

3-5-01

**KING RIDGE 1ST ADDITION AGREEMENT FOR THE
INSTALLATION OF OFF SITE TRANSPORTION IMPROVEMENTS**

This King Ridge 1st Addition Agreement for the Installation of Off Site Transportation Improvements ("Agreement") is made and entered into as of this _____ day of _____, 2001, by and between the **City of Lincoln, Nebraska**, a municipal corporation (hereinafter referred to as the "City") and **Ridge Development Company**, a Nebraska coporation (hereinafter referred to as the "Owner").

RECITALS

A. The City has approved Use Permit No. 103A and Preliminary Plat No. 00009, for Lots 1 through 10, King Ridge Addition; and Lot 1, Block 1, and Outlots "B" through "K", King Ridge 1st Addition, all located in Lincoln, Lancaster County, Nebraska (the "Property").

B. All of the Property except for Lot 1, King Ridge Addition and Lot 1, Block 1, King Ridge 1st Addition, both located in Lincoln, Lancaster County, Nebraska, is owned by Owner ("Owner Property"). That portion of the Owner Property legally described as Outlot "B" and Outlot "C", King Ridge 1st Addition, Lincoln, Lancaster County, Nebraska, is hereinafter referred to as the "North Owner Property".

C. Owner desires to construct 705,660 square feet of commercial/retail floor area on the Property. A general and conceptual subarea plan for the Property is shown on Exhibit "A", which is attached hereto and incorporated herein by this reference.

D. The City's approval of Use Permit No. 103A and Preliminary Plat No. 00009 (collectively referred to herein as "Governmental Actions") and in particular the development and operation of 705,660 square feet of commercial/retail floor area on the Property will cause increased traffic on the public street system that serves and provides access to the Property. To protect and promote the public health, safety and welfare, the City and Owner have studied and identified the street improvements associated with the Governmental Actions and the development and operation of 705,660 square feet of commercial/retail floor area.

E. On February 23, 1998, the City and Owner entered into the King Ridge Agreement for the Installation of Off-Site Transportation Improvements ("Original Agreement") which identified certain street improvements associated with the approval of Use Permit No. 103 and Preliminary Plat No. 97016, and the construction of 237,200 square feet of commercial/retail floor area on the Property. The street improvements identified in this Agreement are in addition to and do not supersede those identified in the Original Agreement.

F. The City and Owner have agreed that, as a condition of said Governmental Actions, Owner shall be responsible for designing and constructing the following through the City's executive order process:

- (i) 275 feet dual west bound to south bound left turn lanes in Enterprise Drive at North 27th Street, a second west bound through lane in Enterprise Drive from North 30th Street terminating at North 27th Street, and rebuilding the north and south median noses, as well as improvements to Enterprise Drive on the west side of North 27th Street necessary to match lane alignments with the east side, as shown conceptually on Exhibit "B", which is attached hereto and incorporated herein by this reference;
- (ii) A 150 feet north bound to east bound right turn lane in North 27th Street at Enterprise Drive which eventually becomes part of the north bound through lane identified in (ix) below;
- (iii) A traffic signal at the intersection of North 27th Street and Enterprise Drive when the volume warrant (#1), the interruption of continuous traffic warrant (#2), or safety warrant (#6) (collectively identified hereafter as "Warrant") is reached;
- (iv) Increasing the length of the south bound to east bound left turn lane in North 27th Street to 350 feet at Enterprise Drive;
- (v) Folkways Boulevard as a six lane median divided roadway 78 feet in width as measured from back of curb to back of curb including west bound dual lefts 12 feet in width utilizing the existing four lane pavement from North 27th Street east to North 30th Street with transitioning east of North 30th Street, as shown conceptually on Exhibit "C", which is attached hereto and incorporated herein by this reference, including underground conduit around the intersection of Folkways Boulevard and North 30th Street to accommodate future signalization of the intersection when Warrant is reached;
- (vi) Increasing the length of the south bound to east bound left turn lane in North 27th Street to 355 feet at Folkways Boulevard;
- (vii) Continuation of the third north bound through lane in North 27th Street from North Hill Road to Folkways Boulevard as a shared north bound to east bound right turn lane at Folkways Boulevard including the relocation of overhead utilities;
- (viii) Folkways Boulevard east of North 30th Street to the edge of the Property as a three lane undivided roadway 39 feet in width with a common center turn lane connecting to that section of Folkways Boulevard located east of this Property with appropriate curves and tapers, as shown conceptually on Exhibit "C"; and
- (ix) A north bound through lane in North 27th Street from Folkways Boulevard to the north edge of the Property including the relocation of overhead utilities

