

#6

RESOLUTION NO. A- 81291

BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the agreement titled Conditional Annexation and Zoning Agreement for S. 84th & Highway 2 (Annexation Agreement), which is attached hereto, marked as Exhibit "A" and made a part hereof by reference, between the City of Lincoln and Andermatt L.L.C., Eiger Corp., Westcor L.L.C., Realty Trust Group, and David S. Olson (Owners) outlining certain conditions and understandings between the City and said Owners relating to the annexation of approximately 245 acres of property generally located at 84th Street and Nebraska Highway 2 is approved.

BE IT FURTHER RESOLVED that the Mayor is authorized to execute the Annexation Agreement on behalf of the City.

BE IT FURTHER RESOLVED that the City Clerk is directed to return one fully executed copy of this Agreement to Rick Peo, Chief Assistant City Attorney, for distribution to the Owners.

BE IT FURTHER RESOLVED that the City Clerk is directed to record the Annexation Agreement with the Register of Deeds, filing fees to be paid by the Owners.

See further Council Proceedings on next page.

Introduced by:

Terry M. Warner

AYES: Camp, Cook, McRoy, Seng, Svoboda, Werner;

NAYS: None, ABSENT: Friendt.

A D O P T E D

Approved as to Form and Legality:

Chana W. Royce
City Attorney

NOV 5 2001

By City Council

Staff Review Completed:

Ann Hannah
Administrative Assistant

Approved this 13 day of Nov, 2001:
Don Wesely
Mayor

Bill 01R-277

10/29/01 Council Proceedings:

SENG Moved to delay Bill 01R-277 for one week to 11/5/01.

Seconded by Cook & carried by the following vote: AYES: Camp, Cook, Friendt, McRoy, Seng, Svoboda, Werner; NAYS: None.

EXHIBIT "A"

CONDITIONAL ANNEXATION AND ZONING AGREEMENT FOR S. 84th & HIGHWAY 2

THIS CONDITIONAL ANNEXATION AND ZONING AGREEMENT FOR S. 84TH & HIGHWAY 2 ("Agreement") is made and entered into as of this 13 day of November, 2001, by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation ("City"), **ANDERMATT, L.L.C.**, a Nebraska limited liability company ("Andermatt"), **EIGER CORP.**, a Nebraska corporation ("Eiger"), **WESTCOR, LLC**, a Nebraska limited liability company, formerly known as Westcore LLC ("Westcor"), **REALTY TRUST GROUP**, a Delaware corporation ("Realty Trust"), and **DAVID S. OLSON**, a married person ("Olson"). Andermatt, Eiger, Westcor, Realty Trust and Olson are sometimes hereinafter referred to individually as "Property Owner" and collectively as "Property Owners."

RECITALS

1. The Property Owners are the owners and developers of or have a contract interest in their respective tracts of the real property legally described on Attachment "A", which is attached hereto and incorporated herein by this reference (collectively the "Property"). Eiger is the owner of the Eiger Tract and has a contract interest to acquire the Andermatt Tract, Westcor Tract and Olson/Realty Trust Tract as described in Attachment "A". Andermatt, solely as a land owner, has entered into a contract with Eiger that provides for Eiger to be the developer of the Andermatt Tract and to carry out and implement all of Andermatt's rights, interests, liabilities and duties described in this Agreement.

2. The Property Owners have requested that the City annex that portion of the Property legally described as Parcels 1 and 2 on Attachment "B", which is attached hereto and

incorporated herein by this reference, for the first phase of development ("First Phase Annexed Property"). The City and Property Owners desire that the balance of the Property will be annexed, rezoned, platted and developed in subsequent phases, pursuant to this Agreement and the City's Comprehensive Plan and land development ordinances and design standards.

3. Property Owners have requested that the City rezone that portion of the First Phase Annexed Property referred to as Parcel 1, as legally described and shown on Attachment "B", from AG to R-3, and Parcel 2, as legally described and shown on Attachment "B", from AG to B-5 (collectively "First Phase Rezoning").

4. Eiger, with the consent of the Property Owners, has requested that the City approve a B-5 use permit and preliminary plat on Parcel 2, as legally described and shown on Attachment "B" (collectively "First Phase Site Plan").

5. The City's approval of the First Phase Annexed Property, First Phase Rezoning, and First Phase Site Plan are collectively referred to herein as "Governmental Actions".

6. The City is willing to approve the Governmental Actions and subsequently consider approving the annexation, rezoning, use permits, preliminary plats, and final plats for the balance of the Property pursuant to the Comprehensive Plan (collectively "Subsequent Governmental Actions"); provided that, the infrastructure improvements are constructed in a timely manner to serve and properly accommodate the area.

7. The City and Property Owners 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 for the Governmental Actions and Subsequent Governmental Actions. The parties also recognize that, in order to approve the Governmental Actions and

Subsequent Governmental Actions, it is necessary that the Property Owners assume certain cost responsibilities for various portions of the necessary municipal infrastructure improvements. The parties are entering into this Agreement for the purpose of providing for the construction of the infrastructure improvements necessary in order to approve the Governmental Actions and Subsequent Governmental Actions and for the allocation of cost responsibilities for such infrastructure improvements between the City and Property Owners.

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

**I.
CONCURRENT APPROVAL OF GOVERNMENTAL ACTIONS;
CONDITIONAL APPROVAL**

A. Concurrent Approval. The City, concurrently with the approval of this Agreement, is approving the following Governmental Actions:

1. Annexing the First Phase Annexed Property legally described and shown on Attachment "B"; and
2. Amending the Lincoln zoning district maps to adopt the First Phase Rezoning as legally described and shown on Attachment "B". The City and Property Owners recognize the zoning lines established hereunder may be shifted as part of an amendment to the preliminary plat, final plat or use permit process for the Property.
3. Consenting to the First Phase Site Plan by approving a B-5 use permit and preliminary plat on Parcel 2, as legally described and shown on Attachment "B".

B. Conditional Approval. Approvals of the Governmental Actions and the Subsequent Governmental 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; 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. DEFINITIONS

For purposes of this Agreement, the words and phrases, "infrastructure" or "infrastructure improvements" shall mean public trunk sanitary sewer lines, water transmission lines, major water distribution lines, water tank and booster pump stations, arterial and major collector streets, parks and trails infrastructure improvements located off-site or on-site of the Property and within the proposed or existing arterial right-of-ways of Old Cheney Road, 70th Street, Pine Lake Road, 84th Street, 56th Street, Yankee Hill Road, 87th Street, 91st Street, 98th Street and Highway 2, or major trunk or distribution line utility corridors as generally described in this Agreement or shown on the attachments to this Agreement. For purposes of this Agreement, the words and phrases, "cost" or "entire cost" of a type of infrastructure improvement shall be deemed to include all construction costs, engineering fees, testing expenses, inspection fees, publication costs, financing costs, and related miscellaneous costs, but shall exclude City personnel costs associated with the acquisition of right-of-way, unless otherwise defined herein.

