
**PRAIRIE VILLAGE NORTH
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Prairie Village North Conditional Annexation and Zoning Agreement (“Agreement”) is made and entered into this _____ day of _____, 2005, by and between **Dubois Land, LLC**, a Nebraska limited liability company; **Prairie Village North, LLC**, a Nebraska limited liability company; **Prairie Home Builders, Inc.**, a Nebraska corporation; and **Ryland Group, LLC**, a Nebraska limited liability company hereinafter collectively referred to as “Owner”; and the **City of Lincoln, Nebraska**, a municipal corporation, hereinafter referred to as “City.”

R E C I T A L S

A. Owner has requested the City to annex approximately 149.09 acres more or less of land generally located Northeast of the intersection of 84th and Adams Street. The approximately 149.09 acres is hereinafter referred to as the “Annexed Property” and is legally described on Exhibit “A” attached hereto.

B. Owner also owns approximately 23 acres more or less of land generally located Southeast of the intersection of 84th and Adams Street. This tract is legally described in the attached Exhibit “A” and is hereinafter referred to as the “Corner Property”. The Corner Property was previously annexed by the City, along with other land pursuant to the Prairie Village Conditional Annexation and Zoning Agreement dated August 19, 2002 and recorded with the Register of Deeds of Lancaster County, Nebraska

on September 3, 2002 as Instrument No. 2002-058562 (“PV Agreement”). The PV Agreement was entered into by and between the City, Faith Evangelical Lutheran Church, Lincoln, Nebraska (“Church”), Owner and another party to whom the Owner is now the successor.

C. The Annexed Property together with the Corner Property are referred to collectively in this Agreement as “Property”.

D. Owner has requested a Change of Zone to rezone the Property from AG Agriculture District to R-3 and R-5 Residential District, B-2 Planned Neighborhood Business District, and O-3 Office Park District under a Planned Unit Development designation authorizing 1,161 dwelling units and 585,000 square feet of commercial retail and office space (which is generally allocated as 285,000 square feet south of Adams and 300,000 square feet north of Adams, 50,000 square feet of which is contingent on meeting incentive criteria) (“Prairie Village North Planned Unit Development”).

E. The City has adopted Ordinance No. 18113, hereinafter referred to as the “Impact Fee Ordinance” based upon an Impact Fee Study prepared by Duncan Associates dated October, 2002, that went into effect on June 2, 2003. This Impact Fee Ordinance enables the City to impose a proportionate share of the cost of improvements to the water and wastewater systems arterial streets and neighborhood parks and trails necessitated by and attributable to new development.

F. A Complaint for Declaratory and Injunctive Relief has been filed in the District Court of Lancaster County, Nebraska. This Complaint prays for judgment of the district court declaring the Impact Fee Ordinance invalid and unenforceable and for injunctive relief enjoining the imposition of impact fees. The District Court held the Impact Fee Ordinance to be valid and enforceable as an excise tax. The decision of the District Court has been appealed to the Nebraska Supreme Court.

G. Pursuant to the Conditional Annexation and Zoning Agreement for Regent Heights 1st Addition and Northern Lights Addition (“Regent Heights Agreement”), the City and the developers of Regent Heights 1st Addition and Northern Lights Addition constructed certain sanitary sewer trunk lines (hereinafter “Sewer A” and “Sewer B”) to sewer 254 acres of land within the preliminary plats of Regent Heights 1st Addition and Northern Lights Addition. Said Sewer A and Sewer B can also sewer 746 acres of land outside of the boundaries of the preliminary plats for Regent Heights 1st Addition and Northern Lights Addition, including a portion of the Owner’s Annexed Property.

H. In the Regent Heights Agreement, the City agreed to charge owners of land outside the boundaries of the preliminary plats for Regent Heights 1st Addition and Northern Lights Addition who benefit not from maintenance of Sewer A and Sewer B, but from the extension of Sewer A and Sewer B into an entirely new area, including that portion of the Owner’s Annexed Property that may be served by those sewer extensions, a fair share of the cost of Sewer A and Sewer B based upon a per-acre formula or some other fair share formula approved by the City.

