

Agenda Item: 8.

MEMORANDUM

TO: Programs, Projects and Operations Subcommittee

FROM: Amanda Grint, Water Resources Engineer

SUBJECT: Proposed Easements for Thrasher Development on Tract 1, WP6

DATE: July 11, 2016

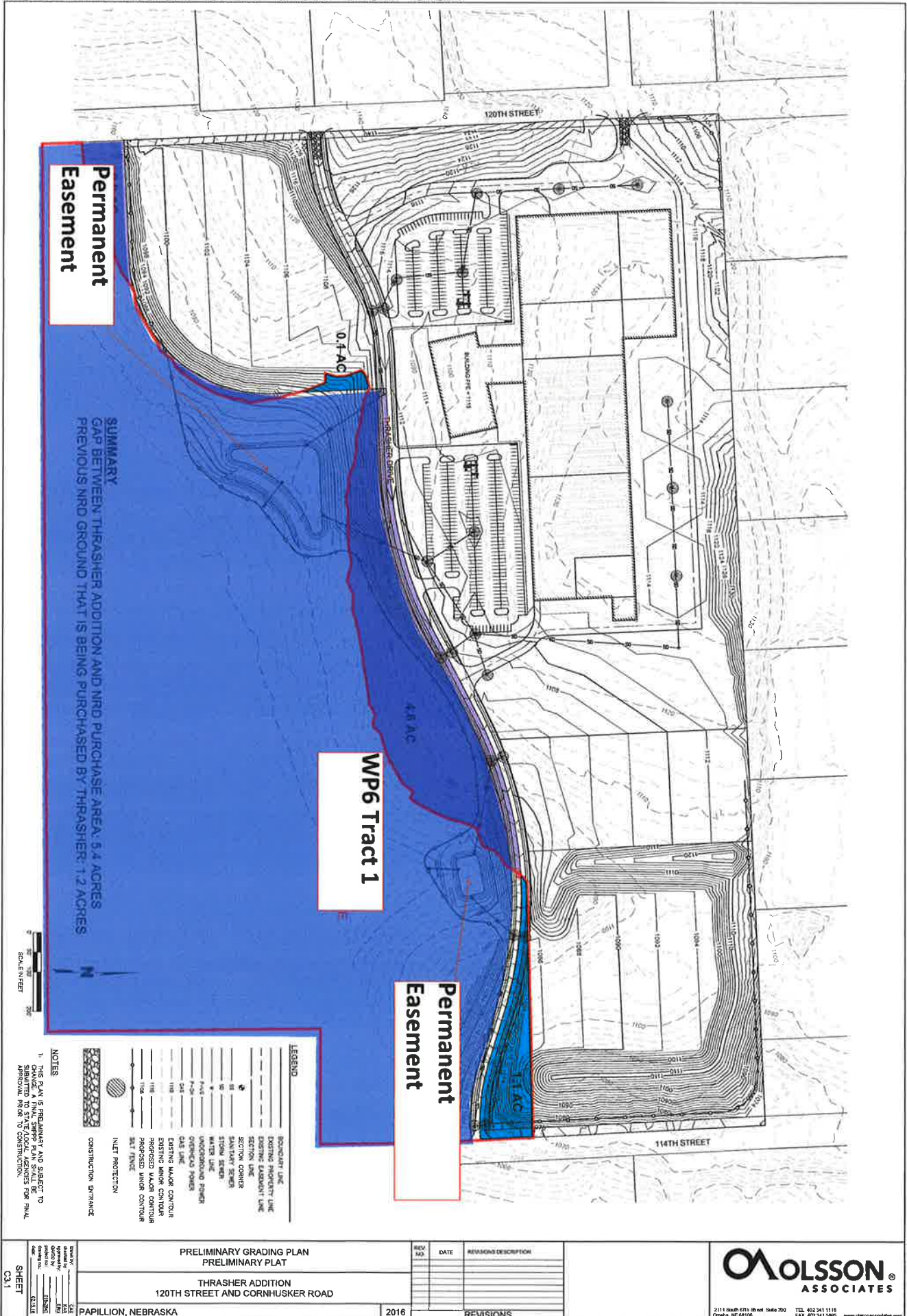
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Representatives for the Thrasher development proposed just north of Tract 1, West Papillion Region Basin 6 (WP6), have coordinated with District staff and the City of Papillion staff requesting a permanent easement for two storm water quality basins and a temporary grading permit on the Tract 1 property. Please see attached map.

The details of the easements and permit are as follows:

1. **Permanent Storm Sewer, Drainage and Stormwater Quality Basin Easement.** The developer proposes to purchase a permanent easement for the two water quality basins. The total area needed for the basins (access for maintenance not included) is 2.855 acres. The District purchased the property for \$55,000 per acre and Thrasher proposes to purchase the easement for 50% of the purchase price or \$27,500 per acre. The total easement purchase amount is proposed to be \$78,512.50. The proposed easement does or will address the comments that are referenced in the attached response letter from Olsson Associates. Any items in the response letter not already noted in the easement will be agreed upon between the District and Thrasher's legal counsel. The easement will also need to be approved by the City of Papillion.
2. **Temporary Grading Permit.** FYRA Engineering, the District's design engineer, has verified that the proposed grading does not impact the planned flood pool volume or the recreation plans. This will also need to be approved by the City of Papillion. The District's standard permit for occupation of ROW for the grading will be issued by Management.

