

**CONDITIONAL ANNEXATION AND ZONING AGREEMENT
FOR
REGENT HEIGHTS FIRST ADDITION
AND
NORTHERN LIGHTS ADDITION**

THIS CONDITIONAL ANNEXATION AND ZONING AGREEMENT FOR REGENT HEIGHTS FIRST ADDITION and NORTHERN LIGHTS ADDITION ("Agreement") is made and entered into as of this 6TH day of DECEMBER, 1996, by and between the **City of Lincoln, Nebraska**, a municipal corporation ("City"), **The Board of Regents of the University of Nebraska**, a corporation ("University"), **D. D. & S. Family Investments**, a Nebraska general partnership ("D. D. & S."), **Regent Heights Limited Partnership**, a Nebraska limited partnership ("Regent Heights"), **Clayton K. Yeutter**, a single person ("CKY"), **Clayton K. Yeutter**, a single person (an undivided ½ interest), and **Gregg S. Yeutter and Wallace Becker**, as Trustees of the **Clayton K. and L. Jeanne Yeutter Trust Dated May 12, 1980** (an undivided ½ interest) ("Yeutter Trustee"), **Clayton K. Yeutter**, Trustee of the **Laura P. Yeutter Trust** ("CKY Trustee") and **Ridge Development Company**, a Nebraska corporation ("Ridge Development"). CKY, Yeutter Trustee and CKY Trustee are sometimes hereinafter referred to individually and collectively as "Yeutter." D. D. & S., Regent Heights, Yeutter, and Ridge Development are sometimes hereinafter referred to individually as "Property Owner" and collectively as "Property Owners." Ridge Development and Yeutter have entered into an agreement granting Ridge Development an option to purchase the real estate owned by Yeutter.

Ridge Development, who is the trustee and agent for the Property Owners, is sometimes referred herein as the "Trustee." Olsson Associates is sometimes referred herein as the "Engineer."

RECITALS

1. The Planning Director has recommended amending the Lincoln City-Lancaster County Comprehensive Plan to adopt and incorporate into the Comprehensive Plan a subarea plan identified as the *Proposed Future Land Use for the North 84th Street Subarea*, as shown on Attachment "A", which is attached hereto and incorporated herein by this reference.

2. The Planning Director has recommended amending the Lincoln City-Lancaster County Comprehensive Plan to adopt a revised Figure 65 entitled *Anticipated 2015 Lincoln Service Limit and Phasing Plan*, as shown on Attachment "A-1", which is attached hereto and incorporated herein by this reference. The revised Figure 65 makes the following designations:

- a. certain properties generally located west of North 84th Street which begin north of Leighton Avenue and continue south of Holdrege have been designated as a "Blue Area" (Phase I -- ready for immediate development); and
- b. certain properties (University Tract) generally located west of North 84th Street which begin north of Havelock Avenue and continue south of Havelock Avenue have been designated as a "Green Area" (Phase II -- ready for near term development).

3. Property Owners have requested that the City annex the property which is described as the D. D. & S. Tract, Ridge Development Tract, Mount Olive Church Tract, Regent Heights Tract, Yeutter Tract and LES Tract (collectively "Property") and legally described on

Attachment "B", attached hereto and incorporated herein by this reference, and shown on the Site Plan on Attachment "C", attached hereto and incorporated herein by this reference.

4. Property Owners have requested that the City rezone those portions of the Property as legally described on Attachment "D", which is attached hereto and incorporated herein by this reference and as shown on Attachment "E", attached hereto and incorporated herein by this reference. In addition, the Property Owners have requested a community unit plan on the R-5 tract as legally described on Attachment "D".

5. The University currently owns and conducts scientific research on certain properties ("University Tract") legally described on Attachment "F", attached hereto and incorporated herein by this reference, and as shown on the Site Plan on Attachment "G", attached hereto and incorporated herein by this reference. In the near term, the University wishes to continue to conduct its scientific research on the University Tract and therefore is not requesting annexation nor rezoning of the University Tract at this time.

6. The City is willing to amend the Lincoln City-Lancaster County Comprehensive Plan, as amended, to adopt as a subarea plan the *Proposed Future Land Use For North 84th Street Subarea* and to designate the Annexed Property shown on Attachment "A-1" as "Blue Area" (Phase I) on Figure 65 of the Comprehensive Plan. The City is also willing to annex the Property as shown on Attachment "C" and rezone the Property as shown on Attachment "E", provided that the necessary municipal infrastructure improvements are constructed in a timely manner to serve and properly accommodate the area of the proposed annexation and the uses under the proposed zoning.

7. The City is willing to amend the Lincoln City-Lancaster County Comprehensive Plan, as amended, to designate the University Tract as "Green Area" (Phase II) on Figure 65 of the Comprehensive Plan, provided that the necessary sanitary sewer trunk line improvements are constructed in a timely manner to serve and properly accommodate the University Tract.

8. The City, Property Owners and University recognize that the City does not currently have sufficient funds to devote to these areas to provide for the construction of all necessary infrastructure improvements. The parties also recognize that, in order to support a current Comprehensive Plan amendment, annexation and rezoning of the Property and to support a current Comprehensive Plan amendment of the University Tract, it is necessary that the Property Owners assume certain cost responsibilities for various portions of the necessary municipal infrastructure improvements and that the University assume certain cost responsibilities for the sanitary sewer trunk line improvements. The parties are entering into this Agreement for the purpose of providing for the construction of the infrastructure improvements necessary for the area of the proposed Comprehensive Plan amendments, annexation and rezoning and for the allocation of cost responsibilities for such infrastructure between the City, Property Owners and the University.