(individually "Street Improvement" and collectively "Street Improvements"). The final design of all construction documents must be approved by the Public Works Department of the City.

G. The City and Owner have agreed that, as a condition of said Governmental Actions, the City shall be responsible for: (i) the actual cost of the design and construction of a traffic signal at the intersection of North 27th Street and Folkways Boulevard, including all associated necessary improvements to the medians in North 27th Street and to Folkways Boulevard west of North 27th Street, when said intersection meets Warrant; and (ii) the actual cost of the design and construction of a traffic signal at the intersection of North 30th Street and Folkways Boulevard when said intersection meets Warrant.

H. The City and Owner have agreed that, as a condition of said Governmental Actions, Owner shall be responsible for granting, at no cost to the City, an easement in the form attached hereto as Exhibit "D", which is incorporated herein by this reference ("Public Street Easement"), for twelve (12) feet of right-of-way from the west side of the Owner Property along North 27th Street between Folkways Boulevard and Enterprise Drive and a Public Street Easement for additional right-of-way from the southwest corner of Lot 2, King Ridge Addition, necessary for the construction of the Street Improvement set forth in Recital F.(vii) (collectively "27th Street Right-of-Way"), as well as the additional right-of-way from the Owner Property along Folkways Boulevard east of North 27th Street shown conceptually on Exhibit "C", and Public Street Easements for site triangles shown conceptually on Exhibit "C" necessary to permit the Owner to construct the Street Improvements set forth in Recital F.(v) and the City to construct a four through lane roadway section east of North 30th Street in the future when required ("Folkways Right-of-Way").

I. The City, with the cooperation of the Owner, shall acquire all right-of-way and temporary and permanent nonexclusive easements necessary for the construction of Enterprise Drive west of North 27th Street as soon as reasonably possible (collectively "Enterprise Right-of-Way"). The costs of the Enterprise Right-of-Way including, but not limited to, the amount of any condemnation award, court costs, condemnee attorney fees, expert witness fees, testing fees and interest, but excluding City staff time and compensation, shall be paid by the Owner.

J. The City and Owner have agreed that the City shall be responsible, at its cost, for obtaining any additional right-of-way along North 27th Street and Folkways Boulevard, east and west of North 27th Street on property not owned by Owner, which includes Lot 1, King Ridge Addition, Lots 1 and 2, Block 1, King Ridge 1st Addition, Lots 48 and 63 Irregular Tracts, located in Section 6, Township 10 North, Range 7 East, and Lot 1, Waterbrook 1st Addition (all located east of North 27th Street) and the property located adjacent to Folkways Boulevard west of North 27th Street, necessary for the construction of the Street Improvements ("Third Party Right-of-Way"). The Owner agrees to cooperate with and assist the City in obtaining the Third Party Right-of-Way along Folkways Boulevard east of North 27th Street.

