to be performed or discharged.

Owner:

\_\_\_\_\_ Pedcor Investments-2008-CXVII, L.P., a  
limited partnership

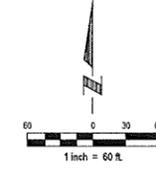
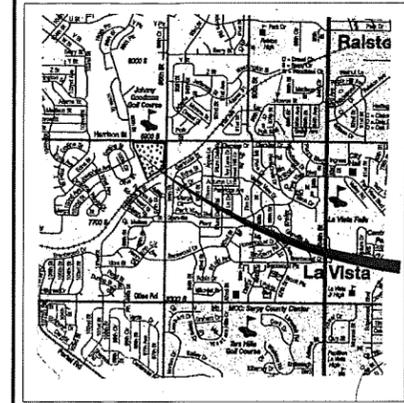
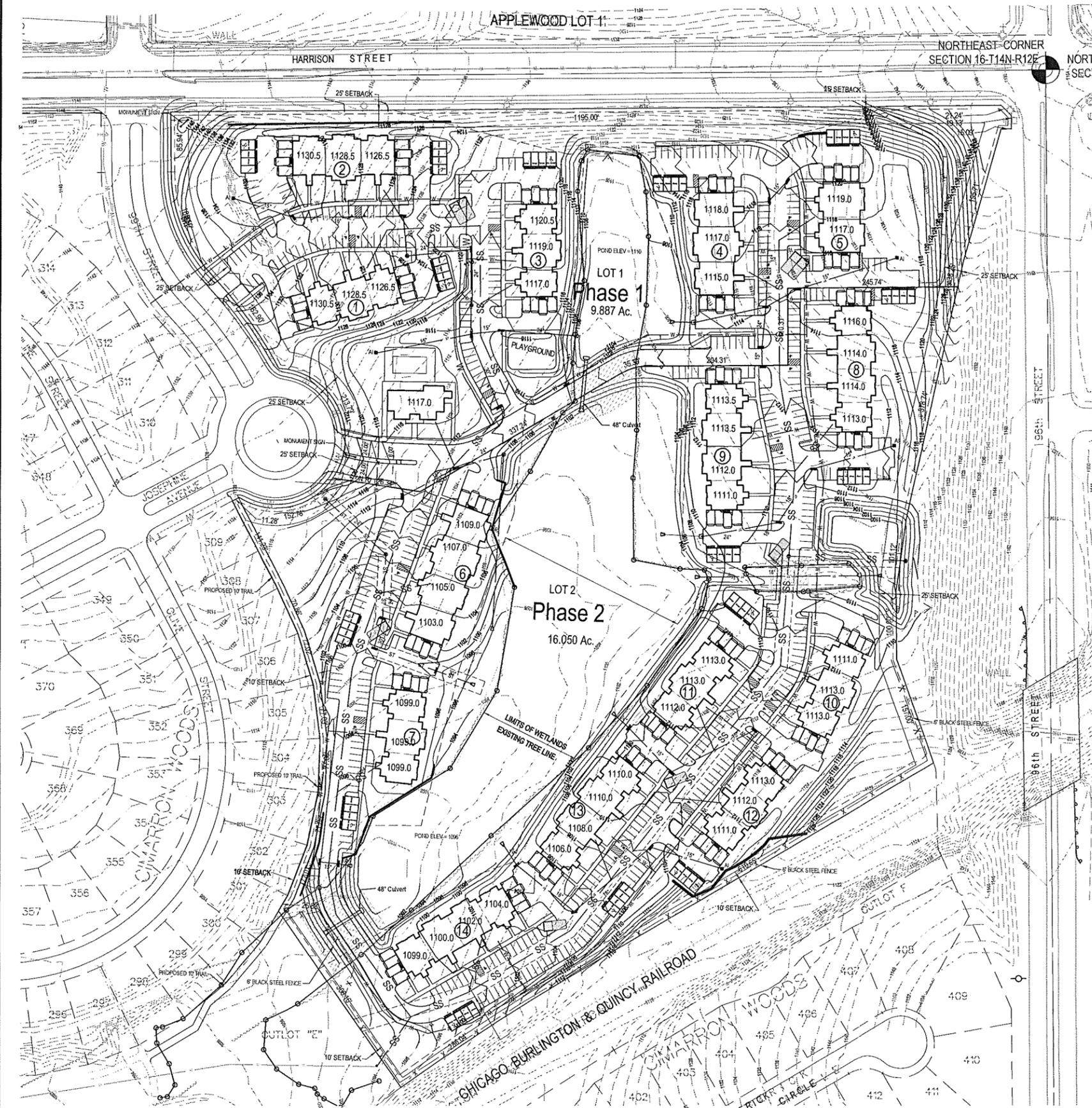
By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\\Lvdcp01\users\Community Development\MBaker\Community Development\Conditional Use Permits\Cimarron Terrace.DOC

DRAFT



**LEGAL DESCRIPTION**

A REPLAT OF LOT 380, CIMARRON WOODS, A SUBDIVISION LOCATED IN THE N1/2 OF SECTION 16, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA.  
 SAID PROPERTY TO BE KNOWN AS LOTS 1 AND 2, CIMARRON WOODS REPLAT TWO.  
 CONTAINING 25.937 ACRES, MORE OR LESS.

**OWNER:** TORCO DEVELOPMENT, INC.  
 11205 S. 150TH STREET, SUITE 100  
 OMAHA, NEBRASKA 68138

**ENGINEER:** E & A CONSULTING GROUP  
 330 NORTH 117TH STREET  
 OMAHA, NEBRASKA 68154

**DEVELOPER:** PEDCOR INVESTMENTS, LLC  
 ONE PEDCOR SQUARE 770 3RD. AVE. SW  
 CAREL, IL 46032

**NOTES**

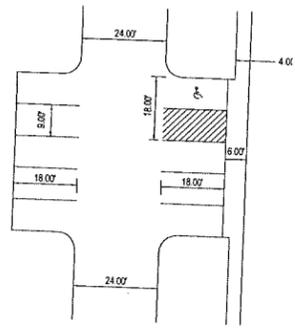
- EXISTING AND PROPOSED ZONING IS R-3 PUD-1.
- EXISTING AND PROPOSED CONTOURS ARE SHOWN AT 2-FOOT INTERVALS AND ARE BASED ON USGS DATUM.
- THERE SHALL BE NO DIRECT VEHICULAR ACCESS ONTO 96TH STREET OR HARRISON STREET FROM ANY LOTS ADJOINING SAID STREETS.
- WATER SERVICE SHALL BE PROVIDED BY MUD, BLACKHILLS ENERGY SHALL PROVIDE GAS SERVICE.
- ALL STORM SEWER SIZES ARE 15" UNLESS OTHERWISE NOTED.
- DUMPSTER LOCATIONS AND NUMBER SUBJECT TO REVIEW AND APPROVAL OF THE CITY OF LA VISTA.
- THE DEVELOPER'S PROPOSED METHOD FOR DETERRING RESIDENTS FROM ENTERING THE RAILROADS RIGHT OF WAY IS TO INSTALL A FENCE ALONG THE RIGHT OF WAY ADJOINING THE DEVELOPER'S PROPERTY.
- THE PROPOSED CLUBHOUSE IS INTENDED FOR RESIDENT USE ONLY. SPECIFIC USES INCLUDE COMMUNITY ROOM, ENTERTAINMENT CENTER WITH TV, FULL KITCHEN, RESTROOMS, AND OFFICES.
- A PERMANENT RECIPROCAL INGRESS AND EGRESS, PARKING AND PEDESTRIAN EASEMENT IS GRANTED TO THE OWNERS OF LOTS 1 AND 2, THEIR GUESTS AND INVITEES OVER ALL OF SAID LOTS 1 AND 2, EXCEPT THOSE PARTS OF SAID LOTS 1 AND 2, WHICH ARE OCCUPIED BY BUILDINGS AS CONSTRUCTED.
- BICYCLE PARKING RACKS WILL BE PROVIDED AT THE CLUBHOUSE, PLAYGROUND, AND EACH OF THE FOURTEEN APARTMENT BUILDINGS.
- PHASE I PROPOSED SCHEDULE OF CONSTRUCTION:  
 CITY COUNCIL APPROVAL 08/04/2009  
 CLOSING AND BUILDING PERMITS 11/02/2009  
 COMPLETION OF CLUBHOUSE AND 1ST BUILDING 07/01/2010  
 ALL BUILDINGS COMPLETE 01/15/2011

**LEGEND**

--- 1200 ---	EXISTING CONTOURS	---	EXISTING AND PROPOSED ZONING, R3 PUD-1
— 1200 —	PROPOSED CONTOURS	---	REQUIRED SETBACK LINE
SS	PROPOSED SANITARY SEWER	---	FRONT YARD SETBACK.....25'
ST	PROPOSED STORM SEWER	---	SIDE YARD SETBACK.....10'
///	TREE REMOVAL AREA	---	(0' ON COMMON LOT LINE BETWEEN LOTS 1 & 2)
		---	STREET SIDE YARD SETBACK.....25'
		---	REAR YARD SETBACK.....10'

**PROJECT DENSITIES**

	BUILDINGS (SQ. FT.)	PAVING (SQ. FT.)	TOTAL IMPERVIOUS	AREA (AC) (SQ. FT.)	% IMPERVIOUS	PARKING PER CODE	REGULAR STALLS	GARAGE STALLS	TOTAL STALLS PROVIDED
PHASE 1	57,246	151,290	208,536	9.887 430,678	48.42%	168	153	64	217
PHASE 2	104,524	151,976	256,500	16.050 699,138	36.65%	372	264	104	368
TOTAL	161,770	303,266	465,036	25.937 1,129,816	41.16%	540	417	168	585



TYPICAL PAVING DETAIL

**UNIT DENSITIES**

	BEDROOMS	NO. OF BEDROOMS	#UNITS	UNITS/ACRE
PHASE 1	1 BR	24	24	
	2 BR	72	36	
	3 BR	72	24	
	TOTAL	168	84	8.5
PHASE 2	1 BR	60	60	
	2 BR	168	84	
	3 BR	144	48	
	TOTAL	372	192	11.99
TOTAL		540	276	10.84

**E & A CONSULTING GROUP, INC.**  
 ENGINEERS • PLANNERS • SURVEYORS  
 330 NORTH 117TH STREET OMAHA NE 68154  
 PHONE (402) 955-7700 FAX (402) 955-9599  
 www.eaeng.com



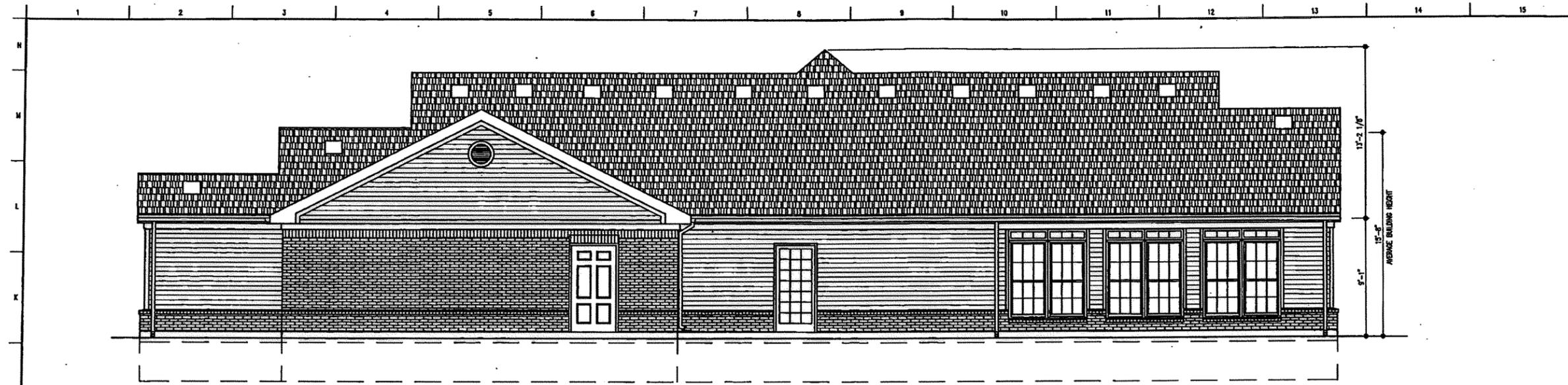
CIMARRON WOODS REPLAT TWO  
 LA VISTA, NEBRASKA

FINAL PLANNED UNIT DEVELOPMENT

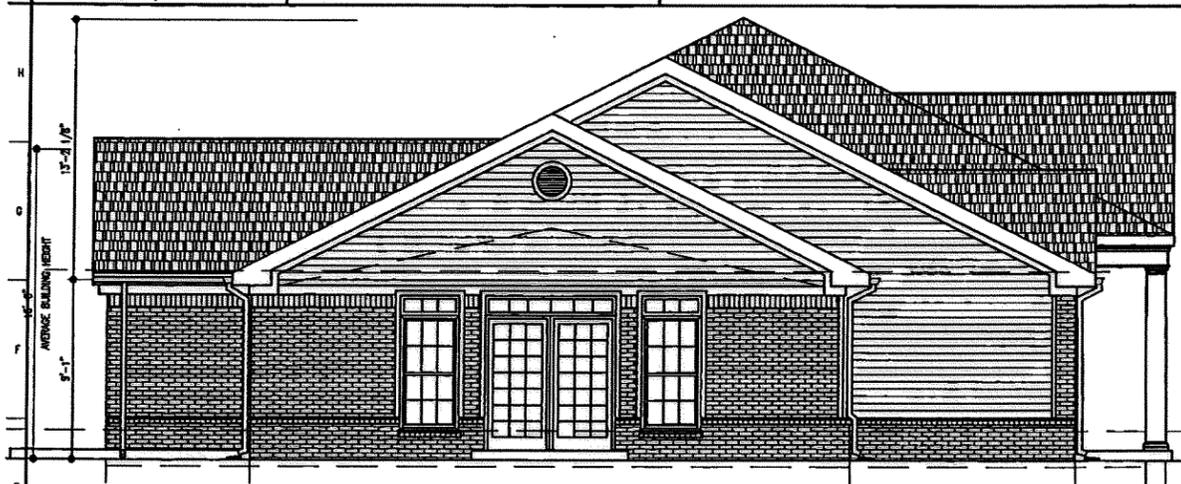
Revisions

No.	Date
1	05/02/2009
2	07/22/2009
3	09/23/2009

Proj. No. P2002-153-002  
 Date 06/02/2009  
 Designed By: MAM  
 Drawn By: LBO  
 Checked By (Design):  
 Checked By (Prep):  
 Checked By (Cad/Map):  
 Scale 1" = 60'  
 Sheet 1 of 1



J1 REAR ELEVATION  
SCALE: 1/4"=1'-0"



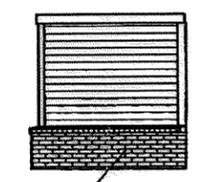
E1 LEFT ELEVATION  
SCALE: 1/4"=1'-0"



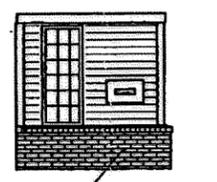
E10 RIGHT ELEVATION  
SCALE: 1/4"=1'-0"



A1 FRONT ELEVATION  
SCALE: 1/4"=1'-0"



COUNTRY ROAD  
ELEVATION "A"



COUNTRY ROAD  
ELEVATION "B"

A14 COVERED PORCH ELEV.  
SCALE: 1/4"=1'-0"

REVISIONS

NO.	DATE	REVISIONS/SUBMISSIONS



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THE OWNER AND THE ARCHITECT ASSUME ALL LIABILITY FOR ANY ERRORS OR OMISSIONS WHICH ARE THE RESULT OF THE NEGLIGENCE OF THE ARCHITECT OR THE OWNER.

**MAS ASSOCIATES, L.L.C.**  
Architects and Planners

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Indianapolis, Indiana 46220  
mrksmith@comcast.net

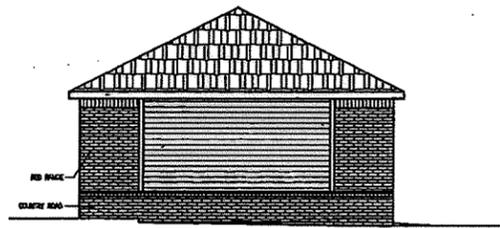
Phone 317 726 1060 Fax 317 726 1061

Pedcor Investments  
Cimarron Terrace  
Lawista, Nebraska

CLUBHOUSE EXTERIOR  
ELEVATIONS

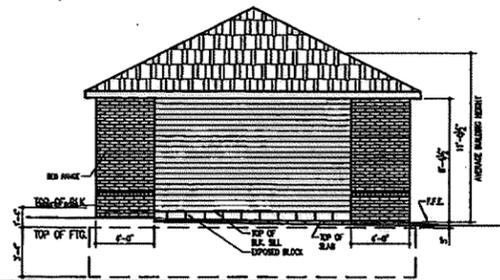
DATE	PROJECT NO.	DRAWN	CHECKED
04/06/2009	2907.001	MAS	MAS

CA201



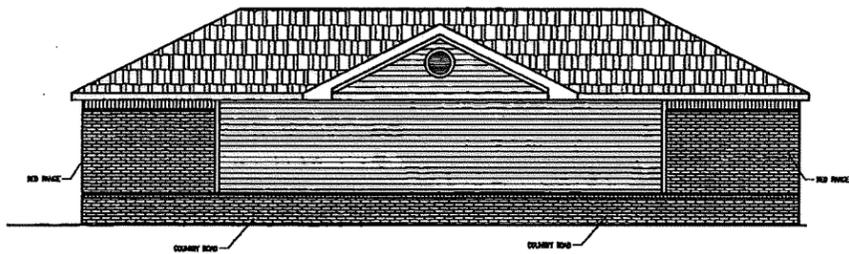
K1 HARRISON & 96TH ST. ELEVATION

SCALE: 3/16"=1'-0"



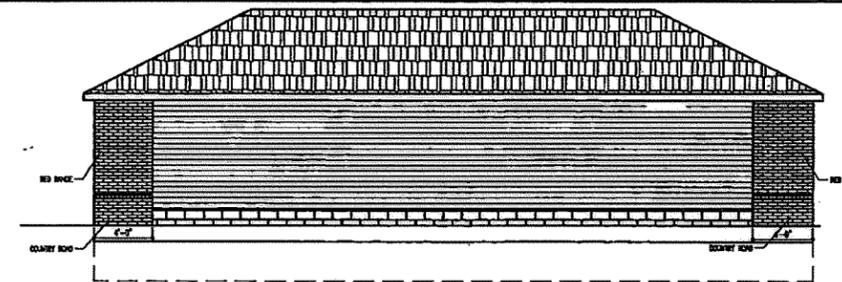
G5 GARAGE END ELEVATION

SCALE: 3/16"=1'-0"



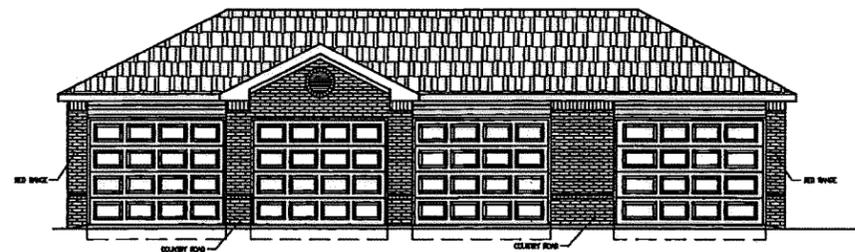
G1 HARRISON & 96TH ST. ELEVATION

SCALE: 1/4"=1'-0"



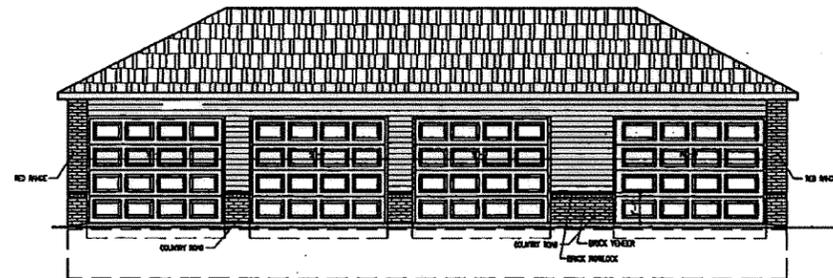
J9 REAR ELEVATION

SCALE: 1/4"=1'-0"



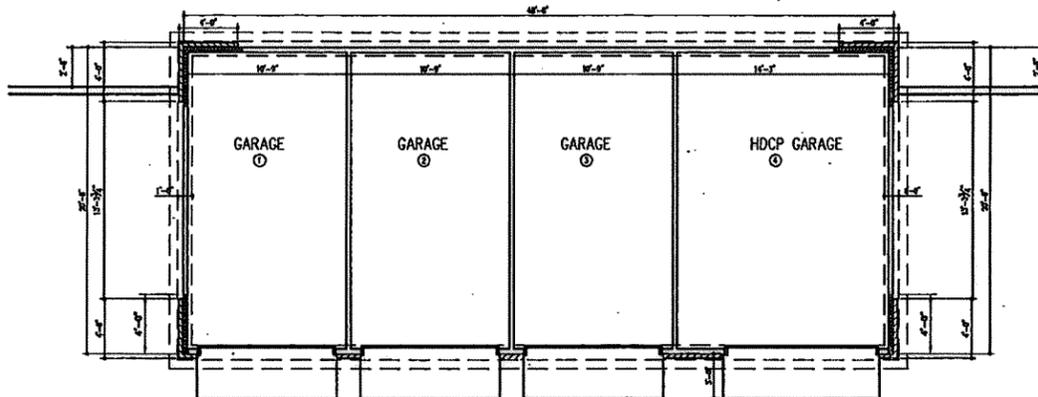
D1 HARRISON & 96TH ELEVATION

SCALE: 3/16"=1'-0"



D9 FRONT ELEVATION

SCALE: 3/16"=1'-0"



A9 GARAGE PLAN "A"

SCALE: 3/16"=1'-0"

REVISIONS

NO.	DATE	REVISIONS/SUBMISSIONS



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Pedcor Investments  
 Cimarron Terrace  
 Lovista, Nebraska

GARAGE  
 FLOOR PLANS, ELEVATIONS, AND DETAILS

DATE	PROJECT NO.	DRAWN	APPROVED
04/06/2009	2907.001	MAS	MAS

COMPILED FILE NAME: SHEET NO.

**G101**



**J1 FRONT ELEVATION 12B6C-1.8**  
SCALE: 1/8"=1'-0"



**E1 LEFT ELEVATION 12B6C-1.8**  
SCALE: 1/8"=1'-0"



**E9 RIGHT ELEVATION 12B6C-1.8**  
SCALE: 1/8"=1'-0"



**A1 REAR ELEVATION 12B6C-1.8**  
SCALE: 1/8"=1'-0"

**REVISIONS**

NO.	DATE	REVISIONS/SUBMISSIONS



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Cimarron Terrace  
Lexista, Nebraska

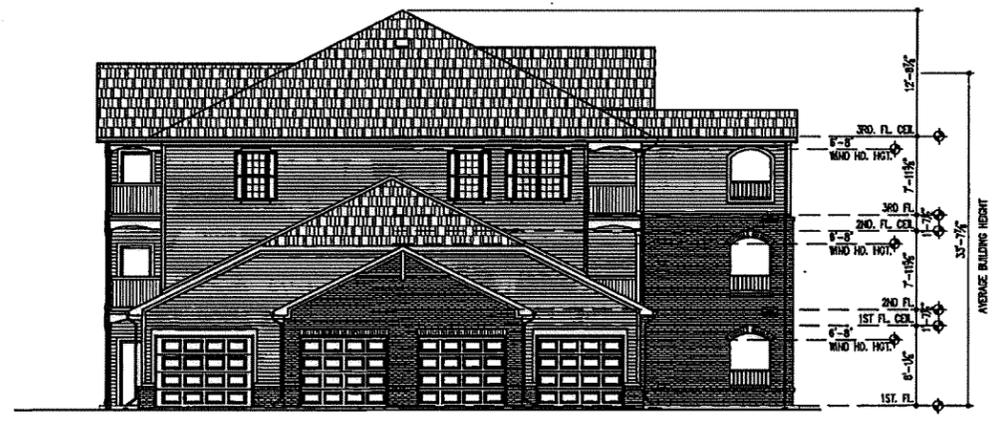
BUILDING ELEVATIONS  
TYPE 12B6C-1.8

DATE 04/06/2009	PROJECT NO. 2907.001	DRAWN MAS	APPROVED MAS
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COMPUTER FILE NAMES SHEET NO.  
**A203**



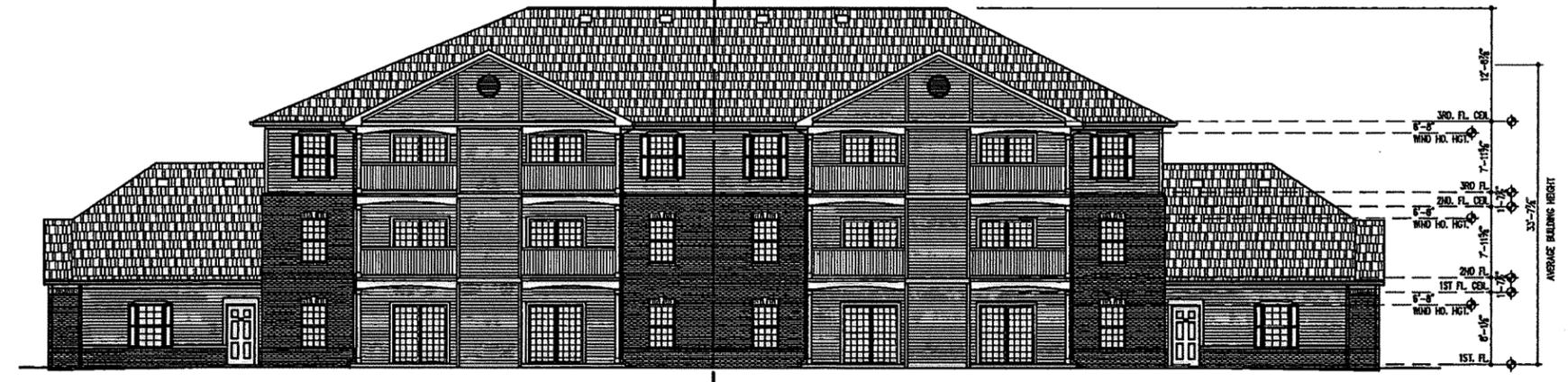
**J1 FRONT ELEVATION 12C-1.8**  
SCALE: 1/8"=1'-0"



**E1 LEFT ELEVATION 12C-1.8**  
SCALE: 1/8"=1'-0"



**E9 RIGHT ELEVATION 12B12C-1.8**  
SCALE: 1/8"=1'-0"



**A1 REAR ELEVATION 12C-1.8**  
SCALE: 1/8"=1'-0"

**REVISIONS**

NO.	DATE	REVISIONS/SUBMISSIONS



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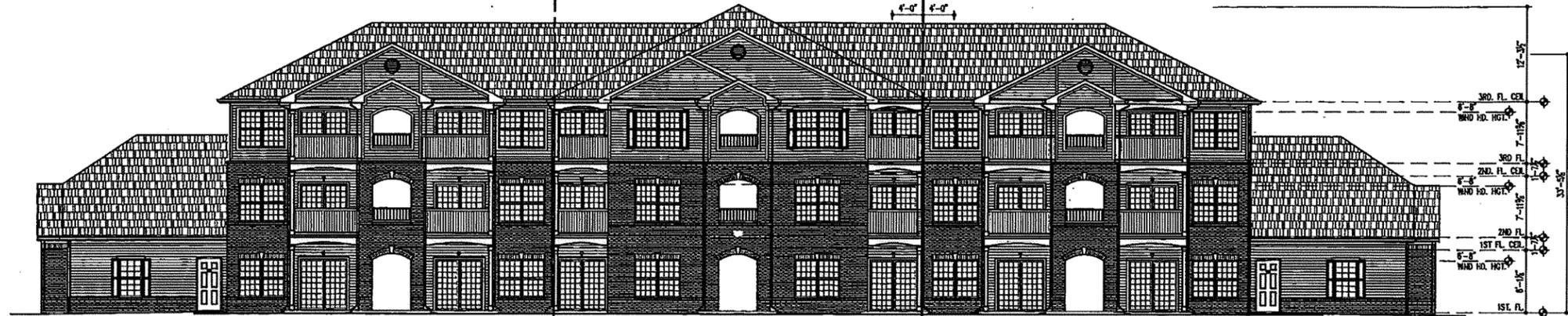
Pedcor Investments  
Cimarron Terrace  
Lavista, Nebraska

BUILDING ELEVATIONS  
TYPE 12C-1.8

DATE	PROJECT NO.	OWNER	ARCHITECT
04/06/2009	2907.001	MAS	MAS

COMPUTER FILE #100 SHEET NO.