NOW, THEREFORE, in consideration of the mutual covenants established herein, the parties to this Agreement do hereby agree as follows:

I.
**COMPREHENSIVE PLAN AMENDMENT,
ANNEXATION, REZONING, AND ZONING TEXT AMENDMENT**

A. **Concurrent Approval.** The City, concurrently with the approval of this Agreement, is:

1. Amending the Lincoln City-Lancaster County Comprehensive Plan, as amended, to incorporate into the Comprehensive Plan as a subarea plan the *Proposed Future Land Use For North 84th Street Subarea* as shown on Attachment "A", and to designate the Property as "Blue Area" (Phase I) and the University Tract as "Green" (Phase II) on Figure 65 of the Comprehensive Plan entitled the *Anticipated 2015 Lincoln Service Limit and Phasing Plan* as shown on Attachment "A-1";
2. Annexing the Property legally described in Attachment "B" and shown on Attachment "C";
3. Approving changes to the Lincoln zoning district maps as legally described in Attachment "D" and shown on Attachment "E";
4. Approving the Community Unit Plan for the R-5 tract described on Attachment "D";
5. Approving the preliminary plat of Northern Lights and Regent Heights First Addition; and
6. Approving the Interlocal Governmental Agreement, dated _____, by and between the University and the City for the University's share of Sewer A as described in Section II.B.1. below.

B. R-5 Tract. The Property Owners of said R-5 tract agree that the total number of residential units on said R-5 tract shall not exceed 360 dwelling units. To insure this maximum amount of density is not exceeded, the Property Owners of said R-5 tract agree not to revoke or seek to remove the community unit plan for said R-5 tract.

C. Tree and Open Space Protection. In consideration of granting the zones as legally described on Attachment "D" and shown on Attachment "E", the Property Owners have agreed to protect the trees and open space as specifically noted on the preliminary plat of Northern Lights and Regent Heights First Addition. Said note requires the applicable Property Owner to use reasonable care to protect the tree mass and vegetation and requires any proposed grading, utilities, drainage or improvements in said area to obtain the prior approval of the Director of Parks and Recreation and the Director of Public Works and Utilities, which approval shall not be unreasonably withheld.

D. Conditional Approval. Said annexation and zoning approvals are conditioned upon the terms, conditions and understandings as set forth in this Agreement being fulfilled. The parties understand and agree that, notwithstanding the conditional nature of such zoning approvals hereto, the City Council, on its own motion or at the request of any party hereto, may, in the exercise of its lawful legislative authority: (i) amend the Comprehensive Plan; (ii) change the municipal corporate boundaries; (iii) rezone or revise the zoning designations applicable to the Property and University Tract; or (iv) approve or amend plats, dedications, use permits, special permits, developments, community unit plans, building permits or other land use controls, as future circumstances may warrant.

II.
NECESSARY SANITARY SEWER IMPROVEMENTS
FOR THE PROPERTY AND UNIVERSITY TRACT

A. Costs Defined. For purposes of this Agreement, the words and phrases, "cost" or "entire cost" of a type of improvement shall be deemed to include all construction costs, engineering fees, testing expenses, publication costs, financing costs, and related miscellaneous costs, but shall exclude City personnel costs.

B. First Phase Sanitary Sewer Trunk Line. The City, Property Owners and University covenant and agree that the following are the first phase sanitary sewer trunk lines necessary to permit approximately 1,000 acres (including the University Tract and the Property) to be sewerable and to promote the general health and welfare of the City:

1. Sewer A. An anticipated 21-inch diameter sanitary sewer, approximately 9,150 linear feet in length and an anticipated 18-inch parallel sanitary sewer, approximately 1,150 linear feet in length will be constructed by the City from the City's existing 24-inch diameter sanitary sewer located at North 70th Street and Custer Street to a point approximately 750 south of North 84th Street and Havelock Avenue, generally as shown on Attachment "I", which is attached hereto and incorporated herein by this reference. The estimated cost of Sewer A is approximately \$516,000. The cost of Sewer A will be paid by the City, provided that the University agrees to pay the City the sum of Two Hundred Thousand pursuant to the Interlocal Governmental Agreement, dated _____, by and

between the University and the City for the University's fair share of Sewer A.

2. Sewer B. An anticipated 21-inch, 15-inch and 10-inch diameter sanitary sewer, approximately 11,800 linear feet in length, will be constructed by the Trustee at the Property Owner's cost from the terminus of Sewer A to approximately North 84th Street and Leighton Avenue generally as shown on Attachment "I". The estimated costs of Sewer B is \$494,000. The Property Owners agree to split the actual cost on the following Acre Percentage:

Name	Sewerable Acres	Acre Percentage	Estimated Prorata Cost
D. D. & S.	20.69	8.1%	\$40,014
Regent Heights	51.34	20.2%	99,788
Ridge Development	182.05	71.7 %	354,198
TOTAL	254.08	100.00%	\$494,000

Under separate agreement with the Property Owners , Mount Olive Evangelical Lutheran Church ("Mount Olive Church") has agreed to pay its fair share of Sewer B. Construction of Sewer A and Sewer B will be coordinated so as to provide sewer service to the first phase area described on Attachment "J" as soon as reasonably possible.

3. Sewer C. An anticipated 8-inch diameter sanitary sewer, approximately 5,600 linear feet in length, will be constructed by the Trustee at the

Property Owner's cost from the terminus of Sewer B to approximately North 81st Street and Elizabeth Drive generally as shown on Attachment "I" in order to provide sewer service to Mount Olive Tract, Regent Heights First Addition, Northern Lights Addition North and Northern Lights Addition South. The estimated cost of Sewer C is \$136,500. If the Department of Public Works and Utilities later determines that a sewer greater than eight-inches in diameter is needed to provide adequate service to the areas east of North 84th Street, such larger sewer over eight-inches shall be subsidized by the City and constructed by Trustee with the Property Owners liable for the cost of an eight-inch line. The Property Owners agree to split the actual cost of the eight-inch Sewer C based upon the following Percentage:

Name	Linear Front Footage	Percentage	Estimated Prorata Cost
D. D. & S.	800	7.1%	\$ 9,692
Mount Olive Church	920	8.2%	11,193
Regent Heights	1,150	10.3%	14,060
Ridge Development	8,330	74.4%	101,555
TOTAL	11,200	100.0%	\$136,500

Under separate agreement with the Property Owners, Mount Olive Church has agreed to its fair share of Sewer C. Upon payment of said sum by Mount Olive Church to the Property Owners, the three Property Owners

agree to split said sum based upon the three Property Owner's Percentage as shown in the above chart. Sewer C will be constructed in phases as part of the platting process of the Property.

