



SUBSTITUTE

THE CITY OF LINCOLN, NEBRASKA

ORDINANCE NO. **18713**
(passed April 17, 2006)

ADOPTED UNDER
ORDINANCE NOS. 18088 AND 18171

AUTHORIZING

A WATER REVENUE OBLIGATION,
A SANITARY SEWER REVENUE OBLIGATION AND
A HIGHWAY ALLOCATION OBLIGATION
(WATERFORD PROJECT)

ORDINANCE NO. 18713

AN ORDINANCE ADOPTED UNDER AND PURSUANT TO ORDINANCE NOS. 18088 AND 18171 OF THE CITY AUTHORIZING THE ISSUANCE OF (1) A WATER REVENUE OBLIGATION OF THE CITY IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED ONE MILLION ONE HUNDRED EIGHTY FIVE THOUSAND DOLLARS (\$1,185,000) (THE "WATER OBLIGATION") (2) A SANITARY SEWER REVENUE OBLIGATION OF THE CITY IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED TWO MILLION SIX HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$2,625,000) (THE "SEWER OBLIGATION") AND (3) A HIGHWAY ALLOCATION OBLIGATION OF THE CITY IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED THREE MILLION FOUR HUNDRED EIGHTY FOUR THOUSAND DOLLARS (\$3,484,000); FIXING IN PART AND PROVIDING FOR THE FIXING IN PART OF THE DETAILS OF THE WATER OBLIGATION, THE SEWER OBLIGATION AND THE HIGHWAY ALLOCATION OBLIGATION; TAKING OTHER ACTION IN CONNECTION WITH THE FOREGOING; AND RELATED MATTERS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LINCOLN, NEBRASKA:

**ARTICLE I
FINDINGS; DEFINITIONS**

Section 1.01. Findings. The Council (the "Council") of The City of Lincoln, Nebraska (the "City"), hereby finds and determines as follows:

(a) The City is a city of the primary class and political subdivision duly organized and existing under the laws of the State of Nebraska, and, pursuant to Chapter 15, Reissue Revised Statutes of Nebraska, as amended, and owns and operates (1) one or more waterworks plants and a water transmission and distribution system (collectively, the "Water System") and (2) one or more sanitary sewer collection systems and one or more sanitary sewer disposal and treatment plants (collectively, the "Sewer System") for the use and benefit of the City and its inhabitants.

(b) Each of the Water System and the Sewer System is a revenue producing facility described in Sections 18-1803 to 18-1805, inclusive, Reissue Revised Statutes of Nebraska, as amended (the "Revenue Act") and Chapter IX, Sections 8 and 44 of the City's Charter (the "Charter") and the City is authorized to issue and sell revenue obligations, payable solely from the revenues derived and to be derived from the operation of the Water System and the Sewer System.

(c) The City has heretofore passed Ordinance No. 18088 (the "General Water Ordinance") under which the City issues its obligations payable from the Revenues (as defined in the General Water Ordinance) of the Water System (the "Water Revenues").

(d) The City has previously issued (a) \$18,510,000 aggregate principal amount of Water Revenue Bonds, Series 2002 dated December 10, 2002 (the "Series 2002 Water Bonds"), (b) \$32,180,000 aggregate principal amount of Water Revenue Bonds, Refunding Series 2003, dated May 20, 2003 (the "Series 2003 Water Bonds") and (c) \$40,000,000 aggregate principal amount of Water Revenue Bonds, Series 2004, dated December 1, 2004 (the "Series 2004 Water Bonds").

(e) The City has heretofore passed Ordinance No. 18171 (the "**General Sewer Ordinance**") under which the City issues its obligations payable from the Revenues (as defined in the General Sewer Ordinance) of the Sewer System (the "**Sewer Revenues**").

(f) The City has previously issued (a) \$55,000,000 aggregate principal amount of Sanitary Sewer Revenue and Refunding Bonds, Series 2003 dated July 31, 2003 (the "**Series 2003 Sewer Bonds**"), and (b) \$18,000,000 aggregate principal amount of Sanitary Sewer Revenue Bonds, Series 2005, dated August 3, 2005 (the "**Series 2005 Sewer Bonds**").

(g) It is necessary, desirable, advisable and in the best interest of the City and its inhabitants that the City acquire, construct, improve, extend, equip, and furnish certain improvements to (a) the Water System, including, but not limited to, [description of project] (collectively, the "**Water Project**") and (b) the Sewer System, including, but not limited to [description of project] (collectively, the "**Sewer Project**") to facilitate the orderly growth and expansion of the City pursuant to a Waterford Estates Conditional Annexation and Zoning Agreement (the "**Agreement**"), under which the City will pay certain costs of the Water Project from the Water Revenues and certain costs of the Sewer Project from the Sewer Revenues.

(h) The obligations of the City under the Agreement constitute Subordinated Indebtedness (as defined in the General Water Ordinance and the General Sewer Ordinance) and are incurred by the City in accordance with the terms and conditions of the General Water Ordinance and the General Sewer Ordinance.

(i) It is necessary, desirable, advisable and in the best interest of the City and its inhabitants that the City construct improvements to certain highways and roads of the City in connection with the Agreement (collectively, the "**Street Project**");

(j) The estimated costs for the improvements constituting the Street Project are not less than \$3,484,000.

(k) Pursuant to the provisions of Section 66-4,101, Reissue Revised Statutes of Nebraska, as amended (the "**Street Act**"), the City is authorized to issue its highway allocation fund obligations to pay the costs of the Street Project.

(l) All conditions, acts and things required by law to exist or to be done precedent to the execution and delivery of the issuance of the Agreement and incurring the obligations therein payable from the sources provided in the Agreement do exist and have been done and performed in regular and due course and time as provided by law.

Section 1.02. Definitions. In addition to the words and terms defined elsewhere herein, the following words and terms shall have the specified meanings:

"Agreement" means the Waterford Estates Conditional Annexation and Zoning Agreement by and among the City, Ridge Development Company, Southview, Inc., Developments Unlimited, L.L.P., Accommodation Titleholder Fourteen, L.L.C., Thomas O. Meginnis and Karen M. Meginnis, Richard W. Meginnis and Lisa J. Meginnis, Daniel H. Meginnis and Jill M. Meginnis, Mark W. Meginnis and Sesostri Temple Holding Corporation.

"Business Day" means a day other than a Saturday, Sunday or holiday on which City offices are scheduled in the normal course of operations to be open to the public for the conduct of its operations.

“Ordinance” means this Ordinance as from time to time amended in accordance with the terms hereof.