**A202**



J1 FRONT ELEVATION 6A6B6A-1.6

SCALE: 1/8"=1'-0"



E1 LEFT ELEVATION 6A6B6A-1.6

SCALE: 1/8"=1'-0"



E9 RIGHT ELEVATION 6A6B6A-1.6

SCALE: 1/8"=1'-0"



A1 REAR ELEVATION 6A6B6A-1.6

SCALE: 1/8"=1'-0"

RECEIVED  
 MAY 12 2009  
 BY

REVISIONS

NO.	DATE	REVISIONS/SUBMISSIONS



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Pedcor Investments  
 Cimarron Terrace  
 Lovista, Nebraska

BUILDING ELEVATIONS  
 BUILDING TYPE 6A6B6A-1.6

DATE 04/06/2009	PROJECT NO. 2907.001	DRAWN MAS	APPROVED MAS
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COMPILED FILE NAME SHEET NO. **A201**



**SUBDIVISION AGREEMENT**

**Lots 1 and 2, Cimarron Woods Replat Two Subdivision  
99<sup>th</sup> and Harrison Streets  
R-3, High Density Residential PUD-1  
(Public Financing)**

THIS SUBIVISION AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between Pedcor Investments-2008-CXVII, L.P., a \_\_\_\_\_ limited partnership (*Status of this entity? w/ Nebraska Secretary of State vs. related entities that appear in SOS records?*) (herein "Subdivider"), TORCO DEVELOPMENT, INC., a \_\_\_\_\_ corporation ("Developer"), SANITARY AND IMPROVEMENT DISTRICT NO. 237 OF SARPY COUNTY, NEBRASKA (hereinafter referred to as "District"), and the CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska (hereinafter referred to as "City").

**WITNESSETH:**

WHEREAS, Developer is the legal owner of Lot 380, Cimarron Woods Subdivision, consisting of 25.937 acres, more or less ("Lot 380") which property is located outside of the corporate limits of the City but within the City's zoning and platting jurisdiction;

WHEREAS, Subdivider has the right to purchase Lot 380 from Developer pursuant to an agreement between Subdivider and Developer dated \_\_ (insert date of Subdivider's option agreement) \_\_ ("Option"), which lot Subdivider desires subdivided into two lots "Lots 1 and 2", as more particularly depicted on the plat titled "Cimarron Woods Replat Two" (the "Plat") attached hereto as Exhibit "A" hereto (herein the "Subdivision") and develop Lots 1 and 2 in two phases of multi-family housing having 84 units and 64 attached garages in Phase 1, to be built on Lot 1, and 192 units and 104 attached garages in Phase 2, to be built on Lot 2; and

WHEREAS, Subdivider has agreed to meet all conditions of the development and other requirements of the City's platting, development and zoning regulations as set forth in the City's Zoning Ordinance, PUD Plan, Conditional Use Permit, Building Code and applicable terms of this Agreement; and

WHEREAS, in order to utilize the Subdivision in the way it wishes, Subdivider must grade, create, construct and maintain certain topographic and surface conditions and provide for surface water detention within the Subdivision and must in connection therewith comply with all terms and conditions of the Department of the Army Nationwide Permit No. 2009-01538-WEH, a copy of which Permit is attached hereto as Exhibit "B"; and

WHEREAS, Subdivider, by and through Torco Development, Inc., the current owner of Lot 380 ("Developer"), has requested the City to approve the Plat, and to approve a connection of said Subdivision to existing sanitary sewer and storm drainage systems; and

WHEREAS, the Developer, Subdivider and District propose that the District or Subdivider will build public improvements in or for the benefit of the Subdivision, as provided herein, with the District being a Sanitary and Improvement District created and controlled by Developer, Developer being the Owner of all lands within the boundaries of the Subdivision and Subdivider being the prospective purchaser and owner of said lands under the Option; and

WHEREAS, Developer and Subdivider request platting of the Subdivision under the following provisions of the City of La Vista Zoning Ordinance: Section 5.08 (pertaining to R-3 High Density Residential District), Section 5.15 (pertaining to PUD-1 Planned Unit Development District), and Section 5.17.06 (Gateway Corridor Overlay District), and have 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 Subdivider, and other matters pertaining to the development of the Subdivision and health, safety and welfare of the City, the District, their inhabitants and the public; and

NOW, THEREFORE, IT IS AGREED as follows:

1. Definitions

Unless a contrary intent is clearly indicated herein, the following words and phrases shall have the following meanings, regardless of whether or not capitalized:

- A. "Agreement" or "this Agreement" or "Subdivision Agreement" shall mean this document entitled "Subdivision Agreement" and all Exhibits and Supplemental Agreements hereto (see Section 18 "Exhibits/Supplemental Agreements Summary").
- B. "Conditional Use Permit" shall refer to that certain conditional use permit issued by the City on \_\_\_\_\_, 2010, which is attached hereto as Exhibit "C".
- C. The "construction cost" of an improvement shall mean the amount paid to the contractor, utility or entity installing the improvement or performing the work, together with all other direct labor and material costs incorporated into the construction of the improvement, and net of refunds, reimbursements and offsets thereto.
- D. 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 other costs of achieving completion, acceptance and financing of the project or work 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.
- E. "Detention Basin" or "Storm Water Detention Basin" shall mean a permanent structure to serve as temporary water holding basins, whether above or below ground, to be constructed at the locations shown on Exhibit "D" attached hereto, or such alternative or substitute locations and accompanying plans and specifications as the City may approve in advance in writing.
- 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 by the District exceeds the amount of special assessments levied by the District in respect to such improvement or type of improvement.
- G. "Improvements" or "Infrastructure" shall mean, to the extent located within the Subdivision or required herein for development of the Subdivision, or pertaining to Subdivision entrances, any and all facilities constructed or otherwise implemented for the purpose of providing access or services of any type or description to or from the Subdivision or serving facilities or properties within or serving the Subdivision, including but not limited to, ingress and egress to and from

the Subdivision, and construction of paving, enhancements or reconstruction of existing paving and traffic signalization in conjunction therewith, and construction of storm sewers, sanitary sewers, including outfall sewer, and access thereto, drainage and drainage retention, culverting, street lighting, and any other item of infrastructure, together with utility systems and easements for any improvements where required.

- H. "Land Utilization and Preparation Costs." "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, financing and 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, water drainageways and surface water retention and/or detention basins or facilities, surveying, staking and testing;
  - (2) Platting (preliminary and final), and including replattings;
  - (3) Excavation, filling, compaction, stabilization 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, drainage control and soil condition ready for installation or construction of the public improvements authorized by this Agreement or to improve, enhance or beautify land.
- I. "Plat" or "the Plat," unless a contrary intent is indicated, shall mean the plat approved by the City Council, a copy of which is attached as Exhibit "A".
- J. "Subdivider's Engineer" shall mean E & A Consulting Group, Inc., Subdivider' engineer, which shall be the principal contact entity with the City in engineering matters.
- K. "Subdivider's 404 Permit" shall mean the Department of the Army Nationwide Permit No. 2009-01538-WEH required for the construction and maintenance of wetlands, a copy of which is attached as Exhibit "B".
- L. "Subdivision" shall mean the 25.937 acres of land described in Exhibit "A" hereto.
- M. "District Credit" shall include all credit and resources of the District, including, but not limited to, bonds, warrants and funds, unless otherwise expressly provided to the contrary herein.

## 2. Construction/Installation of Improvements Authorized

Subdivider, District and City agree that the District and/or Subdivider, in order to serve and enhance the value, sale and utilization of Subdivider's lots, may construct or install, or cause to be constructed or installed, and, except as otherwise herein provided, the credit of District may be used for, the construction of only the following types of public improvements upon the property located within or immediately adjacent to the

boundaries of the District and necessary water, sanitary sewer, and surface water drainage to or from existing or planned facilities as follows:

A. Paving:

- (1) Existing Paving. Within the District there currently exists 99<sup>th</sup> Street which is required to be modified in accordance with Exhibit "E" attached hereto. The District shall cause the modification to 99<sup>th</sup> Street, as shown on Exhibit "E", to be completed and the costs therefore may be a general obligation of the District, except for the removal of the existing paving which shall be a Subdivider cost.
- (2) Harrison Street Improvements. The District shall cause a raised median to be constructed within the Harrison Street right-of-way as shown on Exhibit "E" and the costs therefore may be a general obligation of the District; provided, however, Subdivider shall pay the cost of any portion of the work lying outside District boundaries.

B. Property Entrances/Exits Between Paving Line and Property Line. Entrances/exits serving private property shall be installed at Subdivider expense.

C. Storm Water Detention. The Subdivider shall cause storm water detention basins and other facilities to be constructed in accordance with the Storm Water Detention Plan attached hereto as Exhibit D so there is no net increase in storm water peak runoff from the Subdivision after full build out. A drainage study for the Subdivision has been completed, the results of which show that peak runoff volumes of the Subdivision, during and after development, resulting from 2, 10, 50 or 100 year storm events will be reduced below the historic runoff rate, due to the construction of detention basins depicted in said Storm Water Detention Plan. If actual peak runoff volumes from the Subdivision are not reduced to the levels shown in the drainage study, Owner agrees to cooperate and take such further action with the District as necessary to reduce runoff to levels specified in the study. Further, Subdivider shall have the right to connect to the District's existing storm water system. Storm water detention facilities and improvements are a Land Utilization and Preparation Cost within the meaning of Section 1 hereof and shall be constructed at Subdivider's expense and no part of the cost thereof shall involve or be defrayed by funds or credit of the District. The Subdivider shall maintain and repair all storm water detention facilities within the Subdivision without use of District's credit. Prior to issuance of any building permit, Subdivider shall adopt a Post Construction Storm Water Management Plan governing perpetual operation, maintenance and repair of storm water detention basins and facilities in the Subdivision as attached hereto as Exhibit M(3), subject to such modifications as required by the City Administrator in consultation with the City Engineer.

D. Storm Sewer. The District shall cause the public storm sewer system, including storm sewers, inlets, manholes, junction boxes, flared end sections and other related appurtenances to be constructed within street right-of-way of the Subdivision, or functioning as a transporter of storm water within public storm sewer easements to points outside the Subdivision, as shown on Exhibit "K-2", attached hereto.

E. Sanitary Sewer. The Subdivider shall have the right to connect to the District's existing sanitary sewer system, and all connection fees, if any, shall be paid by Subdivider at the time the building permit is issued at the rates in effect at the time. The Subdivider at its cost shall install all sanitary sewers in accordance with the Sanitary Sewer Plan and Profile attached hereto as Exhibit "K-1" without the use of District's credit.

F. Traffic Control Signal. A traffic signal at the intersection of 99<sup>th</sup> and Harrison Streets shall be installed by the District, when warranted, in accordance with Exhibit E (*should this be Exhibit L – as described at the end of the list of exhibits below?*), attached hereto, and the Subdivision Agreement for Cimarron Woods dated April 7, 2004 and recorded with the Sarpy County Register of Deeds as Instrument Number 2005-00100 (the “Original Subdivision Agreement”). The traffic signal improvements shall include additional combination mast poles, underground conduits and pull boxes, vehicle detectors (whether loops or cameras), signage, and pavement striping. All costs associated with the installation of the traffic signal shall be paid for in accordance with the Original Subdivision Agreement, provided, however, Subdivider, on behalf of the Developer, shall, prior to the recording of the Plat, pay to the District, for deposit in the Construction Fund, the sum of Twenty-Five Thousand Dollars (\$25,000.00) for Developer’s total share of the cost of installing the traffic signal, and upon such payment, neither the Subdivider nor the Developer shall have any further liability or obligation with respect to the installation of the traffic signal or for any costs associated therewith notwithstanding anything contained in the Original Subdivision Agreement to the contrary.

G. Median and Signage Plan. The Subdivider, at its cost, shall be responsible for all work relating to the median and signage plan attached hereto as Exhibit “F”, including installation, maintenance and upkeep of such signage, without the use of District’s credit.

H. Trail Plan. The District shall cause the installation of the trail and other improvements, as shown on Exhibit “G” (“Trail Improvements”), including ingress and egress through perimeter fencing as specified by the City, to be completed before the first of the following to occur: issuance of a certificate of occupancy for Building 6 or Building 7, or elapse of two (2) years after completion of Phase 1, and the costs therefore may be a general obligation of the District. Subdivider shall provide to the District any construction easements within the Subdivision necessary for the District to complete the installation of the Trail Improvements at no cost to the District.

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 not funded by District, 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/Prohibited Expenditures of District Funds

Subdivider and District agree that, except to the extent specifically authorized by Section 2 hereof, supra, or elsewhere in this Agreement, the credit or funds of the District shall not, without prior approval of City’s City Council, be used for the planning, construction, acquisition, financing, maintenance, upkeep, repair or replacement, in whole or in part, of any project, facility, utility installation or connection, or connection or use related fee, or other improvement. By way of specification and not by way of limitation, Subdivider and District agree that, except to the extent specifically authorized under Section 2 hereof, 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, financing, maintenance, upkeep, repair or replacement, in whole or in part, of:

- A. Any clubhouse, swimming pool, golf course, park, playground, lineal trails or other recreational land or facility, or equipping thereof or improvements thereto, 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 Land Utilization and Preparation Costs as defined in Section 1 hereof.
- D. Sidewalks and improved pedestrian ways, except as authorized herein.
- E. Any grading costs, except finish grading for street improvements within street rights-of-way dedicated per plat. The cost of such finish grading shall be one hundred percent (100%) specially assessed.
- F. Any sodding, seeding, tree or plant planting, or other landscaping, including that contemplated on street right-of-way or other public property, except as otherwise expressly provided herein.
- G. 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, provided, however, that District funds may be used for payment of any pioneer water main fee or charge, the entire cost of which shall be specially assessed.
- H. Any gas distribution system or any external gas supply line.
- I. The purchase or acquisition of real estate or interest therein, except as otherwise authorized by City.
- J. Costs of abandonment, relocation or modification of existing utilities or transmission facilities or easements, including electrical, communication, gas or petroleum product transmission lines, pipes or facilities.
- K. Costs of installation, maintenance and removal of silt ponds, silt fences and other erosion control measures, except for supplemental measures temporarily utilized for the sole purpose of protection of specific street improvements within street rights-of-way dedicated per plat during the course of construction of such improvements.
- L. Perimeter or other fencing for Subdivision or part thereof.
- M. Cost of open drainage and detention and/or temporary retention of storm waters, whether above or below ground.
- N. The cost of wetland mitigation, if any, whether on site or off site.
- O. The cost of any traffic study, unless approved in advance by the City Administrator.
- P. The cost of lighting, landscaping or natural screening of private property, or except as otherwise expressly authorized by this Agreement, of public property or right-of-way.
- Q. The cost of deceleration lanes, except as herein otherwise expressly provided.
- R. The cost of paving or otherwise improving parking areas, or drive approaches or similar access from the regular paving line of streets.

4. Allocation of Cost of Improvements

Subdivider, District and City agree that the cost of all improvements constructed by the District and/or the Subdivider within or serving the Subdivision as authorized by Section 2, supra, or elsewhere in this Agreement shall be defrayed as follows:

- A. Paving. The cost of paving and related expenses shall be defrayed as follows: One hundred percent (100%) of the cost of modifying 99<sup>th</sup> Street and Harrison Street, as shown on Exhibit "E" shall be paid as a general obligation credit of the District, except for the removal of existing paving, or the cost of any work outside the District, which shall be a Subdivider cost as provided in Section 2.
- B. Traffic Control Signalization. The cost of traffic control signalization and installation thereof at 99<sup>th</sup> and Harrison Streets, when warranted, shall be paid for in accordance with the Original Subdivision Agreement, provided, however, Subdivider, on behalf of the Developer, shall, prior to the recording of the Plat, pay to the District the sum of Twenty-Five Thousand Dollars (\$25,000.00) for Developer's total share of the cost of installing the traffic signal, and upon such payment, neither the Subdivider nor the Developer shall have any further liability or obligation with respect to the installation of the traffic signal or for any costs associated therewith, notwithstanding anything contained in the Original Subdivision Agreement to the contrary.
- C. Median and Signage Plan. The cost of completing the work contemplated in the Median and Signage Plan (Exhibit "F") shall be paid for by the Subdivider as a private cost and no credit of the District may be used.
- D. Trail Plan. The cost of installing the trail and other improvements, as shown on Exhibit "G", shall be paid as a general obligation credit of the District.
- E. La Vista Special Sewer/Drainage Fee. The City of La Vista imposes a special sewer/drainage fee. The total estimated fee for the Subdivision at current rates is \$236,808, computed as follows:

Phase 1 – 84 units @ \$858 per unit:	\$ 72,072
Phase 2 – 192 units @ \$858 per unit:	<u>\$164,736</u>
Total Aggregate Fee Both Lots	\$236,808

The sanitary sewer connection fees shall be paid and collected as provided for in the Original Subdivision Agreement, except that payment shall be made at the time the building permit is issued and at the rates in effect at the time. The credit of the District shall not be used for purposes of payment of these fees.

- F. Land Utilization and Preparation Costs. Land utilization and preparation costs as defined in Section 1 hereof shall be paid solely by Subdivider and no funds or credit of the District may be used in conjunction therewith.
- G. Storm Sewer. One hundred percent (100%) of the cost of all storm sewers within the right-of-way of 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 inches (24") 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 inches (24") in size, may be generally obligated for the difference in material and installation cost between a twenty-four inch (24") pipe and the actual size required, which difference shall be a general obligation credit of the District. No portion of manholes, inlets or appurtenances may be general obligation.

- H. Sanitary Sewer. One hundred percent (100%) of the cost of all sanitary sewers constructed within or serving the Subdivision, including manholes and other appurtenances, as shown on Exhibit "K-1" shall be paid solely by Subdivider without the use of the District's credit.
- I. Water and Electrical. All costs of causing the installation of water and electrical distribution systems and the operation, maintenance and upkeep thereof within the Subdivision, including any contract charges, shall be paid by Subdivider and no District funds shall be used.
- J. Other Improvements. The cost of all other improvements for which public money is not herein expressly authorized shall be paid by Subdivider without use of District funds.
- K. Source of Funds. Attached hereto as Exhibit "H" is breakdown of the source and use of funds for the improvements described herein.

Notwithstanding any other provision of this Agreement to the contrary, Developer, Subdivider and District covenant and agree that:

1. Any and all costs or obligations which the District shall incur in connection with any improvement, facility, infrastructure, construction, utility installation, connection fee or financing shall be specially assessed or paid by Subdivider, except to the extent expressly provided for in this Agreement to the contrary; and
2. The total amount of general obligation debt of the District arising from the District's activities and expenditures in connection with construction of improvements as provided in this Agreement shall not in the aggregate exceed the total amount of general obligation expressly authorized by the provisions of this Agreement.
5. Special Assessments. Except as provided for in the Original Subdivision Agreement or this Subdivision Agreement, there shall be no special assessments levied against the lots within the Subdivision for any public improvements contemplated by this Agreement. Any special assessment of costs of improvements of the Subdivision shall be levied against buildable sites within the Subdivision using the methodology described in Section 5 of the Original Subdivision Agreement, and the provisions of said Section 5 shall apply to the amounts levied, except to the extent otherwise required by applicable law. The City Engineer shall determine all buildable and unbuildable sites of the Subdivision.
6. General Covenants of Subdivider and District

Subdivider and District covenant, warrant and agree that:

- A. Compliance with City Construction Requirements. Subdivider and 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 or within street right-of-way, and testing procedures therefor. Plans for such proposed improvements and proposed maintenance agreements for said improvements shall be submitted to the City for review and approval prior to commencement of the work.

- B. Preconstruction Contracts. Prior to filing of the Plat, the District will present to the City Administrator for the benefit of the City binding contracts in full force and effect between the District and contractors requiring the timely and orderly installation of improvements authorized herein for public storm sewer improvements, 99<sup>th</sup> and Harrison Streets paving improvements, 99<sup>th</sup> and Harrison Streets traffic signal underground improvements, and the Trail Improvements, 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 costs of the improvements authorized herein that are not to be paid for privately, and said fiscal agent's approval as to the terms of this Subdivision Agreement, satisfactory to the City Administrator.

Prior to signing and releasing the Plat for recording, the Subdivider shall provide an irrevocable letter of credit to the City of LaVista in the amount of \$53,020, which amount represents one hundred ten percent (110%) of the estimated costs to Subdivider for the installation of the sanitary sewer as set forth in Section 2(E), the removal of the existing paving in 99<sup>th</sup> Street as set forth in Section 2(A), median and signage work specified in Section 4C, and construction of sidewalks as set forth in Section 8, which estimated costs are more particularly set forth on Exhibit H.

- C. Administration. As regards to 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.

- D. Remedies. 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 reserves the right to specifically enforce full compliance of the terms and conditions of this agreement by mandatory or prohibitory injunction.

- E. Covenants, Etc. The covenants and agreements of Developer, Subdivider and the District set forth in this Agreement are joint and several and shall constitute covenants running with the land.

- F. Non-Discrimination. In the performance of this contract, neither the District nor the Developer nor Subdivider shall discriminate against any parties or persons on account of race, national origin, sex, age, disability, political or religious affiliations in violation of federal and state laws or local ordinances.

## 7. Construction Standards and Procedures

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

- A. City Approvals. All improvements will be constructed in strict accordance with plans and specifications and locations approved in advance 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. Testing. 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 Subdivider 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. Construction Record Drawings. District shall cause "Construction Record Drawings", 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 mylar, except where the City agrees otherwise. The engineering costs attributable to the production of said "Construction Record Drawings" shall be an engineering fee within the meaning of Subsection 1-D, 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. Compliance With Law. 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. Compliance with City Engineer Determinations. In the event that City's Engineer determine that there is anything in the construction, use, 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 easement, 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 acceptable to the City Engineer which shall be implemented by District at District's cost.
- F. Bonds. District shall require each contractor performing work on behalf of the District to furnish a performance and maintenance bond, and to warrant the work against any defects for a minimum of two years after completion, with District and City as joint and several obligees thereon, which bond and warranty shall be subject to the City approval as to surety, form and terms.
- G. Easements. Any easements required from Developer or District for improvements shall be provided at no cost to the District.
- H. Subdivider Improvements. Subdivider shall be jointly and severally liable with District to satisfy all requirements of this Section 7 with respect to any improvements required of Subdivider under this Subdivision Agreement.

8. Sidewalks

Subdivider, at no cost to the District or City, shall install or cause to be installed sidewalks along the east side of 99<sup>th</sup> Street prior to opening of any building thereon. Such sidewalks shall be constructed at Subdivider's expense and the credit of the District shall not be used in conjunction therewith. All sidewalks,

whenever installed, shall be constructed in accordance with the City sidewalk regulations and policies as they may from time to time exist, and shall be maintained at Subdivider's expense.

9. Maintenance of Improvements

The District shall continuously and permanently maintain and keep in good repair, and reconstruct or replace if necessary, all improvements authorized to be constructed by District within the boundaries of the District pursuant to Section 2, supra, or elsewhere in this Agreement, except to the extent otherwise provided in this Subdivision Agreement. Prior to expending District credit or funds on any major repairs, if permitted by this Agreement, District shall first make a determination that the project would not be covered by the performance bond and/or any separate maintenance bond or warranty executed or provided by the contractor involved in the original construction of said improvement. Any repairs or series of repairs in respect to which the District's share of the cost is reasonably estimated to be or is more than Ten Thousand Dollars (\$10,000) shall be subject to prior approval of the City. Prior approval of the City also is required before the District commences any maintenance, repair, reconstruction or replacement of improvements by general obligation or warrant. Subdivider shall continuously and permanently maintain and keep in good repair, and reconstruct or replace if necessary, all improvements Subdivider constructs or makes or causes to be constructed or made with respect to development of the Subdivision, including, but not limited to, landscaping. Provided, however, that Subdivider each year shall contribute an equal share of the annual cost of perpetual maintenance of landscaping and signage along 99<sup>th</sup> Street, including the roundabout, by developer or Homeowners' Association pursuant to Sections 8D and 10A of the Original Subdivision Agreement. Not in limitation of any of the foregoing, all landscaping within the Subdivision shall be warranted by the landscape contractor for at least two growing seasons, and any replacement, repair or reconstruction shall be of equal or better quality and quantity.

10. Connection Permit and Fees. Before any connection from any premises to the sanitary 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. Connections and use of sewers further shall be subject to any provisions of Section 15 of the Original Subdivision Agreement that are not expressly set forth below.

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

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

- (1) Bound by and to any provisions of any ordinances, rules and regulations as existing or 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 exists or which 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.

13. Additional Special Covenants and Agreements

Subdivider and District further covenant and agree as follows:

A. Existing Wetlands/Mitigation. The development of the Subdivision will impact approximately .36 acres of existing wetlands for which the Subdivider will create no less than .72 acres of wetlands in an off-site location (see Exhibit "I") as more fully described in the Subdivider 404 Permit, as approved or amended by the Department of the Army. Developer and Subdivider warrant that, as of the date hereof, the Subdivider 404 Permit for the Subdivision is in good standing and effect, and that no breach exists thereunder, and that the District, Subdivider or Developer shall not take any action or suffer any omission that will violate or impair the privileges or use under said permit. Subdivider at its cost shall be responsible for satisfying all requirements of the Subdivider 404 Permit.

B. Storm Water Detention. In regards to storm water detention facilities:

- (1) Subdivider's construction of storm water detention basins and facilities within the Subdivision shall be in accordance with Exhibit "D" attached hereto. Construction of storm water detention basins and facilities within Phase 1 shall be completed before a certificate of occupancy is issued for any building within Phase 1; and construction of storm water detention basins and facilities within Phase 2 shall be completed before a certificate of occupancy is issued for any building within Phase 2.
- (2) Any change of a location of a detention basin from that shown on Exhibit "D" shall require approval of the City Administrator, as will any relocation of the basin from its City approved location.
- (3) The detention basins shall be on private property and no District funds or credit shall be involved in their construction, maintenance and repair. Developer at its cost shall be responsible for construction and continuous and permanent maintenance and repair of all detention basins and facilities.
- (4) Subdivider shall execute and deliver to City in form satisfactory to City an access easement to all detention basins authorizing the City, in its sole and absolute discretion to inspect such facilities and to require the Subdivider to clean, maintain and repair such facilities as may be needed. City's exercise of such rights or privileges shall be at City's absolute and sole discretion without liability to the City.
- (5) Any relocation of detention facilities will require release of an old easement and grant of a substitute easement in form satisfactory to City.

C. Annexation. District, Developer and Subdivider each hereby agrees not to directly or indirectly fund or pursue, or encourage any other person to fund or pursue, any lawsuit or other action contesting annexation of the Subdivision or District, or any part thereof, by the City. Provided, however, if only part of the District is annexed, the District does not waive its right to contest a proper division of assets and liabilities of the District. All parties agree that the City shall not be obligated to annex the Subdivision or District, or any part thereof.

D. All publicly used roadways and driveways and other public improvements within the Plat shall be constructed to City approved specifications. The City shall have access to, over and otherwise with respect to all such roadways, driveways and other improvements for any purpose it deems appropriate

in the exercise of its general governmental powers, including, but not limited to, inspection, police, fire and rescue, and other public safety purposes, and for the exercise of all rights granted or reserved to City by this Subdivision Agreement.

E. Original Subdivision Agreement Remains in Effect. Subdivider, Developer, District and City agree that the terms and conditions of the Original Subdivision Agreement shall continue in full force and effect, except to the extent modified by this Subdivision Agreement.

F. Within 90 days after this Agreement is executed, the Subdivider will enter into a maintenance agreement with the District and City for the Subdivision which will obligate the Subdivider on a permanent and continuous basis to provide for proper and continuous maintenance and upkeep within the Subdivision, in form and content satisfactory to City Administrator. Upon its execution, the maintenance agreement shall be incorporated herein by this reference.

G. Before Subdivider directly or indirectly sells or otherwise transfers any interest in the property within the Subdivision, or any entity owning said property, such that after the sale or transfer Subdivider will not have exclusive ownership or control of all property within the Subdivision, Subdivider, before proceeding with such sale or transfer, shall commit and dedicate all property within the Subdivision under a declaration of covenants, conditions, restrictions and easements in form and content satisfactory to the City and providing for ongoing coordinated, common maintenance, upkeep and repair of the property and structures and other improvements of the Subdivision, including, but not limited to common areas, similar to maintenance requirements of Exhibit H-1 and H-2 of the Original Subdivision Agreement. This Subsection G shall not apply to the transfer of an interest pursuant to residential leases of individual units to tenants or initial transfer of a security interest in the property in conjunction with financing improvements of the Subdivision, though it would apply to any subsequent transfer incident to foreclosure of the security interest or otherwise.

H. If Subdivider fails to timely and fully perform any responsibility set forth in this Subsection F or G of this Section, the City, at its option, may itself take such curative or remedial action as it determines appropriate, or cause such action to be taken, and assess any cost thereof against the Subdivider.

I. Subdivider shall be responsible for ensuring compliance with requirements regarding erosion control when developing the Subdivision, specifically including requirements provided in Section 18J of the Original Subdivision Agreement.

J. The parties agree that City shall have the option to locate, place and maintain a City entrance sign on land adjacent to right of way and southwest corner of 96<sup>th</sup> and Harrison Streets; and Subdivider, Developer and District agree to cooperate with City and facilitate the same, including, but not limited to, providing any required easements at no cost to the City.

K. Any City approval required under this Subdivision Agreement must be in writing to be effective.

L. Subdivider and District agree that the 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, as provided hereunder, in the manner set forth in Section 12 of the Original Subdivision Agreement; notwithstanding anything in this Agreement or Exhibits hereto to the contrary.

M. All paving modifications, underground signal work and landscaping for 99<sup>th</sup> and Harrison Street improvements must be completed before issuance of any certificate of occupancy for any building within the Subdivision.

