

**FIRST AMENDMENT OF THE CONDITIONAL ANNEXATION  
AND ZONING AGREEMENT FOR YANKEE HILL ROAD VICINITY**

This First Amendment of the Conditional Annexation and Zoning Agreement for Yankee Hill Road Vicinity ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2000, by and between the **City of Lincoln, Nebraska**, a municipal corporation ("City"), **Ridge Development Company**, a Nebraska corporation ("Ridge"), **Southview, Inc.**, a Nebraska corporation ("Southview"), **Large Partnership, Ltd.**, a Nebraska limited partnership ("Large"), and **Wilderness Ridge, L.L.C.**, a Nebraska limited liability company ("Wilderness Ridge"). Ridge, Southview, Large and Wilderness Ridge are sometimes hereinafter referred to individually as "Property Owner" and collectively as "Property Owners".

**RECITALS**

WHEREAS, the City and Property Owners entered into the Conditional Annexation and Zoning Agreement for Yankee Hill Road Vicinity dated February 3, 1999 ("Original Agreement"); and

WHEREAS, the parties have found it necessary to amend Section A. of Article V. of the Original Agreement regarding street improvements.

NOW, THEREFORE, in consideration of the mutual promises of and benefits to the parties, the parties hereby agree to amend and restate Section A. of Article V. of the Original Agreement as follows:

**A. Streets.** The City and the Property Owners covenant and agree that the following street improvements will be needed:

1. Yankee Hill Road from 14<sup>th</sup> Street to the West Side of Wilderness Ridge Drive ("YHR West Section"). The City agrees, at its cost, to design, grade and pave to Urban Standards, including storm sewer, the south two through lanes and turn lanes of the YHR West Section that will ultimately be designed as a four lane cross section with twenty-eight (28) feet wide medians, as conceptually shown on Exhibit "A", which is attached hereto and incorporated herein by this reference. The City also agrees to complete as much additional grading as is reasonably possible given the existing topographical constraints for the ultimate construction of the YHR West Section as a four lane cross section. The City agrees to use its best efforts to complete the YHR West Section in 2001.

2. Yankee Hill Road from the West Side of Wilderness Ridge Drive to 450 Feet East of the Centerline of South 27<sup>th</sup> Street Intersection ("YHR Middle Section"). The Property Owners shall, at their cost, through the authority of an executive order issued by the Mayor of the City, design, grade and pave to Urban Standards, including storm sewer, the south two through lanes and turn lanes of the YHR Middle Section that will ultimately be designed as a

four lane cross section with twenty-eight (28) feet wide medians, as well as the full intersection of Yankee Hill Road and South 27<sup>th</sup> Street plus approximately 450 feet east of the centerline of South 27<sup>th</sup> Street, all as conceptually shown on Exhibit "B", which is attached hereto and incorporated herein by this reference. The Property Owners also agree to complete as much additional grading as is reasonably possible given the existing topographical constraints for the ultimate construction of the YHR Middle Section as a four lane cross section. The Property Owners agree to use their best efforts to complete the above by December 31, 2000.

3. Yankee Hill Road from the East Side of the South 27<sup>th</sup> Street Intersection to 450 Feet East of the Centerline of the South 40<sup>th</sup> Street Intersection ("YHR East Section"). The City agrees, at its cost, to: (i) grade the YHR East Section as a four lane cross section with twenty-eight (28) feet wide medians to Urban Standards; and (2) design and pave the internal two through lanes, median and turn lanes of the YHR East Section to Urban Standards, including the full intersection with South 40<sup>th</sup> Street plus approximately 450 feet east of the centerline of South 40<sup>th</sup> Street, all as conceptually shown on Exhibit "C", which is attached hereto and incorporated herein by this reference, not including storm sewer. The YHR East Section shall include the construction of left turn lanes at full movement access locations into the Property that have been approved by the City prior to the construction of the YHR East Section, even though such left turn movements are not currently shown on Exhibit "C". The City agrees to use its best efforts to complete the YHR East Section during the 2002 construction season.

4. South 27<sup>th</sup> Street from 450 feet South of Centerline of the Yankee Hill Road Intersection North to the Existing Urban Section ("South 27<sup>th</sup> Street Section"). The City agrees, at its cost, to: (i) grade the South 27<sup>th</sup> Street Section as a four lane cross section with twenty-eight (28) feet wide medians to Urban Standards; and (2) design and pave the internal two through lanes, median and left turn lanes of the South 27<sup>th</sup> Street Section to Urban Standards, including any necessary construction of South 27<sup>th</sup> Street within 450 feet south of the Yankee Hill Road centerline (not including the intersection), as conceptually shown on Exhibit "D", which is attached hereto and incorporated herein by this reference, not including storm sewer. The City agrees to use its best efforts to complete the South 27<sup>th</sup> Street Section at such time as the City determines the additional improvements to the South 27<sup>th</sup> Street Section are warranted.