4. Sanitary Sewer Easements for Sewer A, Sewer B and Sewer C.

- a. Easement Costs. The City, with the cooperation of the Property Owners, shall acquire all temporary and permanent nonexclusive easements necessary for the construction and operation of Sewer A and Sewer B 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 and interest but excluding City staff time and compensation shall be prorated equally between the City and the Property Owners as shown below:

Name	Sewerable Acres	Acreage Percentage	Easement Percentage	Estimated Easement Cost
City	--	--	50.00%	\$ 55,000
D. D. & S.	20.69	8.1%	4.05%	4,455
Regent Heights	51.34	20.2%	10.10%	11,110
Ridge Development	182.05	71.7%	35.85%	39,435
Property Owners	254.08	100%	50.00%	55,000
Total	--	--	100.00%	\$110,000

The University shall dedicate and convey all temporary and permanent nonexclusive sanitary sewer easements to the City,

without additional cost or consideration, which are needed within the University Tract for the construction and operation of Sewer A and Sewer B.

- b. The Property Owners shall dedicate and convey all temporary and permanent nonexclusive sanitary sewer easements to the City, without additional cost or consideration, necessary for the construction and operation of Sewer C as shown on the Preliminary Plat of Regent Heights First Addition and Northern Lights Addition at the time of final platting. D. D. & S., Yeutter, and Ridge Development hereby agrees, and Mount Olive Church under separate agreement with the City has agreed, to dedicate without additional consideration and without costs to the Property Owners all temporary and permanent nonexclusive sanitary sewer easements to the City for Sewer C south of Holdrege Street upon the first occurrence of any of the following events:
- i) City's approval of a final plat of Mount Olive Church Tract (or any portion thereof) as a buildable and sewerable lot of record;
 - ii) City's approval of a final plat of that portion of the D. D. & S. Tract (or any portion thereof) as a buildable and sewerable lot of record; or

- iii) City's approval of a final plat of that portion of the Yeutter Tract legally known as Block 1 through 6 inclusively, Northern Lights Addition South (or any portion thereof) as a buildable and sewerable lot of record.

- c. University and the Property Owner agrees to fully support and cooperate on the design and construction of Sewer A, Sewer B and Sewer C and execute and deliver any and all the necessary permanent easements and temporary easements for construction, soil cuts and fills, reconstruction, maintenance, operation, repair and replacement of said sewer lines located on the University Tract or Property Owners' Tract to the City, without additional consideration, on the City's easement forms. The permanent easements for Sewer A, Sewer B and Sewer C must provide the City the right to construct, reconstruct, repair, operate, maintain, and replace all mains, pipes, manholes, and appurtenance thereto, must prohibit the construction of any buildings on top of the permanent easement areas, and shall be free and clear of any and all mortgages, deeds of trust, or other liens or claims of ownership of any other person. Upon completion of the design and route of Sewer A, Sewer B and Sewer C, the Engineer will prepare the necessary and reasonable legal descriptions for the permanent easements (maximum forty (40) feet wide; provided that the soil

cut and fill easements may exceed forty (40) feet) and the temporary easements for the City Engineer's approval. The City, University and the Property Owners agree that such easements shall be only for the smallest space reasonably feasible and in conformity with applicable City ordinances, design standards and regulations. The City and University agree that (i) the temporary easement and permanent easement on the University Tract will not include the growing crop areas; and that (ii) the City will accept University's temporary easement subject to an indemnification to the University for any livestock, growing crop, or soil damage which affects University research projects caused by the construction of Sewer A and Sewer B. Upon the determination of the necessary legal descriptions for the permanent easements and temporary easements by the Engineer and the City Engineer, the Property Owners and University will execute, notarize and deliver the permanent easements and temporary easements to the City.

- d. The City under separate agreement has secured similar covenants from Mount Olive Church as are made by the Property Owners to the City under Paragraph 4c above.
5. City Funding. The City agrees to fund the necessary costs for the construction of Sewer A and the acquisition of one-half of the cost

for the easements for Sewer A and Sewer B in a timely fashion so as not to delay the Property Owner's development of the area.

6. Responsibility for Completion of Work. The City will cause Sewer A to be constructed as a City project and will be responsible for the design, bidding, and construction oversight of said Sewer A. The City agrees to use its best efforts to complete Sewer A as soon as reasonable possible, but no later than October 1, 1997. The Trustee will cause the Sewer B to be constructed under the authority of an executive order issued by the Mayor of the City. The Trustee agrees to use its best efforts to complete Sewer B as soon as reasonably possible, but no later than October 1, 1997. The City and the Trustee agree to utilize the design services of the Engineer in order to minimize time delays, increase potential quality control, reduce potential liability claims, and to maximize coordination between the City and the Property Owners in designing Sewer A and Sewer B. Sewer A and Sewer B will be designed in a coordinated fashion and the City will be responsible to conduct the bid letting for Sewer A and Sewer B pursuant to the City's competitive bid practices. The applicable Property Owner will cause Sewer C (or the applicable phase extension) to be constructed under the authority of an executive order(s) issued by the Mayor of the City as part of the platting process generally

pursuant to the phases, as shown in Attachment "J", which is attached hereto and incorporated herein by this reference. The Property Owners agree (and Mount Olive Church under separate agreement with the City have agreed) to utilize the design services of the Engineer in order to minimize time delays, increase potential quality control, reduce potential liability claims, and to maximize coordination between the City, Mount Olive Church and the Property Owners in designing Sewer C and the other infrastructure improvements required by this Agreement.

C. Second Phase Sanitary Sewer Trunk Line. The City, Property Owners and University agree that two anticipated 24-inch diameter sanitary relief sewers in North 70th Street ("Second Phase Sewer") may need to be constructed by the City or another third party in order to open up and sewer the remainder of the basin (approximately 400 acres). The City agrees that neither the Property Owners nor the University shall have any cost liabilities for said Second Phase Sewer unless the Property Owners or the University own additional property not described in this Agreement that needs to use the sewer capacity.

