



17R-63

Introduce: 2-13-17

RESOLUTION NO. A- 90299

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

1. That the Annexation Agreement for Van Dorn Street Coalition, which is attached hereto, marked as Attachment "A" and made a part hereof by reference, by and among JLW LP, Clair W. Cooley and Linda Cooley, Roger H. Graff, Matodol, LLC, Daryl Lee Bohac and Kristie A. Bohac, Christopher A. Kidwell (collectively the "Parcel Owners"), and the City of Lincoln, Nebraska, outlining certain conditions and understandings relating to the annexation of approximately 5.12 acres of property generally located on the north side of Van Dorn Street, west of South 91st Street, is approved.

2. That the Mayor is authorized to execute the Annexation Agreement for Van Dorn Street Coalition on behalf of the City.

3. 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 Parcel Owners.

4. The City Clerk is directed to record the Annexation Agreement for Van Dorn Street Coalition with the Register of Deeds to be indexed against the properties listed in Attachment "A" to the Annexation Agreement, filing fees to be paid by the Parcel Owners.

5. The City Clerk is directed to forward a copy of this Agreement to Michaela Dugan, Impact Fee Administrator.

Introduced by:

Jane Raybould
AYES: Camp, Christensen, Eskridge, Fellers, Gaylor Baird, Lamm; NAYS: None; ABSENT: Raybould.

Approved as to Form & Legality:

Jeffery R. Kutzsch
City Attorney

Approved this 9th day of March, 2017:
[Signature]
Mayor

ADOPTED
MAR 06 2017
BY CITY COUNCIL

2-7-17

**ANNEXATION AGREEMENT
FOR VAN DORN STREET COALITION**

This Annexation Agreement for Van Dorn Street Coalition ("Agreement") is made and entered into as of the date of execution by the last signatory hereto as indicated below by and among the **City of Lincoln, Nebraska**, a municipal corporation ("City"). **JLW LP**, a Nebraska limited partnership, **Clair W. Cooley and Linda Cooley**, husband and wife, **Roger H. Graff**, a married person, **Matodol, LLC**, a Nebraska limited liability company, (collectively "Matodol"), **Daryl Lee Bohac and Kristie A. Bohac**, husband and wife and **Christopher A. Kidwell**, a married person. JLW LP, Clair W. Cooley and Linda Cooley, Roger Graff, Matodol, Daryl and Kristie Bohac and Christopher A. Kidwell are hereinafter collectively referred to as the "Parcel Owners" and individually as a "Parcel Owner".

RECITALS

1. The Parcel Owners are the owners and developers of the real estate identified as Parcel Nos. 1-7 on Exhibit "A". The name of the Parcel Owner of each Parcel is also set forth on Exhibit "A". Parcel Nos. 1-7 are individually referred hereafter as "Parcel" and collectively hereinafter referred to as the "Property". The City and Parcel Owners desire to cause the urban development of the Property.

2. The Property is shown as Tier 1, Priority B (2040) on the 2040 Priority Growth Areas (Map 1.3 Growth Tiers with Priority Areas) in the Lincoln City-Lancaster County Comprehensive Plan.

3. The City and Parcel Owners desire that the Property be annexed in phases, pursuant to this Agreement.

4. Matodol, the owner of Parcel No. 1, with the consent of the other Parcel Owners, has requested that the City annex their portion of Parcel No. 1 of the Property legally described and shown on Exhibit "C" as the first phase of annexation of the Property ("First Phase Annexed Property").

5. The City's annexation of the First Phase Annexed Property is referred to herein as "First Phase Governmental Action".

6. The City is willing to approve the First Phase Governmental Action and subsequently consider approving the annexation of the balance of the Property in phases pursuant to the Comprehensive Plan (collectively "Subsequent Phase Governmental Actions"); provided that, the infrastructure improvements are constructed in a timely manner to serve and properly accommodate development of the Property.

7. This Agreement identifies the Parcel Owners' and City's responsibilities regarding the construction of impact fee facility infrastructure improvements necessitated upon annexation and future development of the Property.

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants established herein, the parties do hereby agree as follows:

1.

CONCURRENT APPROVAL OF FIRST PHASE GOVERNMENTAL ACTION;

CONDITIONAL APPROVAL

A. Prior Approval. The City has approved the City's Biennial Budget and the Capital Improvement Program for Fiscal Years 2016-2018 which provide funding for the design and easement acquisition of the Stevens Creek Trunk Sewer Extension and Van Dorn Creek Sewer Line during the next two fiscal years.

B. Concurrent Approval. The City, concurrently with the approval of this

Agreement, is approving the following First Phase Governmental Action:

1. Annexing the First Phase Annexed Property as legally described and shown on Exhibit "C".

C. Conditional Approval of First Phase and Subsequent Governmental Actions.

The City's Approvals of the First Phase Governmental Action and any Subsequent Phase Governmental Actions are conditioned upon the terms, conditions and understandings as set forth in this Agreement being fulfilled. The Parcel Owners understand and agree that, notwithstanding the conditional nature of such governmental approvals hereto, the City Council for the City of Lincoln, on its own motion or at the request of any Parcel Owner hereto, may, in the exercise of its lawful legislative authority: (i) amend the Comprehensive Plan; (ii) extend the municipal corporate boundaries to include any contiguous or adjacent lands; (iii) rezone or revise the zoning designations applicable to the Property or any Parcel thereof; or (iv) approve or amend plats, dedications, use permits, special permits, community unit plans, building permits or other land use controls, as future development and circumstances may warrant.

II.

PHASED DEVELOPMENT OF THE PROPERTY

A. First Phase Annexed Property. Matodol agrees that the First Phase Annexed Property will not be rezoned, replatted or otherwise developed until such time as the Sanitary Sewer Infrastructure Improvements, set forth in Article IV below, have been constructed and extended to sewer the First Phase Annexed Property.

B. Subsequent Phases of Annexation. The City and Parcel Owners agree that the remainder of the Property will be annexed in one or more phases. The Parcel Owners and the City recognize and understand that as part of this Agreement, the Parcel Owners and City are identifying

the public impact fee facility infrastructure improvements necessary to serve future development of the First Phase Annexed Property and all other phases of the Property.

III.

ARTERIAL STREET IMPROVEMENTS

A. Van Dorn Street – S. 84th – S. 98th Streets.

1. Existing Conditions. Presently, Van Dorn Street from S. 84th Street to S. 98th Street is an existing two lane paved county road and is designated as an “urban/rural minor arterial” in the 2040 Lincoln City – Lancaster County Comprehensive Plan. No improvements to this segment of Van Dorn Street are shown in the Lincoln City – Lancaster County Comprehensive Plan during the 25-year planning period. This segment of Van Dorn Street is also described in the City’s Access Management Policy as a Minor Arterial Street.

2. Access Points. The City and Parcel Owners agree that full turn movement intersections ingress and egress to and from the Property along Van Dorn Street will be limited to the Van Dorn Street access points abutting the Property with the exact location determined by the City. The preliminary and approximate location of these access points are shown on Exhibit “D”.

3. Parcel Owner’s Van Dorn Street Improvements. The City and Parcel Owners agree that urban development of the Property will require the Parcel Owners to design and construct, at their own cost and expense, the temporary right and left turn lanes as determined by the City at all of the final approved full turn movement intersections access points along Van Dorn Street abutting the Property between S. 88th and S. 98th Streets as generally shown on Exhibit “D” (individually “Temporary Turn Lane” and collectively “Temporary Turn Lanes”). The turn lanes will provide required turning motor vehicular storage along with the required deceleration lane length. The final design for the above right and left turn lane improvements will be submitted to the City for review and approval. The parties acknowledge and agree that a portion of the grading

and any Section 404 permitting required for the construction of the temporary right and left turn lanes conforms with the City's grade study for Van Dorn Street as an Arterial Street Impact Fee Facility Improvements ("Grading Arterial Street Impact Fee Facility Improvements").

4. Segregated Arterial Street Impact Fees. The City does not currently have funding to pay for the Grading Arterial Street Impact Fee Facility Improvements to Van Dorn Street. Consequently, the City agrees to segregate arterial street impact fees collected by the City from development of the Property after the date of this Agreement ("Segregated Arterial Street Impact Fees") and utilize said Segregated Arterial Street Impact Fees to fund the Grading Arterial Street Impact Fee Facility Improvements associated with the temporary right and left turn lanes. In the event Segregated Arterial Street Impact Fees are not available to fund the Grading Arterial Street Impact Fee Facility Improvements at the time they are constructed by the applicable Parcel Owner, the applicable Parcel Owner shall fund said Grading Arterial Street Impact Fee Facility Improvements and said costs shall be reimbursed to the applicable Parcel Owner by the City when Segregated Arterial Impact Fees become available. If required, the Grading Arterial Street Impact Fee Facility Improvements shall be publicly bid and awarded as provided by law. If required, the applicable Parcel Owner shall prepare and process, and the City agrees to sign, as permittee, an application for the Section 404 permit required for construction of the Grading Arterial Street Impact Fee Facility Improvements associated with the temporary right and left turn lanes ("Van Dorn 404 Permit"). The applicable Parcel Owner will submit any required Van Dorn 404 Permit application to the Corps of Engineers for review concurrently with its submittal of applications for the Section 404 permits required for development of the Property.

5. Dedication of ROW. At the time of final platting, or upon the earlier request by the City, each Parcel Owner whose Parcel includes land needed for the right and left turn lanes in Van Dorn Street shall dedicate or convey to the City the necessary right-of-way for the

improvements and any temporary construction easements without additional cost to the City. At the time of final platting, or upon the earlier request by the City, each Parcel Owner whose Parcel includes land needed for a future roundabout(s) in Van Dorn Street shall dedicate or convey to the City the necessary right-of-way for the future roundabout improvements and any temporary construction easements without additional cost to the City.

6. City's Future Van Dorn Street Improvements. When needed in the future, the City intends, at its expense, to design, grade and construct Van Dorn Street from S. 84th Street to S. 98th Street as an arterial street with four lanes, plus turn lanes, along with full turn movement access points in the approximate locations shown on Exhibit "D" (collectively "Four-Lane Van Dorn Street").

