

98th & Holdrege Conditional Zoning Agreement

This 98th Street and Holdrege Street Conditional Zoning Agreement (“Agreement”) is made and entered into this ____ day of August, 2010, by and between **M. Kent and Marsha Prior**, husband and wife, hereinafter referred to as “Owners”, and the **City of Lincoln**, a municipal corporation, hereinafter referred to as “City”.

RECITALS

I.

M. Kent and Marsha Prior own Lot 1, Prior Addition, City of Lincoln, Lancaster County, Nebraska, generally located at 98th Street and Holdrege Street, hereinafter referred to as the “Property”. Said lot includes approximately 12.75 acres, and it is zoned Agricultural (AG).

II

Owners have petitioned the City requesting Change of Zone #10007 changing the Property from Agricultural (AG) to Agricultural Residential (AGR) zoning to allow for three single family dwelling lots and one outlot to be designated and subsequently constructed on the Property.

III.

This change of zone from Agricultural (AG) to Agricultural Residential (AGR) is generally in conformance with the Lincoln/Lancaster County Comprehensive Plan. The City desires to enter into an agreement with Owners to be assured that the Property will remain viable as a higher density urban residential subdivision in the event that the City expands and annexes the Property in the future.

IV.

Owners, as an inducement for the City to approve the Change of Zone #10007, have

represented to the City that they would enter into and comply with an agreement that includes requirements equivalent to those in place for developments in the Build Through Acreage Overlay District as set forth by the Lincoln Municipal Code in order to permit future development of the Property into an urban subdivision in the event that the Property is annexed by the City of Lincoln and subjected to a subsequent change of zone in order to facilitate higher density urban residential development.

V.

The City Planning Commission recommended approval of the change of zone requested by Owners subject to a zoning agreement being entered by the City and Owners integrating a site plan submitted by Owners as part of the Change of Zone request for the Property.

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

1. City agrees to approve Change of Zone Application #10007 thereby rezoning the “Property”, known as Lot 1, Prior Addition, City of Lincoln, Lancaster County, Nebraska, from Agricultural District (AG) to Agricultural Residential District (AGR).
2. City Agrees to provide preliminary street grades for North 98th Street between Holdrege Street and Leighton Avenue and for Holdrege Street between 98th Street and 112th Street.
3. Owners agree to submit a preliminary plat for approval by the Planning Commission prior to any subdivision of the Property. Said preliminary plat shall clearly delineate a

build through plan for the future urbanization of the property, and it shall conform with all conditions of this Agreement.

4. Owners agree that the preliminary plat submitted for approval will identify the division of the Property into three single family dwelling lots, each with a minimum of three (3) acres, and one outlot. Further, said preliminary plat shall include a preliminary grading plan and local street grades for the Property.
5. Owners agree that a transitional plat will be part of the preliminary plat that identifies how the initial three (3) single family dwelling buildable lots will be converted to a higher urban residential density upon the extension of urban services and annexation of the Property to the City of Lincoln.
6. Owners agree that the transitional plat filed with the preliminary plat shall include the following:
 - a. Final lot lines for future subdivision into urban size lots that may be implemented with the extension of urban infrastructure and annexation to the City;
 - b. The location and layout of any future streets not dedicated and improved as part of the next final plat of the Property into three (3) lots, but needed in the future to implement the transitional preliminary plat;
 - c. Easement locations for future utilities and stormwater drainage; and
 - d. Building envelopes necessary to provide adequate setbacks to implement the future urban lot layout identified in the transitional plat.
7. Owners agree that the preliminary plat shall show building envelopes on the initial three buildable lots that meet required setbacks for the final lot lines shown on the transitional

plat necessary for future conversion of the Property to higher urban residential density.

