

**HIGHWAY 77 & WARLICK BOULEVARD
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Highway 77 & Warlick Boulevard Conditional Annexation and Zoning Agreement ("Agreement") is made and entered into as of this ____ day of _____, 2006 by and between the **City of Lincoln, Nebraska**, a municipal corporation ("City"), **Western Hemisphere Holding Company, LLC**, a Nebraska limited liability company ("WHHC"), **Ridge Development Company**, a Nebraska corporation ("Ridge"), **Southview, Inc.**, a Nebraska corporation ("Southview"), **Developments Unlimited, LLP**, a Nebraska limited liability partnership ("Developments Unlimited"), **Dial – Southwest Village LP**, a Nebraska limited partnership ("Dial"), and **LeGrande Excavating, Inc.**, a Nebraska corporation and **Norman H. LeGrande**, an individual (collectively "LeGrande"). The parties may hereinafter jointly be referred to as the "Parties" or individually as a "Party". WHHC, Ridge, Southview, Developments Unlimited and Dial may hereinafter jointly be referred to as "Developer". LeGrande may hereinafter be referred to as "Landowner". The Developer and Landowner may hereinafter jointly be referred to as the "Parties in Interest".

RECITALS

A. Developer and City desire to cause the urban development of approximately 340 acres of land located in the Cardwell Branch basin in Lancaster County, Nebraska, which is shown and legally described on Attachment "A" attached hereto and incorporated herein by this reference ("Property").

B. WHHC, Southview and Dial are the owners and Dial has a contract interest in land located within the Property marked as the "Hock Tract" on Attachment "B", which is attached hereto and incorporated herein by this reference. Ridge and Southview are the owners of land located within the Property marked as the "UTT Tract" on Attachment "B". LeGrande is the owner and Dial has a contract interest in land located within the Property marked as the "LeGrande Tract" on Attachment "B". Developments Unlimited is the owner of land located within the Property marked as the "Developments Unlimited Tract" on Attachment "B".

C. The County of Lancaster (“County”) and State of Nebraska (“State”) are the owners of land located immediately east of the Property, which is shown on Attachment “B” (“County/State Property”), that they are willing to have annexed and become a part of the City. The County/State Property is presently zoned P Public Use.

E. Developer has requested the City to annex the Property and County/State Property, which is legally described and shown on Attachment “C” attached hereto and incorporated herein by this reference.

F. Developer has requested the City to rezone the Property as shown on Attachment “D”, which is attached hereto and incorporated herein by this reference, from AG Agricultural District to R-3 Residential District, R-4 Residential District, and B-2 PUD.

G. Developer has requested the City approve the accompanying Southwest Village B-2 PUD Site Plan for the Hock Tract and LeGrande Tract (“PUD Site Plan”).

H. Developer has requested the City to issue a private placement bond with Developer (“Bond Ordinance”), which is incorporated herein by this reference. Said Bond Ordinance further describes the City’s agreement to reimburse the Developer for Impact Fee Facility Improvements described in this Agreement pursuant to Paragraph 6 below.

I. The Utilities and Pavement Schedule for the Property is attached hereto as Attachment “E” (“Infrastructure Exhibit”) and is incorporated herein by this reference. The Property is anticipated to be final platted and developed in phases.

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 Property and the County Property as provided above in Recital E.

2. Change of Zone. The City agrees to approve a change of zone rezoning the Property from AG Agricultural District to R-3 Residential District, R-4 Residential District, and B-2 PUD as provided above in Recital F.

3. **PUD Site Plan and Bond Ordinance.** The City agrees to approve the PUD Site Plan for the Property as provided above in Recital G, and the Bond Ordinance as provided above in Recital H.

4. **Development of the Property.**

A. **Street Improvements.**

I. **West Denton Road.** West Denton Road from approximately Southwest 25th Street to Homestead Expressway (U.S. Highway 77) is shown in the Lincoln City – Lancaster County Comprehensive Plan as an arterial road improvement during the 25-year planning period to be constructed as four lanes plus center turn lane. The intersection of West Denton Road, Homestead Expressway and Warlick Boulevard is shown as an interchange. The State of Nebraska shows the construction of the Warlick Boulevard interchange with Homestead Expressway in its Lincoln West Beltway plan (“Interchange Project”). The Interchange Project includes the relocation of West Denton Road from approximately Folsom Street across the Hock Tract to Homestead Expressway (“Relocated West Denton Road”), and the relocation of South 1st Street to connect into Relocated West Denton Road. Presently, West Denton Road from Folsom Street to Homestead Expressway is a rural two lane asphalt roadway, and the intersection of West Denton Road and Homestead Expressway is at grade.