B. South 98th Street – Van Dorn to A Street.

1. Existing Conditions. South 98th Street from Van Dorn Street to A Street is shown in the 2040 Lincoln City – Lancaster County Comprehensive Plan as an arterial street improvement during the 25-year planning period to be constructed as four lanes plus center and right turn lanes ("Four Lane S. 98th Street"). Presently, S. 98th Street from Van Dorn Street to "A" Street has been graded for the ultimate Four Lane S. 98th Street, but only improved as a graveled two-lane rural cross section county road.

2. City Improvements to S. 98th Street – Van Dorn to A Street. The City intends to complete the design and construction of the first phase of Four Lane S. 98th Street including the first two north and south bound through lanes and other turn lanes from Van Dorn Street to approximately one quarter mile south of "A" Street ("S. 98th Street First Phase"). The parties acknowledge that the City may elect to construct the S. 98th Street First Phase in two or more sub phases; provided that if S. 98th Street is constructed in sub phases, then the sub phases will be constructed from south to north, starting at Van Dorn Street. The Parcel Owners understand

and acknowledge that the City intends to construct a future roundabout for the intersection of Van Dorn Street and S. 98th Street (“Van Dorn & S. 98th Roundabout”).

3. Access Points. *The City and Parcel Owners agree that the full turn movement and right-in, right-out intersections ingress and egress to and from the Property along S. 98th Street will be limited to the S. 98th Street access points abutting the Property with the exact location determined by the City. The preliminary and approximate location of these access points are shown on Exhibit “D”.*

4. Funding. *The parties acknowledge that the City does not currently have funding available to construct the S. 98th Street First Phase and the Van Dorn & S. 98th Roundabout as an Arterial Street Impact Fee Facility Improvement as provided in subparagraph B.2. above. In order to fund the future construction of the S. 98th Street First Phase as an Arterial Street Impact Fee Facility Improvement, the City agrees to continue segregating the Arterial Street Impact Fees collected by the City from development of the Property after payment of the Grading Arterial Street Impact Fee Facility Improvements provided for in subparagraph A.2. above and utilize said fees to fund such improvements. The City shall not fund, design and construct the future Van Dorn & S. 98th Roundabout with Arterial Street Impact Fees collected by the City from development of the Property, until the 98th Street First Phase is fully funded. Notwithstanding the foregoing, regarding the segregation and use of Segregated Arterial Street Impact Fees, the City at its sole discretion, shall have the option to fund all or portions of the S. 98th First Phase and the Van Dorn & S. 98th Roundabout from funding sources other than Segregated Arterial Street Impact Fees, should other funding become available.*

5. Acceleration of Construction. *The parties agree that any Parcel Owner (“Triggering Owner”) shall have the right to trigger and accelerate the City’s construction of the S. 98th Street First Phase in phases provided that the minimum length of the S. 98th Street*

improvements in each phase is a quarter of a mile. The following procedure will be utilized to accelerate such construction:

(a) Trigger Notice. The Triggering Owner shall provide written notice to the Director of Public Works and Utilities of the Triggering Owner's request to trigger construction of a specified segment of the S. 98th Street First Phase ("Trigger Notice");

(b) Estimated Costs. Within thirty (30) days of receipt of the Trigger Notice, the City shall cause the preparation of an estimated cost, including City engineering costs (the "Estimated Costs"), for the identified segment of the S. 98th Street First Phase identified in the Trigger Notice, and provide notice of said Estimated Cost and the amount of Segregated Arterial Street Impact Fees then collected and available for the specific segment of S. 98th Street First Phase identified in the Trigger Notice to the Triggering Owner ("Available Segregated Arterial Street Impact Fees");

(c) Road Escrow. Triggering Owner shall provide the City a bond, escrow, letter of credit, or other security agreement approved by the City Attorney ("Road Escrow"), for one hundred ten percent (110%) of the difference between the City's Estimated Cost of the segment of S. 98th Street First Phase identified in the Trigger Notice and the amount of the Available Segregated Arterial Street Impact Fees ("Road Escrow Amount");

(d) Design and Bid. Upon receipt of the Road Escrow in the amount of the Road Escrow Amount, the City shall design and bid the segment of S. 98th Street First Phase identified in the Trigger Notice as soon as reasonably possible. The City shall notify Triggering Owner of the actual bids and, in the event:

- (i) The actual lowest responsible bid exceeds the Road Escrow Amount, then the Triggering Owner will increase the amount of the Road Escrow Amount held in the Road Escrow to cause the

adjusted Road Escrow Amount to be equal to one hundred ten percent (110%) of the difference between the actual lowest responsible bid and the amount of the Available Segregated Arterial Street Impact Fees; or

(ii) The actual lowest responsible bid is less than the Road Escrow Amount, then the Triggering Owner may decrease the amount of the Road Escrow Amount held in the Road Escrow to be equal to one hundred ten percent (110%) of the difference between lowest responsible bid and the amount of the Available Segregated Arterial Street Impact Fees.

(e) Funding Order. The City shall first utilize the Available Segregated Arterial Street Impact Fees, if any, to fund the actual costs for such design, grading, construction, and engineering fees, and then utilize funds of the Triggering Owner to fund any remaining amount of such costs. The City will provide the Triggering Owner an invoice for said remaining amount. If the remaining amount of such actual costs exceeds the Road Escrow Amount in the Road Escrow, then the Triggering Owner shall be responsible to immediately advance the excess costs to the City.

(f) City Reimbursement. The City shall reimburse the Triggering Owner for all funds expended by Triggering Owner on Triggering Owner's segment(s) of S. 98th Street First Phase from Segregated Arterial Street Impact Fees collected, and such reimbursement shall have third priority to the Segregated Arterial Street Impact Fees after the City funds or reserves funds for the Grading Arterial Street Impact Fee Facility Improvement and any earlier segment of the S. 98th Street First Phase.

5. Final Platting.

(a) Unpaved S. 98th Street. The Parcel Owners acknowledge that any Parcel Owner may submit a final plat, subdividing said Parcel Owner's Parcel of the Property prior to construction of Four Lane S. 98th Street or the S. 98th Street First Phase. The parties agree that until that abutting portion of S. 98th Street is paved no abutting buildable lots may be final platted *between unpaved S. 98th Street and a paved Internal Street (defined below) running parallel to S. 98th Street*. In the event an Internal Street does not run parallel to S. 98th Street, no buildable lots may be final platted within 110 feet of unpaved S. 98th Street. While this limitation may cause some hardships and inefficiencies in development, it will permit final platting to proceed forward without the corresponding requirement to pave any abutting section of S. 98th Street.

(b) Section 26.23.080 of the Lincoln Municipal Code. The parties acknowledge that if a proposed preliminary plat or final plat of the Property or part thereof shows an Internal Street that will (i) directly connect (or indirectly connect through other Internal Street(s) shown on an approved preliminary plat and/or final plat) with Van Dorn Street or (ii) will directly connect (or indirectly connect through other Internal Street(s) shown on an approved preliminary plat and/or final plat) with S. 98th Street at one of the approved access points shown on Exhibit "D", then such Internal Street(s) will not be deemed to be a permanent dead end street and thus, will not be subject to the requirements in Section 26.23.080 of the Lincoln Municipal Code applicable to permanent dead end streets, including but not limited to the limitation of forty (40) or less units on a dead end street, provided that no more than 110 lots shall be allowed to be final platted which take access to said internal street until a second street providing access to said lots has been constructed.

6. Internal Streets. Additional City local streets will be required within the Property to serve development of the Property in phases (collectively "Internal Streets" and individually an "Internal Street"). The Internal Streets shall be constructed (or security provided

in a form acceptable to the City Attorney) by each Parcel Owner whose Parcel of the Property is included within a preliminary plat, special permit, use permit or planned unit development which shows an Internal Street. Construction of the Internal Street shall be at such Parcel Owner's own cost and expense, under the authority of an executive order issued by the Mayor of the City in phases as part of the platting process.

7. Dedication of S. 98th Street Right-of-Way. At the time of final platting or upon the earlier request by the City, each Parcel Owner whose Parcel includes land needed for Four Lane S. 98th Street or the S. 98th Street First Phase agrees to dedicate or convey, at no cost to the City, the additional right-of-way needed to provide 60 feet of right-of-way from the center line of S. 98th Street, with an additional ten (10) feet of right-of-way at the intersections for turn lanes. The additional ten (10) feet of right-of-way will extend two blocks from the centerline (approximately 700 feet) of the intersections. At the time of final platting or upon earlier request by the City, each Parcel Owner whose Parcel includes land needed for the S. 98th & Van Dorn Roundabout agrees to dedicate or convey, at no cost to the City, the necessary future right-of-way for the roundabout improvements and any temporary construction easements; provided that, if the requested right-of-way for said S. 98th & Van Dorn Roundabout has to be off-center to accommodate floodplain or flood prone areas located on any corner(s) of S. 98th Street and Van Dorn Street, then the City shall pay the Parcel Owner the fair market value for such additional right-of-way to avoid the floodplain or flood prone areas.

8. Dedication of Internal Street Right-of-Way. As provided in Title 26 of the Lincoln Municipal Code ("Land Subdivision Ordinance"), each Parcel Owner whose Parcel is being final platted shall dedicate and convey the necessary right of way for the construction and operation of the Internal Streets that are located on said Parcel within the final plat, without additional cost or consideration.

IV.

SANITARY SEWER INFRASTRUCTURE IMPROVEMENTS

A. **Sanitary Sewer Improvements.** The City and Parcel Owners agree that the following sanitary sewer improvements, which are shown on Exhibit "F", are necessary to serve the annexation of all of the Property and to promote the general health and welfare of the City.

1. **Stevens Creek Trunk Sewer Extension and Van Dorn Creek Sewer Line.**

The City, at its expense, shall design, acquire permanent and temporary easements and construct (i) the Stevens Creek Trunk Sewer Extension generally running from Holdrege (Point A) to the south of O Street (Point B) as shown by the blue line on Exhibit "F" and (ii) and the Van Dorn Creek Sewer Line from Point B to Point F as shown by the yellow line on Exhibit "F". The Stevens Creek Trunk Sewer Extension and Van Dorn Creek Sewer Line are sometimes individually referred to as "Trunk Sewer Line" and collectively as "Trunk Sewer Lines".

