

CWF

## SUBDIVISION AGREEMENT

THIS SUBDIVISION AGREEMENT ("Agreement") is made this 22nd day of September, 2003 ("Effective Date"), by and among Clearwater Falls, LLC, a Nebraska limited liability company ("DEVELOPER"), SANITARY AND IMPROVEMENT DISTRICT NO. 243 OF SARPY COUNTY, NEBRASKA, a Nebraska political subdivision ("DISTRICT"), and THE CITY OF BELLEVUE, a municipal corporation of the first class ("CITY").

### WITNESSETH:

WHEREAS, DEVELOPER is owner of the real property situated within the Development Area (as defined in Section 1); and

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

WHEREAS, the Development Area is outside the incorporated limits of the CITY but within the CITY's zoning and platting jurisdiction thereby necessitating CITY's review and approval of the desired improvements.

NOW, THEREFORE, in consideration of the premises, 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) "Benefited Property" shall mean any parcel or lot within the Development Area which, as of the Effective Date, may actually be used as a buildable lot.
- (b) "Cost" shall mean all construction costs, engineering fees, design fees, attorneys' fees, testing expenses, publication costs, financing costs (which shall include all fiscal agent's warrant fees and bond fees, and interest on warrants to date of levy of special assessments), the administrative costs incurred by DISTRICT by application of Section 5(c) and all other related or miscellaneous costs or expenses directly incurred by DEVELOPER or DISTRICT in connection with Public Improvements.
- (c) "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.
- (d) "Development Area" shall mean the real property situated within the area identified or depicted on Exhibit A.
- (e) "General Obligation" shall mean any indebtedness for Public Improvements which is not required by law or this Agreement to be specially assessed against Benefited Property.
- (f) "Park Plan" shall have the meaning ascribed in the Subdivision Regulations of the CITY and for purposes of this Agreement, shall include that document attached to this Agreement as Exhibit D, which Plan is hereby accepted and approved by CITY.

TMK/2790-0.9

Post-it® Fax Note	7671	Date	8/15/06	# of pages	2
To	Dr. Peter R. R. R.	From	Debbie		
Co./Dept.		Co.	FOI		
Phone #		Phone #			
Fax #		Fax #			

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

(ii) "Plat" shall mean the Final Plat approved by the City Council for the CITY on September 22, 2003, subject to any conditions expressly provided for at such time or in this Agreement.

( ) "Public Improvements" shall mean:

(i) All Dedicated Streets (including that portion of any "T" intersection abutting any buildable lot or parcel and Street Intersections) 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 Hill Farrell & Associates ("Engineer"). Wastewater Sewers shall include all necessary sanitary and wastewater sewer mains, manholes, lines, pipes, lift stations and related appurtenances.

(v) All "Storm Sewers" to be constructed in the Development Area identified on the storm sewer plan (Exhibit B-1) prepared by the Engineer, including all necessary storm sewers, inlets, manholes, lines, pipes and related appurtenances.

(vi) The "Water Distribution System" to be constructed and installed by Metropolitan Utilities District 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 Metropolitan Utilities District 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.

(x) Those improvements to be constructed by the DISTRICT pursuant to the Park Plan.

(xi) Those road improvements (meeting the Urban Design Standards) made to 48<sup>th</sup> Street by DISTRICT pursuant to the Interlocal Agreement from the existing intersection of

Capehart Road and 48<sup>th</sup> Street to a point approximately five thousand four hundred lineal feet (5,400') south of Capehart Road (collectively, the "48<sup>th</sup> Street Improvements").

(xii) Those island and traffic calming devices within the Dedicated Streets and identified on the paving plan attached as Exhibit B-2.

(xiii) Those road improvements (meeting the Urban Design Standards) made to Capehart Road by Sarpy County pursuant to the Interlocal Agreement from 36<sup>th</sup> to 48<sup>th</sup> Street (collectively "Capehart Road Improvements").

(j) "Sewer System" shall mean, collectively, all sewer systems within the DISTRICT and 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 DISTRICT or the Development Area.

(k) "Street Improvements" shall mean those Public Improvements described in Sections 1(i)(i), (ii), (iii), (viii), (xi), (xii) and (xiii), other than the Street Intersections.

(l) "Street Intersections" shall mean those portions of the Dedicated Streets (other than that portion of any "T" intersection abutting any buildable lot or parcel) designated as intersections on Exhibit B.

(m) "Weeds" shall include, but not be limited to, bindweed (*Convolvulus arvensis*), puncture vine (*Tribulus terrestris*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), perennial peppergrass (*Lepidium draba*), Russian knapweed (*Centaurea pteris*), Johnson grass (*Sorghum halepense*), nodding or musk thistle, quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), horse nettle (*Solanum carolinense*), bull thistle (*Cirsium lanceolatum*), buckthorn (*Rhamnus*) (toorn), hemp plant (*Cannabis sativa*), and ragweed (*Ambrosiaceae*).

(n) "Interlocal Agreement" shall mean that agreement, including any Exhibits or Schedules thereto, dated as of November 10, 2003, between CITY, DISTRICT and the County of Sarpy, Nebraska ("Sarpy County") approved by the Sarpy County Board on October 28, 2003, and the DISTRICT Board of Trustees on November 17, 2003, which Interlocal Agreement is attached to this Agreement as Exhibit E.

(o) "Urban Design Standards" shall mean those twenty-five foot (25') wide, nine inch (9") concrete road improvements, including curbs, guttering, and related storm sewer systems, meeting the design, surface and other specifications of CITY, the plans for which shall be first approved by CITY in accordance with Section 2(b)(i).

(p) "County Design Standards" shall mean those twenty-four foot (24') wide, nine inch (9") concrete road improvements, six foot (6') wide earth shoulders, and rural section with culverts, the plans for which shall be first approved by CITY in accordance with Section 2(b)(i).

## SECTION 2

### AUTHORITY AND DOCUMENTATION

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

(b) Subject to the remaining terms and conditions of this Agreement, CITY hereby approves construction and installation of the 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 DISTRICT and DEVELOPER 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 manner and means of any additional connections required by or for the Wastewater Sewers or Storm Sewers. The specifications and technical terms of all such agreements and plans shall be subject to review and approval of CITY. All agreements and plans shall require the timely and orderly engineering, design, procurement, construction, installation and testing of Public Improvements and that all work therefor shall be performed in a good and workmanlike manner, using quality materials, in accordance with industry standards, in compliance with all applicable laws, rules, regulations, standards and specifications of any governmental agency with jurisdiction over any such work or over the Public Improvements and as otherwise may be reasonably required by the CITY. All such agreements shall require the contractor to procure and maintain throughout the term of any such agreement, policies of insurance as follows: (1) workers' compensation insurance and employer's liability insurance in the statutory amount; (2) commercial general liability insurance covering bodily injury, including death, and property damage coverage; (3) broad form contractual liability coverage for all obligations and liabilities undertaken by the agreement and product and completed operations; (4) comprehensive automobile liability and coverage providing bodily injury and property damage coverage covering all motor vehicles including hired and non-owned autos as well as mobile equipment to the extent that may be excluded from the general liability insurance. All such insurance shall have a combined single limit of at least \$1,000,000 per person, and an aggregate limit of at least \$2,000,000 per occurrence; umbrella liability coverage for all of the above with policy limits of \$1,000,000. The CITY and DISTRICT shall be named additional insureds for purposes of all policies. Certificates of insurance shall be presented to the CITY upon request. No policy of insurance shall be cancelable, except upon thirty (30) days notice to CITY and DISTRICT. All insurance shall be procured from and maintained by a reputable and financially responsible insurance company authorized to transact business in the State of Nebraska. The CITY shall endeavor to review and approve or require modification to any such agreement within fifteen (15) working days after delivery; provided, however, that unless the CITY notifies the DISTRICT of its objection to any such agreement at least seven (7) working days prior to the date scheduled for commencement of such work, the CITY shall be deemed to have approved such agreement.

(ii) Deliver to the Finance Director of the CITY duly executed copies of any written agreement(s) between the DISTRICT and its fiscal agent for the placement of the warrants or bonds of the DISTRICT used for the payment of the Costs of the Public Improvements.