D. Sewering and Annexing the Balance of the Subarea. The City, Property Owners and University acknowledge that Sewer A and Sewer B will potentially sewer other properties as shown on the Subarea plan but that are not subject to this Agreement (collectively "Other Properties"). The City agrees to charge the owners of said Other Properties a fair share cost of said Sewer A and Sewer B based upon a per acre formula or some other "fair share" formula approved by the City in order to permit said Other Properties to be zoned, annexed or

subdivided and be able to connect to said Sewer A or Sewer B at cost roughly equivalent to the Property subject to this Agreement. The Property Owners and University understand that the City itself is directly contributing the costs to sewer approximately 275 acres which may be used by the City to underwrite the costs of a portion of the Other Properties which may be zoned, annexed, subdivided and developed as an Employment Center based upon the City's "fair share" formula. In order to be fair, it is the City's intention to charge the Other Properties for costs or require the Other Properties to pay for infrastructure and other public improvements substantially similar to the level, degree and nature that is required by the Property that is subject to this Agreement; provided that, the City may elect to underwrite some of the costs of a portion of the Other Properties being zoned, annexed, subdivided and developed as an Employment Center.

III. NECESSARY MUNICIPAL IMPROVEMENTS FOR THE PROPERTY

A. Infrastructure Standard. Unless a contrary statement is made herein, the infrastructure described herein shall be constructed to the City's design standards and City standard pavement.

B. Phase Development of the Property. The Property Owners believe that the Property will be final platted and developed in various phases, generally developing from the north to the south. For planning purposes, the Property Owners submitted to the City the potential phasing plan for the Property as shown on Attachment "J". The City and the Property Owners agree that the proposed phases described in Attachment "J" are not binding and the phases may be developed out of the sequence shown on Attachment "J", except that the City and Property Owners agree that the area designated as "Phase 1" on Attachment "J" will be the first

phase of development of the Property. Similarly, the City and the Property Owners agree that the phase(s) designated on Attachment "J" may develop in smaller geographic areas or in subphases.

The following sections below describe the initial infrastructure improvements necessary to promote the Property and the general health of the City.

C. Sewer C. The City and the Property Owners covenant and agree that the Sewer C, which runs north and south through the Property, will be constructed pursuant to Section II. B above.

D. Water Mains. The City and the Property Owners covenant and agree that the following water mains will be needed:

1. 24" Water Line in North 84th Street. A 24-inch water main from Vine Street to Holdrege Street located on the east side of the North 84th Street right-of-way will particularly be needed for the areas east of North 84th Street and will not be the responsibility of the Property Owners and nor will the City impose a requirement or conditions in conjunction with the approval of future plats and dedications, use permits, special permits, planned unit developments, or community unit plans incorporating therein the Property or any portion thereof which has been subject to annexation or rezoning in conjunction with this Agreement.
2. 54" Water Line in North 84th Street. A 54-inch water main from Highway 6 to Vine Street. reservoir will be constructed by the City. This water line will be constructed at the City's cost. The City will cause the water line to be constructed as a City project and will be responsible for design,

bidding, and construction oversight of said project. The exact location of said 54-inch line is unknown at this time, but the City believes that part of the line may be located on the west edge of North 84th Street right-of-way (east portion of Lot 36 [B-2 Tract] and Lot 38 [H-4 Tract], Block 11, Northern Lights Addition North) and may be located on the north edge of Holdrege Street right-of-way (south portion of Lot 36 [B-2 Tract], Lot 38 [R-5], and Lots 36, 45 and Outlot "E", Block 10 [R-3] or the south edge of Holdrege Street right-of-way (north portion of the D. D. & S. Tract). If located along said streets, the water line shall be located in a 40 feet wide nonexclusive permanent easement located in the front yard setback areas on the applicable lot(s). Yeutter, Ridge Development and D. D. & S. agree to grant, without additional consideration, said 40 feet wide nonexclusive permanent easement to the City on the applicable lot(s), if the City makes said request for the easement on the applicable lot(s) on or before City's approval of the first use permit or special permit on the first of the following tracts: Lot 36 [B-2 Tract], Lot 38 [H-4 Tract] or D. D. & S. Tract [B-2 Tract]. The City has not scheduled the proposed construction for said water line at this time.

3. 16" Water Line in Holdrege Street. The City shall propose to the City Council the creation of a district or districts to construct a 16-inch water main from approximately North 79th Street to North 84th Street located on the north side of the right-of-way of Holdrege Street. The parties agree

that said water line will be completed prior to the paving of Holdrege Street as described in Section E. 5 below. Upon creation of such special improvement district, D. D. & S. and Yeutter agree to provide petitions sufficient to order construction of said water district. Yeutter and D.D. & S. shall not object to the City's levying of assessments against the properties which are included within the district(s) for the cost of constructing a typical 6-inch water line abutting a residential area and a typical 8-inch water line abutting a commercial area, and shall pay all assessments so levied as they become due and payable. The City shall be responsible for all costs associated with the water line of any additional diameter due to the fact that the City constructs a 16-inch water line. In the event that the City Council refuses to create such special assessment district or in the event such district is not ordered constructed in a timely manner, Yeutter and D.D. & S., in proportion to the special benefit they receive, shall, construct or cause to be constructed such water line under the authority of an executive order issued by the Mayor of the City of Lincoln and the City will contribute (or cause Mount Olive and/or CCC Church to contribute) any additional costs associated with Mount Olive Tract or the CCC Church Tract. Furthermore, in the event that any assessments levied against benefited properties for such water district(s), if created, are challenged and are for any reason declared to be void, illegal, in excess of benefits, or otherwise unenforceable, then Yeutter and D. D.

& S. agree to pay to the City, in full, an amount equal to the amount of the assessment so declared to be void, illegal, in excess of benefits, or otherwise unenforceable. The proposed construction schedule will generally follow the phases as shown in Attachment "J". The City under separate agreement has secured similar covenants from Mount Olive Church as are made by the Property Owners to the City under this paragraph.