2. **Timeline.** The City, at its expense, has hired professional design services for the Trunk Sewer Lines, including wetland and environmental investigations, design and permitting. The City agrees to use its good faith efforts to complete the wetland and environmental investigations, design, easement acquisition and bidding for the construction of the Trunk Sewer Lines (collectively "Start Activities") by September 1, 2017. The City further agrees to use its good faith efforts to seek and obtain, at its expense, the necessary governmental approvals for the Trunk Sewer Lines by September 1, 2017. As of the date of this Agreement, the City estimates the completion date for the Trunk Sewer Lines will be December 31, 2018. When the City has completed (approximately March 1, 2017) sixty percent (60%) of the design for the Trunk Sewer Lines, then the City agrees to deliver written notice to the Parcel Owners and Olsson Associates (attention Mark Palmer) of the projected and expected completion date for said Trunk Sewer Lines ("Completion Date"). Notwithstanding subparagraphs A.1. and A.2. above, the City, at its

expense, agrees to complete said construction and related implementation work of said Trunk Sewer Lines and make the Trunk Sewer Lines operable for their intended purposes by the Completion Date, subject to Section A. 3 below.

3. Funding. The City's estimated Uses and Sources of Funds for the Trunk Sewer Lines are shown on the attached Uses and Source of Funds in Exhibit "G". The City, at its expense agrees to fund and timely pay for the construction of the Trunk Sewer Lines to be completed by the Completion Date for a total cost not to exceed \$13,050,000.

(a) City's 2016-17 Capital Improvement Program. In order to carry out this responsibility, the City has approved the City's 2016-17 Capital Improvement Program as part of its Fiscal Year 2016 and Fiscal Year 2017 biennial budget which will fund, along with other available funds, the costs for the Start Activities. The current Capital Improvement Plan shows \$7,250,000 for the Fiscal Year 2018 and Fiscal Year 2019 to fund the Trunk Sewer Lines.

(b) Changes to City Budget. The City's approved 2016-17 Capital Improvement Program, as part of its Fiscal Year 2016 and Fiscal Year 2017 biennial budget, also shows a total of \$16,000,000+ for sanitary sewer bonds for all of the City's sewer improvements. The City, at its expense, agrees to (i) budget and approve by September 1, 2018 an additional \$4,200,000 of sanitary sewer bonds and (ii) budget and approve in the Fiscal Year 2017 and Fiscal Year 2018 biennial budget the total sum of \$7,250,000 to timely pay for the construction of the Trunk Sewer Lines to be completed by the Completion Date.

(c) Over Budget. In the event the total of the lowest responsible construction bids and construction observation costs for the Trunk Sewer Lines collectively exceeds the sum of \$11,200,000, then the City and Parcel Owners will meet to determine whether (i) the City should reject the bid(s) and rebid one or both of the Trunk Sewer Lines in hopes that rebidding will cause the collective sum to be equal or less than \$11,200,000; (ii) an alternative

design can be identified that could meet the public's interest while reducing costs; or (iii) the Parcel Owners, at their option, would agree to loan (interest free) the excess amount to the City as evidenced by a written promissory note in a form acceptable to the City and the Parcel Owners ("Coalition Note").

4. Internal Sewer Lines.

(a) Van Dorn Creek Internal Sewer Line from Point F to Point G. The City agrees to design and construct, at its expense, by December 31, 2018, a 15-inch Van Dorn Creek Internal Sewer Line from Point F to Point G as shown on Exhibit "E" as part of the Van Dorn Creek Sewer Line project. Each Parcel Owner whose Parcel includes land needed for the Van Dorn Creek Internal Sewer Line will convey the necessary nonexclusive permanent and temporary easements for the Van Dorn Creek Internal Sewer Line as shown on Exhibit "E" from S. 98th Street to Point G at no cost to the City.

(b) Internal Sewer Lines to Sewer the Property. The Parcel Owners shall design and construct, at their cost, the internal sewer lines (collectively "Internal Sewer Lines" and individually "Internal Sewer Line") required to sewer the Property in phases, including the extension of the Van Dorn Creek Internal Sewer Line from Point G to the Parcel or Parcels of the Property that will be annexed and final platted. The Internal Sewer Lines shall be constructed under the authority of an executive order issued by the Mayor of the City in phases as part of the annexation and platting process. The size and location of the Internal Sewer Lines will be determined as part of the platting process. Each Parcel Owner whose Parcel of the Property will contain an Internal Sewer Line shall be responsible for the cost of constructing a typical 8-inch sanitary sewer line, and the City shall be responsible for all costs attributable to oversizing the Internal Sewer Line with pipe, valves, fittings and all other accessories that are larger than 8-

inches. If required, the oversized Internal Sewer Lines shall be publicly bid and awarded as provided by law.

5. Sanitary Sewer Easements. At the time of the applicable final platting or prior to construction of the Internal Sewer Lines and the Van Dorn Creek Sewer Line Internal Sewer Lines from S. 98th Street to Point G, each Parcel Owner whose Parcel will contain or is necessary for the construction or operation of such Internal Sewer Lines, shall dedicate and convey all necessary temporary and permanent sanitary sewer easements to the City located within such Parcel Owner's Parcel of the Property, without additional cost or consideration. Said easements shall be nonexclusive easements: provided that, no permanent building improvements will be permitted to be constructed over the top of said easements.

V.

WATER INFRASTRUCTURE IMPROVEMENTS

A. **Van Dorn Street.** When needed in the future, the City, at its expense, will be responsible to design and construct the following water line distribution impact fee facilities: (i) a 16-inch water main extension on the north side of Van Dorn Street from S. 91st Street to S. 98th Street ("Van Dorn Street Water Main"). The City may elect to complete the design and construction of the Van Dorn Street Water Main in phases.

1. Water Main Notice. The parties acknowledge that the Property does not require the construction of the Van Dorn Street Water Main and that the City does not currently have funding available to construct the Van Dorn Street Water Main as a water utility impact fee facility. Notwithstanding any contrary provision herein, the City agrees, at its expense, to construct all or a phase of said 16-inch water main within six months from the date a certified engineer notifies the City and provides documentation, verifiable by the City, that a portion of the Property being developed through a building permit, special permit, use permit, planned unit development,

executive order or final plat will not have adequate flow and pressure with a 6-inch main adequate redundancy or fire protection without the construction of said Van Dorn Street Water Main. A Parcel Owner or its certified engineer will make a good faith effort to notify the Public Works and Utilities Department in November prior to the submittal and approval of a new City of Lincoln biennial budget of anticipated water needs for the Property during the new biennial budget period that involve City funding.

B. 12-inch Internal Water Line Improvements.

1. Construction by Parcel Owners. The City and Parcel Owners agree that adequate water service and fire protection for the Property can be provided by internal water lines (collectively "Internal Water Lines" and individually "Internal Water Line") to be constructed on the Property in phases during the annexation and platting process. A conceptual map showing the Internal Water Lines is shown on Exhibit "H". The Internal Water Lines required to serve the Property shall be constructed by each Parcel Owner whose Parcel of the Property is included within an approved preliminary plat, special permit, use permit or planned unit development which shows an Internal Water Line. Construction of the Internal Water Line shall be at such Parcel Owner's own cost and expense, under the authority of an executive order issued by the Mayor of the City as part of the platting process. The size and location of the Internal Water Lines will be determined as part of the platting process. Each Parcel Owner shall be responsible, based upon the proposed use of the Parcel, for the cost of constructing a typical 6-inch or 8-inch water line located on the Parcel Owner's Parcel, and the City shall be responsible for all costs attributable to oversizing the water sewer with pipe, valves, fittings and all other accessories that are larger than 6 or 8-inches. If required, the Internal Water Lines shall be publicly bid and awarded as provided by law.

2. Water Easements. At the time of the applicable final platting or prior to construction of said Internal Water Lines, each Parcel Owner shall dedicate or convey to the City

all temporary and permanent water easements necessary for the construction and operation of the Internal Water Lines set forth herein that are located on the Parcel Owner's Parcel, without additional cost or consideration, in conjunction with the construction of such Internal Water Lines as set forth above. Said easements shall be nonexclusive easements; provided that, no permanent building improvements will be permitted to be constructed over the top of said easements.

VI.

TRAILS & PARKS

A. **Trail Easements.** At the time of the applicable final platting or prior to construction of the bike trail from S. 88th Street and Van Dorn Street to the east across the Property to S. 98th Street and then north within the west right of way of S. 98th Street to the northeast corner of the Property as generally shown on Exhibit "I" (collectively "Trail"), each applicable Parcel Owner shall dedicate or grant to City, at no cost to the City, the necessary nonexclusive permanent and temporary easements for said Trail. The City, at its expense, shall design, grade and construct the Trail based upon the City's design standards, including any culverts, stream crossings, street crossings, signage and signalization. At the City's election, the Parcel Owners shall be responsible to rough grade the trail platform at the same time as their Parcels are graded and the City will fully reimburse such grading costs from the City's Neighborhood Park & Trail Impact Fees. The City, at its expense, will have grading, installation, construction, maintenance, repair and replacement responsibilities for the Trail.

B. **Parks.** The City and Parcel Owners agree that one neighborhood park within the Property should be selected, acquired and improved to service the recreation and park needs of the future residents. The City, at its expense, will provide for the acquisition, design, development, construction and maintenance of a neighborhood park(s) as the City deems necessary within the Property. Exhibit "I" shows two potential neighborhood park sites for said neighborhood park.

The City, at its election, shall timely select the final site for the neighborhood park by one of the following means:

1. The City consents to the Parcel Owners conveying to Lancaster County School District 001, a.k.a. Lincoln Public Schools (“LPS”) the north potential neighborhood park site located abutting the future LPS Elementary School site as shown on Exhibit “F”, as part of the conveyance of the future LPS Elementary School site. In the event LPS acquires the north potential neighborhood park site and said site is selected by the City, then the City will coordinate and acquire the site from LPS; or

2. City may acquire by conveyance or dedication its preferred neighborhood park site from the Parcel Owners on or before the applicable Parcel Owner final plats its Parcel that includes the City’s preferred neighborhood park site, subject to full reimbursement from City’s Neighborhood Park & Trail Impact Fees for (a) the current market value of the selected real estate for the park site and (b) the fair share costs for any applicable design, constructed or installed of Infrastructure (defined below) on the selected neighborhood park site or the abutting right of ways and easements. The parties agree that the value of the land conveyed or dedicated for the neighborhood park shall be based upon its current market value for undeveloped land. "Infrastructure" shall mean site preparation, grading, streets, street lights, street trees, curbs, gutters, sanitary sewer, storm sewer, water service, sidewalks, trails, electricity, and other related or customary utility services, service lines or infrastructure improvements.

