

**SUBDIVISION**  
**AGREEMENT**

THIS AGREEMENT made this 20th day of July, 2004, by and between Market Pointe, L. L. C., a Missouri limited liability company (hereinafter referred to as "Developer"), SANITARY AND IMPROVEMENT DISTRICT NO. 259 of Sarpy County, Nebraska, (hereinafter referred to as "District") and the CITY OF PAPILLION, a municipal corporation, (hereinafter referred to as "City"),

WITNESSETH:

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

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

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

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

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I.

Developer and City agree that the credit of the District created by Developer shall be used for the construction of the following public improvements within the area to be developed.

- A. Grading of street right-of-way.
- B. Construction of and concrete paving of all streets dedicated per plat (Exhibit "A").
- C. All sanitary sewers and water mains constructed on dedicated street right-of-ways or easements per plat. (Exhibit "A")

- D. All storm sewers, inlets and appurtenances constructed on dedicated street right-of-ways or easements within the area to be developed.
- E. Contract with the Omaha Public Power District for street lighting for public streets dedicated per plat (Exhibit "A"), and underground power within the area to be developed. Contracts for decorative lighting shall be made in such a manner that the cost to the District shall not exceed the cost for standard street lighting.
- F. Contracting with a public gas company for a gas distribution system.
- G. Capital facilities charges to the City of Papillion in the amount of \$321,916.74.
- H. In order to facilitate public improvements to streets, intersections and traffic signal devices outside of the jurisdiction of the District, the District shall enter into an Interlocal Cooperation Agreements satisfactory to the City and include as parties, when necessary, Sarpy County and the City of La Vista and any abutting Sanitary Improvement Districts to construct and maintain such improvements as may be reasonably required by the City.
- I. The parties hereby agree that the City shall serve as the lead agent with respect to the construction of the following public improvements:
  - 1. Centennial Road improvements west of the centerline of 72<sup>nd</sup> Street;
  - 2. All water lines exterior to the District boundaries with the City constructing hookup to the frontage of the development site. The City shall have water available to the site for fire protection during construction of the buildings as soon as practicable, but in no event later than February 1, 2005.

Except as otherwise provided, the City shall: (a) have the necessary plans for the public improvements prepared by Thompson, Dreessen, & Dornier, City Engineers; (b) prepare bid specifications for any necessary contracts or subcontracts; (c) let and enter into such or subcontracts as necessary to complete the public improvements; (d) inspect the work performed under such subcontracts; (e) accept the finished work if and when appropriate; and (f) authorize the payment of the cost for the public improvements by the District on a regular basis as said costs accrue.

The parties hereto further agree that the District shall serve as the lead agent with respect to the following public improvements:

1. 72<sup>nd</sup> Street and Giles Road;
2. Giles Road east of 72<sup>nd</sup> Street;
3. Peter's Parkway intersection;
4. Centennial Road east of the centerline of 72<sup>nd</sup> Street;
5. 72<sup>nd</sup> Street and Cornhusker intersection improvements;
7. All other improvements identified on the attached Source and Use of Funds document, Exhibit B, which have not been specifically allocated between the City and District above.

Except as otherwise provided, the District shall: (a) have the necessary plans for the public improvements prepared by Olsson Associates, District Engineers; (b) prepare bid specifications for any necessary contracts or subcontracts; (c) let and enter into such or subcontracts as necessary to complete the public improvements; (d) inspect the work performed under such subcontracts; (e) accept the finished work if and when appropriate; and (f) authorize the payment of the cost for the public improvements by the District on a regular basis as said costs accrue.

- J. The cost of landscaping the west side of 72<sup>nd</sup> Street as shown in Exhibit B attached hereto.
- K. The traffic signal at 66<sup>th</sup> & Harrison Streets shall not be considered a public improvement, but shall be a private improvement, and shall be at the Developer's cost. The Developer shall place in trust with the City, the sum of One Hundred Five Thousand Dollars (\$105,000.00), which shall be held by the City in an interest bearing account to be disbursed by the City pursuant to an Interlocal Agreement between Papillion, La Vista, Sarpy County, or any other appropriate government entity.
- L. Attached hereto and incorporated by reference as Exhibit B, is a spreadsheet document entitled Source and Use of Funds depicting anticipated and estimated cost of aspects of the project.