a. **Four-Lane West Denton Road.** West Denton Road from approximately 250 feet west of Folsom Street where it ties into the existing West Denton Road to the west edge of the future interchange off-ramp that will be constructed as part of the Interchange Project (approximately 2700 feet) will be graded and constructed as a four-lane arterial, including the right and left turn lanes and full turn movement intersections at Folsom Street and Amaranth Lane, as well as any required traffic signals at Folsom Street and Amaranth Lane, and the right-in and right-out intersections shown on the PUD Site Plan, as well as a transition back to the County road section west of Folsom Street (collectively “Four-Lane West Denton Road”). That portion of Four-Lane West Denton located west of Amaranth Lane shall be

constructed with curb and gutter, and that portion located east of Amaranth Lane shall be constructed without curb and gutter. Four-Lane West Denton Road is conceptually shown on Attachment "E" and consists of Arterial Street Impact Fee Facility Improvements and Site-Related Improvements. The Arterial Street Impact Fee Facility Improvements consist of the four-lane arterial, with curb and gutter (where specified), including the right and left turn lanes and full turn movement intersections at Folsom Street and Amaranth Lane, as well as any required traffic signals at Folsom Street and Amaranth Lane. The Site-Related Improvements consist of the right-in and right-out intersections shown on the PUD Site Plan. On behalf of the City, the Developer will design, competitively bid, construct and fund Four-Lane West Denton Road through the City's Executive Order process in one or more phases. That portion of Four-Lane West Denton Road extending from just west of the Amaranth Lane intersection to the west edge of the future interchange off-ramp (approximately 1000 feet) shall be constructed prior to the time a certificate of occupancy is issued on any building within the Property. That portion of Four-Lane West Denton Road extending from approximately 250 feet west of Folsom Street to just west of Amaranth Lane shall be constructed prior to the time a certificate of occupancy is issued on any building located on a lot adjacent to that portion of Four-Lane West Denton Road located west of the right in, right out intersections shown on the PUD Site Plan on either the north or south side. The City will use its best efforts to include Four-Lane West Denton Road in a future City Six-Year Capital Improvement Program, and show it to be funded by the City, at its expense, in said future Six-Year Capital Improvement Program. The City agrees to use its best efforts to reimburse the Developer for the Arterial Street Impact Fee Facility Improvements portion of Four-Lane West Denton Road, including the design, grading and construction of Four-Lane West Denton Road pursuant to Paragraph 6 below. The City agrees to cooperate with Developer to obtain a contribution from the State for the cost the State would have incurred to extend West Denton Road through the Property as part of

the Interchange Project. Any contribution received by the City from the State shall be paid to the Developer to offset the costs expended for construction of Four-Lane West Denton Road.

b. Temporary West Denton Road. West Denton Road from the west edge of the future interchange off-ramp to Homestead Expressway will be graded and constructed as a four lane temporary rural asphalt roadway, including right and left turn lanes and any changes required to the traffic signal at the intersection with Homestead Expressway, as shown on Figure 10 of the October 2005 Traffic Impact Study prepared by Olsson Associates (collectively "Temporary West Denton Road"). Temporary West Denton Road is conceptually shown on Attachment "E". Developer shall be responsible, at its cost, to design and construct Temporary West Denton Road through the City's Executive Order process concurrently with the construction of Four-Lane West Denton Road. Developer and City acknowledge that Temporary West Denton Road will be removed and reconstructed by the State as a four lane arterial roadway as part of the Interchange Project.

II. Folsom Street. Folsom Street from approximately West Pioneers Boulevard to West Denton Road is shown in the Lincoln City – Lancaster County Comprehensive Plan as an arterial road improvement during the 25-year planning period to be constructed as four lanes plus center turn lane. Presently, Folsom Street from West Pioneers Boulevard to Old Cheney Road exists as a two-lane asphalt roadway, and from Old Cheney Road to West Denton Road as a two lane gravel roadway, and does not exist south of West Denton Road. Preliminary roadway design for Folsom Street from West Pioneers Boulevard to the north edge of the Property shall be completed for an ultimate four through lanes with turn lanes, and Folsom Street from the north edge of the Property through the Blueflag Lane intersection will be designed and graded for an ultimate four through lanes with turn lanes and initially constructed as a two-lane arterial, offset to the east from the center line, with curb and gutter, including the right and left turn lanes and full turn movement intersections at Amaranth Lane, West Denton Road and Blueflag Lane,

