

**CONDITIONAL
ANNEXATION AND ZONING AGREEMENT
BETWEEN THE CITY OF LINCOLN, NEBRASKA AND
R. C. KRUEGER DEVELOPMENT COMPANY, INC.
(Porter Ridge West Annexation Agreement)**

THIS AGREEMENT is made and entered into on this 17th day of JULY, 1995, by and between the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "City," and R. C. Krueger Development Company, Inc., a Nebraska corporation, hereinafter referred to as "Developer".

RECITALS

A.

The Developer has requested the annexation and rezoning of certain property generally located south and east of Pine Lake Road and S. 27th Street and legally described as:

A tract of land composed of a portion of Lot 11 I.T., located in the Northwest Quarter of Section 19, Township 9 North, Range 7 East of the 6th P.M. Lancaster County, Nebraska, and is more particularly described as follows:

Commencing from the southwest corner of the Northwest Quarter of said Section 19, thence on an assumed bearing of south 89 degrees 36 minutes 14 seconds east, along the south line of said Northwest Quarter, a distance of 50.00 feet to a point on the east right-of-way line of South 27th Street, said point also being the true point of beginning; thence north 0 degrees 52 minutes 41 seconds west, along the west right-of-way line of South 27th Street, a distance of 400.42 feet to the southwest corner of Lot 8 I.T.; thence north 89 degrees 57 minutes 36 seconds east, along the south line of said Lot 8 I.T., a distance of 450.00 feet to the southeast corner of said Lot 8 I.T.; thence north 0 degrees 02 minutes 24 seconds west, along the east line of said Lot 8 I.T., a distance of 380.00 feet to a point, thence north 89 degrees 57 minutes 36 seconds east, a distance of 410.00 feet to a point, thence north 59 degrees 03 minutes 35 seconds east, a distance of 1031.82 feet to the northwest corner of Lot 2, Block 4, Porter Ridge 2nd Addition; thence south 45 degrees 02 minutes 43 seconds east, along the west line of Lots 2 through 5 of said

Block 4, a distance of 250.00 feet to a point; thence south 31 degrees 06 minutes 14 seconds east, along the west line of Lots 5 through 8 of said Block 4, a distance of 167.87 feet to the northwest corner of Lot 9 of said Block 4; thence south 12 degrees 12 minutes 43 seconds east, along the west line of said Lot 9, a distance of 110.00 feet to the southwest corner of said Lot 9; thence south 6 degrees 13 minutes 23 seconds west, along the west right-of-way line of Katelyn Lane, a distance of 63.25 feet to the northwest corner of Lot 1, Block 2, Porter Ridge 2nd Addition; thence south 12 degrees 12 minutes 43 seconds east along the west line of said Lot 1, a distance of 110.00 feet to the southwest corner of said Lot 1; thence north 77 degrees 47 minutes 17 seconds east along the south line of Lots 1 through 5 of said Block 2, a distance of 280.00 feet to the northwest corner of Lot 7 of said Block 2; thence south 12 degrees 12 minutes 43 seconds east along the west line of Lots 7 through 13 of said Block 2, a distance of 432.63 feet to the northwest corner of Lot 14 of said Block 2; thence south 26 degrees 40 minutes 33 seconds east along the west line of said Lots 14 and Outlot "D", a distance of 144.75 feet to the northwest corner of Outlot "C"; thence south 41 degrees 08 minutes 27 seconds east along the west line of said Outlot "C", a distance of 189.18 feet to a point on the east line of the Northwest Quarter; thence south 0 degrees 02 minutes 43 seconds east along the east line of said Northwest Quarter, a distance of 95.74 feet to the southeast corner of said Northwest Quarter; thence north 89 degrees 36 minutes 14 seconds west along the south line of the Northwest Quarter, a distance of 2596.67 feet to the point of beginning; said tract contains a calculated area of 47.80 acres more or less;

hereinafter referred to as the "Property", to permit the development of the property for urban residential purposes.

B.

The City has amended the 1994 Lincoln-Lancaster County Comprehensive Plan to designate the property as a Phase I development area and is willing to approve the requested annexation and rezoning provided that necessary municipal infrastructure improvements are constructed in a timely manner to serve and

properly accommodate the area of the proposed annexation and the uses permitted under the proposed zoning.

C.

The City and the Developer recognize that the City does not currently have sufficient funds to devote to this area to provide for the construction of all necessary municipal infrastructure improvements and recognize that, in order to support the annexation and rezoning of the property as requested by the Developer, it is necessary that the Developer assume cost responsibility for various portions of the necessary municipal infrastructure improvements.

D.