NOW, THEREFORE, to fulfill the conditions of the Governmental Actions, and to ensure proper and timely funding and construction of the public transportation improvements associated

with and made necessary by the uses authorized under said Governmental Actions, the City and Owner agree as follows:

1. Executive Order. Owner agrees to design and construct by executive order construction the Street Improvements identified in Recital F above. Owner agrees that the actual costs for the Street Improvements shall be paid by Owner pursuant to the City's executive order process. Owner shall complete construction of the Street Improvements identified in Recital F.(i), (ii), and (iv) prior to the receipt of a certificate of occupancy for any new commercial/retail square footage constructed upon the North Owner Property. Owner shall commence construction of the Street Improvements identified in Recital F.(v), (vi), (vii), and (viii), by the summer of 2001. Construction of the Street Improvement identified in Recital F.(ix) by the Owner shall be triggered when the earlier of the following events occurs: (i) certificates of occupancy have been issued for 200,000 square feet of commercial/retail usage on the North Owner Property; or (ii) the approved uses on the North Owner Property generate 1050 P.M. peak hour total trips, of which 515 will be entering and 535 will be exiting. The Owner shall install the traffic signal identified in Recital F.(iii) at the time such intersection meets Warrant.

2. Right-of-Way Dedication. Owner agrees to grant and dedicate to the City, at no cost, the Public Street Easements and right-of-way identified in Recital H above. Owner agrees to grant the Public Street Easements for the North 27th Street Right-of-Way and the Folkways Boulevard site triangles to the City upon final approval of this Agreement. Owner agrees to dedicate the Folkways Right-of-Way to the City when the Outlots located north of Folkways Boulevard are final platted into buildable lots of record. The City agrees to support a corresponding waiver of the front yard setback along the south side of Folkways Boulevard for the Folkways Right-of-Way granted by the Owner.

3. Enterprise Right-of-Way. The City, with the cooperation of the Owner, shall acquire the Enterprise Right-of-Way as soon as reasonably possible after Owner has designed the roadway improvements requiring the right-of-way. The Owner agrees to make a good faith effort to obtain the Enterprise Right-of-Way prior to involving the City in the acquisition. The Owner shall provide the City with the necessary right-of-way and easement documents for the acquisition process. The costs of the Enterprise Right-of-Way including, but not limited to, the amount of any condemnation award, court costs, expert witness fees, testing fees and interest but excluding City staff time and compensation shall be paid by the Owner

4. Third Party Right-of-Way. The City shall use its best efforts to obtain the Third Party Right-of-Way identified in Recital J as soon as reasonably possible after the execution of this Agreement. The City shall be responsible for the actual cost of obtaining the Third Party Right-of-Way identified in Recital J.

5. City Construction. The City shall be responsible for (i) the actual cost of the design and construction of a traffic signal at the intersection of North 27th Street and Folkways Boulevard, including all associated improvements to the medians in North 27th Street and Folkways Boulevard west of North 27th Street, when said traffic signal meets Warrant; and (ii) the actual cost of the

design and construction of a traffic signal at the intersection of North 30th Street and Folkways Boulevard.

6. Costs. For purposes of this Agreement, the words and phrases, "cost" or "entire cost" of a type of an improvement shall be deemed to include all construction costs, engineering fees, testing expenses, inspection fees and related miscellaneous costs.

7. Escrow. In conjunction with the final platting of the North Owner Property, Owner shall furnish to the City a bond, escrow, or other security agreement approved by the City Law Department in the following amounts as security to guarantee Owner's construction of the Street Improvements identified below:

- (i) \$265,100 for the Street Improvements identified in Recital F.(i), (ii) and (iv);
- (ii) \$100,000 for the Street Improvement identified in Recital F.(iii); and
- (iii) \$188,600 for the Street Improvement identified in Recital F.(ix).

The parties acknowledge Owner has already escrowed funds in association with the final platting of Outlots "D" through "K", King Ridge 1st Addition, to guarantee the construction of Folkways Boulevard east of North 30th Street. In conjunction with the final replatting of Outlots "D" through "K", King Ridge 1st Addition into buildable lots of record, Owner shall furnish to the City a bond, escrow, or other security agreement approved by the City Law Department in the amount of \$156,200 as security to guarantee Owner's construction of the Street Improvements identified in Recital F.(v), (vi), and (vii).

If Owner fails to construct the Street Improvements within the time frames set forth herein, the City may apply the security to such costs.

8. Level of Service and Proposed Land Uses. By acceptance of the right-of-way identified in Paragraph 2 above and the executive order construction provided for in Paragraph 1 above, the City in no way warrants or assures any particular level of service on the public streets and roads serving the Property or the development contemplated under the Governmental Actions.