III.
PHASED DEVELOPMENT OF THE PROPERTY

The Property Owners believe that the Property will be annexed, rezoned, platted and developed in various phases. For planning purposes, the Property Owners submitted to the City the potential phasing plan for the Property as shown on Attachment "C", which is attached hereto and incorporated herein by this reference. The City and the Property Owners agree that the proposed phases described in Attachment "C" are not binding and the phases may be developed out of the sequence shown on Attachment "C", except that the City and Property Owners agree that the area designated as "Phase 1" on Attachment "C" will be the first phase of development of the Property. Similarly, the City and the Property Owners agree that the subsequent phase(s) designated on Attachment "C" may develop in smaller geographic areas or in subphases. The Property Owners and the City recognize and understand that as part of this Agreement, the Property Owners and City are contributing the cost of the public infrastructure improvements to provide for the eventual phased annexation and zoning of all of the Property in accordance with Figure 16 of the Comprehensive Plan entitled *Lincoln's Land Use Plan*. The following sections describe the infrastructure improvements necessary to serve all phases of the Property and to promote the general health and welfare of the City.

IV.
SANITARY SEWER INFRASTRUCTURE IMPROVEMENTS

A. Sanitary Sewer Infrastructure Improvements. The City and Property Owners agree that the following are the sanitary sewer infrastructure improvements necessary to permit the Property to be sewerable and to promote the general health and welfare of the City. The sanitary sewer infrastructure improvements will be constructed within the time frames set forth

herein, unless the Property Owners and Director of Public Works consent to a different time frame, which such consent by both parties shall not be unreasonably withheld.

1. Antelope Creek Basin Infrastructure Improvements. The Property Owners agree to pay the City One Hundred Thirty Thousand Dollars (\$130,000) as their share of the required future downstream improvements (near the Holmes Park Dog Run area) to the Antelope Creek Basin sewer system needed in order to provide capacity for the transfer of sewage over the ridge line by the Property Owners payable within thirty (30) days following completion of said sewer infrastructure improvements by the City.

2. Phase I Sewer. An anticipated 15-inch diameter sanitary sewer, approximately 3,700 linear feet in length will be constructed by the Property Owners, at their cost, under the authority of an executive order issued by the Mayor of the City from Pine Lake Road south as generally shown on Attachment "D", which is attached hereto and incorporated herein by this reference, as part of the platting process. The Property Owners agree to use their best efforts to complete the Phase I Sewer by 2002. The Property Owners shall be responsible for the total cost of constructing the Phase I Sewer.

3. Phase IIA Sewer (Beal Slough). The City and Property Owners acknowledge that the construction of an anticipated Beal Slough sanitary sewer of varying diameters, as generally shown on Attachment "D", through the executive order process is dependent upon the cooperation of third party property owners. Consequently, the City agrees that in the event the Phase IIA Sewer is not constructed through the executive order process by the end of 2003, the City will use its best efforts to construct the Phase IIA Sewer through a special assessment district. If the Phase IIA Sewer is constructed through a sewer special

assessment district, the Property Owners shall not object to the City's levying of assessments against any portion of the Property that is included within the district(s) and shall pay all assessments so levied as they become due and payable. In the event the Phase IIA Sewer is constructed under the authority of an executive order issued by the Mayor, the Property Owners shall be responsible for the cost of that portion of the Phase IIA Sewer constructed on the Property.

4. Phase IIB Sewer (Antelope Creek Upper West Branch). The City and Property Owners acknowledge that the construction of an anticipated 10-inch diameter sanitary sewer, approximately 2,000 linear feet in length along the upper west branch of the Antelope Creek drainage area, as generally shown on Attachment "D", through the executive order process is dependent upon the cooperation of third party Property Owners. Consequently, the City agrees that in the event the Phase IIB Sewer is not constructed through the executive order process by the end of 2003, the City will use its best efforts to construct the Phase IIB Sewer through a special assessment district. If the Phase IIB Sewer is constructed through a sewer special assessment district, the Property Owners shall not object to the City's levying of assessments against any portion of the Property that is included within the district(s) and shall pay all assessments so levied as they become due and payable. In the event the Phase IIB Sewer is constructed under the authority of an executive order issued by the Mayor, the Property Owners shall be responsible for the cost of that portion of the Phase IIB Sewer constructed on the Property.

5. Sanitary Sewer Easements.

a. Easement Costs. In the event the Phase IIA Sewer and/or Phase IIB Sewer are constructed by the City through a special assessment district, the City shall acquire all temporary and permanent nonexclusive easements necessary for the construction and operation of the Phase IIA Sewer and the Phase IIB Sewer, except for those easements set forth in paragraph b. below. The costs of the temporary and permanent easements including the amount of any condemnation award, court costs, expert witness fees, condemnee attorney fees, testing fees, interest and City staff time and compensation shall be charged by the City to the special assessment district.

b. Easement Dedication. The Property Owners shall dedicate and convey all temporary and permanent nonexclusive sanitary sewer easements to the City necessary for the construction and operation of the Phase I Sewer, without additional cost or consideration, in conjunction with the construction of such sewer lines as set forth above. In addition, the Property Owners shall dedicate and convey to the City temporary and permanent nonexclusive sanitary sewer easements from the Property that are necessary for the City's construction of the Phase IIA Sewer and Phase IIB Sewer through a special assessment district. The permanent easements for the above sewers 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 the sewers, the Property Owners, at their own cost, with respect to the Phase I Sewer and the Phase IIA and IIB

Sewers if they are constructed through the executive order process, and the City, at the cost of the special assessment district, with respect to the Phase IIA Sewer and Phase IIB Sewer if they are constructed through a special assessment district, 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 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.

V.

WATER INFRASTRUCTURE IMPROVEMENTS

A. **Water System.** The City and Property Owners agree that the following are the water infrastructure improvements necessary to serve the Property and to promote the general health and welfare of the City. The water infrastructure improvements will be constructed within the time frames set forth herein, unless the Property Owners and Director of Public Works consent to a different time frame, which consent by both parties shall not be unreasonably withheld. The sizes of the water mains set forth below may be adjusted by the Director of Public Works, provided that, any reduction in size must be approved by the Property Owners, which approval will not be unreasonably withheld.

1. **Rural Water District Consent.** The Property Owners understand and acknowledge that the City may not furnish water to serve that portion of the Property located within the boundaries of the Lancaster County Rural Water District No. 1 ("District No. 1") without the consent and approval of District No. 1. The Property Owners have entered into

agreements with District No. 1 which provide for the release of the Property from District No. 1's rights and easements. The Property Owners shall be responsible for paying all costs charged by District No. 1 for such releases of the Property.

2. Booster Pump Station. Andermatt and Eiger, in conjunction with Pine Lake Development, L.L.C. ("Pine Lake"), constructed a water booster pump station in the approximate location shown on Attachment "E", which is attached hereto and incorporated herein by this reference, under the authority of an executive order issued by the Mayor of the City in 2000. All costs related to the construction of the booster pump station were paid by Andermatt, Eiger and Pine Lake.