The parties are entering into this Agreement for the purpose of providing for the timely construction of the municipal infrastructure improvements necessary for the area of the proposed annexation and rezoning and for the allocation of cost responsibilities for such municipal infrastructure between the City and the Developer.

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

I.

ANNEXATION AND REZONING

The City Council of the City, concurrently with the approval of this Agreement, is annexing the property as described above. The City Council of the City is also approving changes to the Lincoln zoning district maps to change the zoning of the property from AG Agricultural to R3 Residential as shown on Attachment "A" which is attached hereto and made a part hereof by reference.

II.

NECESSARY MUNICIPAL INFRASTRUCTURE IMPROVEMENTS

The City and the Developer covenant and agree that the following are municipal infrastructure improvements are necessary to promote the general health and welfare of the City, and to relieve potential traffic congestion in the area of the development. For purposes of this Agreement, the words and phrases "cost" or "entire cost" of a type of improvement shall be deemed to include all construction costs, engineering fees, attorney's fees, testing expenses, publication costs, financing costs, and related miscellaneous costs.

A. Water Main. The Developer shall construct, or cause to be constructed, a 16-inch ductile iron pipe water main in S. 27th Street from the water main in Pine Lake Road south to the north line of the Lincoln Electric System Substation property, a distance of approximately 1,180 feet. The Developer shall construct or cause to be constructed such water main under the authority of an executive order issued by the Mayor of the City of Lincoln, and will complete such main by no later than May 1, 1997. The work shall conform to the "City of Lincoln Standard Specifications for Municipal Construction." All costs related to the construction of the water main shall be paid by the Developer except that the City agrees to pay the costs for such water main which exceed the cost of construction of an 8 inch water main at that location.

B. Street Construction. The Developer shall pave, or cause to be paved, S. 27th Street as a two lane urban street with curbs and gutters from the south line of the roadway in Pine Lake Road to the south limits of this proposed annexation. The paving shall be performed under the authority of an executive order issued by the Mayor of the City of Lincoln and shall be completed by no

later than May 1, 1997. The paving shall conform to the "City of Lincoln Standard Specifications for Municipal construction." All costs related to the paving of said street shall be paid by the Developer.

The City and Developer recognize that the City is presently considering a request for the creation of a paving district which would include that portion of S. 27th Street from the south line of the roadway in Pine Lake Road to the southern boundary of Lot 40 I.T. in the Northeast Quarter of Section 24, Township 9 North, Range 6 East. In the event that such paving district is created and ordered constructed by the City Council, the Developer shall be relieved of its responsibility under this Agreement of paving that portion of S. 27th Street included within such paving district.

C. Parks. As fulfillment of the park dedication requirement set forth in Paragraph II(e) of the "Conditional Annexation and Zoning Agreement for South Ridge" dated February 14, 1994, it is understood that the public park land as shown on Attachment "B" and described as follows:

Outlot E, Porter Ridge West (preliminary plat)

shall be conveyed to the City by warranty deed, at no cost to the City, and in accordance with the following conditions:

1. The Developer shall provide to the City marketable title to said park land free and clear of all liens, taxes, or assessments, and free of any encumbrances which would, in the opinion of the City's Director of Parks and Recreation adversely affect the use of the property for park purposes. If subdivision approval is required, the Developer shall obtain such approval prior to conveyance.

2. Prior to conveyance, the City shall conduct a Phase I environmental audit of the park land, and the Developer does hereby grant the City permission and consent to enter upon the proposed park land to conduct such audit and to make such other investigations and tests relating to the environmental conditions of the proposed park land as it may thereafter deem necessary. The City will indemnify and hold harmless the Developer from and against all claims for injuries to persons or property caused by the negligent acts of the City or City's agents during the course of such tests.

3. The park land must have frontage onto a local street at three points that provide, in the opinion of the Director of Parks and Recreation, sufficient size, access, and visibility to cause the park land to be acceptable for public park use. No part of the cost of street improvements, sidewalks, or utilities constructed or required as part of the plat of Porter Ridge West shall be assessed against or be charged against the park land.

4. Prior to conveyance of the park land to the City, the Developer shall grade and seed the park to the satisfaction of the Director of Parks and Recreation, survey the boundaries of the park, and set property corner pins and posts, and construct a low flow liner or other means of drainage control in the park to the satisfaction of the Director of Parks and Recreation. Development of detention ponds in the park will not be considered an acceptable method of drainage control.

5. No building permits shall be issued for any lot in Porter Ridge West until such time as the park land has been conveyed to the City in accordance with this Agreement.