5. South 40<sup>th</sup> Street from 450 Feet South of the Centerline of the Yankee Hill Road Intersection North to the Existing Urban Section ("South 40<sup>th</sup> Street Section"). The City agrees, at its cost, to: (i) grade the South 40<sup>th</sup> Street Section as a four lane cross section with twenty-eight (28) feet wide medians to Urban Standards; and (2) design and pave the internal two lanes, median and turn lanes of the South 40<sup>th</sup> Street Section to Urban Standards, including any necessary construction of South 40<sup>th</sup> Street within approximately 450 feet south of the centerline of Yankee Hill Road (not including the intersection of South 40<sup>th</sup> Street and Yankee Hill which is part of the YHR East Section), as conceptually shown on Exhibit "E", which is attached hereto and incorporated herein by this reference, not including storm sewer. The City agrees to use its best efforts to complete the South 40<sup>th</sup> Street Section during the 2002 construction season. To defray the cost of the above street, the Property Owners shall contribute twenty-five percent (25%) of the total cost, excluding right-of-way costs, to the City, payable within thirty (30) days following completion of said street. The City shall have the option to

request the Property Owners to design, grade and pave the South 40<sup>th</sup> Street Section as set forth above through the authority of an executive order issued by the Mayor of the City. In the event the City desires to exercise this option, it shall provide written notice to the Property Owners as soon as reasonably possible to provide the Property Owners with sufficient time to complete such construction within the 2002 construction season. In the event the Property Owners construct the South 40<sup>th</sup> Street Section under the authority of an executive order, the City shall contribute seventy-five percent (75%) of the total cost of the above street, excluding right-of-way costs, to the Property Owners. Due to the amount of the City subsidy being provided, the design and construction of the South 40<sup>th</sup> Street Section shall be bid and awarded only after competitive bidding in accordance with City procedures. Said costs shall be paid to the Property Owners in progress payments as portions of the construction are completed and verified by the City. In addition, the City shall be responsible for obtaining right-of-way as set forth in paragraph 6 below.

6. Right-of-Way Costs. The City, with the cooperation of the Property Owners, shall acquire, at its cost, any right-of-way and drainage easements necessary for the construction of the above street improvements; provided that, the Property Owners shall grant, dedicate and convey, without additional consideration: (i) an open space easement in the form attached hereto as Exhibit "F" and incorporated herein by this reference ("North Open Space Easement"), on the north ten (10) feet of the Property located south of the YHR West Section and YHR Middle Section, except within the first five hundred (500) feet east of the intersection of South 14<sup>th</sup> Street and Yankee Hill Road, and on the east ten (10) feet of the Property located along South 27<sup>th</sup> Street within the first four hundred fifty (450) feet south of the center line of Yankee Hill Road, limiting the use of said areas to open space; (ii) right-of-way as shown on Exhibit "A", for the YHR West Section and a North Open Space Easement on the north ten (10) feet along the north side of the Property within the first five hundred (500) feet east of the intersection of South 14<sup>th</sup> Street and Yankee Hill Road; (iii) up to a total of sixty (60) feet of right-of-way from the section centerline and a ten (10) feet open space easement in the form attached hereto as Exhibit "G" and incorporated herein by this reference ("South Open Space Easement"), along the south side of the Additional Property located along the YHR Middle Section; (iv) up to a total of sixty (60) feet of right-of-way from the section centerline and a ten (10) feet South Space Easement along the south side of the Property located along the YHR East Section; (v) up to a total of sixty (60) feet of right-of-way from the section centerline and a ten (10) feet South Open Space Easement along the east side of the Additional Property and the west side of the Property located along the South 27<sup>th</sup> Street Section; (vi) up to a total of sixty (60) feet of right-of-way from the section centerline and a ten (10) feet South Open Space Easement along the east side of the Property located along the South 40<sup>th</sup> Street Section; and (vii) 25 feet by 25 feet site triangles from the Property and Additional Property at the Yankee Hill Road intersections with South 27<sup>th</sup> Street and South 40<sup>th</sup> Street. Notwithstanding the foregoing, the Property Owners shall have the option to convey any/or all of the areas of South Open Space Easement set forth above to the City in lieu of the South Open Space Easements. The City's use of the additional area conveyed in lieu of any South Open Space Easement shall contain a deed restriction limiting the City's use of such area to those uses listed in the South Open Space Easement. The City and Property Owners recognize the City is in the process of reviewing and holding public hearings regarding the Lincoln Fringe Area Primary Public Way Corridors Report

