

**DEVELOPMENT/SUBDIVISION AGREEMENT
SHADOW LAKE**

THIS DEVELOPMENT/SUBDIVISION AGREEMENT ("Agreement") pursuant to the Papillion Municipal Code made and entered into this 17th day of May, 2005, by and between the City of Papillion ("City"), ~~Shadow Lake, L.L.C.~~, a Nebraska limited liability company, and its successors and assigns ("Developer") Sanitary and Improvement District No. 264, Sarpy County, Nebraska ("District").

Shadow Lake Development, LLC

WITNESSETH:

WHEREAS, DEVELOPER, has submitted preliminary and final plat approval applications and rezoning applications for the development commonly known as Shadow Lake, which is developed in two phases, the first is Shadow Lake, and the second is Shadow Lake Phase 2; that attached hereto and incorporated herein by reference as Exhibits A and B are plats of said developments, which are outside the incorporated limits of the City, but within the City's zoning and planning jurisdiction; and

WHEREAS, DEVELOPER has requested CITY to approve specific platting of the Development Area, said area to be developed; and

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

WHEREAS, DEVELOPER desires to construct, install and locate certain improvements within the Development Area; and

WHEREAS, the DEVELOPER, CITY, DISTRICT and desire to agree on the method of installation and the allocation of expenses for the Public Improvements 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; and

WHEREAS, the CITY, DISTRICT, and DEVELOPER desire to set forth in this Agreement their respective understandings and agreements with respect to the development of the project.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:

**SECTION 1
DEFINITIONS**

For the purpose of this Agreement, unless the context otherwise requires, the following words and phrases shall have the following meanings:

(a) **"Cost(s)" or "entire cost"**, being used interchangeably, of each "Improvement" or "Public Improvement" shall mean all construction costs, engineering fees, design fees, attorneys' fees, inspection fees and testing expenses, publication costs, financing costs (which shall include interest) and all other related or miscellaneous costs or expenses incurred by DEVELOPER, CITY, DISTRICT and/or in connection with the Improvements or the Public Improvements.

(b) **"Dedicated Street(s)"** shall mean those concrete or paved area(s), including curbing, to be constructed, modified or improved within that portion of the Development Area designated as Dedicated Street right-of-way on Exhibit "B".

(c) **"Development Area"** shall mean the real property situated within the area identified or depicted on Exhibit "A".

(d) **"Improvements"** shall mean those improvements or betterments required by or otherwise undertaken by DEVELOPER pursuant to this Agreement, including the Public Improvements, if any, on, to or otherwise benefiting the Development Area.

(e) **"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.

- (f) **“Public Improvements”** shall mean:
- (i) All Dedicated Streets and the paving identified on Exhibit “B”.
 - (ii) All concrete sidewalks to be constructed, modified or improved along any Dedicated Streets and lying within the boundaries of any Dedicated Street right-of-way.
 - (iii) All Dedicated Street signage required by, and meeting the standards of, the “Manual of Uniform Traffic Control Devices” but only if first approved in writing by the CITY’s Public Works Department and only if located at a Street Intersection.
 - (iv) All “Wastewater Sewers” constructed within the Development Area as identified in the sanitary sewer layout (Exhibit “C”) prepared by Lamp, Ryneerson & Associates, Inc., (“Engineer”). Wastewater Sewers shall include all necessary sanitary and wastewater sewer mains, manholes, lines, pipes and related appurtenances.
 - (v) All “Storm Sewers” to be constructed in the Development Area identified on the storm sewer plan (Exhibit “D”) prepared by the Engineer, including all necessary storm sewers, inlets, manholes, lines, pipes and related appurtenances.
 - (vi) The “Water Distribution System” to be constructed within the boundaries of any Dedicated Street right-of-way within the Development Area or other areas specifically approved by the CITY.
 - (vii) The “Gas Distribution System” to be constructed and installed by Aquila, Inc. within any Dedicated Street right-of-way within the Development Area or other areas specifically approved by the CITY.
 - (viii) The “Lighting System” for any Dedicated Streets to be constructed and installed by the Omaha Public Power District within the boundaries of any Dedicated Street right-of-way within the Development Area, including any decorative, ornamental or other lighting not conforming to CITY standards but which has been specifically approved by the CITY.
 - (ix) The “Electrical Power Service” to be constructed and installed by the Omaha Public Power District within the boundaries of any Dedicated Street right-of-way within the Development Area. The Electrical

Power Service shall include all electrical utility lines and other devices, other than the Lighting System, so constructed and installed for the benefit of the Development Area.