3. Tank Relocation. The City shall be responsible, at its cost, for relocating the 4 MG capacity of the water storage reservoir currently located upon the City Tract as shown on Attachment "E" to a site near 84th Street and Yankee Hill Road where the City currently owns property and has plans for a 6 MG capacity water storage reservoir. The City is willing to increase the size of the 6 MG water storage reservoir to a 10 MG water storage reservoir to include the capacity of the relocated 4 MG water storage reservoir located on the City Tract; provided that the City Council designates the relocation of said water reservoir storage capacity as a City Capital Improvement Project. The City agrees to use its best efforts to include the relocation of the water reservoir storage capacity in its Capital Improvement Program for its fiscal year 2002-2003 and, if so included, agrees to use its best efforts to complete the relocation of the water reservoir storage capacity in 2003. To defray the cost of relocating the water reservoir storage capacity, the Property Owners shall contribute to the City an amount equal to twenty-six and three-tenths percent (26.3%) of the total cost of the 10 MG water storage

reservoir constructed near 84th Street and Yankee Hill Road minus a Four Hundred Thousand Dollar (\$400,000) credit within thirty (30) days following completion of the 10 MG water storage reservoir.

Concurrently with the approval of this Agreement, the City shall declare the east 160 feet of the City Tract surplus property and authorize its sale to Andermatt for One and 15/100 Dollars (\$1.15) per square foot, which amount is equivalent to the price the City paid to acquire the eastern portion of the City Tract. The east 160 feet of the City Tract shall be authorized for immediate sale and transfer of title to Andermatt upon receipt of cash consideration in the amount of Forty Two Thousand Three Hundred Twenty Dollars (\$42,320). The City shall simultaneously, if permissible, or as soon as legally possible, declare the remaining western 350 feet of the City Tract surplus property and authorize its sale to Andermatt for One and 15/100 Dollars (\$1.15) per square foot. The transfer of title to Andermatt and exchange of cash consideration in the amount of Ninety-two Thousand Five Hundred Seventy-five Dollars (\$92,575) for the remaining western 350 feet of the City Tract upon which the existing 4 MG water storage reservoir is located shall not occur until the 4 MG water storage reservoir storage capacity is relocated and the 4 MG water storage reservoir is taken out of service. At the time the 4 MG water reservoir is taken out of service, the City agrees to vacate and release its associated access and water transmission/distribution line easements located on the Property which provide access and connection between South 84th Street and the City Tract. Andermatt/Eiger shall have salvage rights to the 4 MG water storage reservoir and water lines once the storage capacity has been relocated by the City and the 4 MG water storage reservoir has been taken out of service.

The City agrees that while the 4 MG water storage reservoir is in use on the City Property, the Property Owners may provide an alternative access route, acceptable to the City, to the 4 MG water storage reservoir to facilitate grading and construction by the Property Owners.

4. 48" Water Line in 84th Street from Old Cheney Road to Beginning of 84th Street Relocation. A 48-inch water main shall be constructed by the City, at its cost, in 84th Street from Old Cheney Road south to the beginning of the section of 84th Street that is being relocated. The Property Owners shall not be responsible for any portion of the water line, nor will the City impose the construction of any portion of the water line as a requirement or condition of approval for any future plats and dedications, use permits, special permits, planned unit developments, or community unit plans incorporating therein any portion of the Property. The estimated time frame for construction of the 48-inch water main is 2003.

5. 48" Water Line in 84th Street from the Beginning of the Relocated 84th Street Section to Highway 2. A 48-inch water main shall be constructed by the City, at its cost, in 84th Street from the beginning of the relocated 84th Street south to Highway 2 provided that the City Council designates said water main for construction as a City Capital Improvement Project. The City agrees to use its best efforts to include the water main in its Capital Improvement Program for its fiscal year 2001-2002 and, if so included, agrees to use its best efforts to complete the water main in the fall of 2002. The Property Owners shall not be responsible for any portion of the water line, nor will the City impose the construction of any portion of the water line as a requirement or condition of approval for any future plats and dedications, use permits, special permits, planned unit developments, or community unit plans incorporating therein any portion of the Property.

6. 48" Water Line in 84th Street from Highway 2 to Amber Hill Road. A 48-inch water main shall be constructed by the City, at its cost, in 84th Street from Highway 2 south to Amber Hill Road provided that the City Council designates said water main for construction as a City Capital Improvement Project. The City agrees to use its best efforts to include the water main in its Capital Improvement Program for its fiscal year 2001-2002 and, if so included, agrees to use its best efforts to complete the water main in the fall of 2002. The Property Owners shall not be responsible for any portion of the water line, nor will the City impose the construction of any portion of the water line as a requirement or condition of approval for any future plats and dedications, use permits, special permits, planned unit developments, or community unit plans incorporating therein any portion of the Property.

7. 48" Water Line in 84th Street from Amber Hill Road to Yankee Hill Road. A 48-inch water main shall be constructed by the City, at its cost, in 84th Street from Amber Hill Road south to Yankee Hill Road provided that the City Council designates said water main for construction as a City Capital Improvement Project. The City agrees to use its best efforts to include the water main in its Capital Improvement Program for its fiscal year 2001-2002 and, if so included, agrees to use its best efforts to complete the water main in the fall of 2002. To defray the cost of the water main, the Property Owners shall contribute to the City the sum of Fifty Thousand Seven Hundred Fifty Dollars (\$50,750), payable within thirty (30) days following completion of said main.

8. Phase IA Water Line in Pine Lake Road. A 16-inch water main approximately 4,300 linear feet in length has been be constructed by the City, at its cost, in the

location shown as Phase IA on Attachment "E", which is attached hereto and incorporated herein by this reference.

9. Phase IIA Water Line through the Property. A 12-inch water main approximately 5,600 linear feet in length shall be constructed by the Property Owners, at their cost, under the authority of an executive order issued by the Mayor of the City in the location shown as Phase IIA on Attachment "E", as part of the platting process. The Property Owners agree to use their best efforts to complete the water main in 2002.

10. Phase IIB Water Line in Relocated 91st Street. A 12-inch water main approximately 4,650 linear feet in length shall be constructed by the Property Owners, at their cost, under the authority of an executive order issued by the Mayor of the City in the location shown as Phase IIB on Attachment "E", as part of the platting process. The Property Owners agree to use their best efforts to complete the water main in 2002.

11. Phase IIC Water Line in 84th Street. A 24-inch water main approximately 850 linear feet in length shall be constructed by the Property Owners, at their cost, under the authority of an executive order issued by the Mayor of the City in the location shown as Phase IIC on Attachment "E", as part of the platting process; provided, however, the water main shall be bid and awarded as required by law. The Property Owners agree to use their best efforts to complete the water main in 2002. The Property Owners shall be responsible for one-half of the cost of constructing a typical 8-inch water line abutting a commercial area. The City shall be responsible for the other one-half of the cost of such 8-inch water line as well as all costs attributable to oversizing the water main with pipe, valves, fittings and all other accessories that are larger than 8-inch.

12. Phase IIIA Water Line in 84th Street. A 24-inch water main approximately 1,800 linear feet in length shall be constructed by the Property Owners, at their cost, under the authority of an executive order issued by the Mayor of the City in the location shown as Phase IIIA on Attachment "E", as part of the platting process; provided, however, the water main shall be bid and awarded as required by law. The Property Owners agree to use their best efforts to complete the water main in 2002. The Property Owners shall be responsible for one-half of the cost of constructing a typical 8-inch water line abutting a commercial area. The City shall be responsible for the other one-half of the cost of such 8-inch water line as well as all costs attributable to oversizing the water main with pipe, valves, fittings and all other accessories that are larger than 8-inch.

