This Planned Unit Development Agreement (this “Agreement”) is made on this ___ day of __________, 2020 (the “Effective Date”), by and between the City of Papillion, Nebraska, a municipal corporation (hereinafter referred to as the “City”) and Boyer Young Equities XVIII – Sumter Crossing, LLC, a Nebraska limited liability company (hereinafter referred to as “Developer”).

RECATALS:

A. Developer is the lawful owner of the following legally described real property located in Sarpy County, Nebraska, to-wit:

Lots 151 - 173, and Outlots M, N, and O, SumTur Crossing, a Subdivision as surveyed, platted and recorded in Sarpy County, Nebraska, as shown on Exhibit "A" attached hereto (“SumTur Crossing Villas”).

B. The property is zoned R-4 Multiple-Family Residential and has all of the rights and privileges associated with that current zoning district per the Zoning Code of the City of Papillion, Nebraska.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Permitted Uses. Except as provided for in this Agreement, Lots 151 – 173 (each individually a "Lot" and collectively the “Lots”), may be used and developed pursuant to Table 205-38 of the Zoning Ordinance of the City of Papillion, Nebraska (the "Zoning Ordinance"). No buildings shall be constructed on Outlots M, N, and O (each individually an “Outlot” and collectively the “Outlots”). Outlots M, N, and O shall be utilized for the following:

Outlot M – Permanent PCSMP Basin
Outlot N – Signage Easement
Outlot O – Green Space Area

Section 2. Site Plan and Landscaping. Developer hereby acknowledges and agrees that the property shall be developed generally in accordance with the site plan attached hereto as Exhibit B and incorporated herein by this reference (the "Site Plan"). The landscaping shall be in general accordance with the landscaping shown on the landscape Plan attached hereto as Exhibit C. Landscaping within Outlots M, N, and O shall be installed within one (1) year of the issuance of the first building permit within SumTur Crossing Villas.
Section 3. Site Development Regulations. Except as specifically set forth on the Site Plan and in this Agreement, the Lots shall be developed in accordance with the site development regulations for the R-4 Multiple-Family Residential District under the Zoning Ordinance. The setbacks shall be the following:

- Front Yard Setback – 25 Feet
- Interior Side Yard Setback – 5 Feet
- Street Side Yard Setback – 15 Feet
- Rear Yard Setback – 15 Feet

Section 4. Architectural Theme. The building elevations, building materials, and color palette for the development (collectively, the "Architectural Theme") shall be generally consistent with the building elevations set forth on Exhibit D (the "Building Elevations") and the building materials and color palette set forth on Exhibit E (the "Building Materials and Color Palette"). The conceptual building elevations shall be compatible with the height, massing, and general design character shown on Exhibit D. It is understood and agreed that the design details for the elevations, facades, columns, window bays, building materials, and other architectural features may be modified from time to time by the owner or developer of such building; provided that the Planning Director, or his or her designee, determines that such modifications are consistent with the Architectural Theme.

Section 5. Amenities. Developer shall install the SumTur Crossing Villas amenities, which shall be consistent with the amenities, including, but not limited to, the trails, shelter area, community garden, and water feature (the “SumTur Crossing Villas Amenities”) depicted on the Site Plan. All of the Lots within the SumTur Crossing Villas shall be allowed to use the SumTur Crossing Villas Amenities as shown on the Site Plan. The trail shall be a minimum width of eight (8’) feet.

Section 6. Miscellaneous.

(1) Agreement Binding. The provisions of this Agreement, and all exhibits and documents attached or referenced herein, shall run with the land and shall be binding upon, and shall inure to the benefit of, the Parties to this Agreement and all their respective representatives, successors, assigns, heirs, and estates, including all successor owners of the real estate described in the attached Exhibit A, or any future replatting of the same. Every time the phrase “successors and assigns” is used throughout this Agreement, it is to be attributed the same meaning as this “Agreement Binding” provision. No special meaning shall be given to any instance in this contract in which the name of a Party is used without the phrase “successors and assigns” following immediately thereafter, unless expressly stated otherwise.

(2) Notices. All notices, demands, and requests required or permitted to be given under this Agreement (collectively the “Notices”) must be in writing and must be delivered personally, by nationally recognized overnight courier, or sent by United States certified mail, return receipt requested, postage prepaid and addressed to the parties at their respective addresses set forth below. Notices shall be effective upon receipt if delivered personally, on the next business day if sent by overnight courier, or three (3) business days after postmark if mailed. The initial addresses of the parties shall be:

To City: City of Papillion
Attn: City Clerk
122 East 3rd Street
Papillion, Nebraska 68046
To Developer: Boyer Young Equities XVIII – Sumter Crossing, LLC  
Attn: Tim Young  
9719 Giles Road  
La Vista, Nebraska 68128

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

(3) **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which, when taken together shall constitute one instrument.