(iii) Deliver to the Public Works Director of the CITY duly executed copies of an agreement between the DISTRICT and the City of Omaha for wastewater treatment for any wastewater or sewage flowing out of the Development Area.

(iv) Deliver to the Public Works Director of the CITY copies of all performance, labor and material payment or other bonds required by law or the Public Works Director.

(c) At least thirty (30) working days prior to any meeting of the Board of Trustees for the DISTRICT when the Board will consider the levy of special assessments in connection with Public Improvements, the DISTRICT and DEVELOPER shall deliver to the CITY:

(i) A full and detailed statement of the Cost of each Public Improvement, which statement or statements shall separately identify and itemize:

1. The amount and date paid to each contractor, together with releases, lien waivers and other documentation necessary to show that all obligations of the DISTRICT in connection with the Public Improvements have been discharged; and
2. All other direct or indirect Costs of the DISTRICT or any other person which have been or will be expended or otherwise incurred in connection with the Public Improvement including, but not limited to, all engineering fees, attorneys' fees, testing expenses, publication costs, and financing costs including, but not limited to, interest on all warrants to date of levy of special assessments.

(ii) A detailed schedule of each proposed special assessment together with the amount of any General Obligation incurred or to be paid by the DISTRICT for the Public Improvement;

(iii) A plat of all real property to be assessed; and

(iv) Information as may be necessary to evidence that the Public Improvement has been completed in compliance with all applicable laws, rules, regulations, standards and specifications of any governmental agency with jurisdiction over any such work or the Public Improvements and as otherwise has been required by the CITY together with any other information reasonably requested by the CITY.

(d) The DISTRICT shall also provide the Finance Director of the CITY with at least thirty (30) days prior written notice of any meeting whenever the issues of levying special assessments or equalizing or apportioning any debt in connection with the Public Improvements are being considered or discussed by any political or governmental body or agency of competent jurisdiction.

### SECTION 3

#### COSTS OF PUBLIC IMPROVEMENTS

(a) The Costs of Public Improvements (other than the 48<sup>th</sup> Street Improvements and the Capehart Road Improvements which Costs shall be paid for as contemplated by paragraph 4 of the Interlocal Agreement and Sections 3(c) and 3(d)) shall be paid for by the DISTRICT but shall be defrayed as required by law. All such Costs, other than General Obligations, shall be privately financed or specially assessed against Benefited Property on an equitable basis.

(i) If not previously paid for, all special assessments for Public Improvements shall be assessed pursuant to applicable provisions of Nebraska Revised Statutes Chapter 31, as amended from time to time, and DISTRICT shall take all necessary actions to see that such assessments are paid in the manner and time required by Chapter 31.

(ii) The DEVELOPER and DISTRICT shall, upon request of the CITY, evidence to the CITY's satisfaction that any lot or parcel to be assessed is a buildable lot. If any lot, parcel or other area within the Development Area is not a buildable lot for any reason whatsoever, (e.g. by reason of sufficient size, dimensions, easements or similar burdens or for any other reason), then such lot or parcel shall not be considered to be Benefited Property and no portion of the Cost of the Public Improvements shall be levied against such lot or parcel.

(i) The following Costs of Public Improvements shall constitute General Obligations to the extent permitted by law:

- (i) The Cost of any extra width pavings for any Dedicated Streets exceeding twenty-five feet (25').
- (ii) The Cost of Street Intersections.
- (iii) The Cost of the original street signs for Dedicated Streets, other than the Cost of any decorative, ornamental or other signs not conforming to the "Manual of Uniform Traffic Control Devices" which (and notwithstanding any provision in Section 3(b) to the contrary) shall be the obligation of the DEVELOPER to be paid for at the time of installation.
- (iv) The Cost of the Lighting System, other than the Cost of any decorative, ornamental or other Dedicated Street, Street Intersection or other lighting not conforming to CITY standards which (and notwithstanding any provision in Section 3(b) to the contrary) shall be the obligation of the DEVELOPER to be paid for at the time of installation.
- (v) The Cost of Storm Sewers.
- (vi) The difference in Cost between piping eight inches (8") in diameter and the size actually required for piping for the Wastewater Sewers, if greater than eight inches (8") in diameter.
- (vii) The Cost of any outfall line of the Wastewater Sewers which is designed to serve a drainage area beyond the Development Area, but only if actually constructed and installed outside of the Development Area.
- (viii) Charges paid to connect the DISTRICT's Wastewater Sewer System (but not merely the Wastewater Sewers) to another sanitary and improvement district.
- (ix) The Cost of any sewage treatment plant or lift station for the Wastewater Sewers which is designed to serve the entire DISTRICT.
- (x) The Cost of that portion of the Water Distribution System which is designed to benefit areas of the DISTRICT beyond the Development Area.
- (xi) The Cost of that portion of the Gas Distribution System which is designed to benefit areas of the DISTRICT beyond the Development Area.
- (xii) The Cost of the installation of Electrical Power Service other than that portion of the Cost equal to the estimated refundable charge from Omaha Public Power District (which shall be a General Obligation; provided that the refund to the DISTRICT shall be credited to the Bond Construction Account of the DISTRICT) shall be specially assessed against the Benefited Property.
- (xiii) The Cost of the acquisition and installation of Recreational Facilities (including the Cost of Outlot G) in accordance with the Park Plan, subject to the restrictions and limitations of Section 7-24 of the Subdivision Regulations.
- (xiv) The Cost of those Public Improvements identified in Section 1(i)(xii).

- (j) (i) The following Cost of the 48<sup>th</sup> Street Improvements shall constitute General Obligations to the extent permitted by law:

1. One-half of the Costs incurred by DISTRICT for construction of the 48<sup>th</sup> Street Improvements; provided, that whenever any portion of such Costs (including any amounts paid for accrued interest related to financing such Costs) shall be reimbursed by application of Section 3(e), DISTRICT shall use such funds to promptly retire any bonds, warrants or other forms of debt or financing issued or incurred by DISTRICT in connection with such Costs (or, if then fully retired, toward the retirement of any General Obligation then outstanding) and the terms of all such financing shall permit such payment without penalty.
2. To the extent that Sarpy County shall elect to defer the same as may be permitted by paragraph 4 of the Interlocal Agreement, Sarpy County's proportionate share of the Costs of the 48<sup>th</sup> Street Improvements, (i.e., 50 percent of such Costs, subject to the reimbursement contemplated by Section 3(e)); provided, however, that whenever such Costs (including any amounts paid for accrued interest related to financing such Costs) shall be reimbursed by Sarpy County, DISTRICT shall use such funds to promptly retire any bonds, warrants or other forms of debt or financing issued or incurred by DISTRICT in connection with such Costs (or, if then fully retired, toward the retirement of any General Obligation then outstanding) and the terms of all such financing shall permit such payment without penalty.

- (ii) The following Cost of the Capehart Road Improvements shall constitute General Obligations to the extent permitted by law and used by DISTRICT to reimburse County for such Cost of the Capehart Road Improvements pursuant to the terms of the Interlocal Agreement:

1. 21.96% multiplied by (the Costs incurred by County for construction of the Capehart Road Improvements less \$87,000.00) plus \$87,000.00 (i.e. The amount representing the agreed upon Cost differential (when compared to the Cost to meet County Design Standards) that will be incurred by County for construction of the Capehart Road Improvements to meet the Urban Design Standards).
2. Whenever any portion of the Costs identified in Sections 3(c)(ii)(1) or 3(c)(ii)(2) (including any amounts paid for accrued interest related to financing such Costs) shall be reimbursed by application of Section 3(e), DISTRICT shall use such funds to promptly retire any bonds, warrants or other forms of debt or financing issued or incurred by DISTRICT in connection with such Costs (or, if then fully retired, toward the retirement of any General Obligation then outstanding) and the terms of all such financing shall permit such payment without penalty.

(d) Notwithstanding any provisions in Subsection 3(a)(i) related to DEVELOPER's payment obligations in connection with special assessments, to the extent the Water Distribution System or Gas Distribution System is financed in accordance with MUD policies, the payment of special assessments for such Public Improvements shall be undertaken in accordance with such policies.

