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**AMENDED, RESTATED AND COMBINED
PRAIRIE VILLAGE NORTH and PRAIRIE VILLAGE CENTER
CONDITIONAL ANNEXATION AND ZONING AGREEMENT
AND
NORTH 40 PLAZA IMPACT FEE REIMBURSEMENT AGREEMENT**

This Amended, Restated and Combined Prairie Village North and Prairie Village Center Conditional Annexation and Zoning Agreement and North 40 Plaza Impact Fee Reimbursement Agreement ("Agreement") is made and entered into this 7th day of February, 2007, by and between **Dubois Land, LLC**, a Nebraska limited liability company; **Prairie Village North, LLC**, a Nebraska limited liability company; **Prairie Home Builders, Inc.**, a Nebraska corporation; **Ryland Group, LLC**, a Nebraska limited liability company; **North 47 Group, LLC**, a Nebraska limited liability company, and the **City of Lincoln, Nebraska**, a municipal corporation, hereinafter referred to as "City." North 47 Group LLC is hereinafter referred to as "North 47." Dubois Land, LLC, Prairie Village North, LLC, Prairie Home Builders, Inc., and Ryland Group, LLC are collectively hereinafter referred to as "Prairie." Prairie and North 47 are hereinafter collectively referred to as "Owner."

RECITALS

A. Prairie has requested the City to annex approximately 23.34 acres more or less of land (Annexation No. 06021) generally located Northeast of the intersection of 84th and Adams

Character Title

Street. The approximately 23.34 acres is hereinafter referred to as the "Annexed Property" and is legally described on Exhibit "A" attached hereto.

B. Prairie also owns other land recently annexed by the City ("Other Land") generally located adjacent to the Annexed Property east of 84th and north of Adams as well as Southeast of the intersection of 84th and Adams Street. The Other Land and the Annexed Property are legally described in the PUD Legal Description attached as Exhibit "B" and is hereinafter collectively referred to as "PV Property". The PV Property, excluding the Annexed Property, was previously annexed by the City pursuant to the following Agreements:

(1) Prairie Village Conditional Annexation and Zoning Agreement dated August 19, 2002 and recorded with the Register of Deeds of Lancaster County, Nebraska on September 3, 2002 as Instrument No. 2002-058562 ("PV Agreement") The PV Agreement was entered into by and between the City, Faith Evangelical Lutheran Church, Lincoln, Nebraska ("Church"), and other parties to whom Prairie is the successor;

(2) Prairie Village North Conditional Annexation and Zoning Agreement dated June 12, 2006, approved by City Resolution No. A-83878 ("PV North Agreement"); and

(3) Prairie Village Center Conditional Annexation and Zoning Agreement dated June 12, 2006, approved by City Resolution No. A-83877 ("PV Center Agreement").

C. Prairie has requested a Change of Zone to rezone the PV Property from AG Agriculture District to R-3 and R-5 Residential District, B-2 Planned Neighborhood Business District, and O-3 Office Park District and amending and extending the currently approved Planned Unit Development designation authorizing up to 1,063 dwelling units and 885,000 square feet of commercial retail and office space which is generally allocated as 285,000 square feet south of Adams (213,750 square feet of office and 71,250 square feet of commercial) and 600,000 square feet north of Adams (480,000 square feet of retail and 120,000 square feet of office), the total square feet being partially contingent on meeting incentive criteria ("PV North PUD").

D. Pursuant to the Conditional Annexation and Zoning Agreement for Regent Heights 1st Addition and Northern Lights Addition ("Regent Heights Agreement"), the City and the developers of Regent Heights 1st Addition and Northern Lights Addition constructed certain sanitary sewer trunk lines (hereinafter "Sewer A" and "Sewer B") to sewer 254 acres of land within the preliminary plats of Regent Heights 1st Addition and Northern Lights Addition. Said Sewer A and Sewer B can also sewer 746 acres of land outside of the boundaries of the preliminary plats for Regent Heights 1st Addition and Northern Lights Addition, including portions of the PV Property.

E. In the Regent Heights Agreement, the City agreed to charge owners of land outside the boundaries of the preliminary plats for Regent Heights 1st Addition and Northern Lights Addition who benefit not from maintenance of Sewer A and Sewer B, but from the extension of Sewer A and Sewer B into an entirely new area, including that portion of the PV Property that may be served by those sewer extensions, a fair share of the cost of Sewer A and Sewer B based upon a per-acre formula or some other fair share formula approved by the City.

F. North 47 is the developer and its members are the legal title holders of the former North 40 golf course located at the southwest corner of 84th and Adams Street consisting of approximately 47 acres and legally described in the attached Exhibit "C" ("North 40 Property").