District shall have a financing commitment from a recognized municipal bond underwriter in place prior to the District advertising for bids for the public improvements. The work to be performed by the City shall be completed on or before any anchor or tenant or tenants open for business to the public, which is estimated to be September 2005.

II.

It is agreed that the credit or funds of the District created by Developer shall not be used for construction of any improvements or facilities within the area to be developed except those specified in Paragraph I hereof. By way of specification and not by way of limitation, the parties agree that the District shall not incur any indebtedness or otherwise involve its credit or expend any of its funds in the construction or other acquisition or improvement of any swimming pool, golf course, park, playground or other recreational facility, without approval by Resolution of the City Council.

III.

Developer and City agree that the cost of all public improvements constructed by the District within the area to be developed (Exhibit "A"), as authorized by Paragraph I, supra, shall be defrayed as follows:

- A. 100% of the entire cost of grading street right-of-way including intersection shall be paid by special assessment against the property within the District.
- B. 100% of the entire cost of all sanitary sewer lines and water mains located within the District will be paid by special assessment against the property specially benefited. No portion of the cost of sanitary sewers and water mains shall be borne by general obligation of the District; provided, however, that for sanitary sewers in excess of 8 inches and water mains in excess of 8 inches the cost in excess of the cost of 8 inch sanitary sewers and/or 8 inch water mains shall be borne by the general obligation of the District and any outfall sewer lines or water lines outside the District boundaries caused to be constructed by the District shall be borne by the general obligation of the District. Not less than 50% of capital facility charges paid to the City of Papillion shall be specially assessed against properties served. The general obligation portion of the water mains shall be credited from the capital facilities charges as set forth in Exhibit B attached hereto. All private sanitary sewer lines within the Market Pointe subdivision shall be installed and maintained privately.
- C. (1) 100% of the entire cost of all paving and street construction will be paid by special assessment against the property benefited, except that the cost of the paving and construction of street intersections shall be borne by the general obligation of the District and the cost of pavement thickness in excess of 6 inches for reinforced concrete or 7 inches for plain concrete shall be borne by the general obligation of the District and the cost of pavement width in excess of 25 feet exclusive of curb and gutters shall be borne by the general obligation of the District. The cost for curb and gutters are incidental to paving and shall not be considered separately for purposes

of assessment. Street signs shall be purchased from City and installed by District. Cost of street signs and installation may be borne by the general obligation of the District. Notwithstanding the foregoing, the cost of the paving improvements shown on Exhibit B attached hereto shall be treated as a general obligation of the District.

(2) 100% of the entire cost of all storm sewer and appurtenances shall be borne by general obligation of the district: provided, however, that for storm sewers in excess of 48 inches inside diameter the difference in cost between the actual storm sewer constructed and a 48 inch storm sewer shall be specially assessed against the property within the District. Difference in cost shall include a proportionate share of the entire cost as hereinafter described in Paragraph IV. For improved channels, the cost of constructing the channel and appurtenances shall be considered as the cost of storm sewer in excess of 48 inches. Culvert crossings perpendicular to street centerlines may be generally obligated for a length not exceeding the width of the right-of-way, plus six times the vertical distance between the centerline of the pavement and the invert elevation of the box culvert.

- D. The cost of contract charges paid to Omaha Public Power District for lighting of public streets shall be paid out of the general fund of the District.
- E. All contract charges for underground power or natural gas authorized to be paid by District to the Omaha Public Power District or to any public gas utility by the provisions of Paragraph I-E and F, supra, including both the basic charges and refundable charge, together with all other charges as fall within the definition of entire cost as defined in Paragraph IV-A, including all penalties and default charges, and are allocable to such contract charges, shall be specially assessed against property within the area to be developed. Any refund of the refundable portion of the underground electrical service charge for a particular lot which shall be made by Omaha Public Power District to District or its successors shall be credited as follows:
  - 1. If refund is prior to the levy of special assessments for underground electrical service, said refund shall be credited as a reduction in the total cost of the underground electrical service to be levied against said lot.
  - 2. If refund is after the date of levy of special assessments for underground electrical service, said refund shall be credited as a payment on the balance owing on the special assessment levied against said lot in connection with underground electrical service for said lot.

3. If refund is after the date of levy and payment in full of special assessment, said refund shall be repaid to persons paying the special assessment.

F. Pursuant to Chapter 170, Subdivision of Land, Section, Section 170-20 of the Code of the City of Papillion, fire hydrants shall be provided by the subdivider. The type of hydrant and control valves and the location of the hydrant must be approved by the fire chief.