(g) **"Sewer System"** shall mean, collectively, all sewer systems within the Development Area, and shall also include all existing wastewater systems, Wastewater Sewers, existing storm sewer systems, the Storm Sewers and existing sanitary sewer systems located within the Development Area.

(h) **"Street Intersections"** shall mean those portions of the Dedicated Streets (other than that portion of any "T" intersection abutting any buildable lot or parcel) identified as such on the Street Intersection drawing (Exhibit "B").

(i) **"Street Improvements"** shall mean those Public Improvements described in paragraphs 1(e)(i), (ii), (iii) and (viii), other than the Street Intersections.

(j) **"Party"** shall mean CITY, DISTRICT, or DEVELOPER individually, and **"Parties"** shall mean the CITY, DISTRICT, and DEVELOPER, collectively.

SECTION 2

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" pursuant to sanitary sewer plans heretofore prepared by Lamp, Ryneerson & Associates, Inc., consulting engineers and land surveyors.
- 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 are to be developed.

- F. Contracting with a public gas company for a gas distribution system.
- G. Capital facilities charge to the City of Papillion.

SECTION 3

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.

SECTION 4

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.
- 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.

(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.

SECTION 5 AUTHORITY AND DOCUMENTATION

(a) The DEVELOPER and DISTRICT shall cause all Improvements and Public Improvements to be constructed and installed in accordance with the terms and conditions of this Agreement.

(b) DEVELOPER and DISTRICT shall abide by and incorporate into all of its construction contracts the provisions required by the regulations of the City pertaining to construction of public improvements in developments/subdivisions and testing procedures therefore.

(c) Prior to commencement of construction of Improvements and Public Improvements, DEVELOPER and 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 a form satisfactory to the City's attorney and City's engineer.

(d) Subject to the remaining terms and conditions of this Agreement, CITY approves construction and installation of the Improvements and Public Improvements substantially in accordance with the Plat; provided, however, that at least thirty (30) working days before commencing any work in connection with the Public Improvements, the DEVELOPER and DISTRICT shall first:

(i) Deliver to the appropriate department(s) of the CITY duly executed copies of any agreement(s) for work required for, or otherwise entered into in connection with the Public Improvements, and all plans for the Public Improvements, including the manner and means of any additional connections required by or for the Wastewater Sewers or Storm Sewers, prepared by Lamp, Rynearson & Associates, Inc. The

specifications and technical terms of all such agreements and plans shall have been received and approved by CITY prior to Developer and District's execution of any agreements for construction or installation of the Public Improvements.

(ii) The CITY and its departments agree to reasonably cooperate with the DEVELOPER and DISTRICT its agents and contractors for the timely and orderly installation of the Public Improvements following the execution of this Agreement.

(c) Any contracts for the construction or installation of the Public Improvements entered by DEVELOPER and DISTRICT shall provide that the contractor or subcontractor constructing or installing the Public Improvements shall have no recourse against CITY for any claim or matter arising out of, or in any way whatsoever, including without limitation, the cost for Public Improvements, construction oversight of the Public Improvements, the design or preparation of plans and specifications for the Public Improvements, or the construction of the Public Improvements.

(d) The credit of the CITY shall not be used for engineering, procurement or construction of any betterments or Public Improvements.

(e) CITY hereby grants permission to the DEVELOPER and DISTRICT to connect its sanitary sewer system and water system to the sanitary system and water system of the City pursuant to the remaining terms and conditions of this Agreement and the terms and conditions of a sewer and water connection agreement of even date between City and said DEVELOPER and DISTRICT.

SECTION 6

REPRESENTATIONS AND ACKNOWLEDGEMENTS

(a) DEVELOPER represents and warrants to the CITY as follows:

(i) DEVELOPER is the owner of record of the Development Area and has full right and authority to make decisions affecting the Development Area and to enter into this Agreement.