I. The City is willing to annex the Annexed Property and approve the change of zone for the Property prior to a determination as to the validity and enforceability of the Impact Fee Ordinance, provided Owner agrees to make a guaranteed nonrefundable contribution to the cost of improving the City’s Water System, Water Distribution, Wastewater System, Neighborhood Park & Trail, and Arterial Street Impact Fee Facilities necessitated by and attributable to the proposed development of the Property in the event the Impact Fee Ordinance is held invalid or is otherwise unenforceable.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do agree as follows:

- 1. Annexation by the City.** The City agrees to annex the Annexed Property.

2. **Change of Zone.** The City agrees to approve the Change of Zone and Planned Unit Development designation for the Property.

3. **Contributions for Impact Fee Facility Improvements.**

A. Water Distribution Impact Fee Facility Contribution. Owner agrees to contribute \$193,603.33 toward the cost of making Impact Fee Facility Improvements to the City's Water Distribution Impact Fee Facilities attributable to the proposed development of the Property.

B. Water System Impact Fee Facility Contribution. Owner agrees to contribute \$311,653.99 toward the cost of making Impact Fee Facility Improvements to the City's Water System Impact Fee Facilities attributable to the proposed development of the Property.

C. Wastewater Impact Fee Facility Contribution. Owner agrees to contribute \$249,912.66 toward the cost of making Impact Fee Facility Improvements to the City's Wastewater Impact Fee Facilities attributable to the proposed development of the Property.

D. Neighborhood Park and Trail Impact Fee Facility Contribution. Owner agrees to contribute \$268,251.33 toward the cost of making Impact Fee Facility Improvements to the City's Neighborhood Park and Trail Impact Fee Facilities attributable to the proposed development of the Property.

E. Arterial Street Impact Fee Facility Contribution. Owner agrees to contribute \$3,113,072.64 toward the cost of making Impact Fee Facility Improvements to the City's Arterial Street Impact Fee Facilities attributable to the proposed development of the Property.

The Contributions for the above-described Impact Fee Facility Improvements reflect the amounts attributable to 100% development of the proposed development of the

Property for 1,161 dwelling units and 585,000 square feet of commercial and office space in 2005 based upon the 2005 Impact Fee Schedules for said Impact Fee Facilities.

4. Water Main.

A. Construction. Owner agrees to complete construction of a 16-inch water main in Adams Street from approximately 81st Street east to 94th Street and a 12-inch water main internally through the Property. The water mains shall be constructed through the City's executive order process and construction contracts shall be let only after competitive bidding in accordance with City procedures.

B. Reimbursement. City agrees to use its best efforts to reimburse Owner without interest for the cost of the 16-inch water main (except for the City's fixed fee for engineering services) no later than the end of the City's Fiscal Year 2006/2007. The City further agrees to reimburse Owner for the difference between the cost of the internal 12-inch water main and the cost of a typical 6-inch water main abutting a residential area and the cost of a typical 8-inch water main abutting commercial area following completion of construction.

C. Condemnation. If easements are necessary to install the water main on the south side of Adams from 91st to 94th Street the City agrees to use its condemnation authority, if necessary, for such acquisition and shall bear all costs and expenses of the condemnation proceeding.

5. Sanitary Sewer.

A. Construction. The existing Regent Heights/Northern Lights Sanitary Trunk Sewer will need to be relocated into the planned street right-of-ways. The owner shall bear all costs for relocating the existing Regent Heights/Northern Lights Sanitary Trunk Sewer into the street right-of-ways. The phasing and timing of the sewer relocation shall be acceptable to the City's Department of Public Works and Utilities.

The design of the relocation project shall be subject to the approval of the City's Department of Public Works and Utilities. Construction shall be through the City's executive order process.

B. No Reimbursement for Site-Related Improvements. Owner agrees that Owner shall construct the site-related improvements consisting of the relocation of the existing Regent Heights/Northern Lights Sanitary Trunk Sewer into the street right-of-ways at the Owner's own cost and expense without any reimbursement from the City.

C. Regent Heights Connector. Owner acknowledges and agrees to plan for and provide easements acceptable to the City for a future interconnective sanitary sewer trunk line known as the "Regent Heights Connector." The Regent Heights Connector will be between the relocated sanitary sewer trunk line within Prairie Village North and/or future annexed land and the future Stevens Creek Trunk Line.