8. Owners agree that the preliminary plat shall include a preliminary grading plan that is designed to drain and grade the preliminary plat as well as the transitional plat. Grading in accordance with said plan shall be completed and confirmed in writing with the seal of the Owner's surveyor or engineer to the Director of Public Works and Utilities prior to construction of any utility or improvement on the Property.
9. Owners agree that the preliminary plat shall identify land dedicated as right-of-way for streets on the northern, eastern, and western edges of the Property. Said right-of-way shall be sixty (60) feet wide. The designated right-of-way may be shown as an outlet in the preliminary plat. Further, said right-of-way shall provide frontage to each lot designated in the preliminary plat as well as the transitional plat so as to provide local street access to said lots.
10. Owners agree to provide right-of-way dedication to the City according to the Lincoln/Lancaster County Comprehensive Plan at no cost to the City. Said right-of-way shall be provided to the City at the time of final platting of the subdivision or upon the request of the City of Lincoln Public Works and Utilities Department, whichever occurs first.
11. Owners agree to provide utility easements necessary to serve development within or outside the Property. Said easements shall be provided to the City at no cost at the time of final platting of the subdivision or upon the request of the City of Lincoln Public Works and Utilities Department, whichever occurs first. Further, Owners agree that said easements shall be designated on the preliminary plat for the initial three (3) buildable

lots as well as for the lots designated on the transitional plat for conversion of the Property to higher density urban residential use.

12. Owners acknowledge and understand that in the event that the Property is annexed by the City and urban utilities are required of the lot owners, they may be required to pay the costs of serving the Property with urban utilities infrastructure. Said costs may include, but are not limited to, the cost of building streets and utilities along with any necessary replatting, special assessments for urban infrastructure, impact fees, and any other costs associated with annexation and urban development of the Property.
13. Owners agree that private access to 98th Street and Holdrege Street from individual lots within the boundaries of the Property shall be relinquished upon construction of local streets running adjacent to said lots that provide access to either 98th Street or Holdrege Street.
14. The City agrees that each single family dwelling lot designated in the preliminary plat may have one temporary driveway access to either 98th Street or Holdrege Street.
15. The City agrees that the outlot designated in the preliminary plat may be temporarily used for operation of a tree farm within the boundaries of said outlot. Further, said outlot may have one temporary driveway for agricultural purposes providing access to an adjacent arterial street so long as said outlot is used for agricultural purposes.
16. The Owners agree that the obligations of the Owners under this Conditional Zoning Agreement shall constitute a covenant running with the land and shall be binding on Owners and Owner's heirs, administrators, successors, and assigns.
17. 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.

18. Any uncertainty or ambiguity existing herein shall not be construed 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.
19. Owners and City agree that the change of zone approved herein promotes public health, welfare, and safety generally so long as Owners fulfill all of the conditions and obligations set forth in this Agreement. In the event Owners default in fulfilling any of said conditions and obligations as set forth in this Agreement, the City may, in its legislative authority, rezone the rezoned Lot 1, Prior Addition, City of Lincoln, Lancaster County, Nebraska to its previous designation or such other designations as the City deems appropriate to promote the public health, safety, and welfare under the circumstances. Further, the City reserves the right to take such remedies, legal or equitable, as it deems necessary to enforce this Agreement or to seek damages for its breach.

DATED this ____ day of _____, 2010.

M. Kent and Marsha Prior, Owners

M. Kent Prior

Marsha Prior

ATTEST:

**CITY OF LINCOLN, NEBRASKA,
a municipal corporation,**

City Clerk

Chris Beutler, Mayor of Lincoln

COUNTY OF LANCASTER)
) ss.
STATE OF NEBRASKA)

The foregoing Agreement was acknowledged before me this ____ day _____, 2010
by _____, Owner of Lot 1, Prior Addition, City of Lincoln, Lancaster
County, Nebraska.

Notary Public

COUNTY OF LANCASTER)
) ss.
STATE OF NEBRASKA)

The foregoing Agreement was acknowledged before me this ____ day _____, 2010
by _____, Owner of Lot 1, Prior Addition, City of Lincoln, Lancaster
County, Nebraska.

Notary Public

COUNTY OF LANCASTER)
) ss.
STATE OF NEBRASKA)

The foregoing Agreement was acknowledged before me this ____ day _____, 2010
by _____, Chris Beutler, Mayor, City of Lincoln, Nebraska, a
municipal corporation.

Notary Public