dated July 20, 2000, issued by the Planning, Public Works and Utilities and Parks and Recreation Departments, in conjunction with The Clark Enersen Partners and Wells Engineers ("Corridor Report"). In the event the City approves a standard for public way corridors identified in the Corridor Report that is less than the right-of-way and South Open Space Easements set forth in subsections (iii), (iv), (v) and (vi) above, the Property Owners' obligation to grant such right-of-way and South Open Space Easements shall automatically be reduced to match the standard approved by the City. Likewise, in the event the City approves a standard for public way corridors identified in the Corridor Report that is similar to the right-of-way and South Open Space Easements set forth in subsections (iii), (iv), (v) and (vi) above, along with a compensation package for obtaining the necessary right-of-way and easements to meet such standard, the City shall provide the Property Owners' with a similar compensation package in exchange for the Property Owners' grant of the right-of-way and South Open Space Easements set forth in subsections (iii), (iv), (v) and (vi) above.

7. Use Permit and Traffic Studies. The Property Owners agree that the contemplated improvements to Yankee Hill Road, South 27<sup>th</sup> Street and South 40<sup>th</sup> Street under this Agreement may not be sufficient to handle the impact of full development of the Property under its approved commercial zoning and that traffic impact studies are required to determine whether additional off-site transportation improvements are needed because of the commercial developments. The Property Owners agree to complete and submit a traffic study to the City at the time the Property Owners apply for a commercial use permit on any portion of the Property.

8. Security for Street Improvements. Within thirty (30) days from the execution of this Agreement, the Property Owners shall provide to the City a bond, escrow or other security agreement, approved by the City Attorney, in the amount of \$600,000 to guaranty construction of the YHR Middle Section as described in paragraph 2 above. In conjunction with the final platting of the Property, the Property Owners shall provide to the City a bond, escrow or other security agreement, approved by the City Attorney, in the amount of \$208,650 to guaranty payment for the South 40<sup>th</sup> Street Section.

Except as specifically amended herein, all other terms and conditions of the Original Agreement shall remain in full force and effect.

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

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

ATTEST: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Don Wesely, Mayor

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2000, by Don Wesely, Mayor of the **CITY OF LINCOLN, NEBRASKA**, on behalf of the City of Lincoln, Nebraska.

\_\_\_\_\_  
Notary Public

**RIDGE DEVELOPMENT COMPANY,  
a Nebraska corporation**

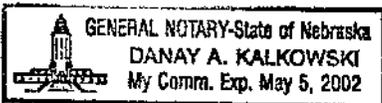
By: Thomas E. White  
Thomas E. White,  
President of Development

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

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of September, 2000, by Thomas E. White, President of Development of **RIDGE DEVELOPMENT COMPANY**, a Nebraska corporation, on behalf of the corporation.

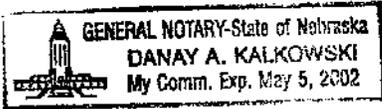
Danay A. Kalkowski  
Notary Public



STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 15 day of September, 2000, by John C. Brager, President of Construction of **RIDGE DEVELOPMENT COMPANY**, a Nebraska corporation, on behalf of the corporation.

Danay A. Kalkowski  
Notary Public



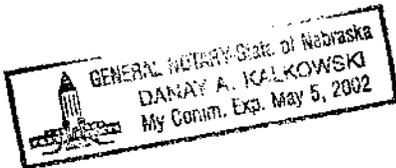
**SOUTHVIEW, INC., a Nebraska corporation**

By: Gerald L. Schleich  
Gerald L. Schleich, President

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 15 day of September, 2000, by Gerald L. Schleich, President of **SOUTHVIEW, INC.**, a Nebraska corporation, on behalf of the corporation.

Danay A. Kalkowski  
Notary Public

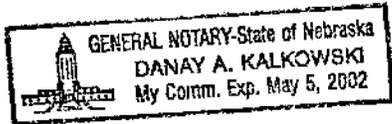


**LARGE PARTNERSHIP, LTD., a Nebraska limited partnership**

By: Richard L. Large  
Richard L. Large, General Partner

STATE OF NEBRASKA            )  
  )ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this 1st day of September 2000, by Richard L. Large, as general partner of **LARGE PARTNERSHIP, LTD.**, a Nebraska limited partnership, on behalf of the limited partnership.