13. Phase IVA Water Line in Pine Lake Road. A 16-inch water main approximately 1,200 linear feet in length shall be constructed by the City, at its cost, in the location shown as Phase IVA on Attachment "E", which is attached hereto and incorporated herein by this reference. The City Council has designated said water main for construction as a City project. The City agrees to use its best efforts to complete the water main by 2003.

14. Phase IVB Water Line in 98th Street. A 24-inch water main approximately 950 linear feet in length shall be constructed by the Property Owners, at their cost, under the authority of an executive order issued by the Mayor of the City in the location shown as Phase IVB on Attachment "E", as part of the platting process; provided, however, the water main shall be bid and awarded as required by law. The Property Owners agree to use their best efforts to complete the water main in 2003. The Property Owners shall be responsible for one-half of the cost of constructing a typical 6-inch water line abutting a residential area. The City shall be

responsible for the other one-half of the cost of such 6-inch water line as well as all costs attributable to oversizing the water main with pipe, valves, fittings and all other accessories that are larger than 6-inch.

15. Phase VA Water Line in 98th Street. A 24-inch water main approximately 2,000 linear feet in length shall be constructed by the Property Owners, at their cost, under the authority of an executive order issued by the Mayor of the City in the location shown as Phase VA on Attachment "E", as part of the platting process; provided, however, the water main shall be bid and awarded as required by law. The Property Owners agree to use their best efforts to complete the water main in 2004. The Property Owners shall be responsible for one-half of the cost of constructing a typical 6-inch water line abutting a residential area. The City shall be responsible for the other one-half of the cost of such 6-inch water line as well as all costs attributable to oversizing the water main with pipe, valves, fittings and all other accessories that are larger than 6-inch.

16. Phase VB Water Line through the Property. A 12-inch water main approximately 1,900 linear feet in length shall be constructed by the Property Owners, at their cost, under the authority of an executive order issued by the Mayor of the City in the location shown as Phase VB on Attachment "E", as part of the platting process; provided, however, the water main shall be bid and awarded as required by law. The Property Owners agree to use their best efforts to complete the water main in 2004. The Property Owners shall 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 attributable to oversizing the water main with pipe, valves, fittings and all other accessories that are larger than 6-inch.

17. Phase VC Water Line in 98th Street. A 24-inch water main approximately 2,350 linear feet in length shall be constructed by the Property Owners, at their cost, under the authority of an executive order issued by the Mayor of the City in the location shown as Phase VC on Attachment "E", as part of the platting process; provided, however, the water main shall be bid and awarded as required by law. The Property Owners agree to use their best efforts to complete the water main in 2004. The Property Owners shall be responsible for one-half of the cost of constructing a typical 6-inch water line abutting a residential area. The City shall be responsible for the other one-half of the cost of such 6-inch water line as well as all costs attributable to oversizing the water main with pipe, valves, fittings and all other accessories that are larger than 6-inch.

B. Easement Dedication. The Property Owners shall dedicate and convey all temporary and permanent nonexclusive water line easements located on the Property, excluding the Johnson Tract, to the City for Phase II, III, IV and V water lines set forth above, without additional cost or consideration, necessary for the construction and operation of such water lines in conjunction with the construction of such water lines as set forth above. The permanent easements for the water lines 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 the water lines, the Property Owners, at their own cost and expense, 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 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.

VI. STREET INFRASTRUCTURE IMPROVEMENTS

A. **Streets.** The City and the Property Owners covenant and agree that the following street and intersection infrastructure improvements and related grading, drainage, traffic signals and ornamental lighting (collectively "Street Improvements") will be needed:

1. South 84th Street - One-fourth Mile North of Pine Lake Road Through Highway 2 Intersection ("84th Street North Section"). The City shall be responsible, at its cost, to design, grade and pave to Urban Standards, including storm sewer, the 84th Street North Section as a four lane cross section with twenty-eight (28) feet wide medians, as conceptually shown on Attachment "F", which is attached hereto and incorporated herein by this reference, including left turn lanes at all of the full access intersections.

The City agrees to construct the following additional intersection improvements as conceptually shown on Attachment "G", which is attached hereto and incorporated herein by this reference, as part of the 84th Street North Section road project; provided that, the Property Owners shall reimburse the City for the costs of the additional intersection improvements listed below within thirty (30) days following completion of the improvements, unless another funding formula is stated:

a. South 84th Street and Highway 2. 150 feet westbound right turn lane, 275 feet southbound right turn lane, 150 feet eastbound right turn lane, lengthening westbound left turn lane to 200 feet, 250 feet southbound second left turn lane, 200 feet eastbound second left turn lane and 150 feet northbound second left turn lane.

b. South 84th Street and Eiger Drive . 150 feet northbound right turn lane, 150 feet northbound left turn lane, 250 feet southbound dual left turn lanes, and additional improvements necessary to connect the South 84th Street and Eiger Drive intersection to the existing South 84th Street. The Property Owners shall only be responsible for reimbursing the City for forty-eight percent (48%) of the total costs of the improvements contained in this subparagraph b.

c. South 84th Street and relocated Pine Lake Road. 300 feet northbound right turn lane, 200 feet westbound second left turn lane and 150 feet southbound left turn lane.

In addition, the City shall be responsible for all costs associated with the design and construction of traffic signals at the intersections of South 84th Street with Pine Lake Road, Eiger Drive and Highway 2 as part of the 84th Street North Section; provided that, the Property Owners shall reimburse the City for forty-eight percent (48%) of the costs associated with the design and construction of a traffic signal at the intersection of South 84th Street and Eiger Drive within thirty (30) days of completion of the signal.

The City shall be responsible for all wetland mitigation costs associated with the construction of the 84th Street North Section.

The City agrees to use its best efforts to include the 84th Street North Section in its Capital Improvement Program for its fiscal year 2002-2003 and, if so included, agrees to use its best efforts to complete the 84th Street North Section by the end of 2003.

2. South 84th Street from Highway 2 to Amber Hill Road ("84th Street South Section"). The City agrees, at its cost, to: (i) grade the 84th Street South Section as a four lane cross section with twenty-eight (28) feet wide medians to Urban Standards; and (2) design and pave the internal two through lanes, median and turn lanes of the 84th Street South Section to Urban Standards, including the full intersection with Amber Hill Road, as conceptually shown on Attachment "F", not including inlets associated with the outside through lanes and storm sewer laterals located outside the limits of pavement; provided that the City Council designates said road project as a Capital Improvement Project. The City agrees to use its best efforts to include the road project in its Capital Improvement Program for its fiscal year 2002-2003 and, if so included, agrees to use its best efforts to complete the 84th Street South Section by the end of 2003. To defray the cost of the 84th Street South Section, the Property Owners shall contribute fifty percent (50%) of the actual costs of such improvements to the City, payable within thirty (30) days following completion of said 84th Street South Section. In addition, the Property Owners shall be responsible for all costs associated with the design and construction of a signal at the intersection of South 84th Street and Amber Hill Road at the time the intersection meets the volume warrant (#1), the interruption of continuous traffic warrant (#2), or safety warrant (#6) established by the then current version of the Federal Highway Administration's Manual on Uniform Traffic Control Devices, and is recommended for a traffic signal by the City, which

recommendation will not be unreasonably withheld (hereinafter collectively described as “Warranted and Recommended”).