(ii) DEVELOPER is duly authorized to transact business under the laws of the State of Nebraska.

(iii) DEVELOPER has full power and authority to enter into, deliver and perform its obligations under this Agreement and each of the documents related thereto.

(iv) DEVELOPER has taken all necessary action to authorize Developer's execution, and delivery of, and its performance under, this Agreement and as such, this Agreement constitutes Developer's valid and binding obligation, enforceable against DEVELOPER in accordance with its terms.

(v) No consent, order, authorization, waiver, approval or any other action, or registration, declaration or filing with any person, board or body, public or private (collectively, the "Approvals") is required to be obtained by the DEVELOPER in connection with the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated thereby.

(vi) DEVELOPER shall cause all Improvements and Public Improvements to be constructed and installed in accordance with the terms and conditions of this Agreement and Chapter 170, Subdivision of Land, Section 170-22 of the Code of the City of Papillion.

(vii) All Public Improvements shall be constructed and installed and payment shall be made of all applicable fees due to the City of Papillion, including, but not limited to, capital facility charges and plan review fees prior to the issuance of certificate of occupancy for any lot within the subdivision.

(viii) DEVELOPER shall comply with (i) the terms of this Agreement and (ii) the provisions of any agreement submitted to the CITY pursuant to this Agreement, which agreements shall not be amended or assigned without prior written approval of the CITY.

(ix) DEVELOPER shall defend, indemnify and hold the CITY harmless from and against any responsibility, claim, damage, loss, liability or obligation resulting or arising from or out of or otherwise occurring in connection with this Agreement and the construction, financing and installation of the Improvements and Public Improvements.

(x) DEVELOPER has not employed or retained any company or person, other than a bona fide employee of DEVELOPER to solicit or

secure this Agreement and has not paid or agreed to pay any entity or person other than a bona fide employee working for the DEVELOPER any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement.

(xi) DEVELOPER shall cause CITY to be named as an additional insured under any policy of insurance, including all payment and performance bonds obtained by DEVELOPER (whether or not required by this Agreement) or any other person in connection with the construction or operation of the Improvements or Public Improvements.

(xii) All documents, contracts and instruments submitted to CITY now, or at any time in the future, or otherwise entered into by or on behalf of DEVELOPER shall in all material respects be fully authorized, and in all material respects shall be valid, binding and enforceable in accordance with their terms.

(xiii) DEVELOPER shall cause all personal property and real estate taxes and assessments levied on the Development Area to be paid prior to the time such taxes become delinquent.

(b) DEVELOPER acknowledges that neither CITY nor any of its officers, agents or employees: (i) is acting as attorney, architect, engineer or otherwise in the interest or on behalf of DEVELOPER in furtherance of this Agreement; (ii) owes any duty to DEVELOPER or any other person because of any action CITY or DEVELOPER has undertaken, or in the future will undertake in furtherance of this Agreement, including any CITY inspection or CITY approval of any matter related to the same; and (iii) shall be liable to any person as a result of any act undertaken by CITY or DEVELOPER to date or at any time in the future in furtherance of this Agreement, and, to the maximum extent permitted by law, DEVELOPER hereby waives for itself, its employees, agents and assigns any such right, remedy or recourse it may have against any of them.

(c) The CITY and DEVELOPER further acknowledge that the CITY makes no representation or warranty as to the validity or effect of (i) CITY's approval of the plat or this Agreement, or (ii) any future act of CITY in respect to Developer's performance, under the Agreement or otherwise, in developing the Development Area; DEVELOPER is proceeding at its own risk.

SECTION 7 OTHER OBLIGATIONS

(a) DEVELOPER shall undertake such acts, responsibilities and obligations as may be necessary or appropriate to prevent and control any adverse impact on any real estate or property beyond the Development Area directly or indirectly caused by, or attributable or related to construction and installation of the Improvements and Public Improvements.

(b) DEVELOPER and DISTRICT shall pay capital facilities charges to the City of Papillion in the amount of \$2,007,991 prior to connection to the City's water system.

(c) DEVELOPER and DISTRICT shall be responsible for Public Improvements to Capehart Road (80th-84th) and improvements to 72nd Street (South end of taper to Capehart), and 84th Street (Schram Road to Capehart). Any public right-of-way that is to be constructed during any phase of the project shall be dedicated to the CITY or COUNTY, depending on jurisdictional location, upon the filing of the approved plat for the project.