6. North 84th Street Improvements.

A. Restricted Commercial Development – Arterial Street Impact Fee Facility Improvements.

1. No occupancy permits shall be approved for any commercial use north of North 84th and Adams Streets which individually or combined with other commercial uses north of North 84th and Adams Street exceed 200,000 square feet of floor area and/or exceed 600 pm peak hour trips until the following Arterial Street Impact Fee Facility Improvements have been constructed by Owner at Owner's own cost and expense generally as shown on Exhibit "B" attached hereto.

(a) Northbound and southbound right-turn lanes and dual left-turn lanes in 84th Street at Adams Street (both north and south approaches);

(b) Extend northbound left-turn lane in 84th Street at Havelock Avenue;

2. No occupancy permits shall be approved for any commercial use north of North 84th and Adams Streets until the following Arterial Street Impact Fee Facility Improvements have been constructed by Owner at Owner's own cost and expense.

(a) Northbound right-turn lane and extend southbound left-turn lane in 84th Street at the one-half mile intersection north of Adams Street (Fremont);

(b) Westbound left-turn lane in the intersection one-half mile north of Adams Street at North 84th Street (Fremont);

B. Restricted Commercial Development – Site-Related Improvements.

1. No occupancy permits shall be approved for any commercial use north of North 84th and Adams Streets until the following Site Related Street Improvements have been constructed by Owner at Owner's own cost and expense.

(a) Northbound right-turn lane and extend southbound left-turn lane in North 84th Street at the intersection one-fourth mile north of Adams Street;

(b) Westbound left-turn lane in the intersection one-fourth mile north of Adams Street at North 84th Street;

C. Deferred Construction. The following Arterial Street Impact Fee Facility Improvements and Site-Related Street Improvements shall be constructed by Owner at Owner's own cost and expense generally as shown on Exhibit "B" in the time lines provided below:

(1) Arterial Street Impact Fee Facility Improvements.

(a) Northbound right-turn lane and southbound left-turn lane in 84th Street at Windmill Drive at the same time as Windmill Drive is constructed.

(b) Northbound and southbound right-turn lanes at Leighton Avenue at the same time as the traffic signal at this location is installed.

(2) Site-Related Street Improvements.

(a) Westbound left-turn lane in Windmill Drive at North 84th Street at the same time as Windmill Drive is constructed.

D. Construction Requirements. Turn lanes at all intersections shall be constructed at a length and width acceptable to the City's Department of Public Works and Utilities. The design of the North 84th Street Improvements shall be subject to the approval of the City's Department of Public Works and Utilities. Construction shall be through the City's executive order process and construction contracts shall be let only after competitive bidding in accordance with City procedures.

Should any of the improvements required in this Paragraph 6 be impossible or impractical to construct prior to completion of the LES Line Relocation described in Paragraph 15 below, no occupancy permits for any commercial use within the Prairie Village North Planned Unit Development which individually or combined with other commercial uses within said Planned Unit Development do not exceed 350,000 square feet of floor area shall be held or final plats denied for the delay in completing the LES Line Relocation.

7. Adams Street Improvements.

A. Adams Street Improvements East of 84th Street. The following Arterial Street Impact Fee Facility Improvements and Site-Related Street Improvements shall be constructed by Owner at Owner's own cost and expense generally as shown on Exhibit "B". Except as otherwise provided below, the improvements shall be constructed when 87th Street north of Adams is platted and constructed or prior to the issuance of any occupancy permit for any commercial use south of Adams Street.

(1) Arterial Street Impact Fee Facility Improvements:

(a) Adams Street east of 84th Street with four lanes plus dual left-turn lanes at 84th Street of permanent concrete pavement with curb and gutter from 84th Street east through 87th Street together with a permanent concrete pavement transition tapering down to a three-lane asphalt paved road as displayed in the attached Exhibit B.

(b) Westbound left-turn lane in Adams Street at 84th Street.

(c) Eastbound and westbound dual left-turn lanes in 87th Street at Adams Street.

(2) Site-Related Street Improvements:

(a) Northbound and southbound left-turn lanes in Adams Street at 87th Street.