3. South 87th Street. The Property Owners shall be responsible, at their cost, under the authority of an executive order issued by the Mayor of the City, to design, grade and pave the intersection of South 87th Street and Highway 2 as conceptually shown on Attachment “H”, which is attached hereto and incorporated herein by this reference. In addition, the Property Owners shall be responsible for all costs associated with the design and construction of a traffic signal at the intersection as part of the intersection improvements. The Property Owners shall use their best effort to complete the South 87th Street improvements in 2002.

4. South 91st Street from relocated Pine Lake Road through Highway 2 Intersection (“91st Street North Section”). The Property Owners shall be responsible, at their cost, under the authority of an executive order issued by the Mayor of the City to: (i) grade the 91st Street North Section as a four lane cross section with twenty-eight (28) feet wide medians to Urban Standards; and (2) design and pave the internal two through lanes, median and turn lanes of the 91st Street North Section to Urban Standards, including left turn lanes at the intersections allowing full access, as conceptually shown on Attachment “I”, which is attached hereto and incorporated herein by this reference, not including inlets associated with the outside through lanes and storm sewer laterals located outside the limits of pavement; provided, however, said 91st Street North Section shall be bid and awarded as required by law. The 91st Street North Section shall also include the construction of a temporary asphalt roadway that connects the 91st Street North Section to existing Pine Lake Road conceptually shown on Attachment “I”. To defray the cost of the 91st Street North Section, the City shall contribute thirty-eight and five

tenths percent (38.5%) of the actual costs of such improvements, including wetland mitigation costs, but excluding the grading costs outlined above, to the Property Owners. The City contribution may, at the request of the Property Owners, be made through progress payments directly to the contractor as the improvements are being constructed.

The Property Owners shall also be responsible for constructing, at their cost and without any City contribution, a 225 feet northbound right turn lane, a 150 feet westbound right turn lane and a 150 feet southbound right turn lane at the intersection of South 91st Street and Highway 2 as part of the 91st Street North Section, as conceptually shown on Attachment "J", which is attached hereto and incorporated herein by this reference.

The Property Owners agree to include the design and construction of traffic signal at the intersection of South 91st Street and Highway 2 as part of the 91st Street North Section; provided that, the City shall be responsible for reimbursing the Property Owners for all of such costs. The Property Owners shall be responsible for all costs associated with the design and construction of traffic signals at the intersections of South 91st Street with Andermatt Drive and Heritage Lakes Drive at the time traffic signal control at each intersection is Warranted and Recommended.

The Property Owners shall use their best effort to complete the 91st Street North Section in 2002.

5. South 91st Street from Highway 2 Southwest Approximately 600 Feet ("91st Street South Section"). The Property Owners shall be responsible, at their cost, under the authority of an executive order issued by the Mayor of the City to: (i) grade the 91st Street South Section as a four lane cross section with twenty-eight (28) feet wide medians to Urban Standards;

and (2) design and pave the internal two through lanes, median and turn lanes of the 91st Street South Section to Urban Standards, including left turn lanes at the intersections allowing full access, as conceptually shown on Attachment "I", not including inlets associated with the outside through lanes and storm sewer laterals located outside the limits of pavement; provided, however, said 91st Street South Section shall be bid and awarded as required by law. To defray the cost of the 91st Street South Section, the City shall contribute fifty percent (50%) of the actual costs of such improvements to the Property Owners. The City contribution may, at the request of the Property Owners, be made through progress payments directly to the contractor as the improvements are being constructed. The Property Owners shall use their best effort to complete the 91st Street South Section in 2002.

The City shall be responsible for all costs associated with the construction of a connector road from the 91st Street South Section to Cheney.

6. Pine Lake Road from Relocated South 84th Street through South 87th Street Intersection ("PLR West Section"). The City shall be responsible, at its cost, to design, grade and pave to Urban Standards, including storm sewer, the PLR West Section as a four lane cross section with twenty-eight (28) feet wide medians, as conceptually shown on Attachment "K", which is attached hereto and incorporated herein by this reference, including left turn lanes at all of the full access intersections. To defray the cost of the PLR West Section, the Property Owners shall reimburse the City for thirty-three percent (33%) of the costs of the above improvements within thirty (30) days following completion of the improvements.

In addition, the City agrees to construct, at its cost and with no contribution from the Property Owners, a 150 feet right turn lane at the intersection of Pine Lake Road and South

87th Street, as part of the PLR West Section. In addition the City shall be responsible for all costs associated with the design and construction of a traffic signal at the intersection of Pine Lake Road and South 84th Street. The Property Owners shall be responsible for all costs associated with the design and construction of a traffic signal at the intersection of Pine Lake Road and South 87th Street at the time traffic signal control at the intersection is Warranted and Recommended.

The City agrees to use its best efforts to include the PLR West Section in its Capital Improvement Program for its fiscal year 2004-2005 and, if so included, agrees to use its best efforts to complete the PLR West Section by the end of 2004.

7. Pine Lake Road from South 87th Street through South 91st Street Intersection ("PLR Middle Section"). The City agrees, at its cost, to: (i) grade the PLR Middle Section as a four lane cross section with twenty-eight (28) feet wide medians to Urban Standards; and (2) design and pave the internal two through lanes, median and turn lanes of the PLR Middle Section to Urban Standards, including the full intersection with South 91st Street, as conceptually shown on Attachment "K", not including inlets associated with the outside through lanes and storm sewer laterals located outside the limits of pavement; provided that the City Council designates said road project as a Capital Improvement Project. The City agrees to use its best efforts to include the road project in its Capital Improvement Program for its fiscal year 2004-2005 and, if so included, agrees to use its best efforts to complete the 84th Street South Section by the end of 2004. The PLR Middle Section shall include a 150 feet southbound right turn lane at the intersection of Pine Lake Road and South 91st Street. To defray the cost of the PLR Middle Section, the Property Owners shall contribute fifty percent (50%) of the actual costs of such

improvements to the City, payable within thirty (30) days following completion of said PLR Middle Section.

As part of the PLR Middle Section, the City shall be responsible, at its cost and with no contribution from the Property Owners, for the design and construction of a signal at the intersection of South 91st Street and Pine Lake Road.

8. Pine Lake Road from South 91st Street to South 98th Street (“PLR East Section”). The City agrees, at its cost, to: (i) grade the PLR East Section as a four lane cross section with twenty-eight (28) feet wide medians to Urban Standards; and (2) design and pave the internal two through lanes, median and turn lanes of the PLR East Section to Urban Standards, including the full intersection with South 98th Street, as conceptually shown on Attachment “L”, which is attached hereto and incorporated herein by this reference, not including inlets associated with the outside through lanes and storm sewer laterals located outside the limits of pavement; provided that the City Council designates said road project as a Capital Improvement Project. The City agrees to use its best efforts to include the road project in its Capital Improvement Program for its fiscal year 2005-2006 and, if so included, agrees to use its best efforts to complete the PLR East Section by the end of 2005. To defray the cost of the PLR East Section, the Property Owners shall contribute all of the cost of the 150 feet eastbound left turn lane at the intersection with Glass Ridge Drive in addition to twenty-five percent (25%) of the actual costs of the remaining improvements set forth above to the City, payable within thirty (30) days following completion of said PLR East Section.