Danay A. Kalkowski  
Notary Public

**WILDERNESS RIDGE, L.L.C.**, a  
Nebraska limited liability company

By: **RIDGE DEVELOPMENT  
COMPANY**, a Nebraska corporation,  
Member

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

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

By: **SOUTHVIEW, INC.**, a Nebraska  
corporation, Member

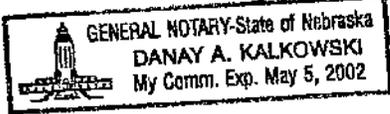
By: Gerald L. Schleich  
Gerald L. Schleich, President

By: **LARGE PARTNERSHIP, LTD.**, a  
Nebraska limited partnership, Member

By: Richard L. Large  
Richard L. Large, General Partner

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

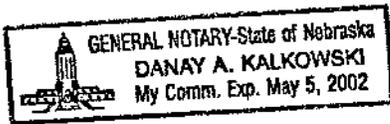
The foregoing was acknowledged before me this 1st day of September, 2000, by Thomas E. White, President of Development of Ridge Development Company, a Nebraska corporation, Member of **Wilderness Ridge, L.L.C.**, a Nebraska limited liability company on behalf of the limited liability company.



Danay A. Kalkowski  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

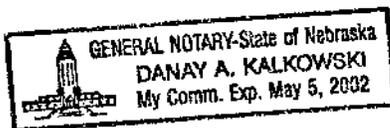
The foregoing was acknowledged before me this 1st day of September, 2000, by John C. Brager, President of Construction of Ridge Development Company, a Nebraska corporation, Member of **Wilderness Ridge, L.L.C.**, a Nebraska limited liability company on behalf of the limited liability company.



Danay A. Kalkowski  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

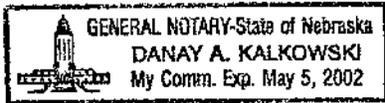
The foregoing was acknowledged before me this 1st day of September, 2000, by Gerald L. Schleich, President of **Southview, Inc.**, a Nebraska, corporation, Member of **Wilderness Ridge, L.L.C.**, a Nebraska limited liability company on behalf of the limited liability company.



Danay A. Kalkowski  
Notary Public

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing was acknowledged before me this 1<sup>st</sup> day of September, 2000, by Richard L. Large, General Partner of Large Partnership, Ltd., Member of **Wilderness Ridge, L.L.C.**, a Nebraska limited liability company on behalf of the limited liability company.