(b) Eastbound left-turn lane in Adams Street at the entrance to the residential development north of Adams Street (approximately 94th Street).

(c) A three-lane asphalt paved road accommodating left turn lanes extending from the permanent concrete pavement transition to the intersection of 94th Street and tapering down to the existing two-lane asphalt roadway. Said three-lane asphalt paved road may be constructed in two phases. The three lane section extending east from the permanent concrete transition to 250 feet east of 90th Street and tapering down to the existing two lane section shall be constructed upon final platting of 90th Street north of Adams Street. The remainder the improvements shall be completed upon final platting of 94th Street north of Adams Street.

(d) Unless the improvements required by 7.A.1 have been constructed, Owner shall expand the existing asphalt road way into a three lane road facility east from 84th Street to 90th Street at the same time the Adams street improvements west of 84th Street are required to be constructed. Should any of the three

lane road facility be constructed of concrete and be convertible into and available for use as a part of the permanent Adams Street Impact Fee Facility Improvement, that convertible portion of the project shall be an Impact Fee Facility Improvement.

B. Adams Street Improvements West of 84th Street. No occupancy permits for commercial uses in excess of 200,000 aggregate sq. ft. or generating more than a total of 600 pm peak trips shall be issued until the following improvements to Adams Street west of 84th Street have been constructed generally as shown on Exhibit “B”.

(1) Arterial Street Impact Fee Facility Improvements.

(a) A modified arterial section at 84th Street with a single left-turn lane of permanent concrete pavement with curb and gutter from 84th Street west to approximately 82nd Street together with a permanent concrete transition tapering down to a three lane section as displayed in the attached Exhibit B.

(b) A convertible three-lane section roadway of permanent concrete pavement with curb and gutter and associated storm sewer from approximately 82nd Street west to 75th Street; or, at the election of the Owner improvements described in paragraph 7.B.2.a.

(c) Eastbound right-turn lane at 80th Street.

(d) Eastbound and westbound right-turn lanes at 70th Street.

(Note: these turn lanes not shown on Exhibit “B”)

(2) Site-Related Improvements

(a) Expansion of the existing two-lane asphalt roadway to a two-lane asphalt roadway plus a center turn lane and an asphalt overlay from approximately 82nd Street west to 75th Street; or, at the election of the Owner improvements described in paragraph 7.B.1.b.

C. Construction Requirements. Turn lanes at all intersections shall be constructed at a length and width acceptable to the City's Department of Public Works and Utilities. The design of the Adams Street Improvements east and west of 84th Street shall be subject to the approval of the City's Department of Public Works and Utilities. Construction shall be through the City's executive order process and construction contracts shall be let only after competitive bidding in accordance with City procedures.

8. Traffic Signals. Owner shall design, construct and install at Owner's own cost and expense the following traffic signals which qualify as Arterial Street Impact Fee Facility Improvements or Site-Related Street Improvements.

A. Arterial Street Impact Fee Facility Traffic Signals in the following intersections:

(1) In 84th Street at Adams Street and also at the one-half mile point north of Adams Street. Installation shall be completed prior to the issuance of an occupancy permit for any commercial use north of 84th Street and Adams Street which individually or combined with other commercial uses north of North 84th and Adams Street exceed 200,000 square feet of floor area and/or exceed 600 pm peak hour trips.

(2) In 84th Street at Havelock Avenue. Installation shall be completed prior to the issuance of an occupancy permit for any commercial use north of 84th Street and Adams Street which individually or combined with other commercial uses north of North 84th and Adams Street exceed 200,000 square feet of floor area and/or exceed 600 pm peak hour trips.

B. Site-Related Traffic Signals are to be installed in the following intersections:

(1) In 84th Street at the one-fourth mile point north of Adams Street. Installation shall be completed prior to the issuance of an occupancy permit for any commercial use north of 84th Street and Adams Street.

(2) In 84th Street at Windmill Drive. Installation shall be required when warrants are met and the Department of Public Works and Utilities has recommended installation of the traffic signal.