As part of the PLR East Section, the City shall be responsible, at its cost and with no contribution from the Property Owners, for the design and construction of a signal at the

intersection of South 98th Street and Pine Lake Road. In addition, the City shall be responsible, at its cost, for the design and construction of a southbound free right turn lane in South 98th Street at Pine Lake Road, if such right turn lane is desired by the City; provided, however, the Property Owners shall be responsible for reimbursing the City for the costs incurred in the acquisition of the necessary right-of-way for the southbound free right turn lane in South 98th Street.

9. South 98th Street from Pine Lake Road through Widgeon Lane Intersection ("98th Street North Section"). The Property Owners shall be responsible, at their cost, under the authority of an executive order issued by the Mayor of the City to: (i) grade the 98th Street North Section, as a four lane cross section with twenty-eight (28) feet wide medians to Urban Standards; and (2) design and pave the internal two through lanes, median and turn lanes of the 98th Street North Section to Urban Standards, including left turn lanes at the intersections allowing full access, as conceptually shown on Attachment "M", which is attached hereto and incorporated herein by this reference, not including inlets associated with the outside through lanes and storm sewer laterals located outside the limits of pavement; provided, however, such 98th Street North Section shall be bid and awarded as required by law. To defray the cost of the 98th Street North Section, the City shall contribute all of the cost of the two left turn lanes constructed at South 98th Street and Widgeon Lane as well as seventy-five percent (75%) of the actual costs of remaining improvements set forth above to the Property Owners. The City contribution may, at the request of the Property Owners, be made through progress payments directly to the contractor as the improvements are being constructed. The Property Owners agree to use their best efforts to complete the 98th Street North Section in 2002.

10. South 98th Street from Widgeon Lane to Approximately 400 Feet North of Highway 2 ("98th Street South Section"). The Property Owners shall be responsible, at their cost, under the authority of an executive order issued by the Mayor of the City to: (i) grade the 98th Street South Section, to the extent possible, as a four lane cross section with twenty-eight (28) feet wide medians to Urban Standards; and (2) design and pave the internal two through lanes, median and turn lanes of the 98th Street South Section to Urban Standards, including left turn lanes at the intersections allowing full access, as conceptually shown on Attachment "M", not including inlets associated with the outside through lanes and storm sewer laterals located outside the limits of pavement; provided, however, such 98th Street South Section shall be bid and awarded as required by law. To defray the cost of the 98th Street South Section, the City shall contribute all of the cost of the two left turn lanes constructed at the full access intersection in South 98th Street as well as seventy-five percent (75%) of the actual costs of remaining improvements set forth above to the Property Owners. The City contribution may, at the request of the Property Owners, be made through progress payments directly to the contractor as the improvements are being constructed. The Property Owners agree to use their best efforts to complete the 98th Street North Section in 2007.

B. Trips and Square Footage. The City and Property Owners agree that the design of the Street Improvements will accommodate 5,283 "net" commercial vehicular trips (which number reflects a 15% internal trip reduction and a 20% pass-by reduction) generated by the square feet of commercial floor area allocated north of Highway 2 ("North Area") and south of Highway 2 ("South Area") for the Property as follows:

P.M. Peak Hour Net Commercial Vehicle Trips

| | |
|------------|-------------|
| North Area | 4044 |
| South Area | <u>1239</u> |
| Total | 5,283 |

The North Area and South Area are individually referred to herein as “Area”. The parties recognize the City may require additional street infrastructure improvements in conjunction with the granting of additional use permits, special permits, and subdivision plats for commercial uses (individually and collectively “Commercial Land Use Action”) for the Property that is subject to this Agreement; provided that, the City shall not require any additional infrastructure improvements or contributions toward additional infrastructure improvements in conjunction with the granting of a Property Owner’s Commercial Land Use Action on any portion of the Property unless the number of P.M. peak hour trips generated by the uses requested in the Property Owner’s Land Use Action exceed the total P.M. peak hour trips shown for the Area on the chart above. In the event a Property Owner submits and the City approves a Commercial Land Use Action within an Area whose uses generate a greater number of P.M. trips than the Area is allocated on the chart above, the Property Owner submitting such request for Governmental Action shall be responsible, at its expense, for additional infrastructure improvements or contributions toward additional infrastructure improvements that, based upon the City’s standards, are required but are not included within paragraph A. above. In the event a Property Owner submits and the City approves a Commercial Land Use Action within an Area whose uses generate a greater number of P.M. trips than the Area is allocated on the chart above, and the City determines that, based upon the City’s standards, no additional infrastructure

improvements or contributions are required in addition to those identified within paragraph A. above, then the chart above shall automatically be amended to show the new number of P.M. trips allowed within the Area under the Governmental Action.

C. **Right-of-Way and Land Exchanges.** The Property Owners and City agree to the following exchanges of right-of-way, land and easements.

1. **Dedication of Right-of-Way.** The Property Owners agree to dedicate the following right-of-way located within the Property, excluding the Johnson Tract, to the City at no cost:

a. up to 130 feet width of right-of-way for the 84th Street North Section; provided that, the City shall support corresponding setback waivers along the east side of South 84th Street of up to ten (10) feet;

b. up to 65 feet width of right-of-way measured from the centerline of the street for the 84th Street South Section; provided that, the City shall support corresponding setback waivers along the east side of South 84th Street of up to fifteen (15) feet;

c. up to 65 feet width of right-of-way measured from the centerline of the street for each side of the Property abutting the PLR West Section, PLR Middle Section and PLR East Section; provided that the City shall support corresponding setback waivers for that portion of the Andermatt Tract located along the south side of the PLR West Section and PLR Middle Section of up to fifteen (15) feet;

d. up to 65 feet width of right-of-way measured from the centerline of the street along the west side of South 98th Street ; and

e. 130 feet width of right-of-way for the 91st Street North Section, as legally described on Attachment “N”, which is attached hereto and incorporated herein by this reference; provided that the City shall support the front yard setback waivers along the west side of the 91st Street North Section shown on the First Phase Site Plan and similar waivers for the remaining phases. The Property Owners shall have the option to dedicate and the City agrees to accept the 91st Street North Section right-of-way described on Attachment “N” by warranty deed or as part of the platting process.

