

Agenda Item: 6.

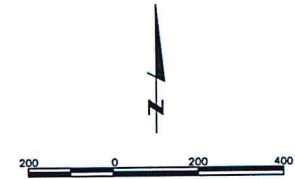
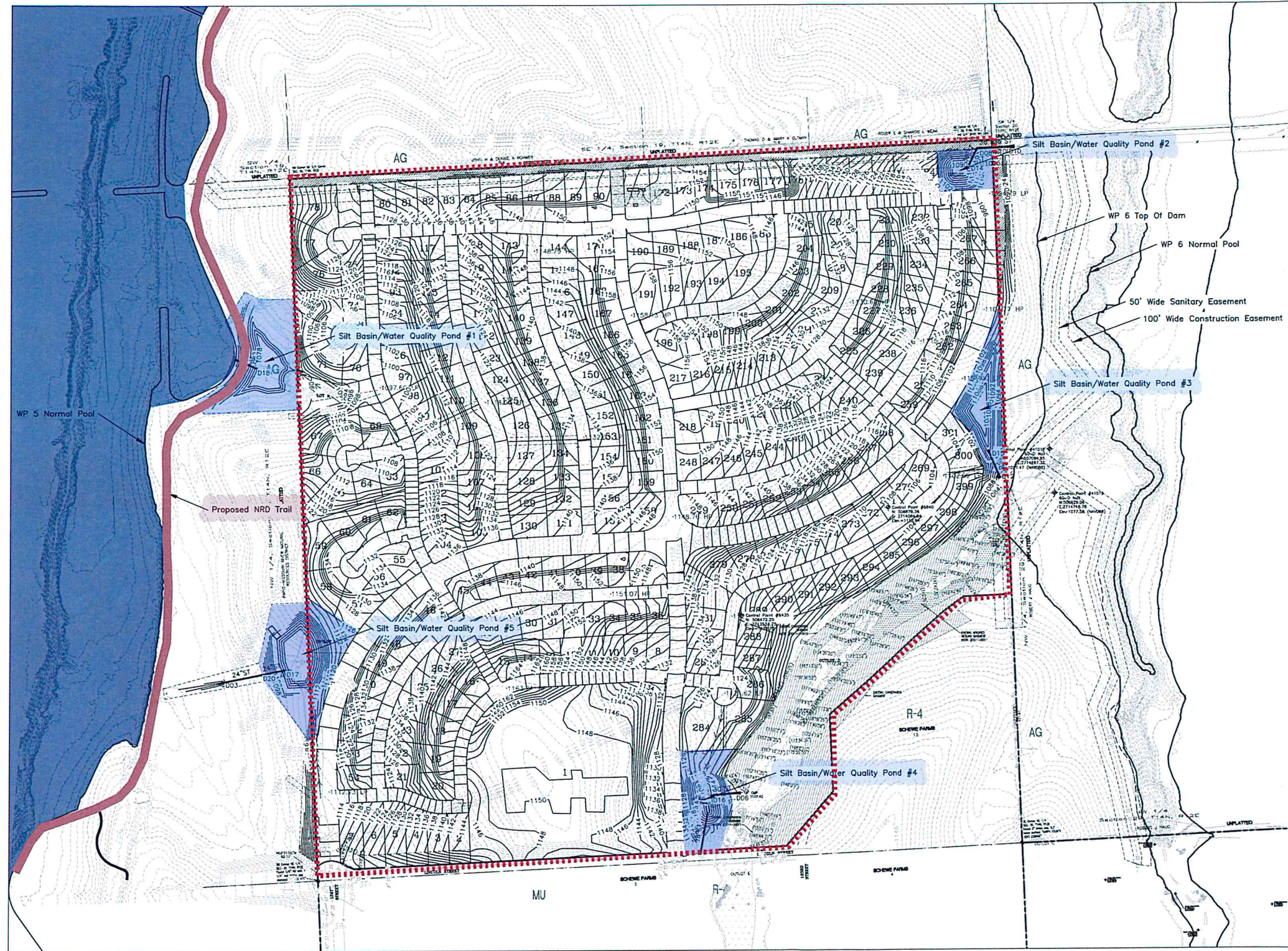
Memorandum

To: Programs, Projects and Operations Subcommittee
From: Amanda Grint, Water Resources Engineer
Date: June 6, 2013
Re: Proposed Stormwater Facility Easements for North Shore Development (SID 292) on WP-5 Project Property

Last month developers and engineers for North Shore Development (SID 292) requested that easements be granted on the WP-5 property for two stormwater quality basins associated with the development. The engineers for North Shore had coordinated with District staff and the City of Papillion on the proposed location and design of the basins.

