

PINE LAKE PLAZA
CONDITIONAL ANNEXATION AND ZONING AGREEMENT

This Pine Lake Plaza Conditional Annexation and Zoning Agreement ("Agreement") is made and entered into this _____ day of _____, 2003, by and between **Pine Lake Development, L.L.C.**, a Nebraska limited liability company, **Stanley L. Portsche and Grace A. Portsche**, husband and wife, and **Mid-American Union Conference Association of Seventh Day Adventists**, a Nebraska nonprofit corporation, hereinafter collectively referred to as "Owners," and the **City of Lincoln, Nebraska**, a municipal corporation, hereinafter referred to as "City."

R E C I T A L S

A. Owners have requested the City to annex approximately 41 acres more or less of land generally located west of 84th Street and north of Highway 2 and legally described as Lots 49, 50, 51, 52, and 53, of Irregular Tracts located in Section 22, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska. The approximately 41 acres is hereinafter referred to as the "Property."

B. Owners have requested the City to rezone those portions of the Property from AGR Agricultural Residential District to R-3 Residential District and O-3 Office Park District as legally described in Change of Zone No. 3373.

C. Owners have requested the City to approve Owners' application to preliminarily plat the Property as Pine Lake Plaza.

D. Owners have requested the City to approve Use Permit No. 145 for the O-3 designated portion of the Property.

E. Pine Lake Development, L.L.C. is the legal owner of Lot 53, I.T.; Stanley and Grace Portsche are the legal owners of Lots 50, 51, and 52; and Mid-American Union Conference Association of Seventh Day Adventists is the legal owner of Lot 49, I.T., all located in the Northeast Quarter of Section 22, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska.

F. The City has adopted an Impact Fee Ordinance based upon an Impact Fee Study prepared by Duncan Associates dated October, 2002, that will go into effect on June 2, 2003.

This Impact Fee Ordinance will enable 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.

G. The City is willing to annex the Property, rezone the Property from AGR Agricultural Residential District to R-3 Residential District and O-3 Office Park District, and conditionally approve the preliminary plat and use permit for the Property as requested by Owners, prior to the June 2, 2003 effective date of the Impact Fee Ordinance, provided Owners agree to make certain improvements to the public street system, water system, and sanitary sewer system which are necessary in order to serve the Property and further agree to pay any future impact fee imposed by the City necessitated by and attributable to the proposed development of the 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 Property.
2. **Rezoning.** The City agrees to rezone portions of the Property from AGR Agricultural Residential District to R-3 Residential District and O-3 Office Park District as legally described in Change of Zone No. 3373.
3. **Preliminary Plat and Use Permit.** The City agrees to conditionally approve the Pine Lake Plaza Preliminary Plat and Use Permit No. 145.
4. **Owners' Street Improvements.** Owners covenant and agree that the Owners shall be responsible for 100% of the cost of the following street improvements:
 - A. A 150-foot northbound to westbound left-turn lane on 84th Street at Eiger Drive.
 - B. A 250-foot southbound to westbound right-turn lane on 84th Street at Eiger Drive.
 - C. A 250-foot westbound to northbound right-turn lane on Highway 2 at Pine Lake Road.

D. A 150-foot northbound to westbound left-turn lane on 84th Street at proposed Pine Lake Road.

E. Reconstruction of existing Pine Lake Road to an urban cross section.

F. Reconstruction of the Pine Lake Road/Highway 2 intersection to permit left-in and right-out vehicle turning movements only.

G. Construct Eiger Drive from South 84th Street west to Highway 2.

In addition to being responsible for 100% of the cost of the above-described street improvements, Owners shall be responsible for 50% of the cost for installation of a traffic signal at 84th and Eiger Drive.

5. City's Street Improvements. The City covenants and agrees that the City shall be responsible for 100% of the cost of the following street improvements:

A. A 150-foot southbound to westbound right-turn lane on 84th Street at proposed Pine Lake Road.

B. Reconstruction of the proposed roadway from the intersection of relocated Pine Lake Road to existing Pine Lake Road.

6. Owners' Water Main Improvements. Owners shall contribute one-half the cost of an equivalent 8-inch water main in 84th Street for the existing and proposed 24-inch mains in 84th Street and one-half the equivalent cost of an 8-inch main abutting the commercially zoned property and one-half the equivalent cost of a 6-inch main abutting the residentially zoned property abutting the existing 24-inch main in Pine Lake Road.