“Payment Date” means any date on which principal of or interest on the Sewer Obligation, the Street Obligation or the Water Obligation is payable in accordance with the provisions of the Agreement.

“Permitted Investments” means any securities and obligations that are at the time permitted by the laws of the State of Nebraska for investment of the City’s moneys held in the funds referred to in **Section 401** hereof.

“Sewer Obligation” means the Sewer Revenue Obligation of the City in substantially the form appended hereto as **Exhibit A** issued in accordance with the provisions of this Ordinance and the Agreement.

“Sewer Obligation Fund” means the fund by that name created by **Section 401** hereof.

“Street Obligation” means the Street Obligation of the City in substantially the form appended hereto as **Exhibit B** issued in accordance with the provisions of this Ordinance and the Agreement.

“Street Obligation Fund” means the fund by that name created by **Section 401** hereof.

“Water Obligation” means the Water Revenue Obligation of the City in substantially the form appended hereto as **Exhibit C** issued in accordance with the provisions of this Ordinance and the Agreement.

“Water Obligation Fund” means the fund by that name created by **Section 401** hereof.

In addition to the words and terms defined herein, all words and terms that are defined in the Agreement have the same meanings, respectively, in this Ordinance as such terms are given in the Agreement, except as such terms may be otherwise defined herein.

ARTICLE II

AUTHORIZATION OF AGREEMENT

Section 201. Authorization of Agreement. The City is authorized to enter into the Agreement in substantially the form attached hereto marked as Exhibit D. The Mayor is authorized to execute the Agreement with such changes therein as such official deems appropriate, for and on behalf of and as the act and deed of the City.

In connection with the execution and delivery of the Agreement, and to evidence the City’s payment obligations thereunder, the City is authorized and directed to execute and deliver (a) the Sewer Obligation in a principal amount not to exceed **\$2,625,000**, (b) the Street Obligation in a principal amount not to exceed **\$3,484,000**, and (c) the Water Obligation in a principal amount not to exceed **\$1,185,000**.

Section 202. Description of Obligations. The Sewer Obligation, the Street Obligation and the Water Obligation (collectively, the **“Obligations”**) shall be dated the date of the Agreement, shall

be due and payable on the dates and in the amounts, and shall bear interest as set forth in **Section 10** of the Agreement payable as provided in **Section 10** of the Agreement. The City shall obligated under the Obligations only to the extent provided in the Agreement.

Section 203. Method and Place of Payment of Obligations. The principal of and interest on the Obligations shall be payable in any coin or currency of the United States of America that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

The principal and interest on the Obligations payable on each Payment Date shall be paid by check or draft to the registered owner thereof on the Business Day prior to such Payment Date by check or draft mailed by the City to such registered owner at the address on file with the City.

Section 204. Execution, Authentication and Delivery of Obligations. The Mayor and City Clerk are hereby authorized and directed to prepare and execute the Obligations as herein specified.

Section 205. Delivery of Obligations. The City shall issue and deliver the Obligations to the Developer to evidence its obligations under the Agreement. The Finance Director is authorized to execute and deliver such documents as may be appropriate for and on behalf of the City to effect the issuance and delivery of the Obligations as provided herein, such officer's signature thereon being conclusive evidence of such official's and the City's approval thereof.

ARTICLE III

SECURITY FOR OBLIGATIONS

Section 301. Security for Sewer Obligation. The Sewer Obligation is a special obligation of the City payable solely and only from the Sewer Revenues to the extent provided in the Agreement. The Sewer Obligation shall be Subordinate Indebtedness issued under and pursuant to the provisions of the General Sewer Ordinance payable from the Sewer Revenues to the extent provided in the Agreement. The Sewer Obligation shall not be or constitute a general obligation of the City, nor shall it constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction, and the taxing power of the City is not pledged to the payment of the Sewer Obligation, either as to principal or interest.

Section 302. Security for Street Obligation. The Street Obligation is a special obligation of the City payable solely and only from the sources and to the extent provided in the Agreement. The Street Obligation shall not be or constitute a general obligation of the City, nor shall it constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction, and the taxing power of the City is not pledged to the payment of the Street Obligation, either as to principal or interest.

Section 303. Security for Water Obligation. The Water Obligation is a special obligation of the City payable solely and only from the Water Revenues to the extent provided in the Agreement. The Water Obligation shall be Subordinate Indebtedness issued under and pursuant to the provisions of the General Water Ordinance payable from the Water Revenues to the extent provided in the Agreement. The Water Obligation shall not be or constitute a general obligation of the City, nor shall it constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction, and the taxing power of the City is not pledged to the payment of the Water Obligation, either as to principal or interest.

ARTICLE IV

FUNDS

Section 401. Establishment of Funds. In addition to the funds and accounts established by the General Sewer Ordinance and the General Water Ordinance, there are hereby created and ordered to be established and maintained in the treasury of the City the following separate funds to be known respectively as the:

- (a) Sewer Obligation Fund (Waterford Project) (the “**Sewer Obligation Fund**”).
- (b) Street Obligation Fund (Waterford Project) (the “**Street Obligation Fund**”).
- (c) Water Obligation Fund (Waterford Project) (the “**Water Obligation Fund**”).

Each fund referred to in **Sections 401(a) to (c)**, inclusive, shall be maintained and administered by the City solely for the purposes and in the manner as provided in this Ordinance and the Agreement so long as any part of the Obligation for which such fund is established remains unpaid.

Section 402. Deposits into Funds; Payments from Funds. The City covenants and agrees that from and after the delivery of the Obligations, and continuing as long as any balance of the Obligations remains unpaid, the City shall deposit into the Sewer Obligation Fund, the Street Obligation Fund and the Water Obligation Fund, respectively, when and as received by the City all amounts that the City is obligated to pay to the Developer under the Agreement.

The City shall on January 1, April 1, July 1 and October 1 of each year pay all amounts then on deposit in the Sewer Obligation Fund, the Street Obligation Fund and the Water Obligation Fund to the registered owners of the Sewer Obligation, the Street Obligation and the Water Obligation, respectively.

Section 403. Payments Due on Saturdays, Sundays and Holidays. In any case where a Payment Date is not a Business Day, then payment of principal or interest need not be made on such Payment Date but may be made on the next succeeding Business Day with the same force and effect as if made on such Payment Date, and no interest shall accrue for the period after such Payment Date.