(d) DEVELOPER and DISTRICT shall comply with all state statutes and CITY ordinances. DEVELOPER and DISTRICT shall further adopt such regulations so as to require strict compliance with all state statutes and CITY ordinances by the owner, agent, occupant, or any person acquiring possession, charge or control of any lot or ground within the Development Area, or any part of any lot within the Development Area.

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

(f) There shall be installed in the Development Area or be available, sufficient civil defense siren coverage, prior to the issuance of any occupancy permit for any structure build in said Development Area, civil defense sirens and a number, type and specifications as determined by the City Administrator in conjunction with the Director of the Sarpy County Civil Defense Agency. The siren must be capable of sounding the severe weather and attach warning. The number, type and specifications for the civil defense sirens shall be determined by the Director of the Sarpy County Civil Defense Agency.

(g) Notwithstanding any provision in this Agreement to the contrary, this Agreement shall not in any way be construed as creating any obligation on the part of DEVELOPER to develop the Developed Area or construct any of the Improvements in the event the plans envisioned by the DEVELOPER are not carried out and the approvals obtained from the CITY are withdrawn or terminated by the Declarant.

(h) The DEVELOPER and DISTRICT have proposed the construction of two lakes within the development area, one of which is referred to as Shadow Lake, and the other referred to as Midland Lake. The cost for the lakes shall be funded 100% as a general obligation debt of the district. The cost for the dams and/or embankments for said lakes shall be funded by Shadow Lake SID 264 in the amount of \$3.378 million dollars and Papillion Promenade SID 267 at a cost not to exceed \$1.367 million dollars. The two proposed lake sites shall be subject to public access at all times pursuant to Rules and Regulations to be adopted and enforced by the City. No portion of any public or private debt associated with the development described herein shall be accessed against or cause an encumbrance on the two lake sites, and accompanying dam embankments or access easements. The Developer and/or District shall execute all necessary conveyances and/or easements to provide for public access to the two lake sites. The City shall have the right at any time to annex the two lake sites, dam embankments and the easement areas accompanying the same, free and clear of any debt or financial obligation for the construction of the same, which annexation may be separate and apart from any annexation of any other portion of the subject development.

SECTION 8

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 to Lake sites, Dam embankments, and public access to the same 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.

SECTION 9

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. 264. The fee shall be allocated to special assessments and general obligation bonds in the same proportion as the costs of the particular construction project.

SECTION 10 MIXED USE DEVELOPMENT PROVISION

Lot 750 of the development has been or will be rezoned from Agricultural (AG) to a Mixed Use District (MU). According to the provisions of Section 205-30 of the City Zoning Ordinance, and for purposes of that portion rezoned Mixed Use District, the parties agree as follows:

I. Definitions

For the purposes of this Agreement, the definitions in Article 2 of the Papillion Zoning Ordinance shall apply. In addition, the following words and phrases shall have the following meanings:

A. "Site Improvement" shall mean any building, parking, landscaping, signage, Fencing or other regulated structure.

II. Development

Except as otherwise permitted in this Agreement, the project shall be developed in accordance with the City of Papillion Comprehensive Plan, the City of Papillion Zoning and Subdivision regulations, the Highway 370 Design Guidelines as adopted by the City, and the terms and conditions of this Agreement. Prior to the issuance of any building permit on Lot 750, the Developer shall submit for approval by the City Council, a Mixed Use Agreement in accordance with Section 205-30 of the Papillion Code. The Developer shall also submit with the Mixed Use Agreement a master plan for all of Lot 750 or a site plan for each individual development project, to be approved through a special use permit procedure, as defined in Section 205-30 of the Papillion Code.

III. Permitted Uses

Except as otherwise allowed by this Agreement, Shadow Lake Mixed Use District shall be developed in accordance with the applicable permitted uses set forth in Exhibit C. The permitted uses will be incorporated into the Mixed Use Agreement, and as such are subject to review and amendment.