Danay A. Kalkowski  
Notary Public

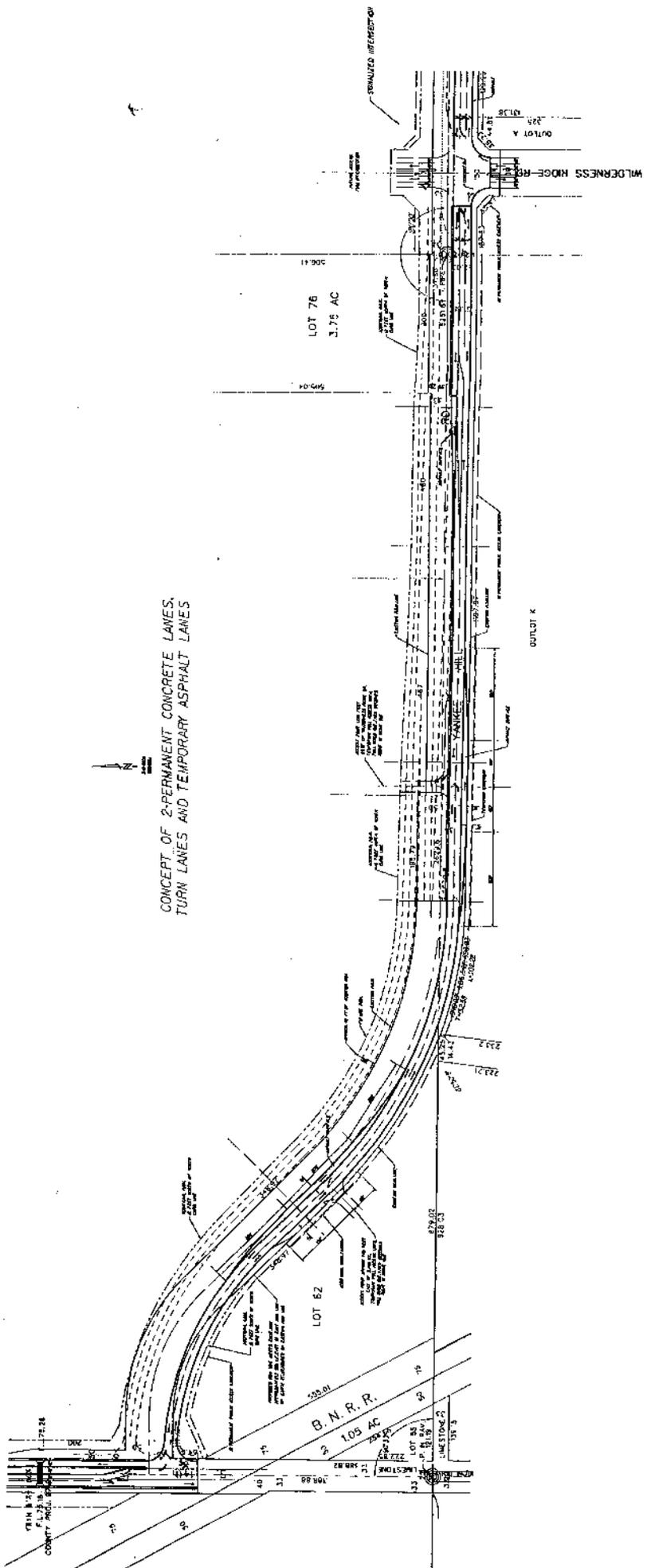


Exhibit "A"

# WILDERNESS RIDGE DRIVE - SOUTH 27TH STREET

## Construct South 2 Lanes Plus Intersection

1" = 200'

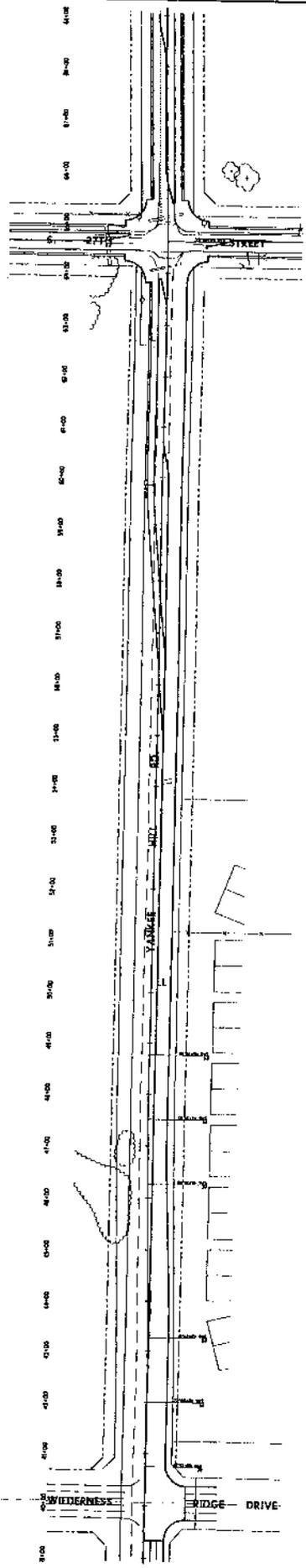


Exhibit "B"