G. North 47 requested and obtained approval through City Ordinance No. 18559 for a Change of Zone to rezone the North 40 Property from AG Agriculture District to R-3 Residential District and B-2 Planned Neighborhood Business District with a Planned Unit Development designation authorizing up to 74 single family dwelling units and 140,000 square feet of commercial space ("North 40 Plaza PUD").

H. The PV Property together with the North 40 Property are referred to collectively in this Agreement as "Property".

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do agree as follows:

1. **Annexation by the City.** The City agrees to annex the Annexed Property.
2. **Change of Zone.** The City agrees to approve the Change of Zone and PV North PUD designation for the PV Property.

3. **Water Main.**

A. Construction. City has entered into a contract with HWS Consulting Group, Inc. ("HWS") to design a 16-inch water main in Adams Street from approximately 81st Street east to 87th Street. The water main shall be constructed by the City in accordance with City procedures. Prairie agrees to construct a 12-inch water main within the PV Property north of Adams as agreed to with the City. The 12-inch water main shall be constructed by Prairie through the City's executive order process and construction contracts shall be let only after competitive bidding in accordance with City procedures

B. Reimbursement. The City agrees to reimburse Prairie for the difference between the cost of the internal 12-inch water main and the cost of a typical 6-inch water main abutting a residential area and the cost of a typical 8-inch water main abutting commercial area following completion of construction.

4. **Sanitary Sewer.**

A. Construction. The existing Regent Heights/Northern Lights Sanitary Trunk Sewer north of Adams Street will need to be relocated into the planned street right-of-ways. Prairie shall bear all costs for relocating the existing Regent Heights/Northern Lights Sanitary Trunk Sewer north of Adams Street into the street right-of-ways. The phasing and timing of the sewer relocation shall be acceptable to the City's Department of Public Works and Utilities. The design of the relocation project shall be subject to the approval of the City's Department of Public Works and Utilities. Construction shall be through the City's executive order process.

B. No Reimbursement for Site-Related Improvements. Prairie agrees that Prairie shall construct the site-related improvements consisting of the relocation of the existing Regent Heights/Northern Lights Sanitary Trunk Sewer into the street right-of-ways at the Prairie's own cost and expense without any reimbursement from the City.

C. Regent Heights Connector. Prairie acknowledges and agrees to plan for and provide easements acceptable to the City for a future interconnective sanitary sewer trunk line known as the "Regent Heights Connector." The Regent Heights Connector will be between the relocated sanitary sewer trunk line within Prairie Village North and/or future annexed land and the future Stevens Creek Trunk Line.

5. North 84th Street Improvements.

A. Deferred Construction. The following Arterial Street Impact Fee Facility Improvements and Site-Related Street Improvements shall be constructed by Owner at Owner's own cost and expense in the time lines provided below:

(1) Arterial Street Impact Fee Facility Improvements.

(a) North and south bound right-turn lanes and any additional length of the south and north bound left-turn lanes beyond their current lengths in 84th Street at Windmill Drive at the same time as Windmill Drive is constructed.

(b) North bound right-turn lanes and the extension of the south bound left-turn lane in 84th Street at the 1/4 and 1/2 mile intersections north of Adams (Fremont?) prior to the issuance of any occupancy permit for any commercial use.

(2) Site-Related Street Improvements.

(a) Westbound left-turn lane in Windmill Drive at North 84th Street prior to the issuance of any occupancy permit for any commercial use east of 84th Street and south of Adams and having access to Windmill Drive.

(b) Eastbound left-turn lane in Windmill Drive at North 84th Street prior to the issuance of any occupancy permit for any commercial use west of 84th Street and south of Adams and having access to Windmill Drive.

(c) Reconstruction of the 84th and Windmill Drive intersection in its new location, other than as provided in 5 (1) (a) above is a site related expense.

(d) Right turn lanes in 84th street at any driveways approved.

B. Construction Requirements. Turn lanes at all street intersections and drives shall be constructed at a length and width as provided for in the approved final site plan for the PV North PUD or North 40 Plaza PUD. The design of the North 84th Street Improvements shall be subject to the approval of the City's Department of Public Works and Utilities. Construction of Impact Fee Facility Improvements shall be through the City's executive order process and

construction contracts shall be let only after competitive bidding in accordance with City procedures.

If any of the improvements required in this Paragraph 5 are impossible or impractical to construct prior to completion of the LES Line Relocation described in Paragraph 13 below, the City agrees that it will not deny or hold up any occupancy permits or final plats because of the delay in completing the LES Line Relocation.