The City and Owner have preliminarily identified the street improvements associated with and made necessary by the Governmental Actions and the assumed development and operation of 705,660 square feet of commercial/retail floor area based upon the peak p.m. motor vehicle trip generation rate of 3,754 and the peak a.m. motor vehicle trip generation rate of 1,762 for the proposed land uses and the square footage amount set forth above. The parties acknowledge that the actual land uses and square footage amounts approved by the City's use permit process may be different from those described above. The parties acknowledge Owner's right to request different land uses and/or square footage amounts through the use permit process or amendments thereto. In the event the combined land uses and square footage amounts under the use permit process do not exceed 705,660 square feet of commercial/retail development and the peak p.m. motor vehicle trip

generation of 3,754 and peak a.m. motor vehicle trip generation of 1,762 for such land uses and square footage amount as published by the Institute of Transportation Engineers, then the City will not require from the Owner any additional off-site road improvements or payment contributions for any additional off-site road improvements. In the event the combined land uses and square footage amounts under the use permit process do exceed 705,660 square feet of commercial/retail development or the peak p.m. motor vehicle trip generation rate of 3,754 and the peak a.m. motor vehicle trip generation rate of 1,762 for such land uses and square footage amount as published by the Institute of Transportation Engineers, then the City may require additional off-site road improvements or payment contributions for additional off-site road improvements from the Owner.

After dedication of the right-of-way as set forth in Paragraph 2 and completion of the Street Improvements as set forth in Paragraph 1, the City reserves the right to adjust the design and construction thereof to meet and accommodate needs arising from any such other development.

9. Liability. Neither the City or Owner shall have any liability under this Agreement until and unless Owner has by written letter of acceptance accepted Use Permit No. 103A.

10. Essential Nexus. The City and Owner agree the City has a legitimate state interest in promoting the public's health, safety and welfare in providing for the safe and efficient movement of motor vehicles upon the public street system, and that an "essential nexus" exists between the City's above interests and the conditions placed upon the Owner under this Agreement. In addition, the City and Owner have made an individualized determination and agree that the conditions placed upon the Owner under this Agreement are related both in nature and extent and are in "rough proportionality" to the projected adverse effects the development and operation of 705,660 square feet of commercial/retail floor area will have on traffic on the public street system that serves and provides access to the Property.

11. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, devisees, personal representatives, successors and assigns and shall inure to and run with the Property.

12. Amendments. This Agreement may only be amended or modified in a writing signed by all parties to this Agreement.

13. Further Assurances. Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

14. Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

15. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

16. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

17. Construction. Whenever used herein, including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

18. Relationship of Parties. Neither the method of computation of funding nor any other provisions contained in this Agreement nor any acts of any party shall be deemed or construed by the City or Owner, or by any third person to create the relationship of partnership or of joint venture or of any association between the parties, other than contractual relationships stated in this Agreement.

19. Certificate of Completion. Upon dedication of the right-of-way as set forth in Paragraph 2 above and satisfactory completion of and payment for the Street Improvements as set forth in Paragraph 1 above, the parties will execute and deliver to each other a mutual Certificate of Completion in a recordable form of all the duties and obligations imposed on the parties pursuant to this Agreement.

20. Assignment. In the case of the assignment of this Agreement by any of the parties, prompt written notice shall be given to the other parties, who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release in writing is given and signed by the other parties to this Agreement.

21. Time is of the Essence. Time is of the essence under this Agreement.

22. Remedies. In the event a party fails to pay its obligations hereunder or breaches a covenant, warranty or representation hereunder ("Defaulting Party"), then any and all other parties may prosecute any proceeding at law or in equity, including specific performance, against the Defaulting Party after giving thirty (30) days written notice to cure to the Defaulting Party.