(3) In 84th Street at Leighton Avenue. Installation shall be required when warrants are met and the Department of Public Works and Utilities has recommended installation of the traffic signal. City agrees to use its best efforts to collect from other developers who have agreed to contribute to the cost of this traffic signal their agreed upon proportionate share of said costs. Said funds when collected shall be used to pay for or to reimburse Owner for advancing those portions of the costs of the traffic signal.

(4) In Adams Street at 87th Street. Installation shall be required when warrants are met and the Department of Public Works and Utilities has recommended installation of the traffic signal.

The design of the traffic signals shall be approved by the City's Department of Public Works and Utilities. Construction shall be through the City's executive order process. Contracts for the traffic signals qualifying as Arterial Street Impact Fee Facility Improvements shall be let only after competitive bidding in accordance with City procedures.

Should any of the improvements required in this Paragraph 8 be impossible or impractical to construct prior to completion of the LES Line Relocation described in Paragraph 15 below, no occupancy permits for any commercial use within the Prairie Village North Planned Unit Development which individually or combined with other

commercial uses within said Planned Unit Development do not exceed 350,000 square feet of floor area shall be held or final plats denied for the delay in completing the LES Line Relocation.

9. Reimbursement of Arterial Street Impact Fee Facility Improvements from Directed Impact Fees. The City agrees to reimburse Owner for the cost to construct the North 84th Street Arterial Street Impact Fee Facility Improvements, the Adams Street Impact Fee Facility Improvements, and the Arterial Street Impact Fee Facility Traffic Signals without interest from Arterial Street Impact Fees collected against the entire development of the Property subject to the following conditions:

(1) Said reimbursement shall be paid quarterly from impact fees actually received from this development;

(2) No reimbursement shall be paid prior to and unless the Impact Fee Ordinance is finally determined to be valid and enforceable;

(3) Any reimbursement to be paid from impact fees shall not constitute a general obligation or debt of the City.

In the event Owner's cost of construction is in excess of the Arterial Street Impact Fees collected from the entire development of the Property, City agrees to use its best efforts to reimburse Owner without interest for the excess cost from other Arterial Street Impact Fees collected from other developments within the same benefit district within eleven (11) years from the date of this Agreement, subject to the following conditions:

(1) The reimbursement shall be repaid from Arterial Street Impact Fees collected from the same benefit district the Property is located in;

(2) Owner shall not be entitled to any reimbursement of said contribution in excess of impact fees actually received;

(3) Any reimbursement to be paid from such impact fees shall not constitute a general obligation or debt of the City; and

(4) No reimbursement shall be made prior to and unless the Impact Fee Ordinance is finally determined to be valid and enforceable.

10. No Reimbursement for Site-Related Street Improvements. Owner agrees that Owner shall construct the Site-Related Street Improvements and Site-Related Traffic Signals at Owner's own cost and expense without any reimbursement from the City.

11. Additional Street Right-of-Way.

A. Dedication. Owner agrees to dedicate at no cost to the City the additional right-of-way needed to provide the amount of right-of-way shown on the approved site plan for the Planned Unit Development for the North 84th Street Improvements and the Adams Street Improvements abutting the Property. Owner further agrees to dedicate or convey at no cost to the City the temporary and permanent easements for construction of said improvements.

B. Condemnation. City agrees to use its condemnation authority if necessary to acquire at the City's cost the additional right-of-way easements needed to provide the amount of right-of-way shown on the approved site plan for the Planned Unit Development for the North 84th Street Improvements and the Adams Street Improvements not abutting the Property.

12. Sewer A and Sewer B Connection Fee.

A. Payment. Owner understands and acknowledges that the Property was made sewerable by the construction of Sewer A and Sewer B described in Recital G above and that Owner did not participate in, nor contribute Owner's fair share of the cost of construction of Sewer A and Sewer B to serve the Property. Owner therefore agrees to

pay a connection fee of \$1,570.00 per acre times the 149.09 acres being annexed for a total connection fee of \$234,071.30.

B. Reimbursement. In the event a final judgment of a court of competent jurisdiction has declared the Impact Fee Ordinance valid and enforceable, the City agrees to reimburse Owner for the connection fee from Wastewater Impact Fees subject to the following conditions:

(1) The reimbursement shall be repaid from Wastewater Impact Fees collected from the same benefit district the Property is located in;

(2) Owner shall not be entitled to any reimbursement of said contribution in excess of impact fees actually received;

(3) Any reimbursement to be paid from such impact fees shall not constitute a general obligation or debt of the City.