VII.

CONTRIBUTION TO RURAL FIRE PROTECTION DISTRICT

Parcel Owners understand and acknowledge that the City’s annexation of the Property or any portion thereof lying within the boundaries of the Southeast Rural Fire Protection District shall

not be complete except upon the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of Property or portion thereof being annexed. Each Parcel Owner agrees to pay the City whatever amount which must be paid by the City to Southeast Rural Fire Protection District in order for the Parcel Owner's portion of the Property being annexed to be complete.

VIII.

PARCEL OWNERS – FUTURE RESPONSIBILITIES

Parcel Owners understand and acknowledge that the Internal Streets, Internal Sewer Lines and Internal Water Lines to be constructed by the Parcel Owners under this Agreement may not reflect all of the minimum improvements required under Title 26 (Land Subdivision Ordinance) and Title 27 (Zoning Ordinance) of the Lincoln Municipal Code in a subdivision or development of the Property under a planned unit development, use permit, special permit, or community unit plan. Parcel Owners agree that by making the dedications or conveyances and internal improvements outlined in this Agreement, Parcel Owners are not relieved of any future obligation which is required as part of the platting process or development of the Property pursuant to Title 26 and Title 27 of the Lincoln Municipal Code. Parcel Owners further agree that failure to include provision for the construction of any other improvements required by Title 26 and Title 27 in this Agreement in no way releases or waives the Parcel Owners' obligations to construct such improvements and to dedicate or convey easements therefore.

IX.

MASTER PLAN

A. **Property Master Planning.** The Parcel Owners, at their expense, have prepared a Coalition Master Land Use Concept of the Property, which is shown on Exhibit "I" to this Agreement (the "Master Plan"). The City's final review and comments of the Master Plan will be provided as

part of the City's formal approval of rezoning and platting for the Property. The City hereby consents to the placement of the Master Plan's roadways and utilities within the Minimum Flood Corridors, floodplains and flood prone areas of the Property and recorded conservation easements, subject to the City's formal review and approval of the more detailed plans and specifications that will be part of the City's approval of the rezoning and preliminary platting for the Property.

X.

SHARED INFRASTRUCTURE

A. Developing Parcel Owner; Other Parcel Owner; Subsequent Phase Governmental Actions. In the event a Parcel Owner ("Developing Parcel Owner") wishes to seek Subsequent Phase Governmental Actions, then the other Parcel Owners (individually "Other Parcel Owner" and collectively "Other Parcel Owners") agree to support and cooperate with the Developing Parcel Owner's request for Subsequent Phase Governmental Actions; provided said Subsequent Phase Governmental Actions are consistent with the Comprehensive Plan.

B. Shared Infrastructure Defined. Shared infrastructure ("Shared Infrastructure") shall mean any of the following:

1. Temporary Turn Lane(s) in an existing or future public right of way or public access easement abutting a Developing Parcel Owner's Parcel and Other Parcel Owner's Parcel which are conceptually shown on Exhibit "D";

2. The future Internal Street(s) are conceptually shown on the Master Plan in Exhibit "H". The future Internal Street(s) location will be determined as part of the City of Lincoln platting process;

3. The future Internal Sewer Line(s) will be located within the Internal Streets or open spaces which are conceptually shown on the Master Plan in Exhibit "H". The future Internal Sewer Line(s) location will be determined as part of the City of Lincoln platting process;

4. The future Internal Water Line(s) will be located within the Internal Streets or open spaces which are conceptually shown on the Master Plan in Exhibit "H". The future Internal Water Line(s) will be determined as part of the City of Lincoln platting process; and

5. Any other Internal Sewer Lines, Internal Water Lines and/or Internal Streets that the Developing Parcel Owner and Other Parcel Owner(s) may agree to implement on a Developing Parcel Owner's Parcel and Other Parcel Owner's Parcel as part of the City of Lincoln platting process.

C. Subsequent Phase Governmental Actions Involving Shared Infrastructure. In the event the Subsequent Phase Governmental Actions cause an Other Parcel Owner's Parcel(s) of the Property to be benefited or burdened with Shared Infrastructure, on one or more occasion, then the Other Parcel Owner agrees on each occasion to support and cooperate with the implementation of the Shared Infrastructure based upon the following terms and conditions:

1. Preliminary Design. The Developing Parcel Owner, at its expense, shall have its professional engineer prepare a preliminary design profile and specifications ("Preliminary Design") for the Shared Infrastructure on the Other Parcel Owner's Parcel(s) of the Property or abutting Temporary Turn Lane and provide such Preliminary Design to the City and Other Parcel Owner, including an estimated costs projection and fair and reasonable allocation to split the costs between the Other Parcel Owner's Parcel and Development Parcel Owner's Parcel ("Cost Allocation") and projected timeline ("Timeline") for said Shared Infrastructure. Notwithstanding any contrary provision stated herein, the Cost Allocations for the Temporary Turn Lanes are shown on Exhibit "E".

2. Meeting. The Developing Parcel Owner, Other Parcel Owner and City shall meet and discuss (i) whether the Subsequent Phase Governmental Actions of the Developing Parcel Owner's Parcel trigger the need for the Other Parcel Owner's Parcel(s) of the Property to

be benefited or burdened with Shared Infrastructure and (ii) the Preliminary Design of the Shared Infrastructure. The Developing Parcel Owner and Other Parcel Owner will also discuss the estimated costs projection, Cost Allocation and the Timeline for said Shared Infrastructure.

3. Revisions and Alternatives. In the event the City determines that the Developing Parcel Owner's Parcel(s) of the Property triggers the need for the Other Parcel Owner's Parcel(s) of the Property to be benefited or burdened with Shared Infrastructure, then the Other Parcel Owner may (i) accept said Developing Parcel Owner's Preliminary Design and Cost Allocation, or (ii) the Other Parcel Owner, at its expense, may have its own professional engineer review and offer reasonable and fair revisions or alternatives of the (a) Preliminary Design for the Shared Infrastructure that meet the existing grade of the common property line(s) between the Developing Parcel Owner and Other Parcel Owner's Parcels (or other common grade elevations acceptable to the Developing Parcel Owner and Other Parcel Owner) and (b) Cost Allocation. Said Other Parcel Owner's revisions or alternative(s) shall be sent to the Developing Parcel Owner and the City within thirty (30) days after the Developing Parcel Owner, Other Parcel Owner and City meeting described in Section C. 2. above, and the Developing Parcel Owner, Other Parcel Owner and City shall again meet within fourteen (14) days of the date that the Other Parcel Owner delivers the Developing Parcel Owner and City said revisions or alternative(s).

4. Final Determination. The Developing Parcel Owner and Other Parcel Owner shall reach consensus on (a) the Preliminary Design of the Shared Infrastructure and (b) Cost Allocation. In the event consensus is not reached on the Preliminary Design of the Shared Infrastructure, then the City shall determine the Preliminary Design of the Shared Infrastructure which determination shall be binding on both the Developing Parcel Owner and Other Parcel Owner. In the event consensus is not reached on the Cost Allocation for the Other Parcel Owner's Parcel and Developing Parcel Owner's Parcel, then the Developing Parcel Owner's professional

engineer, after consultation with Other Parcel Owner's engineer, if any, and the Parcel Owners' coalition attorney (defined in Article XII T. below), shall determine the reasonable and fair Cost Allocation between the Other Parcel Owner's Parcel and Development Parcel Owner's Parcel which determination shall be binding on both the Developing Parcel Owner and Other Parcel Owner.

5. Applications for Subsequent Phase Governmental Actions. The Developing Parcel Owner, at its expense, may then proceed with completing the necessary engineering design and applications to seek final approval of the Subsequent Phase Governmental Actions.

6. Final Design and Security. In the event the City approves the necessary Subsequent Phase Governmental Actions, then the Developing Parcel Owner, at its expense, may complete the final design for said Shared Infrastructure, including necessary right-of-ways, and temporary and permanent easements, based upon the Subsequent Phase Governmental Actions. The Developing Parcel Owner shall provide the final design, right-of-way/easement descriptions on the City's forms, and executive order documents to the Other Parcel Owner and the City. Within fourteen (14) days of receipt of the right-of-way/easement instruments on the City's forms, the Other Parcel Owner agrees to execute, without additional consideration, the necessary right-of-way/easements on the City's forms and deliver said executed instruments to the Developing Parcel Owner. The Developing Parcel Owner, at its expense, shall deliver to the City (i) the executed right-of-way/easements of the Developing Parcel Owner and Other Parcel Owner and (ii) the executive order documents, including the necessary bond, escrow, letter of credit, or other security agreement approved by the City Attorney.

7. Competitive Bids. In the event the City approves the final design, security and executive order for the Shared Infrastructure, then the Developing Parcel Owner may proceed

to competitively bid said approved Shared Infrastructure by obtaining a minimum of three bids (or bid in another manner acceptable to the Other Parcel Owner.) The Developing Parcel Owner shall provide a copy of the lowest responsible bid (or other bid acceptable to the Other Parcel Owner) to the Other Parcel Owner. Seven (7) days thereafter, the Developing Parcel Owner may award the Shared Infrastructure to the lowest responsible bid (or other bidder acceptable to the Other Parcel Owner).

8. Notice of Shared Infrastructure Costs and Notice of Advancement. Within thirty (30) days from completion of the Shared Infrastructure and receipt of invoices for all actual design and construction costs associated therewith, the Developing Parcel Owner's professional engineer shall (a) calculate the final Shared Infrastructure costs that touch or concern (i) the Other Parcel Owner's Parcel ("OPO Infrastructure Costs") and (ii) the Developing Parcel Owner's Parcel ("DPO Infrastructure Costs") and (b) provide written notice ("Notice of Shared Infrastructure Costs") of the OPO Infrastructure Costs and DPO Infrastructure Costs to the Other Parcel Owner and Developing Parcel Owner. The OPO Infrastructure Costs shall be deemed an advancement ("Advancement") by the Developing Parcel Owner to the Other Parcel Owner under the Mortgage Lien provision described in Section C. 10. below. Within fourteen (14) days of the date that the Developing Parcel owner delivers to the Other Parcel Owner the Notice of Shared Infrastructure Costs, the Other Parcel Owner and Developing Parcel Owner shall execute and notarize a notice of advancement ("Notice of Advancement") that states the Advancement amount and file of record the executed and notarized Notice of Advancement on the Other Parcel Owner's Parcel.