The developer has considered the Board's comments from last month and now proposes to purchase the easement for the two water quality basins. The total area needed for the basins and access for maintenance is 4.7 acres. The District purchased the property for \$38,000 per acre and SID 292 proposes to purchase the easement for 50% of the purchase price or \$19,000 per acre. The total easement purchase amount is proposed to be \$89,300. Both the proposed easement and maintenance agreement are attached for consideration. The District will work with the City of Papillion and the North Shore engineers to finalize the Maintenance Agreement.

Staff recommends that the Subcommittee recommend to the Board that the General Manager be authorized to execute the Stormwater Quality Basin Easement and necessary documents with SID 292 to purchase an easement of 4.7 acres on the WP-5 project property for \$89,300, subject to changes deemed necessary by the General Manager and approval as to form by District Legal Counsel.



drawn by
R.K.
designed by
C.L.
reviewed by
K.A.P.

revision

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LAMP RYNEARSON
& ASSOCIATES
NORTH SHORE
SARPY COUNTY, NEBRASKA

NRD EXHIBIT

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DRAFT

May 1, 2013

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

KNOW ALL MEN BY THESE PRESENTS:

THAT **PAPIO-MISSOURI RIVER NATURAL RESOURCES DISTRICT, NEBRASKA**, hereinafter referred to as GRANTOR, for and in consideration of the sum of **One Dollar (\$1.00) and other valuable consideration**, the receipt of which is hereby acknowledged, on the property described below, does hereby grant and convey unto **SANITARY AND IMPROVEMENT DISTRICT NO. 292 OF SARPY COUNTY, NEBRASKA**, a Nebraska political subdivision, hereinafter referred to as the SID, and its successors and assigns, and the **CITY OF PAPILLION, NEBRASKA**, a municipal corporation, hereinafter referred to as the CITY, and its successors and assigns, a permanent easement for the right to construct, maintain and operate storm sewers, drainage structures and/or drainage ways, storm water quality basins, and appurtenances thereto, in, through and under the parcels of land described as follows, to-wit:

**SEE EXHIBITS "A" AND "B" ATTACHED HERETO
PERMANENT EASEMENT LEGAL DESCRIPTION**

TO HAVE AND TO HOLD unto the SID, its successors and assigns, and the CITY and its successors and assigns, together with the right of ingress and egress from said premises for the purpose of constructing, inspecting, maintaining, operating, repairing or replacing said storm sewers, drainage structures and/or drainage ways and storm water quality basins at the will of the SID or the CITY. The GRANTOR may, following construction of said storm sewers, drainage structures and/or drainage ways and storm water quality basins continue to use the surface of the easement strip conveyed hereby for other purposes, subject to the right of the SID and the CITY to use the same for the purposes herein expressed.

It is further agreed as follows:

- 1) 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 said easement strip by GRANTOR or its successors and assigns without the express approval of the SID and the CITY. Improvements which may be approved by the SID and the 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 shall be maintained by GRANTOR, its successors or assigns.

After recording, return to:
John Q. Bachman
PANSING HOGAN ERNST & BACHMAN LLP
10250 Regency Circle, Suite 300
Omaha, NE 68114