13. Restriction on Development in the Floodplain. The Stevens Creek Floodplain and Floodprone Area originally shown within the Prairie Village North PUD has been removed from the PUD and the south side of the boundaries of the Annexed Property.

14. Park Land Dedication. As fulfillment of park dedication requirements in Lincoln Municipal Code §26.23.160, Owner agrees to dedicate 4.56 acres of land within the Stevens creek floodprone area adjacent to the Property for a neighborhood park. The location and configuration of this land shall be subject to approval by the Director of the Parks and Recreation Department. The land shall have visibility and access from the residential area within the Prairie Village North development, and from the Murdock Trail. The City shall reimburse the Owner for dedication of the 4.56 acres of neighborhood parkland at an appraised value representative of the market value of land within the floodprone area from impact fees collected from residential properties within

the Prairie Village North development. If the impact fee ordinance is determined to be unlawful, the Owner shall dedicate the 4.56 acres of neighborhood parkland to the City at no cost.

In addition, the Owner has expressed a desire to donate additional land within the floodprone area contiguous the aforementioned neighborhood parkland. The City agrees to accept this additional land as a charitable donation of additional parkland and/or natural area. The total acreage of the land to be accepted as a charitable donation and its location and configuration shall be subject to review and approval by the Director of the Parks and Recreation Department.

15. Lincoln Electric System (“LES”) Easement. Relocation of the existing LES 35k overhead transmission line is necessary to accommodate the North 84th Street Improvements described in Paragraph 6 above (“LES Line Relocation”). The LES Line Relocation is an Arterial Street Impact Fee Facility Improvement. Owner agrees to dedicate at no cost to the City a 30-foot wide easement immediately east of the existing 115k LES transmission line easement in order to relocate the existing LES 35k overhead transmission line to accommodate the new right-of-way for North 84th Street. The Owner shall bear all the costs of relocating the 35k transmission line as an overhead transmission line into the new easement area subject to reimbursement pursuant to Paragraph 9 above.. City agrees to use its best efforts to cause said relocation to be completed on or before December 31, 2006. The estimated costs for this relocation of the 35k transmission line is \$300,000.00.

Notwithstanding the above, the Owner shall have the right to locate the new easement area for the 35k transmission line anywhere within the Property subject to the approval of LES; provided, any additional costs for moving the 35k transmission line beyond the easement area adjoining the 115k transmission line or burying the

transmission line shall be paid for by Owner and said additional cost shall not be reimbursable.

Notwithstanding the above, the Owner and City in cooperation with LES prefer to replace the older towers supporting the LES 115k transmission line with new monopoles and bury the smaller transmission lines which would eliminate the need for the dedication of the above-described 30-foot wide easement for the LES 35k transmission line. Owner and City agree to proceed with this option if feasible and agree to share the cost of the project with LES in equal one-third shares. The City's one-third share shall be funded by Owner subject to reimbursement pursuant to Paragraph 9 above.

16. PV Agreement Amendments. Owner and City agree that many of the improvements and obligations set forth in the PV Agreement are impliedly amended by this Agreement. Therefore the City and Owner agree that the PV Agreement is expressly amended and superceded as follows:

A. Paragraph 4, Public Water Mains, A. Adams Street, is replaced in its entirety by the provisions of Paragraph 4 of this Agreement.

B. Paragraph 5, Street Improvements, A. Adams Street, is replaced in its entirety by the provisions of Paragraph 6 of this Agreement. The City agrees to use its best efforts to maintain the Church's legal obligation under the PV Agreement to contribute towards the cost of the Adams Street Improvements.

C. Paragraph 6, Sewer Main Extension, is amended by adding the following language:

Reimbursement. In the event a final judgment of a court of competent jurisdiction declares the impact fees to be valid and enforceable, the City agrees to reimburse Owner for the connection fee from Wastewater Impact Fees subject to the following conditions:

1. The reimbursement shall be repaid quarterly from Wastewater Impact Fees collected from the same benefit district the Property is located in.