ARTICLE V

DEPOSIT AND INVESTMENT OF MONEY

(a) Money in each of the funds and accounts created by and referred to in this Ordinance shall be deposited in a bank or banks located in the State of Nebraska that are members of the Federal Deposit Insurance Corporation. All such deposits shall be continuously and adequately secured by the banks holding such deposits as provided by the laws of the State of Nebraska.

(b) Money held in any fund or account referred to in this Ordinance may be invested in Permitted Investments; provided, however, that no such investment shall be made for a period extending longer than the date when the money invested may be needed for the purpose for which such fund or account was created. All earnings on any investments held in any fund or account shall accrue to and become a part of such fund or account. In determining the amount held in any fund or account under any of the provisions of this Ordinance, obligations shall be valued at the lower of the cost or the market value thereof.

ARTICLE VI

DEFEASANCE

When all of the Obligations and the interest payments thereon have been paid and discharged, then the requirements contained in this Ordinance and the pledge of revenues made hereunder and all other rights granted hereby shall terminate with respect to the Obligations.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 701. Amendments. The rights and duties of the City, and the terms and provisions of the Obligations, the Agreement or this Ordinance, may be amended or modified at any time in any respect by Ordinance of the City with the consent of the registered owners of the Obligations.

Every amendment or modification of the provisions of the Obligations or of this Ordinance shall be expressed in an ordinance adopted by the City amending or supplementing the provisions of this Ordinance and the Agreement and shall be deemed to be a part of this Ordinance. A certified copy of every such amendatory or supplemental Ordinance and each such amendment or supplement to the Agreement, if any, and a certified copy of this Ordinance shall always be kept on file in the office of the City Clerk.

Section 702. Further Authority. The officers of the City, including the Mayor, Finance Director and Clerk, shall be, and they hereby are, authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 703. Relationship of Agreement. In the event that any conflict arises between the provisions of the Agreement and the provisions of this Ordinance, the provisions of the Agreement shall prevail.

Section 704. Severability. If any section or other part of this Ordinance, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Ordinance.

Section 705. Governing Law. This Ordinance shall be governed by and constructed in accordance with the applicable laws of the State of Nebraska.

Section 706. Effective Date. This Ordinance shall take effect and be in full force from and after passage by the Council, approval by the Mayor and publication as provided by law.

INTRODUCED BY:

Jim A. Camp

PASSED April 17, 2006.

AYES: Camp, Cook, Eschliman,
Marvin, McRoy, Newman, Svoboda.

ABSENT OR NOT VOTING:

NAYS:

None.

Approved as to Form:

CONFLICT OF INTEREST:

City Attorney

Steven W. Wisner
Bond Counsel

APPROVED: Apr. 20th, 2006.

Colleen J. King
Mayor

PASSED

APR 17 2006

BY CITY COUNCIL

EXHIBIT A

FORM OF SEWER OBLIGATION

UNITED STATES OF AMERICA
STATE OF NEBRASKA
COUNTY OF LANCASTER
THE CITY OF LINCOLN

SEWER REVENUE OBLIGATION
(WATERFORD PROJECT)

_____, 2006

\$ _____

REGISTERED OWNER:

PRINCIPAL AMOUNT:

FOR VALUE RECEIVED, THE CITY OF LINCOLN, NEBRASKA (the "City") promises to pay to the order of the Registered Owner specified above the Principal Amount stated above, and to pay interest on the outstanding principal balance, in installments ("Payments") at the times and in the amounts specified in the Waterford Estates Conditional Annexation and Zoning Agreement dated _____ (the "Agreement") authorized to be executed and delivered by the City pursuant to Ordinance No. _____ (the "Ordinance") adopted by the Council on _____, 2006 and approved by the Mayor on _____, 2006.

The City promises to make all payments required to be made under the Agreement in accordance with the provisions of and in the manner referred to in the Agreement, the terms and provisions of which are incorporated herein by reference, but only from the sources specified in the Ordinance, the terms and provisions of which are incorporated herein by reference.

If an event of default under the Agreement occurs, the Registered Owner shall have such remedies as are set forth in the Agreement.

The laws of the State of Nebraska shall govern this Obligation.

Dated: _____, 2006.

THE CITY OF LINCOLN, NEBRASKA,

ATTEST:

By: _____
Mayor

By: _____
Clerk

EXHIBIT B

FORM OF STREET OBLIGATION

**UNITED STATES OF AMERICA
STATE OF NEBRASKA
COUNTY OF LANCASTER
THE CITY OF LINCOLN**

**STREET OBLIGATION
(WATERFORD PROJECT)**

_____, 2006

\$ _____

REGISTERED OWNER:

PRINCIPAL AMOUNT:

FOR VALUE RECEIVED, THE CITY OF LINCOLN, NEBRASKA (the "City") promises to pay to the order of the Registered Owner specified above the Principal Amount stated above, and to pay interest on the outstanding principal balance, in installments ("**Payments**") at the times and in the amounts specified in the Waterford Estates Conditional Annexation and Zoning Agreement dated _____ (the "**Agreement**") authorized to be executed and delivered by the City pursuant to Ordinance No. _____ (the "**Ordinance**") adopted by the Council on _____, 2006 and approved by the Mayor on _____, 2006.

The City promises to make all payments required to be made under the Agreement in accordance with the provisions of and in the manner referred to in the Agreement, the terms and provisions of which are incorporated herein by reference, but only from the sources specified in the Ordinance, the terms and provisions of which are incorporated herein by reference.

If an event of default under the Agreement occurs, the Registered Owner shall have such remedies as are set forth in the Agreement.

The laws of the State of Nebraska shall govern this Obligation.

Dated: _____, 2006.

THE CITY OF LINCOLN, NEBRASKA,

ATTEST:

By: _____
Mayor

By: _____
Clerk

EXHIBIT C

FORM OF WATER OBLIGATION

**UNITED STATES OF AMERICA
STATE OF NEBRASKA
COUNTY OF LANCASTER
THE CITY OF LINCOLN**

**WATER REVENUE OBLIGATION
(WATERFORD PROJECT)**

_____, 2006

\$ _____

REGISTERED OWNER:

PRINCIPAL AMOUNT:

FOR VALUE RECEIVED, THE CITY OF LINCOLN, NEBRASKA (the "City") promises to pay to the order of the Registered Owner specified above the Principal Amount stated above, and to pay interest on the outstanding principal balance, in installments ("**Payments**") at the times and in the amounts specified in the Waterford Estates Conditional Annexation and Zoning Agreement dated _____ (the "**Agreement**") authorized to be executed and delivered by the City pursuant to Ordinance No. _____ (the "**Ordinance**") adopted by the Council on _____, 2006 and approved by the Mayor on _____, 2006.