2. Vacation and Transfer of Right-of-Way. The City agrees to use its best efforts to work with Lancaster County and the State of Nebraska to cause the vacation and transfer of the following right-of-way and easements to Andermatt and the abutting property owners, at no cost, except as provided herein. The City acknowledges the following vacations and transfers are consideration for the Property Owners’ dedication of the right-of-way set forth in Paragraph C.1. above, and if the City fails to vacate and transfer the right-of-way as set forth below, at no cost, the City will reimburse the Property Owners for an amount equivalent to the consideration received from the Property Owners. In order to facilitate the vacation of the following right-of-way, the Property Owners agree to execute the necessary petitions to vacate and quit claim deeds as abutting property owners, in a form acceptable to the City Attorney, and to use their best efforts to obtain the necessary petitions to vacate and quit claim deeds from third party abutting property owners.

a. Upon dedication and completion of the 84th Street North Section and receipt of the necessary vacation petitions from abutting property owners, the City administration shall recommend the vacation of any unused portions of the existing South 84th

Street right-of-way located north of Highway 2 and that each one-half be transferred, subject to existing utility easements, to the abutting property owners; provided, however, that portion of the existing right-of-way located between Highway 2 and Eiger Drive shall not be vacated unless and until alternative public street access that is acceptable to the City is dedicated to the abutting properties;

b. Upon dedication and completion of the new 84th Street South Section and receipt of the necessary vacation petitions from abutting property owners, the City administration shall recommend the vacation of any unused portions of the existing South 84th Street right-of-way located south of Highway 2 shall be vacated and that the east one-half be transferred, subject to existing utility easements, to Andermatt as the abutting property owner;

c. Upon dedication and completion of the new relocated Pine Lake Road and receipt of the necessary vacation petitions from abutting property owners, the City administration shall recommend the vacation of any unused portions of the existing Pine Lake Road right-of-way located east of South 84th Street abutting the Andermatt Tract and that each half of the right-of-way abutting the Andermatt Tract be transferred, subject to existing utility easements, to Andermatt; and

d. Upon dedication of the right-of-way for the 91st Street North Section and receipt of the necessary vacation petitions from abutting property owners, the City administration shall recommend the vacation of any unused portions of the existing South 91st Street right-of-way and the release of any utility easements located therein, and the transfer of vacated South 91st Street to Andermatt.

In the event, despite the City's best efforts, the State of Nebraska imposes a charge for the vacation and transfer of any unused portion of the existing South 84th Street, Pine Lake Road or South 91st Street right-of-way set forth above, Andermatt shall be responsible for payment of such cost to the State of Nebraska in exchange for the right-of-way.

3. Third Party Right-of-Way. The cost of additional right-of-way that needs to be acquired from third parties, other than the Property Owners, for the construction of the road improvements set forth above ("Third Party ROW") shall be prorated between the City and Property Owners as follows:

- a. 84th Street North Section - 100% City
- b. 84th Street South Section - 50% City, 50% Property Owners
- c. South 87th Street and Highway 2 Intersection - 100% Property Owners.
- d. 91st Street North Section - 33% City, 67% Property Owners
- e. 91st Street South Section - 50% City, 50% Property Owners
- f. PLR West Section - 67% City, 33% Property Owners
- g. PLR Middle Section - 50% City, 50% Property Owners
- h. PLR East Section - 75% City, 25% Property Owners; provided that 100% of the Third Party ROW cost for the southbound free right turn lane at Pine Lake Road and South 98th Street shall be the responsibility of the Property Owners.
- i. 98th Street North Section - 75% City, 25% Property Owners
- j. 98th Street South Section - 75% City, 25% Property Owners

The City and Property Owners agree that in order to avoid or reduce the need to acquire Third Party ROW, (i) the Property Owners shall have the right to shift a road improvement and dedicate more right-of-way on their side of the roadway, in which case the City will consider a corresponding setback waiver, and (ii) the City will use its best efforts to require the rational minimum (and not the maximum) right-of-way based upon sound traffic/utility engineering principals necessary for the road improvements to meet the planned utility improvements, trails and traffic lanes (including right turn lanes and dual left turn lanes) shown in the Comprehensive Plan.

In the event the City acquires from a third party a parcel that is severed by the Third Party ROW that is being acquired, and said severance abuts the Andermatt Tract, then Andermatt shall have the option to acquire, at the City's acquisition cost, any portion of the severance parcel that the City does not wish to retain.

C. **State Permits.** The City and Property Owners agree to use their best efforts to cooperate and work together to obtain all necessary permits from the State of Nebraska needed for the construction of the road improvements set forth above.

VII. OTHER NECESSARY MUNICIPAL INFRASTRUCTURE IMPROVEMENTS

A. **Sidewalks.** Each Property Owner agrees to be responsible, at its cost, for those street sidewalks abutting each Property Owner's respective tract and to complete said sidewalks as required by the City's platting, use permit or special permit process concurrent with adjacent development, except as provided below. Notwithstanding any previous provisions herein, the

Property Owners shall not be liable for sidewalks located on or directly adjacent to property that is owned by a third party.

B. South 91st Street Trail. The Property Owners shall dedicate as part of the South 91st Street right-of-way and front yard setback area, a hiker/biker trail as generally shown on Attachment "O", which is attached hereto and incorporated herein by this reference, at grade along the east side of South 91st Street from the south side of Pine Lake Road to the north side of Highway 2. In addition, the Property Owners agree to dedicate a hiker/biker trail in the front yard setback area along the north side of Highway 2 east of South 91st Street to help facilitate an above grade or below grade trail crossing of Highway 2 as generally shown on Attachment "O". The location of the trail is recognized to be general and may be adjusted through mutual agreement between the City and Property Owners.

The City shall be responsible for constructing the trail improvements along South 91st Street and Highway 2, including any grade separated crossings of Pine Lake Road and/or Highway 2. The Property Owners agree to contribute One Hundred Ten Thousand Dollars (\$110,000) to the City to defray the cost of the South 91st Street trail infrastructure improvements and the Pine Lake Road grade separated crossing within thirty (30) days of receipt of notice from the City that the Pine Lake Road grade separated crossing has been completed. The City and Property Owners recognize the trail improvements located along the east side of South 91st Street will serve as a sidewalk connection from Highway 2 to Pine Lake Road and that the Property Owners shall have no further obligation for the construction of sidewalks along the east side of South 91st Street.

VIII.
CONSTRUCTION STANDARDS AND BID PROCESS

Unless otherwise stated herein or modified by the City Council, 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.

Notwithstanding any of the foregoing provisions, if the City's contribution to an infrastructure improvement equals \$10,000 or more, such infrastructure improvement shall be bid and awarded as required by law. In the event the bids received for such infrastructure improvement exceed the engineer's cost estimate prepared with the construction plans by ten percent (10%) or more, the City and Property Owners shall meet to review the bids and determine an appropriate course of action.