9. Loan and Balloon Payment Date. Developing Parcel Owner agrees to loan and finance the Other Parcel Owner's OPO Infrastructure Costs. The Other Parcel Owner hereby promises to pay and reimburse the Developing Parcel Owner, without demand, notice or presentation, the Advancement of the OPO Infrastructure Costs, without interest, on or before the

Balloon Payment Date, defined below. The "Balloon Payment Date" shall be the earlier date that (i) the Other Parcel Owner or a party with an interest in the Other Parcel Owner's Parcel taps, connects to or uses the Shared Infrastructure in association with a development that includes any new residential dwellings (collectively "Tapping") or (ii) the Other Parcel Owner or a party with an interest in the Other Parcel Owner's Parcel secures the City of Lincoln's approval of a final plat of the Other Parcel Owner's Parcel or any portion thereof ("Final Plat Approval"). An Other Parcel Owner may (i) connect any existing residential dwelling located upon the Other Parcel Owner's Parcel to the Shared Infrastructure and use the Shared Infrastructure without it being deemed a Tapping and triggering the Balloon Payment Date and (ii) seek and obtain a City of Lincoln approval of a final plat if the only buildable lot created by the final plat is the existing residential dwelling located upon the Other Parcel Owner's Parcel without it being deemed a Final Plat Approval and triggering the Balloon Payment Date.

10. Mortgage Lien. The Other Parcel Owner hereby grants to Developing Parcel Owner a mortgage lien upon the Other Parcel Owner's tract to secure (i) any and all Future Advances (defined below) under Article X; (ii) any and all Advancements made by a Developing Parcel Owner to an Other Parcel Owner to fund OPO Infrastructure Costs located upon the Other Parcel Owner's Parcel described in Section C. 8. and Section C. 9 above and (iii) any Default Interest described in Section C. 12. below. "Future Advances" shall mean the potential advancement(s) and loan(s) by a Developing Parcel Owner to an Other Parcel Owner for Shared Infrastructure that could be designed and constructed upon the Other Parcel Owner's Parcel under this Article X. Future Advances are hereby secured by the Mortgage Lien.

11. Right to Prepay. The promise to repay the OPO Infrastructure Costs may be prepaid at any time, in whole or in part. No periodic principal payments are required prior to the Balloon Payment Date.

12. Default. The Other Parcel Owner's failure to pay the entire OPO Infrastructure Cost on or before the Balloon Payment Date shall be a default (without demand or notice) herein ("Default") and the OPO Infrastructure Costs and any other monetary advancement(s) made under the Mortgage Lien shall then start to bear interest after Default ("Default Interest") equal to an interest rate of twelve percent (12%) per annum ("Default Interest Rate"). In the event the Other Parcel Owner fails to pay the OPO Infrastructure Costs and any other monetary advancement(s) made under the Mortgage Lien as set forth herein and the Default Interest, if any, then Developing Parcel Owner may prosecute any proceeding at law or in equity against the Other Parcel Owner, including foreclosure of the Mortgage Lien and seek to prevent the Other Parcel Owner or any other party from Tapping the OPO Infrastructure, or to recover damages, or both.

XI.

NOTICE

A. Notice. Any notices required to be forwarded to a party hereto shall be deemed appropriately given or delivered if sent by registered or certified United States Mail, postage prepaid, return receipt requested, addressed or delivered personally as follows:

- (1) If to the City:
Mayor
555 South 10th Street
Lincoln, Nebraska 68508

with a copy to:

City Attorney
575 South 10th Street
Lincoln, NE 68508

- (2) If to the Parcel Owners:
 - (a) JLW LP
Attention: Mae Whitmer

6421 Rogers Circle
Lincoln, NE 68506

- (b) Clair W. & Linda Cooley
9300 Van Dorn Street
Lincoln, NE 68520
- (c) Roger A. Graff
7005 Shamrock Road, Unit 312
Lincoln, NE 68520
- (d) Matodol, LLC
c/o Olsson Associates, Inc.
Attention: Jeffrey Jenkins
601 "P" Street, Suite 200
Lincoln, NE 68508
- (e) Daryl Lee and Kristie A. Bohac
10011 North 152nd Street
Waverly, NE 68462
- (f) Christopher A. Kidwell
8901 A Street
Lincoln, NE 68508

with a copy to:

Kent Seacrest
Seacrest & Kalkowski, PC, LLO
1128 Lincoln Mall, Suite 105
Lincoln, NE 68508

Any party hereto may change its address for notification purposes by written notice to all parties hereto in the manner and method set forth within this paragraph.

XII.

MISCELLANEOUS

A. **Exhibits.** The following Exhibits are attached to this Agreement and are incorporated herein by this reference:

- | | |
|--------------------|--|
| <u>Exhibit "A"</u> | Parcel Nos. 1-7, Name of Parcel Owners, and Legal Descriptions |
| <u>Exhibit "B"</u> | Comprehensive Plan Tier I, Priority B (2025) Area |

<u>Exhibit "C"</u>	First Phase Annexed Property
<u>Exhibit "D"</u>	Van Dorn Street and 98 th Street Access Points
<u>Exhibit "E"</u>	Temporary Turn Lanes Allocations – Van Dorn Street
<u>Exhibit "F"</u>	Sanitary Sewer Map
<u>Exhibit "G"</u>	Trunk Sewer Lines Uses and Sources of Funds
<u>Exhibit "H"</u>	Water Lines Map
<u>Exhibit "I"</u>	Master Plan

B. Amendments. This Agreement may only be amended or modified in writing signed by the parties to this Agreement.

C. Further Assurances. Parcel Owners and the City will use their best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other parties 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 carry out the intent and purposes of this Agreement.

D. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

E. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against any 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.

F. Construction. Whenever used herein, including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

G. Relationship of Parties. Neither the method of computation of funding or any

other provisions contained in this Agreement or any acts of any party shall be deemed or construed by the City, Parcel Owners, or by any third person to create the relationship of partnership or of joint venture or of any association between the parties other than the contractual relationship stated in this Agreement.

H. Assignment. *In the case of the assignment of this Agreement by any Parcel Owner, prompt written notice shall be given to the City and other Parcel Owners who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release in writing is given and signed by the City and other Parcel Owners to this Agreement or unless otherwise stated herein.*

I. Default. *Time is agreed to be of the essence. In the event any Parcel Owner defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the City may take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach. In the event the City defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then a Parcel Owner may take such remedies, legal or equitable, to enforce this Agreement or to obtain damages for its breach. No delay or omission of any party in exercising any remedies or power accruing upon any event of default shall impair any remedies or power or shall be construed to be a waiver of any event of default or any acquiescence therein.*

J. Copy of Notice of Default to Mortgagee. *Whenever a party shall deliver any notice or demand to a defaulting party with respect to any breach or default by defaulting party of its obligations or covenants in this Agreement, the party delivering such notice or demand shall at the same time forward a copy of such notice or demand to each holder of any mortgage, deed of trust or similar method of encumbrance (collectively "Mortgage") at the last address of such*

Mortgage holder as shown in the records of the Register of Deeds of Lancaster County as provided in such Mortgage of the defaulting party.

K. Mortgage Holder's Option to Cure Defaults. If fourteen (14) days after any notice or demand with respect to any breach or default as referred to in Article XII, Paragraph J such breach or default remains uncured, each such Mortgage holder shall have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage debt and the lien of its Mortgage.

L. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns and shall inure to and run with the Property.

M. Recordation. This Agreement or a memorandum thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at the City's cost and expense.

N. Cooperation. Each undersigned party will whenever it shall be necessary to do so by any other party, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, documents as may be necessary or proper to effectuate the covenants and agreements herein provided.

O. Authority. The City and each Parcel Owner represents and warrants that said party has the authority to enter into this Agreement and perform the party's obligations hereunder and has taken all steps to legally exercise that authority.

P. Release of Buildable Lot. Notwithstanding any contrary provisions herein, any Buildable Lot shall automatically be deemed released from all of the terms of this Agreement and the Mortgage Lien without further written release. For the purposes of this Agreement, "Buildable Lot" shall mean a buildable lot of record (excluding outlots) as defined by the City subdivision ordinance being (a) less than ten acres in size, (b) within a lawful final plat of the Property or a

portion of the Property and (c) conveyed in fee title (or leased in writing for a term of three years or more) to an Unrelated Third Party. Notwithstanding any contrary provision herein, any Buildable Lot Owner shall automatically be deemed released from this Agreement and the Mortgage Lien without further written release. For the purposes of this Agreement, "Buildable Lot Owner" shall mean the grantee under a deed conveying fee title (or a lessee under a written lease having a term of three years or more) to a Buildable Lot who is an Unrelated Third Party. Any such conveyance (or lease) of a Buildable Lot shall not terminate the liability of the grantor (lessor) Parcel Owner and its successors and assigns to perform its obligations under this Agreement or the Mortgage Lien, unless a specific release in writing is given and signed by the other Parcel Owners to this Agreement. An "Unrelated Third Party" means a person, corporation, partnership, trust or other entity who is not a Parcel Owner or its successors or assigns and is not an Affiliate under this Agreement. "Affiliate" means: (i) any officer, director, employee or blood related family member of a Party; and (ii) any corporation, partnership, trust or other entity controlling, controlled by or under common control with a Party or any person described in (i) above; and (iii) any officer, director, trustee, general partner or employee of any person described in (ii) above. For purposes of this definition, the term "control" shall also mean the control or ownership of ten percent (10%) or more of the beneficial ownership or fifty percent (50%) of the memberships in the entity referred to.

Q. **Condemnation**. The City, at its expense, including, but not limited to, acquisition costs, condemnation awards, court costs, expert witness fees, testing fees, interest, and City staff time, acquire the remaining balance of any and all right of way and temporary and permanent easements necessary for the design, grading, construction and operation of the impact fee facilities and related Internal Streets, Internal Sewer Lines, Internal Water Lines, and Trail improvements and infrastructure described in this Agreement. The City is authorized to utilize condemnation, if

necessary, to acquire such right of way and temporary and permanent easements described in this Paragraph.