- 2) That the SID or the CITY will replace or rebuild any and all damage to improvements caused by the SID or the CITY in exercising its rights of inspecting, maintaining or operating said sewer, except that damage to, or loss of trees and shrubbery will not be compensated for by the SID or the CITY.
- 3) This permanent storm sewer, drainage and storm water quality basin easement is also for the benefit of any contractor, agent, employee or representative of the SID and the CITY in any of said construction and work.
- 4) That the SID or the CITY shall cause any trench made on said easement strip to be properly refilled and shall cause the premises to be left in a neat and orderly condition.
- 5) That said GRANTOR does confirm with the said SID and the CITY, and their successors and assigns, that the GRANTOR is well seized in fee of the above-described property and that it has the right to grant and convey this permanent storm sewer, drainage and storm water quality basin easement in the manner and form aforesaid, and it shall warrant and defend this permanent storm sewer, drainage and storm water quality basin easement to said SID and the CITY and their successors and assigns against the lawful claims and demands of all persons. This permanent storm sewer, drainage and storm water quality basin easement runs with the land.
- 6) That said permanent storm sewer, drainage and storm water quality basin easement is granted upon the condition that the SID or the 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 area as necessary for construction.

IN WITNESS WHEREOF said GRANTOR has hereunto set its hand this _____ day of _____, 2013.

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

By: _____
Name: _____
Title: _____

STATE OF NEBRASKA)
) ss.:
COUNTY OF SARPY)

On this _____ day of _____, 2013, 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

EASEMENT EXHIBIT

Exhibit A

LEGAL DESCRIPTION

A permanent easement for the construction and maintenance of silt basins and related facilities over that part of the Northwest Quarter of Section 30, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, described as follows:

Commencing at the southeast corner of the Northwest Quarter of said Section 30;

Thence North 02°31'08" West (bearings referenced to the Final Plat of NORTH SHORE, a subdivision and survey platted and recorded in Sarpy County, Nebraska) for 507.35 feet along the east line of the Northwest Quarter of said Section 30 to the TRUE POINT OF BEGINNING;

Thence North 35°33'55" West for 301.47 feet;

Thence South 80°01'11" West for 385.11 feet;

Thence North 10°54'03" West for 40.00 feet;

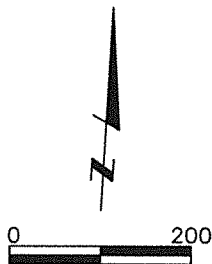
Thence North 75°03'05" East for 372.02 feet;

Thence North 11°54'19" East for 226.11 feet;

Thence North 87°28'52" East for 132.45 feet to the east line of the Northwest Quarter of said Section 30;

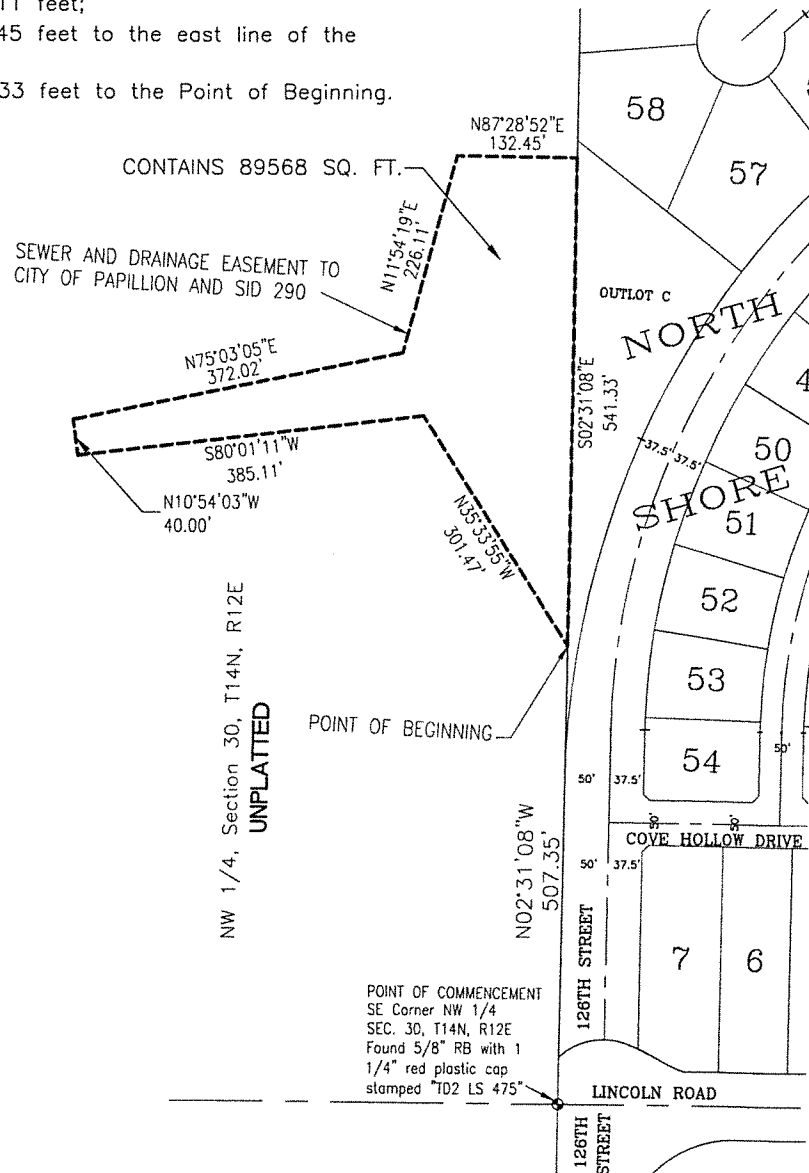
Thence South 02°31'08" East for 541.33 feet to the Point of Beginning.

