

CONDITIONAL ANNEXATION  
AND ZONING AGREEMENT

REFERENCE TO ATTACHMENT  
A, B, C, ON FILE IN  
CLERK'S OFFICE

THIS CONDITIONAL ANNEXATION AND ZONING AGREEMENT ("Agreement") is made and entered into as of this 22ND day of JULY, 1996, by and between the City of Lincoln, Nebraska, a municipal corporation ("City") and Lincoln Memorial Park Cemetery Association, a Nebraska corporation ("Lincoln Memorial"), Dale M. Jensen, an individual ("Jensen") and Ridge Development Company, a Nebraska corporation ("Ridge"). Lincoln Memorial is the fee owner of the North Area, hereinafter defined, and the Jensen is the fee owner of the South Area, hereinafter defined. Ridge holds an option from Jensen to purchase all or a portion of the South Area, hereinafter defined. Lincoln Memorial, Jensen and Ridge are hereinafter referred to as "Property Owners."

RECITALS

A. The Property Owners have requested that the City annex and rezone certain property generally located between 14th and 19th Streets along Pine Lake Road, including the right of way of 14th Street and Pine Lake Road, which property is shown on Attachment "A" (the "Property"). That portion of the Property that is located north of the right of way of Pine Lake Road shall hereinafter be referred to as the "North Area". That portion of the Property that is located south of the right of way of Pine Lake Road shall hereinafter be referred to as the "South Area." In conjunction with the annexation, Ridge has requested a Comprehensive Plan amendment designating the Property "Blue", Phase 1 on the Anticipated 2015 Lincoln Service Limit and Phasing Plan exhibit, and an amendment to the zoning map to change the zone classification on the South Area from AG to B-2.

B. The City is willing to approve the annexation of the Property, Comprehensive Plan amendment and rezoning of the South Area; provided that, the necessary municipal infrastructure improvements are constructed in a timely manner to serve and properly accommodate the area of the proposed annexation and the permitted land uses.

C. The City and the Property Owners 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 annexation and rezoning of the Property as requested by the Property Owners, it is necessary that the Property Owners assume cost responsibility for various portions of the necessary municipal infrastructure improvements. The parties are entering into this Agreement for the purpose of providing for the construction of the municipal infrastructure improvements necessary for the area of annexation and rezoning and for the allocation of cost responsibilities for such municipal infrastructure between the City and the Property Owners.

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

**I.  
COMPREHENSIVE PLAN AMENDMENT,  
ANNEXATION, ZONING TEXT AMENDMENT  
AND REZONING**

The City Council of the City, concurrently with the approval of this Agreement, is approving a Comprehensive Plan amendment designating the Property "Blue", Phase 1 on Figure 65 of the Plan entitled Anticipated 2015 Lincoln Service Limit and Phasing Plan. The City Council of the City is also annexing the Property described in Attachment "A", which is attached hereto and made a part hereof by reference. The City Council is also approving a change to the

Lincoln zoning district maps from AG to B-2 on the South Area described on Attachment "B", which is attached hereto and made a part hereof by reference.

Said annexation and zoning approvals are conditioned 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 at the request of any party hereto, may, in the exercise of its lawful legislative authority: (i) amend the 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, developments, community unit plans, building permits or other land use controls, as future circumstances may warrant.

## II. NECESSARY MUNICIPAL INFRASTRUCTURE IMPROVEMENTS

The City and the Property Owners covenant and agree that the following are the initial municipal infrastructure improvements necessary to promote the general health and welfare of the City, and to relieve potential traffic congestion in the area. 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, right of way or property acquisition, utility relocation, grading, drainage, ornamental street lights, traffic signals, traffic signage, construction costs, engineering fees, attorney's fees, inspections, testing expenses, publication costs, financing costs, and any other related miscellaneous costs.

(a) Streets

1. Street Improvements. The following street improvements shall be completed:

A. Pine Lake Road from South 14th Street east to the west boundary of the current City limits has been graded to urban standard for a five-lane cross-section. The north half (27 feet wide) of Pine Lake Road from South 14th Street to the west boundary of the current City limits (approximately 19th Street) shall be designed and constructed to urban standard.