IX.
SECURITY

In conjunction with the final platting of the Property, the Property Owners shall provide to the City bonds, escrows or other security agreements, approved by the City Attorney, in the following amounts as security for the listed infrastructure:

- A. \$84,500 to guaranty construction of the Phase I Sewer as described in Section IV.A.2.;
- B. \$863,000 to guaranty payment for the water storage reservoir relocation and \$134,895 for payment for the City Tract as described in Section V.A.3.;
- C. \$50,750 to guaranty payment for the water main described in Section V.A.7.;
- D. \$285,600 to guaranty construction of the water main described in Section V.A.9.;

- E. \$237,150 to guaranty construction of the water main described in Section V.A.10.;
- F. \$14,450 to guaranty construction of the water main described in Section V.A.11.;
- G. \$30,600 to guaranty construction of the water main described in Section V.A.12.;
- H. \$13,300 to guaranty construction of the water main described in Section V.A.14.;
- I. \$28,000 to guaranty construction of the water main described in Section V.A.15.;
- J. \$53,200 to guaranty construction of the water main described in Section V.A.16.;
- K. \$32,900 to guaranty construction of the water main described in Section V.A.17.;
- L. \$400,500 to guaranty payment for the road improvements described in Section VI.A.1.;
- M. \$216,000 to guaranty payment for the road improvements described in Section VI.A.2.;
- N. \$355,000 to guaranty construction of the road improvements described in Section VI.A.3.;
- O. \$1,198,750 to guaranty construction of the road improvements described in Section VI.A.4.;
- P. \$108,000 to guaranty construction of the road improvements described in Section VI.A.5.;
- Q. \$345,666 to guaranty payment for the road improvements described in Section VI.A.6.;
- R. \$180,000 to guaranty payment for the road improvements described in Section VI.A.7.;

S. \$220,000 to guaranty payment for the road improvements described in Section VI.A.8.;

T. \$71,970 to guaranty construction of the road improvements described in Section VI.A.9.;

U. \$400,331 to guaranty construction of the road improvements described in Section VI.A.10; and

V. \$110,000 to guaranty payment for the trail improvements described in Section VII.B.

X. FUTURE COST RESPONSIBILITIES

It is understood and agreed between the parties that as long as the Property is zoned in accordance with Figure 16 of the Comprehensive Plan entitled *Lincoln's Land Use Plan* and the traffic generated from the uses shown on the Property does not exceed the total P.M peak hour trips for the Areas shown on the chart in Section VI.B. above, then (i) the Property Owners shall have no further responsibility in the future to construct or pay for any infrastructure improvements, impact fees, special assessments or charges for infrastructure improvements associated with a request for annexation, zoning, plats and dedications, use permits, special permits, planned unit developments, or community unit plans incorporating therein the Property, and (ii) the City agrees not to transfer or require the Property Owners to assume any infrastructure costs that the City is required to pay for or construct under this Agreement as a requirement or condition of approval for any future plats and dedications, use permits, special permits, planned unit developments, or community unit plans incorporating therein any portion

of the Property. However, the Property Owners recognize they are still responsible to construct the internal road and internal utility improvements, including, but not limited to, storm sewer, sanitary sewer, water, paving, grading, drainage, sidewalk and ornamental lighting necessary to service the Property pursuant to the City's land subdivision ordinance design standards and practices.

XI. 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.

XII. 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

Andermatt/Eiger: Seacrest & Kalkowski, P.C.
ATTN: Kent Seacrest
1111 Lincoln Mall, Suite 350
Lincoln, Nebraska 68508

Westcor John H. Bergmeyer
Attorney at Law
800 Lincoln Square
121 So. 13th Street
Lincoln, Nebraska 68501-2028

Realty Trust Bob Weigel
Attorney at Law
2300 South 48th
Lincoln, Nebraska 68506

Olson Jack Wolfe
Attorney at Law
1248 "O" Street, suite 830
Lincoln, Nebraska 68508

**XIII.
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.

**XIV.
AMENDMENTS**

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

**XV.
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.

**XVI.
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.

**XVII.
GOVERNING LAW**

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

**XVIII.
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.

**XIX.
RELEASE**

Notwithstanding any contrary provisions herein, any Buildable Lot shall automatically be deemed released from all of the terms of this Agreement without further written release, except for Sections X and XV. A "Buildable Lot" shall mean a buildable lot of record as defined by the City subdivision ordinances that has been lawfully subdivided from the Property.

**XX.
AUTHORITY**

The undersigned parties acknowledge that, notwithstanding any contrary provision herein, Realty Trust, as buyer, and Olson, as seller, executed a written purchase agreement regarding the Olson Tract described in Attachment "A" and the legality and enforceability of said purchase agreement is being litigated by the two parties. Therefore, the division of Realty Trust's and Olson's rights, title, interests, obligations, and duties to enter into, enforce and be subject to this Agreement are subject to and contingent upon the final outcome of the pending litigation. Subject to the preceding sentence, this Agreement has been duly executed and delivered by the parties and constitutes a legal, valid and binding obligation of each party, enforceable against the same in accordance with its terms.

**XXI.
JOHNSON TRACT**

Bruce A. Johnson and Suzanne Johnson, husband and wife, (collectively "Johnson") are not parties to this Agreement but are property owners of the Johnson Tract, legally described on Attachment "A". The Johnson Tract is incorporated into the definition of "Property" as used in this Agreement. Certain infrastructure improvements described in this Agreement abut, impact and/or benefit the Johnson Tract (collectively "Johnson Infrastructure"). The City agrees that Eiger is paying for the Johnson's fair share costs associated with the Johnson Tract. The City agrees to use its best efforts to collect from Johnson, or their successors and assigns, the Johnson's "fair share" amount for the Johnson Infrastructure and upon receipt of such payment(s) the City agrees to pay said amount(s) to Eiger. The City's obligation to use its best efforts to collect from Johnson shall expire ten (10) years from the date of this Agreement.

Notwithstanding the above, the Property Owners understand and agree that the City cannot contract away its police powers and legislative discretion and, thus, the duty of the City to use its best efforts to charge the owners of the other properties their fair share of the cost of said infrastructure improvements does not require the City Council for the City to adopt nor restrict the Council from adopting ordinances affecting the City's ability to charge property owners for the right to connect or use the City's infrastructure improvements. Notwithstanding any of the foregoing provisions contained in this Agreement, the Property Owners' obligations hereunder to grant right-of-way and easements from the Property necessary for the construction of infrastructure improvements shall not apply to the Johnson Tract or be enforced with respect to the Johnson Tract.

**XXII.
MEMORANDUM**

A summary memorandum of this Agreement, which is attached hereto as Attachment "P" and incorporated herein by this reference, shall be recorded by the City with the Register of Deeds of Lancaster County, filing fees therefore to be paid in advance by the Property Owners.

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:

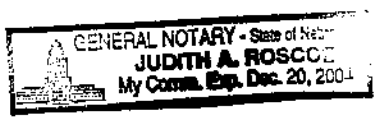
Carol E. Ross
City Clerk

By:

Don Wesely
_____, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 13th day of November, 2001 by Don Wascely, Mayor of the CITY OF LINCOLN, NEBRASKA, on behalf of the City of Lincoln, Nebraska.



Judith A. Roscoe
Notary Public

“Andermatt”

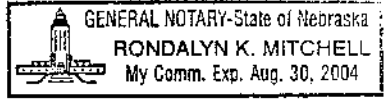
ANDERMATT, L.L.C., a Nebraska limited liability company

By: Kelvin Korver
Kelvin Korver, Managing Member

By: Greg Sutton
Greg Sutton, Managing Member

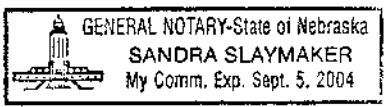
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 28 day of August, 2001, by Kelvin Korver, Managing Member of **Andermatt, L.L.C**, a Nebraska limited liability company, on behalf of the limited liability company.



Rondalyn K. Mitchell
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)



The foregoing was acknowledged before me this 27th day of August, 2000, by Greg Sutton, Managing Member of **Andermatt, L.L.C**, a Nebraska limited liability company, on behalf of the limited liability company.

Sandra Slaymaker
Notary Public