Contains 89,568 square feet.



LEGEND

- — — SECTION LINE
- ⊕ SECTION CORNER
- LOT LINE
- - - EASEMENT LINE



LAMP RYNEARSON
& ASSOCIATES

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EASEMENT EXHIBIT

Exhibit B

LEGAL DESCRIPTION

A permanent easement for the construction and maintenance of a silt basin and related facilities over that part of the Northwest Quarter of Section 30, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, described as follows:

Commencing at the northeast corner of the Northwest Quarter of said Section 30;

Thence South 02°31'08" East (bearings referenced to the Final Plat of NORTH SHORE, a subdivision and survey platted and recorded in Sarpy County, Nebraska) for 451.51 feet along the east line of the Northwest Quarter of said Section 30 to the TRUE POINT OF BEGINNING;

Thence South 02°31'08" East for 418.63 feet continuing along the east line of the Northwest Quarter of said Section 30;

Thence South 87°28'52" West for 357.02 feet;

Thence North 30°47'07" West for 60.87 feet;

Thence along a curve to the left (having a radius of 212.21 feet and a long chord bearing North 21°25'46" East for 323.46 feet) for an arc length of 367.79 feet;

Thence North 31°15'52" East for 123.99 feet;

Thence South 64°10'40" East for 70.87 feet;

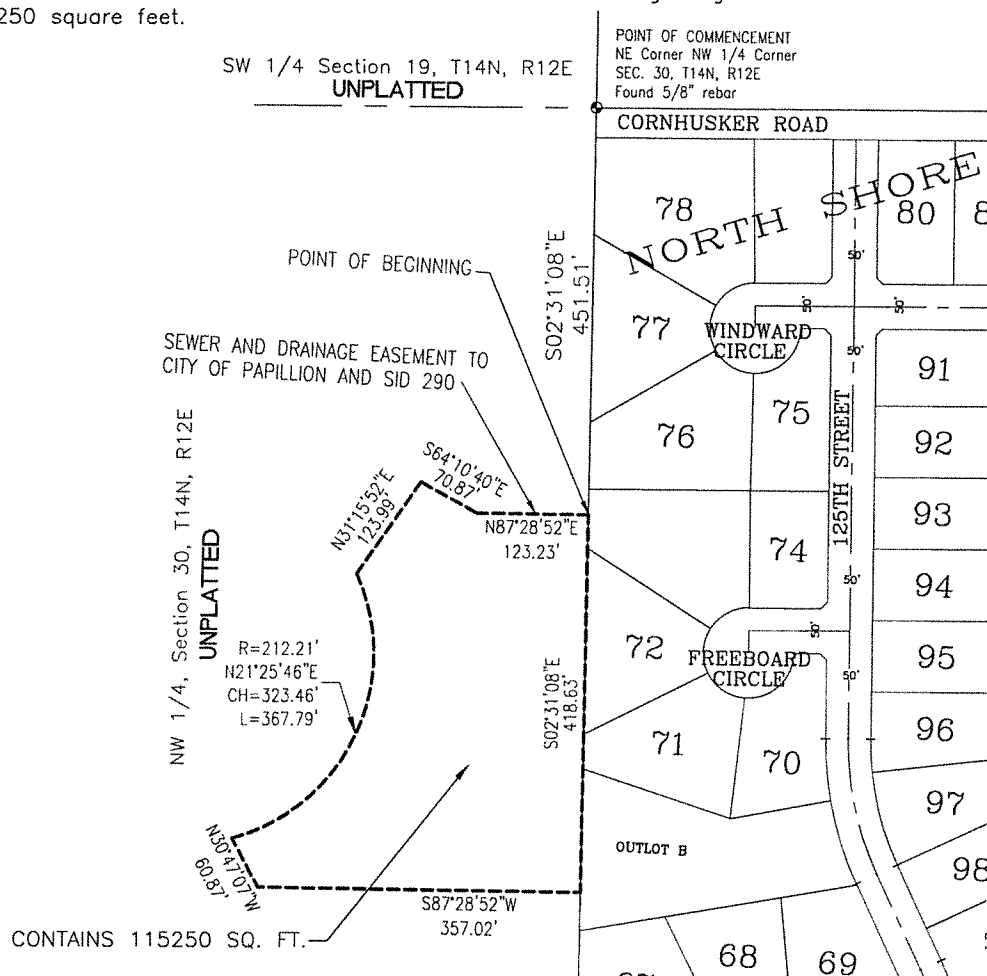
Thence North 87°28'52" East for 123.23 feet to the Point of Beginning.