**Staff recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the proposed Permanent Storm Sewer, Drainage and Stormwater Quality Basin Easement Agreement and the Temporary Grading Permit with Nancy J. Thrasher Irrevocable Family Trust on the WP6, Tract 1, project property, for the amount of \$78,512.50 to the District, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.**





May 17, 2016

Amanda Grint  
Papio-Missouri River NRD  
8901 South 154<sup>th</sup> Street  
Omaha, NE 68138

Re: Thrasher Addition NRD Comments  
Olsson Project Number 015-2843

Dear Mrs. Grint,

Our apologies for not providing a formal response to the NRD comments that you provided via email. Please find below Olsson's responses to those comments.

- A permanent easement would need to be purchased from the NRD if the proposed sediment basins/post construction basins are to be on WP6 property. Likely similar cost to purchase.
  - The owner does not take exception to purchasing a permanent easement for the sediment basins/post construction basins on the WP6 property. Olsson will prepare the necessary documents and file the easement once final design of the basins is complete and easement limits are agreed upon.
- The flood pool calculations would need to be provided by the development and approved by the City and NRD.
  - Olsson will provide the flood pool calculations for review and approval by the City and NRD.
- All plans, specifications, maintenance agreements, easements and calculations would need to be approved by the City and NRD.
  - All specifications, maintenance agreements, easements and calculations will be provided for review and approval by the City and NRD.
- An escrow account should be established in the event that maintenance is not provided in a timely manner. This account would need to be replenished if used.
  - The owner agrees to create and maintain funding for an escrow account for maintenance of the permanent basins.
- The developer would need to pay for the NRD's Construction Project Representative to be on site during the construction of the basins and any associated features (i.e. embankment, outlet structure, trail crossing, etc.)

- The owner agrees to pay for the NRD Construction Project Representative to be on site during construction of the basins and associated features.
- Agreements would need to be in place prior to any work starting and probably goes without saying but we would need to own the land.
  - The work will not begin until agreements are in place. The owner acknowledges that the NRD would own the land.
- Also all of this would be subject to NRD board and city council approval.
  - Understood.

Thank you for your consideration. If you have any questions, please contact me at 402-341-1116.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Eric Galley', with a stylized flourish at the end.

Eric Galley, PE





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(The above space for use of Register of Deeds.)

WHEN RECORDED TO BE RETURNED TO:

Amy L. Lawrenson | Baird Holm LLP  
1700 Farnam Street, Suite 1500  
Omaha, Nebraska 68102  
Email: [alawrenson@bairdholm.com](mailto:alawrenson@bairdholm.com)  
Phone: 402-344-0500

**PERMANENT STORM SEWER, DRAINAGE AND  
STORM WATER QUALITY BASIN EASEMENT AGREEMENT**

**THIS PERMANENT STORM SEWER, DRAINAGE AND STORM WATER QUALITY BASIN EASEMENT AGREEMENT** (this "Agreement") is entered into by and between **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, NEBRASKA** (the "Grantor"), **GNT PROPERTIES, LLC**, a Nebraska limited liability company ("GNT"), Gregory M. Thrasher, as trustee of the **NANCY J. THRASHER IRREVOCABLE FAMILY TRUST** ("Thrasher Trust") (collectively, GNT and Thrasher Trust are referred to herein as "Grantee"), and the **CITY OF PAPILLION, NEBRASKA**, a municipal corporation ("City"), and its successors and assigns.

**WHEREAS, GNT** is the owner of that certain real property located in Sarpy County, Nebraska as legally described in **EXHIBIT "A"**, attached hereto and incorporated herein by this reference (the "GNT Property");

**WHEREAS, Thrasher Trust** is the owner of that certain real property located in Sarpy County, Nebraska as legally described in **EXHIBIT "B"**, attached hereto and incorporated herein by this reference (the "Thrasher Trust Property") (collectively, the GNT Property and Thrasher Trust Property are referred to herein as the "Benefited Property"); and

**WHEREAS, Grantor** is the owner of certain real property located adjacent to the Benefited Property upon which **Grantor** has agreed to grant certain easement rights to the **Grantee** and **City**, as further set forth herein.

**NOW THEREFORE**, for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, **Grantor** does hereby grant and convey unto **Grantee**, and its successors and

assigns, for the benefit of the Benefited Parcel, and **City**, and its successors and assigns, as follows:

**A. Maintenance Easement.** A permanent easement (hereinafter the "Maintenance Easement") for the right to construct, maintain and operate storm sewers, drainage structures and/or drainage ways, storm water quality basins, and appurtenances thereto (collectively, the "Facilities"), in, through and under that certain real property owned by **Grantor** and legally described in **EXHIBIT "C-1"** and **EXHIBIT "C-2"**, attached hereto and incorporated herein by this reference, collectively, the "Maintenance Easement Area"; and

**B. Access Easement.** A permanent easement (hereinafter the "Access Easement") for the right in, through and under that certain real property owned by **Grantor** and legally described in **EXHIBIT "D-1"** and **EXHIBIT "D-2"**, attached hereto and incorporated herein by this reference, collectively, the "Access Easement Area"), for purpose of constructing, inspecting, maintaining, operating, repairing or replacing the Facilities in the Maintenance Easement Area at the will of **Grantee** or **City**.

**TO HAVE AND TO HOLD** unto **Grantee**, its successors and assigns, for the benefit of the Benefited Parcel, and **City** and its successors and assigns.