- (e) (i) To the extent permitted by law, CITY shall include provisions in any subdivision agreement required by application of CITY's Subdivision Regulations (as amended from time to time) to effect the intended development of real property directly abutting any of the 48<sup>th</sup> Street Improvements requiring the developer, sanitary and improvement district or other

appropriate party (or combination thereof as determined by CITY in its discretion) to reimburse DISTRICT and Sarpy County, in the aggregate, an amount equal to 1/3 of the Cost of the 48<sup>th</sup> Street Improvements multiplied by the ratio of the development's total lineal 48<sup>th</sup> Street front footage to 11,110. The amount so paid shall be allocated between Sarpy County and DISTRICT in such a manner so as to proportionately reimburse each of Sarpy County and DISTRICT for their respective Costs (whether incurred or to be incurred and including any accrued interest obtained on financing obtained for such purposes) of the 48<sup>th</sup> Street Improvements. The net effect of the aggregate of such reimbursements shall be that, assuming full development along the 48<sup>th</sup> Street Improvements, Sarpy County shall have absorbed 1/3 of the Cost of the 48<sup>th</sup> Street Improvements and DISTRICT shall have absorbed 1/3 of the Cost of the 48<sup>th</sup> Street Improvements abutting the boundaries of DISTRICT (i.e. approximately 2640 lineal feet).

(ii) To the extent permitted by law, CITY shall include provisions in any subdivision agreement required by application of CITY's Subdivision Regulations (as amended from time to time) to effect the intended development of real property directly abutting any of the Capehart Road Improvements requiring the developer, sanitary and improvement district or other appropriate party (or combination thereof as determined by CITY in its discretion) to reimburse DISTRICT and Sarpy County for their respective Costs (whether incurred or to be incurred and including any accrued interest on financing obtained for such purposes) of the Capehart Road Improvements as follows:

To Sarpy County: (2/3's of the Cost of the Capehart Road Improvements less the amount permitted to be a general obligation of DISTRICT pursuant to the application of Section 3(c)(ii)) multiplied by the ratio of the development's total lineal Capehart Road front footage to 11,020.

To DISTRICT: The amount permitted by application of Section 3(c)(ii) to be a general obligation of DISTRICT multiplied by the ratio of the development's total lineal Capehart Road front footage to 7,390.

#### SECTION 4

##### REPRESENTATIONS

(a) DEVELOPER covenants and represents 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 organized, validly existing and in good standing under the laws of the State of Nebraska and is currently authorized to do business in 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 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, except as may be described or contemplated by this Agreement, the Interlocal Agreement.

(vi) DEVELOPER shall cause all Public Improvements (including the Capehart Road Improvements contemplated to be constructed by the County pursuant to the Interlocal Agreement) to be constructed and installed in accordance with the terms and conditions of this Agreement.

(vii) DEVELOPER shall take all steps reasonably necessary to cause all Public Improvements to be constructed and installed by the DISTRICT no later than December 31, 2005. To the extent not provided by the DISTRICT, DEVELOPER shall provide CITY with quarterly progress reports during the redevelopment and allow CITY reasonable access to any relevant financial or other records pertaining to the Public Improvements.

(viii) The Park Plan shall be implemented in accordance with the terms and conditions of attached Exhibit D. DEVELOPER shall provide CITY with quarterly progress reports during the redevelopment and allow CITY reasonable access to any relevant financial or other records pertaining to the same.

(ix) INTENTIONALLY LEFT BLANK.

(x) 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.

(xi) DEVELOPER shall not permit any private wastewater/sewage disposal systems to be constructed, installed or used on, under or in the vicinity of the Development Area, except as permitted by this Agreement.

(xii) DEVELOPER shall not permit any discharge into the Wastewater/Sewage System to be constructed, installed or used on, under or in the vicinity of the Development Area, in violation of an applicable law, ordinance, statute, rule or regulation.

(xiii) 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.

(xiv) 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.

(xv) After the Plat has been approved, DEVELOPER shall promptly record the same. Thereafter, DEVELOPER shall promptly (1) create a duly incorporated or organized Homeowners Association ("HOA") providing for membership consisting of the owners of all lots in the Development Area (other than DISTRICT), (2) deed outlots A through H ("Outlots") to such HOA, and (3) cause the HOA to accept and record such deed; provided that such deed shall include a right of reverter whereby the ownership of such Outlots shall automatically revert to the then current owners (and their respective grantees) of those parcels adjoining such Outlots as joint tenants and not tenants in common to take effect in the event the HOA or its successor (previously approved by CITY, which approval shall not be unreasonably withheld) in title shall dissolve or otherwise cease to exist, which right of reverter shall be also made part of the covenants applicable to the development contemplated by this Agreement.

(xvi) DEVELOPER shall not plat, sell or otherwise permit development of more than 167 single family lots within the boundaries of DISTRICT (as amended from time to time) prior to the completion of the 48<sup>th</sup> Street Improvements and the Capehart Road Improvements in accordance with the Urban Design Standards.

(xvii) DEVELOPER is the owner of all real property abutting 48<sup>th</sup> Street and lying between the north and south boundaries of DISTRICT as extended westerly through 48<sup>th</sup> Street. By its signature to this Agreement, DEVELOPER (on behalf of itself, its grantees, transferees and assigns) hereby consents to all actions of CITY undertaken now or in the future in furtherance of the application of Section 3(e) and hereby waives any right, remedy or recourse it may have against CITY, its officers, employees or elected officials as a result of any such undertaking.

(xviii) DEVELOPER shall include provisions in each contract, if any, entered into by DEVELOPER related to construction or installation of those Public Improvements contemplated by Section 1(i) requiring all contractors, subcontractors and their respective agents and employees to enter the Development Area by use of an entrance on 48<sup>th</sup> Street approved by CITY and further requiring all connecting streets to Fox Ridge and Heartland Hills to be barricaded during such construction or installation. DEVELOPER shall exercise its best efforts to enforce all such provisions.

(b) DISTRICT covenants and represents as follows:

(i) It is duly organized, is in good standing and is currently authorized to do business in the State of Nebraska; that this Agreement and the Interlocal Agreement has been duly executed and constitutes its valid and binding obligation, each enforceable in accordance with their respective terms.

(ii) DISTRICT shall cause all Public Improvements (including the Capehart Road Improvements contemplated to be constructed by the County pursuant to the Interlocal Agreement) to be constructed and installed in accordance with the terms and conditions of this Agreement. All Public Improvements shall be constructed and installed by no later than December 31, 2005. The Park Plan shall be implemented in accordance with the terms and conditions of attached Exhibit D.

(iii) No consent, order, authorization, waiver, approval or any other action, or registration, declaration or filing with any person, board or body, public or private is required to be obtained by the DISTRICT in connection with the execution, delivery or performance of this Agreement or the consummation of the transactions contemplated thereby, except as may be described or contemplated by this Agreement, the Interlocal Agreement.

(iv) It shall abide and be bound by the terms of this Agreement and the provisions of any agreement submitted to the CITY pursuant to this Agreement, which agreements shall not be amended or assigned without written approval of the CITY.

(v) The performance of DISTRICT contemplated by this Agreement and the Interlocal Agreement is within its lawful power and authority and has been duly authorized under, pursuant to and in accordance with its constituent documents and the laws of the State of Nebraska. The DISTRICT shall not incur any General Obligation other than those expressly contemplated by this Agreement for, or in connection with, Public Improvements for any purpose without prior approval from the CITY which may be withheld in the absolute discretion of the CITY.

(vi) It shall not permit any private wastewater/sewage disposal systems to be constructed, installed or used in the Development Area.

(vii) It shall not permit any discharge into the Sewer System in violation of an applicable law, ordinance, statute, rule or regulation.

(viii) To maintain all Public Improvements, other than the 48<sup>th</sup> Street Improvements and the Capehart Road Improvements (which maintenance shall be the obligation of County pursuant to the terms of the Interlocal Agreement), in a good and functional state of repair. DISTRICT shall use its best efforts to cause Sarpy County to similarly maintain the 48<sup>th</sup> Street Improvements and the Capehart Road Improvements.

(ix) DISTRICT 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, including DISTRICT and Sarpy County, in connection with the construction or operation of the Public Improvements.

