

## LAND EXCHANGE AGREEMENT

This Land Exchange Agreement ("Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between **Ridge Development Company**, a Nebraska corporation and **Southview, Inc.**, a Nebraska corporation (collectively referred to hereinafter as "Developer") and the **City of Lincoln, Nebraska**, a municipal corporation ("City").

WHEREAS, the Developer is the owner of the real property legally described as Outlot "A", Block 5, Highlands West 1<sup>st</sup> Addition, Lincoln, Lancaster County, Nebraska ("Parcel 1"); and

WHEREAS, the City is the owner of the real property legally described as Lots 16, 17 and 18, Block 6, Olympic Heights First Addition, Lincoln, Lancaster County, Nebraska ("Parcel 2"); and

WHEREAS, the City and the Developer wish to exchange their properties under the terms and conditions set forth herein.

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

1. DEFINITIONS. Parcel 1 and Parcel 2 are sometimes individually referred to hereinafter as the "Exchange Property" or collectively as the "Exchange Properties."

A party who is intending to convey title to an Exchange Property at Closing is sometimes referred to hereinafter as "Grantor Party" and a party who is intending to accept title to an Exchange Property at Closing is sometimes referred to hereinafter as "Grantee Party."

2. THE EXCHANGE TERMS. Developer and the City acknowledge that Parcel 1 and Parcel 2 are of like kind and equal value. Pursuant to Section 1031 of the Internal Revenue Code, the Developer will convey Parcel 1 to the City and the City will convey Parcel 2 to the Developer at Closing. At Closing, Grantor Party will execute and deliver a general warranty deed conveying marketable title to the Exchange Property to Grantee Party. The Developer shall convey Parcel 1 to the City together with any easements or restrictions of record which do not interfere or prevent the City from utilizing it, but free and clear of all liens, encumbrances, encroachments and special assessments levied or assessed. The City shall convey Parcel 2 to the Developer together with any easements or restrictions of record, but free and clear of all liens, encumbrances, encroachments and special assessments levied or assessed. Developer acknowledges Parcel 2 will be used for development of affordable housing similar to the Nebraska Housing Resources project immediately to the north.

3. DEDICATIONS AND EASEMENTS. After the date of this Agreement, but prior to Closing, Grantor Party shall not dedicate, gift, transfer, mortgage or convey any interest in Grantor Party's Exchange Property without written consent from Grantee Party, which may be withheld for any reason.

4. TESTS. The City and the Developer shall each have the right for thirty (30) days after the date of this Agreement, at each party's own expense, to undertake an environmental audit, a professional wetlands delineation, professional floodplain analysis, survey, grading and soil tests (collectively "Tests") on the Exchange Property each party is to receive. The Grantor Party shall, upon the execution of this Agreement, promptly furnish to the Grantee Party, any and all documents or reports which each party has in its possession which cover all or any portion of the Exchange Property to be conveyed with regard to any previous Tests. Grantor Party shall allow Grantee Party and its representatives and agents reasonable access onto the Exchange Property to conduct such Tests. Grantee Party agrees to indemnify, defend and hold Grantor Party harmless against all claims for injuries to persons on or damage to the Exchange Property caused by the Grantee Party and its agents, or caused by the Tests. Grantee Party shall have thirty (30) days after the date of this Agreement to notify Grantor Party, in writing, that a licensed professional has reviewed the results of the Tests and has determined and concluded either that the Exchange Property to be received may be subject to wetlands protection under federal or state laws or regulations, or that the Exchange Property to be received is otherwise not conducive or suitable for Grantee Party's intended uses based upon the Tests. If the Exchange Property is subject to wetlands protection and/or not suitable for Grantee Party's intended use of the Exchange Property, Grantee Party will furnish Grantor Party with a certified copy of the professional's determination and copies of any relevant tests and conclusion that the Exchange Property is unsuitable. In the event Grantee Party notifies Grantor Party of the above within such thirty (30) day period, Grantee Party shall have ten (10) days from the date of notice of the test results to declare this Agreement null and void and if this option is exercised, then the parties shall have no further obligations under this Agreement.

5. TITLE INSURANCE. Within twenty (20) days after the date of this Agreement, or mutual written extension, Grantee Party shall deliver to Grantor Party a copy of a title insurance commitment (the "Commitment") bearing an effective date subsequent to the date hereof in favor of Grantee Party for an owner's title insurance policy insuring marketability of the title to the Exchange Property in the amount of the Exchange Property's appraised value underwritten by a title insurance company acceptable to Grantee Party. The copy of the Commitment shall be accompanied by a written statement of any objections to Grantor Party's title to the Exchange Property as disclosed by the Commitment. Any matter not objected to by Grantee Party within such twenty (20) day period shall be deemed approved exceptions to title by Grantee Party. Prior to Closing, Grantor Party shall deliver to Grantee Party a written statement of any objections which Grantor Party could not, upon the exercise of due diligence in good faith, cure prior to or concurrent with Grantee Party's acquisition of the Exchange Property. If Grantor Party gives notice to Grantee Party of any objections which cannot be cured, then Grantee Party shall have the option of: (i) waiving such objections and proceeding with this Agreement or (ii) terminating this Agreement, and thereupon this Agreement shall be null and void and neither Grantor Party nor Grantee Party shall have any further obligations hereunder. In addition to the terms and conditions of this Agreement, land title law of Nebraska and the title standards approved by the Nebraska State Bar Association to the date of examination of title shall serve as a guide of marketability of title. Grantee Party shall be responsible for the expense of a title insurance policy issued on the Exchange Property to be transferred to the Grantee Party.