Contains 115,250 square feet.



LEGEND

- SECTION LINE
- ⊕ SECTION CORNER
- LOT LINE
- EASEMENT LINE



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POST CONSTRUCTION STORMWATER MANAGEMENT PLAN MAINTENANCE AGREEMENT AND EASEMENT

WHEREAS, The Property Owner recognizes that stormwater management facilities (hereinafter referred to as "the facility" or "facilities") must be maintained for the development called North Shore (SID 292); located in the jurisdiction of the City of Papillion, Sarpy County, Nebraska; and,

WHEREAS, the Property Owner (whether one of more) is the owner of real property depicted on Exhibit "A" (hereinafter referred to as "the Property"); and,

WHEREAS, the City of Papillion (hereinafter referred to as "the City") requires and the Property Owner allow access. That North Shore (SID 292) and its administrators, executors, successors, heirs, or assigns, agree that the health, safety and welfare of the citizens of the City require that the facilities be constructed and maintained on the property; and,

WHEREAS, the Post Construction Stormwater Management Plan, Building Permit Number , (hereinafter referred to as "PCSWMP"), should be constructed and maintained by North Shore (SID 292), its administrators, executors, successors, heirs, or assigns.

NOW, THEREFORE, in consideration of the foregoing premises, the covenants contained herein, and the following terms and conditions, the property owner agrees as follows:

1. The facility or facilities shall be constructed by North Shore (SID 292) in accordance with the PCSWMP, which has been reviewed and accepted by the City of Papillion or its designee.
2. North Shore (SID 292) must develop and provide the "BMP Maintenance Requirements", attached here to as Exhibit "B", which have been reviewed and accepted by the City of Papillion or its designee. The BMP Maintenance Requirements shall describe the specific maintenance practices to be performed for the facilities and include a schedule for implementation of these practices. The Plan shall indicate that the facility or facilities shall be inspected by a professional qualified in stormwater BMP function and maintenance at least annually to ensure that it is operating properly. A written record of inspection results and any maintenance work shall be maintained and available for review by the City within 24-hours of request.
3. North Shore (SID 292), its administrators, executors, successors, heirs, or assigns, shall construct and perpetually operate and maintain, at its sole expense, the facilities in strict accordance with the attached BMP Maintenance Requirements accepted by the City of Papillion or its designee.
4. 4. The Property Owner, its administrators, executors, successors, heirs, or assigns hereby grants permission to the City, its authorized agents and employees, to enter upon the property and to inspect the facilities whenever the City deems necessary. The City shall provide the Owner and North Shore (SID 292) copies of the inspection findings and a directive to commence with the repairs if necessary. The City will require North Shore (SID 292) to provide, within 7 calendar days, a written response addressing what actions will be taken to correct any deficiencies and provide a schedule of repairs within

a reasonable time frame. Whenever possible, the City shall provide notice prior to entry. The City shall indemnify and hold the Property Owner harmless from any damage by reason of the City's negligent or intentional acts during such entry upon the property.