7. Water Service. Owners understand and acknowledge that on an interim basis the Property will be serviceable off the 24-inch water main in Pine Lake Road until such time as the City can connect into the Booster Cheney System which is anticipated to happen with the realignment of 84th Street on or about August, 2003.

8. Sanitary Sewer Service.

A. Owners understand and acknowledge that the area will not be sewerable until the Beals Slough trunk sewer is extended from approximately the Home Depot property at 70th Street and Highway 2 north to the subject Property.

9. **Security.** Owners shall provide the City a bond, escrow, or other security agreement approved by the City Attorney in the amount of Six Hundred Fifty-four Thousand and No/100ths Dollars (\$654,000.00) to insure Owners' share of the cost of the street improvements described in Paragraph 4 above and in the amount of Forty-six Thousand and No/100ths Dollars (\$46,000.00) to insure Owners' share of the cost of the water main improvements described in Paragraph 6 above at the time of final platting of the Property or any part thereof.

10. **Future Cost Responsibilities.** Owners understand and acknowledge that the street improvements to be paid for or constructed by Owners under this Agreement do not reflect all the impacts the proposed development of the Property would have on the City's public facilities as set forth in the Impact Fee Study prepared by Duncan Associates dated October, 2002. The Owners agree that by making the payments or constructing the improvements outlined in this Agreement, Owners shall not be relieved of any future obligation to pay any impact fee imposed on this proposed development of the Property which are required to be paid pursuant to the provisions of any impact fee ordinance adopted by the City Council for the City. However, to the extent impact fees are imposed and paid pursuant to any impact fee ordinance, credit shall be granted against any street impact fee equal to the cost of construction or contribution paid by Owners pursuant to Paragraph 4 above, provided however, in the event the amount of credit exceeds the impact fees that would otherwise be due from the entire development of the property, Owners shall not be entitled to refund of the excess credits.

The Owners further agree that, by making the contribution and/or construction of the improvements outlined in this Agreement, Owners shall not be relieved of any future obligation to dedicate land for, contribute to the cost of construction of, or to construct public facilities or improvements which are attributable to proposed changes in land use, zoning, or intensity of development which have the effect of causing the need for addition public improvements in the immediate area of such development.

11. **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 Preliminary Plat Property.

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

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

19. Default. Owners and City agree that the annexation, change of zone, preliminary plat, and community unit plan promote the public health, safety, and welfare so long as Owners fulfill all of the conditions and responsibilities set forth in this Agreement. In the event Owners default in fulfilling any of its covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rezone the Rezoned Property to its previous designations or such other designations as the City may deem appropriate under the then existing circumstances, or take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach.

20. Cost Defined. 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.

21. Fair Share. Owners and City agree 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 streets and the provision of adequate water service which is promoted by requiring Owners to pay their fair share of the cost to construct the water and street improvements and that an essential nexus exists between the City's legitimate interests and the conditions placed upon Owners under this Agreement. In addition, City and Owners have made an individualized determination and agree that the conditions placed upon Owners under this Agreement including the obligation to pay future impact fees which are imposed pursuant to the provisions of any impact fee ordinance, or to dedicate land for, contribute to the cost of the construction of, or to construct public facilities or improvements relating to future changes to development of the Property 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 Change of Zone from AG Agricultural District to R-3 Residential District and Use Permit No. 145 would have on the City's arterial streets.

22. **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.

ATTEST:

THE CITY OF LINCOLN, NEBRASKA
a municipal corporation

City Clerk

By: _____
Don Wesely, Mayor

PINE LAKE DEVELOPMENT, L.L.C.,
a Nebraska limited liability company

Witness

By: _____
Robert D. Hampton, Manager

Witness

STANLEY L. PORTSCHE

Witness

GRACE A. PORTSCHE

**MID-AMERICAN UNION CONFERENCE
ASSOCIATION OF SEVENTH DAY
ADVENTISTS, a Nebraska nonprofit
corporation**

Witness

By: _____
Title: _____

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.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by Robert D. Hampton, Manager of Pine Lake Development, L.L.C., a Nebraska limited liability company on behalf of said limited liability company.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by Stanley L. Portsche and Grace A. Portsche, husband and wife.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____, _____ of Mid-American Union Conference Association of Seventh Day Adventists, a Nebraska nonprofit corporation, on behalf of said corporation.

Notary Public

[code\agr\Pine Lake Plaza Annexation]