IX. Miscellaneous Provisions

- A. The City Administrator of the City of Papillion shall have the authority to administer this Agreement on behalf of the City and to exercise discretion with respect to those matters contained herein so long as the development proceeds in general accord with this Agreement and with regard to those matters not fully determined at the date of this Agreement. The provisions of this Agreement shall run with the land in favor of and for the benefit of the CITY and shall be binding upon present and all successor owners of the real estate described in the attached Exhibit A.
- B. Nondiscrimination. DEVELOPER shall not, in the performance of this contract, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of face, color, sex, age, political or religious opinions, affiliations or national origin.
- C. Applicable Law. Parties to this contract shall conform with all existing and applicable CITY ordinances, resolutions, state and federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this contract.
- D. Interest to the CITY. No elected official or any officer or employee of the City of Papillion shall have a finance interest, direct or indirect, in any City of Papillion contract. Any violation of this section with the knowledge of the person or corporation contracting with the City of Papillion shall render the contract voidable by the Mayor or Council.
- E. None of the foregoing provisions shall be construed to imply any waiver of any provision of the zoning or planning requirements or any other section of the Papillion Zoning Code and Ordinances.

SECTION 11 ANNEXATION

The DISTRICT hereby agrees not to issue bonds for the payment of its public improvements prior to when the CITY has either fully or partially annexed the project within the DISTRICT'S jurisdiction, without first obtaining written permission of CITY. The Lake areas within the development shall be considered public areas and remain open to public use. The CITY may annex the lake areas without assuming any debt of the district. Upon annexation of the lake areas, the city will assume responsibility for promulgating all rules and regulations regarding the use of the public lake areas.

**SECTION 12
INTERLOCAL COOPERATION ACT PROVISIONS**

The City of Papillion, Sarpy County, Sanitary Improvement District No.264 of Sarpy County, and the Papillion Natural Resource District will enter into a separate Interlocal Cooperation Agreement pursuant to Neb. Rev. Stat. Section 13-801, et seq., as necessary, which shall reference and incorporate the terms of this Development/Subdivision Agreement and which Interlocal Cooperation Agreement(s) shall be subject to the approval of a majority of the members of each political subdivision's governing body or board.

**SECTION 13
CONTROL OF PROJECT**

DEVELOPER shall have complete and exclusive control over the construction of the project other than the public improvements described herein, subject to all applicable laws, ordinances and regulations, including, but not limited to, the Papillion Zoning Code. As to all parts the project owned by it from time to time, the DEVELOPER hereby grants to the CITY, COUNTY, DISTRICT and NRD and their agents and employees, the right to enter at reasonable times for the purpose of inspecting the project.

**SECTION 14
TECHNICAL AMENDMENTS**

In the event that there are minor inaccuracies contained herein, or any attachment attached hereto or any other agreement contemplated hereby, or the parties agree that changes are required due to unforeseen events or circumstances, or technical matters arising during the term of this agreement, which changes do not alter the substance of this agreement, the respective presiding officers of the CITY, COUNTY, DISTRICT and NRD, and the managers of the DEVELOPER are authorized to approve such changes and authorized to execute any required instruments and to make and incorporate such amendment or change to this agreement or any attachment hereto or to any other agreement contemplated hereby.

SECTION 15

VALIDITY AND SEVERABILITY

(a) It is the intention of the parties hereto that the provisions of this agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of Nebraska, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereto shall not render unenforceable or impaired, the remainder of this agreement. Accordingly, if any provision of this agreement shall be deemed invalid or unenforceable in whole or in part, this agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unreasonable provision or provisions, or portions thereof, and to alter the balance of this agreement in order to render the same valid and enforceable.

(b) If this agreement contains any unlawful provisions not an essential part of this agreement and which shall not appear to have a controlling or material inducement to the making thereof, such provisions shall be deemed of no effect and shall be deemed stricken from this agreement without affecting the binding force of the remainder. In the event any provision of this agreement is capable of more than one interpretation, one which would render the provision invalid, and one which would render the provision valid, the provision shall be interpreted so as to render it valid.