23. Notice. Any notices required to be forwarded to a party hereto shall be deemed appropriately sent, if deposited in the United States mail, sufficient postage prepaid, addressed as follows:

If to Owner: Ridge Development Company
Attn: Tom White and John Brager
PO Box 22296
Lincoln, NE 68542-2296

If to City: Mayor
County-City Building
555 South 10th Street
Lincoln, NE 68508

A copy of any notice sent to Owner shall also be sent to:

Seacrest & Kalkowski, P.C.
1111 Lincoln Mall, Ste. 350
Lincoln, NE 68508

Any party hereto may change its address for notification purposes by written notice to all parties hereto in the manner and method set forth within this Section.

24. Recordation. This Agreement or a summary memorandum thereof shall be recorded by the City with the Register of Deeds for Lancaster County, Nebraska, filing fees therefore to be paid in advance by Owner.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

**RIDGE DEVELOPMENT COMPANY, a
Nebraska corporation**

By: Thomas E. White
Thomas E. White
President of Development

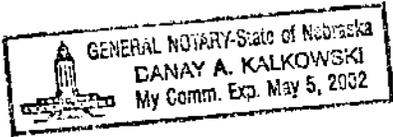
By: John C. Brager
John C. Brager
President of Construction

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

By: _____
Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

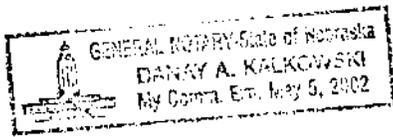
The foregoing was acknowledged before me this 7th day of March, 2001, by Thomas E. White, President of Development of **Ridge Development Company**, a Nebraska corporation, on behalf of the corporation.



Danay A. Kalkowski
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 7th day of March, 2001, by John C. Brager, President of Construction of **Ridge Development Company**, a Nebraska corporation, on behalf of the corporation.



Danay A. Kalkowski
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this ___ day of _____, 2001, by Don Wesley, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation, on behalf of the municipal corporation.