and any required traffic signals and related improvements at said intersections, and the right-in and right-out intersection with Gailyn Road, as well as an appropriate transition back to the County road section north of the Property (collectively “Two-Lane Folsom Street”). Two-Lane Folsom Street is conceptually shown on Attachment “E” and consists of Arterial Street Impact Fee Facility Improvements and Site-Related Improvements. The Arterial Street Impact Fee Facility Improvements consist of the preliminary roadway design from West Pioneers Boulevard to the north edge of the Property, the two-lane arterial, offset to the east from the center line, with curb and gutter, including the right and left turn lanes and full turn movement intersections at Amaranth Lane, West Denton Road and Blueflag Lane, and any required traffic signals and related improvements at said intersections. The Site-Related Improvements consist of the right-in and right-out intersection at Gailyn Road and a northbound right turn lane at W. Cardwell Ridge Drive. On behalf of the City, the Developer will design, competitively bid, construct and fund the Two-Lane Folsom Street through the City’s Executive Order process in one or more phases. That portion of Folsom Street located between and including the intersections with West Denton Road and Amaranth Lane shall be completed prior to the time a certificate of occupancy is issued on any building within the Property. Those portions of Folsom Street located south of West Denton Road and north of Amaranth Lane shall be completed in phases as part of the final plat process. The City will use its best efforts to include Two-Lane Folsom Street in a future City Six-Year Capital Improvement Program, and show it to be funded by the City, at its expense, in said future Six-Year Capital Improvement Program. The City agrees to use its best efforts to reimburse the Developer for the Arterial Street Impact Fee Facility Improvements cost of the Two-Lane Folsom Street, including the design, grading and construction of the Two-Lane Folsom Street pursuant to Paragraph 6 below.

III. Amaranth Lane North of Relocated West Denton Road. Amaranth Lane from Relocated West Denton Road to Folsom Street, as conceptually shown on Attachment “E”, will be graded and constructed as a four lane roadway, including a round-a-bout and right and left turn lanes at the intersections shown on the PUD Site

Plan ("North Amaranth Lane"). Developer shall be responsible, at its cost, to design and construct North Amaranth Lane through the City's Executive Order process prior to the time a certificate of occupancy is issued on any building within the Property.

IV. South 1st Street/Amaranth Lane. South 1st Street from Yankee Hill Road to West Denton Road is shown in the Lincoln City – Lancaster County Comprehensive Plan as an arterial road improvement during the 25-year planning period to be constructed as two lanes plus center turn lane. Presently, South 1st Street adjacent to the Property exists as a two lane gravel roadway. The Interchange Project includes the relocation of South 1st Street to connect into Relocated West Denton Road. South 1st Street from Relocated West Denton Road through the Property, as conceptually shown on Attachment "E", shall be graded and initially constructed as a two lane gravel roadway ("Temporary South 1st Street Connection"). Developer shall be responsible, at its cost, for constructing the Temporary South 1st Street Connection concurrently with the construction of Four-Lane West Denton Road. The City agrees to cooperate with Developer to obtain a contribution from the State for the cost the State would have incurred to relocate South 1st Street as part of the Interchange Project. Any contribution received by the City from the State shall be paid to the Developer to offset the costs expended for construction of the Temporary South 1st Street Connection. As the Developer final plats that portion of the Property that contains the Temporary South 1st Street Connection, the gravel roadway shall be replaced with the public street Amaranth Lane shown on the PUD Site Plan.

V. Dedication of Street Right-of-Way and Easements. The Parties in Interest and City acknowledge the State has purchased right-of-way through the Property for the Interchange Project. The Parties in Interest agree to dedicate to the City the additional street right-of-way shown on the PUD Site Plan, at no additional cost, as well as all temporary nonexclusive easements needed for construction and operation of Four-Lane West Denton Road, Two-Lane Folsom Street, North Amaranth Lane and Temporary South 1st Street Connection.

VI. Vacation and Transfer of Right-of-Way. The City administration agrees to use its best efforts to vacate and transfer the following right-of-way, to the

Parties in Interest, at no cost, except as provided herein. The City acknowledges the vacations and transfers are consideration for the Parties' in Interest dedication of the right-of-way set forth in Paragraph V above. In order to facilitate the vacation of the following right-of-way, the Parties in Interest agree to execute the necessary petitions to vacate and quit claim deeds as abutting property owners, in a form acceptable to the City Attorney.

a. Upon dedication and completion of the Four-Lane West Denton Road, Temporary West Denton Road and Temporary South 1st Street Connection, and receipt of the necessary vacation petitions from abutting property owners, the City administration shall recommend the vacation of those portions of the existing West Denton Road right-of-way located east of Folsom Street identified on the PUD Site Plan, and that each one-half be transferred, subject to existing utility easements, to the abutting property owners.

b. Upon dedication and completion of the new Temporary South 1st Street Connection and receipt of the necessary vacation petitions from abutting property owners, the City administration shall recommend the vacation of those portions of the existing South 1st Street right-of-way adjacent to the Property identified on the PUD Site Plan and that each one-half be transferred, subject to existing utility easements, to the abutting property owners.

In the event, despite the City's best efforts, the State of Nebraska or County of Lancaster imposes a charge for the vacation and transfer of any unused portion of the existing West Denton Road or South 1st Street right-of-way set forth above, the Parties in Interest shall be responsible for payment of such cost to the State of Nebraska and/or County of Lancaster in exchange for the right-of-way.