(x) Other than DISTRICT's Agreement with its fiscal agent, the Interlocal Agreement or this Agreement, there are no agreements to which DISTRICT is a party or by which DISTRICT is bound concerning the construction or installation, or the repair, replacement or maintenance of any of the Public Improvements. DISTRICT shall not modify any such agreement nor otherwise undertake or assume any such obligation or liability therefor without the express prior written approval of the Bellevue City Council, which approval may be withheld in its absolute discretion.

(xi) DISTRICT shall not issue any debt, bonds, warrants or enter into any other form of financing arrangement in furtherance of any other improvement lying, in whole or in part, outside the boundaries of the DISTRICT, without first obtaining an unqualified favorable opinion from competent bond counsel of DISTRICT's choice, including, among other appropriate matters, that such financing is within its lawful power and authority and has been duly authorized under, pursuant to, and in accordance with its

constituent documents and the laws of the State of Nebraska. Such opinion shall be made to those parties deemed appropriate by DISTRICT and to the City of Bellevue, its elected officials and officers.

(xii) DISTRICT shall include provisions in each contract entered into by DISTRICT related to construction or installation of those Public Improvements (other than park Public Improvements undertaken after the 48<sup>th</sup> Street Improvements have been completed) contemplated by Section 1(i) requiring all contractors, subcontractors and their respective agents and employees to enter the Development Area by use of an entrance on 48<sup>th</sup> Street approved by CITY and further requiring all connecting streets to Fox Ridge and Heartland Hills to be barricaded during such construction or installation. DISTRICT shall exercise its best efforts to enforce all such provisions.

(xiii) DISTRICT shall contribute \$30,195.00 to the Park Development Fund in accordance with the following schedule: 5 installments of \$6,037.00 the first of which shall be due on March 15, 2004, with the remaining installment to be on or before March 4 of each calendar year thereafter.

(c) DISTRICT and DEVELOPER acknowledge that the CITY makes no representation or warranty as to the validity or effect of (i) any expenditure, bond or indebtedness contemplated to be incurred by DISTRICT or DEVELOPER in furtherance of this Agreement, the Interlocal Agreement or otherwise to be incurred or actually incurred by DISTRICT in furtherance of the Public Improvements, (ii) CITY's approval of the plat or this Agreement, (iii) any future act of CITY in respect to DISTRICT or DEVELOPER's performance, under the Agreement or otherwise, in developing the Development Area, or (iv) the enforceability of any provisions, obligations or responsibility of CITY in respect to the provisions of Section 2(c) or 3(e) of this Agreement or in the Interlocal Agreement; provided further that to the extent CITY has, or may, undertake any act in respect to any of the foregoing now or at a time in the future, both DISTRICT and DEVELOPER are proceeding at their own risk. The DEVELOPER and DISTRICT do hereby waive and release the CITY from any right, remedy or recourse against it or its elected officials, officers and employees in connection with any provision of this Agreement and the Interlocal Agreement; provided, however, that such waiver shall not be construed to preclude DISTRICT from enforcing CITY's performance obligations in this Agreement or in the Interlocal Agreement.

## SECTION 5

### 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 Public Improvements. Such acts shall include seeding the Development Area disturbed by grading operations, construction of temporary terraces on slopes, temporary silting basins, swales and spillways, and other acts which may be necessary to prevent erosion, damage and sedimentation to adjacent properties and public rights-of-way.

(b) Following the construction and installation of such Public Improvements, the DISTRICT shall pay for the Cost of (i) maintaining street signs, other than decorative, ornamental or other signs not conforming to the "Manual of Uniform Traffic Control Devices" (which shall be the sole obligation of the owner of the real estate and not the DISTRICT) and (ii) for monthly charges paid to Omaha Public Power District for the Lighting System for Dedicated Streets out of the operating fund of the DISTRICT, to the extent permitted by law.

(c) DISTRICT shall pay to the CITY Thirty Five Thousand Dollars (\$35,000.00) concurrent with the CITY's approval of the plans and specifications for the Public Improvements, as reimbursement for any costs incurred by the CITY for review of this Agreement and all actions undertaken by the CITY in connection with the adoption of this Agreement and the development contemplated thereby; provided, however, DISTRICT shall not be permitted by any provision of Section 3 to generally obligate, in the aggregate, an amount exceeding thirty percent (30%) of the fee paid pursuant to this Section 5(c).

(d) DEVELOPER shall comply with all applicable state statutes and CITY ordinances. DEVELOPER shall further adopt such regulations so as to require strict compliance 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 with the following:

(i) All state statutes and CITY ordinances, including Nebraska Revised Statute Section 16-230 and CITY ordinances enacted pursuant thereto.

(ii) That all such persons cut and clear any part of any lot within the Development Area in its possession, charge or control of all weeds, grass and worthless vegetation which has reached a height of twelve inches (12") or more.

(iii) That such weeds, grass and worthless vegetation be cut as close to ground level as possible and be maintained so that at any time the same does not exceed twelve inches (12") or more above the ground.

(iv) That the cuttings be raked and removed from such premises.

(v) That if any such person fails to comply with these requirements, DEVELOPER shall cause such weeds, grass and worthless vegetation to be cut and assess the costs thereof upon the owner of the affected real estate.

(vi) The name and telephone number of the person designated by the DISTRICT or the DEVELOPER to be contacted in the event that such violation occurs, with such name and telephone number being kept current at all times.

## SECTION 6

### USE OF SEWER SYSTEM

(a) DISTRICT shall connect its Sewer System to the wastewater sewer systems operated by the CITY pursuant to plans approved by CITY. Additional connections necessary for the Wastewater Sewers or Storm Sewers, or otherwise required by the Public Improvements shall be made in such a manner and by such means as shall be approved by the CITY.

(b) In no event shall the DISTRICT permit any person (i) to connect to or otherwise use the Sewer System; (ii) to connect any part of the Sewer System to any other sewer system (including to the CITY's sewer system or to any outfall sewer or any wastewater or sewage treatment plant lying within the zoning jurisdiction of the CITY), except as may be currently existing (and then only to the extent as may be currently existing) or as may be specifically permitted by this Agreement or the subsequent express written consent of the CITY; or (iii) to make or allow any unlawful or improper discharge into the CITY's sewer system.

(c) At the request of the CITY the DISTRICT shall permit any person to connect to the Sewer System unless then prohibited by the City of Omaha, provided, however, that the DISTRICT shall use reasonable efforts to obtain consent from the City of Omaha for such purposes. Except as provided in Section 6(d), the DISTRICT shall not be required to permit such connection except upon the payment of a duly levied connection fee calculated after giving due consideration to the Costs, maintenance and other investment of the DISTRICT to date in the Sewer System (including a proportionate share of any unrecovered costs, plus accrued interest) and additional design, engineering or maintenance costs, for the outfall line. Such proportionate share shall be determined on a pro rata basis of the contributing design flows to the total outfall design flow, which flows and fees shall be reviewed and approved by the CITY prior to levying said fees.

(d) Notwithstanding any provision in Section 6(c), the DISTRICT shall not charge the CITY nor the owner of such real estate nor place any lien or encumbrance upon any real estate for any connections permitted by CITY to, or any persons use of, the Sewer System as may be necessary in order to permit the discharge of wastewater, sewage or storm water from any areas within the then incorporated limits of the CITY for which the CITY shall, nevertheless, have the right to collect its own fees and charges.

(e) No Sewer System, or connection thereto, allowable pursuant to this Section 6 shall be made unless an appropriate permit is first issued by and obtained from the CITY. The construction, installation and other work related to such connection or Sewer System shall be made in compliance with applicable engineering, design, construction, installation and testing rules, regulations, standards, laws and specifications of any governmental agency with jurisdiction over any such work and as otherwise may be reasonably required by the CITY.

(f) Notwithstanding any other provision of this Agreement, the CITY retains the right to immediately require the DISTRICT to disconnect the Sewer System from the CITY's sewer system or to disconnect any user from the Sewer System for any discharge in violation of any rules, regulations, standards, laws and specifications of any governmental agency with jurisdiction over the same or as may otherwise be prohibited by the CITY.