The City promises to make all payments required to be made under the Agreement in accordance with the provisions of and in the manner referred to in the Agreement, the terms and provisions of which are incorporated herein by reference, but only from the sources specified in the Ordinance, the terms and provisions of which are incorporated herein by reference.

If an event of default under the Agreement occurs, the Registered Owner shall have such remedies as are set forth in the Agreement.

The laws of the State of Nebraska shall govern this Obligation.

Dated: _____, 2006.

THE CITY OF LINCOLN, NEBRASKA,

ATTEST:

By: _____
Mayor

By: _____
Clerk

4/24: 2 Exec orig
to R. Peo

April 10, 2006

WATERFORD ESTATES CONDITIONAL ANNEXATION AND ZONING AGREEMENT

This Waterford Estates Conditional Annexation and Zoning Agreement ("Agreement") is made and entered into as of this 20th day of April, 2006 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"), **Developments Unlimited, LLP**, a Nebraska limited liability partnership ("Developments"), **Northern Lights, L.L.C.**, a Nebraska limited liability company ("Northern Lights"), **Thomas O. Meginnis and Karen M. Meginnis**, husband and wife, **Richard W. Meginnis and Lisa J. Meginnis**, husband and wife, **Daniel H. Meginnis and Jill M. Meginnis**, husband and wife, and **Mark W. Meginnis**, an individual, (collectively "Meginnis"), and **Sesostris Temple Holding Corporation**, a Nebraska corporation ("Sesostris").

The parties may hereinafter jointly be referred to as the "Parties" or individually as "Party". Ridge, Southview, Northern Lights and Developments may hereinafter jointly be referred to as "Developer". Developer, Meginnis and Sesostris may hereinafter jointly 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 540 acres of land ("Property") located in the Stevens Creek basin in Lancaster County, Nebraska as shown on the master plan, which is attached hereto as Attachment "A" and incorporated herein by this reference.

B. Developer is the property owner of land located within the Property marked as the "Developer Tract" and the "Finke Tract" on Attachment "B", which is attached hereto and incorporated herein by this reference. Meginnis is the property owner of land located within the Property marked as the "Meginnis Tract" on Attachment "B". Developer has entered into a written joint venture agreement with Meginnis to develop the Meginnis Tract.

C. Southeast Community College (“SCC”) is the owner of land located immediately west of the Property in Lancaster County, Nebraska. SCC has advised the City that SCC is willing to have that portion of its property legally described as Lots 15, 16 and that portion of Lot 10 that is not already annexed, all located in Section 23, Township 10 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, annexed and become a part of the City (“SCC Annexed Property”). The SCC Annexed Property is shown on Attachment “C”, which is attached hereto and incorporated herein by this reference, and is presently zoned P Public Use.

D. Sesostris Temple Holding Corporation, a Nebraska nonprofit corporation (“Sesostris”), is presently the property owner of approximately 19.5 acres of land abutting the southeast side of the Property which is marked as the “Sesostris Tract” on Attachment “B”. The Developer, Meginnis and Sesostris have entered into an exchange agreement to exchange a portion of the Meginnis Tract for the Sesostris Tract.

E. Developer has requested the City to annex: (i) approximately 300 acres of the Property shown as the Annexed Property on Attachment “C”, hereinafter referred to as the “Annexed Property” and (ii) the SCC Annexed Property. The legal description of the Annexed Property and the SCC Annexed Property are more particularly described on Attachment “C”.

F. Developer has requested the City to rezone those portions of the Annexed 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 and B-2 Planned Neighborhood Business District.

G. Developer has requested the City approve the accompanying Waterford Estates Preliminary Plat of the Annexed Property (“Preliminary Plat”).

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 10 below.

I. The Waterford Estates Phase A, B, C and D, Utilities and Pavement Schedules are attached hereto, marked as Attachment “E 1 of 4”, Attachment “E 2 of 4”, Attachment “E 3 of 4” and Attachment “E 4 of 4”, respectively (collectively referred to as “Infrastructure Exhibits, Attachment “E””) and are incorporated herein by this reference. The Annexed Property is anticipated to be final platted and developed in three phases, more or less, and shown as Phase A, B and C on Attachment

“E”. The City and Developer agree that the proposed phases shown on Attachment “E” are not binding and the phases may be developed out of the sequence shown on Attachment “E”. The timing of infrastructure improvements may be modified accordingly. The City and Developer further agree that the subsequent phases designated on Attachment “E” may develop in smaller geographic areas or in subphases. The remaining portion of the Property is anticipated to be annexed and developed in one or more phases (Phase D on Attachment “E”), hereinafter referred to collectively as the “Future Annexed Property.” Developer and City anticipate that the Future Annexed Property, or portions thereof, will be annexed, rezoned, and platted at later dates. The parties recognize and understand as part of this Agreement that Developer and City are incorporating the Master Plan as shown in Attachment “A” for the Property merely as an illustrated master plan and are preliminarily agreeing to future responsibilities with respect to future annexation, rezoning, and platting of the Future Annexed Property or portions thereof at a later date based upon said Master Plan, provided that necessary infrastructure improvements identified in Attachment “E” are constructed and available to serve development of the Future Annexed Property.

J. 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 proportional share of the cost of improvement to the water and wastewater systems, arterial streets, and neighborhood parks and trails, necessitated by and attributable to new development.

K. A Complaint for Declaratory and Injunctive Relief has been filed in the District Court of Lancaster County, Nebraska. This Complaint prayed 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 found 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. In Home Builders Assn. v. City of Lincoln, 271 Neb. 353 (2006), the Nebraska Supreme Court held that the City’s home rule charter permits the City to impose impact fees and affirmed the judgment of the District Court dismissing the Plaintiffs’ petition (“Nebraska Supreme Court Decision”). One or both litigants may file a motion for rehearing or other applicable motion before the Nebraska Supreme Court Decision is deemed final. When the Nebraska Supreme Court Decision is adjudicated final or any such rehearing appeal has been conclusively denied, then said

Nebraska Supreme Court Decision shall be hereinafter referred to as the “Final Nebraska Supreme Court Decision.”

L. The City is willing to annex the Annexed Property and the SCC Annexed Property, approve the Preliminary Plat, approve the changes of zone and approve the Bond Ordinance as requested by Developer prior to determination as to the validity and enforceability of the Impact Fee Ordinance, provided Developer agrees to make a guaranteed non-refundable contribution to the cost of improving the City’s Water System, Water Distribution, Wastewater System, Neighborhood Park and Trail, and Arterial Street Impact Fee Facilities necessitated by and attributable to the proposed development of the Annexed Property, in the event the Impact Fee Ordinance is held invalid or is otherwise unenforceable by the Final Nebraska Supreme Court Decision.