(4) **Entire Agreement.** This Agreement, and the exhibits and documents attached hereto or referenced in this Agreement, which are hereby incorporated and specifically made a part of this Agreement by this reference, 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.

(5) **Amendments.** This Agreement may be amended, modified, or supplemented in writing by the City and Developer as follows:

i. **Minor Amendments.** The Planning Director, or his or her designee, may approve minor amendments to the approved Site Plan, provided that:

   a. Changes in the alignment and location of structures do not exceed ten feet in any direction.

   b. The floor area of any single building is not changed by more than 5%.

   c. All changes are within the allowable floor area ratios established by the project, are consistent with the adopted Site Plan, and have been approved in writing by any applicable property owners association established within the boundaries of the project.

ii. **Major Amendments.** Any amendment not conforming to the provisions for a minor amendment as listed in Section 5(a) shall be considered tantamount to a new application and shall be submitted to the Planning Commission and City Council according to the procedures for new applications established in Section 205-134 of the Zoning Ordinance.

Any such amendment, modification or supplement of this Agreement shall be executed by the Developer and the City and recorded in the Office of the Register of Deeds of Sarpy County, Nebraska (the “Register of Deeds”). Pursuant to the Master Fee Schedule of the City of Papillion, Developer shall reimburse City for any costs incurred recording this Agreement or any amendment, modification or supplement of this Agreement with the Register of Deeds.

(6) **Successors and Assigns.** This Agreement shall run with each of the Lots and Outlots and any future replatting(s) of said Lots and Outlots and shall be binding upon the parties hereto and their successors and assigns.
(7) **Recordable Agreement.** This Agreement shall be indexed and recorded against the Lots and Outlots, and any future replatting of the same, in the Office of the Sarpy County Register of Deeds.

(8) **Nondiscrimination.** In performance of this Agreement, the Parties, their respective agents, contractors, subcontractors, and consultants shall not discriminate or permit discrimination against any person on account of disability, race, color, sex, age, political or religious opinions or affiliations, national origin in violation of any applicable laws, rules, or regulations of any governmental entity or agency with jurisdiction over such matter.

(9) **Governing Law.** The Parties to this Agreement shall conform to all existing and applicable City ordinances, resolutions, state and federal laws, and all existing and applicable rules and regulations. Any dispute arising from this contractual relationship shall be governed solely and exclusively by Nebraska law except to the extent such provisions may be superseded by applicable federal law, in which case the latter shall apply.

(10) **Forum Selection and Personal Jurisdiction.** Any lawsuit arising from this contractual relationship shall be solely and exclusively filed in, conducted in, and decided by the state or county courts located in Sarpy County, Nebraska. As such, the Parties also agree to exclusive personal jurisdiction in the courts located in Sarpy County, Nebraska or the U.S. District Court located in Omaha, Nebraska, as appropriate. Accordingly, the Parties also agree to exclusive personal jurisdiction in said state and county courts located in Sarpy County, Nebraska or the U.S. District Court located in Omaha, Nebraska, as applicable.

(11) **Contract Voidable.** No elected official or any officer or employee of City shall have a financial interest, direct or indirect, in any City contract. Any violation of this subsection with the knowledge of the person or corporation contracting with City shall render the contract(s) voidable by the Mayor or City Council.

(12) **No Waiver.** None of the foregoing provisions shall be construed to imply any waiver of any provision of the zoning or planning requirements or any other section of the Papillion Zoning Code or Ordinances unless expressly stated.

(13) **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.

(14) **Headings.** The section headings appearing in this Agreement are inserted only as a matter of convenience, and in no way define or limit the scope of any section.

(15) **Severability.** In the event that any provision of this Agreement which shall prove to be invalid, void, or illegal by a court of competent jurisdiction, such decision shall in no way affect, impair, or invalidate any other provisions hereof, and such other provisions shall remain in full force and effect as if the invalid, void, or illegal provision was never part of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives effective as of the day and year first above written.