**Grantor, Grantee, and City** further agree as follows:

1. **Grantee**, at **Grantee's** expense, shall construct the Facilities according to plans and specifications approved by **Grantor** and **City**, which such approval **Grantor** and **City** shall not unreasonably withhold, condition, or delay;
2. That **Grantor** may, following construction of the Facilities continue to use the surface of the Maintenance Easement Area and Access Easement Area (collectively, the "Easement Areas") for other purposes, subject to the right of **Grantee** and **City** to use the same for the purposes herein expressed. **Grantor** shall reimburse **Grantee** for any reasonable costs and expenses associated with **Grantor's** construction project representative to be present during construction of the Facilities;
3. **Grantor** and **Grantee** hereby grant permission to **City**, and its authorized agents and employees, to enter upon the Easement Areas and to inspect the Facilities whenever **City** deems necessary. **City** shall provide **Grantor** and **Grantee** copies of any inspection findings and shall provide **Grantee** a directive to commence with repairs or maintenance, if necessary;
4. That no buildings, improvements or other structures, nor any grading, fill or fill material or embankment work, shall be placed in, on, over or across the Easement Areas by **Grantor** or its successors and assigns without the express approval of **Grantee** and **City**. Improvements which may be approved by

**Grantee** and **City** include landscaping, road and/or street surfaces, parking area surfacing and/or pavement. These improvements and any trees, grass or shrubbery placed on said Easement Areas shall be maintained by **Grantor**, its successors or assigns;

5. That **Grantee** will replace or rebuild any and all damage to improvements caused by **Grantee** in exercising its rights of the Maintenance Easement and Access Easement, except that damage to, or loss of trees and shrubbery will not be compensated for by **Grantee**;
6. That **City** will replace or rebuild any and all damage to improvements caused by **City** in exercising its rights of the Maintenance Easement and Access Easement, except that damage to, or loss of trees and shrubbery will not be compensated for by **City**;
7. That any permanent storm sewer, drainage and storm water quality basin easement constructed as part of the Facilities and maintained in the Maintenance Easement Area is also for the benefit of any contractor, agent, employee or representative of **Grantee** and **City** in any of said construction and work;
8. That **Grantee** or **City** shall cause any trench made on the Maintenance Easement Area to be properly refilled and shall cause the Maintenance Easement Area to be left in a reasonably neat and orderly condition;
9. That said **Grantor** does confirm with the said **Grantee** and **City**, and their successors and assigns, that **Grantor** is well seized in fee of the Easement Areas and that it has the right to grant and convey the Maintenance Easement and Access Easements in the manner and form aforesaid, and it shall warrant and defend the Maintenance Easement and Access Easement to **Grantee** and **City** and their successors and assigns against the lawful claims and demands of all persons. The Maintenance Easement and Access Easement shall run with the land;
10. That the Maintenance Easement and Access Easement are granted upon the condition that **Grantee** or **City** may remove or cause to be removed all presently existing improvements thereon, including, but not limited to, crops, vines and trees within the Easement Areas, as necessary for **Grantee** or **City** to exercise either's rights under the Maintenance Easement and Access Easement;
11. That **Grantee** shall operate and maintain, at its sole expense, the Maintenance Easement Area in accordance with the "Maintenance Requirements", attached hereto and incorporated herein by this reference as **EXHIBIT "E"**, which have been reviewed and accepted by **City** and **Grantor**;
12. That should it be determined by **Grantor** that **Grantee** has failed to comply with the Maintenance Requirements then **Grantor** shall provide **Grantee** and **City**



notice of the same and, within ten (10) business days of Grantee's receipt of such notice of noncompliance, **Grantee** shall provide **Grantor** and **City** a written response addressing what actions will be taken to correct any deficiencies and provide a schedule of repairs within a reasonable time frame.

13. Should **Grantee** or its successors or assigns, fail to respond to **Grantor's** notice with ten (10) business days or fail to correct any defects in the facility or facilities within the time frame agreed to by **Grantor**, then **Grantor** shall have the right to recover from **Grantee** any and all reasonable costs **Grantor** expends to maintain or repair the facility or facilities in the Easement Areas. Failure to pay **Grantor** or its designee all of its expended costs, after forty-five (45) days' written notice, shall entitle **Grantor** to bring an action against **Grantee** to pay, or terminate this Easement, or both. Interest and collection costs shall be added to the recovery of the successful party;
14. In the event of an emergency, as determined by **City** or **Grantor**, in either's reasonable discretion, **City** or **Grantor** may enter onto the Easement Areas to make all repairs, and to perform all maintenance, construction, and reconstruction as **City** or **Grantor** reasonably deems necessary and **Grantee** shall reimburse said party for any reasonable costs expended to maintain or repair the Facilities within forty-five (45) days of **Grantee's** receipt of an invoice for such costs. Failure of **Grantor** to pay **City** or **Grantor** all reasonable expended costs within the foregoing period shall constitute a breach of this Agreement. **City** or **Grantor** shall thereafter be entitled to bring an action against **Grantee** to pay. Interest, collection costs, and reasonable attorney fees shall be added to the recovery to the successful party. Notwithstanding anything to the contrary contained herein, nothing shall obligate **City** or **Grantor** to maintain or repair the Facilities nor shall anything in this Agreement in any way diminish, limit, or restrict the right of **City** to enforce any of its ordinances as authorized by law;
15. **Grantee** shall indemnify and hold **Grantor** harmless from any loss or damage by reason of **Grantee**, or its agents or employee's, negligent acts or willful misconduct during any entry upon the Easement Areas;
16. **City** shall indemnify and hold **Grantor** harmless from any loss or damage by reason of **City**, or its agents or employee's, negligent acts or willful misconduct during any entry upon the Easement Areas;
17. That **Grantee** shall establish and maintain an escrow account in the amount of \$[x] for payment of any actions or services required under the Maintenance Requirements should **Grantee** fail to comply with such Maintenance Requirements within the time requirements set forth in this Agreement. If the escrow account is drawn upon at any time, **Grantee** shall replenish the same within sixty (60) days of any such withdrawal. GNT and