14. Section 14 is hereby intentionally left blank.

15. Planned Unit Development

Subdivider has requested PUD-1 Planned Unit Development zoning for the Subdivision under Section 5.15 of the La Vista Zoning Ordinance No. 848, and Subdivider' 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 and the approved Cimarron Terrace Planned Unit Development, a copy of the which is attached hereto as Exhibit "J", except as shall be amended by the City Council in the required manner. The application for the PUD-1 Planned Unit Development, as amended, ("Application") is incorporated herein by this reference, and said Application, as well as the underlying residential zoning district and sub-area secondary overlay of the Gateway Corridor Overlay District regulations, shall continue to be applicable and govern within the Subdivision, except as provided for in the approved Cimarron Terrace Planned Unit Development Plan, Conditional Use Permit or this Agreement. The meaning of words in City Ordinances, including, but not limited to, Ordinance No. 848, as periodically amended or superseded, shall control the meaning of the same words when used herein, except where the meaning herein is clearly intended to be otherwise. *(We will need to develop an Exhibit J acceptable to all parties)* Construction of buildings, structures and other improvements of Phase 1 of the Subdivision will commence within 24 months after the date of City Council approval of the Conditional Use Permit and will be completed within 18 months thereafter. Construction of Phase 2 may be constructed after the completion of the first phase as economics and demand warrant and in accordance with a schedule approved by the City.

16. Agreements Herein Constitute Covenants Running with Land

This Subdivision Agreement and the agreements and understandings contained or incorporated herein constitute covenants running with the land and shall be binding, jointly and severally, upon the District, Subdivider and Developer, and their respective successors, heirs, assigns, lenders, mortgagees and others gaining or claiming an interest or lien against any property within the Subdivision tract. This Agreement shall be subject to approval of the City Council and cannot be changed without City Council approval and a written amendment executed by a proper City official.

17. Acknowledgement of Obligations

The parties hereto acknowledge and agree that, notwithstanding anything contained in this Agreement to the contrary, this Subdivision Agreement shall be subject to Subdivider purchasing all land within the Subdivision from Developer within 120 days after the City executes this Subdivision Agreement. Failure of Subdivider to purchase said land within the specified time will render this Subdivision Agreement null and void and of no effect; provided, however, the City, upon written approval of the City Administrator, shall have the option to periodically extend the time for Subdivider to purchase said land and thereby satisfy the condition of this Section 17.

18. Exhibits/Supplemental Agreements Summary

Except as otherwise noted, the following attached Exhibits were prepared by E & A Consulting Group, Inc. engineers for District and Subdivider. The Exhibits (Exhibits "A" thru "J") and the Schedule of Supplemental Agreements (Exhibit "K") are attached hereto and made a part of this Subdivision Agreement and are incorporated herein by this reference as follows:

Exhibit "A":	Plat
Exhibit "B":	Subdivider's 404 Permit

Exhibit "C":	Conditional Use Permit
Exhibit "D":	Storm Water Detention Plan
Exhibit "E":	Paving and Median Plan
Exhibit "F":	Median and Signage Plan
Exhibit "G":	Trail Plan
Exhibit "H":	Sources and Uses <i>(to be revised)</i>
Exhibit "I":	Wetlands Mitigation Plan
Exhibit "J":	Planned Unit Development
Exhibit "K-1"	Public Sanitary Sewer Plan and Profile
Exhibit "K-2"	Public Storm Sewer Plan and Profile
Exhibit "L"	Harrison Street & 99 <sup>th</sup> Street Traffic Signal Plan
Exhibit "M"	Schedule of Supplemental Agreements or Documents:
	(1) Original Subdivision Agreement
	(2) Application for the PUD-1 Planned Unit Development
	(3) Post Construction Storm Water Management Plan





ATTEST:

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

\_\_\_\_\_  
Clerk of Said District

By \_\_\_\_\_  
Chair of the Board of Trustees

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA                    )  
  )ss.  
COUNTY OF \_\_\_\_\_                )

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

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

\_\_\_\_\_  
Notary Public

ATTEST:

CITY OF LA VISTA.

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Douglas Kindig, Mayor

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA                    )  
  )ss.  
COUNTY OF \_\_\_\_\_                )

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 Pamela Buethe, to me personally known to be the City Clerk of the City of La Vista, the identical persons whose names are affixed to the foregoing Subdivision Agreement, and they acknowledged the execution thereof to be their voluntary act and deed.

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

\_\_\_\_\_  
Notary Public







REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, OMAHA DISTRICT  
NEBRASKA REGULATORY OFFICE - WEHRSPANN  
8901 SOUTH 154<sup>TH</sup> STREET, SUITE 1  
OMAHA, NEBRASKA 68138-3635

<https://www.nwo.usace.army.mil/html/od-me/nehome.html>

October 1, 2009

Mr. Mike Smith  
Pedcor Investments 2008-CXVII, L.P.  
One Pedcor Square 770 3<sup>rd</sup> Ave., SW  
Carel, Indiana 46032

RE: 2009-01538-WEH—Cimarron Woods Lot 380—Cimarron Woods Apartment Complex

Dear Mr. Smith:

We have reviewed your request for Department of the Army authorization for the construction of three road crossings and two embankment fills impacting 0.36 acres of riverine PSSA/C wetlands and 220 linear feet of an unnamed tributary to West Papillion Creek. The work will be carried out in accordance with your complete application received on September 4, 2009. The project is located in the N ½ of Section 16, Township 14 North, Range 12 East, Sarpy County, Nebraska.

We have prepared a preliminary jurisdictional determination (JD) for the site which is a written indication that waterways within your project area may be Waters of the United States. Such waters have been treated as jurisdictional Waters of the U.S. for purposes of computation of impacts and compensatory mitigation requirements. If you concur with the findings of the enclosed preliminary JD, please sign it and return it to the letterhead address within two weeks.

If you believe the preliminary JD is inaccurate, you may request this office complete an approved JD prior to your commencement of any work in a Water of the U.S. An approved JD is an official determination regarding the presence or absence of Waters of the U.S. Completion of an approved JD may require coordination with the U.S. Environmental Protection Agency.

If you do not want the U.S. Army Corps of Engineers (Corps) to complete an approved JD, you may proceed with the proposed project in accordance with the terms and conditions of Department of the Army Nationwide Permit No. 29 found in the March 12, 2007 Federal Register (72 FR 11092), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General and Regional Conditions that must be complied with.

This authorization is subject to the following regional condition(s):

1. All areas disturbed by construction shall be revegetated with appropriate perennial, native grasses and forbs and maintained in this condition. *Phalaris arundinacea* (Reed Canary Grass), *Lythrum salicaria* (Purple Loosestrife), *Bromus inermis* (Smooth Brome), *Phragmites, sp.* (Common Reed, River Reed) and *Tamarix, sp.* (Salt Cedar), are NOT appropriate choices of vegetation. The disturbed areas shall be reseeded concurrent with the project or immediately upon completion. Revegetation shall be acceptable when ground cover of desirable species reaches 75%. If this seeding cannot be accomplished by September 15 the year of project completion, then an erosion blanket shall be placed on the disturbed areas. The erosion blanket shall remain in place until

EXHIBIT "B"

ground cover of desirable species reaches 75%. If the seeding can be accomplished by September 15th, all seeded areas shall be properly mulched to prevent additional erosion.

2. The permittee and/or the permittee's contractor or any of the employees, subcontractors or other persons working in the performance of a contract or contracts to complete the work authorized herein, shall cease work and report the discovery of any previously unknown historic or archeological remains to the Nebraska Regulatory Office. Notification shall be by telephone (402) 896-0896 or FAX (402) 896-0997 within 24 hours of the discovery and in writing within 48 hours. Work shall not resume until the permittee is notified by the Nebraska Regulatory Office.

This authorization is subject to the following special condition(s):

1. Prior to construction, the permittee shall provide to the above Regulatory Office address the proposed date of commencement of any filling activity and the completion date of the wetland mitigation site.
2. Concurrent with construction, silt curtains or other sediment control measures will be employed to reduce soil erosion and sedimentation into waters of the U.S. The amount of sediment entering waters of the U.S. and leaving the site shall be reduced to the maximum extent practicable. If the permittee fails to institute all appropriate measures, the Corps reserves the option to halt all earthmoving operations until the erosion/sedimentation problems are corrected.
3. Wetland impacts shall be mitigated at a minimum ratio of 2.0 acres of created wetland for every 1.0 of impacted wetland. The project will impact 0.36 acre of riverine PSSA/C wetland; therefore, no less than 0.72 acres of riverine PSSA/C wetlands shall be created.
  - a. The final mitigation plan received from Hayes Environmental on September 4, 2009 is approved by the Corps and shall be incorporated by reference into this permit.
  - b. The Corps must be notified by documentation, verifying the mitigation site was constructed and seeded concurrently with any filling activities, no later than May 1, 2010. If the filling activities are scheduled to take start after May 1, 2010 the Corps of Engineers must be notified to ensure proper construction schedule of the wetland mitigation site.
5. Monitoring reports of the wetland mitigation site shall be submitted to the Wehrspann Regulatory Office to ensure the mitigation site is developing properly. The mitigation site shall be delineated using the 1987 Corps of Engineers Wetland Delineation Manual. Besides the delineation information, the monitoring reports shall include, but are not limited to, the following:
  - a. A set of as-built plans of the mitigation site including photo reference points and soil testing holes, etc. should be clearly marked on the plans. Representative photos, taken in the growing season, showing all areas of the mitigation site. Due to the cyclic nature of wetlands, we recommend that photos be taken two or more times a year.
  - b. The monitoring reports shall be due December 1 of 2010, 2011, 2012, 2013 and 2014. Please contact the Wehrspann Regulatory Office if construction of the mitigation site is not completed by May 1, 2010, to ensure a proper monitoring schedule.
  - c. Should the mitigation fail to produce the type and level of compensation necessary at any time or after a period of five years, the permittee shall comply with the Corps' directives to

provide the required mitigation. The permittee shall assume all liability for accomplishing corrective work should the Corps determine that the compensatory mitigation has not been fully satisfactory. Remedial work may include, but is not limited to, regarding and/or replanting the site. This responsibility shall extend for a period three years upon completion of the work.

6. Buffer strips shall be set aside around the entire wetland mitigation site measuring no less than 50 feet from the edge of the wetland outward. The buffer strips shall be planted to a mixture of perennial, native grasses and forbs and maintained in this condition. Reed Canary Grass (*Phalaris arundinacea*), Purple Loosestrife (*Lythrum salicaria*) and Smooth Brome (*Bromus inermis*) are NOT appropriate choices of vegetation. Revegetation will be acceptable when ground cover of desirable species reaches 75%. The buffer strips shall be protected to ensure that it does not compromise its function. This includes not mowing the buffer strip. The permittee shall prove to the Wehrspann Regulatory Office documentation verifying that the mitigation site was constructed and seeded before May 1, 2010. This documentation may include dates of construction and seeding, planting list, seed bag tags, or receipts. Please include permit number on documentation.

7. To protect against future impacts on the wetland mitigation site, an appropriate real estate instrument shall be placed on the entire mitigation site and the buffer areas. After the completion of construction, the permittee shall provide to the Wehrspann Regulatory Office a legal description of the land to be preserved and a draft Covenant of Dedication for approval. A certified copy of the real estate instrument, as recorded with the Sarpy County Registrar of Deeds, shall be submitted to the Wehrspann Regulatory Office by May 1, 2010.

a. There shall be no construction or placement of structures or mobile homes, fences, signs, billboards or other advertising material, or other structures, whether temporary or permanent, on the land.

b. There shall be no filling, draining, excavating, dredging, mining, drilling or removal of topsoil, loam, peat, sand, gravel, rock, minerals or other materials.

c. There shall be no building of roads or paths for vehicular or pedestrian travel or any change in the topography of the land.

d. There shall be no removal, destruction, or cutting of trees or plants, spraying with biocides, insecticides, or pesticides, grazing of animals, farming, tilling of soil, or other agricultural activity. Maintenance activities are acceptable upon approval from the Corps.

e. There shall be no operation of all-terrain vehicles or any other type of motorized vehicle on the land, except for pre-existing access roads at the mitigation site.

f. This Covenant of Dedication may be changed, modified or revoked only upon written approval of the District Engineer of the Omaha District of the U.S. Army Corps of Engineers. To be effective, such approval must be witnessed, authenticated, and recorded pursuant to the law of the State of Iowa. This Covenant needs to be reviewed by the Corps of Engineers prior to signature to assure compliance with permit conditions.

COE representative's initial \_\_\_\_\_

g. This Covenant is made in perpetuity such that the present owner and its heirs and assigns forever shall be bound by the terms and conditions set forth herein.

8. The permittee shall be responsible for providing a complete copy of this permit document to each individual lot owner or lessee and any future lot or property owner that may be affected by the terms and conditions of this authorization. The permittee shall notify the Wehrspann Regulatory Office prior to any transfer of this authorization. The notification shall include the permit number (NE 2004-11254), previous owner and future owner to ensure proper transfer of this authorization.

This determination is applicable only to the permit program administered by the Corps. It does not eliminate the need to obtain other Federal, state or local approvals before beginning work. Specifically, you will need a Section 401 Water Quality Certification (WQC) from the Nebraska Department of Environmental Quality (NDEQ). Please note that no work may be performed in a jurisdictional water of the U.S. until you have obtained the required Section 401 WQC.

To apply for your Section 401 WQC, please contact Ms. Terry Hickman at the following address:

Ms. Terry Hickman  
NE Department of Environmental Quality  
Water Quality Division -- Planning Unit  
PO Box 98922  
Lincoln, Nebraska 68509-8922

Once you have received your WQC or a written waiver, you must furnish this office a copy. Upon the Corps' receipt, you may proceed with your project under the terms and conditions of the Nationwide Permit. Any additional conditions associated with the WQC must also be complied with. In the event that the State does not act upon your request within 60 days from receipt of the request, the Corps will consider WQC waived. However, before proceeding with your project, you must provide this office a copy of your correspondence to the State requesting WQC and subsequently obtain written correspondence from the Corps stating that you are authorized to proceed.

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

In compliance with General Condition 26, the attached Compliance Certification form must be signed and returned to the address listed upon completion of the authorized work and any required mitigation.

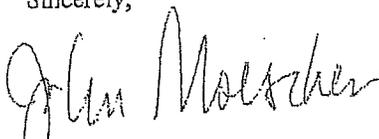
This verification will be valid until October 1, 2011.

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

The Omaha District, Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at <http://per2.nwp.usace.army.mil/survey.html>. If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

If you have any questions concerning this determination or jurisdiction, please feel free to contact Mr. Matt Wray at (402) 896-0896 and reference Nationwide Permit No. 2009-01538-WEH.

Sincerely,



John L. Moeschen  
Nebraska State Program Manager

Enclosure

Copy Furnished:  
NDEQ (Terry Hickman)  
Hayes Environmental (Triletty Wade)

**City of La Vista  
Conditional Use Permit**

**Conditional Use Permit for Cimarron Terrace Apartments**

This Conditional Use Permit issued this \_\_\_\_ day of \_\_\_\_\_, 2010, by the City of La Vista, a municipal corporation in the County of Sarpy County, Nebraska ("City") to, ~~Fereo Development, Inc.,~~ a <sup>1</sup>Pedcor Investments-2008-CXVII, L.P., a ~~limited partnership authorized to do business in~~ <sup>2</sup>Nebraska corporation <sup>3</sup>("Owner"), pursuant to the La Vista Zoning Ordinance.

WHEREAS, Owner wishes to construct and operate a multiple family dwelling complex to be known as Cimarron Terrace Apartments to be constructed in two phases <sup>4</sup> upon the following described tract of land within the City of La Vista's zoning jurisdiction:

Lots 1 and 2, Cimarron Woods Replat Two, located in the N½ of Section 16, Township 14 North, Range 12 East of the 6th P.M. Sarpy County, Nebraska (the "Property") <sup>5</sup>

with Phase 1 to be constructed on Lot 1 and comprised of 84 units and 64 attached garages, and Phase 2 to be constructed on Lot 2 and comprised of 192 units and 104 attached garages. <sup>6</sup>

WHEREAS, Owner has applied for a conditional use permit for the purpose of constructing and operating a multiple family dwelling complex as described above; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit to the Owner for such purposes, subject to certain conditions and agreements as hereinafter provided (the "Permit").

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this Permit is issued to the owner of the Property to use the Property hereto for the purposes of ~~a multiple family dwelling complex~~ <sup>8</sup>described above <sup>9</sup>; said use hereinafter being referred to interchangeably as a "Permitted Use" or "Use".

**Conditions of Permit**

The conditions to which the granting of this Permit is subject are as follows:

1. The rights granted by this Permit are transferable and any breach of ~~a material term~~ <sup>10</sup>any terms <sup>11</sup> hereof shall cause Permit to expire and terminate subject to the rights of the Owner to cure such default or deficiency as set forth herein.
2. In respect to the proposed Use:
  - a. A site plan showing the Property's boundaries, all existing and proposed easements, proposed structures, parking, access points, and drives shall be submitted to, and subject to approval of <sup>12</sup> the City and once approved by the City, shall be attached to and incorporated herein as Exhibit "A".

<sup>1</sup> Materiality is addressed in 4a below; no need to insert individually throughout the agreement.

- b. Architectural review of the building design, landscaping, and lighting has been completed and the foregoing are approved as shown on Exhibits "B" through "\_\_\_".
- c. The Property shall be developed and maintained in accordance with the site plan (Exhibit "A") and all other Exhibits of this Agreement, as well as the Final Plat - Cimarron Woods Replat Two, Cimarron Terrace Planned Unit Development, and Subdivision Agreement applicable to Lots 1 and 2, Cimarron Woods Replat Two Subdivision,<sup>13</sup> as approved by the City and incorporated herein by this reference. Any modifications to the site plan<sup>14</sup> must be submitted to the City's Chief Building Official for approval. Modification of any of the other document or Exhibit shall be subject to approval of the City, as directed by the City Administrator, unless otherwise expressly provided in the document or Exhibit to be modified.<sup>15</sup>
- d. As-built topographic surveys of storm water detention areas shall be required before certificates of occupancy (or such other equivalent certificate)<sup>16,217</sup> are issued for each phase of<sup>18</sup> any building in Phase 1 of the<sup>19</sup> project,<sup>20</sup> with a requirement that any discrepancies from the approved detention plans be corrected, or certified as inconsequential, to the satisfaction of the City Engineer in his sole discretion<sup>21</sup> prior to issuing such certificates.
- e. An off-site wetlands mitigation area has been or will be acquired. No permits shall be issued by the City to commence any grading or work on the Property until Owner demonstrates to the satisfaction of the City Administrator that Owner has purchased a sufficient off-site wetlands mitigation site<sup>22</sup>.
- f. No vehicle repair, other than emergency maintenance such as changing a tire, or inoperable, abandoned or storage of vehicles<sup>23</sup> shall be allowed in the parking areas shown on Exhibit "A". The Owner shall have seventy-two (72) hours after notice to correct the<sup>24</sup> any<sup>25</sup> violation or cause the removal of any such vehicle that is in violation<sup>26</sup>. *(Can we narrow this down – what will be deemed vehicle repair?)*
- g. Owner shall obtain all required permits for the Use from the City of La Vista and shall comply with any additional requirements as determined by the Chief Building Official, including, but not limited to, building codes, fire codes and ADA requirements.
- h. Owner shall comply, in all material respects<sup>27</sup> (and shall ensure that all structures, appurtenances and improvements, and all activities occurring or conducted, on the Property at any time comply in all material respects<sup>28</sup>) with any applicable federal, state and/or local laws, rules or<sup>29</sup> regulations, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.
- i. Owner hereby indemnifies the City against, and holds the City harmless from, any liability, loss, claim or expense whatsoever (including, but not limited to, reasonable attorney fees and court cost) arising out of or resulting from the acts, omissions or negligence of the Owner or its agents, employees, assigns, suppliers or invitees, including, but not limited to, any liability, loss, claim or expense arising out of or resulting from any violations of any applicable environmental or safety law, rule or regulation relating to the Owner's Use of the Property.
- j. A drainage study for the Property has been completed, the results of which show that peak runoff volumes of the Property will be reduced by the detention basin<sup>30</sup> during and after development, resulting from 2-, 10-, 50 or 100 year storm events will be reduced below the historic runoff rate, and there will be no negative downstream drainage impact from the development of the Property, due to construction of the detention basins<sup>31</sup> depicted on the Storm Water Detention Plan attached hereto as Exhibit D. Owner agrees to cooperate and take such further action with the District as necessary if peak runoff volumes from the Property are not reduced to levels shown in the drainage study or if development of the Property creates any negative downstream drainage impact.<sup>32</sup>
- k. <sup>33</sup>Owner shall ensure that any clubhouse on the property is professionally staffed during open hours.<sup>34</sup>
3. In respect to the Gateway Corridor Overlay District, building design has been approved per letter from the City's design review architect, Kevin Schluckebier, dated \_\_\_\_\_.

<sup>2</sup> Reference to other certificates deleted, absent indication of certificates intended.

4. The Owner's right to maintain the Use of the Property, as contemplated by this Permit, shall be based on the following conditions:
  - a. An annual inspection to determine compliance with the conditions of this Permit. The Permit may be revoked upon a finding by the City that there is a material violation of the terms of this Permit if the violation continues after written notice from the City to Owner and a reasonable time was given for Owner to cure such violation.
  - b. The Use authorized by this Permit must be initiated within 24 months after the date of the approval of this Permit otherwise such Permit shall become void. Notwithstanding the foregoing, it is understood and agreed that this is a phased project. As such, phase one of the project, consisting of approximately 35<sup>35</sup> 84 units and 64 garages and having the design, dimensions, construction and amenities set forth in Owner's application<sup>36</sup>, shall be commenced within 24 months after the date of the approval of this Permit and completed with certificate of occupancy within 18 months after commencement of construction<sup>37</sup>, otherwise such Permit shall become void. All other phases of the project may be constructed from time to time<sup>38</sup> Phase two of the project, consisting of 192 units and 104 attached garages and having the design, dimensions, construction and amenities set forth in Owner's application, may be constructed<sup>39</sup> after the completion of the first phase as economics and demand warrant and in accordance with a schedule approved by the City<sup>40</sup>. In addition, it is understood and agreed that Subdivider, through administrative actions only if permitted under the zoning ordinances and regulations existing at the time<sup>41</sup>, shall have the right to further subdivide the Property as necessary to create such other phases of the Property, subject to approval of the City Council<sup>42</sup>.
  - c. All obsolete or unused structures, accessory facilities or materials with an environmental or safety hazard shall be abated and/or removed from the Property at Owner's expense within twelve (12) months of cessation of the Use of the Property.
5. Notwithstanding any other provision herein to the contrary, this Permit, and all rights granted hereby, shall expire and terminate as to a Permitted Use hereunder upon the first of the following to occur:
  - a. Owner's abandonment of the Permitted Use. There shall be a presumption that the project has been abandoned if the Owner fails to commence construction of phase one of the project within twenty-four (24) months after the approval of this Permit, unless otherwise approved by the City.
  - b. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use, and such cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the use is not cured within a reasonable period of time<sup>43</sup> so long as curative rights are provided under laws, rules and regulations governing said permit and<sup>44</sup> Owner is diligently pursuing correction of the same.
  - c. Owner's construction or placement of a storage tank, structure or other improvement on the premises (except during construction of any phase of the project) not specified in this Permit and Owners failure to correct such breach within a reasonable period of time after City's giving notice thereof.
  - d. Owner's breach of any material<sup>45</sup> other<sup>46</sup> term hereof and its failure to correct such breach within a reasonable period of time after City's giving notice thereof.
6. If construction of phase one has not been commenced within twenty-four (24) months from the date of this Permit, this Permit shall be null and void subject to the Owner's<sup>47</sup> and all rights hereunder shall lapse; provided, however, Owner shall have the<sup>48</sup> right to file for an extension of time pursuant to the La Vista Zoning Ordinance.
7. In the event the Owner fails to promptly remove any safety or environmental hazard from the Property, or<sup>49</sup> upon the expiration or termination of this Permit the Owner fails to promptly remove any permitted materials or any remaining environmental or other hazard,<sup>50</sup> the City may, at its option (but without any obligation to the Owner or any third party to exercise said option) cause the same to be removed at Owner's cost (including, but not limited to, the cost of any excavation and earthwork that is necessary or

advisable in connection with the removal thereof) and the Owner shall reimburse the City the reasonable<sup>51</sup> costs incurred to remove the same. Owner hereby irrevocably grants the City, its agents and employees the right, provided notice is furnished to the Owner along with a reasonable time to remove or cure such hazard, to enter the Property and to take whatever action as is necessary or appropriate to remove the structures or<sup>52</sup> any environmental or safety hazards in accordance with the terms of this Permit, and the right of the City to enter the Property as may be necessary or appropriate to carry out any other provision of this Permit.

8. If any provision, or any portion thereof, contained in this Permit is held to be unconstitutional, invalid, or unenforceable, the remaining provisions hereof, or portions thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

### Miscellaneous

The conditions and terms of this Permit shall be binding upon owner, its successors and assigns.

1. Delay of City to terminate this Permit on account of breach of Owner of any of the terms hereof shall not constitute a waiver of City's right to terminate this Permit, unless the City has expressly waived said breach. A waiver of the right to terminate upon any breach shall not constitute a waiver of the right to terminate upon a subsequent breach of the terms hereof, whether said breach be of the same or different nature.
2. Nothing herein shall be construed to be a waiver or suspension of, or an agreement on the part of the City to waive or suspend, any zoning law or regulation applicable to the premises except to the extent and for the duration specifically authorized by this Permit.
3. Any notice to be given by City hereunder shall be in writing and shall be sufficiently given if sent by regular mail, postage prepaid, addressed to the owner as follows:

**Contact Name and Address:** Torco Development, Inc.  
11205 South 150<sup>th</sup> Street, Suite 100  
Omaha, Nebraska 68138  
(402) 592-6942

And;

Pedcor Investments, A Limited Liability Company  
770 3<sup>rd</sup> Avenue, S.W.  
Carmel, IN 46032  
Attn: Thomas G. Crowe

### Effective Date:

This Permit shall take effect upon the filing hereof with the City Clerk a signed original hereof.

THE CITY OF LA VISTA

By \_\_\_\_\_  
Douglas Kindig, Mayor

Attest:

\_\_\_\_\_  
Pamela A Buethe, CMC  
Deputy City Clerk

CONSENT AND AGREEMENT

The undersigned does hereby consent and agree to the conditions of this permit and that the terms hereof constitute an agreement on the part of the undersigned to fully and timely perform each and every condition and term hereof, and the undersigned does hereby warrant, covenant and agree to fully and timely perform and discharge all obligations and liabilities herein required by owner to be performed or discharged.