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 and the SCC Annexed Property as provided above in Recital E.

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

3. Other Governmental Approvals.

A. Preliminary Plat. The City agrees to approve the Preliminary Plat for the Annexed Property as provided above in Recital G.

B. Bond Ordinance. The City agrees to approve the Bond Ordinance as provided above in Recital H.

4. Contributions for Impact Fee Facility Improvements.

A. Water Distribution Impact Fee Facility Contribution. Developer agrees to contribute \$343,518 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 Annexed Property and Future Annexed Property.

B. Water System Impact Fee Facility Contribution. Developer agrees to contribute \$552,864 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 Annexed Property and Future Annexed Property.

C. Wastewater Impact Fee Facility Contribution. Developer agrees to contribute \$443,424 toward the cost of making Impact Fee Facility Improvements to the City's Wastewater Impact Fee Facilities attributable to the proposed development of the Annexed Property and Future Annexed Property.

D. Neighborhood Park and Trail Impact Fee Facility Contribution. Developer agrees to contribute \$298,126 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 Annexed Property and Future Annexed Property.

E. Arterial Street Impact Fee Facility Contribution. Developer agrees to contribute \$2,304,526 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 Annexed Property and Future Annexed Property.

The contributions for the above-described Impact Fee Facility Improvements reflect the amounts attributable to 100% development of the Annexed Property as proposed in the Preliminary Plat in 2005 and to the proposed residential portion of the Future Annexed Property based upon the 2005 Impact Fee Schedules for said Impact Fee Facilities, as shown on Attachment "F", which is attached hereto and incorporated herein by this reference.

5. Development of the Annexed Property.

A. Street Improvements.

I. North 98th Street. North 98th Street from "A" Street to Adams Street 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 lanes. Presently, North 98th Street from "O" Street to Holdrege Street does not exist. Based upon the Preliminary Plat and the Infrastructure Exhibits (Attachment "E"), North 98th Street from "O" Street to Holdrege Street will be graded for an ultimate four through lanes with turn lanes and initially constructed as a

concrete paved two-lane arterial, offset to the east from center line, with curb and gutter, including the right and left turn lanes and full turn movement intersections at Boathouse Road (¼ mile), Waterford Estates Drive (½ mile), and Moonlight Drive (¼ mile), the right-in and right-out intersections at Waterview Drive, Turtle Creek Road, Meginnis Drive and Black Rapids Road, any required traffic signals and related improvements at “O” Street, Waterford Estates Drive (1/2 mile) and Holdrege Street, and any required temporary right and left turns lanes in the “O” Street right-of-way at North 98th Street and in the Holdrege Street right-of-way at North 98th Street (collectively “Two-Lane North 98th Street”). Two-Lane North 98th Street includes Arterial Street Impact Fee Facility Improvements and Site-Related Street Improvements. The Arterial Street Impact Fee Improvements consist of the concrete paved 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 Boathouse Road (¼ mile), Waterford Estates Drive (½ mile), and Moonlight Drive (¼ mile), any required traffic signals and related improvements at “O” Street, Waterford Estates Drive (½ mile), and Holdrege Street, and fifty percent (50%) of any required temporary right and left turn lanes in (i) the “O” Street right-of-way at North 98th Street, and (ii) the Holdrege Street right-of-way at North 98th Street. The Site-Related Improvements consist of the right-in and right-out intersections at Waterview Drive, Turtle Creek Road, Meginnis Drive and Black Rapids Road, and fifty percent (50%) of any required temporary right and left turn lanes in (i) the “O” Street right-of-way at North 98th Street, and (ii) the Holdrege Street right-of-way at North 98th Street. On behalf of the City, the Developer will design, competitively bid, construct and fund the Two-Lane North 98th Street through the City’s Executive Order process in one or more phases as part of the final plat process. The City agrees to subtract the cost of the Arterial Street Impact Fee Facility Improvements portion of the Two-Lane North 98th Street from Developer’s obligation to make the Arterial Street Impact Fee Facility Contribution set forth in Paragraph 4.E. above, and to accordingly reduce Developer’s obligation to guarantee payment of said contribution required in Paragraph 9 below. The City will use its best efforts to include Two-Lane North 98th Street in a future City Six-Year Capital Improvement Program, and show

the Arterial Street Impact Fee Facility Improvements portion 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 North 98th Street, including the design, grading and construction of the Two-Lane North 98th Street pursuant to Paragraph 10 below. City shall have the right to add water casing that would allow the "O" Street water line to cross 98th Street to Two-Lane North 98th Street, at the City's expense. The City agrees to use its best efforts to reach an interlocal agreement with Lancaster County for that portion of the Two-Lane North 98th Street near "O" Street.

II. Holdrege Street. Holdrege Street from North 84th Street to North 98th Street 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 lanes. Holdrege Street from North 98th Street to the proposed East Beltway 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 lanes. Presently, Holdrege Street along the north edge of the Property is a two-lane rural cross section. The City intends to design, grade and construct in the foreseeable future four lanes, plus turn lanes between the west edge of the Property and North 98th Street and two-lanes, plus turn lanes between North 98th Street and the east edge of the Property, along with four full turn movement access points at North 95th Street (¼ mile), North 98th Street (1 mile), North 102nd Street (¼ mile) and North 104th Street (½ mile) abutting the Property along the south side of Holdrege Street, as generally shown on the Preliminary Plat (collectively "Four/Two-Lane Holdrege Street"). The City, at its expense, will design, grade and construct the Four/Two-Lane Holdrege Street. Notwithstanding the above, Developer agrees that if any final plat development under the Preliminary Plat commences greater than one year prior to the City Public Works Director's best judgment of the City's anticipated date for constructing the above-described Four/Two-Lane Holdrege Street, then the Developer shall, at its own cost and expense, design and construct temporary right and left turn lanes at each final

platted street connection to Holdrege Street as required by the City. The design and construction of temporary right and left turn lanes in the Holdrege Street right-of-way at the intersection of Holdrege Street and North 98th Street shall be part of the design and construction of Two Lane North 98th Street.