6. Adams Street Improvements.

A. Adams Street Impact Fee Facility Improvements. The City has entered into a contract with HWS to design Adams Street from 75th to 90th Streets. The contemplated road way improvements to Adams Street are Impact Fee Facility Improvements. The City agrees to complete the design and undertake the construction of the Impact Fee Facility Improvements in a timely manner with a goal of completing construction in calendar year 2007. The City shall consult with the Owners during preparation of the plans and contract to develop a mutually agreeable phasing plan. The Owners may determine the phasing provided there is no detriment to the traveling public and property owners in the vicinity of the project caused by the Owners preferred phasing. If the Owners preferred phasing costs more than the City's preferred phasing the Owners shall pay the additional costs.

B. Adams Street Site-Related Improvements East of 87th Street. The Adams Street Site-Related Improvements shown on the approved final site plan for the Prairie Village North PUD shall be constructed by the City or Prairie at the City's option at Prairie's own cost and expense. These site related improvements shall be constructed prior to the issuance of any occupancy permit for any commercial use that takes access to 87th Street.

C. Construction Requirements. Turn lanes at all intersections shall be constructed at a length and width acceptable to the City's Department of Public Works and Utilities. The design and construction of the Adams Street Impact Fee Facility Improvements east and west of 84th Street shall be the responsibility of the City and shall be completed in accordance with City procedures.

D. **Reimbursable Contribution by Owner for Adams Street Impact Fee Facility Improvements.** Owner agrees to contribute \$2,000,000.00 to City for the construction of the Adams Street Impact Fee Facility Improvements subject to reimbursement as provided in paragraph 8 below. If said contract includes construction of the Adams Street Site Related Improvements or a portion thereof by the City, Prairie shall be entitled to take advantage of the unit bid pricing offered by the City's contractor. Prior to the award of the contract for the Adams Street Impact Fee Facility Improvements, Prairie and North 47 shall each post security such as a letter of credit or cash escrow in the amount of \$1,000,000.00 with the City to guarantee the \$2,000,000.00 reimbursable contribution. In addition, if the contract includes construction of the Adams Street Site Related Improvements, Prairie shall post security such as a letter of credit or cash escrow with the City in the amount attributable to the cost of the Adams Street Site Related Improvements based upon the unit pricing. Upon receipt of any request for payment in connection with the construction of the Adams Street Impact Fee Facility Improvements, the City shall invoice Prairie for one-half of said cost and invoice North 47 for one-half of said cost provided that Prairie's and North 47's total cost to be paid by Prairie and North 47 shall not exceed their respective \$1,000,000.00 reimbursable contribution. The City shall pay all additional costs. Prairie and North 47 shall pay the amounts due on the invoice to the City or directly to the contractor as requested by the City within thirty (30) days of the date of the invoice. When the City receives any request for payment in connection with the construction of the Adams Street Site Related Improvements, the City shall invoice Prairie for said costs and Prairie agrees to pay the amount due on the invoice to the City or directly to the contractor as requested by the City within thirty (30) days of the date of the invoice. Should Prairie or North 47 construct at the request of the City, all or any part of the Adams Street Impact Fee Facility Improvements, the cost of that work shall be credited equally to Prairie's and North 47's respective \$1,000,000.00 reimbursable contribution.

7. Traffic Signals.

A. *Site Related.* When warranted and recommended for installation by the City's Department of Public Works and Utilities, Owner, Prairie or North 47 shall design, construct and install at their own cost and expense Site-Related Street Traffic Signals in the following intersections:

(1) In 84th Street at Windmill Drive. Installation by Owner shall be required when warrants are met and the Department of Public Works and Utilities has recommended installation of the traffic signal.

(2) In Adams Street at 87th Street. The design of this traffic signal shall be done as a part of the City's contract with HWS for the Adams Street Impact Fee Facility Improvements. Installation by Prairie shall be required when warrants are met and the Department of Public Works and Utilities has recommended installation of the traffic signal.

(3) In Adams Street at the North 40 Plaza Entrance. The design of this traffic signal shall be done as a part of the City's contract with HWS for the Adams Street Impact Fee Facility Improvements. Installation by North 47 shall be required when warrants are met and the Department of Public Works and Utilities has recommended installation of the traffic signal.

(4) In 84th Street at the one-fourth mile point north of Adams Street. Installation by Prairie shall be completed prior to the issuance of an occupancy permit for any commercial use north of 84th Street and Adams Street.

(5) At the recommendation of the Department of Public Works and Utilities, signals may be required before any occupancy permit if the signal is likely to be warranted upon occupancy.