VII. Obtaining Easements. The City, with the cooperation of the Property Owners, shall acquire all additional temporary and permanent nonexclusive easements necessary for the construction and operation of Four-Lane West Denton Road, Temporary West Denton Road, Two-Lane Folsom Street, North Amaranth Lane and Temporary South 1st Street Connection as soon as reasonably possible. The costs of the temporary and permanent easements including, but not limited to, the amount of any condemnation award, court costs, expert witness fees,

testing fees, interest, and City staff time shall be paid by the Developer and included as part of the project cost. Costs associated with Four-Lane West Denton Road and Two-Lane Folsom Street shall be reimbursed to Developer as part of the project costs. The City is authorized to utilize condemnation, if necessary, to acquire the temporary and permanent easements.

B. Water Improvements.

I. Water Line in Folsom Street. In order to provide water service to the Property, a 16-inch water main (approximately 11,580 lineal feet) needs to be constructed in Folsom Street from West Pioneers Boulevard to Blueflag Lane as conceptually shown on the Infrastructure Exhibit (Attachment "E") (collectively "Folsom Street Water Line"). On behalf of the City, the Developer will design, competitively bid, construct and fund the Folsom Street Water Line through the City's Executive Order process in one or more phases as part of the final plat process. The Folsom Street Water Line is shown in year five of the City's 2005/2006 Six-Year Capital Improvement Program. The City agrees to use its best efforts to show the Folsom Street Water Line to be funded by the City, at its expense in year one of the 2009/2010 Six-Year Capital Improvement Program. The City agrees to use its best efforts to reimburse the Developer, by no later than November 2009, for the costs of the Folsom Street Water Line, including the design and construction (not grading) of the Folsom Street Water Line pursuant to Paragraph 6. The City's best efforts are contingent upon City Council approving the necessary future rate increase(s) for water in the subsequent fiscal years.

II. Obtaining Easements. The City, with the cooperation of the Property Owners, shall acquire all temporary and permanent nonexclusive easements necessary for the construction and operation of the Folsom Street Water Line as soon as reasonably possible. The costs of the temporary and permanent easements including, but not limited to, the amount of any condemnation award, court costs, expert witness fees, testing fees, interest, and City staff time shall be paid by the Developer and included as part of the project cost of the Folsom Street Water Line to be reimbursed to Developer. The City is authorized to utilize condemnation, if necessary, to acquire the temporary and permanent easements.

C. Sanitary Sewer Improvements

I. Salt Valley Trunk Sewer. As part of the City's utility planning, the City desires to design and construct: (i) Phase V of the Salt Valley Basin relief sewer improvements from approximately South 6th Street and Pioneers Boulevard to Hunts and Old Cheney Roads; and (ii) upper southwest trunk sewer extension from South 7th Street and Old Cheney Road to near South 1st Street and West Denton Road, to serve the Tier I, Priority A areas located on the west side of Salt Creek, collectively "Upper Southwest Salt Valley Trunk Sewer", as shown on Attachment "F", which is attached hereto and incorporated herein by this reference. The completion of (i) and (ii) above will allow the gravity flow connection of the Internal Sewer Line described below to the Salt Valley Trunk Sewer and abandonment of the Pump and Force Main described below. The City, at its expense, will design, competitively bid, construct and fund the Upper Southwest Salt Valley Trunk Sewer. The City agrees to use its best efforts to design and construct the Phase V relief sewer improvements by December of 2007. The City agrees to use its best efforts to design and construct the Upper Southwest Trunk Extension to South 1st Street and West Denton Road, as well as any additional extension necessary to connect the Trunk Sewer to the Internal Sewer Line, by December of 2013. These above dates are as shown in the City's proposed 2006/07 Six-Year Capital Improvement Program and are subject to rate increase approvals and project reprioritization. The Parties in Interest agree to grant the City, at no cost, temporary and permanent nonexclusive easements necessary for the construction and operation of the Upper Southwest Trunk Extension anywhere within Outlot "A", Block 5, and Outlot "B", Block 4, shown on the PUD Site Plan.

II. Pump Station and Force Main. As part of the Developer's Master Plan, the Developer desires to design and construct a pump station and force main lines to be designed and operated to pump, on a temporary basis, sanitary waste generated from the Property to the Salt Valley Trunk Line (collectively "Pump and Force Main"). The Pump and Force Main are illustratively shown on Attachment "G", which is attached hereto and incorporated herein by this reference. The Developer, at its expense, will design, construct and fund the operations of the Pump and Force

Main. The design, specifications and operations of the Pump and Force Main will be to the satisfaction of the Director of Public Works and Utilities and in accordance with Criteria Numbers 1-21 set forth in the “Policy on Temporary Pump Stations and Force Mains” (“Policy”) adopted by Resolution No. A-83112 on December 6, 2004. A copy of the Policy is attached hereto as Attachment “H” and incorporated herein by this reference. The City agrees to timely review the plans for the design, construction and operation of the Pump and Force Main.