III. Dedication of Street Right-of-Way. At the time of the applicable final platting of North 98th Street, the applicable Parties in Interest agree to dedicate, at no cost to the City, the additional right-of-way needed to provide: (a) 120 feet of right-of-way for North 98th Street between Meginnis Drive and Boathouse Road; (b) 130 feet of right-of-way for North 98th Street between Holdrege Street and Meginnis Drive, and between Boathouse Road and "O" Street; and (c) the additional right-of-way for all turn lanes. At the time of the applicable final platting of Holdrege Street, the applicable Parties in Interest agree to dedicate, at no cost to the City, the additional right-of-way needed to provide (a) 72 feet of right-of-way, (b) 77 feet of right-of-way from the centerline of Holdrege Street, and (iii) the additional right-of-way for all turn lanes, as shown on the Preliminary Plat. Until the applicable street is constructed, the Parties in Interest are entitled to farm the dedicated right-of-ways and easement areas. The Parties in Interest waive and hold the City harmless for damages to crops and/or the Property that is subject to said dedicated right-of-ways and easement areas, when the City constructs the improvements in question.

B. Water Improvements.

I. Water Line in North 98th Street. In order to provide water service to the Annexed Property, a 16-inch water main (approximately 5,650 lineal feet) needs to be constructed in North 98th Street from "O" Street to Holdrege Street generally as shown on the Infrastructure Exhibits (Attachment "E") (collectively "North 98th Street Water Line"). On behalf of the City, the Developer will design, competitively bid, construct and fund the North 98th Street Water Line through the City's Executive Order process in one or more phases as part of the final plat process. The City agrees to subtract the cost of the North 98th Street Water Line from Developer's obligation to make the Water Distribution Impact Fee Facility Contribution set forth in Paragraph 4.A. above, and to accordingly reduce Developer's obligation to guarantee payment of said contribution required in Paragraph 9 below. The North

98th 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 North 98th 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 North 98th Street Water Line, including the design and construction (not grading) of the North 98th Street Water Line pursuant to Paragraph 10. 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. Water Line in Holdrege Street. In order to provide water service to the Annexed Property, a 16" water main (approximately 3,850 lineal feet) needs to be constructed in Holdrege Street from its existing terminus east to North 98th Street generally as shown on the Infrastructure Exhibits (Attachment "E") (collectively "Holdrege Street Water Line"). On behalf the City, the Developer will design, competitively bid, construct and fund the Holdrege Street Water Line through the City's Executive Order process in one or more phases as part of the final plat process. The City agrees to subtract the cost of the Holdrege Street Water Line from Developer's obligation to make the Water Distribution Impact Fee Facility Contribution set forth in Paragraph 4.A. above, and to accordingly reduce Developer's obligation to guarantee payment of said contribution required in Paragraph 9 below. The Holdrege Street Water Line is shown in year four of the City's 2005/2006 Six-Year Capital Improvement Program. The City agrees to use its best efforts to show the Holdrege Street Water Line to be funded by the City, at its expense, in year one of the 2008/2009 Six-Year Capital Improvement Program. The City agrees to use its best efforts to reimburse the Developer by no later than November, 2008, for the costs of the Holdrege Street Water Line, including the design, grading and construction of the Holdrege Street Water Line pursuant to Paragraph 10 below. The City's best efforts are contingent upon City Council approving the necessary future rate increase(s) for water in the subsequent fiscal years.

III. 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 Holdrege 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 Holdrege 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. Stevens Creek Trunk Sewer. As part of the City's utility planning, the City desires to design and construct: (i) a large Stevens Creek gravity flow trunk sewer to first serve the Regent Heights sewer line at approximately the Murdock Trail (Stevens Creek phase II in the CIP); (ii) the gravity flow connection sewer trunk line connecting the Regent Heights Sewer Line to the large Stevens Creek gravity flow trunk sewer at approximately the Murdock Trail (part of Stevens Creek phase II in the CIP); (iii) a large Stevens Creek gravity flow trunk sewer to serve the Tier I, Priority A areas located on the west side of the Stevens Creek Basin at approximately Holdrege Street (Stevens Creek phase III in CIP); and (iv) a gravity flow connection sewer trunk line connecting the Internal Sewer Line (defined below) at the to be abandoned pump station location to the large Stevens Creek gravity flow trunk sewer at approximately Holdrege Street (Stevens Creek phase IV in the CIP), collectively "Stevens Creek Trunk Sewer", as generally shown on Attachment "G", 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 Regent Heights sewer line (including the connection of the sanitary sewer waste from the Pump and Force Main described below) to the Stevens Creek Trunk Sewer. The completion of (iii) and (iv) above will allow the gravity flow connection of the Internal Sewer Line described below to the Stevens Creek 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 Stevens Creek Trunk Sewer. The City agrees to use its best efforts to design and construct the Stevens Creek Trunk Sewer phase II near the

Murdock Trail by August of 2009. The City agrees to use its best efforts to design and construct the Stevens Creek Trunk Sewer phase III to Holdrege Street by August of 2011. The City agrees to use its best efforts to design and construct the Regents Heights connection to Stevens Creek Trunk Sewer near the Murdock Trail by August of 2009. The City agrees to use its best efforts to design and construct the Stevens Creek Trunk Sewer phase IV from Holdrege Street to the internal sewer line at the pump station by August of 2012, although this is not currently included in the 2005/06 CIP; provided, however, the City agrees to bid this portion of the Stevens Creek Trunk Sewer phase IV as an alternative bid for the Stevens Creek Trunk Sewer phase III to determine whether it is economically feasible to add it to the phase III project. These above dates are as shown in the City's 2005/06 Six-Year Capital Improvement Program and are subject to rate increase approvals and project reprioritization.

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 Regent Heights Sewer Line and, if necessary, to the Northeast Treatment Plant (collectively "Pump and Force Main"). The Pump and Force Main are illustratively shown on Attachment "H", 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. Except as otherwise provided herein, 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 "I" 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 Regent Heights Trunk Line. The receiving Regent Heights 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 Annexed 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. In the event the Developer seeks approval of a final plat for the Phase C or D Property shown on Attachment "E" (or for property in excess of 205 acres if Developer changes the phasing plan) and (i) the gravity flow connection sewer trunk line connecting the Regent Heights Sewer Line to the large Stevens Creek gravity flow trunk sewer has not been constructed by the City, and (ii) the Director of Public Works and Utilities Department determines there is not adequate capacity in the Regent Heights Trunk Line or other down gradient receiving lines, then the Developer, at its expense, shall delay the final plat until the Regent Heights Sewer Line connection is constructed or cause the extension of the force main lines to the Northeast Treatment Plant or to some other point on the Stevens Creek trunk line acceptable to the Director of Public Works and Utilities Department.