SECTION 16 MISCELLANEOUS

(a) **TERMINATION OF AGREEMENT.** This Agreement shall not be terminated except (i) by the written agreement between the DEVELOPER, CITY, , OR DISTRICT, or; (ii) by CITY for any material breach or default by any other PARTY which remains uncured thirty (30) days following notice to the respective PARTY specifying such breach or default ("Notice to Cure"), to be effective upon notice of termination. No termination shall relieve the DEVELOPER of any unperformed obligation required as of the effective date of termination nor any liability which may have then accrued, each of which shall survive such termination. Notwithstanding the foregoing, CITY may terminate this Agreement immediately upon notice without allowing any right to cure upon the recurrence of any breach or default for which CITY has given a Notice to Cure in the preceding 180 days. The provisions of this Section 6 shall survive the expiration or termination of this Agreement;

(b) **INDEMNITY.** DEVELOPER agrees to defend, indemnify and hold CITY, and their employees, agents and assigns, harmless from and against any and all claims, judgments, actions, loss, damage or injury of any nature whatsoever resulting

from any negligence or performance by any of them or their employees, agents, contractors, subcontractors or other representatives under this Agreement, including any failure to perform or properly perform as required by this Agreement, or any and all claims, judgments, actions, loss, damage or injury of any nature whatsoever which may otherwise arise from or out of or may be caused by its breach of or default in any warranty, representations, obligation, requirement, responsibility or other provision of this Agreement or from any unlawful or improper discharge into the CITY's sewer system during the term of this Agreement. Without limiting the generality of the foregoing, such indemnity shall include and extend to any injury, loss or damage:

- (i) to any agent, employee or subcontractor of DEVELOPER, CITY, occurring while they are on any premises owned, operated or controlled by CITY, for any reason except to the extent such injury is caused by the act, error or omission, including negligence, of CITY.
 - (ii) either a construction contract entered into by (i) DEVELOPER under the terms of this Agreement, or (ii) DEVELOPER on behalf of the CITY.
 - (iii) a breach of any contract, covenant, representation or warranty made by DEVELOPER in this Agreement; and
 - (iv) any responsibility, claim, damage, loss, liability or obligation resulting or arising from or out of or otherwise occurring in connection with this Agreement and the construction, financing and installation of the Improvements or any Public Improvements.
 - (v) any person's use or occupancy of any part of the Development Area, including the Improvements or any Public Improvements, and any act undertaken, or agreement entered into, by DEVELOPER in furtherance of this Agreement.
- (c) **ASSIGNMENT.** Neither this Agreement nor any obligations hereunder shall not be assigned to without the express written consent of CITY which may be withheld in CITY's sole discretion.
- (d) **WAIVER.** A waiver by any Party of any default, breach or failure of another shall not be construed as a continuing waiver of the same or of any subsequent or different default, breach or failure.
- (e) **GOVERNING LAW.** This Agreement shall be governed exclusively by its provisions and by the laws of the State of Nebraska except to the extent such

provisions may be superseded by applicable federal law regulation, in which case the latter shall apply.

(f) **ENTIRE AGREEMENT.**

(i) This Agreement, and the Exhibits and documents referenced in this Agreement (which are intended to be and hereby are specifically made a part of this Agreement whether or not so stated) express the entire understanding and all agreements of the PARTIES. Specifically, this Agreement supersedes any prior written or oral agreement or understanding between any of the PARTIES, whether individually or collectively concerning the subject matter hereof.

(ii) This Agreement may be modified only by a written agreement, executed by all PARTIES; provided that the PARTIES agree, without cost to the CITY, to conform this Agreement and all performance obligations hereunder to the requirements of any applicable laws, rules, regulations, standards and specifications of any governmental agency with jurisdiction over any such matter, including any amendment or change thereto.

(iii) This Agreement shall not be construed to be a joint venture or a lease among any of the Parties. Notwithstanding the preceding sentence, whenever any provision of this Agreement has reference to a performance obligation or requirement of the CITY and the DEVELOPER, such performance obligation or requirement shall be the joint and several obligation or requirement of the CITY and the DEVELOPER, whether or not so stated, unless otherwise specifically stated.