[Signatures on following pages]
BOYER YOUNG EQUITIES XVIII – SUMTER CROSSING, LLC,
a Nebraska Limited liability company,

By: _________________________________
    TIM W. YOUNG, Administrative Member

STATE OF NEBRASKA  )
    ) ss.
COUNTY OF SARPY  )

On this_____ day of ________________________, 2020, before me, a Notary Public in and
for said County, personally came TIM W. YOUNG to me personally known to be the President of
BOYER YOUNG EQUITIES XVIII – SUMTER CROSSING, LLC, a Nebraska Limited liability
company, and the identical person whose name is affixed to the foregoing instrument, and
acknowledged the execution thereof to be their respective voluntary act and deed and the voluntary act
and deed of said limited liability company.

Notary Seal: _________________________________

NOTARY PUBLIC
CITY OF PAPILLION, NEBRASKA,
a Municipal Corporation,

By: ________________________________
    Mayor David P. Black

Attest: ______________________________
    Nicole Brown, City Clerk
EXHIBIT A

LEGAL DESCRIPTION WITH METES AND BOUNDS
(Attached)
LEGAL DESCRIPTION

A TRACT OF LAND BEING PART OF TAX LOT 8, A TAX LOT LOCATED IN THE SW1/4 OF NE1/4 OF SECTION 5, TOWNSHIP 13 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID NE1/4 OF SECTION 5, THENCE N02°57'20"W (ASSUMED BEARING) ALONG THE WEST LINE OF SAID NE1/4 OF SECTION 5, A DISTANCE OF 448.32 FEET, THENCE N87°04'40"E, A DISTANCE OF 50.00 FEET; THENCE N58°12'13"E, A DISTANCE OF 148.45 FEET; THENCE N76°19'09"E, A DISTANCE OF 87.74 FEET; THENCE S34°04'38"E, A DISTANCE OF 9.52 FEET; THENCE N53°23'12"E, A DISTANCE OF 116.26 FEET; THENCE S34°04'38"E, 9.52 FEET; THENCE N55°55'22"E, A DISTANCE OF 66.90 FEET; THENCE S02°57'21"E, A DISTANCE OF 66.49 FEET; THENCE R=125.00' L=67.72' CH=S18°28'34"E 66.90' TO THE RIGHT AT A RADIUS OF 10909 MILL VALLEY ROAD, SUITE 100

ON BEARS S06°56'31"E, S18°28'34"E, S02°57'21"E, A CHORD THE CHORD OF 875.395 SQUARE FEET OR 8.617 ACRES, MORE OR LESS.

SAID TRACT OF LAND CONTAINS AN AREA OF 375,395 SQUARE FEET OR 8.617 ACRES, MORE OR LESS.
EXHIBIT B

SITE PLAN
(Attached)
ZONING:
R-4 PUD, LOTS 151 THRU 173 & OUTLOTS "M", "N" & "O"

1. DIRECT VEHICULAR ACCESS WILL NOT BE ALLOWED TO S 114TH STREET FROM LOTS 158 THRU 160 AND OUTLOTS "M", "N". DIRECT VEHICULAR ACCESS WILL NOT BE ALLOWED TO WHITESTRIPPE DRIVE FROM LOTS 160, 161, 173 AND OUTLOT "O". ACCESS TO OUTLOT "N" SHALL BE LIMITED TO WHITESTRIPPE DRIVE.

2. ALL ANGLES ARE 90° UNLESS OTHERWISE NOTED.

3. ALL LOT LINES ARE RADIAL TO CURVED STREETS UNLESS SHOWN AS NONRADIAL (N.R.).

4. ALL DIMENSIONS SHOWN WITH PARENTHESES ARE FOR THE LOCATION OF CENTERLINE.

5. ALL EASEMENTS THAT ARE NOT LABELED WITH ANY RECORDING INFORMATION WILL BE RECORDED BY A SEPARATE DOCUMENT.

6. THE CHAMBERS FOR SIDEWALKS ON CORNER LOTS ARE SET AT EIGHT AND HALF FEET (8.5') RADI FROM THE INTERSECTION OF RIGHT-OF-WAY LINES. NO ANGLES SHOWN WHEN RIGHT-OF-WAY LINES HAVE 90° ANGLE.

7. OUTLOT "M" IS TO BE USED FOR A PERMANENT PCSMP BASIN. A PERMANENT STORM SEWER AND DRAINAGE EASEMENT IS GRANTED OVER ALL OF OUTLOT "M". OUTLOT "M" IS TO BE OWNED AND MAINTAINED BY THE SANITARY AND IMPROVEMENT DISTRICT. OUTLOT "M" SHALL BE TRANSFERRED TO THE HOMEOWNERS ASSOCIATION PRIOR TO ANNEXATION.

