1ST AND FLETCHER
CONDITIONAL ANNEXATION AND ZONING AGREEMENT

This 1st and Fletcher Conditional Annexation and Zoning Agreement ("Agreement") is made and entered into this ____ day of _____, 2005, by and between Carlton Paine and Judith Paine, Glenn Umberger and Lois Umberger, and Umberger Farms, Ltd., hereinafter collectively referred to as "Owner," and the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "City."

RECITALS

A. Owner has requested the City to annex approximately 100.69 acres more or less of land generally located southeast of North 1st Street and Fletcher Avenue. The approximately 100.69 acres of land is hereinafter referred to as the "Property" and is legally described as:

> Lots 38 and 43, Irregular Tracts, located in the Northwest Quarter of Section 2, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska.

B. Owner has requested the City to rezone the Property from AG Agriculture District to R-3 Residential District.

C. Owner has requested the City to approve a planned unit development ("PUD") for the Property consisting of approximately 60,000 square feet of commercial space; a nine-hole private golf course with driving range (no lights); a club house, including a full fitness center (that may be open to the public); and 612 apartment dwelling units (initially consisting of 51 buildings with 12 units per building). Owner's request also proposes as an alternative to the 60,000 square feet of commercial space, an additional 84 dwelling units.

D. The City has adopted Ordinance No. 18113, hereinafter referred to as the "Impact Fee Ordinance" based upon an Impact Fee Study prepared by Duncan Associates dated October, 2002,

that went into effect on June 2, 2003. This Impact Fee Ordinance enables the City to impose a proportionate share of the cost of improvements to the water and wastewater systems arterial streets and neighborhood parks and trails necessitated by and attributable to new development.

E. A Complaint for Declaratory and Injunctive Relief has been filed in the District Court of Lancaster County, Nebraska. This Complaint prays for judgment of the district court declaring the Impact Fee Ordinance invalid and unenforceable and for injunctive relief enjoining the imposition of impact fees. The decision of the District Court upholding the validity of the Impact Fee Ordinance has been appealed to the Nebraska Supreme Court.

F. The Property is designated as Priority B in the Lincoln City-Lancaster County Comprehensive plan. Impact Fee Facility Improvements to serve land designated as Priority B are not included in the City's 2004 Six-Year Capital Improvement Program as Priority B lands are not designated for development in the near term.

G. The City is only willing to annex the Property, approve the change of zone, and approve the PUD prior to a final determination as to the validity and enforceability of the Impact Fee Ordinance, provided (1) Owner agrees to pay or cause to be paid all impact fees imposed by the Impact Fee Ordinance or pay or cause to be paid an equivalent in-lieu-of fee necessitated by and attributable to the proposed development of the Property in the event the Impact Fee Ordinance is held invalid or otherwise unenforceable; (2) Owner agrees to construct at Owner's own cost and expense without any reimbursement from the City those Impact Fee Facility Improvements needed to serve the development of the Property which are not included in the City's 2004 Six-Year Capital Improvement Program; and (3) Owner agrees to construct at Owner's own cost and expense Owner's site related improvements.

H. The Property is located in the Raymond Rural Fire District. Neb. Rev. Stat. § 35-514, dealing with the City's annexation of territory from rural fire protection districts, provides in part that: "(7) Areas duly incorporated within the boundaries of a municipality shall be automatically annexed from the boundaries of the district notwithstanding the provisions of §31-766 and shall not be subject to further tax levy or other charges by the district, except that before the annexation is complete, the municipality shall assume and pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the area annexed or incorporated." The City is willing to annex the Property as requested by Owner, provided Owner agrees to pay all costs needed for the City to assume and pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the Property being annexed.

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 Property.

2. Change of Zone and PUD. The City agrees to approve the Change of Zone rezoning the Property from AG Agricultural District to R-3 Residential District and agrees to approve the PUD for the Property.