R. Written Certification. In addition to any other information which may reasonably be requested, any Parcel Owner shall without charge, at any time and from time to time hereafter, within fourteen (14) days after written request from another Parcel Owner for the same, certify by written instrument duly executed and acknowledged to any person, firm or corporation the following information which was specified in such request:

1. Whether this Agreement has been supplemented or amended, and if so, the substance and manner of such supplement or amendment;

2. Whether this Agreement is still valid;

3. The existence of any default under this Agreement;

4. The existence of any claims, liens or amounts owed to such Parcel Owner by any other Parcel Owner; and

5. The expiration dates, if any, of the term of this Agreement.

Any such certificate may be relied on by the Parcel Owner who requested it and by any other person, firm or corporation to whom it may be exhibited or delivered, and the contents of the certificate shall be binding on the Parcel Owner executing it.

S. Representation. The Parcel Owners are the fee owners of their respective parcels of land as described in Exhibit "A" and said parcels and legal interests are free and clear of liens, except for Mortgage Lien described herein and any other lien that is junior to the Mortgage Lien described herein. All necessary actions to duly approve the execution, delivery, and performance of this Agreement has been undertaken by each party and this Agreement constitutes a valid and binding agreement of the parties, enforceable in accordance with its terms

T. Conflicts. The Parcel Owners acknowledge that Seacrest & Kalkowski, PC, LLO

("Coalition Attorney") has fully explained to the Parcel Owners the implication of Seacrest & Kalkowski, PC, LLO's common representation of the Parcel Owners regarding this Agreement and the matters contained therein, and in the event an actual conflict arises and it is necessary for any Parcel Owner to take action against another Parcel Owner to this Agreement, then it will be necessary for each Parcel Owner to obtain independent separate legal counsel. The Parcel Owners understand the implication of common representation and hereby consent to Attorney's representation of the Parcel Owners.

U. Contingency. This Agreement is contingent upon the City and Parcel Owners executing and delivering the Annexation Agreement and the City approving the Annexation Agreement and the First Phase Governmental Action.

V. Amendments. This Agreement may only be amended or modified in writing signed by the City and all of the Parcel Owners.

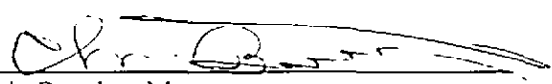
W. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank]

Dated as of ~~February 9~~^{March 9th}, 2017 by the City.

“CITY”

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: 
Chris Beutler, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 9th day of ~~February~~^{March 9th}, 2017, by Chris Beutler, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation, on behalf of the municipal corporation.

(Seal)

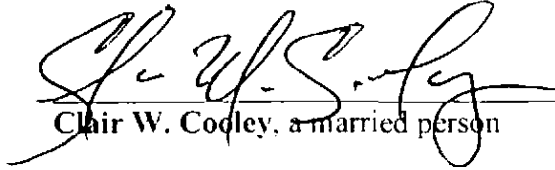


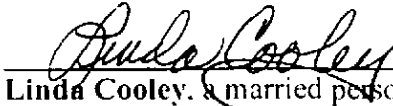
Notary Public



Dated as of February ___, 2017 by Clair W. and Linda Cooley.

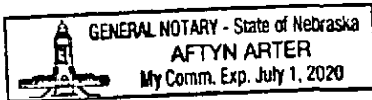
"CLAIR W. AND LINDA COOLEY"


Clair W. Cooley, a married person



Linda Cooley, a married person

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 10 day of February, 2017, by **Clair W. Cooley**, a married person.



(Seal)

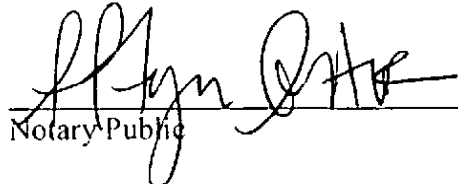

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 10 day of February, 2017, by **Linda Cooley**, a married person.



(Seal)


Notary Public

Dated as of Feb. 15, 2017 by JLW LP

"JLW LP"

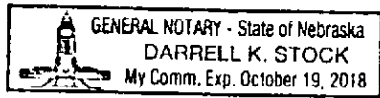
JLW LP,
a Nebraska limited partnership

By: Mae Whitmer
Mae Whitmer

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 15 day of Feb., 2017, by Mae Whitmer of **JLW LP**, a Nebraska limited partnership, on behalf of the limited partnership.

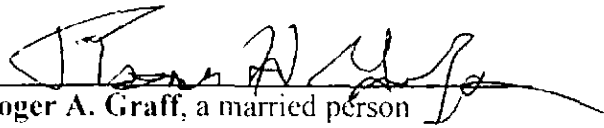
(Seal)



[Signature]
Notary Public

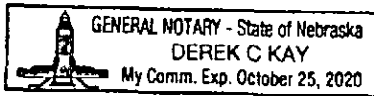
Dated as of 2-14, 2017 by Roger A. Graff.

“ROGER A. GRAFF”


Roger A. Graff, a married person

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 14th day of February, 2017, by Roger A. Graff, a married person.



(Seal)


Notary Public

Dated as of February 13, 2017 by Matodol, LLC

MATODOL, LLC"

Matodol, LLC, a Nebraska limited liability company, an undivided one-half interest

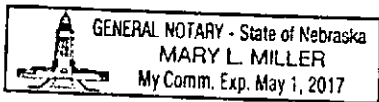
By: Olsson Associates, Inc., a Nebraska corporation, as Manager

By: Jeffrey S. Jenkins

Title: CFO

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 13 day of February 2017, by Jeffrey Jenkins as CFO of Olsson Associates, Inc., a Nebraska corporation, as Manager of **Matodol, LLC**, a Nebraska limited liability company, on behalf of the Nebraska limited liability company.




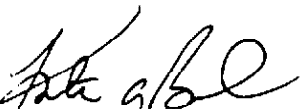
(Seal)

Mary L. Miller
Notary Public

Dated as of February 17th, 2017 by Daryl Lee and Kristie A. Bohac

"DARYL LEE AND KRISTIE A. BOHAC"

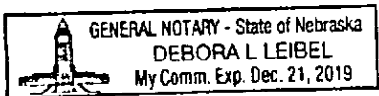

Daryl Lee Bohac, a married person



Kristie A. Bohac, a married person

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 17th day of February, 2017, by **Daryl Lee Bohac**, a married person.

(Seal)

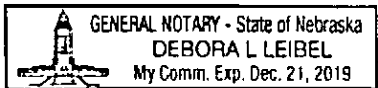


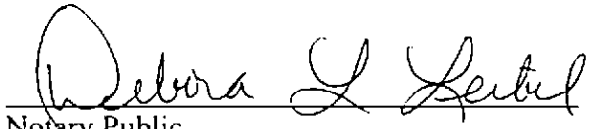

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 17th day of February, 2017, by **Kristie A. Bohac**, a married person.

(Seal)




Notary Public

Dated as of February 27, 2017 by Christopher A. Kidwell

"CHRISTOPHER A. KIDWELL"

Chris Kidwell

Christopher A. Kidwell, a married person

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of February, 2017,
by Christopher A. Kidwell, a married person.

(Seal)

State of Nebraska – General Notary
EMILY C. SCHAMBER
My Commission Expires
March 17, 2020

Emily C. Schamber

Notary Public

Exhibit "A"

Parcel Nos. 1-7 Name of Parcel Owners and Legal Descriptions

Parcel #	Property ID	Acre	Parcel Owner	Parcel Owner Address
1	17-35-300-005-000	68.54	MATODOL, LLC. c/o Olsson Associations, Inc., Manager, Attention Jeffrey Jenkins	601 P Street Lincoln, Nebraska 68508
2	17-35-400-003-000	73.34	JLW LP Attention: Mae Whitmer	6421 Rogers Circle Lincoln, NE 68506
3	17-35-400-001-000	4.91	Clair W. and Linda Cooley	9300 Van Dorn Street Lincoln, NE 68520
4	17-35-400-002-000	72.76	Roger H. Graff	7005 Shamrock Road, Unit 312 Lincoln, NE 68506
5	17-35-203-002-000	32.94	MATODOL, LLC. c/o Olsson Associations, Inc., Manager, Attention Jeffrey Jenkins	601 P Street Lincoln, Nebraska 68508
6	17-35-200-015-000 17-35-200-018-000	29.80	Daryl Lee and Kristie A. Bohac	10011 N. 152 nd Street Waverly, NE 68462
7	17-35-100-005-000	26.87	Christopher A. Kidwell	8901 A Street Lincoln, NE 68508
Total		309.16		

LEGAL DESCRIPTION

A LEGAL DESCRIPTION FOR PARCELS LOCATED IN SECTION 35, TOWNSHIP 10 NORTH, RANGE 7 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA. AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOT 50 IRREGULAR TRACT, LOT 51 IRREGULAR TRACT, LOT 48 IRREGULAR TRACT, LOT 61 IRREGULAR TRACT, LOT 54 IRREGULAR TRACT. LOT 62 IRREGULAR TRACT. OUTLOT "A", FBT ADDITION, AND A PART OF LOT 30 I.T. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 30 I.T., SAID POINT BEING THE SOUTHEAST QUARTER OF THE EAST HALF OF SAID NORTHWEST QUARTER, THENCE. WEST, ALONG THE SOUTH LINE OF SAID LOT 30 I.T., SAID LINE BEING THE SOUTH LINE OF THE EAST HALF OF SAID NORTHWEST QUARTER, ON AN ASSUMED BEARING OF NORTH 89 DEGREES 27 MINUTES 50 SECONDS WEST, A DISTANCE OF 1327.12 FEET TO THE SOUTHWEST CORNER OF SAID LOT 30 I.T., SAID POINT BEING THE SOUTHWEST CORNER OF THE EAST HALF OF SAID NORTHWEST QUARTER; THENCE NORTH 00 DEGREES 01 MINUTES 45 SECONDS WEST, ALONG THE WEST LINE OF SAID LOT 30 I.T., SAID LINE BEING THE WEST LINE OF THE EAST HALF OF THE NORTHWEST QUARTER, A DISTANCE OF 256.52 FEET TO A POINT; THENCE NORTH 46 DEGREES 51 MINUTES 48 SECONDS EAST A DISTANCE OF 1812.23 FEET TO A POINT ON THE EAST LINE OF SAID LOT 30 I.T., SAID POINT BEING ON THE EAST LINE OF THE EAST HALF OF SAID NORTHWEST QUARTER; THENCE SOUTH 00 DEGREES 10 MINUTES 51 SECONDS EAST, ALONG SAID LINE, A DISTANCE OF 1508.04 FEET TO THE POINT OF BEGINNING.