4. Intentionally omitted.
5. 12" Water Line in Leighton Avenue. A 12-inch water main from approximately North 80th Street to North 84th Street located in the proposed right-of-way of Leighton Avenue will be constructed by Regent Heights, Yeutter and Ridge Development under the authority of an executive order issued by the Mayor of the City as part of the platting process of Regent Heights First Addition and Northern Lights Addition North. Regent Heights, Yeutter and Ridge Development will be responsible for the cost of constructing a typical 6-inch water line abutting a residential area. The City shall be responsible for all costs associated with over sizing the water line from 6-inches to 12-inches. The proposed construction schedule will generally follow the phases as shown in Attachment "J". Regent Heights, Yeutter and Ridge Development agrees to utilize the design services of the Engineer in order to minimize time delays, increase potential quality control, reduce potential liability

claims, and to maximize coordination between the City and the Property Owners in designing this water line and the other infrastructure improvements required by this Agreement.

6. City Funding. The City agrees to fund the necessary costs for its share of the above described water lines in a timely fashion so as not to delay the Property Owner's development of the area.

E. Streets. The City and the Property Owners covenant and agree that the following Street improvements will be needed:

1. North 84th Street. The Property Owners shall have no liability or responsibility to widen North 84th Street with raised median and turn lanes from Adams Street to Highway 6 as part of this Agreement or under the terms and conditions of any resulting preliminary plat, final plat, use permit, special permit or community unit plan for the Property.
2. Median Opening in North 84th Street. D. D. & S. and Ridge Development, at their expense will construct a median opening, including the necessary taper median and lanes and left turn pocket in North 84th Street, and as further defined by the traffic study described in Section E. 6 below. D. D. & S. and Ridge Development will cause the median opening to be constructed under the authority of an executive order issued by the Mayor of the City within one year after the approval of the earlier of the following three events: (i) City approval of a B-2 use permit for the D. D. & S. Tract; (ii) City approval of a special permit for the R-T Tract; or (iii)

City approval of a final plat of all or a portion of the lots in the Northern Lights Addition (South). D. D. & S. and Ridge Development will have cost responsibilities for design, bidding, construction oversight and traffic signalization and signage for said median opening project. The following Property Owners agree to split the actual cost on the following Percentage:

Name	Estimated Commercial Acres	Percentage	Estimated Cost
D. D. & S.	20.69	94.7%	\$142,050
Ridge Development	1.17	5.3%	7,950
Total	21.86	100.0%	\$150,000

City, at no charge, will fully cooperate with and assist D. D. & S. and Ridge Development in obtaining the State of Nebraska's approval of said median opening and release of the necessary portion of any controlled access rights or interests. The City agrees not to charge D. D. & S. and Ridge Development for any release of any controlled access rights or interests the City may have along North 84th Street; provided however, the State of Nebraska may charge the City or D. D. & S. and Ridge Development for said release and such cost shall be deemed a part of the median opening project and shall be the responsibility of D.D. & S. and Ridge Development based upon the Percentage as shown in the above chart.

3. Leighton Avenue/ North 78th Street. The City will extend Leighton Avenue from the terminus of the existing urban paving (approximately

North 78th Street) to North 84th Street and will pave North 78th Street between Garland Street and Leighton Avenue. Leighton Avenue will be located in a 66 feet wide right-of-way with paving of 32 feet wide (parking on one side of the street) in areas abutting residential areas and 32 feet wide (no parking on either side of the street) in the area abutting the B-1 zoned tract near the intersection of Leighton Avenue and North 84th Street to permit a left turn lane, a through lane and a right turn lane for traffic travelling east. North 78th Street between Garland Street and Leighton Avenue will be a residential street located in a 60 feet wide right-of-way with paving of 27 feet wide. Together these two street improvements will provide circulation to the area and improve access, circulation and safety to the children attending Kahoa Elementary School. The City will cause the two street to be constructed as a City project as soon as reasonably possible and will be responsible for design, bidding, construction oversight and traffic signalization and signage for said project. The City shall propose to the City Council the creation of a paving district or districts to accomplish the urban standard paving described above. Upon creation of such paving district(s), the Regent Heights, Yeutter, and Ridge Development will provide petitions sufficient to order construction of the paving district(s). Regent Heights, Yeutter, and Ridge Development shall not object to the City's levying of assessments against the properties which are included within the district(s) and shall pay all assessments so levied

as they become due and payable. In the event that the City Council refuses to create such special assessment district, or in the event such district is not ordered constructed in a timely manner, the Property Owners shall, at their own cost and expense, construct or cause to be constructed such paving under the authority of an executive order issued by the Mayor of the City of Lincoln. Furthermore, in the event that any assessments levied against benefited properties for such paving district(s), if created, are challenged and are for any reason declared to be void, illegal, in excess of benefits, or otherwise unenforceable, then the applicable Property Owner agrees to pay to the City, in full, an amount equal to the amount of the assessment so declared to be void, illegal, in excess of benefits, or otherwise unenforceable. Regent Heights, Yeutter, and Ridge Development agree to dedicate their half of the necessary right-of-way to permit the proper width of paving as described above. In addition, Ridge Development and/or Regent Heights agree to pay in full sixty (60) days after the assessments are levied the cost of the street assessment amount associated with the abutting proposed ice skating rink area. Notwithstanding any contrary provision herein, no Property Owner shall have any liability for the cost of any assessment amounts associated with Kahoa Park tract, Lincoln Electric System Tract or any lots located in Block 1, Rosemont 2nd Addition, Lincoln, Lancaster County, Nebraska.