6. TAXES. Real estate taxes on the Exchange Property prior to the date of Closing shall be paid by Grantor Party. Real estate taxes on the Exchange Property after the date of Closing shall be paid by Grantee Party. The taxes for the year of the date of Closing shall be prorated based upon the then most current property valuations and upon the most current tax rate as determined by law.

7. CLOSING. Closing shall occur within forty-five (45) days from the date of this Agreement.

8. RISK OF LOSS. Risk of loss or damage to the Exchange Property shall rest with Grantor Party until the time of delivery of possession.

9. NO REAL ESTATE COMMISSION AND FINDER'S FEE. The parties agree that no party hereto shall be liable for any real estate broker's commission, agent's commission, or finder's fee, in connection with the transaction contemplated by this Agreement. Each party warrants to the other party that it shall indemnify and hold harmless for any and all claims of any person for broker's or agent's commissions or finder's fees in connection with this transaction. The City acknowledges that Thomas E. White, John C. Brager, Gerald L. Schleich, Louise D. Schleich, John F. Schleich, Thomas G. Schleich and David D. Schleich, who are principals of the Seller, are licensed real estate brokers

10. CONDITION OF EXCHANGE PROPERTY. Grantor Party acknowledges that its representatives or agents have examined the Exchange Properties prior to entering into this Agreement. This Agreement is based upon Grantee Party's inspection of the Exchange Property and not upon any representation or warranties or conditions by Grantor Party's agents. Grantee Party acknowledges Grantor Party is conveying the Exchange Property on an "as is" basis, except for the warranties and representations as provided in this Agreement and the warranties in the general warranty deed.

11. DEFAULT. Time is agreed to be of the essence. In the event either party fails to comply with any of the material terms hereof, then the other party may declare a default and seek any remedy at law or in equity without notice or demand, including specific performance.

12. NON-FOREIGN STATUS. At the date of Closing, Developer shall deliver to the City the Certification of Non-Foreign Status duly executed and containing such other information as may be required by Internal Revenue Code Section 1445 and the Regulations issued thereunder.

13. RIGHT TO EFFECTUATE EXCHANGE. The City acknowledges that the Developer may undertake an additional Internal Revenue Code Section 1031 tax deferred exchange of their interest in all or any portion of the Exchange Property. The Developer's rights and obligations under this Agreement may be assigned to facilitate such exchange. The City agrees to cooperate with the Developer and any assignee of the Developer to enable it to qualify for such exchange; provided that such cooperation shall not require the City to incur any additional costs or liability and the City shall be able to realize all intended benefits of this Agreement.

14. ASSIGNMENT. In the case of the assignment of this Agreement by either of the parties, prompt notice shall be given to the other party, who shall at the time of such notice be furnished with a duplicate of such assignment by such assignors. Any such assignment shall not terminate the liability of the assignor to perform, unless a specific release in writing is given and signed by the other party to this Agreement.

15. SEVERABILITY. If any non-economic mutual term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

16. FURTHER ASSURANCES. Each undersigned party will, except as otherwise provided herein, whenever it shall be necessary to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, documents as may be necessary or proper to effectuate the covenants, contingencies and agreements herein provided. The Developer and the City agree to use their best efforts in cooperation to carry out the intent of this Agreement and to provide quality and efficient development sites for both the Developer and the City.

17. 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.

18. 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.

19. NON-MERGER. All representations and warranties made herein are intended to survive Closing and shall not be merged in the deed unless otherwise stated in this Agreement. This Agreement shall not be canceled at Closing.

20. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties relating to the transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are merged herein. This Agreement cannot be modified or altered unless reduced to writing and consented to by all the undersigned parties.

21. NOTICE AND DEMANDS. Notice, demand, or other communication mandated by this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally at the address stated above.

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

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

24. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legatees, devisees, personal representatives, successors and assigns.

25. TIME IS OF THE ESSENCE. The parties agree time is of the essence under this Agreement.

“CITY”

**City of Lincoln, Nebraska,**  
a municipal corporation

ATTEST: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

“DEVELOPER”

**Ridge Development Company,** a Nebraska corporation

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

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

**Southview, Inc.**, a Nebraska corporation

By: \_\_\_\_\_  
Gerald L. Schleich, President

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2003 by Don Wesely, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation, on behalf of the municipal corporation.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2003 by Thomas E. White, President of Development of **Ridge Development Company**, a Nebraska corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2003 by John C. Brager, President of Construction of **Ridge Development Company**, a Nebraska corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2003 by Gerald L. Schleich, President of **Southview, Inc.**, a Nebraska corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public