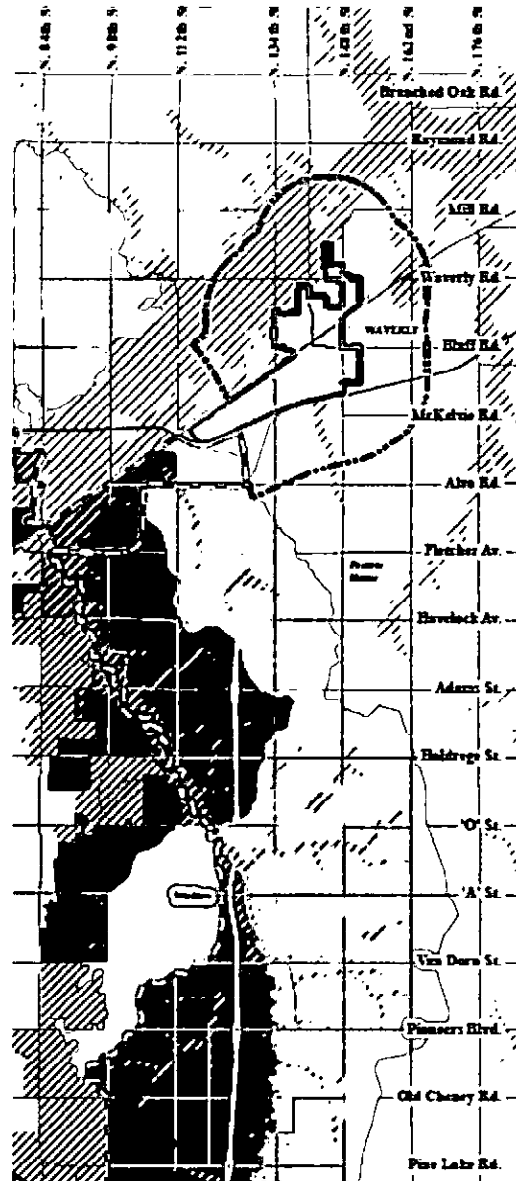
SAID TRACT CONTAINS A CALCULATED AREA OF 1,170,291.04 SQUARE FEET OR 26.87 ACRES, MORE OR LESS.

THE PROPERTY AS REFERRED TO IN THE ABOVE DESCRIPTION HAS NOT BEEN SURVEYED.

F:\Projects\015-2987\20-Management\Communication\Annexation Agreement legal.docx

Exhibit "B"

Comprehensive Plan Tier I, Priority B (2025) Area



2040 PRIORITY GROWTH AREAS

- Existing Lincoln City Limits and Approved Preliminary Plans (2016)
- Floodplain and Flood Prone Areas
- 2040 Future Service Limit
- Tier I, Priority A (Developing)
- Tier I, Priority B (2025)
- Tier I, Priority C (2040)
- Tier II (2060)
- Tier III



Map 1.3: Growth Tiers with Priority Areas

Exhibit "C"

First Phase Annexed Property

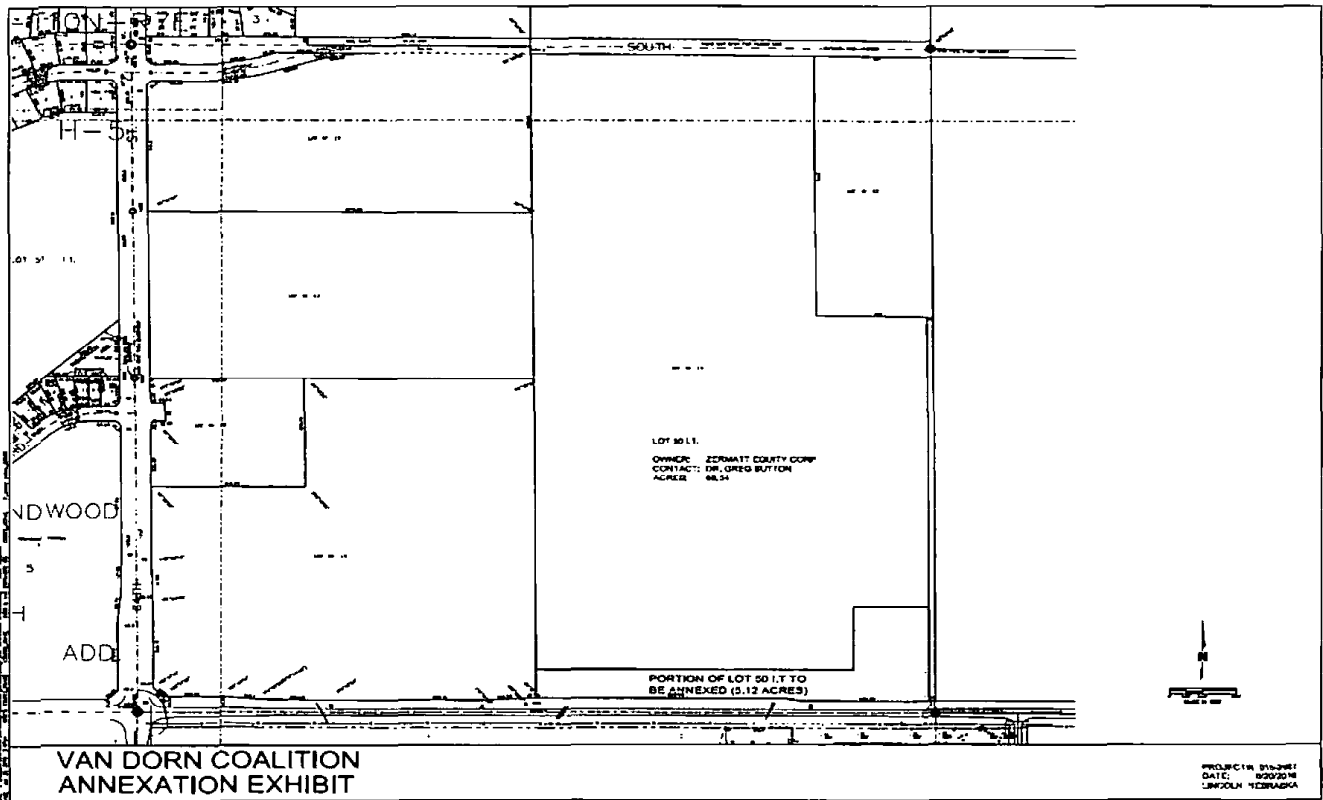
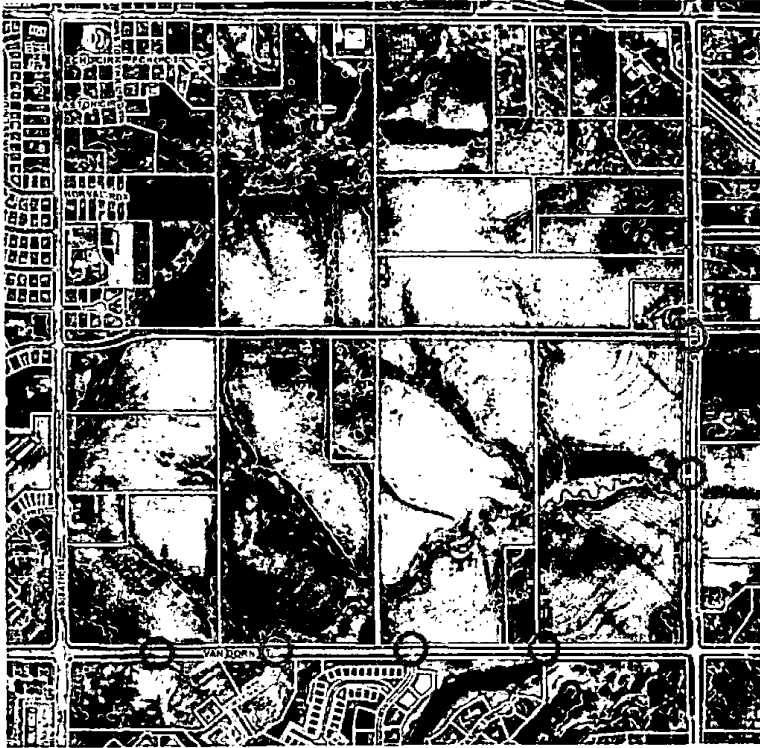