4. Private Roadway. A private roadway from Leighton Avenue to H-4 zoned tract traveling through Outlot "C", Northern Lights Addition (North) between the skating pond area and the LES Tract will be constructed by Yeutter and/or Ridge Development. Yeutter and/or Ridge Development will be responsible for the cost of constructing a private roadway located in a minimum 25 feet wide public access easement with paving a minimum of 25 feet wide. The City at its cost may expand the paving width of the private roadway to allow parking on the west side of the private roadway. After construction of the private roadway, the City will be responsible for the maintenance, repair and replacement of said private roadway located on Outlot "C", Northern Lights Addition (North). The proposed construction schedule for the private roadway will generally follow the phases as shown in Attachment "J".
5. Holdrege Street. Holdrege Street from the terminus of the existing urban street section (approximately North 79th Street) to approximately North 82nd Street will be reconstructed at a minimum from two lanes to three lanes (two through and a left middle lane) with City standard paving (no parking on either side of the street) in areas abutting residential areas. Holdrege Street from approximately North 82nd Street to North 84th Street will be reconstructed at a minimum as a five lane street (four through lanes and left turn lane) located in a 100 feet wide right-of-way with paving of 64 feet wide (no parking on either side of the street) in

areas abutting the commercial areas. The City will cause Holdrege Street to be constructed as a City project as soon as reasonably possible after the approval of the first B-2 Use Permit for either a portion or all of Lot 36, Block 11, Northern Lights Addition (North) or the D. D. & S. Tract. The City will be responsible for design, bidding, construction oversight and traffic signalization and signage for said project. The City shall propose to the City Council the creation of a paving district or districts to the urban standard paving described above. Upon creation of such paving district(s), D. D. & S., Yeutter and Ridge Development will provide petitions sufficient to order construction of the paving district(s). D. D. & S., Yeutter and Ridge Development shall not object to the City's levying of assessments against its properties which are included within the district(s) for two through lanes and a left turn lane and shall pay all assessments so levied as they become due and payable. In the event that any assessments levied against benefited properties for such paving district(s), if created, are challenged and are for any reason declared to be void, illegal, in excess of benefits, or otherwise unenforceable, then D. D. & S., Yeutter and Ridge Development agree to pay to the City, in full, an amount equal to the amount of the assessment so declared to be void, illegal, in excess of benefits, or otherwise unenforceable. D. D. & S., Yeutter and Ridge Development agree to dedicate their respective halves of the necessary right-of-way to permit the proper width of paving as described above. In

addition, D. D. & S., Ridge Development and Yeutter jointly and severally agree to pay in full sixty (60) days after the assessments are levied the cost of the amount associated with the extra two lanes abutting the commercial areas that are not being assessed hereunder; provided that the extra concrete/asphalt associated with the taper section of Holdrege Street from five lanes down to three lanes shall be the City's cost. The following Property Owners agree to split the actual cost of the extra two lanes abutting the commercial areas that are not being assessed hereunder based upon the following Percentage:

<i>Name</i>	<i>Estimated Commercial Acres</i>	<i>Percentage</i>	<i>Estimated Cost</i>
<i>D. D. & S.</i>	<i>20.69</i>	<i>46.55%</i>	<i>\$40,964</i>
<i>Ridge Development</i>	<i>23.76</i>	<i>53.45%</i>	<i>47,036</i>
<i>Total</i>	<i>44.45</i>	<i>100.0%</i>	<i>\$88,000</i>

Notwithstanding any contrary provision herein, The Property Owners shall not have any liability for the cost of any assessment amounts associated with the CCC Church Tract, Mount Olive Church Tract or any lot that is outside the boundary of the Property. The City at its cost will be responsible for the hiker/biker trail crossing (at grade or below grade) of Holdrege Street.

6. Additional Street Extensions. As part of the final platting process of Northern Lights Addition, Ridge Development and Yeutter will be

responsible to extend the paving of Garland Street, Colby Street, Lexington Avenue and Aylesworth Avenue from the end of the existing pavement to the property line of Northern Lights Addition.

7. Traffic Study. Within six (6) months of the date of this Agreement, the City, D. D. & S. and Ridge Development agree to undertake a traffic study for the development of the B-2 and H-4 zoned tracts as well as the general development of the entire 1,400 acre subarea based upon the Proposed Future Land Use For North 84th Street Subarea as shown on Attachment "A". The Property Owners agree to pay the City \$10,000 as its share for the Traffic Study. The City shall pay the balance of the Traffic Study costs and in the event the City desires to expand the traffic study, then the City agrees to pay the additional cost of the expanded traffic study. The traffic study will be prepared based upon the City's design standards and the following Property Owner's cost of the traffic study will be shared as follows:

Name	Acres	Percentage	Cost
Ridge Development	38.80	66%	\$ 6,340
D. D. & S.	20.69	34%	3,660
Total	59.49	100%	\$10,000

The split of the \$10,000 between Ridge Development and D. D. & S is based upon each party's proration of the commercial acres comprising the B-2 and H-4 zoned tracts. The results of the traffic study will be used to

determine the appropriate abutting or adjacent traffic improvements associated with the use permits for the B-2 zoned tracts and any turn lane's appropriate lengths and locations. Notwithstanding any contrary provision herein, no Property Owner shall have any liabilities or costs for any portion of Holdrege Street located west of North 79th Street as a result of this Agreement or any use permits, special permits, preliminary plats, final plats, community unit plans, planned unit developments, or any amendments or modifications thereto, associated with the zoning pattern shown on Attachment "E".

F. Intentionally Omitted.

G. Sidewalks. Each Property Owner agrees to be responsible, at its cost, for those sidewalks abutting each Property Owner's respective tract and complete said sidewalks as required by the City's platting, use permit or special permit process concurrent with adjacent development. No portion of any sidewalk will be constructed nor included within any paving or other assessment district. Notwithstanding any contrary provision herein, no Property Owner shall have any liability for the cost of any Leighton Avenue sidewalk abutting Kahoa Park tract or the Lincoln Electric System Tract. Yeutter and/or Ridge Development will be liable for the cost to construct the Leighton Avenue sidewalk abutting Outlot "C" (Open Space and Detention Area) and D. D. & S., Yeutter and/or Ridge Development will be liable for the cost to construct the Holdrege sidewalk abutting the City's linear park .