Thrasher Trust may enter into a separate agreement setting forth the terms and conditions for their respective contributions to such escrow account;

18. **Grantee** shall perform the grading of the Easement Areas in accordance with the specifications for grading set forth in **EXHIBIT "F"**, attached hereto and incorporated herein by this reference ("Grading Specifications");
19. It is specifically provided that **Grantor** shall have the reserved right to construct, operate, maintain, re-construct and regulate a bicycle and pedestrian trail in, on, over and across the Easement Areas ("Pedestrian Trail"). In designing, constructing, operating and maintaining the Easement Areas, **Grantee** shall provide a subgrade for the trail reasonably acceptable to **Grantor** over and across such embankment and in accordance with the Grading Specifications;
20. In consideration for the rights granted under this Agreement, **Grantee** shall pay **Grantor** as set forth in **EXHIBIT "G"**, attached hereto and incorporated herein. **For recording purposes, the parties to this Agreement acknowledge and agree that EXHIBIT "G" shall be omitted from the Agreement when recorded;** and
21. This Agreement shall be recorded with the Register of Deeds of Sarpy County, Nebraska and shall constitute a covenant running with the land and shall be binding on the **Grantee**, its administrators, executors, successors, heirs, or assigns, including any homeowners or business association and any other successors in interest.

[REMAINDER OF PAGE BLANK – SIGNATURE PAGES FOLLOW]

[EXECUTED IN COUNTERPARTS – GRANTOR SIGNATURE PAGE]

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates set forth below in their respective signature blocks.

**Grantor:**

**PAPIO-MISSOURI RIVER NATURAL  
RESOURCES DISTRICT, NEBRASKA**

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

Name: \_\_\_\_\_

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

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF SARPY     )

On this \_\_\_\_ day of \_\_\_\_\_ 2016, before me, the undersigned, a Notary Public in and for said County, personally came \_\_\_\_\_ of PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, NEBRASKA, to me personally known to be the \_\_\_\_\_ of said PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, NEBRASKA and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his/her voluntary act and deed as such officer and the voluntary act and deed of said PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, NEBRASKA.

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

[EXECUTED IN COUNTERPARTS – CITY SIGNATURE PAGE]

**City:**

**CITY OF PAPILLION, NEBRASKA**, a  
municipal corporation

WITNESS: \_\_\_\_\_

By: \_\_\_\_\_  
David Black, Mayor

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF SARPY     )

On this \_\_\_\_\_ day of July 2016, before me, the undersigned, a Notary Public in and for said County, personally came David Black of the City of Papillion, Nebraska, a municipal corporation, to me personally known to be the Mayor of said City and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of the City of Papillion.

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

[EXECUTED IN COUNTERPARTS – GNT SIGNATURE PAGE]

**GNT:**

**GNT PROPERTIES, LLC**, a Nebraska  
limited liability company

By: \_\_\_\_\_  
Gregory M. Thrasher, Member

By: \_\_\_\_\_  
Nancy J. Thrasher, Member

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF SARPY     )

On this \_\_\_\_\_ day of July 2016, before me, the undersigned, a Notary Public in and for said County, personally came **Gregory M. Thrasher**, of GNT PROPERTIES, LLC, a Nebraska limited liability company, to me personally known to be a Member of said company and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his/her voluntary act and deed as such officer and the voluntary act and deed of GNT Properties, LLC.

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

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF SARPY     )

On this \_\_\_\_\_ day of July 2016, before me, the undersigned, a Notary Public in and for said County, personally came **Nancy J. Thrasher** of GNT PROPERTIES, LLC, a Nebraska limited liability company, to me personally known to be a Member of said company and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be her voluntary act and deed as such officer and the voluntary act and deed of GNT Properties, LLC.

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



[EXECUTED IN COUNTERPARTS – THRASHER TRUST SIGNATURE PAGE]

