

SUBDIVISION AGREEMENT

SUMMIT RIDGE
LOTS 243-495, INCLUSIVE
AND
OUTLOTS "C" THROUGH "N", INCLUSIVE

THIS AGREEMENT made this 15 day of February, 2005, by and between HEARTHSTONE HOMES, INC., a Nebraska corporation d/b/a Summit Ridge, (hereinafter referred to as "Developer"); SANITARY AND IMPROVEMENT DISTRICT NO. 245 OF SARPY COUNTY (hereinafter referred to as "District") and the CITY OF PAPIILLION, 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 herein referred to as the "area to be developed", which area 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 has requested City to forbear from annexing the area to be developed until after February 15, 2006, for public improvements through Sanitary and Improvement District No. 245 created by Developer (hereinafter referred to as the "District"); 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 cost 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.

- 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 E & A Consulting Group, 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 area to be developed.
- F. Contracting with a public gas company for a gas distribution system.

G. Capital facilities charge to the City of Papillion.

H. Purchase of Outlots C & D at Developer's costs for park purposes and construction of improvements thereon as approved by the City.

I. Improvements to 96th Street. The District shall enter into an Interlocal Cooperation Agreement satisfactory to the City with Sarpy County, the City and the Sanitary and Improvement Districts abutting along or affecting 96th Street to construct and maintain such improvements to 96th Street as may be reasonably required by the City.

J. Acquisition and site preparation of Outlots C & D, Summit Ridge.

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. One Hundred (100%) percent of the entire cost of grading 96th Street may be borne by the general obligation of 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 benefitted. 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 will 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 District will, for the benefit of the City, construct the 24 inch water main along portions of the north property line of the subdivision at locations directed by the City Engineer. The City, at its discretion, may pay for the 24 inch water line by giving the District a credit against Capital Facilities Charges due the City or reimburse the District, plus accrued interest, within three (3) years hereof.

C. (1) 100% of the entire cost of all paving and street construction will be paid by special assessment against the property benefitted, 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. 100% of sidewalks within Outlots "G" and "H" may be a general obligation.

(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 center lines 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 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 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 or be available, sufficient civil defense siren coverage, 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 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 attack warning. The number, type and specifications for the civil defense sirens shall be determined by the Director of the Sarpy County Civil Defense Agency. The cost for said civil defense sirens shall be treated as a general obligation cost. 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 (100%) percent of park acquisition and approved park improvements shall be a general obligation of the District. The City approves the acquisition of Outlots C & D, Summit Ridge, for a park at a total cost of \$219,463.93 (developer's actual out of pocket land cost plus Greenbelt Recapture) plus soft costs not to exceed 15% thereof and total amount of park improvement and trail costs of \$200,000, which improvements must be approved by City.

H. One hundred (100%) percent of the cost per Interlocal Cooperation Agreement for 96th Street shall be a general obligation of the District.

I. One hundred (100%) percent of the cost of silt basin removal shall be a general obligation of the District. Any cost of maintenance thereof shall be paid from the District's operating fund.

J. The developer in grading of its subdivision will place a surcharge pile on Lot 240, Summit Ridge, owned by the City and the City shall reimburse the developer for its out of pocket cost thereof. Such work shall be performed by developer's grading contractor under the supervision of the City Engineer and shall not exceed \$30,000.

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 benefitted" shall mean property benefitted 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 construed 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 the 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 benefitted by any improvements constructed by District.

D. The District shall make its annual tax levy in an 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 requests.

F. The District shall be a party to the Interlocal Cooperation Agreement between the City of Papillion and other Sanitary and Improvement Districts within the City's zoning jurisdiction to provide for the service of line location service for water, sanitary sewer, storm sewer and other utility owned by the District.

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. 245. 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 any part of the area to be developed and said annexation shall not include the entire territory of the District created by Developer, 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 in or expenses incurred in connection with areas other than the area so annexed by the City.

CITY OF PAPILLION, A Nebraska
Municipal Corporation

By: _____
Mayor

Attest:

City Clerk

SANITARY AND IMPROVEMENT DISTRICT NO. 245 OF
SARPY COUNTY, NEBRASKA

By: _____
Chairman

Attest:

Clerk

HEARTHSTONE HOMES, INC., a Nebraska corporation
d/b/a Summit Ridge

By: _____
Title