B. *Arterial Street Impact Fee Related.*

(1) *Construction.* When warranted and recommended for installation by the City's Department of Public Works and Utilities, Prairie shall design, construct and install at its own cost and expense an Arterial Street Impact Fee Facility Traffic Signal in 84th Street at the one-half mile point north of Adams Street.

(2) *Contribution for Arterial Street Impact Fee Facility Traffic Signal in 84th Street at Leighton Avenue.* The City shall install a traffic signal in the intersection in 84th Street and Leighton Avenue when warrants are met and the Department of Public Works and Utilities recommends installation of the traffic signal. Prairie shall contribute and pay the City 25% of the cost. Prairie understands that other developers have also agreed to contribute to the cost of this traffic signal.

C. *Design.* The design of the traffic signals referred to above shall be approved by the City's Department of Public Works and Utilities. Construction shall be through the City's executive order process.

8. Reimbursement for Arterial Street Impact Fee Facility Improvements.

A. *Directed Arterial Street Impact Fees.* The City agrees to reimburse the Owner for the cost to construct the North 84th Street Arterial Street Impact Fee Facility Improvements, the Adams Street Impact Fee Facility Improvements, the Arterial Street Impact Fee Facility Traffic Signals and the LES Line Relocation, without interest from Arterial Street Impact Fees collected against the entire development of the Property up to the Directed Arterial Street Impact Fee Amount of \$4,711,893.00 which reflects the amount attributable to 100% development of the proposed development of the Property in 2007 based upon the 2007 Arterial Street Impact Fee Schedule. *Reimbursement shall be subject to the following conditions:*

(1) Said reimbursement shall be paid quarterly from Impact Fees actually received from development occurring on the land included in the PV Agreement, on any of Prairie's property located south of the Murdock Trail, or subject to the PV North PUD or North 40 PUD;

(2) Any reimbursement to be paid from Impact Fees shall not constitute a general obligation or debt of the City.

B. *Owner's Cost in Excess of Directed Arterial Street Impact Fee Amount.* In the event Owner's cost of construction of the improvements described in A above are in excess

of the Arterial Street Impact Fee Amount (\$5,711,893.00), City agrees to use its best efforts to reimburse Owner with interest for the excess cost from other Arterial Street Impact Fees collected from this and/or other developments within the same benefit district within eleven (11) years from the date the improvements described in A above are substantially completed as determined by the City, subject to the following conditions:

(1) The reimbursement shall be repaid quarterly from Arterial Street Impact Fees collected from the same benefit district the Property is located in;

(2) Owner shall not be entitled to any reimbursement of said costs in excess of Impact Fees actually received; and

(3) Any reimbursement to be paid from such Impact Fees shall not constitute a general obligation or debt of the City.

Interest on the outstanding balance shall draw interest at the rate of two percent (2%) per annum, provided, however, interest shall not begin to accrue until Owner advances any excess funds to the City. Notwithstanding the above, the City's best efforts to reimburse Owner with Impact Fees collected from other developments within the same benefit district does not restrict the City from agreeing to reimburse future developers within the same benefit district from Directed Impact Fees collected against the entire development of their property if those developers fund the construction of Impact Fee Facility Improvements. If a developer does not fund the construction of Impact Fee Facility Improvements, the Impact Fees that are collected from that development shall be used to pay the oldest reimbursement obligation that the City may have in the same benefit district.

C. The Impact Fee reimbursement payments shall be made to the Owner or to the Owner's Escrow Agent as directed by Owner.

9. No Reimbursement for Site-Related Street Improvements. Owner agrees that Owner shall construct the Site-Related Street Improvements and Site-Related Traffic Signals at Owner's own cost and expense without any reimbursement from the City.

10. Additional Street Right-of-Way.

A. Dedication. Owner agrees to dedicate at no cost to the City the additional right-of-way needed to provide the amount of right-of-way shown on the approved site plan for the PV North PUD and that portion of the North 40 Plaza PUD under the control of North 47 for the North 84th Street Improvements and the Adams Street Improvements. Owner further agrees to dedicate or convey at no cost to the City the temporary and permanent easements for construction of said improvements.

B. Condemnation. City agrees to use its condemnation authority if necessary to acquire at the City's cost the additional right-of-way easements needed to provide the amount of right-of-way shown on the approved site plan for the North 84th Street Improvements and the Adams Street Improvements.