a. Receiving Sewer Line Capacity: The Pump and Force Main will discharge into the Salt Valley Trunk Line. The receiving Salt Valley Trunk Line and other down gradient receiving lines have capacity based on current and projected flows to receive the extra flow during the temporary basis for the Property. The projected capacity assumes a full buildout of any land that is already planned to be served in the Comprehensive Plan. The projected capacity is based on a reasonable buildout of any undeveloped land.

b. Upper Southwest Salt Valley Sewer Line Capacity: When the new Upper Southwest Salt Valley Sewer Line is constructed, the Salt Valley Trunk Line will have sewer capacity for the Property.

c. Service Area of Pump Station: The Pump and Force Main will be sized to serve the Tier I, Priority A land that is in the same sub-basin which naturally drains to the Property’s pump station. The pump station will be designed to serve approximately 251 sewerable acres. Based upon the annexation described herein, the area to be served by the pump station is contiguous to the city limits and the Property to be served will be inside the city limits prior to service.

d. Location of Pump Station: The Developer, at its expense, shall provide the land and related improvements for the pump station as generally shown on Attachment “G”, including but not limited to, providing access drives to the pump station facility. The pump station will not be in public right-of-way. The Developer, at its expense, shall be solely responsible for any and all costs of any environmental analysis needed to

locate the facility.

e. **Obtaining Easements:** The Developer, at its expense, shall be responsible for all costs of obtaining easements for the force main lines without any reimbursement from the City. The force main lines will be allowed to be located in arterial street/section road right-of-way, if space is available, without additional payment. The City will support Developer's efforts to secure the approval of Lancaster County and the State of Nebraska to grant permission to locate the force main lines within property owned by the County and/or State, as generally shown on Attachment "G". When the force main lines are abandoned, the Developer, at its expense, shall properly remove the force main lines, unless the City and County determines that there is adequate right-of-way for the unused force main lines and all other utilities typically found in the right-of-way.

f. **Construction:** The Developer, at its expense, shall pay all costs of constructing the Pump and Force Main, without reimbursement from the City. Construction plans shall be approved by the Director of Public Works and Utilities Department and be per City standards. The Pump and Force Main are considered temporary facilities and thus are not eligible for reimbursement under the Impact Fee Ordinance.

g. **Pump Station Design Specifications:** The Developer will conform to the City design specifications for temporary pump stations and force mains as developed by the Director of the Public Works and Utilities Department. All reasonable costs for any additional review time, outside of the normal executive order process, of the pump station and force main shall be paid for by the Developer.

h. **Ownership and Operation:** The Developer will own or have the legal right to use the Pump and Force Main, land and easements, and the City will operate the Pump and Force Main once inspections have been completed and the facilities are found acceptable.

i. **Operating, Repair and Maintenance Costs:** The

Developer will be responsible for all the reasonable and customary costs for operating and maintaining the Pump and Force Main during the time the facilities are in use by the Property. The costs of operating, maintaining, upgrading, permitting, and administering, are all costs of the system that must be paid by the Developer. The City will bill the Developer for such costs and the Developer will pay such costs within thirty (30) days of being billed. In turn, the Developer may bill and collect from other property owners, tenants or homeowners'/business owners' associations who benefit from the facilities. The City shall not have any responsibility to collect monies from any property owners, tenants or homeowners'/business owners' associations who benefit from the facilities. Prior to the City's approval of this Agreement, the Developer will provide a bond, escrow, letter of credit, or other security agreement, approved by the City Attorney for the operating costs over the full estimated six year life time of the facility. The estimate for the operating, repair and maintenance costs is One Hundred Fifty Thousand Dollars (\$150,000) or Twenty-Five Thousand Dollars (\$25,000) per year. The amount of Developer's security may be reduced annually by \$25,000 per year, if the Upper Southwest Salt Valley Trunk Sewer progresses forward in the CIP, as long as security for at least two years of costs is provided.

j. Closing of the Pump Station: The Developer, at its expense, shall fund all costs associated with properly abandoning the Pump and Force Main, including any costs for restoring all property in or adjacent to the easements. The Developer shall fund all costs associated with closing and removing the pump station.

k. Salvage Rights: The Developer shall have full salvage rights to the building and equipment for the pump station after it is closed. The future use of the land for the pump station shall be residential. Developer agrees that the Pump and Force Main shall be abandoned and decommissioned within six (6) months from the date the City

provides Developer notice to abandon and decommission.

I. Third Party Connections: When an eligible property owner seeks permission from the City to connect and utilize the Pump and Force Main, the City will first determine if there is downstream capacity (taking into account and reserving capacity for the potential sanitary waste capacity of the Property). Next, the City will contact the Developer to obtain the “fair share” contribution that the eligible property owner must reimburse and pay to the Developer for the Developer’s costs for the design, location, financing, right of way, time, construction, operation and other soft and hard costs associated with Developer obtaining the City’s approval of the Pump and Force Main and the design, location, construction and operation of the Pump and Force Main. The City and Developer will also meet and agree upon (i) the proration of the costs to operate and maintain the Pump and Force Main during the time the facilities are in use by the eligible property owner and the Developer; (ii) the reduction, if any, of the Developer’s security held by the City to insure the Developer’s payment of the operating and maintenance costs; and (iii) any other necessary adjustments and amendments to the Pump and Force Main conditions, terms, provisions and agreements described above.