**OLSSON ASSOCIATES**  
 CONSULTING ENGINEERS  
 1115 Lincoln Mall, P.O. Box 84608, Lincoln, NE 68501

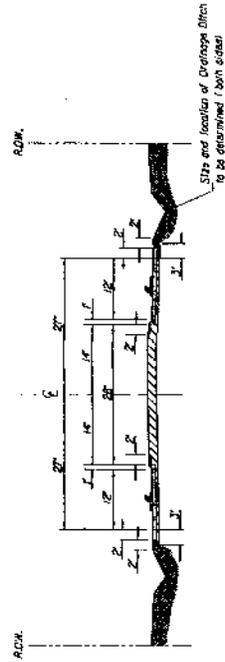
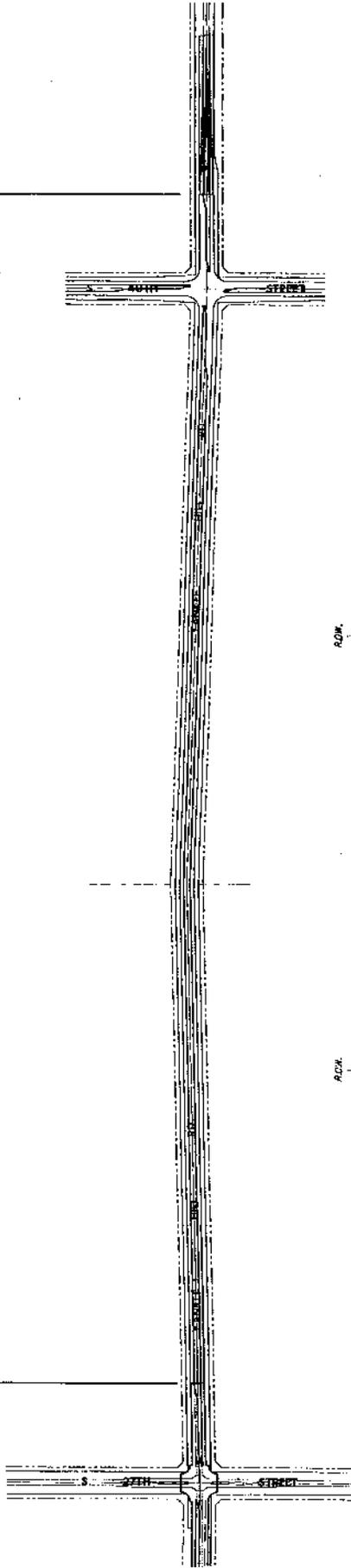
8/15/00

# South 27th Street - South 40th Street Construct Sub-Urban Section

Not To Scale



Limits of Project

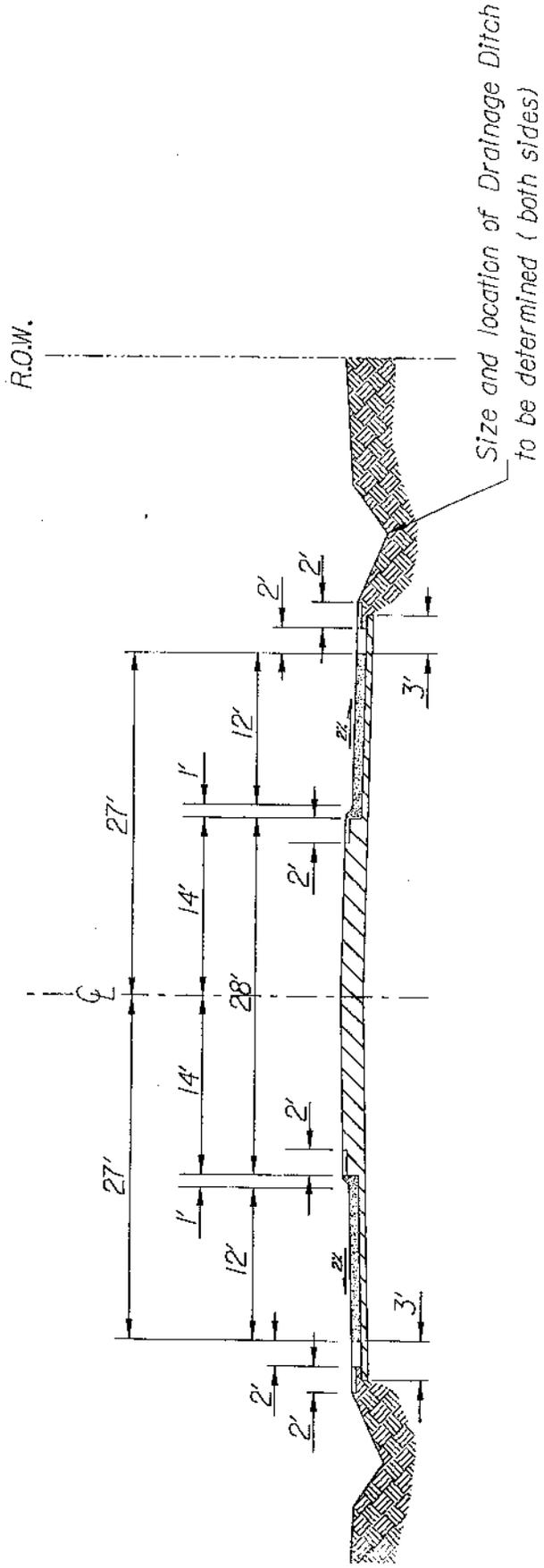


**TYPICAL SUB-URBAN SECTION**

Exhibit "C"