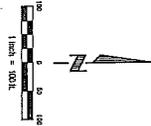
Owner:

\_\_\_\_\_  
TORCO DEVELOPMENT, INC., a Nebraska corporation,<sup>53</sup>  
Pedcor Investments-2008-CXVII, L.P., a  
\_\_\_\_\_  
limited partnership<sup>54</sup>

By: \_\_\_\_\_

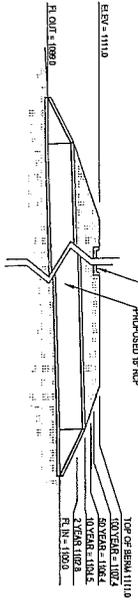
Title: \_\_\_\_\_

Date: \_\_\_\_\_



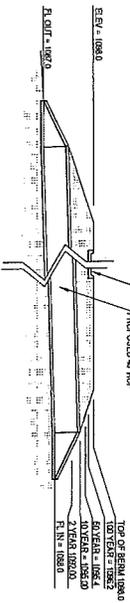
PHASE I	
DESIGN YEAR	DESIGN FLOW (CFS)
1 YEAR	792
2 YEAR	1142
5 YEAR	2142
10 YEAR	2621

DETENTION BASIN #26 OUTLET DETAIL - PHASE I  
NOT TO SCALE

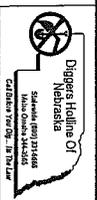


DETENTION BASIN #27 OUTLET DETAIL - PHASE II  
NOT TO SCALE

PHASE II	
DESIGN YEAR	DESIGN FLOW (CFS)
1 YEAR	1022
2 YEAR	1478
5 YEAR	2678
10 YEAR	3303



DETENTION BASIN #24 OUTLET DETAIL - PHASE II  
NOT TO SCALE



Proj No.	22001-153-000
Date	12/4/2009
Designed By	MSB
Drawn By	BLM
Checked By	
Sheet	C1

No.	Date	Description
1	2/22/10	CITY COMMENTS

EXHIBIT "D"  
STORM WATER  
DETENTION PLAN

CIMARRON WOODS REPLANT TWO  
LA VISTA, NEBRASKA

**e+a** E&A CONSULTING GROUP, INC.  
ENGINEERING • PLANNING • FIELD SERVICES  
330 NORTH 157TH STREET OMAHA, NE 68184  
PHONE: (402) 864-6700 FAX: (402) 866-3009  
www.eacg.com

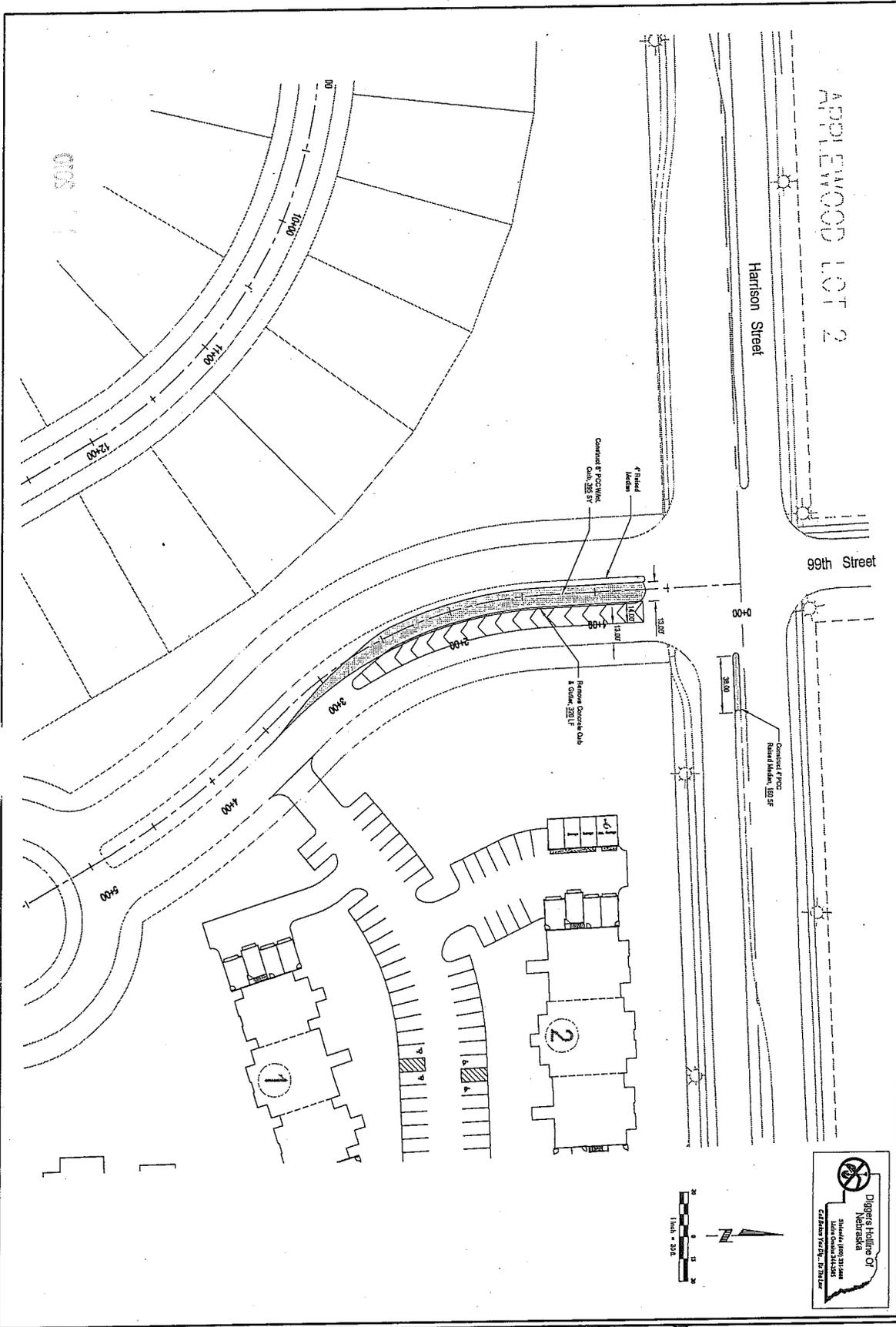


EXHIBIT "E", PAVING & MEDIAN PLAN

3/11/10

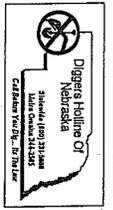
Revisions	
No.	Description
1	1/17/09
2	JAY
3	JAY
4	JAY
5	JAY

EXHIBIT "E"  
PAVING PLAN

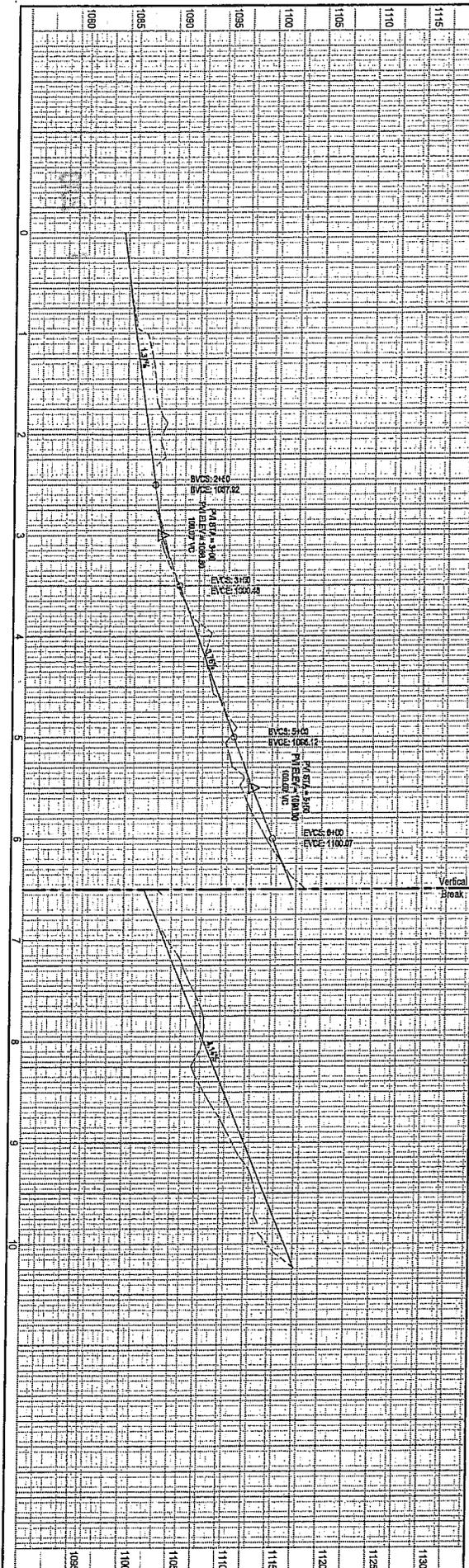
CIMARRON WOODS REPLAT TWO  
99TH STREET & HARRISON STREET  
IMPROVEMENTS  
S.A. LD. NO. 227  
SARPY COUNTY, NEBRASKA



E&A CONSULTING GROUP, INC.  
ENGINEERS • PLANNERS • SURVEYORS  
1909 I O STREET  
OMAHA, NE 68107  
PHONE: (402) 426-4200  
FAX: (402) 426-3588  
7129 SOUTH 24TH STREET, SUITE D  
LINCOLN, NE 68516-8441  
PHONE: (402) 426-7212  
FAX: (402) 426-7218

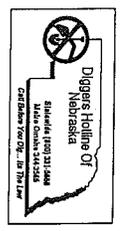
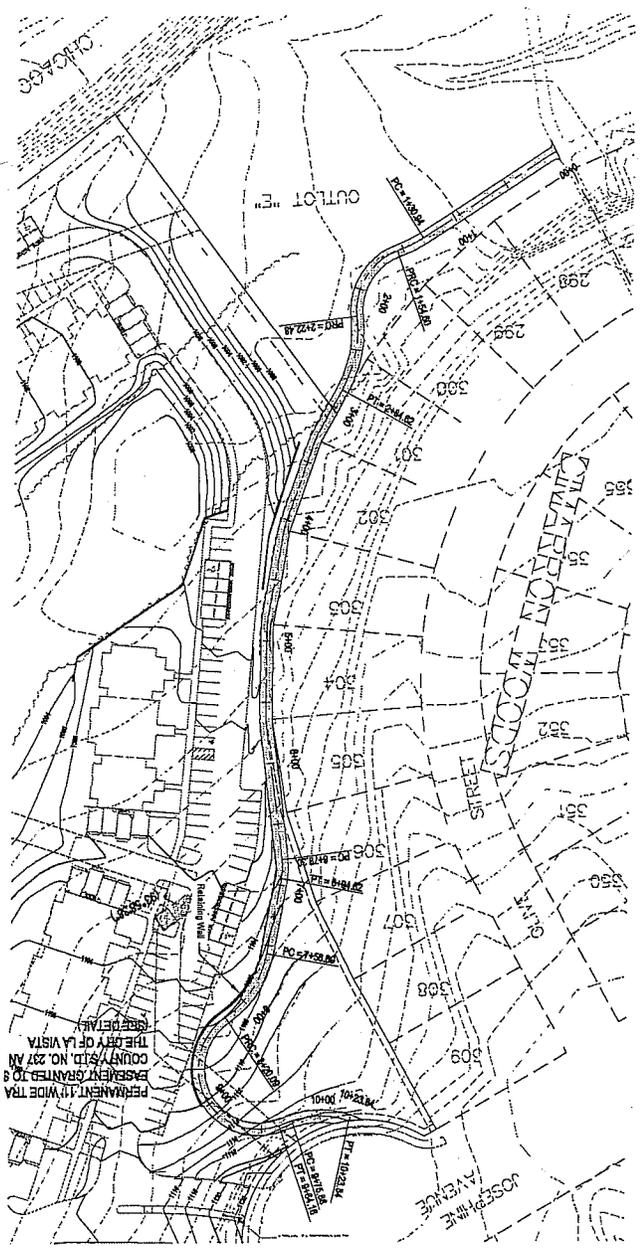






TRAIL PROFILE

Scale: Horiz. 1"=50'  
Vert. 1"=5'



Proj. No.	Revision
PP021151 001	
Date	Description
12/01/2009	
Designed By: RDW	
Drawn By: KMM	
Checked By:	
Sheet 1 of 1	

EXHIBIT 'G'  
TRAIL PLAN

CIMMARON WOODS REPLAT TWO  
SARPY COUNTY, NEBRASKA



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

330 NORTH 157TH STREET CHAMA, NE 68154  
PHONE: (402) 835-4700 FAX: (402) 835-2899  
www.eagroup.com



E&A CONSULTING GROUP  
 330 N. 117TH STREET  
 OMAHA, NEBRASKA 68154

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

## SUMMARY OF ESTIMATED PROJECT COSTS

PROJECT:	CIMARRON TERRACE APT.	JURISDICTION:	LA VISTA
PROJECT NO.:	P2002.153.002	NO. APT. UNITS	276
DEVELOPER:	PEDCOR		
ESTIMATED BY:	MAW	DATE:	2/1/2010 Revised 3/11/10

### CIMARRON TERRACE APARTMENTS

ITEM	CONSTRUCTION	TOTAL	PRIVATE	SPECIAL ASSESSMENT	G.O.	OTHERS
GRADING	\$284,400	\$284,400	\$284,400			
PUBLIC SANITARY SEWER	\$37,700	\$37,700	\$37,700			
PRIVATE SANITARY SEWER	\$66,500	\$66,500	\$66,500			
PUBLIC PAVING 99TH	\$13,305	\$18,361			\$18,361	
PRIVATE PAVING 99TH	\$10,500	\$10,500	\$10,500			
99TH STREET SIGNAL	\$84,558	\$95,777	\$25,000		\$15,743	\$55,034
INTERNAL PRIVATE PAVING	\$628,000	\$628,000	\$628,000			
WATER	\$79,950	\$79,950	\$79,950			
UNDERGROUND ELECTRICAL	\$37,260	\$37,260	\$37,260			
PUBLIC STORM SEWER	\$54,390	\$76,146		\$65,979	\$10,167	
PRIVATE STORM SEWER	\$152,130	\$152,130	\$152,130			
PLAY STRUCTURE	\$55,000	\$55,000	\$55,000			
TRAIL IMPROVEMENTS	\$62,275	\$87,185			\$87,185	
LAVISTA SPECIAL SEWER/DRAINAGE FEE	\$236,808	\$236,808	\$236,808			
BOND FEES	\$2,725	\$3,270			\$3,270	
ADMINISTRATIVE FEES	\$5,698	\$5,698			\$5,698	
<b>TOTALS</b>	<b>\$1,811,198</b>	<b>\$1,874,684</b>	<b>\$1,613,248</b>	<b>\$65,979</b>	<b>\$140,423</b>	

VALUATION:	<u># UNITS</u>	<u>AVE. PRICE</u>	=	<u>TOT. VALUATION</u>
APARTMENT	276 UNITS @	\$50,000		\$13,800,000

TOTAL DISTRICT VALUATION: \$13,800,000

G.O. DEBT RATIO = **1.02%** (USING 100% OF TOTAL VALUATION)

SPECIALS TO APARTMENTS	\$65,979 : PER UNIT	\$239	
PRIVATE PER APARTMENT	\$1,613,248 : PER UNIT	\$ 5,845	

PROJECT:

GRADING

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	COST
1	COMMON EXCAVATION ON SITE C TO F	100000	CY	1.10	110,000.00
2	HAUL IN FROM OFF SITE	30000	CY	5.00	150,000.00
3	SILT FENCE	3000	LF	2.50	7,500.00
4	STRIP, STOCKPILE AND RE-SPREAD TOPSOIL	16000	CY	0.90	14,400.00
5	CONSTRUCTION ENTRANCE	1	LS	2,500.00	2,500.00
TOTAL ESTIMATED CONSTRUCTION COST					284,400.00

PUBLIC SANITARY SEWER (PAID PRIVATELY)

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	COST
1	8 INCH SANITARY SEWER PIPE	1170	L.F.	15.00	17,550.00
2	6 INCH SANITARY SEWER PIPE	50	L.F.	15.00	750.00
3	54 IN. I.D. SANITARY MANHOLE	96	V.F.	175.00	16,800.00
7	CONNECT TO EX.	1	EA	700.00	700.00
8	CRUSHED ROCK BEDDING	100	TON	19	1,900.00
TOTAL ESTIMATED CONSTRUCTION COST					\$37,700.00

PRIVATE SANITARY SEWER

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	COST
1	8 INCH SANITARY SEWER PIPE	2000	L.F.	15.00	30,000.00
2	6 INCH SANITARY SEWER PIPE	750	L.F.	15.00	11,250.00
3	54 IN. I.D. SANITARY MANHOLE	120	V.F.	175.00	21,000.00
7	CONNECT TO EX.	2	EA	700.00	1,400.00
8	CRUSHED ROCK BEDDING	150	TON	19	2,850.00
TOTAL ESTIMATED CONSTRUCTION COST					\$66,500.00

PROJECT:

PUBLIC PAVING(WIDEN 99TH STREET)

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	COST
1	EARTHWORK (EXCAVATION)	150	C.Y.	\$3.00	\$450.00
2	8" PC CONCRETE PAVEMENT	395	S.Y.	\$25.00	9,875.00
3	MODIFY MEDIANS	760	SF	\$3.00	2,280.00
4	PAVEMENT MARKINGS	1	LS	\$700.00	700.00
TOTAL ESTIMATED CONSTRUCTION COST					\$13,305

TOTAL DISTRICT COST @ 138%

\$18,361

100% G.O.

01/5 1

PROJECT: 99TH & HARRISON TRAFFIC SIGNAL

ITEMS TO BE FURNISHED AND INSTALLED BY DEVELOPER / SID

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
1	COMB. MAST ARM SIGNAL & LIGHTING POLE(TYPE CMP 0-12-40)	2	EA	\$8,150.00	\$16,300.00
2	3" PVC CONDUIT - BORED	46	LF	\$16.00	\$736.00
3	3" PVC CONDUIT - TRENCHED	35	LF	\$6.75	\$236.25
4	2" PVC CONDUIT - BORED	356	LF	\$10.50	\$3,738.00
5	2" PVC CONDUIT - TRENCHED	149	LF	\$5.00	\$745.00
6	INSTALL 200 wt STREET LIGHT LUMINAIRE	2	EA	\$405.00	\$810.00
7	6-PAIR COMMUNICATION CABLE	293	LF	\$1.45	\$424.85
8	SERVICE DISCONNECT PEDESTAL	1	EA	\$3,850.00	\$3,850.00
9	CONTINGENCY	1	LS	\$2,684.01	\$2,684.01
SUBTOTAL, CONSTRUCTION COSTS					\$29,524.11
SOFT COSTS @ 38%					\$11,219.16
SUBTOTAL, SID/DEVELOPER COSTS					\$40,743.27

ITEMS TO BE FURNISHED AND INSTALLED BY THE CITY OF OMAHA

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
1	MAST ARM - 40'	3	EA	\$2,500.00	\$7,500.00
2	MAST ARM - 35'	1	EA	\$2,200.00	\$2,200.00
3	TRAFFIC SIGNAL (TYPE TS-1)	8	EA	\$785.00	\$6,280.00
4	TRAFFIC SIGNAL (TYPE TS-1A)	4	EA	\$645.00	\$2,580.00
5	PEDESTRIAN SIGNAL (TYPE PS-1)	4	EA	\$500.00	\$2,000.00
6	PEDESTRIAN PUSH BUTTON (TYPE PPB)	3	EA	\$125.00	\$375.00
7	TRAFFIC SIGNAL CONTROLLER/CABINET, TYPE 170/336S	1	EA	\$9,500.00	\$9,500.00
8	16/C #14 AWG TAFFIC SIGNAL CABLE	545	LF	\$5.10	\$2,779.50
9	2/C #16 PPB LEAD-IN CABLE	293	LF	\$1.20	\$351.60
10	GROUND CONDUCTOR	293	LF	\$1.05	\$307.65
11	PROVIDE & INSTALL MODULAR VIDEO DETECTION SYSTEM	1	LS	\$8,500.00	\$8,500.00
12	SERVICE CABLE (SC)	200	LF	\$2.60	\$520.00
13	SERVICE ENTRANCE CABLE (SEC)	200	LF	\$1.65	\$330.00
14	PROVIDE & INSTALL WIRELESS INTERCONNECT SYSTEM	1	LS	\$9,500.00	\$9,500.00
15	18" STREET NAME SIGN	4	EA	\$465.00	\$1,860.00
16	OVERHEAD SIGN	3	EA	\$150.00	\$450.00
SUBTOTAL, ITEMS BY OMAHA					\$55,033.75
TOTAL COSTS FOR SIGNAL					\$95,777.02

PROJECT: PRIVATE PAVING(WIDEN 99TH STREET)

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	COST
1	CURB AND MEDIAN REMOVAL 99TH ST.	1	LS	\$2,500.00	\$2,500.00
2	RELOCATE / REPLACE EXISTING LANDSCAPING	1	LS	\$8,000.00	8,000.00
TOTAL ESTIMATED CONSTRUCTION COST					\$10,500

PROJECT: INTERNAL PRIVATE PAVING & SIDEWALKS

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	COST
1	CURB AND GUTTER.	8400	LF	\$10.00	\$84,000.00
2	ASPHALT PAVING	26000	SY	\$17.00	442,000.00
3	CONCRETE SIDEWALKS & TRAILS	34000	SF	\$3.00	102,000.00
TOTAL ESTIMATED CONSTRUCTION COST					\$628,000

PROJECT: INTERIOR WATER

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	COST
1	6" INTERIOR WATER	3700	L.F.	\$16.00	\$59,200.00
2	GATE VALVES	9	EA	\$750.00	\$6,750.00
3	HYDRANT ASSEMBLY	5	EA	\$1,800.00	\$9,000.00
4	MICS FITTINGS & CONNECTIONS	1	LS	\$5,000.00	\$5,000.00
TOTAL ESTIMATED CONSTRUCTION COST					\$79,950.00

PROJECT: ELECTRICAL SERVICE

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	COST
1	ELECTRICAL SERVICE APARTMENT	276	UNIT	\$135.00	\$37,260.00
TOTAL ESTIMATED CONSTRUCTION COST					\$37,260.00

PROJECT: PUBLIC STORM SEWER

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	COST
1	18" RCP	280	L.F.	\$25.00	\$7,000.00
2	24" RCP	270	L.F.	\$32.00	\$8,640.00
3	30" RCP	160	L.F.	\$38.00	\$6,080.00
4	36" RCP	274	L.F.	\$55.00	\$15,070.00
5	STORM MANHOLE.	14	V.F.	\$350.00	\$4,900.00
6	CURB INLET	3	EACH	\$1,500.00	\$4,500.00
7	AREA INLET	1	EACH	\$2,500.00	\$2,500.00
8	FES	5	EACH	\$700.00	\$3,500.00
9	RIP RAP	100	TON	\$22.00	\$2,200.00
TOTAL ESTIMATED CONSTRUCTION COST					\$54,390

TOTAL DISTRICT COST @ 140%

\$76,146

G.O. PORTION

1	18" RCP	280	L.F.	\$0.00	\$0.00
2	24" RCP	270	L.F.	\$0.00	\$0.00
3	30" RCP	160	L.F.	\$6.00	\$960.00
4	36" RCP	274	L.F.	\$23.00	\$6,302.00

TOTAL G.O. CONSTR. \$7,262.00  
 TOTAL G.O. w/ 140% \$10,166.80

PROJECT:

PRIVATE STORM SEWER

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	COST
1	15" RCP	1220	L.F.	\$21.00	\$25,620.00
2	18" RCP	1030	L.F.	\$25.00	\$25,750.00
3	24" RCP	870	L.F.	\$32.00	\$27,840.00
4	30" RCP	180	L.F.	\$38.00	\$6,840.00
5	36" RCP	0	L.F.	\$45.00	\$0.00
6	48" RCP CULVERT	130	L.F.	\$80.00	\$10,400.00
7	48" FES	2	EACH	\$1,200.00	\$2,400.00
8	POST CONSTRUCTION STORM INLET CONTROLS	2	EACH	\$3,500.00	\$7,000.00
9	STORM MANHOLE.	28	V.F.	\$350.00	\$9,800.00
10	CURB INLET	29	EACH	\$1,500.00	\$43,500.00
11	AREA INLET	4	EACH	\$2,500.00	\$10,000.00
12	FES(15"-36")	6	EACH	\$700.00	\$4,200.00
	RIP RAP	200	TON	\$22.00	\$4,400.00
TOTAL ESTIMATED CONSTRUCTION COST					\$152,130

PROJECT:

PLAY STRUCTURE (PRIVATE)

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	COST
1	PLAY STRUCTURE	1	LS	\$55,000.00	\$55,000.00
TOTAL ESTIMATED CONSTRUCTION COST					\$55,000.00

PROJECT:

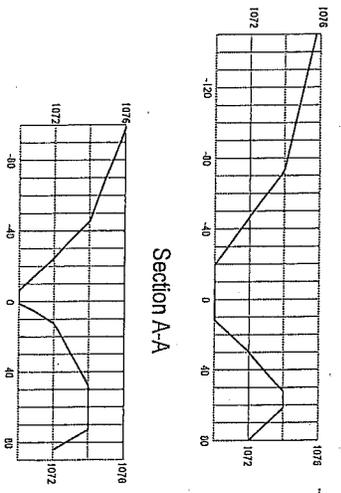
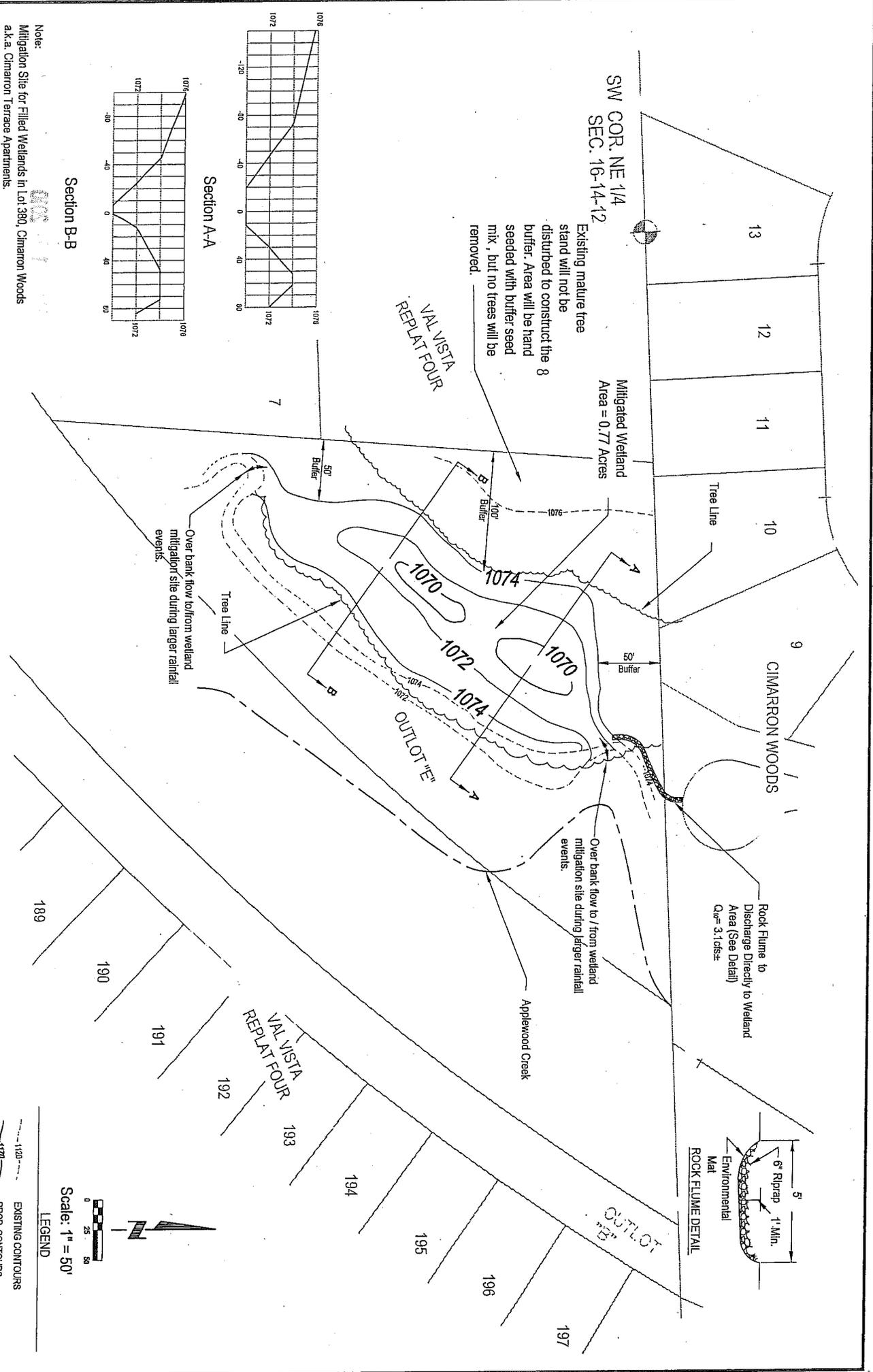
CONCRETE TRAIL (PUBLIC)

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	COST
1	GRADING	1500	CY	\$2.00	\$3,000.00
2	SUBGRADE PREPARATION	400	CY	\$2.00	\$800.00
3	SEGMENTAL BLOCK RETAINING WALL	1000	SF	\$25.00	\$25,000.00
4	5" CONCRETE TRAIL	10300	SF	\$3.25	\$33,475.00
TOTAL ESTIMATED CONSTRUCTION COST					\$62,275.00
TOTAL DISTRICT COST @ 140%				\$87,185	
100% GENERAL OBLIGATION					

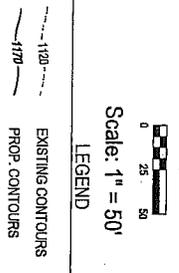
PROJECT:

LA VISTA SPECIAL SEWER/DRAINAGE FEE

NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	COST
1	PHASE I	84	UNITS	\$858.00	\$72,072.00
2	PHASE II	192	UNITS	\$858.00	\$164,736.00
TOTAL ESTIMATED CONSTRUCTION COST					\$236,808.00
100% PRIVATE COST					



Note:  
Mitigation Site for Filled Wetlands in Lot 380, Cimarron Woods  
a.k.a. Cimarron Terrace Apartments.



Proj. No.	P2002153.002	Revisions	
Date	3/24/2006		
Designed By	MMW		
Drawn By	DHC		
Scale	1" = 50'		
Sheet	1 of 1		

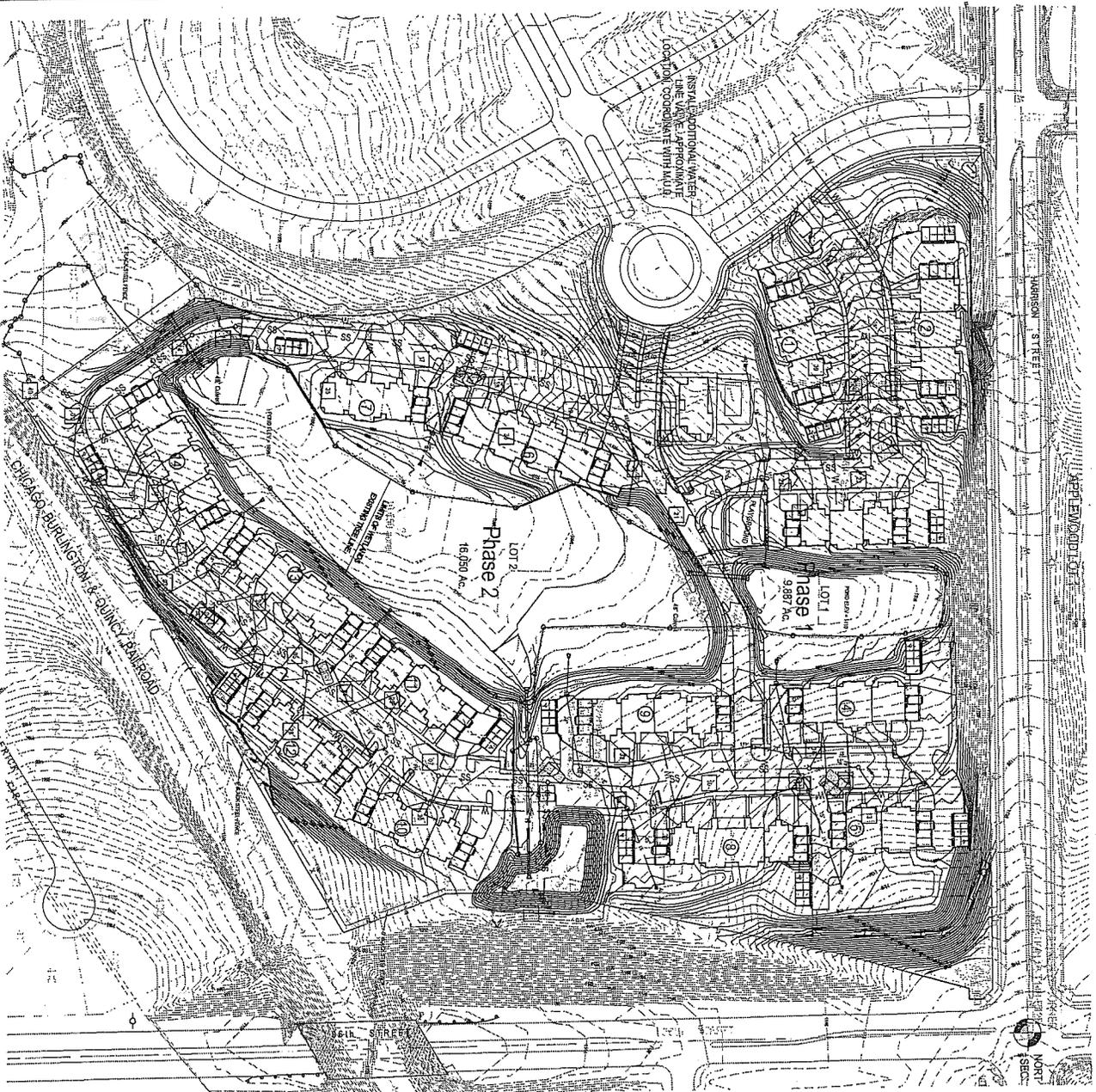
EXHIBIT "H"  
WETLANDS MITIGATION PLAN  
OUTLOT 'E', VAL VISTA

CIMARRON WOODS REPLAT TWO  
SARPY COUNTY, NEBRASKA



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

330 NORTH 14TH STREET, OMAHA, NE 68154  
PHONE: (402) 865-4700 FAX: (402) 865-5588  
WWW.EAGROUP.COM

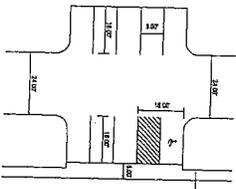


INSTALL ADDITIONAL WATER LINE AND APPROXIMATE LOCATION COORDINATE WITH MAIN

Phase 2  
16.050 Ac.