Notary Public

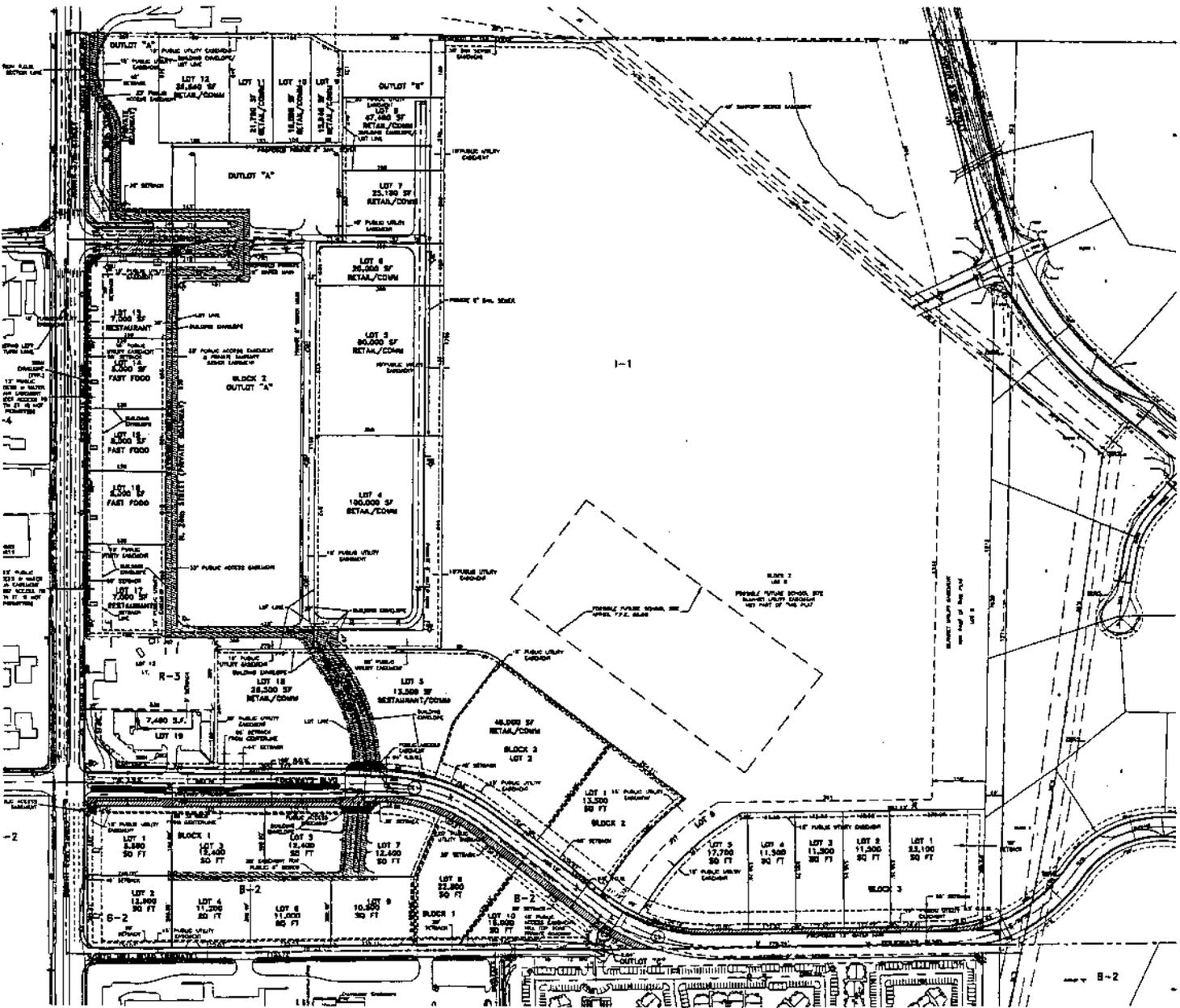