There shall be installed in the subdivision, prior to the issuance of any occupancy permit for any structure built in said subdivision, civil defense sirens and a number, type and specifications as determined by the fire chief.

The siren must be capable of sounding the severe weather and attack warning. The number, type and specifications for the civil defense sirens shall be determined by the fire chief in consultation with the director of the Sarpy County Civil Defense Agency. If existing coverage is available, subdivision will pay its pro-rata share of siren cost based on acres of coverage as determined by the City Engineer.

G. One hundred percent (100%) of the cost of the planting and maintaining the landscaping on the west side of 72<sup>nd</sup> Street, as shown in Exhibit D attached hereto, shall be a general obligation debt of the District.

H. The maintenance costs of Outlot A shall be the responsibility of the Developer until such time as the development is substantially built-out and Outlot A is in a vegetated state and sedimentation from the Market Pointe subdivision is no longer required as a sediment trap for the construction of the shopping center at which time the District and/or City shall assume all maintenance responsibilities.

#### IV.

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

A. "Entire cost" of a type of improvement shall be deemed to include all construction costs, engineering fees, attorney fees, testing expenses, penalties, forfeitures and default charges, and miscellaneous costs such as interest on warrants to date of levy of special assessments and fiscal agent's warrant fees and bond fees.

B. "Property benefited" shall mean property benefited from the improvement and situated either (1) within the platted area in which the improvement is situated or (2) outside such platted area in which such improvement is situated but within the corporate limits of the District and within 300 feet of

said platted area. No special assessments shall be assessed against any outlot nor against any other lot, part of lot, lands and real estate upon which cannot be built a structure compatible with the zoning regulations of said lot except to the extent of the special benefit to said lot, part of lot, lands and real estate by reason of such improvement.

- C. "Street intersections" shall be constructed to mean the area of the street between the returns of the various legs of the intersection, but in no case shall said area extend in any direction beyond a straight line drawn perpendicular from the centerline of the street to the adjacent lot corner.

V.

City covenants and agrees:

- A. That should City annex the entire area of the District created by Developer prior to the District's levy of special assessments for the improvements authorized in Paragraph I hereof, supra, and thereby succeed to said District's power to levy special assessments, that City will levy same in accordance with Paragraph III, hereof, supra.
- B. That the District created by Developer may connect its sanitary sewer system and water system to the sanitary system and water system of the City pursuant to the terms and conditions of a sewer and water connection agreement of even date between City and said District.
- C. Any time subsequent to when the Sanitary Improvement District is put on written notice by the City of Papillion that the City is conducting an investigation to determine the feasibility of annexing said Sanitary Improvement District boundaries, then the Sanitary Improvement District shall make no further expenditures for any purpose, except for those expenditures previously authorized by a duly approved budget, without first obtaining permission of the City of Papillion, which permission must be granted by a majority vote of those members elected or appointed to the Papillion City Council.
- D. Sanitary Improvement District shall furnish to the City of Papillion copies of all proposed budgets and published notices of meetings to consider said budget and expenditures at least thirty (30) days prior to the Board of Trustees' meeting to consider and/or adopt a proposed budget.
- E. District warrants that it will provide City with a minimum of thirty (30) days prior written notice of the filing of any petition Under Chapter 9 of the United States Bankruptcy Code and the District shall also provide to the City actual

prior notice of any hearings held in the United States Bankruptcy Court pursuant to any bankruptcy filings.

VI.

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

- A. Abide by and incorporate into all of its construction contracts and provisions required by the regulations of the City pertaining to construction of public improvements in subdivisions and testing procedures therefor.
- B. Prior to commencement of construction of improvements, said District will obtain and file of record permanent easements for all sanitary, water and storm sewer lines as determined by City's engineer. Said easements shall be in form satisfactory to the City's attorney and City's engineer.
- C. Prior to the District publishing notice to levy special assessments, District agrees to submit to City:
  1. A schedule of the proposed special assessments.
  2. A plat of the area to be assessed.
  3. A full and detailed statement of the entire cost of each type of improvement, which statement or statements shall separately show:
    - (a) The amount paid to contractor.
    - (b) A separate itemization of all other costs of the project, including but not limited to engineering fees, attorney's fees, testing expenses, publication expenses, estimated interest on all warrants to date and the estimated fiscal agent's levy of special assessments, warrant fees and bond fees. District agrees to obtain written approval of City of proposed assessment schedules prior to advertising for any hearing of District to be held for the purpose of equalizing or levying special assessments against property benefited by any improvements constructed by District.
- D. The District shall make its annual tax levy in any amount sufficient to timely pay the indebtedness and interest thereon for public improvements but in no event shall said levy be less than the current tax levy assessed by the City of Papillion on the taxable real estate within the City limits.