Phase 1  
9.987 Ac.

TYPICAL PAVING DETAIL



PROJECT DENSITIES		UNIT DENSITIES	
PHASE	TOTAL	PHASE 1	PHASE 2
PHASE 1	9,987	21	24
PHASE 2	16,050	27	28
TOTAL	26,037	48	52

- LEGEND**
- DESTROYED CONTROLS
  - PROPOSED CONTROLS
  - PROPOSED SHADING STRIPS
  - PROPOSED STAIR STRIPS
  - THIS REMOVAL AREA
- EXISTING AND PROPOSED CONTROL POINTS**
- EXISTING CONTROL POINT
  - PROPOSED CONTROL POINT
  - PROPOSED SHADING STRIP
  - PROPOSED STAIR STRIP

- NOTES**
1. EXISTING AND PROPOSED CONTROLS ARE SHOWN AT FOOT INTERNALS AND ARE BASED ON 100% DATA.
  2. EXISTING AND PROPOSED CONTROLS ARE SHOWN AT FOOT INTERNALS AND ARE BASED ON 100% DATA.
  3. THESE SHALL BE NO DIRECT VEHICULAR ACCESS DRIP WITH STREET ON HARRISON STREET FROM ANY ADJACENT SIDE STREETS.
  4. WATER SERVICES SHALL BE PROVIDED BY MAIN, BACKFLOW PREVENTER SHALL, PROTECT GAS SERVICE.
  5. ALL STORM SEWER SIZES ARE 30" UNLESS OTHERWISE NOTED.
  6. EXISTING LOCATIONS AND NUMBER SUBJECT TO REVISIONS AND APPROVAL OF THE CITY OF AVARIA.
  7. THE ENGINEER'S RESPONSIBILITY FOR OBTAINING NECESSARY PERMITS FROM THE AGENCIES LISTED ON DRAWING IS TO BE DETERMINED BY THE CLIENT. THE ENGINEER'S RESPONSIBILITY IS TO PROVIDE THE NECESSARY INFORMATION TO THE CLIENT.
  8. A REBARMENT INSPECTION, UTILITY, FULL UTILITY, RESTROOMS, AND OFFICES.
  9. A REBARMENT INSPECTION, UTILITY, FULL UTILITY, RESTROOMS, AND OFFICES.
  10. A REBARMENT INSPECTION, UTILITY, FULL UTILITY, RESTROOMS, AND OFFICES.
  11. PHASE 1 THROUGH SCIENTIFIC CONSTRUCTION.
  12. CITY COUNCIL APPROVAL.
  13. CITY COUNCIL APPROVAL.
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**LEGAL RESERVATION:**  
A PORTION OF THE CEMARRON WOODS, A SUBDIVISION LOCATED IN THE CITY OF AVARIA, IS THE SUBJECT OF A REBARMENT INSPECTION, UTILITY, FULL UTILITY, RESTROOMS, AND OFFICES. THE PROJECT IS BEING DEVELOPED IN PHASES 1 AND 2. CEMARRON WOODS REPLAT TWO, CONTAINING 2,331 ACRES, PART OF THE...

**ENGINEER:**  
E&A CONSULTING GROUP, INC.  
220 NORTH 11TH STREET  
OAKA, NEBRASKA 68134

**PROJECT SITE:**  
VICINITY MAP



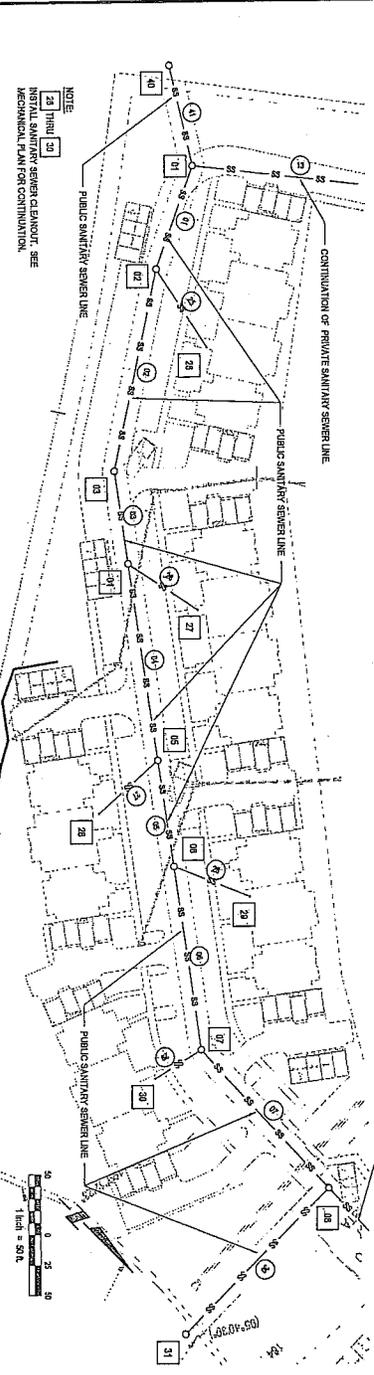
**E&A CONSULTING GROUP, INC.**  
ENGINEERS • PLANNERS • SURVEYORS

220 NORTH 11TH STREET OAKA, NE 68134  
PHONE: 402-892-0000 FAX: 402-892-0000  
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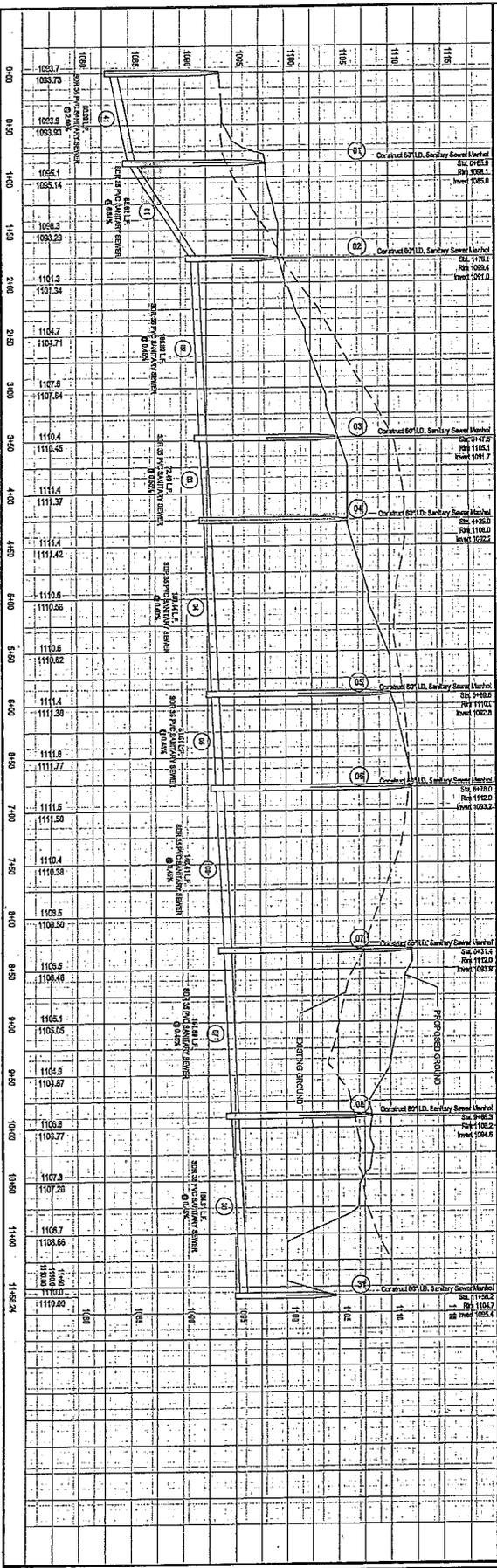
CONSTRUCT SANITARY SEWER MANHOLE				
a/d	Description	Depth	Height	Existing
01	Construct 10.5' Sanitary Sewer Manhole	10.5' (105.00 FT)	5' (150.00 FT)	27271023
02	Construct 10.5' Sanitary Sewer Manhole	10.5' (105.00 FT)	5' (150.00 FT)	27271023
03	Construct 10.5' Sanitary Sewer Manhole	10.5' (105.00 FT)	5' (150.00 FT)	27271023
04	Construct 10.5' Sanitary Sewer Manhole	10.5' (105.00 FT)	5' (150.00 FT)	27271023

CONSTRUCT SANITARY SEWER MANHOLE				
a/d	Description	Depth	Height	Existing
05	Construct 10.5' Sanitary Sewer Manhole	10.5' (105.00 FT)	5' (150.00 FT)	27271023
06	Construct 10.5' Sanitary Sewer Manhole	10.5' (105.00 FT)	5' (150.00 FT)	27271023
07	Construct 10.5' Sanitary Sewer Manhole	10.5' (105.00 FT)	5' (150.00 FT)	27271023
08	Construct 10.5' Sanitary Sewer Manhole	10.5' (105.00 FT)	5' (150.00 FT)	27271023

INSTALL SANITARY SEWER PIPE						
a/d	Material	Size	Length	Slope	Existing	Notes
01	30" PVC SANITARY SEWER	30"	63.0	0.0%		
02	30" PVC SANITARY SEWER	30"	153.0	0.0%		
03	30" PVC SANITARY SEWER	30"	73.0	0.0%		
04	30" PVC SANITARY SEWER	30"	153.0	0.0%		
05	30" PVC SANITARY SEWER	30"	153.0	0.0%		
06	30" PVC SANITARY SEWER	30"	153.0	0.0%		
07	30" PVC SANITARY SEWER	30"	153.0	0.0%		
08	30" PVC SANITARY SEWER	30"	153.0	0.0%		
09	30" PVC SANITARY SEWER	30"	153.0	0.0%		
10	30" PVC SANITARY SEWER	30"	153.0	0.0%		
11	30" PVC SANITARY SEWER	30"	153.0	0.0%		



NOTE:  
 23 THROUGH 30  
 INSTALL SANITARY SEWER CLEANOUT. SEE MECHANICAL PLAN FOR CONTINUATION.



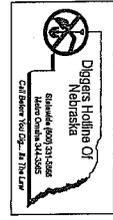
Proj No.	Date	Description
P2002.153.002	3/1/2010	CITY COMMENTS
1	2/2/2010	

EXHIBIT "K-1"  
 PUBLIC  
 SANITARY SEWER  
 PLAN AND PROFILE

CIMARRON WOODS  
 REPLAT TWO  
 SAPPY COUNTY, NEBRASKA

**E&A CONSULTING GROUP, INC.**  
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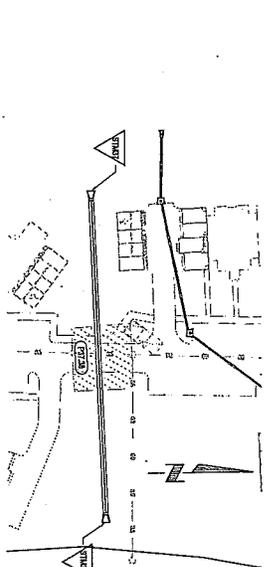
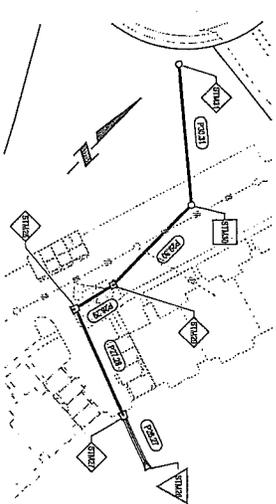
330 NORTH 117TH STREET OMAHA, NE 68154  
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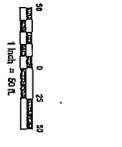
CONSTRUCT AREA INLET				
ID	Description	Depth	Height	Ending
ST02	Concrete Type IV Catch Basin	RM = 100.00 INV IN = 100.00 (PT) INV OUT = 100.00 (PT)	5183.15	2720.18
ST04	Concrete Type IV Catch Basin	RM = 100.00 INV IN = 100.00 (PT) INV OUT = 100.00 (PT)	5187.18	2720.18
ST05	Concrete Type IV Catch Basin	RM = 100.00 INV IN = 100.00 (PT) INV OUT = 100.00 (PT)	5188.25	2720.25

CONSTRUCT STORM SEWER MANHOLE				
ID	Description	Depth	Height	Ending
ST03	Concrete Storm Sewer Manhole	RM = 100.00 INV IN = 100.00 (PT) INV OUT = 100.00 (PT)	5183.25	2720.25

INSTALL FLARED END SECTION				
ID	Description	Depth	Height	Ending
ST06	Install 30" Flared End Section	RM = 100.00 INV IN = 100.00 (PT) INV OUT = 100.00 (PT)	5183.25	2720.18
ST07	Install 30" Flared End Section	RM = 100.00 INV IN = 100.00 (PT) INV OUT = 100.00 (PT)	5183.25	2720.25

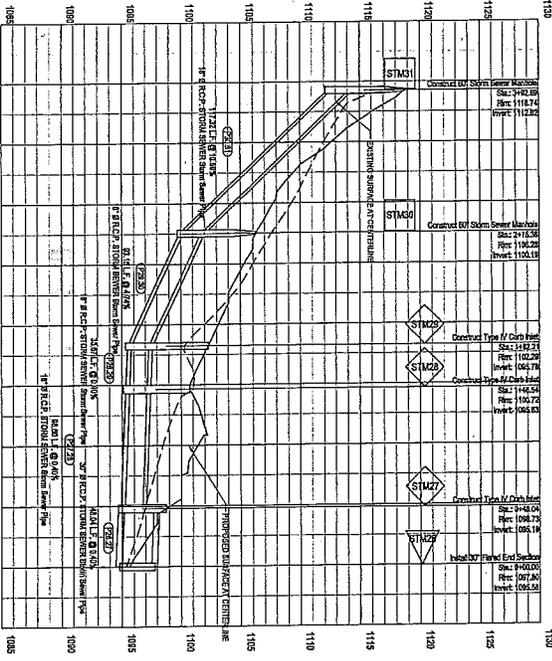


INSTALL SANITARY SEWER PIPE				
ID	Material	Size	Length	Slope
P207	RCP STORM SEWER	36"	43.2'	0.00%
P208	RCP STORM SEWER	36"	82.4'	0.00%
P209	RCP STORM SEWER	36"	3.5'	0.00%
P210	RCP STORM SEWER	36"	8.0'	0.00%
P211	RCP STORM SEWER	36"	12.2'	0.00%
P212	RCP STORM SEWER	36"	27.0'	0.00%

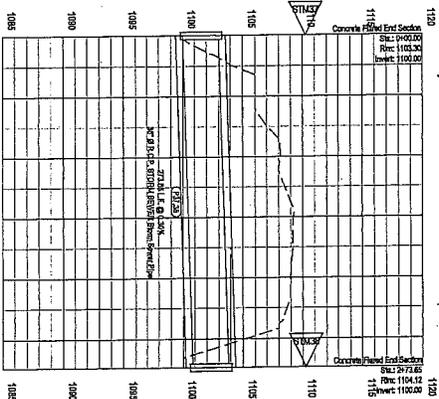


Scale: Horiz 1"=50'  
Vert 1"=5'

Pipe Run CP-STE-STM03 PROFILE



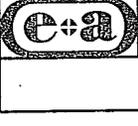
Pipe Run CP-STE-STM05 PROFILE



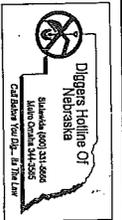
Proj No	Revision
P2002.153.007	
Date	Date
Designed By: LBS	
Drawn By: B.W.	
Checked By:	
Sheet 2 of 2	

EXHIBIT "K-2"  
PUBLIC STORM  
SEWER  
PLAN AND PROFILE

CIMARRON WOODS  
REPLAT TWO  
DASBY COUNTY, NEBRASKA

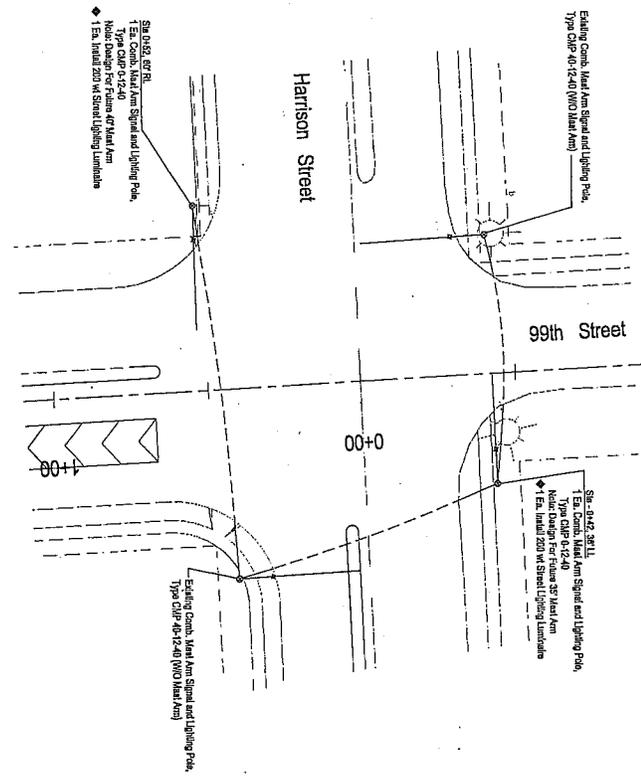
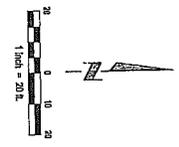
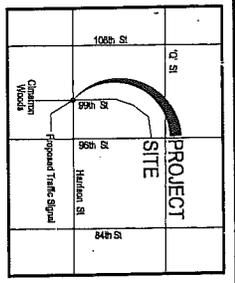


E&A CONSULTING GROUP, INC.  
ENGINEERING • PLANNING • FIELD SERVICES  
330 NORTH 117TH STREET OMAHA, NE 68154  
PHONE: (402) 655-0700 FAX: (402) 655-3399  
www.eacg.com



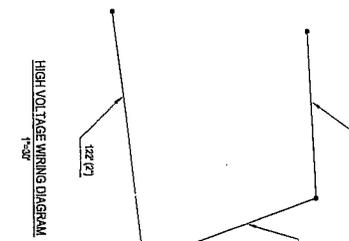
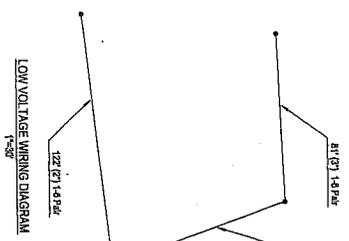
Improvement Plans for  
**CIMARRON WOODS**  
 TRAFFIC SIGNALS - SECTION II

Located in the East 1/2 of the NW 1/4 and also together with part of the NE 1/4 of Section 16, Township 14 North, Range 11 East, of the 6th P.M.  
 S & L D. No. 237  
 Sarpy County, Nebraska



**LEGEND**

---	ROWLINE
---	CONDUIT IN TRENCH
---	CONDUIT UNDER ROADWAY
⊙	PULL BOX
⊙	LUMINAIRE



- GENERAL NOTES**
- Indicates material will be supplied by GPO. Conduit shall be installed at 4' and 8' segments.
  - All utilities indicated that are disturbed by excavation and building operations shall be replaced and reconnected to their pay here.
  - The location of all aerial and underground utilities are not indicated on these plans. Underground utilities whether shown or not will be located by utilities upon the request of protection of all underground and aerial utilities and connections.
  - Conductor to supply and install the service cable (S-C) from the meter room to the service disconnect (S-D) and the service entrance cable (S-E) and according to the manufacturer's instructions. The service disconnect shall be installed in the meter room and a service lighting shall (S-L) from the service disconnect (S-D) to the service entrance cable (S-E) and the service entrance cable (S-E) shall be installed in the meter room.
  - Spindle systems may exist within the area of the signal conductor. The conductor shall determine if spindle systems exist by the use of probing methods. The coil to repair any damage to spindle systems caused by the conductor shall be installed in the meter room.
  - The conductor shall conduct the City of Omaha with the utility to be installed in order to be installed in the meter room.
  - The conductor shall conduct the City of Omaha with the utility to be installed in order to be installed in the meter room.
  - The conductor shall conduct the City of Omaha with the utility to be installed in order to be installed in the meter room.

**APPROXIMATE QUANTITIES**

ITEM	DESCRIPTION	QUANTITY	UNIT
1.	CONSP. MAST ARM SIGNAL AND LIGHTING POLE (TYPE CIP 40-12-40)	2	EA
2.	3" PVC CONDUIT - BORED	48	LF
3.	2" PVC CONDUIT - BORED	358	LF
4.	2" PVC CONDUIT - TRENCHED	148	LF
5.	INSTALL 200' M STREET LIGHT LUMINAIRE	2	EA
6.	INSTALL 200' M STREET LIGHT LUMINAIRE	2	EA
7.	SEPARATE DISCONNECT COUPLER	1	EA
8.	SEPARATE DISCONNECT TRENCH	1	EA

K:\Projects\2002\153\p02\Traffic Signal 99th Street\Traffic Signal Plan-000.dwg, 1/29/2010 8:59:39 AM, KIP 01 Bond Merge.pc3

EXHIBIT "L", HARRISON STREET & 99TH STREET TRAFFIC SIGNAL PLAN, 3/1/10

Prof. No. 2002.153.002 Date: 01/09/2010 Designed by: JAV Drawn by: JAV Checked by: Sheet 1 of 1	Revisions <table border="1"> <thead> <tr> <th>Date</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Date	Description			<b>HARRISON STREET &amp; 99TH STREET TRAFFIC SIGNAL PLAN</b> <b>CIMARRON WOODS REPLAT TWO IMPROVEMENTS</b> S.A. I.D. NO. 237 SARPY COUNTY, NEBRASKA	1201 O STREET OMAHA, NE 68117 PHONE: (402) 865-4700 FAX: (402) 865-2625	<b>E&amp;A CONSULTING GROUP, INC.</b> ENGINEERS • PLANNERS • SURVEYORS 7130 SOUTH 29TH STREET, SUITE D LINCOLN, NE 68516-5841 PHONE: (402) 438-1212 FAX: (402) 438-7211
Date	Description							

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
2005-00100  
2005 JAN -3 P 6:15 P

*Lloyd J. Dowding*  
REGISTER OF DEEDS

COUNTER DE C.E. B  
VERIFY DM D.E. B  
PROOF DM  
FEES \$ 741.00  
CHECK# \_\_\_\_\_  
CHG. MOA CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT \_\_\_\_\_ NCR \_\_\_\_\_  
*Fullenkamp Doyle & Johnson*



**THIS PAGE ADDED  
FOR RECORDING  
INFORMATION.**

**DOCUMENT STARTS ON  
NEXT PAGE.**

**LLOYD J. DOWDING**

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

A

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

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

WITNESSETH:

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

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

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

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

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

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

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

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

Return to: Fullenkamp, Doyle + Johnson  
11440 W. Center Rd, Ste C  
Omaha NE 68144

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

NOW, THEREFORE, IT IS AGREED as follows:

1. Definitions

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

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

C

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

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

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

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

- H. "Maximum general obligation" of the District shall mean the amount by which the total indebtedness of the District incurred in respect to all improvements within or for the benefit of the subdivision exceeds the total of special assessments levied or to be levied in respect to all such improvements.
- I. "Planned Unit Development" shall mean a development under Section 5.15 PUD-1 Planned Unit Development of the La Vista Zoning Code. The meaning of words therein shall control the meaning of the same words herein, except where the meaning herein is clearly intended to be otherwise.
- J. "Plat" or "the Plat," unless a contrary intent is indicated, shall mean the final plat approved by the City Council, a copy of which is attached as Exhibit "B".
- K. "Property benefited" shall mean property within the subdivision (Exhibit "B") which constitutes buildable sites, as defined in Subsection 5-B, infra.

D

- L. "Burlington Northern Railroad" or "Railroad" shall mean the Chicago, Burlington & Quincy Railroad, now known as Burlington Northern & Santa Fe Railroad.
- M. "Cimarron Woods West Homeowners' Association" or "Tract A Homeowners' Association" shall be the property owners association for Tract "A" (herein sometimes referred to as "Tract A Property Owners Association") and shall mean the Nebraska nonprofit corporation formed pursuant to, or in furtherance of, the Cimarron Woods West Declaration of Covenants, etc. and consisting of all property owners of Tract "A" in the manner and for such purposes as are provided in the "Cimarron Woods West Declaration of Covenants, etc." prepared by the Developer and approved by the City, for the development of Tract "A" of the Subdivision.  
"Cimarron Woods South Homeowners' Association" or "Tract B Homeowners' Association" shall be the property owners association for Tract "B" (herein sometimes referred to as "Tract B Property Owners Association") and shall mean the Nebraska nonprofit corporation formed pursuant to, or in furtherance of, the Cimarron Woods South Declaration of Covenants, etc. and consisting of all property owners of Tract "B" in the manner and for such purposes as are provided in the "Cimarron Woods South Declaration of Covenants, etc." prepared by the Developer and approved by the City, for the development of Tract "B" of the Subdivision.

Said Declarations shall, as among other subjects, provide for the Homeowners' Association to maintain and repair open space, buffer areas and recreational facilities and land in a manner consistent with this Agreement, and in default thereof, shall provide for the City's right to take such actions as needed to cause any deficiency or default therein to be assessed against lots within the Subdivision.

- N. "Storm water detention" shall mean a system of open, temporary detention of storm water temporarily relieving the flow through the storm sewer system or storm drainage system during heavy storm situations or as otherwise needed.
- O. "Subdivision Tract A" or "Tract A" shall mean the 188.987 acres to be developed by Torco, and described by metes and bounds as Tract "A" on the final plat.
- P. "Subdivision Tract B" or "Tract B" shall mean the 36.67 acres to be developed by Sudbeck and described by metes and bounds as Tract "B" on the final plat.
- Q. "Subdivision Buffer Zone" or "Buffer Zone" shall mean the exterior buffer areas shown per the Park & Boulevard Plan (Exhibit "E-1") hereto. "Industrial Buffer Zone" shall mean the thirty foot (30') easement along the borders of the Subdivision and have a common boundary with the industrial areas bordering the Subdivision on the west and on the south, including tree plantings, maintenance and replacement thereof along the entire length of said easement as located on the Park & Boulevard Plan (Exhibit "E-1") hereto, and a six foot (6') wood fence within the easement along the west edge of the Subdivision.

2. Authorized Public Improvements

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

E

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

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

F

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

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

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

3. Unauthorized Expenditures of District Funds

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

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

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

4. Allocation of Cost of Improvements

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

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

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

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

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

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

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

5. Special Assessments

Developer and District covenant and agree:

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

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

B. Levy of Special Assessments. Except as may otherwise be agreed to by City, all said District's levy of special assessments shall be made in such a manner so as to assure that the entire burden of the levy is borne on an equitable basis by lots or parcels or portions of lots or parcels which are truly buildable sites. If any lots, parcel or part thereof, or other are within the area to be developed is not a buildable site by reason of insufficient size or dimensions or by reason of its having been acquired for any public purpose, or by reason of easement of similar burdens or by reason of floodway or flood plain restrictions, or for any other reason, then no portion of the total amount to be levied for special assessments shall be levied against said unbuildable lot, parcel, or other area, and the amount that otherwise would have been levied against same shall be spread and levied against the lots or parts thereof, within the area to be developed which are buildable sites. The City's Engineer will determine which sites, if any, are not buildable sites. Attached hereto as Exhibit "G" is Developer's determination of the lots within the subdivision which Developer considers to be buildable lots. Except as City may otherwise authorize, costs shall be allocated and special assessments shall be levied on a front footage basis.