11. Sewer A and Sewer B Connection Fee.

A. Payment. Prairie understands and acknowledges that portions of the PV Property were made sewerable by the construction of Sewer A and Sewer B described in Recital D above and that Prairie did not participate in, nor contribute Prairie's fair share of the cost of construction of Sewer A and Sewer B to serve the PV Property. Prairie therefore agrees to pay a connection fee of \$1,570.00 per acre times the 181.43 acres being annexed in this Agreement and previously annexed pursuant to the Conditional Annexation and Zoning Agreements approved by Resolution Nos. A-83877 and A-83878 for a total connection fee of \$284,845.10, less any payments previously received by the City, if any, for such annexed lands.

B. Reimbursement.

(1) Directed Wastewater Impact Fees. The City agrees to reimburse Prairie for the Sewer A and Sewer B connection fee from Directed Wastewater Impact Fees up to the Directed Wastewater Impact Fee Amount of \$561,819.00 which reflects the amount attributable to 100% development of the proposed development of the Property in 2007 based

upon the 2007 Wastewater Impact Fee Schedule. Reimbursement shall be subject to the following conditions:

(a) The reimbursement shall be repaid quarterly from Wastewater Impact Fees collected from the Property;

(b) Prairie shall not be entitled to any reimbursement of said connection fee in excess of Impact Fees actually received;

(c) Any reimbursement to be paid from such Impact Fees shall not constitute a general obligation or debt of the City.

(2) **Prairie's Cost in Excess of Directed Wastewater Impact Fee Amount.**

In the event Prairie's costs for the Sewer A and Sewer B connection fee are in excess of the Directed Wastewater Impact Fee Amount of \$561,819.00, the City agrees to use its best efforts to reimburse Prairie with interest for the excess costs from other Wastewater Impact Fees collected from this and/or other developments within the same benefit district within eleven years from the date the connection fee is paid. Reimbursement from Impact Fees shall be subject to the same conditions listed in subparagraph B.(1) above. Interest on the outstanding balance shall draw interest at the rate of 2% per annum, provided, however interest shall not begin to accrue until Prairie pays the connection fee. Notwithstanding the above, the City's best efforts to reimburse Prairie with Impact Fees collected from other developments within the same benefit district does not restrict the City from agreeing to reimburse future developers within the same benefit district from Directed Impact Fees collected against the entire development of their property if those developers fund the construction of Wastewater Impact Fee Facility Improvements. If a developer does not fund the construction of Wastewater Impact Fee Facility Improvements, the Impact Fees that are collected from that development shall be used to pay the older reimbursement obligation that the City may have in the same benefit district.

12. Restriction on Development in the Floodplain. The Stevens Creek Floodplain and Floodprone Area are not a part of the PV North PUD.

13. **Lincoln Electric System ("LES") Easement.** Relocation of the existing LES 12kV feeder circuit and 35kV overhead transmission line is necessary to accommodate the North 84th Street Improvements described in Paragraph 5 above ("LES Line Relocation"). The LES Line Relocation is an Arterial Street Impact Fee Facility Improvement. Prairie agrees in the event there is no feasible alternative to dedicate at no cost to the City a 30-foot wide easement immediately east of the existing 115kV LES transmission line easement in order to relocate the existing LES 12kV feeder circuit and 35kV overhead transmission line to accommodate the new right-of-way for North 84th Street. Prairie shall advance all the costs of relocating the 12kV feeder circuit underground and relocating the 35kV transmission line as an overhead transmission line into the new easement area subject to reimbursement pursuant to Paragraph 8 above.

Notwithstanding the above, Prairie and the City, in cooperation with LES, prefer to replace the older towers supporting the LES 115kV transmission line with new mono poles and bury the smaller transmission lines which would eliminate the need for the dedication of the above-described 30-foot wide easement for the LES 12kV feeder circuit and 35kV transmission line. Under this alternative, LES, the City and Prairie would each share in one third of the total costs, except for the cost to bury the 12kV feeder circuit, and Prairie's one-third share would not be reimbursable as an Arterial Street Impact Fee Facility Improvement. Under this alternative, Prairie shall advance all the cost to relocate the 12kV feeder circuit underground subject to reimbursement pursuant to Paragraph 8 above.

14. **Prior Agreements.**

1. PV North Agreement and PV Center Agreement. Prairie and City agree that the PV North Agreement and PV Center Agreement are superceded and replaced in their entirety by this Agreement.

2. PV Agreement Amendments. Prairie and City agree that many of the improvements and obligations set forth in the PV Agreement were impliedly amended by the PV

North Agreement, the PV Center Agreement and now by this Agreement. Therefore the City and Prairie agree that the PV Agreement is expressly amended and superceded as follows:

A. Paragraph 4, Public Water Mains, A. Adams Street, is replaced in its entirety by the provisions of Paragraph 3 of this Agreement.