Exhibit "D"
Van Dorn and 98th Street Access Points



○ = Full Turn Movements

⊙ = Right In, Right Out Turn Movements

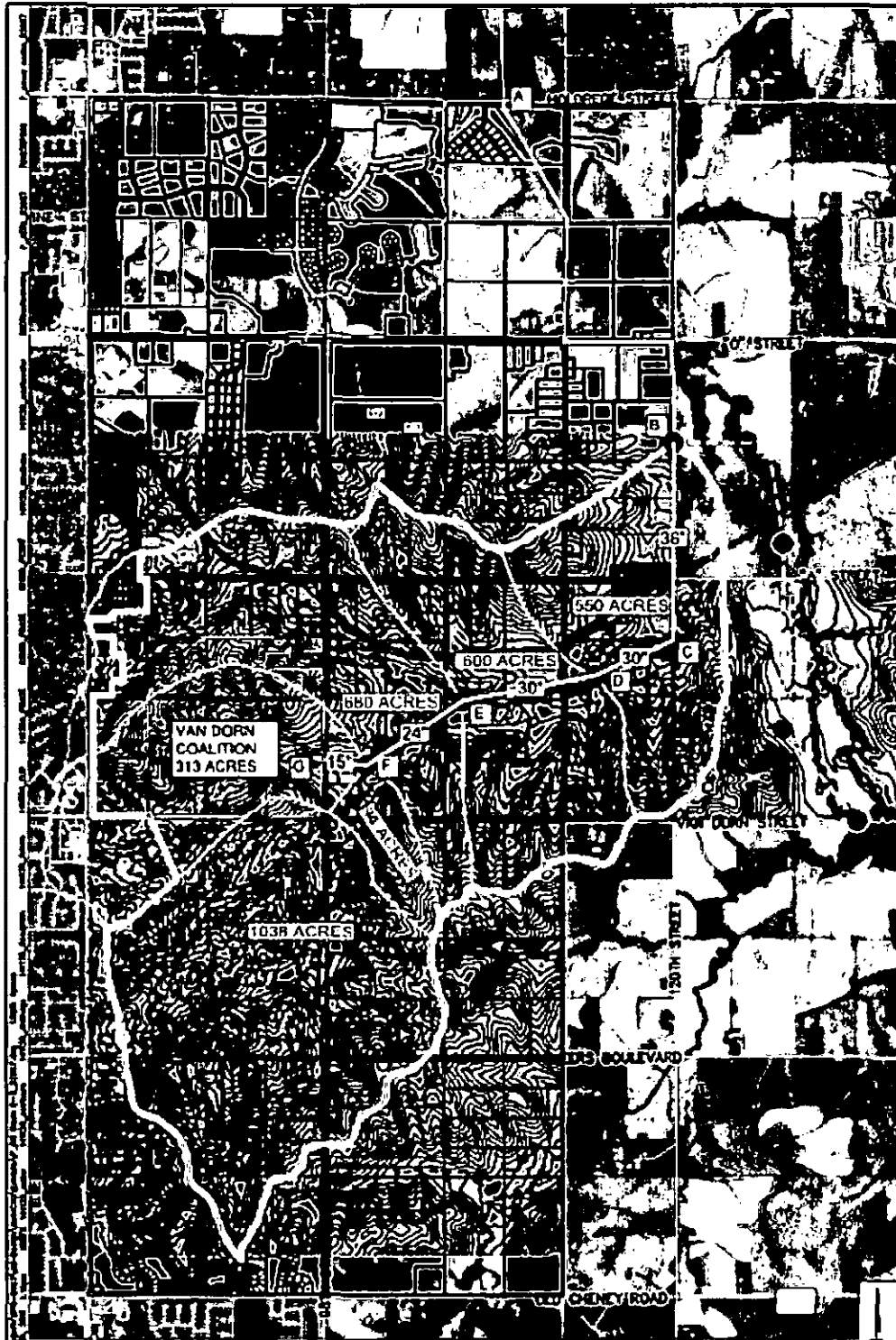
⊙ = Future full intersection, exact location TBD.

Exhibit "E"

Temporary Turn Lanes Allocations—Van Dorn Street

		Temporary Turn Lanes Design and Construction Cost Allocation		
	Van Dorn Street Intersection	Parcel Owners	Lineal Feet	Percentage
1	Approximately 3,4010 feet west of the west ROW line of S. 98th Street (S. 88th Street)	Matodol		100%
2	S. 91st Street	Matodol	277	56.8%
		JLW LP	<u>211</u>	<u>43.2%</u>
		Total	488	100.0%
3	Approximately 1,180 feet west of the west ROW line of S. 98th Street (S. 96th Street)	JLW LP	288	16.2%
		Clair W. Cooley and Linda Cooley	260	14.7%
		Roger H. Graff	<u>1,225</u>	<u>69.1%</u>
		Total	1,773	100.0%

Exhibit "F"
Sanitary Sewer Map



PROJECT NO. 013-2087
 DRAWN BY JRM/J
 DATE 05/31/06

BASIN E-3

OLSON.
 ASSOCIATES

Sanitary Sewer Map
 Basin E-3
 City of San Diego
 1035 Boulevard
 05/31/06
 404-441-7733 ext. 200

FIGURE

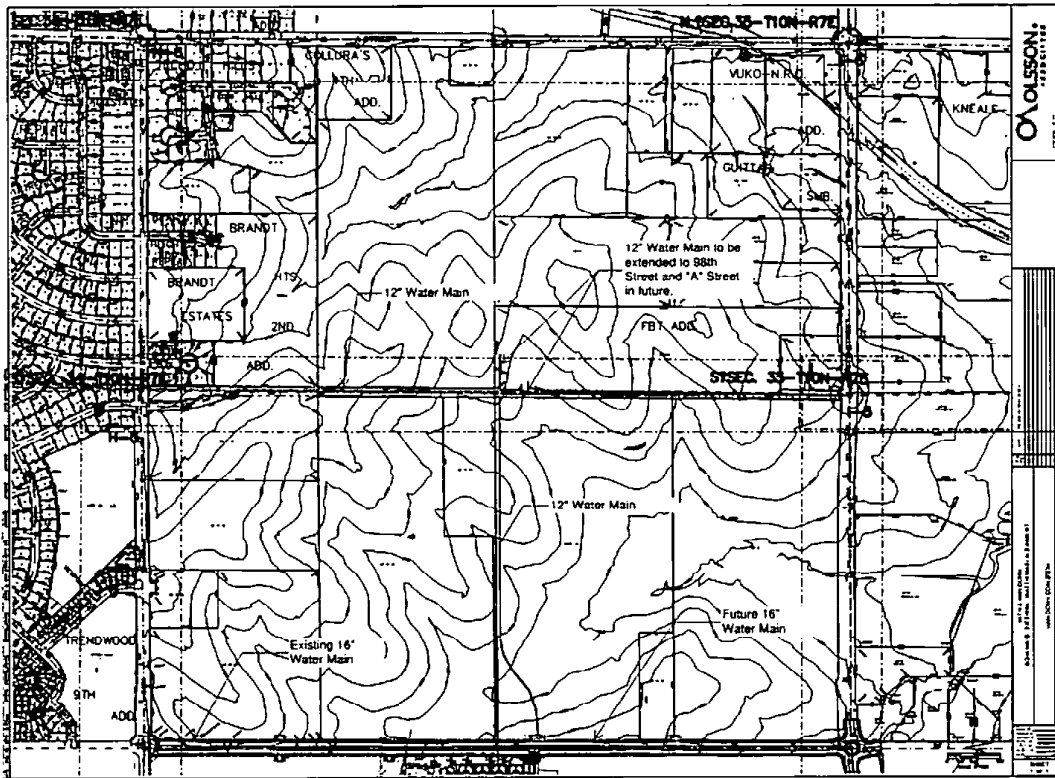
Exhibit "G"

Trunk Sewer Lines Uses and Sources of Funds

Trunk Sewer Lines Uses and Sources of Funds					
Description	Uses Total	Sources			
		Available City Funds	New Revenue Bond (funded by September 2018)	CIP Budget (2018/2019)	Total
Design	\$1,600,000				
Right of way acquisition	\$250,000				
Construction	\$10,000,000				
Construction observation	\$1,200,000				
Total	\$13,050,000	\$1,600,000	\$4,200,000	\$7,250,000	\$13,050,000

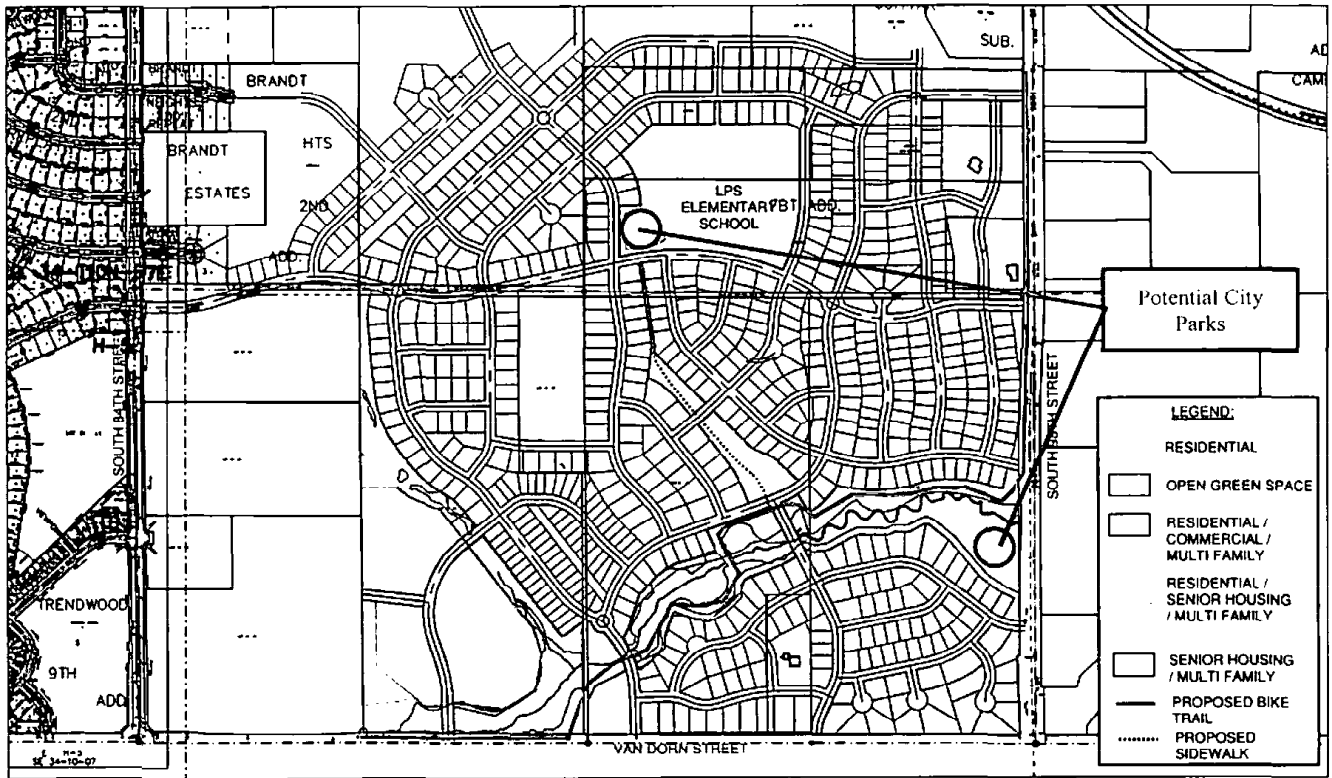
Exhibit "H"

Water Lines Map



Note Existing 16" water main is located on the south side of Van Dorn Street ROW: future 16" water main from the 1/2 mile to the 3/4 mile mark will be located on the north side of the Van Dorn Street ROW

Exhibit "I"
Master Plan



PROJECT NO. 015-2987
 DRAWN BY: MCP
 DATE: 10/2/18

Coalition Master Land Use Concept

OLSSON
 ASSOCIATES

9111 1/2 Street, Suite 200
 P.O. Box 10000
 Lincoln, NE 68508
 (402) 441-9471
 (402) 441-9444

EXHIBIT