b. Stevens Creek Sewer Line Capacity: The new Stevens Creek Sewer Line, when constructed, 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 Property's pump station benefits and potentially serves five separate properties (Developer, Meginnis, Sesostris and Finke Tracts and an acreage owned by Donald Wenzl). The pump station will be designed to serve approximately 500 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. Notification of Other Affected Properties: The City

contacted all other property owners that may reasonably be served by a Pump and Force Main early in the review process to allow other owners to have the same information and determine their interest in the Pump and Force Main. No other property owners have expressed a willingness to participate.

e. **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.

f. **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 the Developer's efforts to secure the approval of Lancaster County to grant permission to locate the force main lines in the County's right-of-ways, if space is available without additional compensation, 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.

g. **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.

h. 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.

i. 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.

j. 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 Stevens Creek Trunk Sewer progresses forward in the CIP, as long as security for at least two years of costs is provided.

k. 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.

l. 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.

m. 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. Phase I Internal Sewer Line. In order to provide gravity sewer service to the Annexed Property, an internal 36-inch sanitary sewer line (1,175 feet) and an internal 15-inch sanitary sewer line (4,500 feet) need to be constructed generally as shown on the Infrastructure Exhibits (Attachment "E") (collectively "Phase I Internal Sewer Line"). On behalf of the City, the Developer will design, competitively bid, construct and fund the Phase I Internal Sewer Line through the City's Executive Order process in one or more phases as part of the final plat process. The City agrees to subtract the cost of the Phase I Internal Sewer Line from Developer's obligation to make the Wastewater Distribution Impact Fee Facility Contribution set forth in Paragraph 4.C. above, and to accordingly reduce Developer's obligation to guarantee payment of said contribution required in Paragraph 9 below. The City will use its best efforts to include the Phase I 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 use its best efforts to reimburse the Developer, no later than November 2011, for the costs of the Phase I Internal Sewer Line, including the design and construction of the Phase I Internal Sewer Line pursuant to Paragraph 10 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 Phase I 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 Phase I Internal Sewer Line.

D. Parks and Trails

I. Trail. At the time of final platting of the Annexed Property, the applicable Parties in Interest shall dedicate or grant to City, at no cost to the City, the necessary easements for a hiker/biker trail as generally shown on Attachment "J", which is attached hereto and incorporated herein by this reference (collectively "Trail"). The width of the easement for the Trail will vary depending upon the location of the Trail abutting arterial right-of-way, local street right-of-way or crossing an outlot area. The additional maximum width abutting the arterial right of way of Holdrege Street, North 98th Street or "O" Street shall be ten (10) feet wide. The additional maximum width abutting a local street right-of-way shall be six (6) feet wide. The maximum width crossing an outlot area shall be twenty (20) feet wide. The location of the Trail crossing an outlot will generally follow the route of the underground sanitary sewer. The City acknowledges that it is not practical from an engineering perspective to have the Trail go underneath North 98th Street or "O" Street. As part of the Holdrege Street improvement, the City will study the feasibility to have the Trail cross underneath Holdrege Street. The City, at its expense, shall design, grade and construct the Trail, including any culverts, stream crossings, street crossings, signage and signalization; provided, however, Developer, at its expense, agrees to grade that portion of the trail located within platted outlots. In addition, Developer agrees to grade that portion of the trail located along arterial or local streets; provided, the City shall responsible for the cost of that portion of the grading

that is over and above what would be needed for the construction of a sidewalk along the arterial or local streets ("Trail Overage"), and shall give Developer an appropriate grading credit/reimbursement against the Impact Fee Contribution amounts set forth in Paragraph 4.D. above for said Trail Overage. 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. Until the Trail is constructed, the Parties in Interest are entitled to farm the easement areas, but agree to hold the City harmless for any damages to crops and/or the Property within said easement areas when the City constructs the Trail improvements.

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 and the City will give an appropriate grading credit/reimbursement against the Impact Fee Contribution amounts set forth in Paragraph 4.D. above. 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. 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. Trail Hard Surfacing. The Preliminary Plat shows a ten (10) feet wide hiker/biker trail abutting certain arterial and local streets in the street right-of-way and said trail replaces the normal four (4) feet wide sidewalk along the local streets and five (5) feet wide sidewalk along the arterial streets. In these cases, the City shall have the option at the time of final platting to (i) pay the Developer the equivalent hard costs for the additional five (5) or six (6) feet of concrete depending on whether it is an arterial or local street and the Developer will then be required to construct the ten (10) feet wide Trail by adding an additional five (5) or six (6) feet to the Developer' required sidewalk or (ii) City can request the Developer to pay the City the cost of four (4) or five (5) feet of concrete depending on whether it is an arterial or local street and the City will build the ten (10) feet wide Trail within four (4) years.

IV. City Park. The Developer and Lincoln Public School ("LPS") have reached a tentative agreement to permit LPS to own and develop the Future School Site as shown on Attachment "A" as a joint public school and city neighborhood park site. In the event said Developer and LPS tentative agreement is not reduced to writing and signed by the Developer and LPS, then the Developer is willing to entertain an offer by the City to acquire a portion of the Future School Site as a city neighborhood park. City agrees that it will fund the initial and replacement base line playground equipment, standard grass/landscaping and related improvements for said park area. Developer, at Developer's own cost and expense, may supersize or enhance the initial and replacement improvements based upon a design and specifications acceptable to the Director of the Parks and Recreation Department.

6. Development of Future Annexed Property.

A. Potential Phasing of the Future Annexed Property. Developer believes that the Future Annexed Property will be annexed, rezoned, platted, and developed in accordance with Developer's Master Plan and generally as shown on the Infrastructure Exhibits (Attachment "E"). The City and Developer agree that the proposed phases shown on

Attachment "E" are not binding and the phases may be developed out of the sequence shown on Attachment "E". The City and Developer further agree that the subsequent phases designated on Attachment "E" may develop in smaller geographic areas or in subphases.

B. Future Infrastructure Improvements. The City and Developer agree that the infrastructure improvements identified in the Infrastructure Exhibits (Attachment "E") show the Impact Fee Facility wastewater and water improvements necessary to serve all phases of the Future Annexed Property in accordance with the Developer's Master Plan and to promote the general health and welfare of the City. In the event the Developer does not follow the Master Plan or makes material modification(s) to the Master Plan as it relates to rezoning and platting that would negatively impact the Impact Fee Facility wastewater and water improvements as shown on Attachment "E", then the Developer and City agree that there will need to be appropriate amendment(s) to this Annexation Agreement to reflect such changes in the Master Plan as it relates to rezoning and platting, prior to the City's approval of the annexation of the Future Annexed Property.