## SECTION 7

### MISCELLANEOUS

#### (a) TERMINATION OF AGREEMENT.

(i) This Agreement shall not be terminated except (1) by the written agreement among DEVELOPER, DISTRICT and CITY; (2) 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 as of the date specified in a written Notice of Termination provided, however, that no such Notice to Cure shall be required whenever the breach or default shall recur within 180 days of a Notice to Cure, in which event termination shall be effective as of the date specified in a written Notice of Termination; or (3) upon annexation of the DISTRICT by CITY. No termination shall relieve the DISTRICT or 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.

(ii) The provisions of this Section 7 shall survive the expiration or termination of this Agreement.

(b) **INDEMNITY.** DEVELOPER shall defend, indemnify and hold CITY, its officers, elected officials, employees, agents and assigns harmless from and against any and all third party or CITY claims, judgments, actions, loss, liability, damage or injury of any nature whatsoever, whether under theory of tort, contract or otherwise ("Damages"), which may arise or result from, out of or in connection with (i) any material misrepresentation made by DISTRICT or DEVELOPER in this Agreement, (ii) any breach of any representation or covenant made by DEVELOPER or DISTRICT in this Agreement, (iii) any negligent or other act, error or omission of DEVELOPER or DISTRICT (including any of their respective employees, agents, contractors, subcontractors or other representatives) in furtherance of this Agreement or any other agreement contemplated by this Agreement to be entered into by DEVELOPER or DISTRICT, including the failure to perform or properly perform as may be so required, (iv) any default in or breach of any provision of this Agreement, including any obligation or responsibility of DEVELOPER or DISTRICT in this Agreement, and (v) any act undertaken by CITY in furtherance of Section 3(c) or 3(e) of this Agreement. Notwithstanding the preceding sentence, DEVELOPER's indemnity and related obligations under (ii), (iii) and (iv) hereof in respect to Damages related to DISTRICT's conduct shall apply only in the event that the occurrence giving rise to such obligation shall occur during any period that DEVELOPER, its officers, directors or affiliates shall have, in the aggregate, sufficient voting power to elect a majority of DISTRICT's Board of Trustees; otherwise, between DEVELOPER and DISTRICT, DISTRICT shall be responsible and liable for any such indemnity or related obligation in respect to such Damages, to the extent the same shall arise from, out of, or in connection with DISTRICT's conduct.

(c) **ASSIGNMENT.** Neither this Agreement nor any obligations hereunder shall be assigned 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 DISTRICT and the DEVELOPER, such performance obligation or requirement shall be the joint and several obligation or requirement of the DISTRICT 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 [Editor's Note: Please update.]:

For DEVELOPER: Boyer Young Development Company  
9805 Giles Road  
LaVista, NE 68128

With Copy To: Robert C. Doyle  
FULLENKAMP DOYLE & JOBEUN  
11440 West Center Road  
Omaha, NE 68144

For DISTRICT: Sanitary and Improvement District No. 243 of Sarpy County, NE  
c/o Fullenkamp Doyle & Jobeun  
11440 West Center Road  
Omaha, NE 68144

For CITY: City Clerk  
City of Bellevue  
210 West Mission Avenue  
Bellevue, Nebraska 68005  
AND  
Public Works Director  
City of Bellevue  
210 West Mission Avenue  
Bellevue, Nebraska 68005

Such address may be changed from time to time by notice to all other PARTIES.

(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.

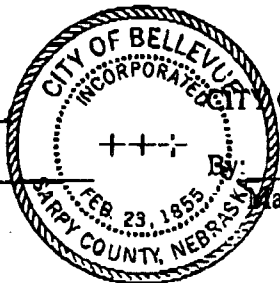
(i) **MISCELLANEOUS.** Unless otherwise specified, all references in this Agreement to Exhibits numbered paragraphs or Sections shall mean those Exhibits attached to this Agreement, which are incorporated into this Agreement as if fully set out herein, and those numbered paragraphs and Sections of this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



IN WITNESS WHEREOF, the PARTIES have executed this Agreement as of the date and year first above written.

ATTEST:

City Clerk



CITY OF BELLEVUE

By: Mayor

Date

APPROVED AS TO FORM:

Attorney for City of Bellevue

ATTEST:

Clerk

SANITARY & IMPROVEMENT DISTRICT  
NO. 243 OF SARPY COUNTY, NEBRASKA

By:

Chairman

Date

APPROVED AS TO FORM:

Attorney for Sanitary and Improvement  
District No. 243 of Sarpy County, Nebraska

ATTEST:

Secretary

CLEARWATER FALLS, LLC

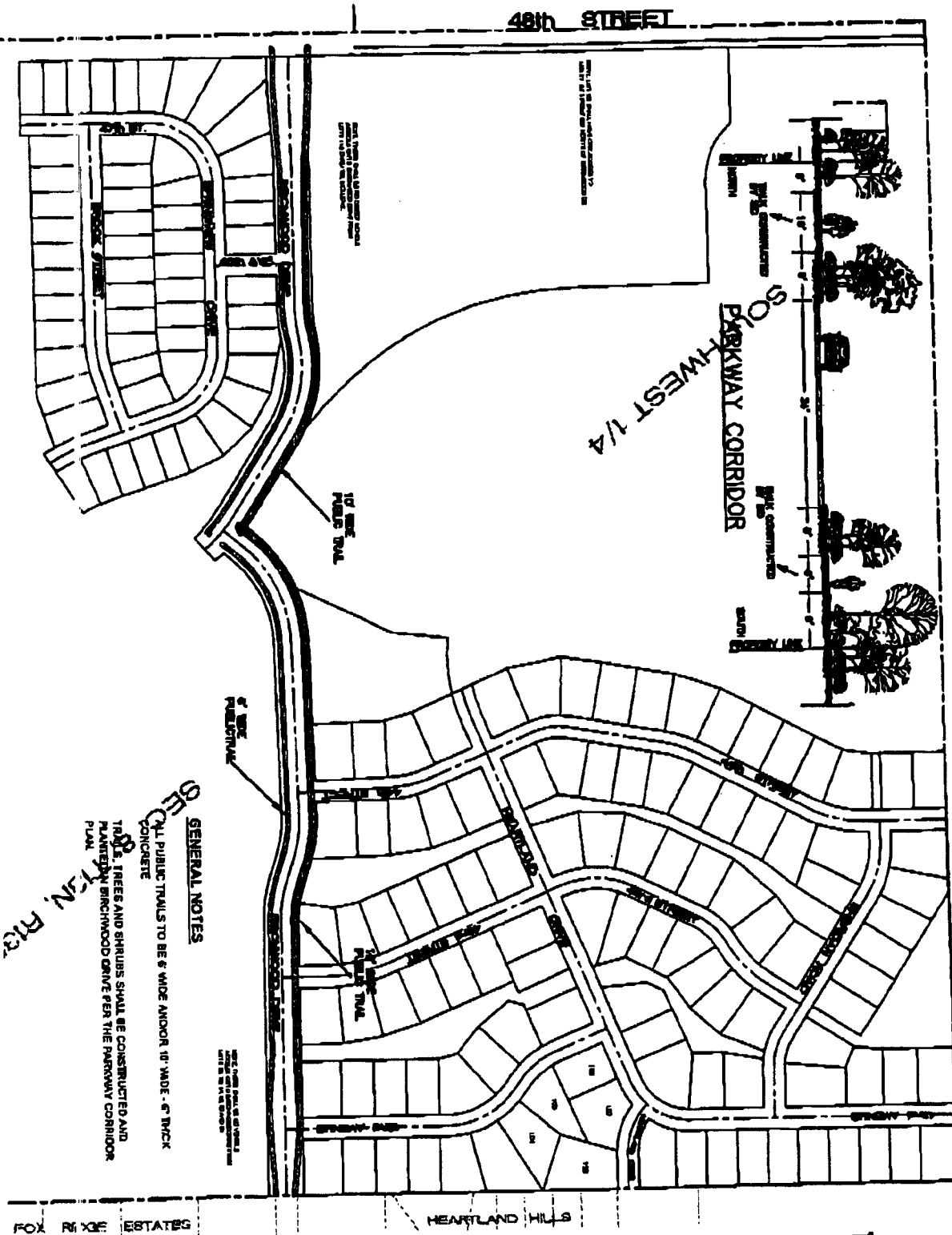
By:

President

Date

APPROVED AS TO FORM:

Attorney for Developer



**GENERAL NOTES**

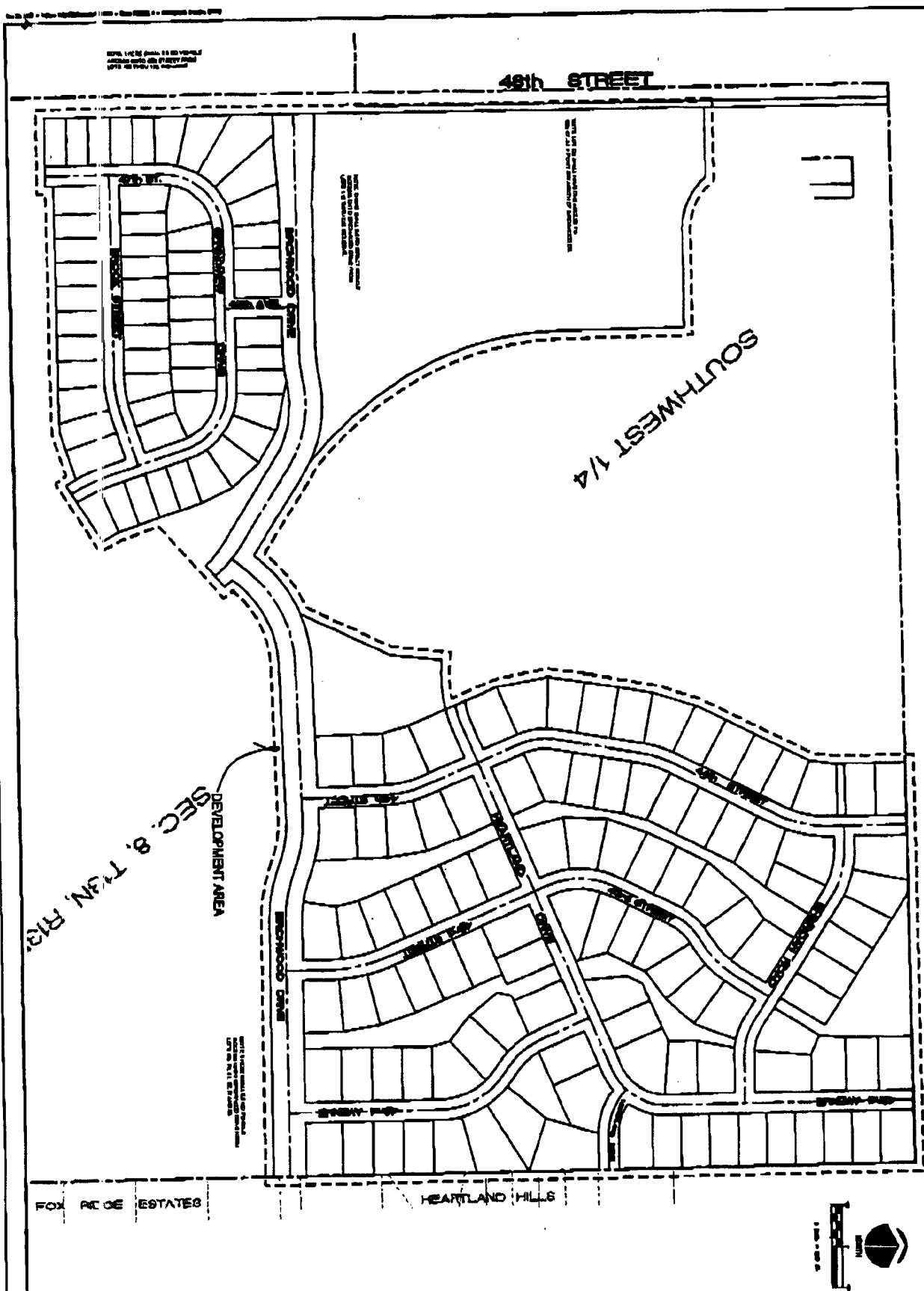
ALL PUBLIC TRAILS TO BE 6' WIDE AND/OR 10' WIDE - 6" THICK CONCRETE

TRAIL, TREES AND SHRUBS SHALL BE CONSTRUCTED AND PLANTED BY BIRCHWOOD DRIVE PER THE PARKWAY CORRIDOR PLAN.

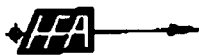
SECTION 8

FOURTH AVENUE, N12

<p>PROJECT NO. SHEET NO. EXH. D</p>		<p><b>Hill-Farrell Associates, Inc.</b> Architects - Engineers - Land Planners 1000 Lincoln Rd., Bellevue, NE 68005 402-261-4100</p>	<p><b>CLEARWATER FALLS</b> SANITARY AND SEWERAGE DISTRICT NO. 248 SARPY COUNTY, NEBRASKA</p> <p><b>EXHIBIT D - PARK PLAN</b></p>
---	--	--	--



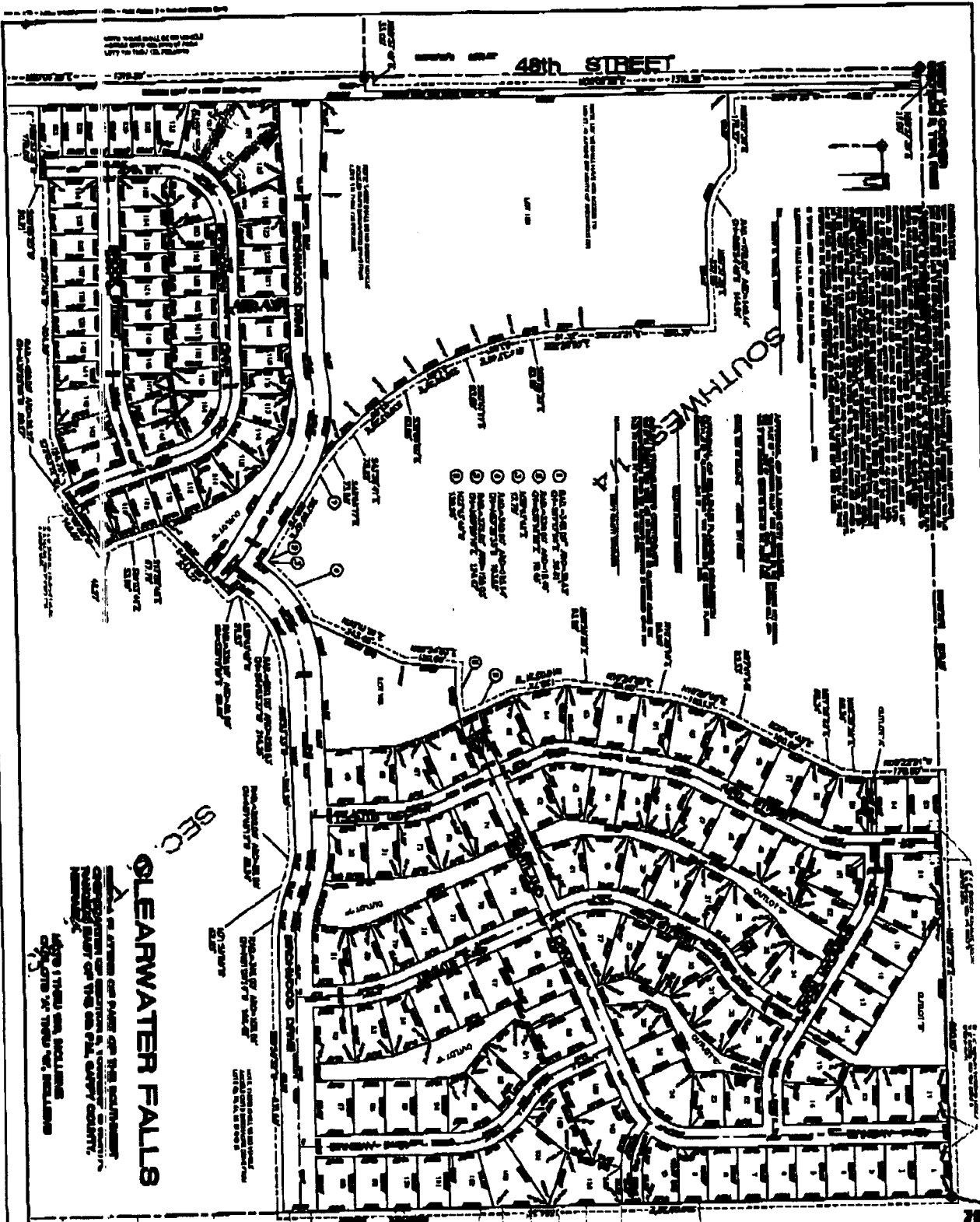
### EXH. A



**Hill-Farrell Associates, Inc.**  
Architects - Engineers - Land Surveyors  
1000 Lincoln St., Baltimore, MD 21204 410-591-6100