B. Paragraph 5, Street Improvements, A. Adams Street, is replaced in its entirety by the provisions of Paragraph 6 of this Agreement. The City agrees to use its best efforts to maintain the Church's legal obligation under the PV Agreement to contribute towards the cost of the Adams Street Improvements.

C. Paragraph 6, Sewer Main Extension, is amended by adding the following language:

B. Reimbursement.

(1) Directed Wastewater Impact Fees. The City agrees to reimburse Prairie Home Builders, Inc. for the Sewer A and Sewer B connection fee from Directed Wastewater Impact Fees up to the Directed Wastewater Impact Fee Amount of \$158,576 which reflects the amount attributable to 100% development of the proposed development of the Property in 2006 based upon the 2006 Wastewater Impact Fee Schedule. Reimbursement shall be subject to the following conditions:

(a) The reimbursement shall be repaid quarterly from Wastewater Impact Fees collected from the Property;

(b) Owner shall not be entitled to any reimbursement of said connection fee in excess of Impact Fees actually received;

(c) Any reimbursement to be paid from such Impact Fees shall not constitute a general obligation or debt of the City.

(2) Prairie Home Builders, Inc.'s Cost in Excess of Directed Wastewater Impact Fee Amount. In the event Prairie Home Builders, Inc.'s costs for the Sewer A and Sewer B connection fee are in excess of the Directed Wastewater Impact Fee Amount of \$158,576, the City agrees to use its best efforts to reimburse Prairie Home Builders, Inc. with interest for the excess costs from other Wastewater Impact Fees collected from this and/or other developments within the same benefit district within eleven years from the date the connection fee is paid. Reimbursement from Impact Fees shall be subject to the same

conditions listed in subparagraph B.(1) above. Interest on the outstanding balance shall draw interest at the rate of 2% per annum, provided, however interest shall not begin to accrue until Prairie Home Builders, Inc. pays the connection fee. Notwithstanding the above, the City's best efforts to reimburse Prairie Home Builders, Inc. with Impact Fees collected from other development within the same benefit district does not restrict the City from agreeing to reimburse future developers within the same benefit district from Directed Impact Fees collected against the entire development of their property if those developers fund the construction of Wastewater Impact Fee Facility Improvements. If a developer does not fund the construction of Wastewater Impact Fee Facility Improvements, the Impact Fees that are collected from that development shall be used to pay the older reimbursement obligation that the City may have in the same benefit district.

D. Paragraph 7, Additional Contributions, is deleted in its entirety as it has been replaced by the provisions of Paragraphs 5 and 7 of this Agreement.

E. Subparagraphs B and D of Paragraph 8, Security, are deleted in their entirety as these provisions have been replaced by the provisions of Paragraphs 5 and 7 of this Agreement.

F. Paragraph 10, Credit Against Future Impact Fees, is deleted in its entirety as it has been replaced by the provisions in Paragraphs 5 and 7 of this Agreement.

15. Future Cost Responsibilities. Owner understands and acknowledges that the proposed development of the Property shall be subject to the payment of impact fees and Owner agrees to pay said Impact Fees if development occurs.

16. 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.

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

18. Further Assurances. Each party will use its 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 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.

19. 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.

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

21. 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.

22. 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, Owner, 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.

23. Assignment. In the case of the assignment of this Agreement by any of the parties, prompt written notice shall be given to the other parties 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 other parties to this Agreement.

24. Default. Owner and City agree that the annexation and change of zone promote the public health, safety, and welfare so long as Owner fulfills all of the conditions and responsibilities set forth in this Agreement. In the event Owner defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rescind said

change of zone or take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach.

25. Definitions. For purposes of this Agreement, the words and phrases “cost” or “entire cost” of a type of improvement shall be deemed to include all design and engineering fees, testing expenses, construction costs, publication costs, financing costs, and related miscellaneous costs. For the purposes of this Agreement the words and phrases “building permit”, “development”, “Impact Fee Facility”, “Impact Fee Facility Improvement”, and “site-related improvements” shall have the same meaning as provided for said words and phrases in the Impact Fee Ordinance.

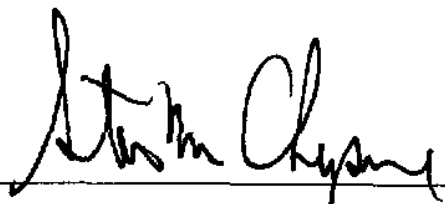
26. Recordation. This Agreement or a memorandum or notice thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at Owner’s cost and expense.