- E. The District shall provide the City ten (10) days notice of its annual budget meeting along with its tax request.

## VII

It is mutually agreed that the District shall pay a fee of one percent (1%) of construction cost to the City to cover engineering, legal and other miscellaneous expenses incurred by the City in connection with any necessary review of plans and specifications in connection with the construction projects performed by Sanitary and Improvement District No. 259. The fee shall be allocated to special assessments and general obligation bonds in the same proportion as the costs of the particular construction project.

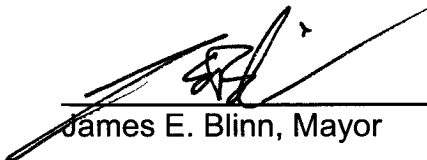
## VIII

The parties mutually agree that in the event City shall annex Lot 1, Market Pointe Addition, as a partial annexation of the District, that the City will assume an equitable portion of the general obligation debt based upon the following formula: The amount of general obligation debt to be assumed by the City shall equal the sum of the following: (i) the total cost of the Centennial Road improvements, plus (ii) the total cost of the Centennial Road and 72<sup>nd</sup> Street intersection improvements, plus (iii) the total cost of the general obligation debt, less the cost of (i) and (ii), above, multiplied by 25%, which is estimated to be in the amount of \$2,751,525 being assumed by the City and \$1,971,827 being retained by the District. In the event the City annexes any other lots in the Market Pointe Addition other than Lot 1, which would constitute a partial annexation, then a division of assets and liabilities of said District in connection with such partial annexation of the District shall be made strictly on the basis of assets and liabilities of this District attributable to the area annexed by the City, and City shall not be required to assume in connection with such partial annexation any indebtedness of such District which is attributable to improvements or expenses incurred in connection with areas other than the areas so annexed by the City in accordance with Neb. Rev. Stat. Section 31-766 as amended. City shall have the right to annex all or part of the District at any time upon its sole discretion and District and Developer or its successors and assigns agree not to protest said annexation.

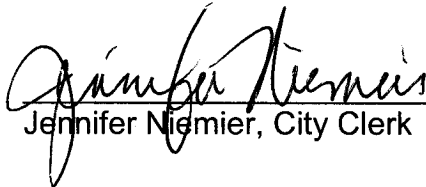
## IX

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

CITY OF PAPILLION, A Nebraska  
Municipal Corporation

  
\_\_\_\_\_  
James E. Blinn, Mayor

Attest:

  
\_\_\_\_\_  
Jennifer Niemier, City Clerk

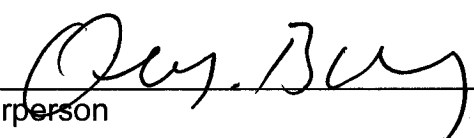
MARKET POINTE, LLC, a Missouri limited liability  
company, Developer

By:   
\_\_\_\_\_  
Authorized Member

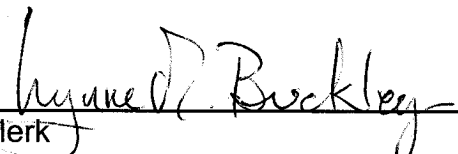
Attest:

  
\_\_\_\_\_  
Authorized Member

SANITARY AND IMPROVEMENT  
DISTRICT NO. 259 OF SARPY  
COUNTY, NEBRASKA

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

Attest:

  
\_\_\_\_\_  
Clerk



**Exhibit B**

**Source and Use of Funds**  
**MARKET POINTE ADDITION - 72ND & GILES ROAD (SE Quad)**

**NAME OF ADDITION :**  
**SID NO.259 of Sarp County :**  
**DATE :**

4/6/2004 (Revised 4/13/04)(Revised 5/12/04)(Revised 7/8/04)(Revised 7/09/04)

**PROPOSED IMPROVEMENTS**

**FINANCING**

NOTE: These values are based on the most current estimates of probable construction costs using current bid prices. Actual final costs may vary according to market conditions

