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41-6979  
E.O. 41379

MOPAC TRAIL AGREEMENT  
AND  
GRANT OF EASEMENTS

THIS MOPAC TRAIL AGREEMENT AND GRANT OF EASEMENTS is made and entered into as of the 1st day of May, 1991, by and between LINCOLN BRANCH, INC., a Nebraska corporation, hereinafter referred to as "Owner", and the CITY OF LINCOLN, NEBRASKA, a municipal corporation, hereinafter referred to as "City".

RECITALS

A. Owner is the owner of the following described property. All right, title and interest in and to the right-of-way and appurtenant facilities located thereon, of that portion of the abandoned Lincoln Subdivision of the Missouri Pacific Railroad Company, said right-of-way being of varying widths that extends in a general easterly and southeasterly direction from the east line of 35th Street in the City of Lincoln, a straight line drawn at right angles to a point in the centerline of abandoned main track of said Lincoln Subdivision that is 564 feet distant southeasterly, measured along said centerline, from the west line of Section 26, Township 10 North, Range 7 East of the 6th Principal Meridian, all in Lancaster County, Nebraska, through the following legal subdivisions:

South Half of the Northeast Quarter of Section 19, Township 10 North, Range 7 East of the 6th Principal Meridian;

South Half of the North Half of Section 20, Township 10 North, Range 7 East of the 6th Principal Meridian;

South Half of the Northwest Quarter; the Northeast Quarter of the Southwest Quarter; and the Southeast Quarter of Section 21, Township 10 North, Range 7 East of the 6th Principal Meridian;

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Southwest Quarter of Section 22, Township 10 North, Range 7 East of the 6th Principal Meridian;

North Half of the Northwest Quarter; and the Northeast Quarter of Section 27, Township 10 North, Range 7 East of the 6th Principal Meridian;

West Half of the Northwest Quarter of Section 26, Township 10 North, Range 7 East of the 6th Principal Meridian,

all in Lancaster County, Nebraska, hereinafter referred to as Owner's Property.

B. City has acquired by condemnation a permanent public access easement to construct, reconstruct, inspect, repair, maintain, operate and replace a bike path (trail) and appurtenances thereto belonging over, through and across a portion of the Owner's Property, from the east line of 35th Street to the east line of 84th Street, Lincoln, Nebraska. A particular description of the real property condemned is described on Attachment "A" to the City's Petition for the Appointment of Appraisers and Condemnation of Lands filed before the County Judge of Lancaster County, Nebraska, at Docket 119, Page 38.

C. City has prepared final design and construction plans and specifications for construction of Phase II of the bike path (trail) within said easement area from the west right-of-way line of 66th Street to the east right-of-way line of 84th Street.

D. Owner has requested that the bike path from 66th Street to 70th Street be constructed outside the City's easement area acquired by condemnation.

E. City is willing to relocate the bike path at no additional cost to City.

NOW, THEREFORE, in consideration of the mutual obligations of the parties hereto, each of them covenant and agree with each other as follows:

1. Grant of Permanent Easement. Owner hereby creates, establishes, grants, and conveys to City for its benefit and the benefit of the public a permanent public access easement (hereinafter "Permanent Easement") over,

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through, and across a portion of Owner's Property to construct, reconstruct, inspect, repair, maintain, operate and replace a bike path (trail) and appurtenances thereto belonging subject to the following conditions:

A. The easement area for the Permanent Easement shall be a strip of land 20.0 feet in width extending generally in an easterly direction from 60 feet west of the west right-of-way line of 66th Street to 60 feet east of the east right-of-way line of 70th Street generally as shown on Sheet 2 of Drawing No. 56-A-38 of the City of Lincoln, Nebraska Plans and Specifications for Bikepath Proj. 204-725C "Phase C" in the MoPac RR R.O.W. from 66th to 84th Street.

B. Owner shall have no right to enter or use the surface of the easement area of the Permanent Easement for any purpose which would involve a permanent fill, cut, or excavation above or below existing grade or which would involve the construction thereon of permanent buildings or structures without the prior written authorization of the City.