8. OUTLOT "N" SHALL BE USED FOR A SIGNAGE EASEMENT. OUTLOT "N" SHALL BE OWNED AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION.

9. OUTLOT "O" IS TO BE USED AS A GREEN SPACE AREA. OUTLOT "O" IS TO BE OWNED AND MAINTAINED BY THE DEVELOPER OR THE HOMEOWNERS ASSOCIATION.

10. ZONING R-4 PUD MINIMUM SETBACK REQUIREMENTS:
FRONT YARD: 25 FEET
INTERIOR SIDE YARD: 5 FEET
STREET SIDE YARD: 15 FEET
REAR YARD: 15 FEET
EXHIBIT C

LANDSCAPE PLAN
(Attached)
Irrigation contractor to provide owner and engineer an irrigation plan shop drawing and equipment catalog cuts for approval prior to installation.

The contractor shall keep all sodded areas thoroughly watered for a period of thirty (30) calendar days after the initial laying and as often as required thereafter until sod has been fully established (two mowings) and sod shall also be watered. When the sod is watered, sufficient water shall be applied to wet the sod at least two inches deep in the sod bed. Watering shall be done in a manner which will not cause erosion or air pockets, settling and to soak through the soil profile. Water thoroughly to eliminate dead branches. Some interior twigs and lateral branches shall be removed. No sodding shall be done on frozen earth.

There shall be a minimum of six inches, after tamping, of topsoil under all sod. Excavations or trenching shall be made to a sufficient depth below the finished grade of the sod to accommodate the depth of topsoil required.

The soil on which the sod is laid shall be reasonably moist and shall be watered, if so directed. The sod shall be laid smoothly, edge to edge, and all openings shall be plugged with sod. Immediately after the sod is placed, water shall be applied to a depth which will soak the sod to a depth of at least two inches. Fertilizer applied under this item shall be incorporated with the topsoil to a depth of at least two inches before the sod is laid, unless otherwise specified or approved. Incorporation shall be done in a manner which will not cause erosion or damage to the finished surfaces. Any surfaces which become gullied or otherwise damaged shall be repaired to reestablish the grade and conditions of the soil prior to sodding and shall then be re-fertilized.

The contractor will be repaired at no cost to the Owner.

The irrigation system to be guaranteed for 1 year. Written guarantee to be supplied prior to final payment.

Irrigation bid to include meter pit and MUD fees.

Contractor to coordinate work with other amenities contractors.

All trees are to be staked for a period of not less than one year from time of planting.

Contractor to remove all construction debris and materials injurious to plant growth from planting pits and beds prior to backfilling with planting mix. All planting areas shall be free of weeds and debris prior to any work.

Inlet conflict). All adjustments must be approved by the landscape architect.

There shall be a minimum of six inches, after tamping, of topsoil under all sod. Excavations or trenching shall be made to a sufficient depth below the finished grade of the sod to accommodate the depth of topsoil required.

The soil on which the sod is laid shall be reasonably moist and shall be watered, if so directed. The sod shall be laid smoothly, edge to edge, and all openings shall be plugged with sod. Immediately after the sod is placed, water shall be applied to a depth which will soak the sod to a depth of at least two inches. Fertilizer applied under this item shall be incorporated with the topsoil to a depth of at least two inches before the sod is laid, unless otherwise specified or approved. Incorporation shall be done in a manner which will not cause erosion or damage to the finished surfaces. Any surfaces which become gullied or otherwise damaged shall be repaired to reestablish the grade and conditions of the soil prior to sodding and shall then be re-fertilized.

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EXHIBIT D

ARCHITECTURAL THEME AND BUILDING ELEVATIONS
(Attached)
EXHIBIT D (PAGE 1 OF 4)
ARCHITECTURAL THEME AND BUILDING ELEVATIONS

SumTur Crossing Villas

- Villa, ranch homes from $250,000-$325,000.
- 1500-1900 sq ft, 2-5 bedrooms
- Two car garages

ELEVATION EXAMPLE
EXHIBIT D (PAGE 2 OF 4)
ARCHITECTURAL THEME AND BUILDING ELEVATIONS

ELEVATION EXAMPLE
ELEVATION EXAMPLE
COMMUNITY RAISED GARDEN
EXHIBIT E

BUILDING MATERIALS AND COLOR PALETTE

(Attached
EXHIBIT E
BUILDING MATERIALS AND COLOR PALETTE

Siding

Brick

Stone