C. Notice to City. At least forty-five (45) days prior to setting the date of any hearing of the Board of Trustees of the District to be held for the purpose of equalizing or levying special assessments against property benefited by any improvements constructed by District, submit to City in writing the following:

- (1) A detailed statement of the costs and schedule of the proposed special assessments and the amount, if any, of proposed general obligation costs of any improvement or acquisition;
- (2) A plat of the area to be assessed;
- (3) A full and detailed statement of the entire cost of each type of improvement, which statement or statements shall separately show:
  - (a) the amount paid to each contractor regarding said improvement;
  - (b) an itemization of all other costs of the project, including, but not limited to, all engineering fees, attorneys' fees, testing expenses, publication costs, financing costs, including, but not limited to, interest on all warrants to date of levy or funding by issuance of bonds if later, estimated fiscal agent's warrant fees and bond fees and other fees incurred in connection with construction and/or financing of the improvements;
  - (c) an itemization of all construction related costs of the District not itemized in (a) or (b) above;

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

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

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

6. Maximum General Obligation Debt

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

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

7. Formula to be Applied by Both District and City

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

8. General Covenants of Developer and District

Developer and District covenant, warrant and agree that:

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

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

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

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

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

9. Partial Annexations

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

10. Recreational and Boulevard Improvements

Developer and District shall construct and install the following:

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

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

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

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

(1) Within Tract "A":

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

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

(2) Within Tract "B":

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

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

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

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

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

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

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

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

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

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

- E. Tree Plantings, Etc. in Outlots C, D and E. District funds and credit may be used to pay the cost of tree plantings in Outlots C, D and E, and the maintenance thereof, said maintenance to be paid from the general fund of the District.
- F. Specific Authority to Purchase Land for Public Purposes within Tract A. As regards the acquisition of land by the District, the parties agree:
- (1) Authorization for Acquisition. The City does hereby authorize and approve District's acquisition from Developer of approximately 37.504 acres of land for green space and other public purpose. The tracts comprising such authorized acquisition are identified on Exhibit "J".

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

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

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

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

11. Construction Standards and Procedures

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

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

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12. Administrative Fee

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

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

13. Sidewalks

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

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

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

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

14. Maintenance of Improvements

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

15. Sewer Connections

The parties mutually agree as follows:

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

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

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

16. Sewer Connection Fees

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

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Tract "A":

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

Tract "B":

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

<b>Combined total for both Tract "A" and Tract "B" at current rates (exclusive of Lot 380 multi-family)</b>	<b><u>\$477,288.00</u></b>
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- B. Time of Collection/Adjustment of Fee. The connection fees charged in respect to any lot at the time it becomes due shall be adjusted to reflect any and all increases in connection fee rates occurring subsequent to this Agreement and prior to the time of due date of the fee. If any lots within the Subdivision are subject to connection fees imposed by Sarpy County by reason of use of the Sarpy Industrial Sewer "Sarpy Fee", the amount of the Sarpy Fee shall be collected by the City on behalf of Sarpy County and receipt for payment for each fee issued by City.
- C. When Due. Sewer connection fees shall be collected on a per lot basis rather than on the basis of a one-time payment by the District. Fees shall become due and owing and shall be paid in full in respect to each lot or parcel upon application for a building permit or sewer connection permit for the lot. If a property is connected without benefit of the proper City permit, it shall be subject to disconnection at the cost of the owner and/or person causing such connection shall be subject to applicable penalties. In no event shall a property be served by the sewer system unless all fees and charges are paid in full.
- E. Additional Plats. In the event Developer shall plat or replat additional lots within the Development Tract, this Agreement shall be amended by the parties to provide payment of the then current fee for the additional lots, any additional fee to be paid at time of plat approval(s) and prior to issuance of any building or sewer permits by City in such additional platted or replatted area.
- F. City Sewer Tap, Inspection and Use Fees to be Paid. The City may collect, within the Development Tract, the City's sewer tap and inspection and permit fees, and its sewer use fees as now or hereafter existing. Such fees shall be in addition to the payments provided for in this Section 18.

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

17. District Mill Levy.

The District and Developer agree:

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

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

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

18. Additional Special Covenants and Agreements

Developer and District further covenant and agree as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. Planned Unit Development.

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

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

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

20. Agreements Herein Constitute Covenants Running with Land

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

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

21. Miscellaneous

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

22. Exhibit Summary

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

Exhibit "A": Metes and bounds legal description for Tract "A" (Lots 1 through 380, plus Outlots A through E, inclusive) and Tract "B" (Lots 381 through 505, inclusive and Outlots F and G), Cimarron Woods Subdivision.

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

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

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

ATTEST:

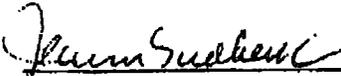
TORCO DEVELOPMENT COMPANY

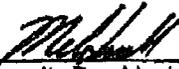
  
Secretary

By   
Its President

ATTEST:

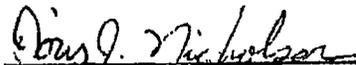
CIMARRON WOODS EAST, INC.

  
Secretary

By   
Its President

ATTEST:

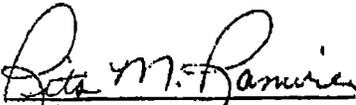
SANITARY AND IMPROVEMENT DISTRICT NO. 237  
OF SARPY COUNTY, NEBRASKA

  
Clerk of Said District

By   
Chair of the Board of Trustees

ATTEST:

CITY OF LA VISTA

  
City Clerk



  
Harold Anderson, Mayor

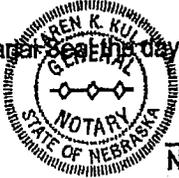
Ag

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA )  
COUNTY OF SARPY )

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

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



Karen K. Kuea

Notary Public

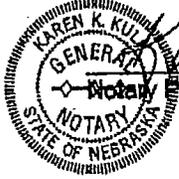
MY COMMISSION EXPIRES:  
JULY 26, 2005

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA )  
COUNTY OF SARPY )

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

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



Karen K. Kuea

Notary Public

MY COMMISSION EXPIRES:  
JULY 26, 2005

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA )  
COUNTY OF SARPY )

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

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

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



Karen K. Hueb  
Notary Public

MY COMMISSION EXPIRES:  
JULY 28, 2005

**ACKNOWLEDGMENT OF NOTARY**

STATE OF NEBRASKA  
COUNTY OF Sarpy }

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

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



Karen S. Fagin  
Notary Public

**TRACT "A"**  
**SURVEYOR'S CERTIFICATE**

AI

I hereby certify that I have made a ground survey of the subdivision described herein and that temporary monuments have been placed on the boundary of the within plat, and that a bond has been furnished to the City of La Vista to ensure placing of permanent monuments and stakes at all corner of all lots, streets, angle point and ends of all curves in CIMARRON WOODS (the lots numbered as shown) being a platting of part of the East 1/2 of the NW 1/4 and also together with part of the NE 1/4 of Section 16, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, more particularly described as follows:

Commencing at the Southeast corner of said NE 1/4 of Section 16; thence S87°31'16"W (assumed bearing) along the South line of said NE 1/4 of Section 16, said line also being the North line of MAYFAIR and MAYFAIR REPLAT ONE, subdivisions located in the SE 1/4 of said Section 16, said line also being the North line of VAL VISTA, a subdivision located in the South 1/2 of said SE 1/4 of Section 16, said line also being the North line of the SE 1/4 of said Section 16, a distance of 1989.48 feet to the point of intersection of the Northerly right-of-way line of the Chicago, Burlington and Quincy Railroad and said South line of the NE 1/4 of section 16, said point also being the Point of Beginning; thence continuing S87°31'16"W along said South line of the NE 1/4 of Section 16, said line also being said North line of the SE 1/4 of Section 16, said line also being on part of said Northerly right-of-way line of the Chicago, Burlington and Quincy Railroad, said line also being the North line of said VAL VISTA, a distance of 674.14 feet to the Southwest corner of said NE 1/4 of Section 16, said point also being the Southeast corner of said East 1/2 of the NW 1/4 of Section 16, said point also being the Northeast Corner of the SW 1/4 of said Section 16 and also the Northwest corner of said SE 1/4 of Section 16; thence continuing S87°31'16"W along the South line of said East 1/2 of the NW 1/4 of Section 16, said line also being said North line of VAL VISTA, said line also being the North line of said SW 1/4 of Section 16, a distance of 1329.69 feet to the Southwest corner of said East 1/2 of the NW 1/4 of Section 16, said point also being the Southeast corner of Lot 1, Oakdale Park, a subdivision located in the West 1/2 of said NW 1/4 of Section 16; thence N02°51'56"W along the East line of said East 1/2 of the NW 1/4 of Section 16, said line also being the East line of said West 1/2 of the NW 1/4 of Section 16, said line also being the East line of said Lot 1, Oakdale Park, said line also being the East line of Tax lots 8C3A, 8B, 8A2, and 8A1A, said tax lots located in said West 1/2 of the NW 1/4 of Section 16, a distance of 2600.33 feet to the South right-of-way line of Harrison Street; thence N87°32'31"E along said South right-of-way line of Harrison Street, a distance of 1334.93 feet to the point of intersection of said South right-of-way line of Harrison Street and said East line of the East 1/2 of the NW 1/4 of Section 16, said line also being the West line of said NE 1/4 of Section 16; thence N87°33'45"E along said South right-of-way line of Harrison Street, a distance of 2605.10 feet; thence S47°31'20"E along said South right-of-way line of Harrison Street, a distance of 21.24 feet to the point of intersection of the Westerly right-of-way line of 96th Street and said South right-of-way line of Harrison Street; thence Southerly along said Westerly right-of-way line of 96th Street on the following described courses; thence S02°36'27"E, a distance of 19.13 feet; thence S87°23'10"W, a distance of 15.09 feet; thence S13°42'29"W, a distance of 195.71 feet; thence S10°21'20"W, a distance of 378.74 feet; thence S05°55'02"W, a distance of 101.12 feet; thence S02°36'49"E, a distance of 100.00 feet; thence S21°49'12"E, a distance of 157.00 to the point of intersection of said Westerly right-of-way line of 96th Street and said Northerly right-of-way line of the Chicago, Burlington & Quincy Railroad; thence along said Northerly right-of-way line of the Chicago, Burlington & Quincy Railroad on the following described courses; thence S57°43'36"W, a distance of 610.65 feet; thence Southwesterly on a curve to the left with a radius of 2936.79 feet, a distance of 1303.30 feet, said curve having a long chord which bears S45°00'47"W, a distance of 1292.63 feet; thence S32°17'59"W, a distance of 557.90 feet; thence Southwesterly on a curve to the left with a radius of 2249.50 feet, a distance of 28.40 feet, said curve having a long chord which bears S32°38'41"W, a distance of 28.40 feet to the Point of Beginning.

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

**TRACT "B"**  
**SURVEYOR'S CERTIFICATE**

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

COMMENCING AT THE SE CORNER OF SAID NE 1/4; THENCE S87°31'24"W (ASSUMED BEARING) 60.00 FEET ON THE SOUTH LINE OF SAID NE 1/4 TO THE POINT OF BEGINNING; THENCE CONTINUING S87°31'24"W 1718.02 FEET ON THE SOUTH LINE OF SAID NE 1/4 TO THE SOUTHEAST LINE OF THE ABANDONED MISSOURI PACIFIC RAILWAY COMPANY RIGHT-OF-WAY; THENCE NORTHEASTERLY ON THE SOUTHEASTERLY LINE OF THE ABANDONED MISSOURI PACIFIC RAILWAY COMPANY RIGHT-OF-WAY ON THE FOLLOWING DESCRIBED 3 COURSES; THENCE NORTHEASTERLY ON A NON-TANGENT 2732.29 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING N27°47'33"E, CHORD DISTANCE 544.06 FEET, AN ARC DISTANCE OF 544.96 FEET; THENCE NORTHEASTERLY ON A 2661.83 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING N45°33'10"E, CHORD DISTANCE 1168.68 FEET, AN ARC DISTANCE OF 1176.98 FEET; THENCE N57°28'09"E 548.49 FEET TO THE WEST LINE OF 96th STREET; THENCE S26°44'36"E 240.69 FEET ON THE WEST LINE OF 96th STREET AND ITS SOUTHEASTERLY EXTENSION; THENCE S02°36'21"E 1305.71 FEET ON A LINE 60.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID NE 1/4 TO THE POINT OF BEGINNING.

CONTAINING 36.67 ACRES MORE OR LESS.

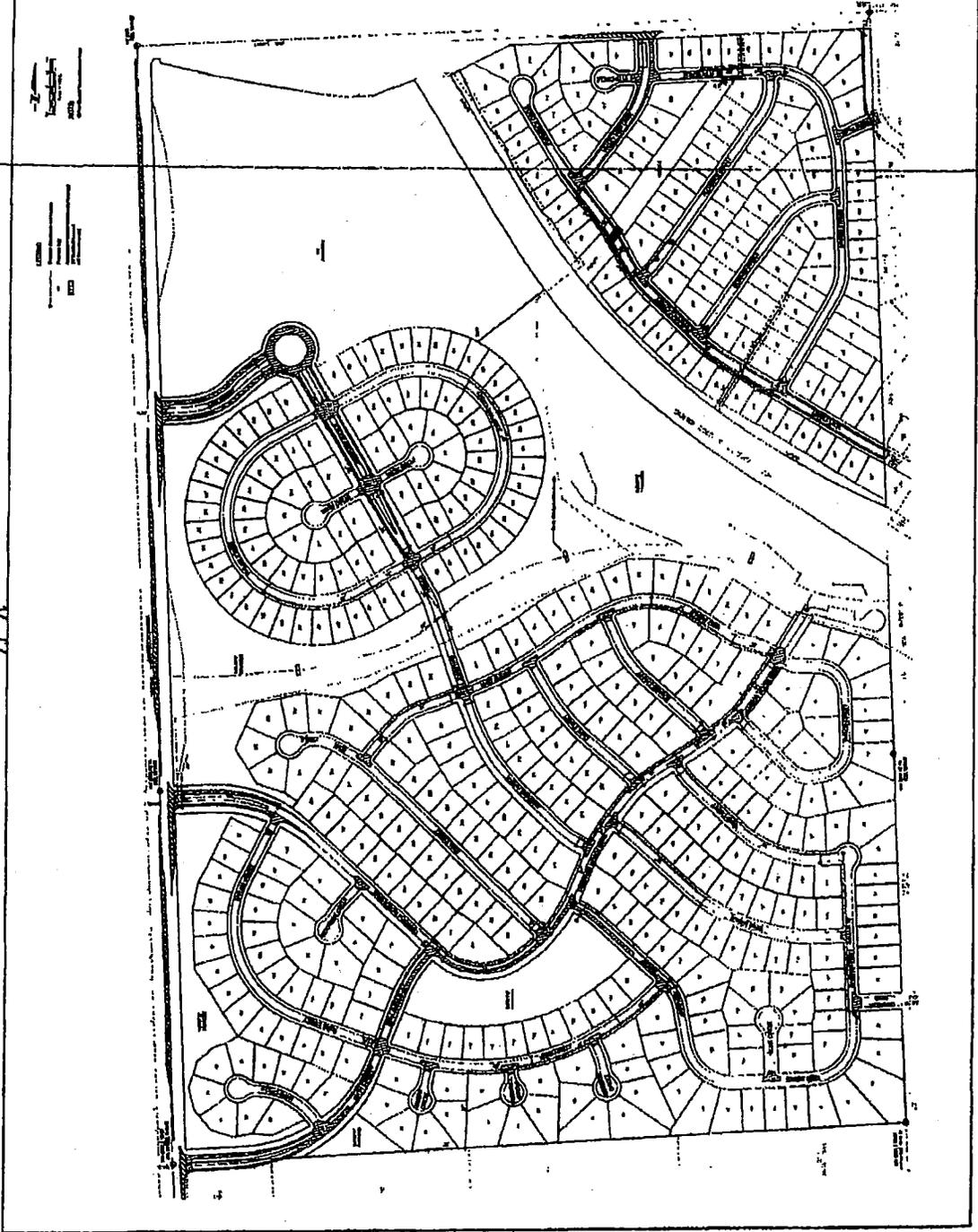
EXHIBIT "A"





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ERM CONSULTING GROUP, INC. ENGINEERS • PLANNERS • ARCHITECTS	GREENWOOD <small>10000 WOODBURN AVENUE          GREENWOOD, MISSISSIPPI 39204</small>	GRANT & ELLISON CONTROL PLAN	<table border="1"> <tr> <td>Project No.</td> <td>10000</td> </tr> <tr> <td>Sheet No.</td> <td>10000</td> </tr> <tr> <td>Date</td> <td>10/1/78</td> </tr> <tr> <td>Scale</td> <td>1" = 100'</td> </tr> <tr> <td>Author</td> <td>J. E. Ellison</td> </tr> <tr> <td>Checked</td> <td>J. E. Ellison</td> </tr> <tr> <td>Approved</td> <td>J. E. Ellison</td> </tr> </table>	Project No.	10000	Sheet No.	10000	Date	10/1/78	Scale	1" = 100'	Author	J. E. Ellison	Checked	J. E. Ellison	Approved	J. E. Ellison
Project No.	10000																
Sheet No.	10000																
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Scale	1" = 100'																
Author	J. E. Ellison																
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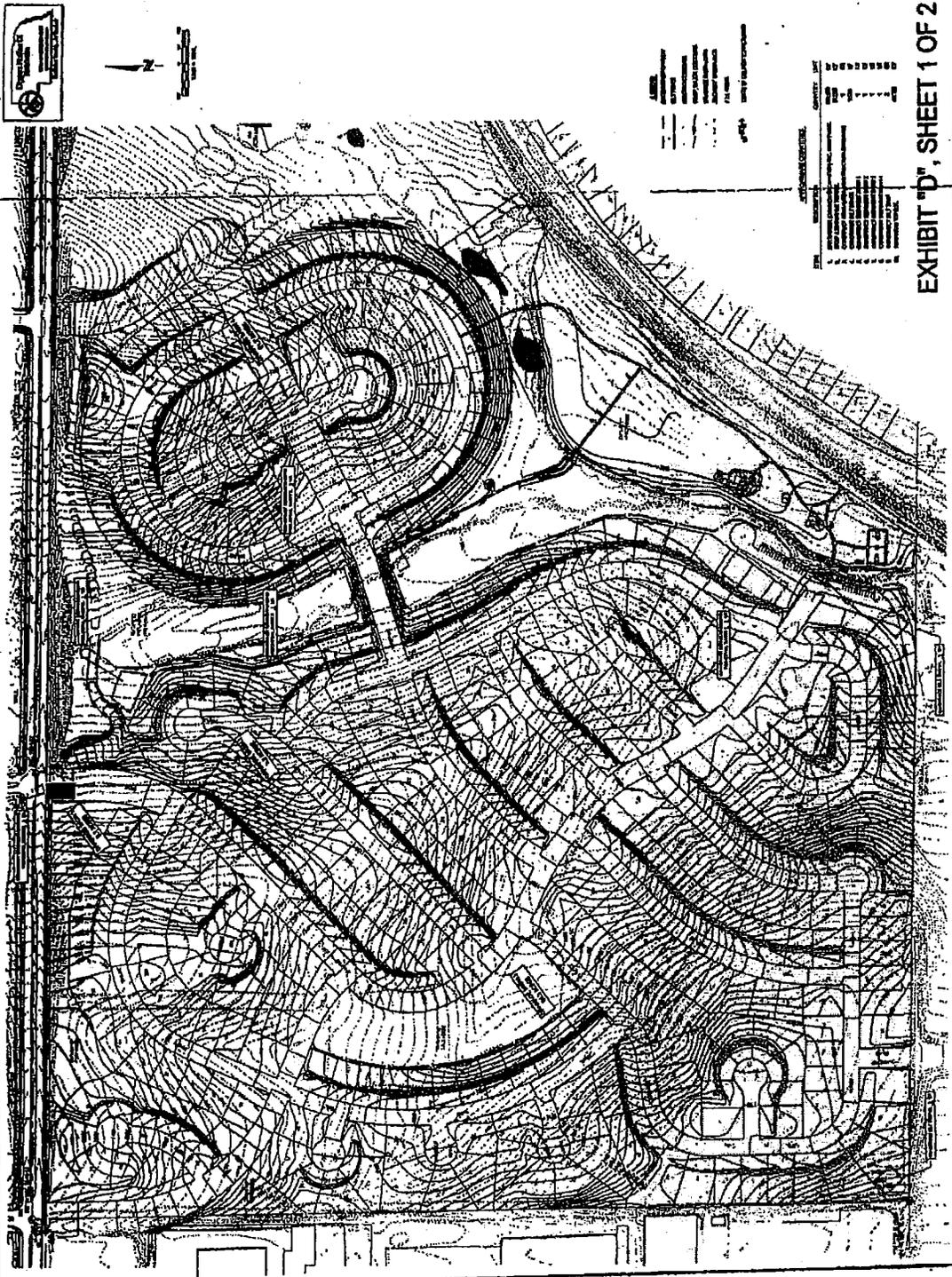


EXHIBIT "D", SHEET 1 OF 2

A-P

As

EIA CONSULTING GROUP, INC.  
 EXPERTISE IN PLANNING • DESIGN • CONSTRUCTION

CLAYTON WOODS

GROUND DETAILS

NO.	DATE	REVISIONS

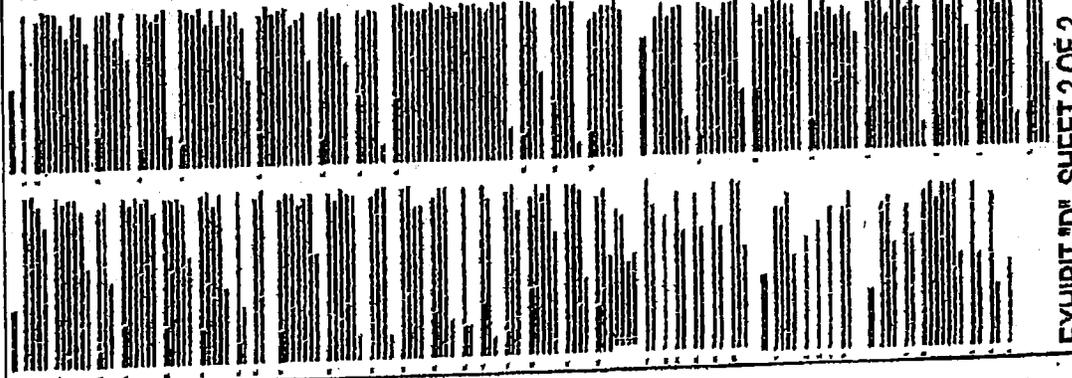
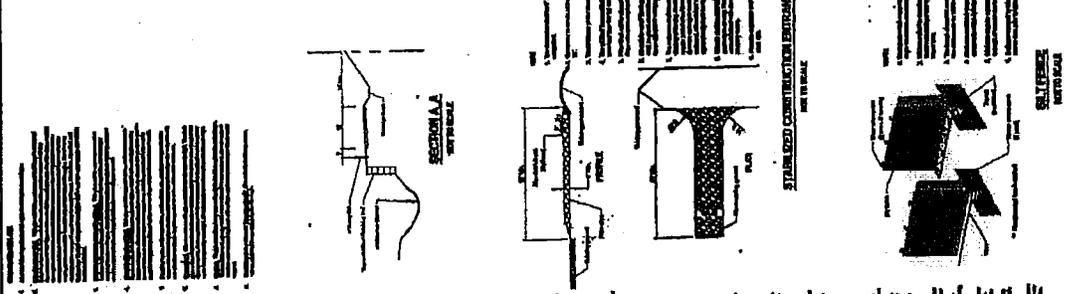
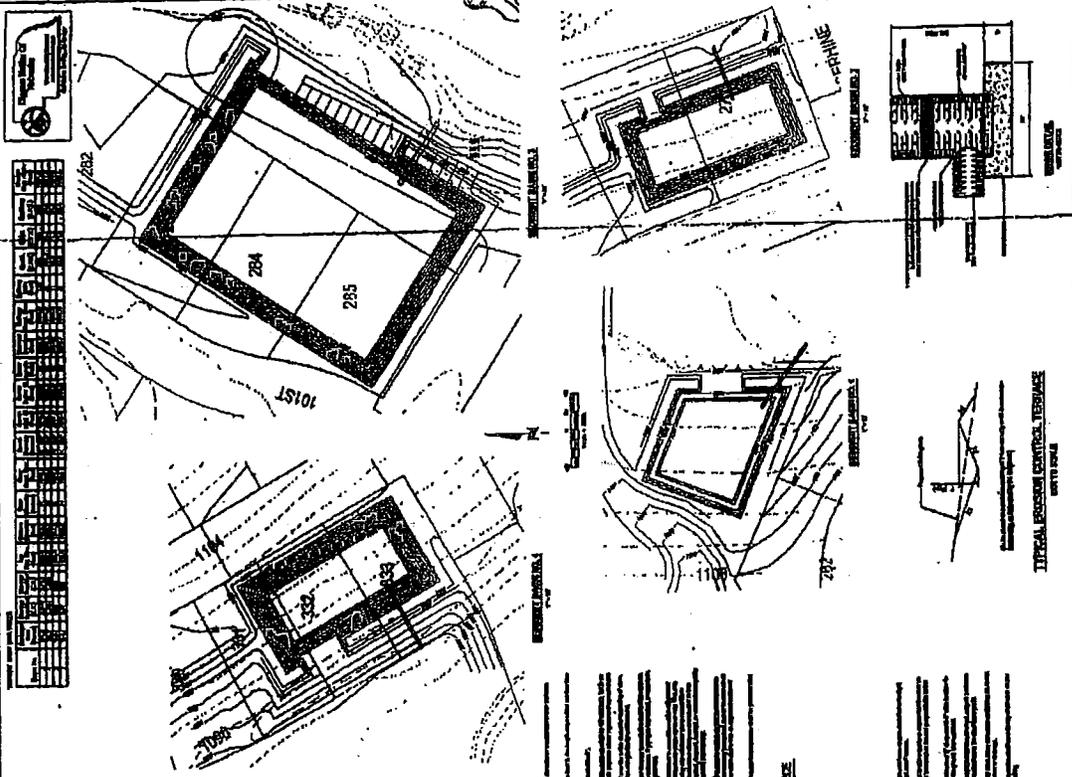
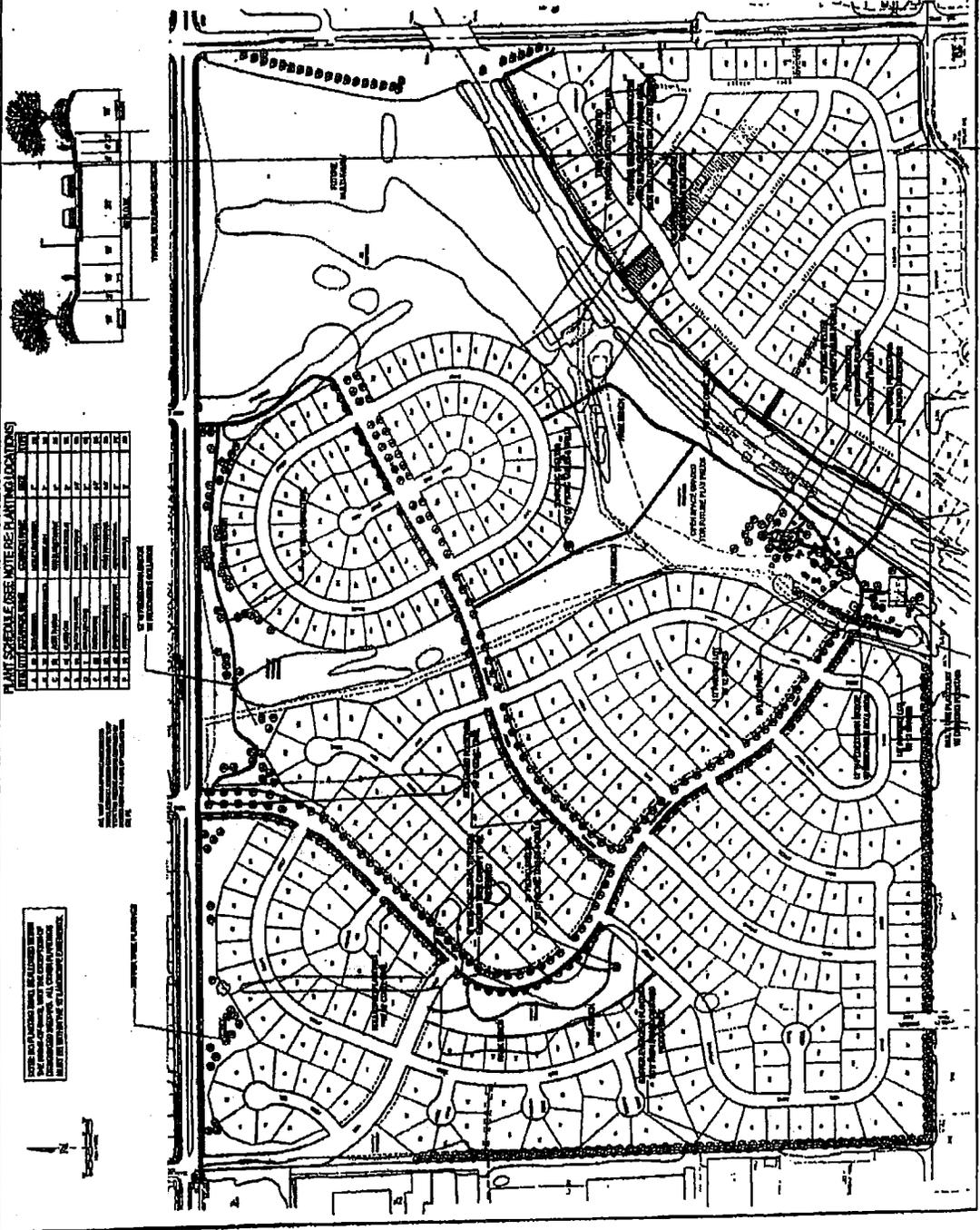