**Thrasher Trust:**

**Gregory M. Thrasher, as trustee of  
the Nancy J. Thrasher Irrevocable  
Family Trust**

By: \_\_\_\_\_  
Gregory M. Thrasher, Trustee

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

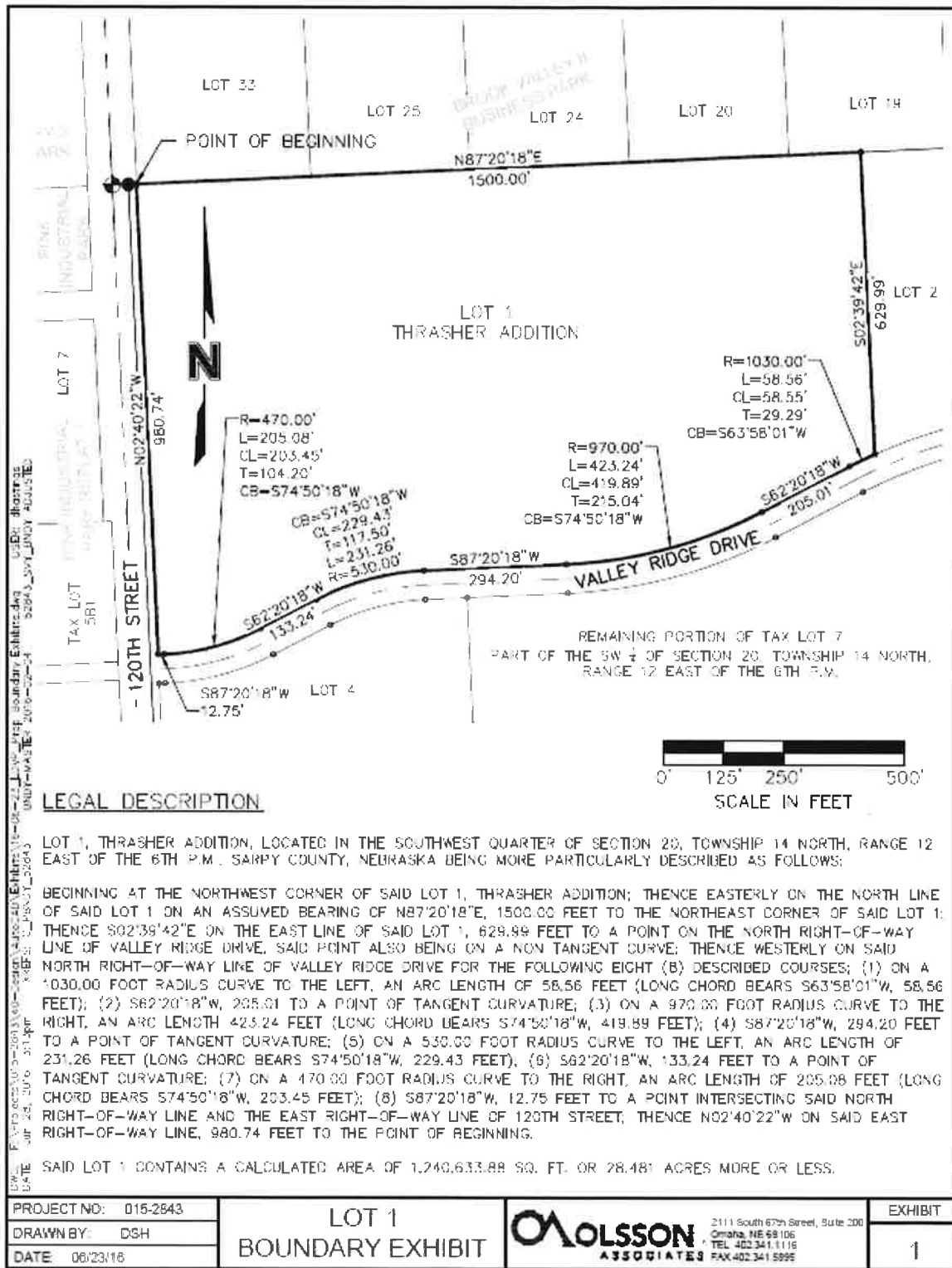
STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF SARPY     )

On this \_\_\_\_\_ day of July 2016, before me, the undersigned, a Notary Public in and for said County, personally came Gregory M. Thrasher, in his capacity as trustee of the Nancy J. Thrasher Irrevocable Family Trust, and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of the trust.