C. As soon as the precise location of the Permanent Easement has been more precisely ascertained, Owner and City shall file a supplemental document which shall thereby specifically locate such easement.

D. The Permanent Easement shall run with the land and shall be binding upon all persons having or acquiring any rights, title or interest therein or any portions thereof and upon their respective successors and assigns in interest.

E. Owner covenants that it is the owner of the Permanent Easement premises and has legal right, title and capacity to grant the Permanent Easement contained herein, subject to easements and restrictions of record.

2. Grant of Temporary Construction Easement. Owner hereby creates, establishes, grants, and conveys to City for its benefit a temporary construction easement (hereinafter "Temporary Easement") over, through, and

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across a portion of Owner's Property for the accommodation of construction equipment, materials and excavated earth subject to the following conditions:

A. The easement area for the Temporary Easement shall be all of Owner's Property extending generally in an easterly direction from 60 feet west of the west right-of-way line of 66th Street to 60 feet east of the east right-of-way line of 70th Street, Lincoln, Nebraska.

B. That the right, privilege and easement granted for temporary construction shall cease and terminate immediately following the completion of construction, final inspection and acceptance of the bike path (trail) herein-above mentioned from 60 feet west of the west right-of-way line of 66th Street to 60 feet east of the east right-of-way line of 70th Street.

C. The Temporary Easement shall run with the land and shall be binding upon all persons having or acquiring any rights, title or interest therein or any portions thereof and upon their respective successors and assigns in interest. All parties having any interest in the area covered by the Temporary Easement including Owner hereby agree to cooperate with each other so that the bike path can be constructed in an unimpeded manner while other construction which may occur on the property covered by the Temporary Easement can also be accommodated at the same time, if necessary.

D. Owner covenants that it is the owner of the Temporary Easement premises and has legal right, title and capacity to grant the Temporary Easement referred to herein, subject to easements and restrictions of record.

3. Obligation to Reimburse City for the City's Cost to Relocate the Bike Path. Owner agrees to pay and reimburse the City for the City's following costs of relocating the bike path:

A. The direct and soft costs (including City staff time) incurred by the City for all survey work needed as determined by City to relocate the bike

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path from 60 feet west of the west right-of-way line of 66th Street to 60 feet east of the east right-of-way line of 70th Street.

B. The direct and soft costs (including City staff time) incurred by the City for all design and plan review work needed as determined by the City to relocate the bike path as stated in A above.

C. The direct and soft costs (including City staff time) incurred by the City for all engineering work needed as determined by City to relocate the bike path as stated in A above.

D. The direct and soft costs (including City staff time) incurred by the City for all construction work needed, as determined by City to relocate the bike path as stated in A above.

E. The direct and soft costs (including City staff time) incurred by the City for all grading work needed as determined by City to relocate the bike path as stated in A above.

Owner further agrees that its obligation to reimburse the City for the cost incurred by the City to relocate the bike path as provided above is not contingent upon Owner selling the property to any potential buyer and/or upon City rezoning the property in any manner. All costs incurred by the City as set forth above including direct, soft costs, and City staff time costs shall be incurred by the City only as reasonably necessary for the completion of the above described tasks and such costs shall not be cumulative, duplicative, and repetitive unless reasonably necessary and reasonably justified.

4. Records of Costs Incurred by City. The City of Lincoln shall keep records of the costs and expenses it incurs for the costs and expenses outlined in paragraph 3 above. Said records shall be made available for inspection by a representative of Owner.

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5. Payment of Reimbursement. City shall submit a bill to Owner for the reimbursable costs incurred by City to relocate the bike path. Owner shall pay and reimburse the City for such costs within thirty (30) days after an award is entered in the currently pending condemnation case on appeal in the district Court of Lancaster County, Nebraska, under the caption of Lincoln Branch, Inc. v. City of Lincoln, Docket 448, Page 70, regardless of whether either party subsequently appeals the award. The City agrees to pay into court any increase in said award payable to Owner which is over and above the Board of Appraisers' award of damages in the amount of \$576,915.00. City further agrees to stipulate to the withdrawal of such increase, if any, up to an amount at least sufficient to enable Owner to pay the reimbursable costs incurred by City as described hereunder, regardless of whether either party subsequently appeals the award.