3. Payment of Impact Fees or In-Lieu-Of Fees. As an inducement to the City to approve the annexation of the Property, to approve the Change of Zone rezoning the Property from AG Agriculture District to R-3 Residential District, and to approve the PUD for the Property, Owner voluntarily agrees not to object to or protest the City's imposition of impact fees pursuant to the Impact Fee Ordinance and Impact Fee Schedules adopted by the City Council. If Owner is the developer of any development which occurs on the Property, Owner agrees to pay all impact fees imposed as they become due and payable. Owner further agrees that if Owner is not the developer

of any development which occurs on the Property, Owner agrees to require any such developer to pay all impact fees imposed as they become due and payable without objection or protest to the City's imposition of impact fees pursuant to the Impact Fee Ordinance and Impact Fee Schedules adopted by the City Council. Owner further agrees to require such developer to execute the form entitled "Non-Owner Developer Voluntary Payment of Impact Fees and Waiver of Refund" attached hereto, marked as Attachment A, and incorporated herein by reference. Owner further agrees that in the event the Impact Fee Ordinance is for any reason declared to be void, illegal, or otherwise unenforceable, then the Owner agrees, in lieu of impact fees, to pay or cause to be paid to the City in full, prior to the issuance of a building permit for development, or prior to the issuance of any other permit for development where a building permit is not required, or prior to engaging in a development for which no permit is required, an amount equal to the amount of the impact fees which would have been imposed under the Impact Fee Schedules in place on the date the Impact Fee Ordinance is held to be void, illegal, or otherwise unenforceable.

In the event impact fees for any such development are paid to the City and subsequently the Impact Fee Ordinance and impact fees thereunder are declared to be void, illegal, or otherwise unenforceable and ordered refunded, Owner agrees the City may keep and treat the impact fees so paid by Owner as the payment of in-lieu-of impact fees for said development instead of refunding said fees. Owner further agrees that if any impact fee paid by a developer other than the Owner is ordered refunded, Owner agrees to pay said amount to the City.

4. Sanitary Sewers.

A. Wastewater Impact Fee Facility Improvements. Owner agrees to construct at Owner's own cost and expense by Executive Order Construction and without reimbursement from the City the approximately 2,000 lineal feet of 10- to 12-inch wastewater mains which must be

extended through the Highlands and bored under Highway 34 in order to provide wastewater collection service to the Property.

The City and Owner acknowledge that the 10- and 12-inch wastewater mains will potentially sewer other properties that are not subject to this Agreement (collectively "Other Properties"). Notwithstanding the above, the Owner, as an inducement for the City to enter into this Agreement, has agreed to pay for the total cost of constructing said wastewater mains. However, in order to be fair, the City agrees, if permitted by law, to charge the owners of said Other Properties a fair share cost of the said 10- and 12-inch wastewater mains based upon a per acre formula or some other "fair share" formula approved by the City in order to permit said Other Properties to be zoned, annexed, or subdivided, and to be connected to said 10- and 12-inch wastewater mains at a cost roughly equivalent to that paid by Owner to sewer the Property on a per acre basis. If said connection is made within six year from the date of this Agreement, the City agrees to pay the amount of any connection fee so collected to Owner provided Owner constructed the 10- to 12-inch wastewater mains through the City's competitive bidding process. Notwithstanding the above, Owner understands and agrees that the City cannot contract away its police powers and the legislative discretion and thus the duty of the City to use its best efforts to charge the owners of the Other Properties their fair share of the cost of constructing the 10- and 12-inch wastewater mains does not require the City Council for the City to adopt nor restrict the Council from adopting ordinances affecting the City's ability to charge property owners for the right to connect to the City's wastewater collection system. Owner further agrees that the City shall not be liable to Owner in the event of any failure on the part of the City by negligence or otherwise to collect all or any part of such connection fees.

B. Easements. City agrees to acquire all necessary temporary and permanent easements for the wastewater mains described in subparagraph A above which Owner cannot acquire by voluntary negotiation. However, the City will not advance the appraisal of and acquisition of these easements over other projects the City is acquiring right-of-way and/or easements for. Owner agrees to reimburse City for the City's cost of acquisition, including but not limited to the amount of any condemnation award, court costs, expert witness fees, attorney fees, and interest.

5. Water Main.

A. Sixteen-inch Main. Owner agrees at Owner's own cost and expense to construct by Executive Order Construction the approximately 2,200 lineal feet of 16-inch water main from NW 2nd Circle bored under Highway 34 and extended along Fletcher Avenue to the entrance into the Property in order to provide fire protection during construction of the residential dwelling units.

B. Easements. City agrees to acquire all permanent and temporary easements needed for the construction of the 16-inch water main which Owner cannot acquire by voluntary negotiation. However, the City will not advance the appraisal of and acquisition of these easements over other projects the City is acquiring right-of-way and/or easements for. Owner agrees to reimburse City for the cost of said acquisition, including but not limited to the amount of any condemnation award, court costs, expert witness fees, attorney fees, and interest.