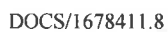
\_\_\_\_\_  
Notary Public

# EXHIBIT A

## GNT PROPERTY



## THRASHER TRUST PROPERTY



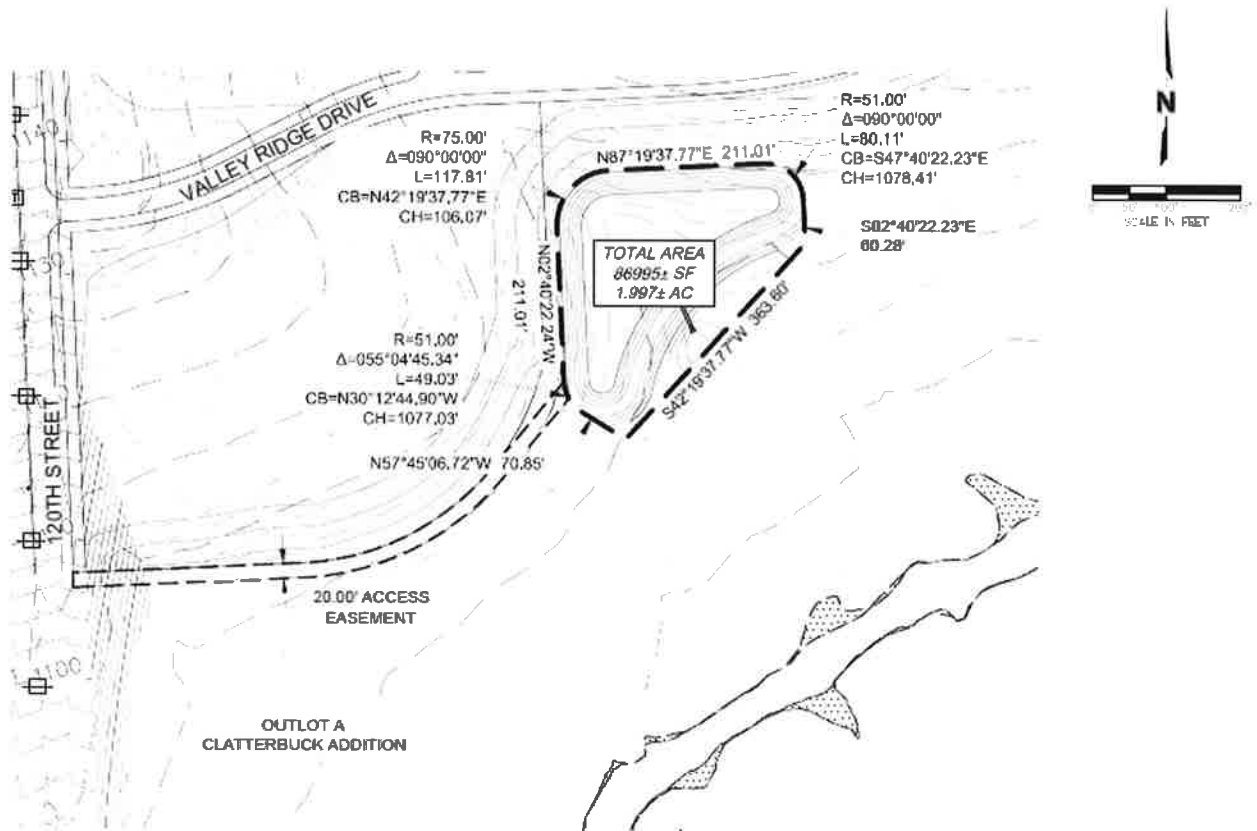


# EXHIBIT C-1

## MAINTENANCE EASEMENT AREA

(West Pond)

[Legal description to be added]



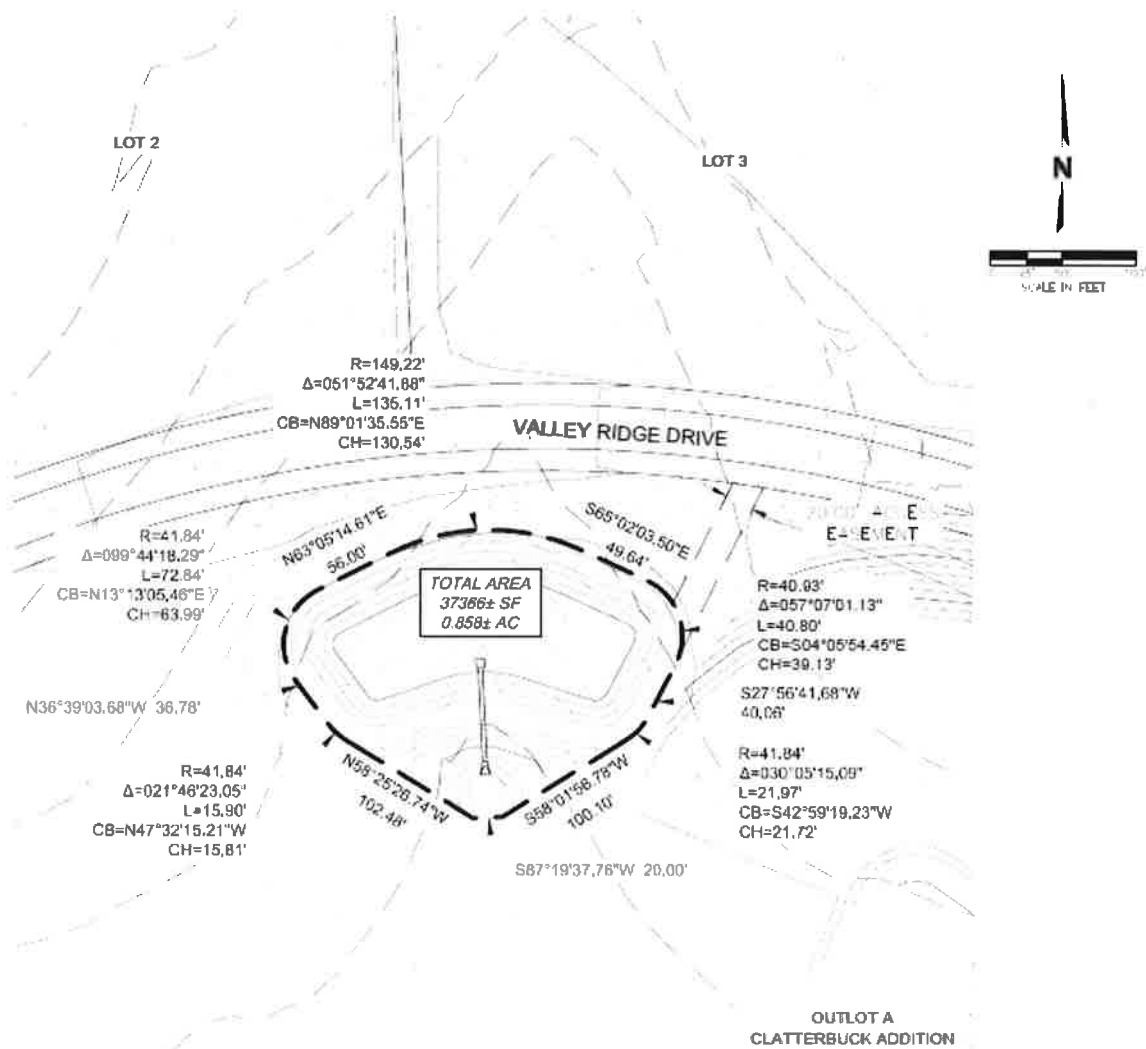


## EXHIBIT C-2

### MAINTENANCE EASEMENT AREA

(East Pond)