27. Escrow Agent. Repayment of Impact Fees to the Owner, North 47, or Prairie shall be made only to an Escrow Agent as designated from time to time in writing by Prairie, North 47 or their respective successors or assigns. The City shall have no obligation to make any distributions until an Escrow Agent is designated and shall have no liability to Owner other than the payment to the Escrow Agent. Owner shall designate the Escrow Agent to whom payments are to be made under this Agreement by submitting in writing to the Impact Fee Administrator the name, address, phone number and any other contact information for the Escrow Agent. Owner reserves the right to designate and change the Escrow Agent upon timely written notice to the City. The initial Escrow Agent designate by Owner is: Nebraska Title Company, 6003 Old Cheney Road, Suite 300, P. O. Box 6169, Lincoln, Nebraska 68506-0169; (402) 476-7621; ATTN: R. Kent Radke, President/Counsel (402) 323-3845; kradke@nebtittlelincoln.com.

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

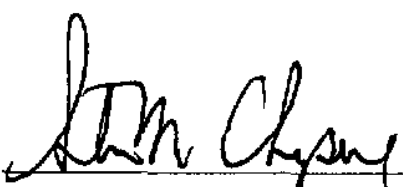
DUBOIS LAND, LLC,

a Nebraska limited liability company

By: 
Steven M. Champoux, Managing Member

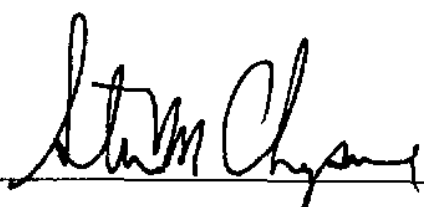
PRAIRIE VILLAGE NORTH, LLC

a Nebraska limited liability company

By: 
Steven M. Champoux, Managing Member


PRAIRIE HOME BUILDERS, INC.

a Nebraska corporation

By: 
Steven M. Champoux, President


RYLAND GROUP, LLC

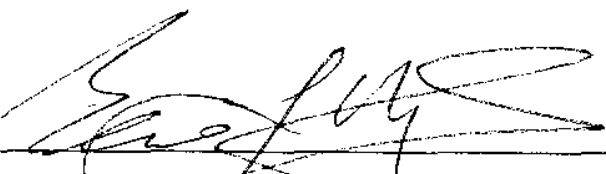
a Nebraska limited liability company

By: 
Steven M. Champoux, Managing Member

NORTH 47 GROUP, LLC

a Nebraska limited liability company

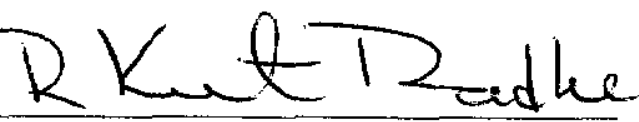
By: 
James C. Tomasek, Managing Member

By: 
Bennie L. McCombs, Managing Member

“ESCROW AGENT”

NEBRASKA TITLE COMPANY,

a Nebraska corporation

By: 
R. Kent Radke, President

ATTEST:

Joan E. Ross
City Clerk



THE CITY OF LINCOLN, NEBRASKA

a municipal corporation

By:

Coleen J. Seng
Coleen J. Seng, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

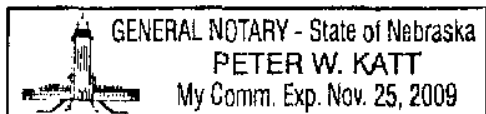
The foregoing instrument was acknowledged before me this 17th day of Feb., 2007, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.



Teresa J. Meier
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

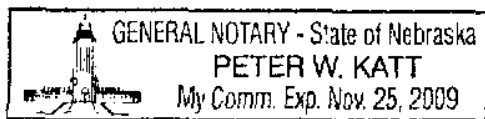
The foregoing instrument was acknowledged before me this 30th day of January, 2007, by James C. Tomasek, Managing Member of North 47 Group, LLC, a Nebraska limited liability company, on behalf of said limited liability company.



Peter W. Katt
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

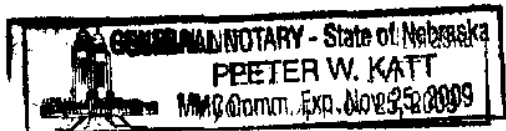
The foregoing instrument was acknowledged before me this 30th day of January, 2007, by Bennie L. McCombs, Managing Member of North 47 Group, LLC, a Nebraska limited liability company, on behalf of said limited liability company.



Peter W. Katt
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 1st day of February, 2007, by R. Kent Radke, President of Nebraska Title Company, a Nebraska corporation, on behalf of the corporation.