C. Street Improvements. There are no additional Arterial Street Impact Fee Facilities necessary to annex the Future Annexed Property. Any additional site related permanent turn lanes or turn lane improvements will be identified as part of the use permit process for the B-2 zoned tracts and any future commercially zoned tract(s). Notwithstanding the above, Developer agrees that if any final plat development of the Future Annexed Property commences greater than one year prior to the City Public Works Director's best judgment of the State's anticipated date for constructing Four-Lane "O" Street, identified in Paragraph 6.F. below, then the applicable Party in Interest shall, at its own cost and expense, design and construct the temporary right and left turn lanes at each final platted street connection to "O" Street as required by the City.

D. Water Improvements

I. Balance of Water Line in Holdrege Street. As part of the City's utility planning, the City desires to design and construct a 16" water main (approximately 2,640 lineal feet) in Holdrege Street generally east of North 98th Street as shown on the Infrastructure Exhibits (Attachment "E") (collectively "Balance of Holdrege Street Water Line"). The City, at its expense, will design, competitively bid, construct and fund the Balance of Holdrege Street Water Line. The Balance of

Holdrege Street Water Line is shown year four of the City's 2005/2006 Six-Year Capital Improvement Program to be funded by the City, at its expense. The City agrees to use its best efforts to design, grade and construct the Balance of Holdrege Street Water Line by August, 2009. 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. Water Line in "O" Street. As part of the City's utility planning, the City desires to design and construct a 24" water main (approximately 5,280 lineal feet) in "O" Street generally west of North 98th Street as shown on the Infrastructure Exhibits (Attachment "E") (collectively "'O" Street Water Line"). The City, at its expense, will design, competitively bid, construct and fund the "O" Street Water Line. The City agrees to use its best efforts to include the "O" Street Water Line in year one of the City's 20011/2012 Six-Year Capital Improvement Program to be funded by the City, at its expense. The City agrees to use its best efforts to design, grade and construct the "O" Street Water Line by August, 2011. The City's best efforts are contingent upon City Council approving the necessary future rate increase(s) for water in the subsequent fiscal years.

E. Sanitary Sewer Improvements.

I. Phase II Internal Sewer Line. In order to provide gravity sewer service to the Future Annexed Property, an internal 27-inch sanitary sewer line (3,310 feet), an internal 24-inch sanitary sewer line (2,821 feet) and an internal 21-inch sanitary sewer line (566 feet) need to be constructed and connected to the Internal Sewer Line as generally shown on the Infrastructure Exhibits (Attachment "E") (collectively "Phase II Internal Sewer Line"). The City will use its best efforts to include the Phase II Internal Sewer Line in year two of the City's 2011/2012 Six-Year Capital Improvement Program to be constructed and funded by the City, at its expense in 2012/2013. Notwithstanding the foregoing, Developer shall have the option to design, competitively bid, construct and fund the Phase II Internal Sewer Line through the City's Executive Order process in one or more phases as part of the final plat process if Developer desires to be connected to the Phase II Internal Sewer Line prior to the City's construction of such sewer line. In the event the Phase II Internal

Sewer Line is constructed by Developer, the City agrees to subtract the cost of the Phase II Internal Sewer Line from Developer's obligation to make the Wastewater Impact Fee Facility Contribution set forth in Paragraph 4.C. above, and to accordingly reduce Developer's obligation to guarantee payment of said contribution.

The City agrees to use its best efforts to reimburse the Developer, no later than November 2012, for the costs of the Phase II Internal Sewer Line, including the design and construction of the Phase II Internal Sewer Line pursuant to Paragraph 10 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 Phase II 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 Phase II Internal Sewer Line.

F. Street Improvements.

I. "O" Street. "O" Street from 42nd Street to 98th Street 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 six lanes plus center turn lanes. "O" Street from 98th Street to the east edge of Lancaster County 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 lanes. Presently, "O" Street along the south edge of the Property is a two-lane rural cross section. Based upon preliminary agreements between the State of Nebraska and the City, the State of Nebraska intends to design, grade and construct within the next six years (more or less) four lanes between approximately 85th Street and the east edge of the Property, plus turn lanes at four full turn movements access points (¼ mile, 1 mile, ¼ mile and ½ mile respectively) abutting the Property along the north side of "O" Street, as generally shown on Attachment "A" (collectively "Four-Lane "O" Street"). The State/City, at their expense, shall be responsible for any required traffic signals at the 1 mile and ½ mile intersection of "O" Street when warranted. The City shall also be responsible for any costs associated with obtaining a break in controlled access along "O" Street from the State

of Nebraska for the location of the 98th Street intersection. The State of Nebraska, at its expense (with a local sponsor match from the City, at the City's expense), will design, grade and construct the Four-Lane "O" Street. The design and construction of the temporary right and left turn lanes in the "O" Street right-of-way at the intersection of "O" Street and 98th Street shall be part of the design and construction of Two-Lane North 98th Street.

G. Trails and Parks.

Except for the completion of the Trail described in paragraph 5 D above, there are no additional permanent Impact Fee Facilities for trails or parks necessary to annex the Future Annexed Property.

7. Minimum Flood Plain Corridor. Impact Fee Facilities which cross or otherwise encroach into Minimum Flood Corridors are required to meet the standards for sequencing identified in the City's Drainage Criteria Manual. This includes impacts to Minimum Flood Corridors for arterial street, water, sewer, and trail impact fee facilities on or adjacent to the Property. Developer has submitted and the City has approved the Master Drainage Study dated December 17, 2004 and Minimum Flood Corridor Exhibits for the Property dated June, 2005, in conjunction with the Waterford Estates Preliminary Plat (collectively "Master Plan").

The sequencing process and details regarding the construction and location of the facilities as they relate to impacts on Minimum Flood Corridors shall be reviewed and approved by the Public Works and Utilities Department if the facility is constructed through the City's executive order process prior to approval of construction plans. Because this process provides greater detail than the preliminary plat, the City's review and approval process may result in alterations of some locations for water, sewer, and trail impact fee facilities shown on the preliminary plat with regard to impacts on the Minimum Flood Corridor. Minor alterations of some arterial roadway locations may also be required, but shall be generally as shown on the Master Plan. The sequencing process of avoidance, minimization and mitigation shall be part of the project cost. The Developer, at its expense, shall have the responsibilities to sequence the other improvements required by the final plat process.