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

8/15/00



# TYPICAL SUB-URBAN SECTION

# South 40th Street - Yankee Hill Road North

## Proposed Sub-Urban Section

**2**  
1" = 100'

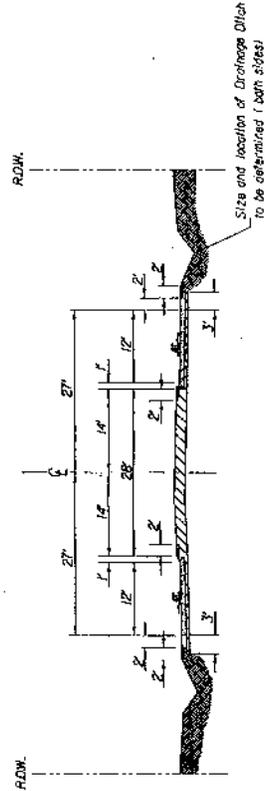
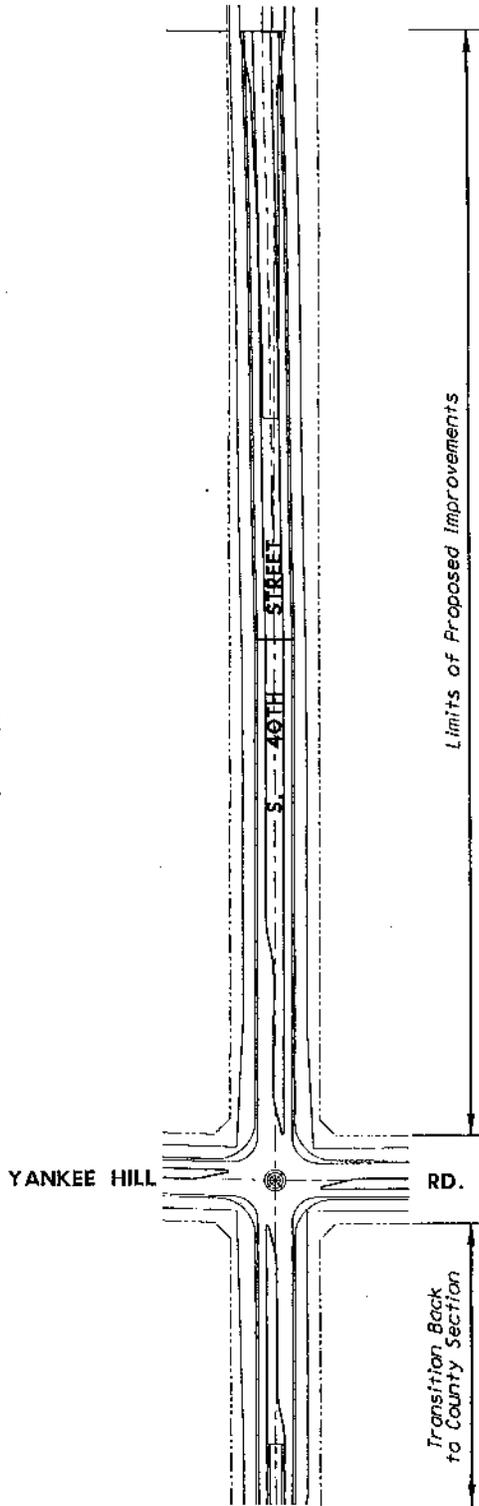


Exhibit 'E'

**OLSSON ASSOCIATES**  
CONSULTING ENGINEERS  
1111 Lincoln Mall, P.O. Box 84688, Lincoln, NE 68501

8/15/00

## **EXHIBIT "F"**

### **(NORTH) OPEN SPACE EASEMENT**

That **Wilderness Ridge, L.L.C.**, a Nebraska limited liability company, **Ridge Development Company**, a Nebraska corporation, **Southview, Inc.**, a Nebraska corporation and **Large Partnership, Ltd.**, a Nebraska limited partnership, herein called "*Grantor*", whether one or more, record owner of the real property hereinafter described, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, duly paid, the receipt whereof is hereby acknowledged, does hereby GRANT, REMISE and RELINQUISH unto the CITY OF LINCOLN, NEBRASKA a municipal corporation, its successors and assigns, herein called "*Grantee*", an easement over the real property legally described on Attachment "A", which is attached hereto and incorporated herein by this reference ("Easement Area") to restrict the use of the Easement Area to open space and to prohibit building development within the Easement Area, subject to the following terms and conditions:

1. Rights Reserved. Notwithstanding any contrary provision herein, the Grantor, and its successors and assigns, hereby reserves the right to plant and maintain grass, shrubs, trees and other landscaping material within the Easement Area. In addition, Grantor reserves the right to construct a fence within the Easement Area; provided that such fence does not screen the Easement Area from Yankee Hill Road.
2. Prohibited Uses. Grantor agrees that no buildings, structures, parking lots, driveways, fences or any other improvements, except those listed in paragraph 1. above, shall be constructed within the Easement Area.
3. Maintenance of Easement Area. Grantor shall be responsible, at its cost, to maintain the Easement Area.
4. Enforcement. Grantor agrees that the City may enforce the provisions of this Easement by any proceeding at law or in equity. Grantor further agrees that the City may seek an injunction restraining any person from violating the terms of this Easement and that the City may be granted such injunction without posting of any bond whatsoever. Grantor further agrees that the City does not waive or forfeit the right to take any action as it deems necessary to insure compliance with the covenants and purposes of this grant by any prior failure to act. Grantor further agrees that should Grantor undertake any activity requiring the approval of the City without or in advance of securing such approval, or undertake any activity in violation of the terms of this Easement that City shall have the right to enforce the restoration of that portion of the Easement Area affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the cost of such restoration and the City's cost of suit, including reasonable attorney fees, shall be paid by Grantor.
5. Title to Easement Area. Grantor covenants that Grantor is the owner of marketable title to all of the Easement Area, has legal right, title and capacity to grant the Easement granted herein subject to easements and restrictions of record.

6. Binding Affect. The Easement granted herein shall run with the land and shall inure to the benefit of and be binding upon the heirs, successors and assigns of Grantor and the City.

7. Amendment or Termination of Easement. This Easement may not be terminated without the express written consent of the Grantee.

8. Recordation. The parties agree that this Agreement shall be duly filed by the City with the Lancaster County Register of Deeds upon execution and acceptance by the City. Filing fees shall be paid in advance by the Grantor.

IN WITNESS WHEREOF, the parties hereto have executed this Easement as of the date set forth above.

## EXHIBIT "G"

### (SOUTH) OPEN SPACE EASEMENT

That **Ridge Development Company**, a Nebraska corporation and **Southview, Inc.**, a Nebraska corporation, herein called "*Grantor*", whether one or more, record owner of the real property hereinafter described, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, duly paid, the receipt whereof is hereby acknowledged, does hereby GRANT, REMISE and RELINQUISH unto the CITY OF LINCOLN, NEBRASKA a municipal corporation, its successors and assigns, herein called "*Grantee*", an easement over the real property legally described on Attachment "A", which is attached hereto and incorporated herein by this reference ("Easement Area") to restrict the use of the Easement Area to open space and to prohibit building development within the Easement Area, subject to the following terms and conditions:

1. Rights Reserved. Notwithstanding any contrary provision herein, the Grantor, and its successors and assigns, hereby reserves the right to plant and maintain grass, shrubs, trees and other landscaping material within the Easement Area.
2. Prohibited Uses. Grantor agrees that no buildings, structures, parking lots, driveways, fences or any other improvements, except those listed in paragraph 1. above, shall be constructed within the Easement Area.
3. Maintenance of Easement Area. Grantor shall be responsible, at its cost, to maintain the Easement Area.
4. Enforcement. Grantor agrees that the City may enforce the provisions of this Easement by any proceeding at law or in equity. Grantor further agrees that the City may seek an injunction restraining any person from violating the terms of this Easement and that the City may be granted such injunction without posting of any bond whatsoever. Grantor further agrees that the City does not waive or forfeit the right to take any action as it deems necessary to insure compliance with the covenants and purposes of this grant by any prior failure to act. Grantor further agrees that should Grantor undertake any activity requiring the approval of the City without or in advance of securing such approval, or undertake any activity in violation of the terms of this Easement that City shall have the right to enforce the restoration of that portion of the Easement Area affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the cost of such restoration and the City's cost of suit, including reasonable attorney fees, shall be paid by Grantor.
5. Title to Easement Area. Grantor covenants that Grantor is the owner of marketable title to all of the Easement Area, has legal right, title and capacity to grant the Easement granted herein subject to easements and restrictions of record.

6. Binding Affect. The Easement granted herein shall run with the land and shall inure to the benefit of and be binding upon the heirs, successors and assigns of Grantor and the City.

7. Amendment or Termination of Easement. This Easement may not be terminated without the express written consent of the Grantee.

8. Recordation. The parties agree that this Agreement shall be duly filed by the City with the Lancaster County Register of Deeds upon execution and acceptance by the City. Filing fees shall be paid in advance by the Grantor.

IN WITNESS WHEREOF, the parties hereto have executed this Easement as of the date set forth above.