H. Parks. Property Owner will cause the dedication of the linear park as an outlot (Outlot C) from Leighton Avenue to Holdrege Street as shown on Attachment "K" (collectively

“Park”) at the time of the final platting of Northern Lights Addition. The Park dedication will be free and clear of liens but subject to easement, restrictions, and conditions of record and as stated in this Agreement, including pedestrian trails, drainage and grading easements and other infrastructure improvements as shown on the preliminary and final plats of Northern Lights and Regent Heights First Addition, as may be amended from time to time. Under a separate agreement with the City, Mount Olive Church has agreed to dedicate an easement for trail, vegetation, mini-playground area and open space between the area located north of Holdrege Street and to the south edge of Mount Olive’s tract. The City agrees to accept the linear Park subject to a minimum 25 feet wide public access easement located on the east edge of the Skating Rink area for a private roadway as described in Section III.E.4 above. The City will be responsible for the cost of maintaining, repairing and replacing said private roadway and said Park. The City at its cost may expand the paving width of the private roadway to allow parking on the west side of the private roadway. Ridge agrees to convey two sets of mini-playground equipment acceptable to the Director of the Parks and Recreation Department (not exceeding a total of \$30,000) to the City and the City agrees to construct two mini-playground park areas as part of the linear Park. One said area will be in Outlot D north of Holdrege in an area in close proximity to the R-5 zoned tract and the other area will be south of Holdrege on that portion of the Mount Olive Church easement being dedicated by Mount Olive Church for a mini-playground park area. The City acknowledges that the dedication of the Park and the payment of the \$30,000 will be adequate to meet the needs of the R-5 zoned tract in the event it is developed as a community unit plan; provided that, the developer of said R-5 tract may still be

required to provide some type of adult recreation (i.e., swimming) as part of the community unit plan.

I. Trails. The following parties will be responsible for the cost of constructing an eight (8) feet wide hiker/biker trail in the linear park between Holdrege Street and the east limits of the Property (South 84th Street) as generally shown on Attachment "K":

Name	Sewerable Acres	Acre Percentage	Estimated Prorata Cost
D. D. & S.	20.69	8.1%	\$ 6,594.40
Regent Heights	51.34	20.2%	16,442.80
Ridge Development	182.05	71.7 %	58,363.80
TOTAL	254.08	100.00%	\$81,400.00

The City at its cost will be responsible for the hiker/biker trail crossing (at grade or below grade) of Holdrege Street. The City will be responsible for building the trail south of Holdrege to the south limits of the Property.

Ridge and Yeutter will be responsible for the cost of constructing a four (4) feet wide pedestrian sidewalk from North 80th Street to the eight (8) feet wide hiker/biker trail in Park between proposed Lots 24 and 25, Block 11, Northern Heights Addition and will be responsible for the cost of constructing a four (4) feet wide pedestrian sidewalk from North 81th Street to the eight (8) feet wide hiker/biker trail in Park between proposed Lots 13 and 14, Block 11, Northern Heights Addition.

**IV.
CONSTRUCTION STANDARDS**

All construction of required municipal infrastructure improvements shall be completed in accordance with the City of Lincoln's standard specifications for municipal construction which are on file in the Office of the City Engineer and shall be subject to inspection and approval by the City Engineer.

**V.
NECESSARY MUNICIPAL IMPROVEMENTS
FOR THE UNIVERSITY TRACT**

A. Future Annexation Agreement. The University is not requesting annexation nor rezoning of the University Tract at this time. Other than the sanitary sewer trunk line, no other provisions have been made to address the necessary municipal improvements for the University Tract to be annexed or rezoned. The City and University expect that a future annexation agreement between the City and the University or its successors or assigns will need to address these municipal improvements.

**VI.
SECURITY**

Immediately upon execution of this Agreement, the Property Owners shall provide to the City the following:

A. A bond escrow or other security agreement, approved by the City Attorney, in the amount of \$465,842 to insure construction of Sewer B by the Property Owners as described in Section II.B.2 of this Agreement.

B. A bond or escrow or other security agreement, approved by the City Attorney, in the amount of \$51,866 to insure part of Sanitary Sewer Easement Costs by the Property Owners as described in Section II.B.4 of this Agreement.

C. A bond or escrow or other security agreement, approved by the City Attorney, in the amount of \$10,000 to insure part of Property Owners' share of the traffic study by the Property Owners as described in Section III.E.6 of this Agreement.

VII. FUTURE COST RESPONSIBILITIES

Except as stated herein, it is understood and agreed between the parties that the provision of the above described municipal infrastructure improvements and the allocation of cost responsibilities therefore in no way limit the right of the City to impose reasonable conditions or to require reasonable additional dedications, contributions, or construction in conjunction with the approval of future zoning requests, plats and dedications, use permits, special permits, planned unit developments, or community unit plans incorporating therein the Property or any portion thereof which has been subject to annexation or rezoning in conjunction with this Agreement. Such future dedications, contributions and construction may include, but shall not be limited to, local sewers, water mains, paving, trails, detention ponds, storm sewers, or transportation improvements relating to commercial development, including necessary street widening, traffic signals and added turn lanes necessitated, in the opinion of the City, by major commercial development in the area.

**VIII.
DEFAULT**

The parties agree that the rezoning of the Property promotes the public health, safety and welfare so long as the Property Owners fulfill all of the conditions and responsibilities set forth in this Agreement. In the event that the Property Owners default in fulfilling any of the covenants or responsibilities as set forth in this Agreement, the City may, in the exercise of its legislative authority, rezone said property to the previous zoning designations or such other zoning designations as the City may deem appropriate under the then existing circumstances. The City shall not have any responsibility to enforce any clause in this Agreement that does not involve the City.

**IX.
NOTICES**

Any notice hereunder shall be given in writing to the party for whom it is intended, in person or by certified mail, at the following addresses or at such future addresses as may be designated in writing:

City of Lincoln, Nebraska
ATTN: Public Works Director
555 South 10th Street
Lincoln, Nebraska 68508

with a copy to:

City Clerk
555 South 10th Street
Lincoln, Nebraska 68508

Property Owners: Seacrest & Kalkowski, P.C.
ATTN: Kent Seacrest
1111 Lincoln Mall, Suite 350
Lincoln, NE 68508

**X.
BINDING EFFECT**

This Agreement shall run with the land and shall be binding upon and inure to the benefit and burden of the successors and assigns of the respective parties.