2. Owner shall not be entitled to any reimbursement of said contribution in excess of impact fees actually received.

3. Any reimbursement repaid from such impact fees shall not constitute a general obligation or debt of the City.

D. Paragraph 7, Additional Contributions, is deleted in its entirety as it has been replaced by the provisions of Paragraph 6 of this Agreement.

E. Subparagraphs B and D of Paragraph 8, Security, are deleted in their entirety as these provisions have been replaced by the provisions of Paragraph 6 of this Agreement.

F. Paragraph 10, Credit Against Future Impact Fees, is deleted in its entirety as it has been replaced by the provisions in Paragraphs 4 and 6 of this Agreement.

17. Future Cost Responsibilities. Owner understands and acknowledges that it is the City's position that the Impact Fee Facility Contributions by Owner under Paragraph 3 of this Agreement do not address all the impacts the proposed development of the Property will have on the City's Impact Fee Facilities as set forth in the Impact Fee Study prepared by Duncan Associates dated October, 2002. Therefore, Owner understands that the proposed development of the Property shall be subject to the payment of impact fees.

18. Guaranteed Payment of Contributions.

A. Water Distribution, Water System, Wastewater, Neighborhood Park & Trail, and Arterial Street Impact Fee Facility Contributions. Owner shall, prior to the approval of each final plat of the Property, provide the City a bond, escrow, letter of

credit, or other security agreement approved by the City Attorney in an amount equal to a proportionate share of the Water Distribution, Water System, Wastewater, Neighborhood Park & Trail, and Arterial Street Impact Fee Facility Contributions attributable to full development of the lots within each final plat compared to the approved full development of the Property under this Agreement. Owner's proportionate payments of the Water Distribution, Water System, Wastewater, Neighborhood Park & Trail, and Arterial Street Impact Fee Facility Contributions shall be paid to City within thirty days written notice from the City that the following two events have occurred: (i) the City has awarded a bid and entered into a contract for the improvement of an eligible Water Distribution, Water System, Wastewater, Neighborhood Park and Trail, and/or Arterial Street Impact Fee Facility Improvement, and (ii) a final judgment of a court of competent jurisdiction has declared the Impact Fee Ordinance invalid and unenforceable.

B. Release of Guarantee. In the event a final judgment of a court of competent jurisdiction has declared the Impact Fee Ordinance valid and enforceable, the City agrees to release the bond, escrow, letter of credit, or other security agreement provided by Owner to guarantee the above-described Contributions.

19. Reduction of Guaranteed Payment of Contribution. Notwithstanding any provision to the contrary, the amount of the bond, escrow, letter of credit, or other security agreement ("security") for the Water Distribution, Wastewater, Neighborhood Park and Trail, and Arterial Street Impact Fee Facility Improvement Contributions may be reduced as follows:

A. The security for the Water Distribution Impact Fee Facility Contribution may be reduced by the amount of the construction cost to complete construction of the 16-inch water main in Adams Street.

B. The security for the Wastewater Impact Fee Facility Improvement Contribution may be reduced by the amount of the connection fee for connection to Sewer A and Sewer B provided for in Paragraph 12 above.

C. The security for the Neighborhood Park and Trail Impact Fee Facility Improvement Contribution may be reduced by the agreed upon or appraised value of the park land dedication provided for in Paragraph 14 above.

D. The security for the Arterial Street Impact Fee Facility Contribution may be reduced by the amount of the construction cost to:

(1) construct the North 84th Street Arterial Street Impact Fee Facility Improvements;

(2) construct the Adams Street Arterial Street Impact Fee Facility Improvements; and

(3) install the Arterial Street Impact Fee Facility Traffic Signals.

20. 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.

21. Amendments. This Agreement may only be amended or modified in writing signed by the parties to this Agreement.

22. 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.

23. 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.

24. 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.

25. 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.

26. Relationship of Parties. Neither the method of computation of funding or any other provisions contained in this Agreement or any acts of any party shall be deemed or construed by the City, 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 the contractual relationship stated in this Agreement.

27. 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.

28. Default. Owner and City agree that the annexation and change of zone promote the public health, safety, and welfare so long as Owner fulfills all of the conditions and responsibilities set forth in this Agreement. In the event Owner defaults in

fulfilling any of its covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rescind said change of zone or take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach.