ITEM	QUANTITY	UNIT PRICE	CONSTRUCTION COST	TOTAL COST	FINANCING			
					GENERAL OBLIGATION	SPECIAL ASSESS	REIMBURSABLE PRIVATE	
<b>Sanitary Sewer</b>								
Connection Fees Paid with Building Permit, (all interior sanitary sewers to be funded privately)			\$ 16,775.00				\$ 16,775.00	
<b>Water</b>								
(A) Capital Facilities Fees	(66.92Ac @ \$4,500/Ac & 4.94Ac @ \$4,200)		\$ 321,916.74	\$ 370,204.25	\$ 108,518.63	\$ 185,102.13		
16" Centennial (8" Equiv)	1,280.00 LF	\$ 55.00	\$ 70,400.00	\$ 91,520.00	\$ 33,280.00	\$ 58,240.00		
12" 72nd Street (8" Equiv)	2,071.00 LF	\$ 45.00	\$ 93,195.00	\$ 121,163.50	\$ 26,923.50	\$ 94,230.00		
12" Peters Pkwy (8" Equiv)	1,260.00 LF	\$ 45.00	\$ 56,700.00	\$ 73,710.00	\$ 16,380.00	\$ 57,330.00		
8" 72nd and Giles Rd	1,785.00 LF	\$ 35.00	\$ 62,475.00	\$ 81,217.50	\$ 16,380.00	\$ 81,217.50		
(A) Payment of G.O. portion of Capital Facilities Charges is reduced by \$76,583.50 to compensate SID for oversized water mains which are part of the primary distribution system								
<b>Paving and Storm Sewer</b>								
72nd and Giles	1.00 LS	\$ 425,000.00	\$ 425,000.00	\$ 595,000.00	\$ 595,000.00			
Giles Road East of 72nd	1.00 LS	\$ 415,000.00	\$ 415,000.00	\$ 581,000.00	\$ 523,000.00	\$ 58,000.00		
72nd and Peters Pkwy	1.00 LS	\$ 250,000.00	\$ 250,000.00	\$ 350,000.00	\$ 350,000.00			
72nd and Centennial	1.00 LS	\$ 235,000.00	\$ 235,000.00	\$ 329,000.00	\$ 329,000.00			
(B) Centennial Road West of 72nd	1.00 LS	\$ 1,535,000.00	\$ 1,535,000.00	\$ 1,765,250.00	\$ 1,765,250.00			
72nd and Cornhusker	1.00 LS	\$ 550,000.00	\$ 550,000.00	\$ 770,000.00	\$ 770,000.00			
(C) Centennial, East of 72nd Street	1.00 LS	\$ 168,000.00	\$ 168,000.00	\$ 235,200.00	\$ 177,200.00	\$ 58,000.00		
(B) Cost share with City of Papillion for improvement of Centennial West of centerline of 72nd Street								
(C) Portion of paving may be delayed pending extension of street to the East								
<b>Traffic Signal</b>								
66th & Harrison Street Intersection			\$ 105,000.00				\$ 105,000.00	
<b>Parks</b>								
Commercial			\$ -					
<b>Gas</b>								
Commercial			\$ -					
<b>Electricity - OPPD</b>								
Commercial	66.92 AC	\$ 2,425.00	\$ 162,281.00	\$ 202,851.25		\$ 202,851.25		
<b>Entrance Monuments</b>								
	1.00 LS	\$ 120,000.00	\$ 120,000.00	\$ 144,000.00		\$ 144,000.00		
<b>Landscaping, site</b>								
72nd West right of way	1.00 LS	\$ 270,000.00	\$ 270,000.00	\$ 324,000.00		\$ 324,000.00		
<b>Street Lighting to be installed per standard OPPD schedule &amp; paid from operating funds of the SID</b>								
Site Grading - Private	825,000.00 CY	\$ 1.00	\$ 825,000.00	\$ 990,000.00		\$ 990,000.00		
<b>GRAND TOTAL</b>					\$ 4,723,352.13	\$ 794,970.88	\$ 1,579,775.00	
					<b>TOTAL SID EXPENSE</b>			\$ 5,518,323.00

\*\*\*Interlocal Cooperation Agreements for:

72nd and Giles Intersection  
 Improvement of Centennial, West of 72nd  
 72nd and Cornhusker Intersection  
 66th and Harrison Traffic Signal

OPINION OF VALUATION AT BUILDOUT \$45 Million

EXHIBIT D