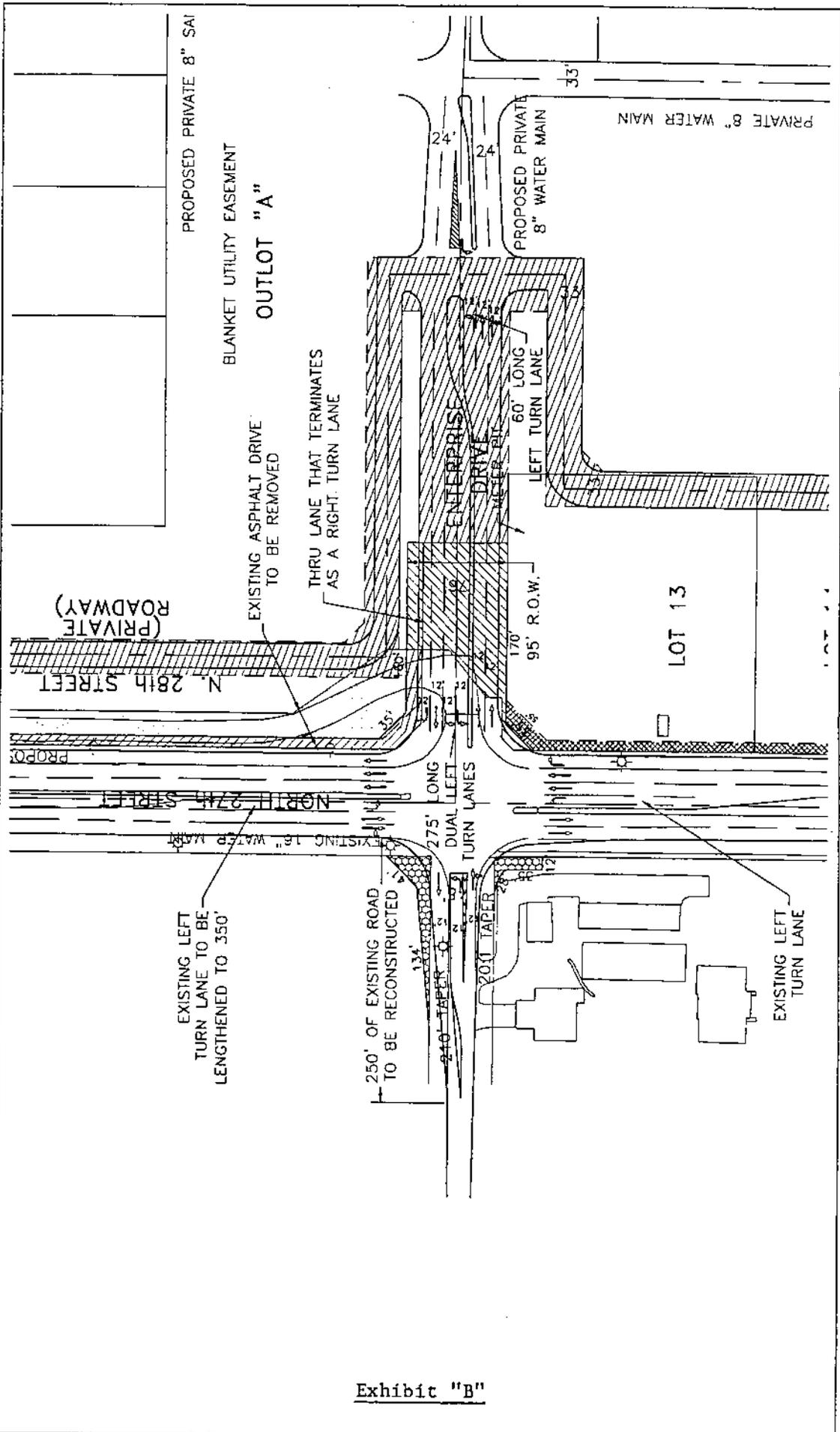