**CLEARWATER FALLS**  
**SANITARY AND IMPROVEMENT DISTRICT NO. 288**  
**SARPY COUNTY, NEBRASKA**  
**EXHIBIT A - DEVELOPMENT AREA**

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-----



FOX RD 2E ESTATES

HEARTLAND HILLS

SEC. 16

CLEARWATER FALLS

HEARTLAND HILLS

SEC. 16

CLEARWATER FALLS

HEARTLAND HILLS

SEC. 16

CLEARWATER FALLS

HEARTLAND HILLS

SEC. 16

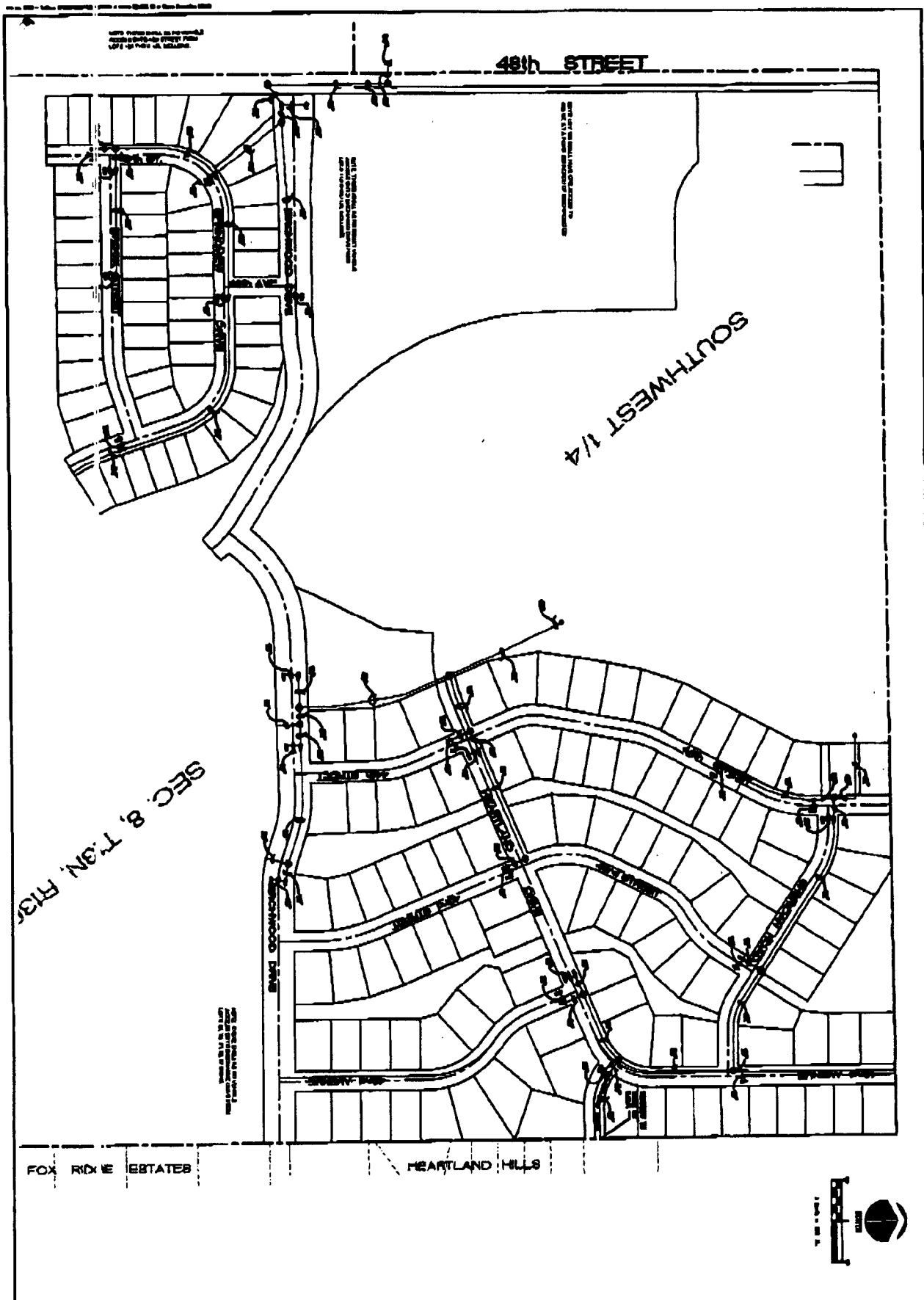
CLEARWATER FALLS

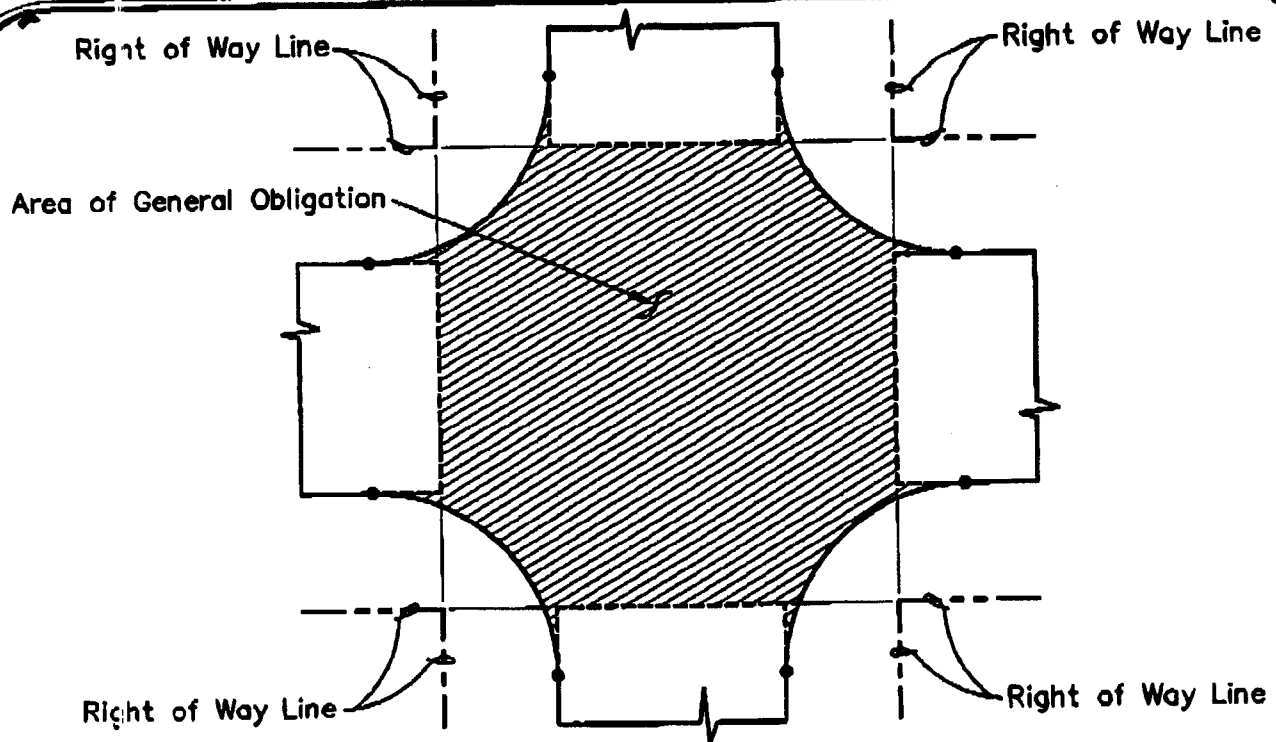


**Hill-Parrell Associates, Inc.**  
Architects - Engineers - Land Surveyors  
1000 Lincoln St., Lincoln, NE 68502 402-441-0100