Prior to the City granting approval to an eligible property owner to connect and utilize the Pump and Force Main, the City will secure from the eligible property owner: (i) the eligible property owner’s agreement to be liable for its prorated share of the costs to operate and maintain the Pump and Force Main during the time the facilities are in use by the eligible property owner; (ii) the necessary bond, escrow, letter of credit, or other security agreement, approved by the City Attorney, to guarantee the eligible property owner’s prorated share of operating and maintaining the Pump and Force Main during the time the facilities are in use by the eligible property owner; (iii) the

eligible property owner's agreement to reimburse and pay the Developer the "fair share" amount described above; and (iv) the necessary bond, escrow, letter of credit, or other security agreement, approved by the City Attorney and attorney for the Developer, to guarantee payment of the "fair share" amount to the Developer. Prior to the physical connection and utilization of the Pump and Force Main by the eligible property owner, the eligible property owner must pay to the Developer the "fair share" amount in cash or by other means acceptable to the Developer.

III. Internal Sanitary Sewer. In order to provide gravity sewer service to the Property, an internal sanitary sewer line extending approximately 600 feet north from the pump station parallel to the west interchange off ramp needs to be constructed generally as shown on the Infrastructure Exhibits (Attachment "E") ("Internal Sewer Line"). On behalf of the City, the Developer will design, competitively bid, construct and fund the Internal Sewer Line through the City's Executive Order process as part of the final plat process. The parties acknowledge that the City may request that the Internal Sewer Line be oversized from the eight inch line that is needed to serve the Property in order to serve other additional property. In the event the City requests Developer to oversize the Internal Sewer Line to a ten inch or larger pipe size and the Developer utilizes the Internal Sewer Line for service, then the City agrees to subsidize the Developer for all costs attributable to oversizing the Internal Sewer Line with pipe, valves, fittings and all other accessories that are larger than 8-inch as part of the Executive Order process. In the event the City requests Developer to oversize the Internal Sewer Line to a 10-inch or larger pipe size and the Developer does not utilize the Internal Sewer Line for service, then the City will use its best efforts to include the Internal Sewer Line in year one of the City's 2011/2012 Six-Year Capital Improvement Program to be funded by the City, at its expense, in 2011/2012. The City agrees to use its best efforts to reimburse the

Developer, no later than November 2011, for the costs of the Internal Sewer Line, including the design and construction of the Internal Sewer Line pursuant to Paragraph 6 below. The City's best efforts are contingent upon City Council approving the necessary future rate increase(s) for wastewater in the subsequent fiscal years. At the time of the applicable final platting of the Internal Sewer Line, the applicable Parties in Interest agree to dedicate, at no cost to the City, the additional temporary and permanent easements needed to construct and operate the Internal Sewer Line.

D. Parks and Trails

I. Trail. At the time of final platting of the Property, the applicable Parties in Interest shall dedicate or grant to City, at no cost to the City, a twenty (20) feet wide easement for a hiker/biker trail as generally shown on Attachment "I", which is attached hereto and incorporated herein by this reference (collectively "Trail"). The City, at its expense, shall design, grade and construct the Trail, including any culverts, stream crossings, street crossings, signage and signalization. The City further agrees to consult with the Developer prior to commencing any design, grading or construction of the Trail to make sure Developer has no development problems with the design and timing of said grading or construction. The applicable Parties in Interest agree to grant the City, at no cost to City, any temporary construction easements needed in order for the City to grade, install culverts and stream crossings and construct the Trail. Developer understands that the construction of the Trail is not anticipated to occur prior to the City's fiscal year 2010-2011. The City, at its expense, will have maintenance, repair and replacement responsibilities for the Trail. The City agrees that during grading and construction and upon completion of the construction of the Trail, the City shall indemnify, defend, and hold harmless the Property Owner and its successors and assigns, from and against any and all losses, damages, claims, costs, expenses, or liabilities, including attorney fees, arising out of the City's negligence or willful misconduct regarding the public's use of the Trail easement granted to the City herein other than as a result of the Property Owner's or its successors' or assigns' negligence or willful

misconduct.

II. Trail Grading. As an alternative to the City grading the Trail, the City shall have the option to require the Developer to grade the Trail platforms at the time Developer is grading abutting sites to the Trail; provided the City be responsible for the costs of the grading. In order to exercise this option, the City must deliver at least thirty (30) days prior written notice to the Developer, along with proper construction documents and specifications for the requested grading, and the funds for the costs of the grading. Developer understands that the construction of the Trail is not anticipated to occur prior to the City's fiscal year 2010-2011. The City, at its expense, will have maintenance, repair and replacement responsibilities for the Trail.