B. South 14th Street from Old Cheney Road to Pine Lake Road shall be designed and constructed to urban standard for a five-lane cross-section. The City anticipates completion of such construction by 2002. The City agrees to use its best efforts to provide a left turn lane into the Lincoln Memorial property along the east side of 14th Street when it completes the above construction of 14th Street. Lincoln Memorial agrees to use its best efforts to cooperate with the City in locating the left turn lane into its property. The Property Owners are not required to grant any additional right-of-way along South 14th Street as part of this Agreement.

2. Cost Responsibilities and Responsibility for Completion of Work.

A. The Property Owners shall construct or cause to be constructed the street to urban standard described in (a)1A under the authority of an executive order issued by the Mayor of the City of Lincoln, subject to the City's contribution as described below. In the event the City determines it is necessary, the Property Owners shall also construct or cause to be constructed a west bound to south bound left-turn lane at the intersection of Pine Lake Road and 14th Street as part of the street described in (a)1A above. The Property Owners agree to use their

best efforts to complete the street described in (a)1A above by no later than January 1, 1997. The total estimated cost of the street described in (a)1A is Two Hundred Twenty-five Thousand Three Hundred Fifty-three and 70/100 Dollars (\$225,353.70). The Property Owners shall contribute One Hundred and Seventy-Five Thousand Dollars (\$175,000.00) toward said project. The City shall be responsible for the remaining cost of the project, including all curb cuts shown on Attachment "C", which is attached hereto and incorporated by reference, which costs are estimated to total approximately Fifty Thousand Three Hundred Fifty-three and 70/100 Dollars (\$50,353.70). If the City determines it is necessary to construct a west bound to south bound left turn lane at the intersection of 14th Street and Pine Lake Road as part of the street described in (a)1A, the City shall be responsible for all costs associated with the construction of the left turn lane. The City agrees to include the funding necessary to fund its share of the construction of the street described in (a)1A in its 1996-2002 Capital Improvement Program and to include the funding therefore in the City's 1996/1997 budget.

B. The City shall, at its own cost and expense, construct or cause to be constructed the street to urban standard described in (a)1B.

(b) **Water Mains.**

1. **Water Mains to be Constructed.** A 24-inch ductile iron pipe water main from the west boundary of the Scott Middle School site to 14th Street in Pine Lake Road and a 16-inch ductile iron pipe water main in 14th Street from Pine Lake Road north to the southerly limits of Thunderbird Estates must be constructed in order to serve the annexed area.

2. **Cost Responsibility for Water Mains.** The water mains described above shall be constructed by the City at its cost. The Property Owners have already contributed to the cost of such water mains pursuant to the Conditional Annexation and Zoning Agreement for

South Ridge, as amended. The City will include the construction of the water mains described above in its 1996-2002 Capital Improvement Program and will propose their completion in the fall of the fiscal year 1997/1998.

3. Responsibility for Completion of Work. The City will cause the water mains described above to be constructed as City projects and will be responsible for design, bidding, and construction oversight of said projects. The City agrees to complete the above described water mains by no later than August, 1998; provided, however, because Ridge has a tenant and/or purchaser for all or a part of the South Area that will require water service prior to August 1998, the City agrees to use its best efforts to extend the water main in Pine Lake Road to South 14th Street by the spring of 1997.

(c) Sanitary Sewers. The Property Owners agree that the North Area will be served by a sanitary sewer line that runs through the South Area.

(d) Trails and Sidewalks. Lincoln Memorial agrees to grant the City a ten (10) foot wide exclusive surface easement along the south boundary of its property adjacent to the right-of-way for Pine Lake Road. The City, at its cost, shall construct a 10-foot wide bike trail along the north side of Pine Lake Road that is centered on the property line between the Lincoln Memorial property and Pine Lake Road after the water mains described in II(b) above are constructed. The City shall be responsible for the design, bidding and construction oversight of the trail. To defray the City's costs, Lincoln Memorial agrees to contribute Twelve Thousand Nine Hundred Twenty and no/100 Dollars (\$12,920.00) directly to the City to apply toward the costs of the trail, which amount is equivalent to the cost of constructing a 4-foot sidewalk along the south side of the Lincoln Memorial property which abuts Pine Lake Road.

(e) **Parks.** The Property Owners have already contributed to the City parks and trails as set forth in the Conditional Annexation and Zoning Agreement for South Ridge, as amended, which along with Densmore Park, Wilderness park and the new park located east of South 27th Street, cause the Property to have park services to permit annexation.