**XI.
AMENDMENTS**

This Agreement may only be amended or modified in writing, signed by the parties hereto.

**XII.
FURTHER ASSURANCES**

The parties agree to use their best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein, the parties shall cooperate in good faith with the others and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and to carry out the intents and purposes of this Agreement.

**XIII.
EXECUTION IN COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

**XIV.
GOVERNING LAW**

All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

**XV.
INTERPRETATIONS**

Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

**XVI.
TERMINATION**

This Agreement shall terminate upon completion of the following items:

- A. Sewer A and Sewer B;
- B. The Water Lines described in Section III, Paragraphs D. 3, 4, and 5;
- C. The Streets described in Section III, Paragraphs E. 2, 3, 4, 5;
- D. The Traffic Study described in Section III, Paragraph 6;
- E. Sidewalks in Section III, Paragraph G.;
- F. The Park dedication described in Section III, Paragraph H; and
- G. The Trails described in Section III, Paragraph I.

**XVII.
TRUSTEE**

The Trustee is trustee and agent on behalf of the Property Owners under the terms and conditions of this Agreement. The Property Owners agree and understand that any and all interest, rights, and liabilities Trustee has under this Agreement shall be as agent, coordinator and trustee on behalf of the Property Owners. The Property Owners hereby agree to indemnify,

defend and hold harmless the Trustee in its capacity as Trustee based upon the Sewer B proration from any damages sought against the Trustee except for intentional misconduct or negligence of the Trustee.

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

City of Lincoln, Nebraska,
a municipal corporation

ATTEST: *Kenneth M. Malzer*
City Clerk

By: *Mike Johanns*
Mike Johanns, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 6TH day of DECEMBER, 1996 by Mike Johanns, Mayor of the **City of Lincoln, Nebraska**, on behalf of the City of Lincoln, Nebraska.

Teresa J. Meier
Notary Public



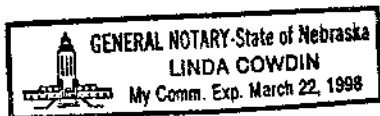
"University"

**The Board of Regents of the
University of Nebraska, a
corporation**

By: *Melvin W. Jones*
Title: Vice Chancellor for Business
and Finance

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 6th day of
November, 1996 by Melvin W. Jones, as
VCBF for **The Board of Regents of the University of Nebraska, a**
corporation, on behalf of the corporation.



Linda Cowdin
Notary Public

Approved as to
form and legality
Richard A. Wood
General Counsel
University of Nebraska

"D. D. & S."

D.D.& S. Family Investments, a Nebraska
general partnership

By: *Richard B Campbell*
General Partner

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 14 day of
November, 1996 by Richard Campbell as general partner of **D. D. & S. Family**
Investments, a Nebraska general partnership, on behalf of the general partnership.

Paula M Hydo
Notary Public



"Regent Heights"

**Regent Heights Limited Partnership, a
Nebraska limited partnership**

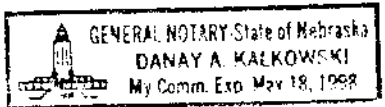
By: Ridge Development Company,
a Nebraska corporation

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

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

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

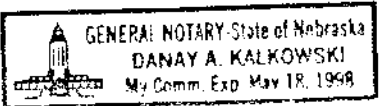
The foregoing instrument was acknowledged before me this 7th day of November, 1996 by Thomas E. White, President of Development of Ridge Development Company, as general partner of **Regent Heights Limited Partnership**, a Nebraska limited partnership, on behalf of the limited partnership.



Danay A. Kalkowski
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 7th day of November, 1996 by John C. Brager, President of Construction of Ridge Development Company, as general partner of **Regent Heights Limited Partnership**, a Nebraska limited partnership, on behalf of the limited partnership.



Danay A. Kalkowski
Notary Public

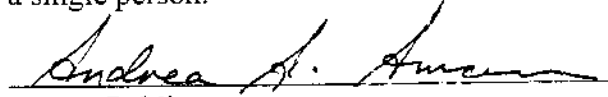
"CKY"



Clayton K. Yeutter, a single person

STATE OF Washington D.C.)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this 1 day of November, 1996 by Clayton K. Yeutter, a single person.



Notary Public

My Commission Expires
July 31, 1998

"Yeutter Trustees"

By: Gregg S. Yeutter
Gregg S. Yeutter, as Trustee of the Clayton K. and L. Jeanne Yeutter Trust Dated May 12, 1980

By: Wallace Becker
Wallace Becker, as Trustee of the Clayton K. and L. Jeanne Yeutter Trust Dated May 12, 1980

STATE OF Nebraska)
) ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 6th day of November, 1996 by Gregg S. Yeutter, as Trustee of the Clayton K. and L. Jeanne Yeutter Trust Dated May 12, 1980, on behalf of the Trust.

Betty M. Cronican
Notary Public



STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 11th day of NOVEMBER, 1996 by Wallace Becker, as Trustee of the Clayton K. and L. Jeanne Yeutter Trust Dated May 12, 1980, on behalf of the Trust.

Karen F. Minks
Notary Public



"Ridge Development"

Ridge Development Company,
a Nebraska corporation

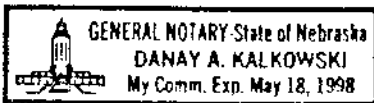
By: Thomas E. White
Thomas E. White,
President of Development

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

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 7th day of November, 1996 by Thomas E. White, President of Development of **Ridge Development Company**, a Nebraska corporation, on behalf of the corporation.

Danay A. Kalkowski
Notary Public



STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 7th day of November, 1996 by John C. Brager, President of Construction of **Ridge Development Company**, a Nebraska corporation, on behalf of the corporation.

Danay A. Kalkowski
Notary Public