Exhibit "A"



EXISTING LEFT
TURN LANE TO BE
LENGTHENED TO 350'

250' OF EXISTING ROAD
TO BE RECONSTRUCTED

EXISTING LEFT
TURN LANE

PROPOSED PRIVATE 8" SAI

BLANKET UTILITY EASEMENT

OUTLOT "A"

EXISTING ASPHALT DRIVE
TO BE REMOVED

THRU LANE THAT TERMINATES
AS A RIGHT TURN LANE

PROPOSED PRIVATE
8" WATER MAIN

PRIVATE 8" WATER MAIN

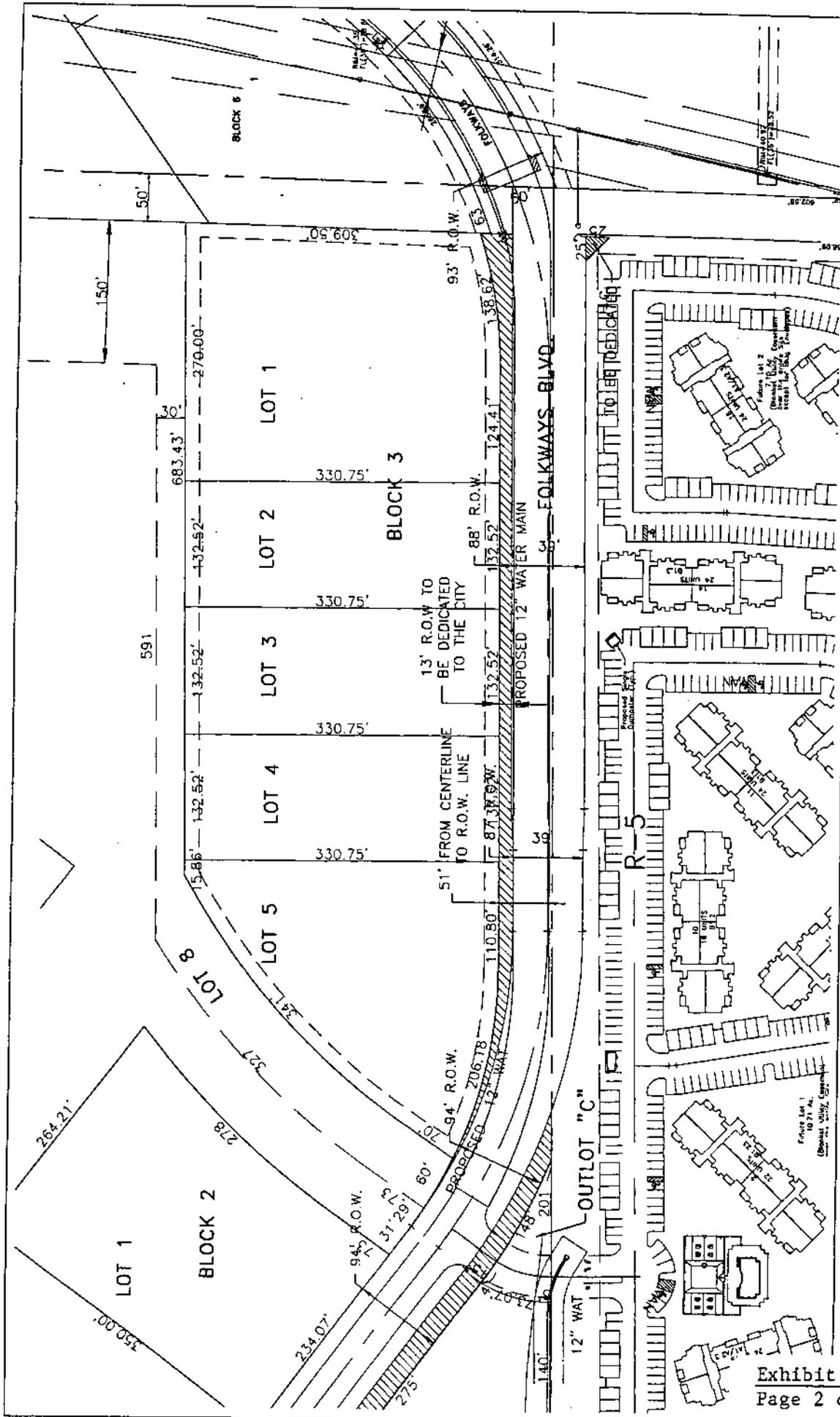
LOT 13

27TH & ENTERPRISE DRIVE

OLSSON ASSOCIATES
CONSULTING ENGINEERS
1111 Lincoln Mall, P.O. Box 84608, Lincoln, NE 68501

NOT TO SCALE
3/5/2001

Exhibit "B"



NOT TO SCALE
6/4/2001

OLSSON ASSOCIATES
CONSULTING ENGINEERS
1111 Lincoln Mall, P.O. Box 84608, Lincoln, NE 68501

FOLKWAYS BLVD.
EAST SECTION

EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That _____, herein called "Grantor", whether one or more, record owners of the real property hereinafter described, for and in consideration of the sum of One Dollar and other good and valuable consideration, duly paid, the receipt whereof is hereby acknowledged, does hereby grant, remise and relinquish unto the **City of Lincoln, Nebraska**, a municipal corporation, its successors and assigns, herein called "Grantee", the right, privilege and easement to construct, reconstruct, maintain, operate, and replace public streets and appurtenances thereto belonging, for vehicular and pedestrian access by the public over and through the following described real property, to-wit:

To have and to hold unto the City of Lincoln, Nebraska, its successors and assigns, so long as such public streets shall be maintained, together with the right of ingress and egress to said property from the public streets, for the purpose of constructing, reconstructing, inspecting, repairing, maintaining, operating and replacing said public streets and appurtenances thereto, located thereon, in whole or in part, at the will of Grantee, it being the intention of the parties hereto that Grantor is hereby granting full and free use of the above-described property for the uses herein specified.

This instrument, and the covenants and agreements herein contained, shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors and assigns of the respective parties, and the easement created by this instrument shall not in any manner be released, waived, or in any way be terminated or affected by any delay, failure, or lack of use by the Grantee for any period of time.

Grantor covenants that Grantor is the owner of the above-described property, that said property is free from encumbrances and that Grantor has legal right, title, and capacity to grant the easement contained herein.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 2001.

Exhibit "D"