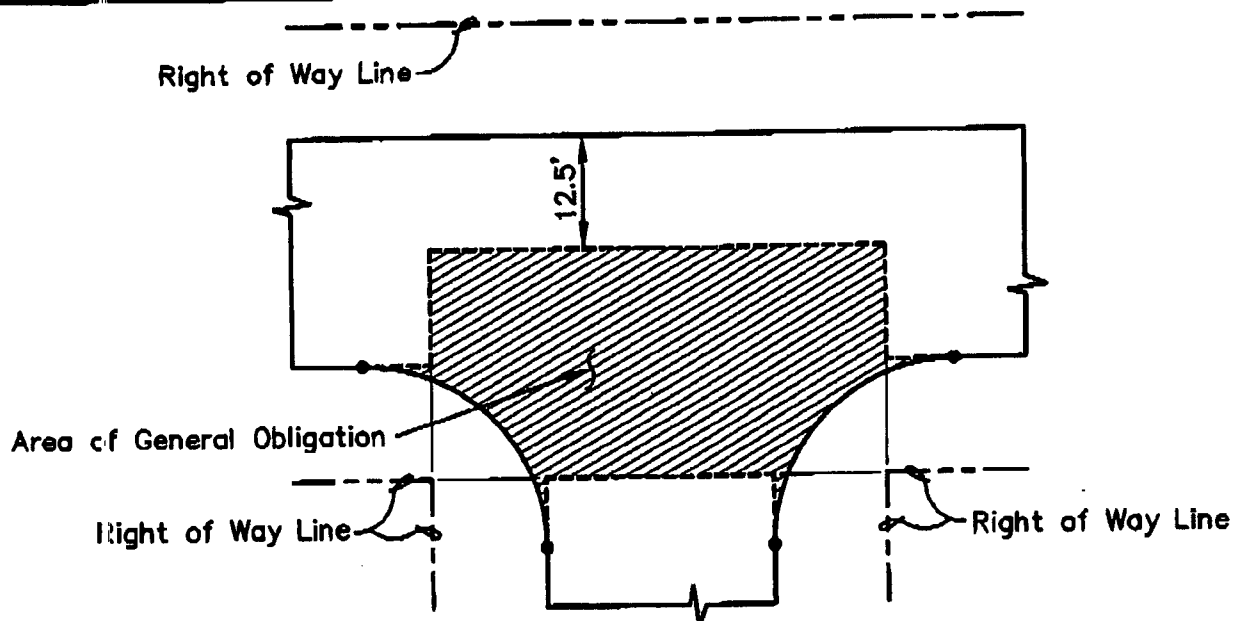
**CLEARWATER FALLS**  
SANITARY AND IMPROVEMENT DISTRICT NO. 868  
GARFIELD COUNTY, NEBRASKA  
**EXHIBIT B - DEDICATED STREETS**

EXH. B





**TYPICAL "4-WAY" INTERSECTION**  
No Scale



**TYPICAL "T" INTERSECTION**  
No Scale

## EXHIBIT B-2

DESIGNED: DOH

DRAWN: MFD

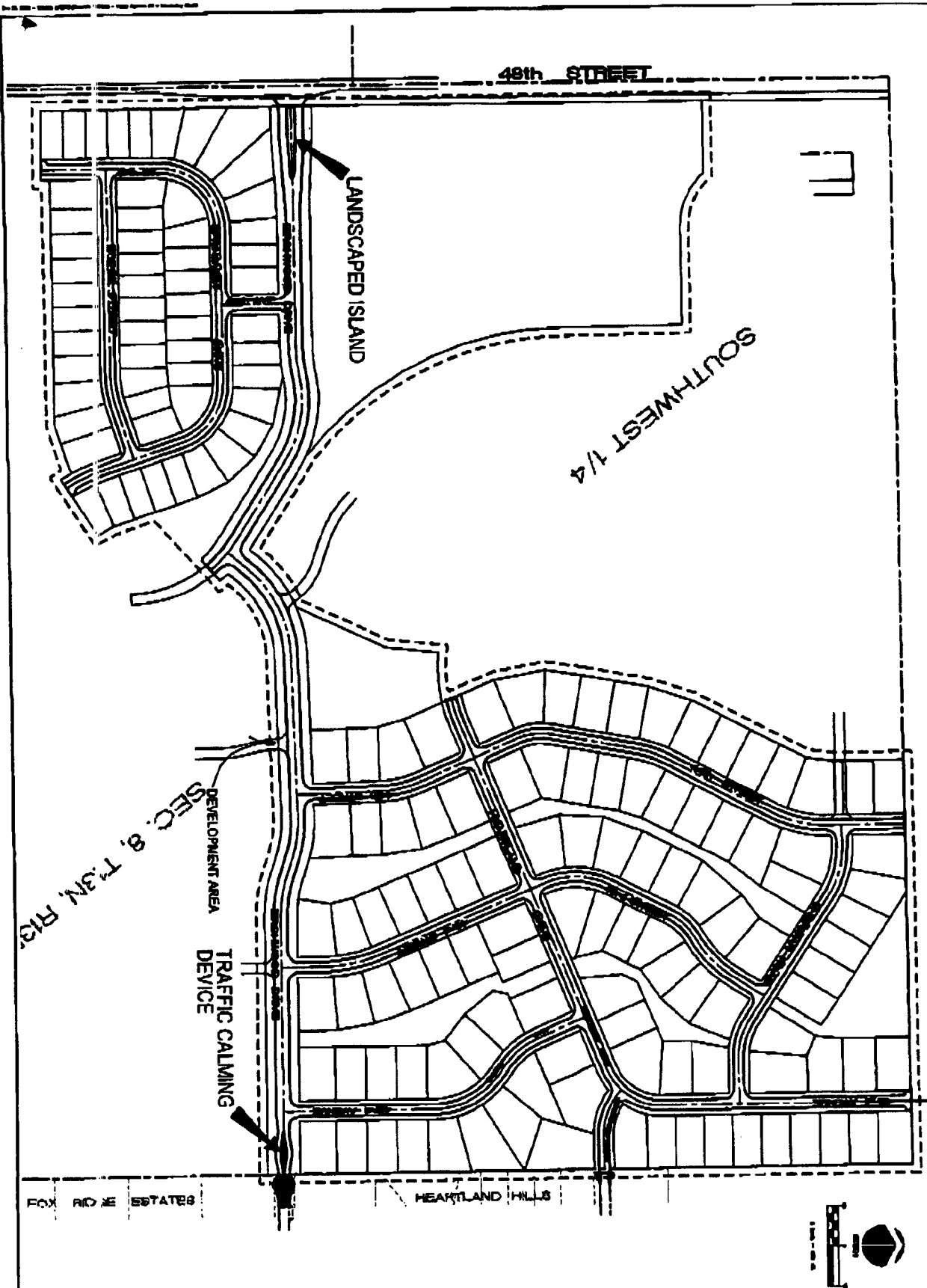
CHECKED: DOH

DATE: 3-6-03 PROJECT NO.



**Hill-Farrell Associates, Inc.**  
Engineers, Land Surveyors, Land Planners  
1006 Lincoln Rd., Bellevue, NE 68005 402-291-6100

SHEET  
NO.EXH.  
B-2



PROJECT NO.  
SHEET NO.  
EXH. B-3

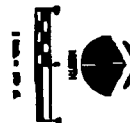


**Hill-Farrell Associates, Inc.**  
Architects - Engineers - Land Surveyors  
1000 Lincoln St., Lincoln, NE 68502 402-491-0100

**CLEARWATER FALLS**  
SANITARY AND IMPROVEMENT DISTRICT NO. 848  
SARPY COUNTY, NEBRASKA

EXHIBIT B-3 - ISLAND AND TRAFFIC CALMING DEVICE

DATE: 08/15/2008  
BY: [Signature]  
CHECKED: [Signature]  
SCALE: AS SHOWN



**CLEARWATER FALLS**  
**SANITARY AND IMPROVEMENT DISTRICT NO. 248**  
**SARPY COUNTY, NEBRASKA**

---

**EXHIBIT C - WASTEWATER**

1. **NAME**  
 2. **DATE**  
 3. **TIME**  
 4. **LOCATION**  
 5. **REMARKS**