6. Obligation of City and Owner to Coordinate Grading. Owner and City agree that since the land remaining in private ownership within this 66th-70th Street segment also needs to be graded, the City shall contact either Jim Gerking, President of Lincoln Branch, Inc., or its attorney, Charles D. Humble prior to commencing any grading work to construct the bike path and attempt to coordinate the same with Owner. Owner will not unnecessarily delay the City in performing grading work and if Owner is not ready to timely grade the property or coordinate such grading with City, City, after said notice, may commence the grading work required for the installation of its bike path.

7. Release of Prior Easement. City agrees to release that portion of the bike path easement no longer needed which was condemned from 60 feet west of the west right-of-way line of 66th Street to 60 feet east of the east right-of-way line of 70th Street.

8. Determination of Damages from Condemnation; 66th to 70th. Owner and City agree that in determining Owner's damages in Lincoln Branch, Inc. v. City

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of Lincoln, Docket 448, Page 79, the after value of Owner's property from 60 feet west of the west right-of-way line of 66th Street to 60 feet east of the east right-of-way line of 70th Street (or damages to the remainder) shall be determined based upon the Permanent Easement for the bike path (trail) as relocated and not upon the originally condemned easement for said bike path (trail).

9. Grant of Easement to NRD and Drainage. Owner agrees without further consideration to grant the Lower Platte South Natural Resource District a permanent non-exclusive access easement for the inspection, operation, and maintenance of the banks, channel, improvements, and appurtenances of Dead Man's Run, in, over, through, and across a portion of Owner's property from 66th to 70th Street to the north bank of Deadman's Run. If and when the then owner constructs a property line fence, access to the north bank from Owner's property shall be restricted to a gate in the south property fence at a point 625 feet southeast of the east right-of-way line of 66th Street. The access easement shall be in a form substantially similar to that attached hereto as Exhibit "A" and incorporated herein by this reference.

Owner agrees, at the time that the property is developed, to meet the minimum improvement standards of the City of Lincoln in regard to the collection and disposal of storm water drainage from the property located outside of the Permanent Easement. Owner agrees, at a minimum, to utilize the existing underground conduits and pipes which empty into Dead Man's Run unless otherwise approved by the City and the Lower Platte South Natural Resource District.

10. Successors and Assigns. This MoPac Trail Agreement and Grant of Easements shall inure to the benefit of and be binding upon the successors and assigns of Owner and City.

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11. **Interpretation.** The headings used herein are for the convenience of the parties and are not intended to be used in the interpretation of the MoPac Trail Agreement and Grant of Easements. Any uncertainty or ambiguity shall not be interpreted against either party because such party prepared that portion, but shall be construed according to the rules of interpretation of contracts generally.

12. **Authorization.** The undersigned parties hereby warrant and represent to each other that all necessary action to duly approve the execution, delivery and performance of this MoPac Trail Agreement and Grant of Easements have been taken, and this Agreement constitutes a valid and binding agreement of the parties enforceable in accordance with its terms.

IN WITNESS WHEREOF the parties have signed this MoPac Trail Agreement and Grant of Easements the day and year first above written.

LINCOLN BRANCH, INC.  
A Nebraska Corporation, Owner

BY: James O. Gerking  
James Gerking, President

ATTEST:

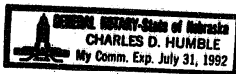
CITY OF LINCOLN, NEBRASKA,  
A Municipal Corporation, City

Michael O. Johanns  
City Clerk

BY: Michael O. Johanns  
Michael O. Johanns, Mayor

STATE OF NEBRASKA )  
                          ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of June, 1991, by James Gerking, President of Lincoln Branch, Inc., a Nebraska corporation, on behalf of the corporation.



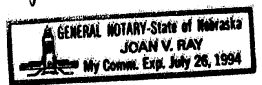
Charles D. Humble  
Notary Public



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STATE OF NEBRASKA )  
                          ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of July, 1991, by Michael O. Johanns, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the City.