III. Park. Developer and City agree when Developer brings forward a preliminary plat for the development of the UTT Tract and Developments Unlimited Tract, which are being zoned for residential use in accordance with Paragraph 2 above, the City shall determine whether it desires a dedication of park land in lieu of the payment of Neighborhood Park and Trail Impact Fees.

5. Future Cost Responsibilities. Developer understands and acknowledges that the proposed development of the Property shall be subject to the payment of Impact Fees and Developer agrees to pay said Impact Fees.

6. Reimbursement for Impact Fee Facility Improvements. In the event Developer funds the Impact Fee Facility Improvements described herein, then the City agrees to reimburse Developer for said costs with Interest (as set forth below), as soon as reasonably possible, from the following sources of funds.

A. Directed Impact Fees. The City agrees to reimburse the Developer for Impact Fee Facility Improvements with the applicable Impact Fees collected from the development of the Property under the applicable Impact Fee Facility Improvements category (e.g., Water Distribution, Wastewater, Neighborhood Park and Trail, Arterial Street), subject to the following conditions:

1. Said reimbursement shall be paid quarterly from impact fees actually received;

2. The reimbursement shall continue until the outstanding principle amount, plus Interest, is collected against the entire development of the Property or is reimbursed pursuant to this Paragraph 6; and

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

B. Capital Improvement Budget and Program. The City agrees to use its best efforts to include the stated Impact Fee Facility Improvements, along with the potential funding source(s), in the stated City's Six-Year Capital Improvement Budget and Program described in this Agreement.

C. Developer's Cost in Excess of Directed Impact Fees. In the event Developer's costs for Impact Fee Facility Improvements are in excess of \$301,636 for Water Distribution Impact Fee Facilities, \$388,871 for Wastewater Impact Fee Facilities, \$175,031 for Neighborhood Park and Trail Impact Fee Facilities, and \$4,700,789 for Arterial Street Impact Fee Facilities, then City agrees to use its best efforts to reimburse Developer with Interest for the excess cost from the Impact Fees collected from other development within the same benefit district or from other funding sources identified in this Agreement and the Bond Ordinance within eleven (11) years from the date the applicable Impact Fee Facility Improvement has been substantially completed as determined by the City. Any agreement to reimburse the Parties in Interest for Impact Fee Facility Improvements with the applicable Impact Fees collected from other developments within the same benefit district shall be subject to the same three conditions listed in Paragraph 6A. above. Notwithstanding the above, the City's best efforts to reimburse Developer with the impact fees collected from other development within the same benefit district does not restrict the City from agreeing to reimburse future developers within the same benefit district from directed impact fees if those developers fund Impact Fee Facility Improvements. If a developer does not fund the construction of Impact Fee Facility Improvements, the impact fees that are collected from that development shall be used to pay the oldest reimbursement obligation that the City may have in the same benefit district.

D. Interest. Interest shall be paid upon the outstanding balance owed to the Developer to reimburse the Developer for the Developer's cost of the Impact Fee Facility Improvements in excess of the applicable amounts set forth in Paragraph 6.C. above. Said

outstanding balance shall draw interest at the rate of two percent (2%) per annum (“Interest”); provided, however, Interest on the applicable Impact Fee Facility Improvement shall not begin to accrue until the Developer advances any excess funds to the City.

E. Full Payment. Notwithstanding any contrary provision herein, the City will use its best efforts to reimburse Developer for principal and interest owed from available City funds within eleven (11) years from the date the Impact Fee Facility Improvement is substantially constructed.

F. City’s Obligations Under This Agreement. The City represents and warrants that its obligations under this Agreement for the reimbursement of Impact Fee Facility Improvements are subject to the terms, conditions and covenants of the Bond Ordinance, and are lawful binding obligations incurred:

1. Pursuant to (a) Section 18-1803 to 18-1805, inclusive, Reissue Revised Statutes of Nebraska, as amended, and (b) Article IX, Sections 8 and 44 of the City’s Home Rule Charter with respect to the Water Distribution and shall, to the extent of the City’s obligation hereunder, constitute Subordinate Indebtedness (as defined in Ordinance No. 18088 of the City).

2. Pursuant to (a) Section 18-1803 to 18-1805, inclusive, Reissue Revised Statutes of Nebraska, as amended, and (b) Article IX, Section 44 of the City’s Home Rule Charter with respect to the Wastewater System and shall, to the extent of the City’s obligation hereunder, constitute Subordinate Indebtedness (as defined in Ordinance No. 18171 of the City).