5. North Shore (SID 292) its administrators, executors, successors, heirs, or assigns, agrees that should it fail to correct any defects in the facility or facilities within reasonable time frame agreed to in the response by North Shore (SID 292) for corrective actions, or shall fail to maintain the structure in accordance with the attached BMP Maintenance Requirements and with the law and applicable executive regulation or, in the event of an emergency as determined by the City of Papillion or its designee in its sole discretion, the City of Papillion or its designee is authorized to enter the property to make all repairs, and to perform all maintenance, construction and reconstruction as the City of Papillion or its designee deems necessary. Notwithstanding the foregoing, the City shall indemnify and hold the Property Owner harmless from any damage by reason of the City's negligent or intentional acts during such entry upon the property. The City of Papillion or its designee shall have the right to recover from North Shore (SID 292) any and all reasonable costs the City of Papillion expends to maintain or repair the facility or facilities or to correct any operational deficiencies subject to the provisions of the immediately preceding sentence relating to negligence or intentional acts of the City. Failure to pay the City of Papillion or its designee all of its expended costs, after sixty days written notice, shall constitute a breach of the agreement. The City of Papillion or its designee shall thereafter be entitled to bring an action against North Shore (SID 292) to pay, or foreclose upon the lien hereby authorized by this agreement against the property, or both. Interest, collection costs, and reasonable attorney fees shall be added to the recovery to the successful party.
6. North Shore (SID 292) shall not obligate the City of Papillion to maintain or repair the facility or facilities, and the City of Papillion shall not be liable to any person for the condition or operation of the facility or facilities.
7. The Property Owner, its administrators, executors, successors, heirs, or assigns, hereby indemnifies and holds harmless the City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims that may arise or be asserted against the City from the construction, presence, existence or maintenance of the facility or facilities by North Shore (SID 292). In the event a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Property Owner and North Shore (SID 292) and the Property Owner and North Shore (SID 292) shall defend at its own expense any suit based on such claim unless due solely to the negligence of the City in which event the City shall be required to defend any such suit at its own expense. Notwithstanding the foregoing, if any claims are made against both the City of Papillion North Shore (SID 292) and the Property Owner, all will be required to defend any such suit or claim against it at its own expense. Each shall be responsible for payment of any recovery to the extent determined in such suit. If any judgment or claims against the City, its authorized agents or employees shall be allowed, North Shore (SID 292) shall pay for all costs and expenses in connection herewith except to the extent of the negligence or intentional act of the City.
8. The Property Owner shall not in any way diminish, limit, or restrict the right of the City of Papillion to enforce any of its ordinances as authorized by law.

9. 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 Property Owner, its administrators, executors, successors, heirs, or assigns, including any homeowners or business association and any other successors in interest.

IN WITNESS WHEREOF, the Property Owner (s) has/have executed this agreement this _____ day of _____, 20____ .

INDIVIDUAL and/or PARTNERSHIP

Name

Title

Signature

ACKNOWLEDGMENT

_____))
State

_____))
County

On this _____ day of _____, 20____ before me, a Notary Public, in and for said County, personally came the above named: who is (are) personally known to me to be the identical person(s) whose name(s) is (are) affixed to the above instrument and acknowledged the instrument to be his, her (their) voluntary act and deed for the purpose therein stated.

WITNESS my hand and Notarial Seal the day and year last above written.

Notary Public

Notary Seal

Exhibit "A"
Insert Real Property Depiction

Exhibit "B"
Short Term: Year 1 – Year 3 (Post-Installation)

1. Water young plants and seedlings a minimum of weekly for the first three months. Watering may be required more frequently during the summer months (June through August) during the first year. Try to maintain at least a 70-percent 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 structure. Replace dead plants and remove invasive plant species.
6. Removed sediments should be tested for toxicants and should comply with local disposal requirements.

Long Term: Year 3 – later

1. In early spring, mow or trim vegetation to an approximate height of 6 inches above grade. Remove accumulated debris.
2. Inspect vegetation one to two 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.