Peter W. Katt
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 31st day of January, 2007, by Steven M. Champoux, Managing Member of Dubois Land, LLC, a Nebraska limited liability company, on behalf of said limited liability company.



Sondra S. Barry
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

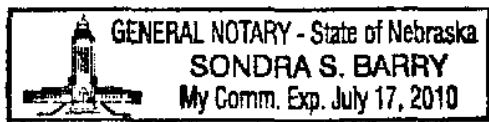
The foregoing instrument was acknowledged before me this 31st day of January, 2007, by Steven M. Champoux, Managing Member of Prairie Village North, LLC, a Nebraska limited liability company, on behalf of said limited liability company.



Sondra S. Barry
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

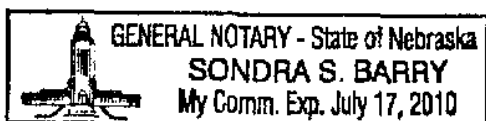
The foregoing instrument was acknowledged before me this 31st day of January, 2007, by Steven M. Champoux, President of Prairie Home Builders, Inc., on behalf of said corporation.



Sondra S. Barry
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 31st day of January, 2007, by Steven M. Champoux, Managing Member of Ryland Group, LLC, a Nebraska limited liability company, on behalf of said limited liability company.



Sondra S. Barry
Notary Public

REVISED LEGAL DESCRIPTION

The following is intended to be a restated and amended description for the real estate legally described in the attached Exhibits A, B and C describing the land subject to the Amended, Restated and Combined Prairie Village North and Prairie Village Center Conditional Annexation and Zoning Agreement and North 40 Plaza Impact Fee Reimbursement Agreement, dated as of February 7, 2007 as approved by City of Lincoln, Nebraska Resolution No. A-84229. The metes and bounds descriptions of the land provided in the original Exhibits have become outdated due to final platting and were therefore rejected for filing by the Register of Deeds of Lancaster County, Nebraska. The current legal descriptions are set forth below:

Land North of Adams Street and East of N. 84th Street

Lots 1-3, Block 1; Lot 1, Block 2; Lots 1-6, Block 3; Lots 1-106, Block 4; Lots 1-12, Block 5; Lot 1, Block 6; and Outlots A, C, F, G, and H, Prairie Village North Addition, Lincoln, Lancaster County, Nebraska;

Lot 1, Block 1; and Outlots A, B, C, D and E, Prairie Village North First Addition, Lincoln, Lancaster County, Nebraska;

21.78 +/- acres of Lot 23, Irregular Tract located in the Southeast Quarter (SE 1/4) of Section 11, Township 10 North, Range 7 East of the 6th PM, Lancaster County, Nebraska lying inside Lincoln City limits;

0.23 +/- acres in the West part of Lot 23, Irregular Tract located in the Southeast Quarter (SE 1/4) of Section 11, Township 10 North, Range 7 East of the 6th PM, Lancaster County, Nebraska lying inside Lincoln City limits; and

4.12 +/- acres in the West part of Lot 43, Irregular Tract located in Northwest Quarter (NW 1/4) Section 11, Township 10 North, Range 7 East of the 6th PM, Lancaster County, Nebraska lying inside Lincoln City limits.

Land South of Adams Street and East of N. 84th Street

Outlot C, Prairie Village Addition, Lancaster County, Nebraska; and

Lots 96, 106 and 107, Irregular Tracts located in the Northwest Quarter (NW1/4) Section 14, Township 10 North, Range 7 East of the 6th PM, Lancaster County, Nebraska.

Land South of Adams Street and West of N. 84th Street

Remaining portion of Lot 1, North Forty Golf Addition, Lancaster County, Nebraska; and

Lots 1-17, Block 1; Lots 1-7, Block 2; Lots 1-28, Block 3; Lot 1, Block 4; and Outlots A-I, North Forty Golf First Addition, Lancaster County, Nebraska.

CERTIFICATE

STATE OF NEBRASKA)
)
COUNTY OF LANCASTER) ss:
)
CITY OF LINCOLN)

I, Joan E. Ross, City Clerk of the City of Lincoln, Nebraska, do hereby certify that the foregoing is a true and correct copy of the **Amended, Restated and Combined Prairie Village North and Prairie Village Center Conditional Annexation and Zoning Agreement and North 40 Plaza Impact Fee Reimbursement Agreement** as approved by Resolution No. A-84229 and adopted by the Lincoln City Council on February 5, 2007, as the original appears of record on file in my said office.

In Witness Whereof, I have hereunto set my hand officially and affixed the seal of the City of Lincoln, Nebraska, on February 20, 2007.

Joan E. Ross
Joan E. Ross, City Clerk