6. The City agrees that, for a period of two years after the conveyance, Developer shall have the right of access over and across the park land for the passage of construction vehicles involved in construction in Porter Ridge West; provided however, Developer shall maintain the area utilized by it for access, shall restore any damaged area upon completion of construction activity, and shall not dump or bury any construction debris in the park land.

In the event that Developer cannot provide marketable title, or in the event that an environmental audit reveals any unsatisfactory environmental condition or a violation of any federal, state, or local law or regulation, the City shall not be obligated to accept such land for park purposes and in that event alternate, acceptable land must be identified and conveyed to the City in lieu thereof; provided, however, if any of such objections are subject to cure, then the Developer shall have the option, at its own cost, to cure the objection if such cure can be effected in a timely manner.

III.

SECURITY

Immediately upon execution of this Agreement, the Developer shall provide to the City the following:

A. A bond, escrow, or other security agreement, approved by the City Attorney, in the amount of \$47,000.00 to insure construction of the water main as described in Section IIA of this Agreement.

B. A bond, escrow, or other security agreement, approved by the City Attorney, in the amount of \$250,000.00 to insure the paving of S. 27th Street by the Developer as described in Section IIB of this Agreement; provided, however, in the event that a paving district is created and ordered constructed

by the City Council for the paving of S. 27th Street from the south line of the roadway in Pine Lake Road to the southern boundary of Lot 40 I.T. located in the Northeast Quarter of Section 24, Township 9 North, Range 6 East, then the security provided by the Developer under this paragraph may be reduced at Developer's request to the amount of \$120,000.00.

IV.

CONSTRUCTION STANDARDS

All construction of required municipal infrastructure improvements shall be completed in accordance with the City of Lincoln's standard specifications for municipal construction which are on file in the Office of the City Engineer, and shall be subject to inspection and approval by the City Engineer.

V.

FUTURE COST RESPONSIBILITIES

It is understood and agreed between the parties that the provision of the above-described municipal infrastructure improvements and the allocation of cost responsibilities therefor in no way limit the right of the City to impose reasonable conditions or to require reasonable additional dedications, contributions, or construction in conjunction with the approval of future zoning requests, plats and dedications, use permits, special permits, planned unit developments, or community unit plans incorporating therein the property or any portion thereof which has been subject to annexation or rezoning in conjunction with this Agreement. Such future dedications, contributions, and construction may include, but shall not be limited to, local sewers, water mains, paving, trails, detention ponds, storm sewers, or transportation improvements relating

to commercial development, including necessary street widening, traffic signals and added turn lanes necessitated, in the opinion of the City, by commercial development in the area.

Said annexation and zoning approvals are conditional upon the terms, conditions, and understandings as set forth in this Agreement being fulfilled. The parties understand and agree that notwithstanding the conditional nature of such zoning approvals hereto the City Council, on its own motion or upon petition may, in the exercise of its lawful legislative authority (i) amend the 1994 Lincoln Lancaster County Comprehensive Plan, (ii) change the municipal corporate boundaries, (iii) rezone or revise the zoning designations applicable to the property described in Attachment "A", or (iv) approve or amend plats, dedications, use permits, special permits, planned unit developments, community unit plans, building permits or other land use controls as future circumstances may warrant.

VI.

ESSENTIAL NEXUS

The City and the Developer agree that an essential nexus exists between the uses which will be permissible upon the property on approval of Developer's proposed rezoning and the municipal infrastructure improvements being required. Further, the Developer and the City agree that the cost responsibilities imposed upon the Developer by this Agreement are roughly proportional both in nature and extent to the impact of the proposed development.

VII.

DEFAULT

The Developer and the City agree that the rezoning of the property referred to in Attachments "A" promote the public health, safety and welfare so long as the property owners fulfill all of the conditions and responsibilities set forth in this Agreement. In the event that the Developer defaults in fulfilling any of the covenants or responsibilities as set forth in this Agreement, the City may, in the exercise of its legislative authority, rezone said property to the previous zoning designations or such other zoning designations as the City may deem appropriate under the then existing circumstances. Such option to rezone shall be in addition to, and not in lieu of, any other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach.

VIII.

NOTICES

Any notices hereunder shall be given in writing to the party for whom it is intended, in person or by certified mail, at the following addresses or such future addresses as may be designated in writing:

City of Lincoln, Nebraska
Attn: Planning Director
555 South 10th Street
Lincoln, NE 68508

With a copy to:
City Clerk
555 South 10th Street
Lincoln, NE 68508

Developer:
Rick Krueger
R. C. Krueger Development Co., Inc.
Suite A
5901 S. 58th Street
Lincoln, NE 68516

IX.