29. Definitions. For purposes of this Agreement, the words and phrases “cost” or “entire cost” of a type of improvement shall be deemed to include all design and engineering fees, testing expenses, construction costs, publication costs, financing costs, and related miscellaneous costs. For the purposes of this Agreement the words and phrases “building permit”, “development”, “Impact Fee Facility”, “Impact Fee Facility Improvement”, and “site-related improvements” shall have the same meaning as provided for said words and phrases in the Impact Fee Ordinance.

30. Fair Share. The City believes that it has a legitimate interest in the public health, safety and welfare and in providing for the safe and efficient movement of vehicles on the public arterial streets and the provision of adequate water and wastewater service an adequate neighborhood parks and trails as provided for in the Impact Fee Ordinance which is promoted by requiring Owner to pay its fair share of the cost to construct such Impact Fee Facilities and that an essential nexus exists between the City’s legitimate interests and the conditions placed upon Owner under this Agreement. In addition, City has made an individualized determination and found that the conditions placed upon Owner under this Agreement are related both in nature and extent and are in rough proportionality to the projected adverse effects full development of the Property under the annexation and change of zone would have on the City’s Impact Fee Facilities.

31. Reservation of Rights and Waivers. Notwithstanding any other provision of this Agreement, Owner reserves the right to sue the City to determine the validity of the provisions of this Agreement which relate to Impact Fee Facilities. No provision of

this Agreement which recites Owner's understanding that Owner's development will be subject to payment of impact fees, or acknowledges that Impact Fee Facility Contributions required by this Agreement do not address all the impacts the proposed development of the Property will have on Impact Fee Facilities, shall have the effect of waiving Owner's rights to a judicial determination of the essential nexus, rough proportionality or any other issue of federal or state constitutionality of such requirements and/or the procedure by which Owner's applications were approved, or the validity of such requirements under the Statutes of Nebraska, the Lincoln City Charter, or Lincoln Municipal Code. In consideration of the foregoing reservation of rights, and notwithstanding such reservation, Owner releases and discharges the City, all past, present and future members of the City Council of the City, in their official and individual capacities, the past or present Mayor or any department director, and all other officers agents, and employees of the City in their official and individual capacities from any and all causes of action for money damages, penalties or attorneys fees which Owner may now have with respect to or arising from Owner's request for annexation and application for change of zone approval described in Recitals A and B of this Agreement and the City's negotiations, considerations and actions taken thereon, including but not limited to: a) claims for violation of Owner's rights under the United States Constitution, under 42 U.S.C. section 1983 and attorneys fees under 42 U.S.C. section 1988; b) claims for just compensation for a temporary taking of the Property pursuant to the Fifth Amendment of the United States Constitution and Article I, Section 21 of the Nebraska Constitution; and c) claims under the City's home rule charter, ordinances and regulations.

City acknowledges that City has included substantially identical provisions regarding Impact Fee Facilities in other "Conditional Annexation and Zoning Agreements" which also included this reservation of rights to sue the City to determine

the validity of such provisions. If a lawsuit is brought challenging such provisions under any other “Conditional Annexation and Zoning Agreement” and the provisions in such agreement which relate to Impact Fee Facilities are held invalid due to lack of authority to require such provisions in exchange for annexation and/or the change of zone, the City agrees that Owner shall be entitled to the benefit of such judgment without the necessity of bringing a separate lawsuit challenging the Impact Fee Facility provisions in this Agreement, provided the statute of limitations in which to bring said lawsuit has not expired.

32. Recordation. This Agreement or a memorandum or notice thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at Owner’s cost and expense.

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

DUBOIS LAND, LLC,
a Nebraska limited liability company

By: _____
_____, Managing Member

PRAIRIE VILLAGE NORTH, LLC
a Nebraska limited liability company

By: _____
_____, Managing Member

PRAIRIE HOME BUILDERS, INC.
a Nebraska corporation

By: _____
_____, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, President of Prairie Home Builders, Inc., on behalf of said corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, Managing Member of Ryland Group, LLC, a Nebraska limited liability company, on behalf of said limited liability company.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public