

---

---

**THE CITY OF LINCOLN, NEBRASKA**

**ORDINANCE NO. \_\_\_\_\_**  
**(passed \_\_\_\_\_, 2006)**

---

**ADOPTED UNDER**  
**ORDINANCE NOS. 18088 AND 18171**

---

**AUTHORIZING**

**A WATER REVENUE OBLIGATION,**  
**AND**  
**A HIGHWAY ALLOCATION OBLIGATION**  
**(HIGHWAY 77 & WARLICK BOULEVARD PROJECT)**

---

ORDINANCE NO. \_\_\_\_\_

**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 FOR WATER: ONE MILLION FIVE HUNDRED TWENTY THOUSAND DOLLARS (\$1,520,000.00) (THE “WATER OBLIGATION”), AND (2) A HIGHWAY ALLOCATION OBLIGATION OF THE CITY IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED FOUR MILLION TWO HUNDRED FORTY FIVE THOUSAND DOLLARS (\$4,245,000.00); FIXING IN PART AND PROVIDING FOR THE FIXING IN PART OF THE DETAILS OF THE WATER 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 one or more waterworks plants and a water transmission and distribution system (collectively, the “**Water System**”) for the use and benefit of the City and its inhabitants.

(b) The Water 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.

(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) 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 the Water System, including, but not limited to Highway 77 & Warlick Boulevard Project (collectively, the “**Water Project**”) to facilitate the orderly growth and expansion of the City pursuant to Highway 77 & Warlick

Boulevard Conditional Annexation and Zoning Agreement (the “**Agreement**”), under which the City will pay certain costs of the Water Project from the Water Revenues.

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

(g) 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**”):

(h) The estimated costs for the improvements constituting the Street Project are \$4,245,000.

(i) 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.

(j) 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 Highway 77 & Warlick Boulevard Conditional Annexation and Zoning Agreement by and among the City, Western Hemisphere Holding Company LLC (WHHC), Ridge Development Company (Ridge), Southview Inc. (Southview), Developments Unlimited LLP (Developments Unlimited), Dial-Southwest Village LP (Dial), LeGrande Excavating Inc. and Norman H. LeGrande. WHHC, Ridge, Southview, Developments Unlimited and Dial are hereinafter referred to as Developer.

“**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 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.

“**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 C. 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 Street Obligation in a principal amount not to exceed **\$4,245,000** and (b) the Water Obligation in a principal amount not to exceed **\$1,520,000**.

**Section 202. Description of Obligations.** 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 **Paragraph 6** of the Agreement payable as provided in **Paragraph 6** of the Agreement. The City shall be 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 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 302. 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 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) Street Obligation Fund (Highway 77 & Warlick Boulevard) (the “**Street Obligation Fund**”).
- (b) Water Obligation Fund (Highway 77 & Warlick Boulevard Project) (the “**Water Obligation Fund**”).

Each fund referred to in **Sections 401(a)** and **(b)**, 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 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 Street Obligation Fund and the Water Obligation Fund to the registered owners of 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:**

\_\_\_\_\_

**PASSED** \_\_\_\_\_, 2006.

**AYES:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**NAYS:**

\_\_\_\_\_

\_\_\_\_\_

**CONFLICT OF INTEREST:**

\_\_\_\_\_

**APPROVED:** \_\_\_\_\_, 2006.

\_\_\_\_\_

**Mayor**

**ABSENT OR NOT VOTING:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Approved as to Form:**

\_\_\_\_\_

**City Attorney**

**EXHIBIT A**  
**FORM OF STREET OBLIGATION**

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

**STREET OBLIGATION**  
**(HIGHWAY 77 & WARLICK BOULEVARD)**

\_\_\_\_\_, 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 Highway 77 & Warlick Boulevard 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 WATER OBLIGATION**

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

**WATER REVENUE OBLIGATION  
(HIGHWAY 77 & WARLICK BOULEVARD)**

\_\_\_\_\_, 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 Highway 77 & Warlick Boulevard 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