BINDING EFFECT

This Agreement shall run with the land and shall be binding upon and inure to the benefit and burden of the successors and assigns of the respective parties.

X.

AMENDMENTS

This Agreement may only be amended or modified in writing signed by the parties hereto.

XI.

SEVERABILITY

If any non-material term or provision of this Agreement, or the application thereof to any person or circumstances, shall to any non-material 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 to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

XII.

MERGER

The parties intend this writing as the final expression of their agreement and as a complete and exclusive statement of the terms of their agreement.

XIII.

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.

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

ATTEST:

THE CITY OF LINCOLN, NEBRASKA
A Municipal Corporation

Paul M. Mahan
City Clerk

By: *Mike Johanns*
Mike Johanns, Mayor

R. C. KRUEGER DEVELOPMENT CO., INC.,
a Nebraska corporation,

By: *Richard C. Krueger*

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 20th day of July, 1995, by Mike Johanns, Mayor of the City of Lincoln, Nebraska on behalf of the City of Lincoln, Nebraska.



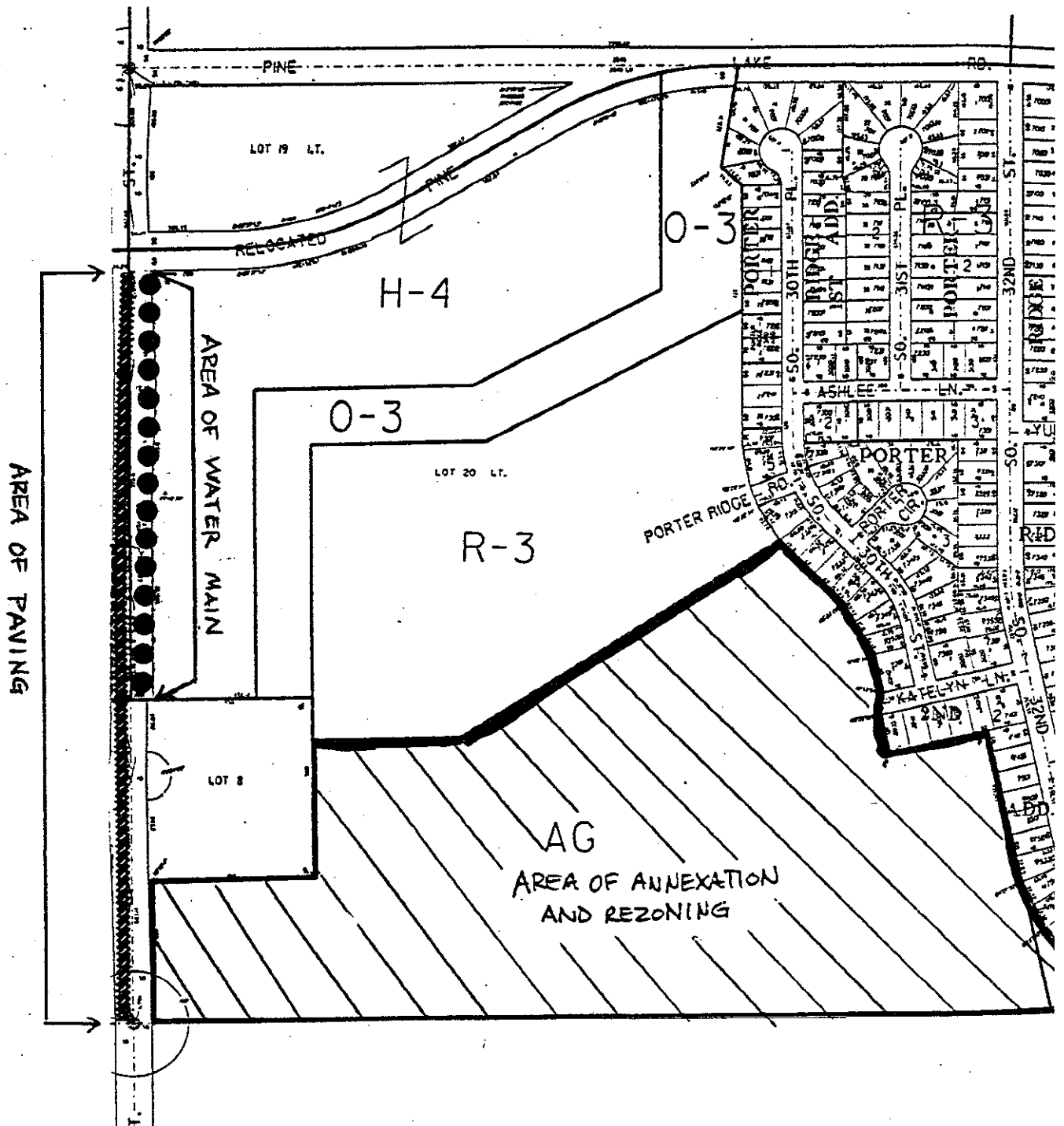
Joan E. Ross
Notary Public

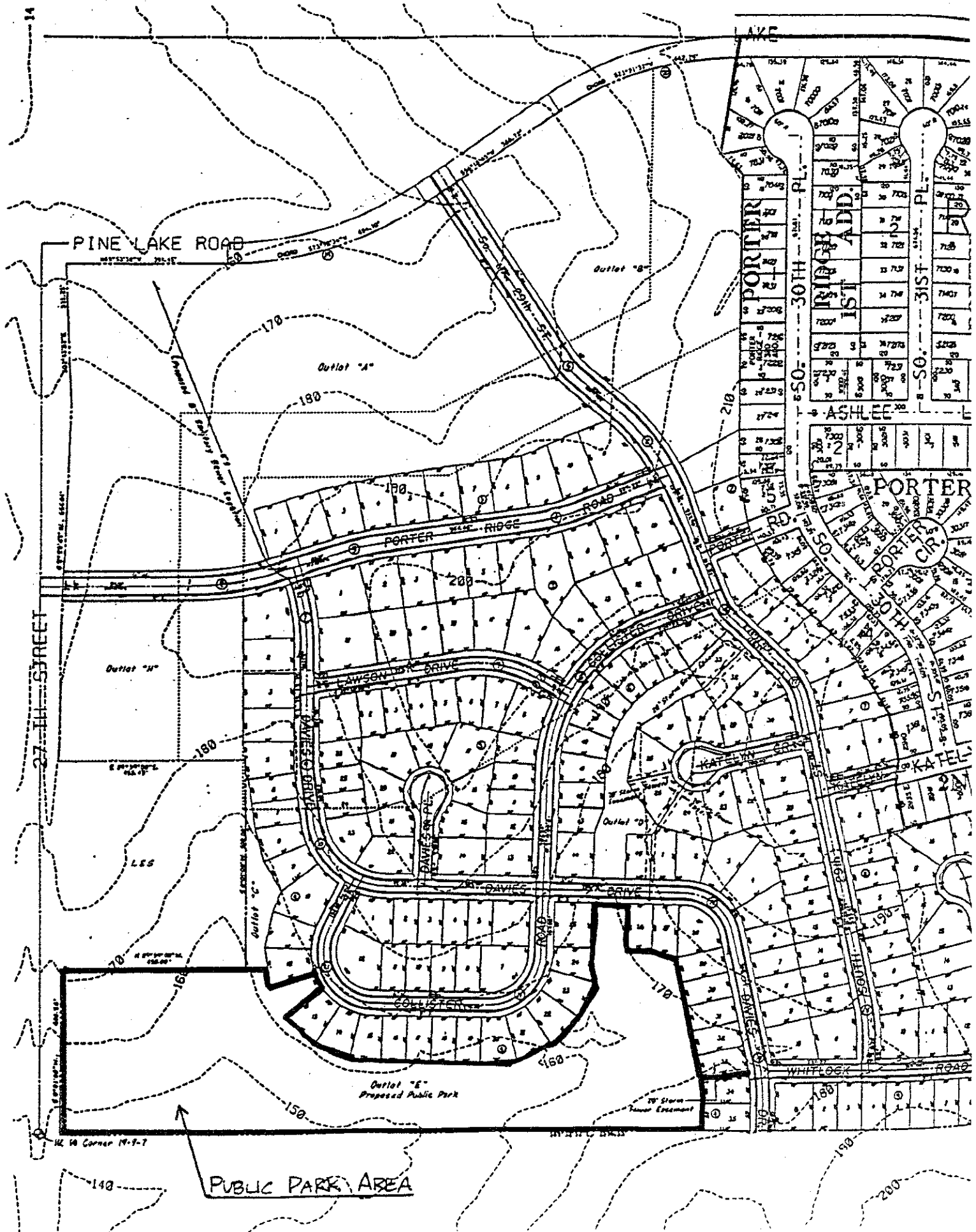
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 17th day of July, 1995, by Richard C. Krueger President of R. C. Krueger Development Company, Inc. a Nebraska corporation, on behalf of the corporation.

Patricia J. Bahr
Notary Public







PUBLIC PARK AREA

Outlet "E" Proposed Public Park

1/4 Corner N-7-7

20 Storm Water Estimation