EXHIBIT "D", SHEET 2 OF 2

Au

# EXHIBIT "E" - 1<sup>st</sup>



PLANT SCHEDULE (SEE NOTE RE PLANTING LOCATIONS)

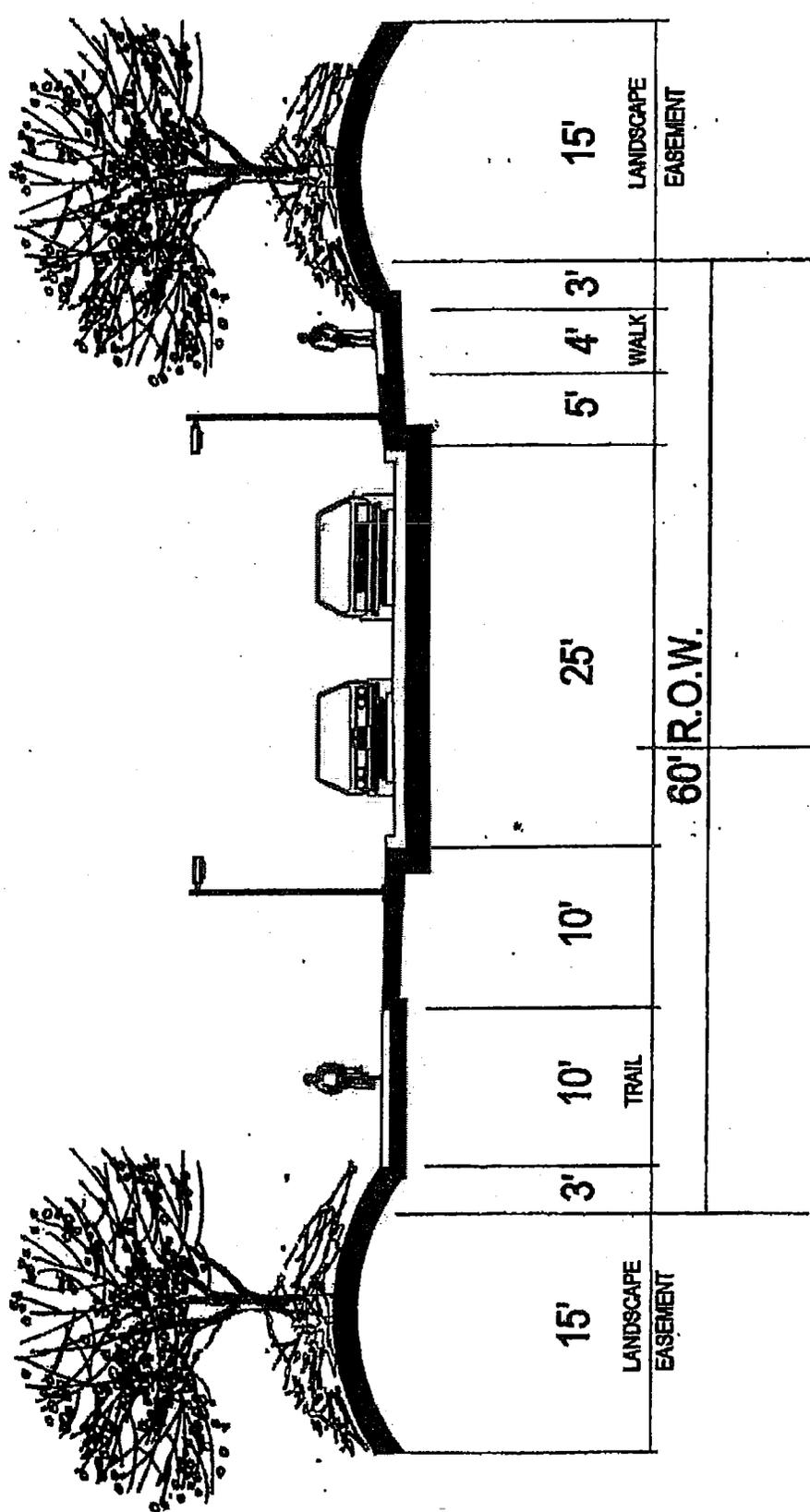
NO.	SYMBOL	PLANT NAME	COMMENTS
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SEE PLAN FOR LOCATIONS OF ALL PLANTS TO BE PLANTED.  
 THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION  
 AND MAINTENANCE OF ALL PLANTS THROUGHOUT THE PROJECT.  
 ALL PLANTS SHALL BE PLANTED AT THE END OF EACH DAY.



Av



TYPICAL BOULEVARD SECTION

EXHIBIT "E-2"

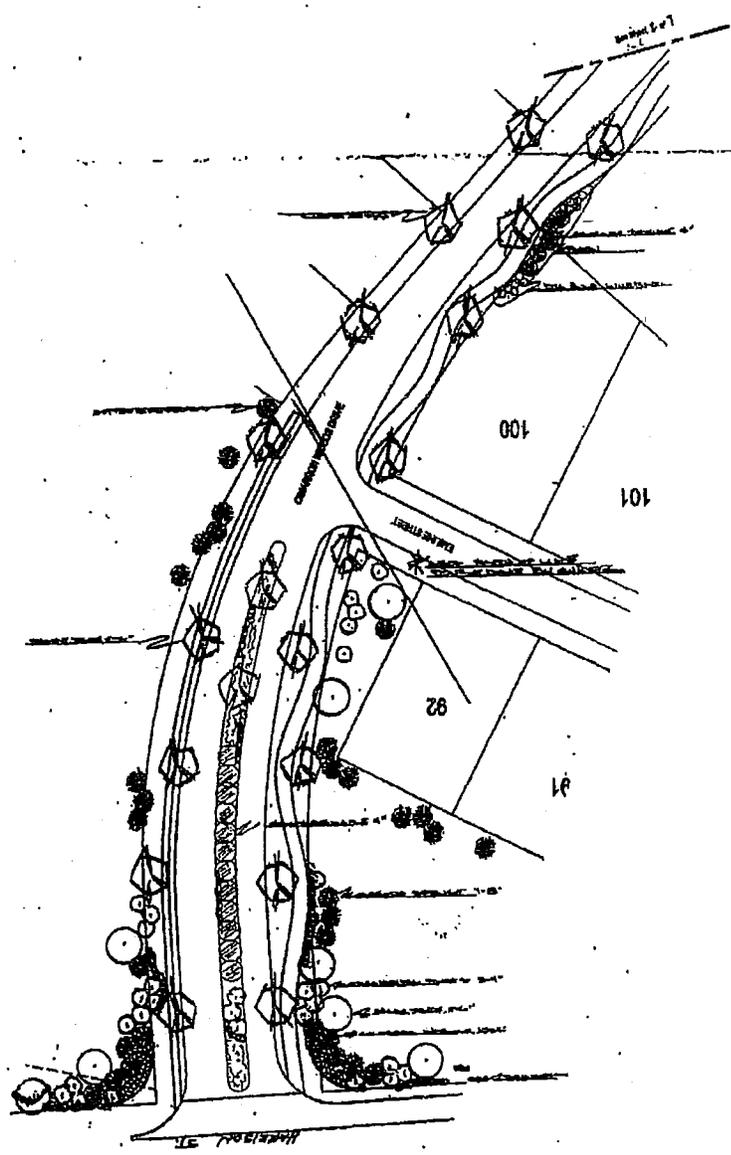
AX

<b>EBA CONSULTING GROUP, INC.</b> ENGINEERS • PLANNERS • SURVEYORS		PROJECT NO. _____ SHEET NO. _____	DATE _____	DRAWN BY _____	CHECKED BY _____
		CLIENT _____	LOCATION _____	SCALE _____	PROJECT NAME _____



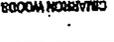
EBA CONSULTING GROUP, INC.  
 1000 N. W. 10th St.  
 Suite 100  
 Ft. Lauderdale, FL 33304  
 Phone: (954) 561-1111  
 Fax: (954) 561-1112  
 Website: www.eba.com

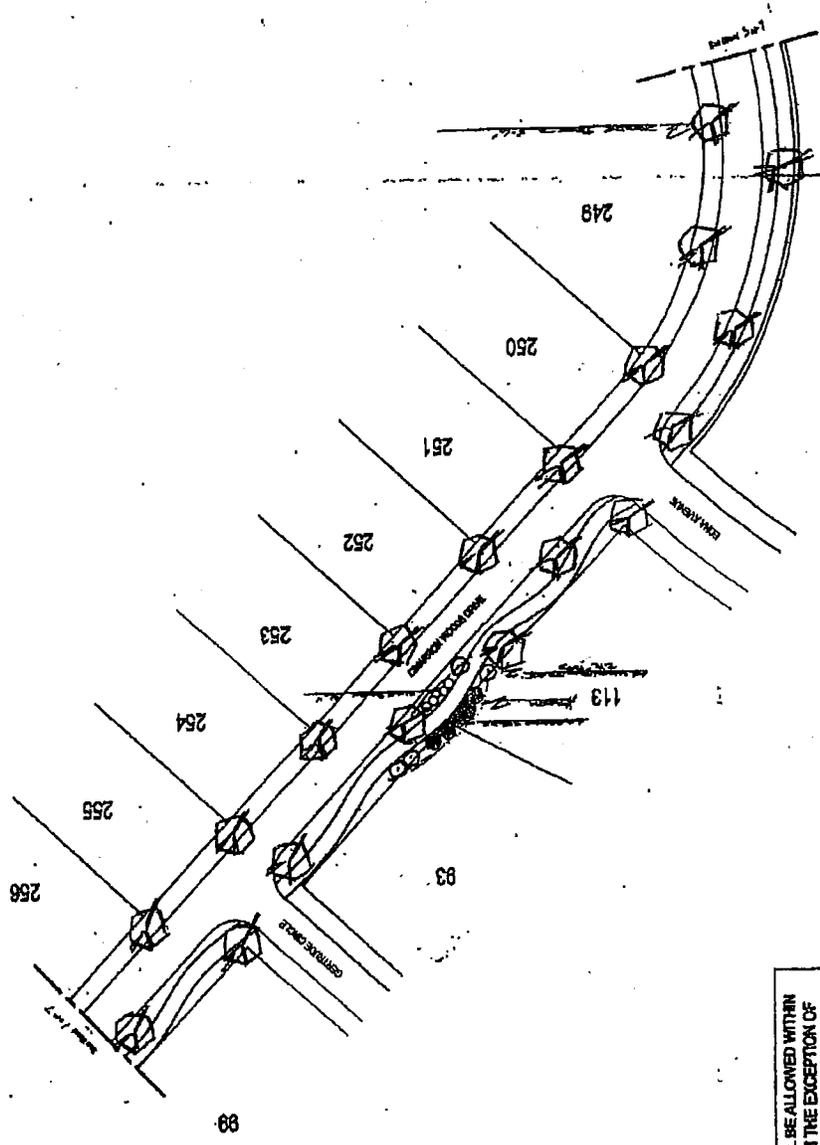
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NOTE: NO PLANTING SHALL BE ALLOWED WITHIN  
 THE RIGHT-OF-WAYS, WITH THE EXCEPTION OF  
 DESIGNATED MEDIANS. ALL OTHER PLANTINGS  
 MUST BE WITHIN THE 16' LANDSCAPE EASEMENTS.

Az

<b>E&amp;A CONSULTING GROUP, INC.</b> ENGINEERS • PLANNERS • SURVEYORS		CAMERON WOODS		PROJECT NO. 119		SHEET NO. 107	
				DATE: 11/19/03		DRAWN BY: JLD	



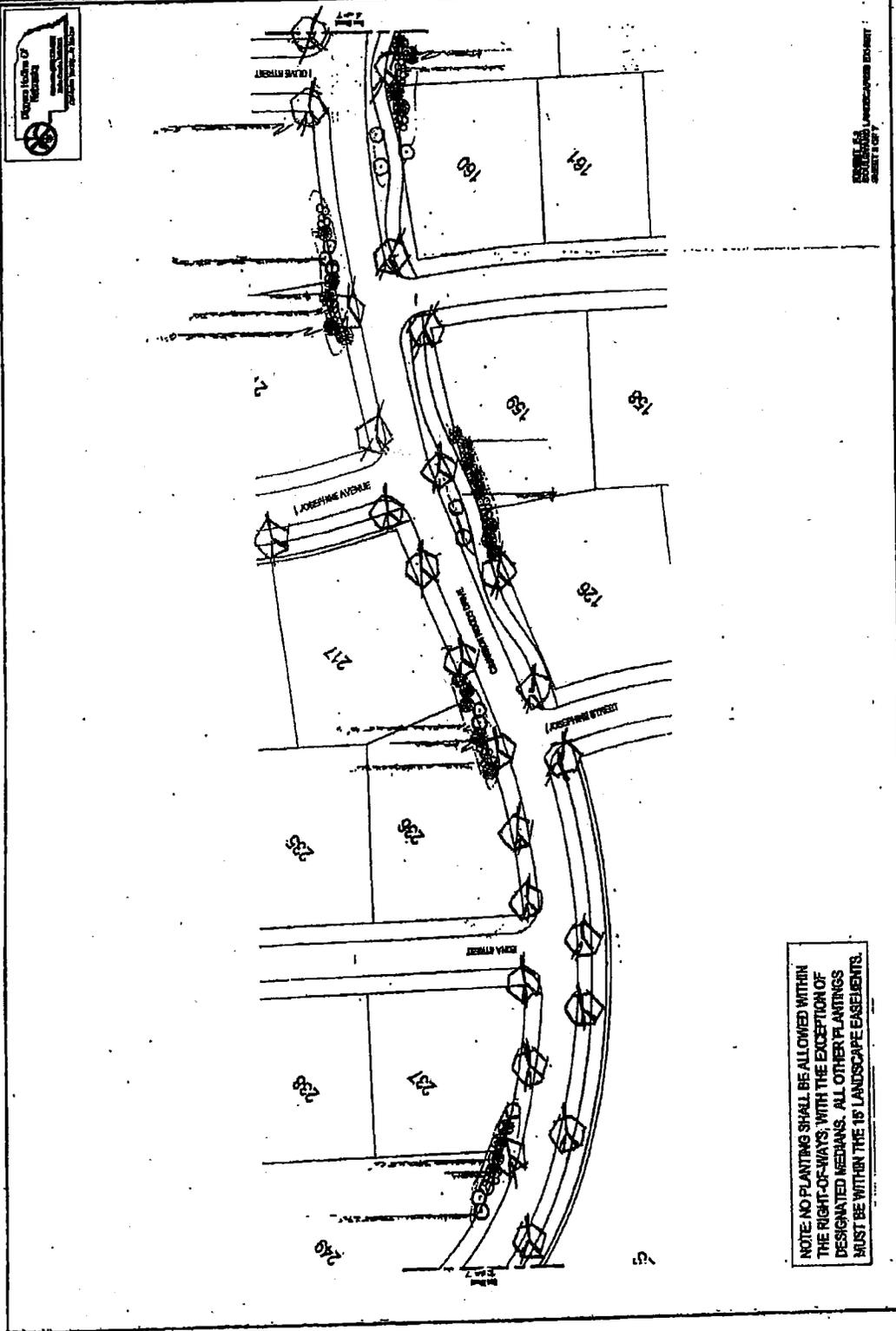
NOTE: NO PLANTING SHALL BE ALLOWED WITHIN THE RIGHT-OF-WAYS, WITH THE EXCEPTION OF DESIGNATED MEDIANS. ALL OTHER PLANTINGS MUST BE WITHIN THE 15' LANDSCAPE EASEMENTS.

Ay

E&A CONSULTING GROUP, INC.  
 11900 CAMERON WOODS  
 SUITE 107

58

<b>E&amp;A CONSULTING GROUP, INC.</b> ENGINEERS • PLANNERS • SURVEYORS		<b>CHARYON WOODS</b> LANDSCAPE ARCHITECT	SHEET NO. 1 DATE 11/17/11 PROJECT NO. 11-001
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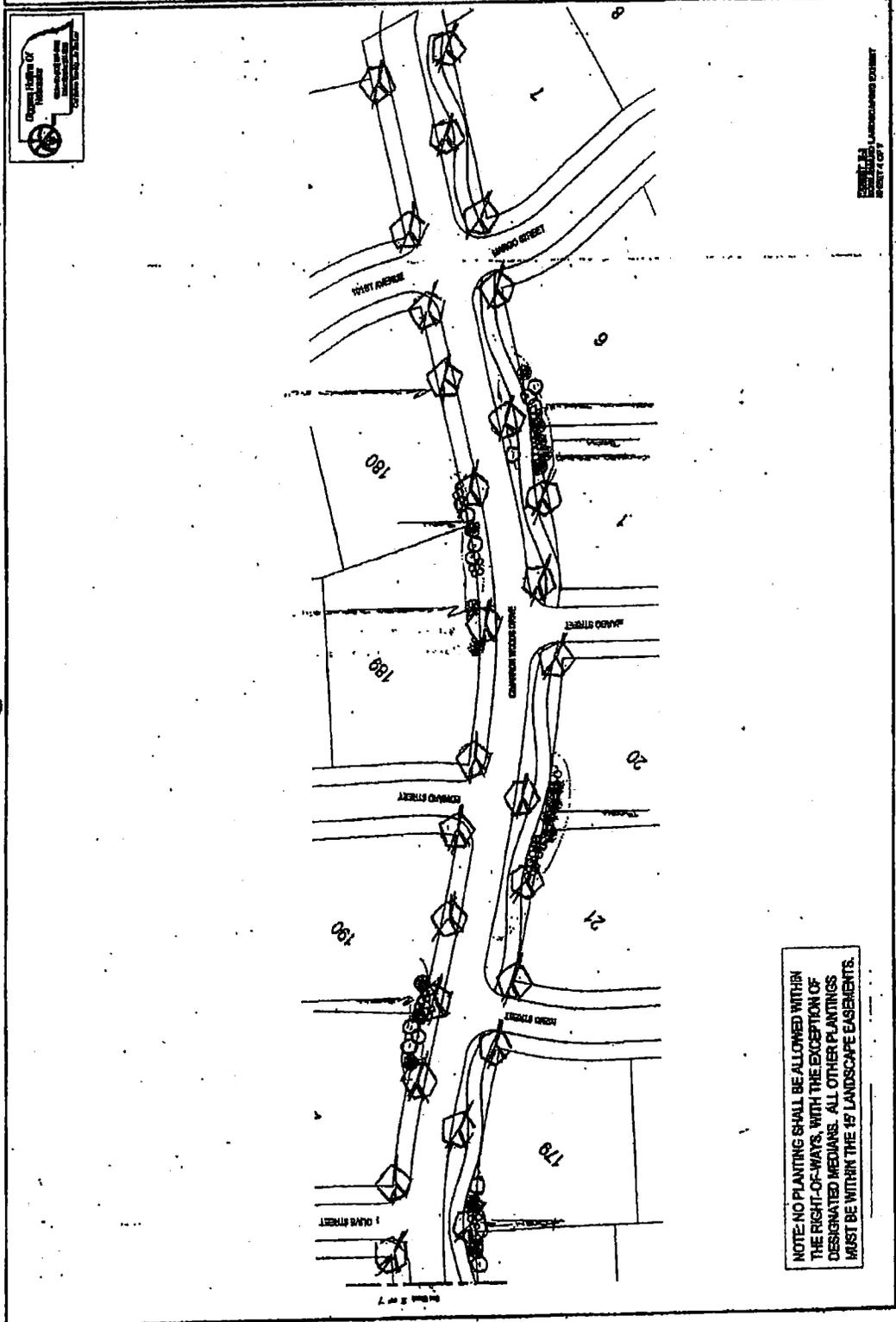


59

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

Bd.

<b>E&amp;A CONSULTING GROUP, INC.</b> ENGINEERS • PLANNERS • SURVEYORS		CHARRON WOODS 10000 W. 10th Ave. Suite 100 Golden, CO 80401 Phone: 303.440.1100 Fax: 303.440.1101 Website: www.eaconsulting.com	Project No. 10000 Date 10/1/04 Scale 1" = 40'	Sheet No. 1 of 1
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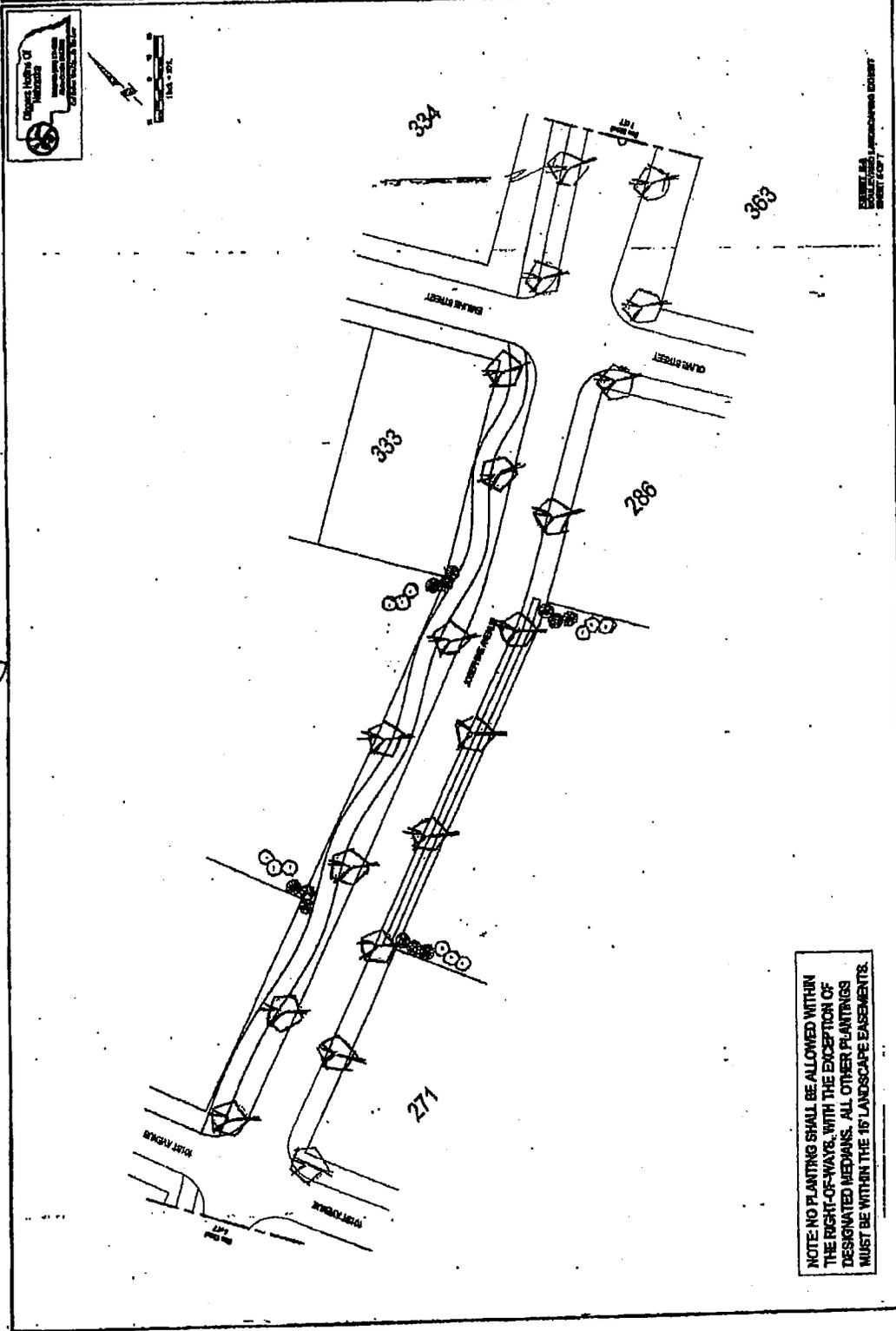
Bc

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



BK

<b>E&amp;A CONSULTING GROUP, INC.</b> ENGINEERS • PLANNERS • SURVEYORS			CHARLETON WOODS 1000 W. 10th St. Oklahoma City, OK 73106 Phone: (405) 233-1100 Fax: (405) 233-1101	SHEET NO. 1 OF 1	DATE: 10/1/01	PROJECT NO. 01-001
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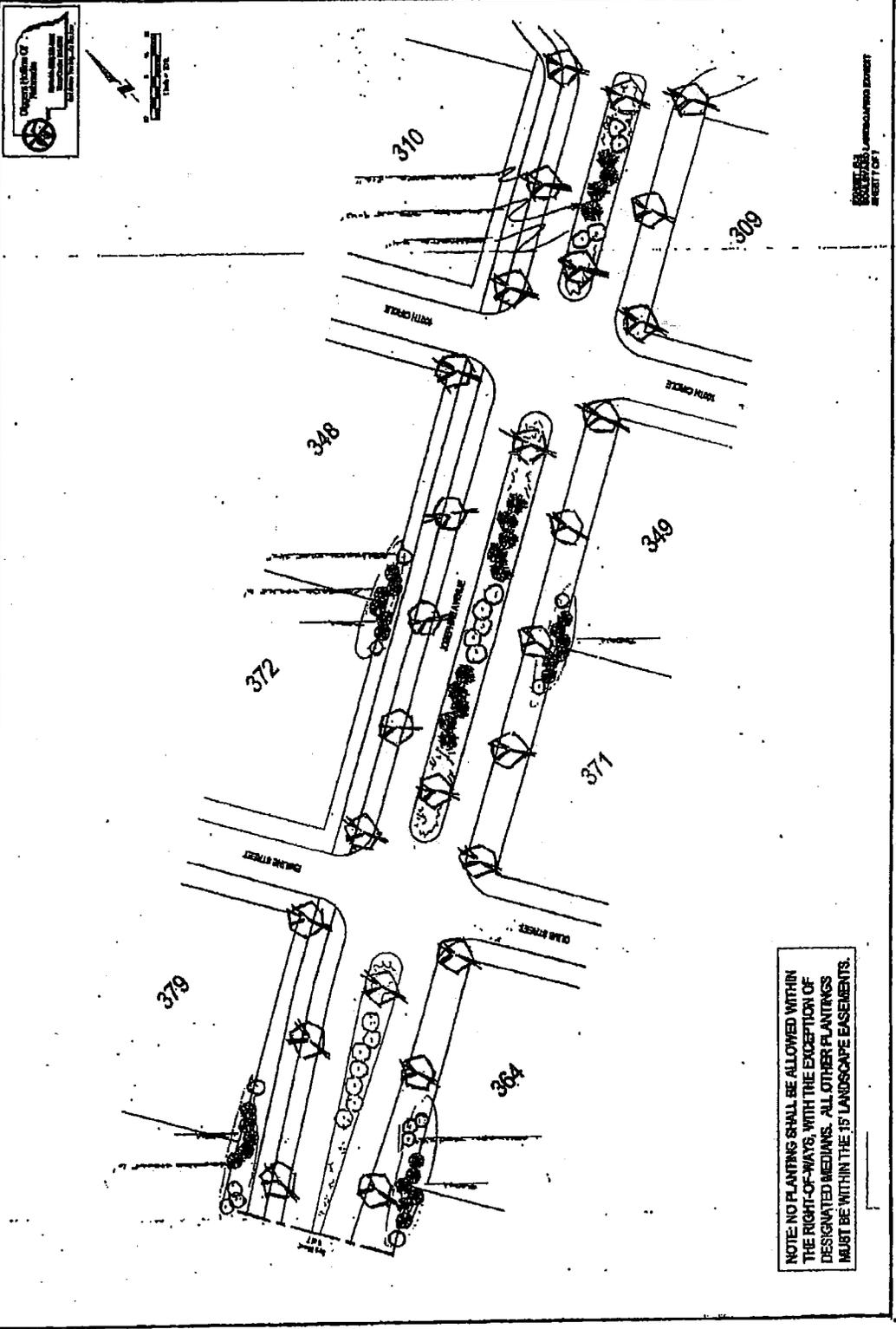


Bg

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

Rj x

<b>E&amp;A CONSULTING GROUP, INC.</b> ENGINEERS • PLANNERS • SURVEYORS			CHARRON WOODS 10000 104th Ave S Suite 100 Richmond, BC V6V 2G9 Canada Tel: 604-273-1111 Fax: 604-273-1112 Email: info@eandagroup.com	Project No. 10000 Date 10/12/11	Scale 1:100 Drawing No. 10000-01
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NOTE: NO PLANTING SHALL BE ALLOWED WITHIN THE RIGHT-OF-WAYS, WITH THE EXCEPTION OF DESIGNATED MEDIANS. ALL OTHER PLANTINGS MUST BE WITHIN THE 15' LANDSCAPE EASEMENTS.