(g) **NOTICES, CONSENTS AND APPROVAL.** All payments, notices, statements, demands, requests, consents, approval, authorizations or other submissions required to be made by the PARTIES shall be in writing, whether or not so stated, and shall be deemed sufficient and served upon the other only if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

For DEVELOPER:

John Allen
~~Shadow Lake, L.L.C.~~ Shadow Lake Development, LLC
14769 California St.
P.O. Box 540490

Omaha, Nebraska 68154

With Copy to:

Dennis P. Hogan, III
PANSING, HOGAN, ERNST
& BACHMAN
10250 Regency Ct., #300
Omaha, NE 68114-3728

For CITY:

City Clerk
City of Papillion
122 East Third Street
Papillion, NE 68046
AND
City Administrator
City of Papillion
122 East Third Street
Papillion, NE 68046

(h) **NON-DISCRIMINATION.** In performing under this Agreement, no PARTY shall discriminate against any persons on account of disability, race, national origin, sex, age, and political or religious affiliations in violation of any applicable laws, rules and regulations of any governmental agency with jurisdiction over any such matter.

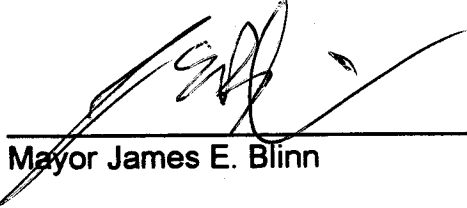
(i) **MISCELLANEOUS.** Unless otherwise specified, all references in this Agreement to Exhibits, numbered paragraphs or Sections shall mean those Exhibits attached to this Agreement, which are incorporated into this Agreement as if fully set out herein, and those numbered paragraphs and Sections of this Agreement.

(j) **APPROVAL OF PLAT.** DEVELOPER acknowledges that CITY's approval of the Plat, passed and approved by the Papillion City Council on May 17, 2005, are each specifically subject to and conditioned on the Developer's entering into and complying with this Agreement.

(k) This is an agreement between the named parties hereto, enforceable only by them. No third party beneficiaries are created or allowed to enforce this agreement or claim damages for its breach.

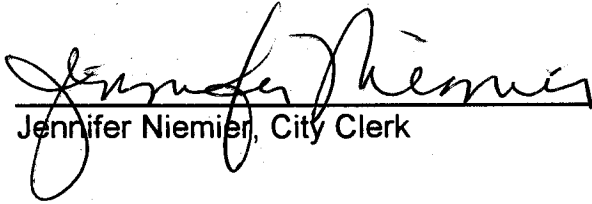
IN WITNESS WHEREOF, the undersigned have executed this Agreement on or before the day and year first above written.

CITY OF PAPILLION, A Municipal Corporation



Mayor James E. Blinn

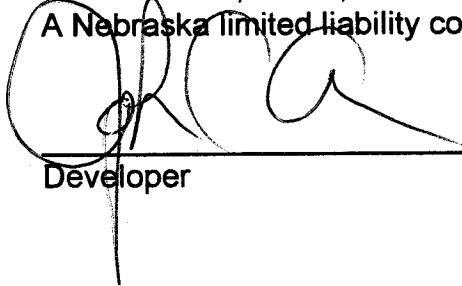
Attest:



Jennifer Niemier, City Clerk

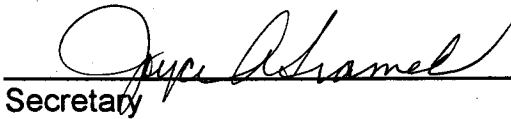
(SEAL)

~~Shadow Lake, L.L.C.~~, Shadow Lake Development, LLC
A Nebraska limited liability company



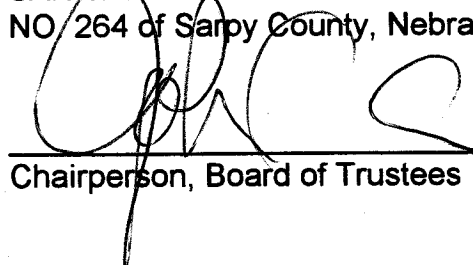
Developer

Attest:



Secretary

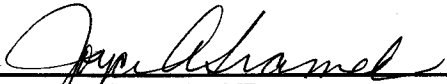
SANITARY & IMPROVEMENT DISTRICT
NO 264 of Sarpy County, Nebraska



Chairperson, Board of Trustees

Attest::

Development/Subdivision Agreement
Page 22



~~Secretary~~, Board of Trustees
Clerk