[Legal description to be added]

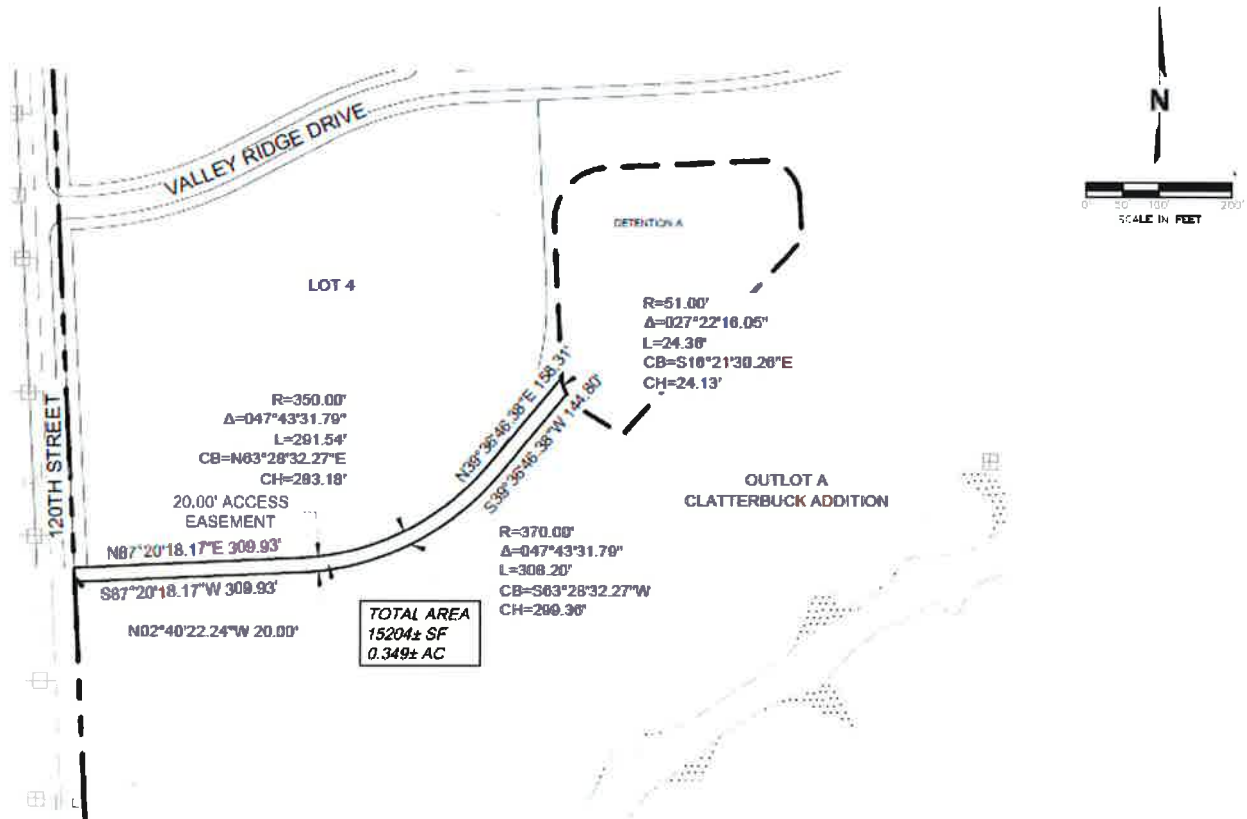


## EXHIBIT D-1

### ACCESS EASEMENT AREA

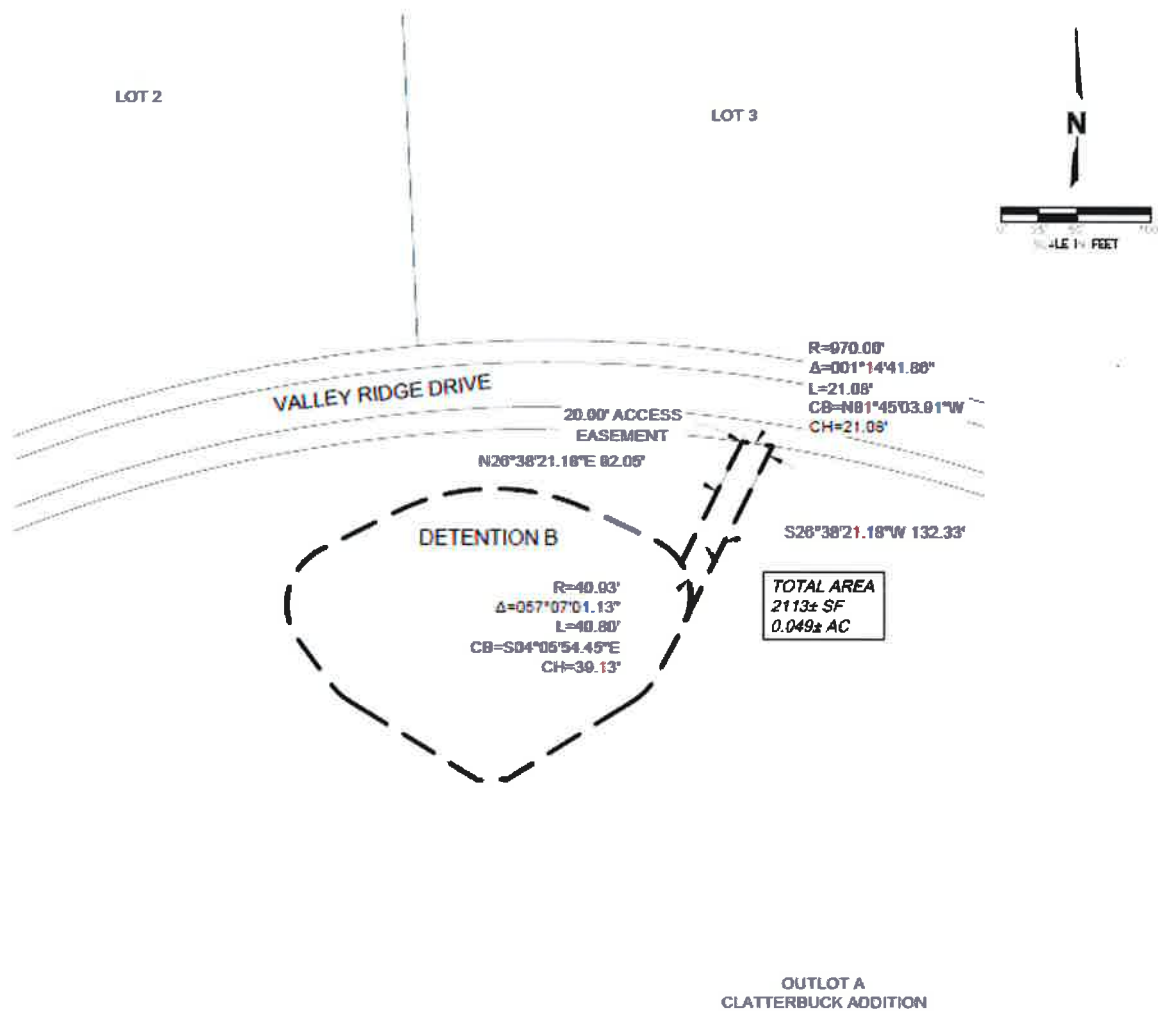
(West Pond)

[Legal description to be added]



**EXHIBIT D-2**  
**ACCESS EASEMENT AREA**  
**(East Pond)**

[Legal description to be added]



## EXHIBIT E

### MAINTENANCE REQUIREMENTS

***[Grantee's Maintenance Requirements shall be further set forth in that certain Post Construction Stormwater Management Plan Maintenance Agreement and Easement related to the Property and dated on or about even date hereof]***

#### ***Short Term: Year 1 – Year 3 (Post-Installation)***

1. Water young plants and seedlings a minimum of weekly for the first three (3) months. Watering may be required more frequently during the summer months (June through August) during the first year. Try to maintain at least a seventy percent (70%) vegetation density to ensure stability.
2. Eliminate weeds using spot application of herbicide throughout the first year.
3. Check for signs of erosion or instability and make sure that aesthetics are maintained throughout the BMP footprint.
4. After rainfall equaling or exceeding 0.5 inches:
  - a. Ensure that vegetation and other erosion stabilizing mechanisms are intact and check inlet/outlet structures and surrounding area for signs of erosion or instability.
  - b. Inspect all inlet/outlets and repair or restore clogged flow structures as needed.
  - c. Remove sediment and debris from pretreatment BMP or forebay.
  - d. Confirm drainage system functions and bank stability.
5. At one year after installation, inspect vegetation and all other supporting structures. Replace dead plants and remove invasive plant species.