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# TYPICAL STREET INTERSECTION

BK

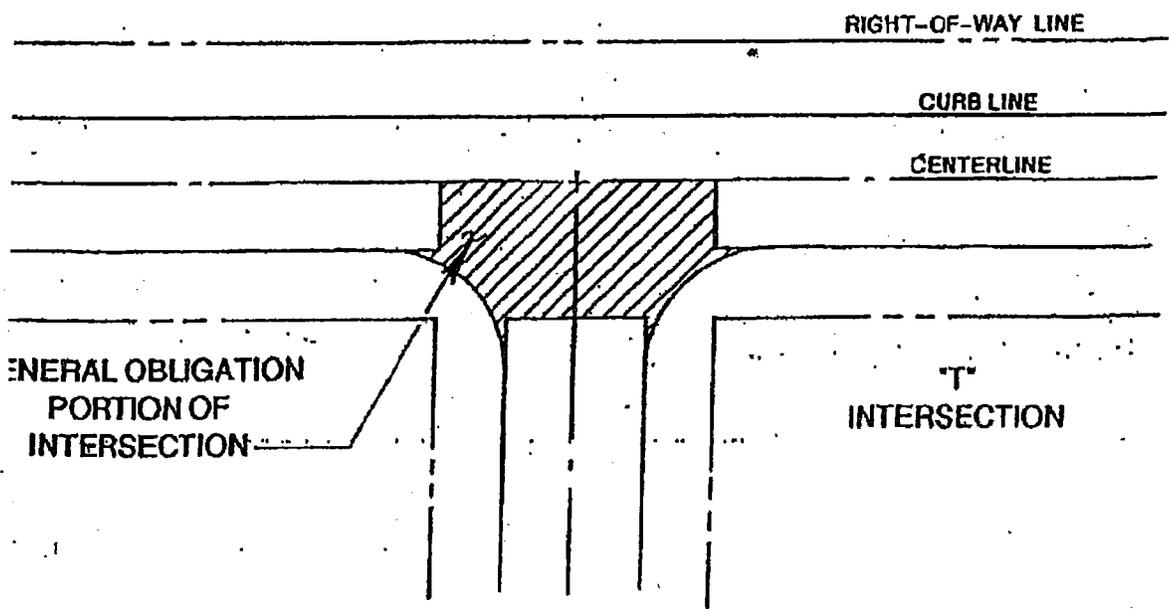
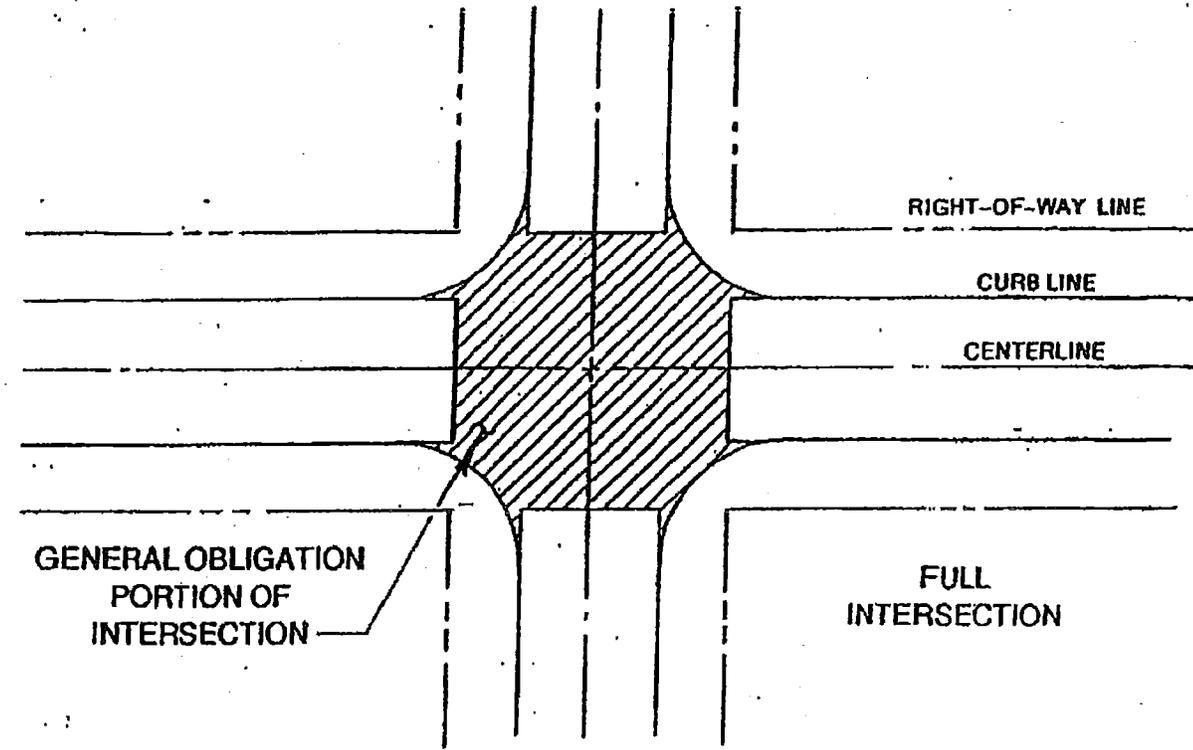


EXHIBIT "F"

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**EXHIBIT "G" TO THE SUBDIVISION AGREEMENT**

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

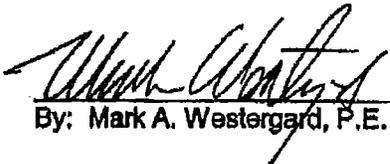
**FROM: Mark Westergard, P.E., E&A Consulting Group  
Doug Kellner, P.E. Thompson Dreesen & Domer, Inc.**

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

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

**E&A CONSULTING GROUP**  
Lots 1 through 380

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

  
By: Mark A. Westergard, P.E.

  
By: Douglas E. Kellner, P.E.

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

Bm

FILED SARPY CO. NE  
INSTRUMENT NUMBER  
2004- 30795  
2004 AUG 10 A 8:39  
REGISTER OF DEEDS

COUNTER PK C.E. PKM  
VERIFY PK D.E. PKM  
PROOF PK  
FEES \$ 265.50  
CHECK# 1249  
CHG. \_\_\_\_\_ CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT \_\_\_\_\_ NCR \_\_\_\_\_

[This Space Above is for Recording Data]

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

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

**PRELIMINARY STATEMENT**

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

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

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

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

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

**ARTICLE I.  
RESTRICTIONS AND COVENANTS**

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

Bn A

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

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

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

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

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

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

Bo B

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

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

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

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

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

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

Bp C

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE II.  
HOMEOWNERS' ASSOCIATION**

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

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

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

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

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

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

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

The Association shall have two classes of voting membership:

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

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

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

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

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

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

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

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

E. The expenditure, commitment and payment of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### ARTICLE III. EASEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE V.  
GENERAL PROVISIONS**

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

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

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

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

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

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

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

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

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

DECLARANT:

TORCO DEVELOPMENT, INC.,  
a Nebraska corporation,

By: Gerald Torzcon  
Gerald Torzcon, President

STATE OF NEBRASKA )  
                                  ) ss.  
COUNTY OF SARPY )

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



Doris J. Nicholson  
Notary Public

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

EXHIBIT "H-2" Cb

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

COUNTER \_\_\_\_\_ C.E. *[initials]*  
VERIFY *[initials]* D.E. *[initials]*  
PROOF \_\_\_\_\_  
FEES \$ 123.50  
CHECK# 21738  
CHG \_\_\_\_\_ CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT 1.00 NCR \_\_\_\_\_

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

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR LOTS 381 THROUGH 505, INCLUSIVE, AND OUTLOTS F AND G, CIMARRON WOODS IN SARPY COUNTY, NEBRASKA (herein "Declaration") made this 27 day of August, 2004 by Cimarron Woods East, Inc., a Nebraska corporation ("Declarant").

**RECITALS:**

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

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

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

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

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

*SL*  
After recording, please return to: Robert F. Peterson, Attorney, 11718  
Nicholas Street, Suite 101, Omaha, NE 68154

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PRELIMINARY STATEMENT

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

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

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

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

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

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

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

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

ARTICLE I  
TERMLAND AFFECTED

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

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

ARTICLE II  
RESTRICTIONS AND COVENANTS

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

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

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

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

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

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

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

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

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

ARTICLE III  
RESTRICTIONS FOR RESIDENTIAL DWELLINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV  
EASEMENTS

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

ARTICLE V  
HOMEOWNERS' ASSOCIATION

1. The following definitions shall apply for the purposes of this Article:
  - A. "Association" shall mean and refer to the Cimarron Woods East Homeowners Association, its successors and assigns, a Nebraska nonprofit corporation, herein referred to as "Homeowners' Association."
  - B. "Improved Lot" shall mean and refer to any Lot within Cimarron Woods East on which a dwelling has been erected and the construction thereof is substantially complete.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE VI  
CITY RIGHT TO ENFORCE COMMON AREA OBLIGATIONS

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

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

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

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

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

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

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

ARTICLE VII  
GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 21 day of August, 2004.

ATTEST:

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

Jeanne Sudbar  
Secretary

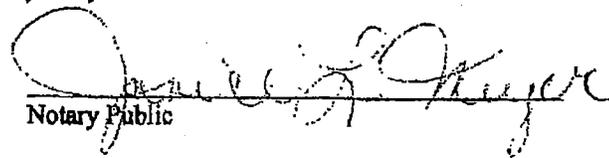
By: [Signature]  
Its: President

~~2004 3-20-04~~  
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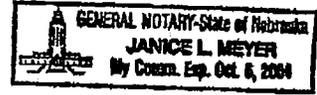
STATE OF NEBRASKA ]  
COUNTY OF Sarpy ] SS:

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

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

  
Notary Public

After recording please return to:  
Robert F. Peterson  
Laughlin, Peterson & Lang  
11718 Nicholas Street, #101  
Omaha, Nebraska 68154  
402-330-1900





# PLANNING & ZONING APPLICATION

CITY OF LA VISTA

8116 PARK VIEW BLVD., LA VISTA, NE 68128

402-331-4343

### Check Application/s Submitted:

- Comprehensive Plan Amendment
- Rezoning
- Zoning/Subdivision Amendment
- Conditional Use Permit
- Conditional Use Permit Amendment
- Tower Development Permit
- Administrative Plat
- Preliminary Plat\*
- Revised Preliminary Plat
- Final Plat
- Replat or Small Tract Sub.
- Vacation of Plat
- Preliminary P. U. D.
- Final P.U.D.
- Building Design Review
- Site Plan Review
- Other: \_\_\_\_\_

\*A pre-application meeting is required prior to submittal.

### A. General Information

#### 1. APPLICANT

Name: PEDCOR INVESTMENTS, LLC Contact: MIKE SMITH  
 Address: ONE PEDCOR SQUARE 770 3RD AVE. SW  
 City/State/Zip: CAREL, IN. 46032  
 Phone/Fax: 1-317-705-7924 / 1-317-587-0340

#### 2. PROPERTY OWNER (if not the same as applicant above):

Name: TORCO DEVELOPMENT, INC. Contact: \_\_\_\_\_  
 Address: 11205 S. 150TH STREET, STE 100  
 City/State/Zip: OMAHA, NE 68138  
 Phone/Fax: 592-3277 / 592-5381

#### 3. ENGINEER/SURVEYOR OR ARCHITECT:

Name: E&A CONSULTING GROUP, INC. Contact: MARK WESTERGARD  
 Address: 330 N. 117TH STREET  
 City/State/Zip: OMAHA, NE 68154  
 Phone/Fax: 402-895-4700 / 402-895-3599

#### 4. PRIMARY PROJECT CONTACT (applicant, representative, or other):

Name: E&A CONSULTING GROUP, INC. Contact: MARK WESTERGARD  
 Address: 330 N. 117TH STREET  
 City/State/Zip: OMAHA, NE 68154  
 Phone/Fax: 402-895-4700 / 402-895-3599

- ✓ If more than one property owner or developer is involved, please attach additional names and addresses to this application.
- ✓ The contact person will receive all staff correspondence.

Twelve additional, pre-folded (8.5 x 11) copies of each site plan/plot is required with your submittal.

Please note that your application will not be accepted or there may be a delay in processing by the Community Development Department if any of the required information or materials are missing or improperly presented. In order to ensure that a complete application is provided and to avoid unnecessary delays in processing, please remember to submit the appropriate submittal requirements, i.e., signed application, fees, exhibits and/or site plans, special studies if applicable and signed checklist. If you have any questions regarding this application or required materials, please contact the Community Development Department at (402) 331-4343 between 8:00 a.m. and 4:30 p.m., Monday through Thursday, and on Friday, 8:00 a.m. to Noon.

5. Certification:

An application may be filed only by the owner(s) of the property or by a person with the power of attorney from the owner authorizing the application, or by the attorney-at-law representing the owner.

Indicate your authority.

I (We) (am) (are) the sole owner(s) of the property.

I have the power of attorney from the property owner(s) authorizing the application and a copy of the authorization is attached.

I am the attorney at law representing the owner(s) and a copy of the authorization is attached.

	GERALD L. TORCZON	TORCO DEVELOPMENT, INC. 11205 S. 150th ST. STE. 100 OMAHA, NE. 68138
Signature	Print Name	Address

Signature	Print Name	Address

**NOTE: ALL APPLICATIONS MUST HAVE THE CURRENT PROPERTY OWNER'S SIGNATURE(S), OR THE PERSON WITH THE PROPER POWER OF ATTORNEY SIGNATURE, NOTRAIZED BY A CERTIFIED NOTARY PUBLIC (ATTACH IF NECESSARY)**

6. Affiliated Application:

An applicant may wish to increase the property considered under this application to include surrounding owners. By signing below, an adjoining property owner can state their intent to be party to this application (attach additional sheet if necessary). A legal description must also be attached for each property owner.

Signature	Print Name	Address

Signature	Print Name	Address

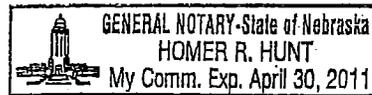
ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA  
COUNTY OF SARPY

On this 27<sup>TH</sup> day of MAY, 2009, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Gerald L. Torczon, President of Torco Development, Inc., who is the identical person whose name is affixed to the Planning and Zoning application, and acknowledged the execution thereof to be his voluntary act and deed as said officer of said entity.

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

Homer R. Hunt  
Notary Public



**B. Project Information:**

1. Subdivision Name: CIMARRON WOODS REPLAT TWO
2. Project Location: 1/4 1/4 Section 16, T14, R12, Sarpy County, Nebraska  
General Location: 96TH & HARRISON STREET
3. Project/Property Address (if known): \_\_\_\_\_
4. Area: 25.938 (acres)
5. Future Land Use Designation (Comprehensive Plan): HIGH DENSITY RESIDENTIAL
6. Proposed Land Use Designation (if applicable): HIGH DENSITY RESIDENTIAL
7. Existing Zoning Designation: (attach additional sheet if necessary)

Zoning	Acres	Lots	Units	Density
<u>R-3 (PUD) -1</u>	<u>25.938</u>	<u>LOT 380</u>	<u>N.A.</u>	<u>N.A.</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
<b>Total</b>	<u>25.938</u>	<u>1</u>	_____	_____

8. Proposed Zoning Designation: (attach additional sheet if necessary)

Zoning	Acres	Lots	Units	Density
<u>R-3 (PUD) -1</u>	<u>25.938</u>	<u>1 &amp; 2</u>	<u>276</u>	<u>10.64</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
<b>Total</b>	<u>25.938</u>	<u>2</u>	<u>276</u>	<u>10.64</u>

9. Present Use of the Land: VACANT

10. Proposed Request: HIGH DENSITY RESIDENTIAL

11. If commercial/industrial/office or multi-family residential:

- a. Number & Type of units/buildings: 14 BUILDINGS, (276 UNITS), 1 CLUBHOUSE
- b. Total building coverage (footprint): 161,770 = 14.3% square feet.
- c. Total Open Space: 664,823 = 58.8% square feet.
- d. Total paved impervious area: 303,266 square feet
- e. Total building floor area: 353,060 gross square feet
- f. Total number of parking spaces: Provided 585 Covered 168 Uncovered 417
- g. Total number of persons employed or intended to be regularly employed on the site during the maximum working shift N.A.

AVERAGE 33'-5 1/8" TO 33'-7 7/8"

- 12. Building Height: \_\_\_\_\_ feet 3 stories.
- 13. If single family residential:
  - a. Number of units/lots: \_\_\_\_\_
  - b. Minimum lot frontage as measured at building setback line: \_\_\_\_\_
  - c. Minimum lot size: \_\_\_\_\_ square feet
  - d. Average lot size: \_\_\_\_\_ square feet
- 14. Attach Legal Description of Property and Surveyor's Certificate.
- 15. Attach list of Property Owners located with 300 feet of proposed project. (Must be prepared by a title company and in label-ready format).
- 16. Attach site plan and/or other documents that illustrate this request.
- 17. Include appropriate application fee.
- 18. For public hearing presentation, overhead transparencies or other approved form of projected illustrations identical to any display boards being used are required.

For Office Use Only

Project Case Number \_\_\_\_\_ Planning Commission \_\_\_\_\_  
 Published \_\_\_\_\_  
 Action: \_\_\_\_\_

Date Complete Application Received \_\_\_\_\_ City Council \_\_\_\_\_  
 Published: \_\_\_\_\_  
 Action: \_\_\_\_\_

Check Number/Amount \_\_\_\_\_ Posted on Property: \_\_\_\_\_  
 Notice to School District \_\_\_\_\_

Other Comment(s): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## UTILITIES & IMPROVEMENTS

(Must be Submitted when Public Improvements are Proposed and/or Required)

	FINANCING %						
		Proposed		Private	S.I.D.		
		Existing	Quantity		Cost	Special	G.O.
Sanitary Sewer							
Storm Sewer							
Paving							
Major							
Collector							
Minor							
Sidewalks							
Parks & Open Space							
Recreation Facilities							
Water							
Gas							
Electricity							
Other							
<b>TOTALS</b>							

Electricity:                      Above Ground \_\_\_\_\_ Below Ground \_\_\_\_\_  
 Anticipated Total Taxable Valuation:      Land \_\_\_\_\_ Improvements \_\_\_\_\_  
 Covenants: \_\_\_\_\_      Filed: \_\_\_\_\_ Debt Ratio \_\_\_\_\_

\*\*Attach Itemized Estimate

## POST CONSTRUCTION STORMWATER MANAGEMENT PLAN MAINTENANCE AGREEMENT AND EASEMENT

NOTE: THIS IS A DRAFT FORM OF AGREEMENT FOR USE IN THE CITY OF LA VISTA JURISDICTION UNTIL SUCH TIME AS THE PCWP ADOPTS A STANDARD DOCUMENT. THIS DRAFT PREPARED MARCH 2009..

**WHEREAS**, The Property Owner recognizes that stormwater management facilities (hereinafter referred to as "the facility" or "facilities") must be maintained for the development called (insert name of project or address if no project name) located in the jurisdiction of the City of La Vista, Sarpy County, Nebraska; and,

**WHEREAS**, the Property Owner (whether one of more) is the owner of real property depicted on Exhibit "A" (hereinafter referred to as "the Property"), and,

**WHEREAS**, the City of La Vista (hereinafter referred to as "the City") requires and the Property Owner, or its administrators, executors, successors, heirs, or assigns, agree that the health, safety and welfare of the citizens of the City require that the facilities be constructed and maintained on the property, and,

**WHEREAS**, a Post Construction Stormwater Management Plan is required by Chapter 154 of the Municipal Code of the City of La Vista, and,

**WHEREAS**, the Post Construction Stormwater Management Plan for (insert address of subject property) (hereinafter referred to as "PCSMP"), shall be constructed and maintained by the Property Owner, its administrators, executors, successors, heirs, or assigns, and

**NOW, THEREFORE**, in consideration of the foregoing premises, the covenants contained herein, and the following terms and conditions, the property owner agrees as follows:

1. The facility or facilities shall be constructed by the Property Owner in accordance with the PCSMP, which has been reviewed and accepted by the City of Omaha or its designee.
2. The Property Owner must develop and provide the "BMP Maintenance Requirements", attached here to as Exhibit "B", which have been reviewed and accepted by the City designee. The BMP Maintenance Requirements shall describe the specific maintenance practices to be performed for the facilities and include a schedule for implementation of these practices. The facility or facilities shall be inspected by a qualified professional at least annually to ensure that it is operating properly. A written record of inspection results and any maintenance work shall be maintained for a 3-year period and shall be available for review by the City.
3. The Property Owner, its administrators, executors, successors, heirs, or assigns, shall construct and perpetually operate and maintain, at its sole expense, the

facilities in strict accordance with the attached BMP Maintenance Requirements accepted by the City or its designee.

4. The Property Owner, its administrators, executors, successors, heirs, or assigns hereby grants permission to the City, its authorized agents and employees, to enter upon the property and to inspect the facilities whenever the City deems necessary. Whenever possible, the City shall provide notice prior to entry.
5. The Property Owner its administrators, executors, successors, heirs, or assigns, agrees that should it fail to correct any defects in the facility or facilities within time frame allowed in Section 154.21 of the Municipal Code of the City of La Vista, or shall fail to maintain the structure in accordance with the attached BMP Maintenance Requirements and with the law and applicable executive regulation or, in the event of an emergency as determined by the City or its designee in its sole discretion, the City or its designee is authorized to enter the property to make all repairs, and to perform all maintenance, construction and reconstruction as the City or its designee deems necessary. The City or its designee shall then recover from the Property Owner any and all costs the City expends to maintain or repair the facility or facilities or to correct any operational deficiencies. Failure to pay the City or its designee all of its expended costs, after sixty (60) days written notice, shall constitute a breach of the agreement. The City or its designee shall thereafter be entitled to bring an action against the Property Owner to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, administrative costs, and attorney fees shall be added to the recovery.
6. The Property Owner shall not obligate the City to maintain or repair the facility or facilities, and the City shall not be liable to any person for the condition or operation of the facility or facilities.
7. The Property Owner, its administrators, executors, successors, heirs, or assigns, hereby indemnifies and holds harmless the City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims that may arise or be asserted against the City from the construction, presence, existence or maintenance of the facility or facilities by the Property Owner or the City. In the event a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Property Owner and the Property Owner shall defend at its own expense any suit based on such claim. If any judgment or claims against the City, its authorized agents or employees shall be allowed, the Property Owner shall pay for all costs and expenses in connection herewith.
8. The Property Owner shall not in any way diminish, limit, or restrict the right of the City to enforce any of its ordinances as authorized by law.
9. This Agreement shall be recorded with the Register of Deeds of Sarpy County, Nebraska and shall constitute a covenant running with the land and shall be binding on the Property Owner, its administrators, executors, successors, heirs, or assigns, including any homeowners association and any other successors in interest.

IN WITNESS WHEREOF, the Property Owner (s) has/ have executed this agreement  
this day of \_\_\_\_\_, 20\_\_\_\_\_.

**INDIVIDUAL and/or PARTNERSHIP**

Signature
Printed Name & Title
Company
Phone No. / Fax No.
Address
Town / State / Zip
Email Address

Signature
Printed Name & Title
Company
Phone No. / Fax No.
Address
Town / State / Zip
Email Address

Signature
Printed Name & Title
Company
Phone No. / Fax No.
Address
Town / State / Zip
Email Address

Signature
Printed Name & Title
Company
Phone No. / Fax No.
Address
Town / State / Zip
Email Address

**ACKNOWLEDGMENT**

\_\_\_\_\_) )  
State

\_\_\_\_\_) )  
County

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, a Notary Public, in and for said County, personally came the above named: \_\_\_\_\_ who is (are) personally known to me to be the identical person(s) whose name(s) is (are) affixed to the above instrument and acknowledged the instrument to be his, her (their) voluntary act and deed for the purpose therein stated.

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

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Notary Seal

**Exhibit "A"**  
Insert Real Property Depiction

**Exhibit "B"**  
**Insert BMP Maintenance Requirements**

## EXHIBIT B1

### BMP Maintenance Plan (insert address of project) (insert name of project-if any)

I. General BMP Information

BMP ID Name	BMP Location
(Insert BMP Name & ID #)	(insert Lat. and Long. Coordinates)

II. BMP Site Location Map (attached)

III. Routine Maintenance Tasks and Schedule for typical BMPs

Bioretention Maintenance Tasks and Schedule	
Task	Schedule
Remove trash and debris	Monthly
Check and repair eroded areas	Monthly
Remulch any void areas	Monthly
Check vegetation and replace any damaged plan materials	Monthly
Inspect for ponding, washed out areas, soil conditions	Monthly
Perimeter mowing	Monthly
Inspect collection system for proper functioning	Quarterly
Reseed grass swale or border	As needed
Apply for new mulch	Annually
Pruning	Annually
Perform soil test and replace soil if needed	Annually
Repair broken pipes	As needed
Replace rip rap that is chocked with sediment	As needed
Remove sediment	As needed
Replace mulch	Every three years

<b>Wet Pond Maintenance Tasks and Schedule</b>	
<b>Task</b>	<b>Schedule</b>
Remove debris from side slopes and trash rack	Monthly
Check and clear orifice of any obstructions	Monthly
Outlet/inlet inspection and cleanout	Monthly
Check pond side slopes and repair eroded areas, bank mowing	Monthly
Forebay inspection and cleanout	Monthly-remove sediment every 7 years or when sediment volume exceeds 50% of storage volume
Volume Measurement	Annually-dredging needed every 20 years or when 25% of permanent pool volume has been lost
Inspect/Exercise all mechanical devices	Annually
Inspect for structural damage/leaks	Annually
Replace broken pipes	As needed
Replace riprap that has been choked with sediment	As needed
Pest control	As needed
Security	As needed

<b>Dry Detention Basin/Pond Maintenance Tasks and Schedule</b>	
<b>Task</b>	<b>Schedule</b>
Remove debris and trash from rack and side slopes	Monthly
Outlet/inlet inspection and cleanout	Monthly
Bank mowing and inspection/stabilization of eroded areas	Monthly
Forebay inspection and cleanout	Monthly-remove sediment every 7 years or when sediment volume exceeds 50% of storage volume
Check pond depth	Annually-remove sediment as needed
Remove woody vegetation along embankment	Annually
Inspect for structural damage	Annually
Inspect, exercise all mechanical devices	Annually
Replace broken pipes	As needed
Replace riprap that has been choked with sediment	As needed
Security	As needed

<b>Stormwater Wetland Maintenance Tasks and Schedule</b>	
<b>Task</b>	<b>Schedule</b>
Remove debris and trash from rack and side slopes	Monthly
Inlet/outlet inspection and cleanout	Monthly
Forebay inspection and cleanout	Monthly-remove sediment every 7 years or when sediment volume exceeds 50% of storage volume
Bank mowing and stabilization of eroded areas	Monthly
Removal of cattails and invasive species, replant as necessary	Semi-Annually
Inspect for structural damage	Annually
Sediment level	Annually-remove at 20 years or when plants are being impacted
Repair broken pipes	As needed
Replace riprap that has been choked with sediment	As needed
Pest control	As needed
Security	As needed

<b>Sand Filter Maintenance Tasks and Schedule</b>	
<b>Task</b>	<b>Schedule</b>
Remove trash	Monthly
Inspect outlet for obstructions	Monthly
Inspect for clogging	Monthly
Skim sand media	Annually
Pump oil and grit separator	Annually
Replace sand media	As needed

<b>Infiltration Trench Maintenance Tasks and Schedule</b>	
<b>Task</b>	<b>Schedule</b>
Remove trash and debris	Monthly
Check observation well for standing water	Monthly
Remove unwanted vegetation	Monthly
Maintain stone or mulch top surface	Annually
Remove sediment deposits and reseed	As necessary

<b>Grassed Swale/Channel Maintenance Tasks and Schedule</b>	
<b>Task</b>	<b>Schedule</b>
Trash/debris removal	Monthly
Mowing	Monthly-maintain 2-6 inches in height
Inspect for erosion and vegetative failure	Monthly, reseed as necessary
Inspect check dams and diversion devices	Monthly
Remove accumulated sediment	Semi-Annually
Repair any damaged or displaced riprap	As needed

<b>Filter Strip Maintenance Tasks and Schedule</b>	
<b>Task</b>	<b>Schedule</b>
Remove debris and trash	Monthly
Stabilization of eroded areas	Monthly
Mowing	Monthly-maintain 2-6 inches in height
Check outlet pipes (if present) for clogging	Monthly
Repair flow dispersion device to avoid formation of channels	Monthly
Remove sediment	Semi-Annually
Reseed	Annually

<b>Greenroof/Roof Runoff Management Maintenance Tasks and Schedule</b>	
<b>Task</b>	<b>Schedule</b>
Remove debris and trash	Monthly
Weed trees and invasive species	Monthly
Remove debris and litter from the rooftop drainage system	Monthly
Irrigate and fertilize	As necessary
Replace dying/diseased plants	As necessary

<b>Level Spreader Maintenance Tasks and Schedule</b>	
<b>Task</b>	<b>Schedule</b>
Remove trash and debris	Monthly
Inspect for any undercutting	Monthly
Inspect for any settlement	Monthly
Replace eroded riprap or stone	Monthly
Mowing	Monthly-maintain 2-6 inches in height
Inspect for erosion and channeling	Monthly
Remove sediment from forebay	Annually
Remove large stemmed vegetation	Annually
Repair all concentrated flows	As needed

Permeable Pavement Maintenance Tasks and Schedule	
Task	Schedule
Remove sediment from pavement surface	Monthly
Clean pavement of oil and grease	Monthly
Spray weeds and moss with herbicides	Monthly-during growing season
Vacuum sweep surface	Annually
Replace gravel	Annually
Inspect for deterioration	Annually
Verify surface dewaterers after storms	Annually

- IV. The Property Owner shall perform maintenance and inspection in accordance with the above table. A written report of all maintenance and inspections shall be prepared annually and kept on file by the Owner for a period covering the last 3 years at all times. The first report shall be prepared within one year of receiving the Certificate of Occupancy. Upon request of the City, the Owner shall provide copies of the annual maintenance inspection reports within three (3) business days.