6. Dedication of Fletcher Avenue Right-of-Way. Owner agrees to dedicate at no cost to City the additional right-of-way needed to provide 40 feet of right-of-way from the centerline of Fletcher Avenue adjacent to the Property.

7. Street Improvements.

A. North 7th Street. Owner agrees at Owner's own cost and expense by Executive Order Construction to construct and pave North 7th Street as a local street in accordance with the City's Urban Public Street Design Standards from Fletcher Avenue to the southernmost entrance to the Property prior to occupancy of any dwelling units. Owner agrees at Owner's own cost and expense by Executive Order Construction to pay one-half of the cost to construct and pave North 7th Street as a local street in accordance with the City's Urban Public Street Design Standards from the southernmost entrance to the Property to the south boundary of the Property at such time as the adjacent property to the east develops.

B. Fletcher Avenue. Owner agrees at Owner's own cost and expense through Executive Order Construction to design and construct asphalt paved center left-turn lanes in Fletcher Avenue at North 7th Street and at all access points into the Property at a width and thickness satisfactory to the City. Owner understands and acknowledges that the City is allowing these asphalt paved center left-turn lanes only in order to maximize the use of the existing pavement and that such authorization does not constitute a policy of the City to accept rural asphalt pavement in the urban environment.

8. Contribution for Raymond Rural Fire District Costs. Owner understands and acknowledges that the City may not annex the property lying within the boundaries of the Raymond Rural Fire District except by the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of the Property being annexed. Owner desires to be annexed by the City and therefore agrees to pay, prior to annexation, the $136.58 which the City has determined must be paid by the City to the Raymond Rural Fire District in order for the annexation to be complete.

9. 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.

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

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. Default. Owner and City agree that the annexation, change of zone, and approval of the PUD 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 and PUD approval or take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach.

18. 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," "developer," "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.

19. Fair Share. Owner agrees that the City has a legitimate interest in the public health, safety and welfare and in providing for the safe and efficient movement of vehicles on the public arterial streets and the provision of adequate water and wastewater service and adequate neighborhood parks and trails as provided for in the Impact Fee Ordinance which is promoted by requiring Owner to pay its fair share of the cost to construct such Impact Fee Facilities, to pay impact

fees or an in-lieu-of fee, and to pay all costs which must be paid by the City to the Raymond Rural Fire District in order for the annexation to be complete, and that an essential nexus exists between the City's legitimate interests and the conditions placed upon Owner under this Agreement. In addition, City and Owner have each made an individualized determination and have found and agree that the conditions placed upon Owner under this Agreement are related both in nature and extent and are in rough proportionality to the projected adverse effects full development of the Property under the annexation, change of zone, and PUD approval would have on the City's Impact Fee Facilities.

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

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

The City of Lincoln, Nebraska
a municipal corporation

ATTEST:

_____
City Clerk

By: _____
Coleen J. Seng, Mayor

_____
Carlton Paine

_____
Judith Paine

_____
Glenn Umberger

_____
Lois Umberger

Umberger Farms, Ltd., a Nebraska limited partnership

By: _____
_____, Partner

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Carlton Paine.

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Judith Paine.

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Glenn Umberger.

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Lois Umberger.

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by _____, Partner of Umberger Farms, Ltd., a Nebraska limited partnership, on behalf of said partnership.

_____
Notary Public

NON-OWNER DEVELOPER
VOLUNTARY PAYMENT OF IMPACT FEES
AND WAIVER OF REFUND

Date:_____

Permit #:_____

Address:_____

Legal Description:_____

_____

Name of Property Owner:_____

Amount of Impact Fee Paid: $_____

Check #:_____

The undersigned Permit Applicant understands and acknowledges that the above-described property is subject to the 1st and Fletcher Conditional Annexation and Zoning Agreement and that pursuant to said Agreement, the owner of the above-described property has agreed that development of the property shall be subject to the voluntary payment of impact fees or payment of an equivalent fee in lieu of impact fees in the event impact fees are determined to be invalid. The undersigned is developing the property on behalf of or with permission of the owner and acknowledges that the undersigned is voluntarily paying this fee without protest or objection. In the event the Impact Fee Ordinance and impact fees thereunder are declared to be invalid, the undersigned agrees that the City may keep and treat the impact fees paid as the owner's equivalent payment in lieu of impact fees and the undersigned hereby waives any refund of said fees.

Name of Permit Applicant:_____

Address:_____

By:_____

Title:_____