3. Pursuant to Section 66-4,101, Reissue Revised Statutes of Nebraska, as amended, with respect to Arterial Streets and shall, to the extent of the City’s obligation hereunder, constitute an obligation junior and inferior to the City’s outstanding General Obligation Highway Allocation Bonds, Series 2004 and any other highway allocation bonds of the City hereafter issued pursuant to Section 66-4,101, Reissue Revised Statutes of Nebraska, as amended.

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

8. 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.

9. 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.

10. 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.

11. 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.

12. 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, Parties in Interest, 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.

13. 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 or unless otherwise stated herein.

14. Default. Parties in Interest and City agree that the annexation, changes of zone and Preliminary Plat promote the public health, safety and welfare so long as Parties in Interest fulfill all of the conditions and responsibilities set forth in this Agreement. In the event Parties in Interest default in fulfilling any of their covenants and responsibilities as set forth in this Agreement, then the City may, after providing written notice of the default to the Parties in Interest and a reasonable opportunity to cure said default, (i) in its legislative authority rescind said PUD Site Plan on any portion of the Property that has not been final platted and rezone any portion of the Property that has not been final platted to its previous designation or such other designations as the City may deem appropriate under the then existing circumstances, or (ii) take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach. In the event the City defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the Parties in Interest may take such remedies, legal or equitable, to enforce this Agreement or to obtain damages for its breach; provided the Parties in Interest have provided the City with written notice of the default and a reasonable opportunity to cure said default.

15. 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, acquisition of right-of-way from a third party (but excluding any Parties In Interest) 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.

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

17. 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.

18. Engineering Services. The uniform procedure for the selection of professional consultants set forth in Executive Order No. 58026 dated August 6, 2003 need not be utilized to select the Developer's engineer to design the required improvements to be installed by Developer. The Developer's engineer has performed preliminary design work and continuing utilization of the Developer's engineer will avoid delay, inefficiencies, lack of coordination, and duplication of effort. Notwithstanding the above, the Developer agrees that, in order for Developer's engineer design costs to be reimbursable Impact Fee Facility Improvements, the compensation to be paid for such services must be approved the City's Department of Public Works & Utilities.

19. Authority. The City has the authority to engage in the reimbursements to Developer described in this Agreement, and (i) has taken all steps to legally exercise that authority, and (ii) the reimbursements to Developer described in this Agreement will comply with all applicable laws.

20. Rural Fire Protection District. Developer understands and acknowledges that the City may not annex the Property lying within the boundaries of the SW Rural Fire Protection District except by the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of the Property being annexed. Developer desires to be annexed by the City and, therefore, agrees to pay the City \$4660 prior to annexation, the amount the City has determined must be paid to the SW Rural Fire Protection District in order for the annexation to be complete, based upon the City's standard formula for calculating such costs.

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

"CITY"

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

ATTEST:

City Clerk

By: _____
Coleen J. Seng, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2006, by Coleen J. Seng, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation.

Notary Public

“DEVELOPER”

WESTERN HEMISPHERE HOLDING COMPANY, LLC, a Nebraska limited liability company

By: **WHITE FAMILY L.L.C.**, a Nebraska limited liability company, Member

By: _____
Thomas E. White, Manager

By: **BRAGER FAMILY L.L.C.**, a Nebraska limited liability company, Member

By: _____
John C. Brager, Manager

RIDGE DEVELOPMENT COMPANY, a Nebraska corporation, Member

By: _____
Thomas E. White
President of Development

By: _____
John C. Brager
President of Construction

SOUTHVIEW, INC., a Nebraska corporation

By: _____
John F. Schleich, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2006 by John C. Brager, Manager of Brager Family L.L.C., a Nebraska limited liability company, as a Member of **Western Hemisphere Holding Company, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this ____ day of _____, 2006, by Thomas E. White, President of Development of **Ridge Development Company**, a Nebraska corporation, on behalf of the corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this ____ day of _____, 2006, by John C. Brager, President of Construction of **Ridge Development Company**, a Nebraska corporation, on behalf of the corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this ____ day of _____, 2006, by John F. Schleich, President of **Southview, Inc.**, a Nebraska corporation, on behalf of the corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this ____ day of _____, 2006, by Thomas E. White, President of Development of Ridge Development Company, a Nebraska corporation, as a Member of **Developments Unlimited, LLP**, a Nebraska limited liability partnership, on behalf of the limited liability partnership.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this ____ day of _____, 2006, by John C. Brager, President of Construction of Ridge Development Company, a Nebraska corporation, as a Member of **Developments Unlimited, LLP**, a Nebraska limited liability partnership, on behalf of the limited liability partnership.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this ____ day of _____, 2006, by John F. Schleich, President of Southview, Inc., a Nebraska, corporation, as a Member of **Developments Unlimited, LLP**, a Nebraska limited liability partnership, on behalf of the limited liability partnership.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2006 by _____, President of Dial – Southwest Village, Inc., a Nebraska corporation, as General Partner of **Dial – Southwest LP**, a Nebraska limited partnership, on behalf of the limited partnership.

Notary Public