### **III. SECURITY**

The City and Property Owners acknowledge that the Property Owners have provided to the City payment of Twelve Thousand Nine Hundred Twenty and no/100 Dollars (\$12,920.00) representing the cash contribution to be made by Lincoln Memorial for the trail to be constructed along the north side of Pine Lake Road as described in Section II(d).

### **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 therefore 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 major commercial development in the area; provided that, any required off-site road improvements associated with the B-2 Use Permit, as may be amended from time to time, shall only be for (i) additional turn lane(s) (right or left) that enter or exit the South Area or for additional turn lanes at the intersection of 14th and Pine Lake Road, and (ii) additional traffic signalization on Pine Lake Road (not including the traffic signalization at the intersection of 14th Street and Pine Lake Road which is the responsibility of the City). The covenants herein shall survive the termination of this Agreement.

## VI. DEFAULT

The parties agree that the rezoning of the South Area referred to in Attachment "C" promotes the public health, safety and welfare so long as Jensen, Ridge or their successors and assigns, fulfill all of the applicable conditions and responsibilities of the South Area set forth in this Agreement. In the event that Jensen, Ridge or their successors and assigns default in fulfilling any of the applicable covenants or responsibilities as set forth in this Agreement, then the City may, in the exercise of its legislative authority, rezone said South Area to the previous zoning designations or such other zoning designations as the City may deem appropriate under the then existing circumstances.



**VII.  
NOTICES**

Any notice 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 at such future addresses as may be designated in writing:

City of Lincoln, Nebraska  
ATTN: Public Works Director  
555 South 10th Street  
Lincoln, Nebraska 68508

with a copy to:

City Clerk  
555 South 10th Street  
Lincoln, Nebraska 68508

Property Owners:

Lincoln Memorial Park Cemetery Association  
ATTN: Cliff Lant  
P.O. Box 22606  
Lincoln, Nebraska 68542

Dale Jensen  
ATTN: Ridge Development Company  
P.O. Box 22296  
Lincoln, Nebraska 68542-2296

with copy to:

Seacrest & Kalkowski, P.C.  
ATTN: Kent Seacrest  
1111 Lincoln Mall, Ste. 350  
Lincoln, NE 68508

**VII.  
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.

**IX.  
AMENDMENTS**

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

**X.  
FURTHER ASSURANCES**

The parties agree to use their best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein, the parties shall cooperate in good faith with the others 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 to carry out the intents and purposes of this Agreement.

**XI.  
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.

**XII.  
GOVERNING LAW**

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

**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.

**IXV.  
TERMINATION**

This Agreement shall terminate upon completion of the following items:

- (a) completion of the streets as described II(a);
- (b) completion of the water mains described in II(b);
- (c) completion of the sanitary sewers described in II(c); and
- (d) completion of the trails described in II(d).

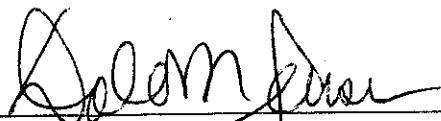
**XV.  
WEST AREA**

Under the Conditional Annexation and Zoning Agreement for South Ridge, as amended, the Property Owners and other property owners contributed the cost of certain public infrastructure improvements to provide for possible annexation of the "West Area" or portions thereof at a later date. The Property which is the subject of this Agreement comprises only a portion of the West Area. The City hereby recognizes and affirms that the that Section XV of the Conditional Annexation and Zoning Agreement for South Ridge, as amended, continues to apply to the remainder of the West Area.

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

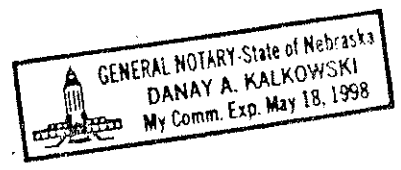


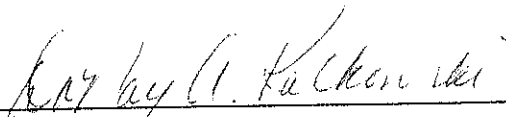


  
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Dale M. Jensen

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this   7<sup>th</sup>   day of   July  , 1996 by Dale M. Jensen.



  
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Notary Public