6. Removed sediments should be tested for toxicants and should comply with local disposal requirements.
7. All inspections shall be conducted by a professional qualified in stormwater BMP function and maintenance. A written record of inspection results and any maintenance work shall be maintained and available for review upon request.

#### ***Long Term: Year 3 – later***

1. In early spring, mow or trim vegetation to an approximate height of six (6) inches above grade. Remove accumulated debris.
2. Inspect vegetation (1) one to two (2) times each year and remove weeds and invasive species.
3. Trim back or remove overgrown vegetation.
4. Repair or restore clogged high flow structures as needed.
5. At least twice a year, check for subsidence, erosion, tree growth on the embankment, sediment accumulation around the outlet, and erosion within the basin and banks.

6. Removed sediments should be tested for toxicants and should comply with local disposal requirements.
7. All inspections shall be conducted by a professional qualified in stormwater BMP function and maintenance. A written record of inspection results and any maintenance work shall be maintained and available for review upon request.



**EXHIBIT F**

**GRADING SPECIFICATIONS**

**[TO BE AGREED TO BETWEEN THE PARTIES]**

## EXHIBIT F

### PAYMENT TERMS

Within five (5) business days of full execution of this Agreement, **Grantee** shall pay **Grantor** Twenty-Seven Thousand Five Hundred Dollars (\$27,500.00) per acre of the Maintenance Easement Area, which the parties acknowledge and agree is equal to 2.855 acres for a total amount payable from **Grantee** to **Grantor** of Seventy-Eight Thousand Five Hundred Twelve and 50/100 Dollars (\$78,512.50).