Joan V. Ray  
Notary Public

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ACCESS EASEMENT

In consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Lincoln Branch, Inc., a Nebraska Corporation, hereinafter referred to as Grantor, does hereby convey and release to the Lower Platte South Natural Resources District, a political subdivision of the State of Nebraska, hereinafter referred to as Grantee, a non-exclusive permanent access easement for the inspection, operation, and maintenance of the banks, channel, improvements, and appurtenances of Dead Man's Run in, over, through and across a portion of the Grantor's property from 66th to 70th Street to the north bank of Dead Man's Run. IF and when the then owner constructs a property line fence, access to the north bank from Grantor's property shall be restricted to a gate in the south property fence at a point 625 feet southeast of the east right-of-way line of 66th Street. The Grantor's property is legally described as:

All right, title and interest in and to the right-of-way and appurtenant facilities located thereon, of that portion of the abandoned Lincoln Subdivision of the Missouri Pacific Railroad Company, said right-of-way being of varying widths that extends in a general easterly and southeasterly direction from the east line of 35th Street in the City of Lincoln, a straight line drawn at right angles to a point in the centerline of abandoned main track of said Lincoln Subdivision that is 564 feet distant southeasterly, measured along said centerline, from the west line of Section 26, Township 10 North, Range 7 East of the 6th Principal Meridian, all in Lancaster County, Nebraska, through the following legal subdivisions:

South Half of the Northeast Quarter of Section 19,  
Township 10 North, Range 7 East of the 6th  
Principal Meridian;

South Half of the North Half of Section 20,  
Township 10 North, Range 7 East of the 6th  
Principal Meridian;

South Half of the Northwest Quarter; the Northeast  
Quarter of the Southwest Quarter; and the  
Southeast Quarter of Section 21, Township 10  
North, Range 7 East of the 6th Principal Meridian;

Southwest Quarter of Section 22, Township 10  
North, Range 7 East of the 6th Principal Meridian;

Exhibit "A"

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North Half of the Northwest Quarter; and the  
Northeast Quarter of Section 27, Township 10  
North, Range 7 East of the 6th Principal Meridian;

West Half of the Northwest Quarter of Section 26,  
Township 10 North, Range 7 East of the 6th  
Principal Meridian,

all in Lancaster County, Nebraska, hereinafter referred to as  
Grantor's Property.

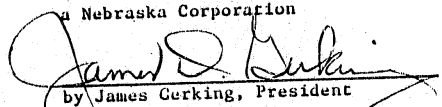
The Grantor is granting the easement and rights herein  
specified without divesting himself of the title or ownership of the  
above-described property, subject, however, to the right of the  
Grantee to use the same for the purposes herein expressed.

The Grantor hereby covenants with the Grantee and with the  
successors and assigns that the Grantor has good right and lawful  
authority to grant this easement and does hereby covenant to warrant  
and defend the title to said easement against the lawful claims of all  
persons whomsoever.

This easement shall be perpetual and is binding on the  
Grantor, the Grantor's successors and assigns. The easement granted  
in favor of the Grantee shall inure to its successors and assigns.

Dated this 25<sup>th</sup> day of June, 1991.

Lincoln Branch, Inc.,  
a Nebraska Corporation

  
by James Gerking, President

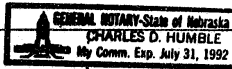
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STATE OF NEBRASKA )  
 ) ss  
COUNTY OF LANCASTER )

Before me a Notary Public qualified for said county, personally came, James Cerking, President of Lincoln Branch, Inc., a Nebraska Corporation, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and that of the Corporation.

*Charles D. Humble*  
Notary Public

My Commission Expires:



BLDG  
CODE  
CHECKED  
*Co*  
ENTERED  
EDITED  
*Co*

LANCASTER COUNTY, NEB  
*Dan Jels*  
REGISTER OF DEEDS  
91 JUL 11 PM 12:58

*\$6500*

INST. NO. 91 22101

Attn:  
Rick Reo  
City Attorney