

## CONDITIONAL ANNEXATION AND ZONING AGREEMENT

THIS CONDITIONAL ANNEXATION AND ZONING AGREEMENT ("Agreement") is made and entered into as of this 22ND day of APRIL, 1998, by and between the City of Lincoln, Nebraska, a municipal corporation ("City"), John Rallis, a married person and Gary Pickering, a married person, hereinafter referred to collectively as "Property Owners".

### I. RECITALS

1. The Property Owners have requested an amendment to Figure 65 of the Lincoln City-Lancaster County Comprehensive Plan entitled *Anticipated 2015 Lincoln Service Limit and Phasing Plan* to designate as a "Blue Area" (Phase I -- ready for immediate development) Lot 22 I.T., located in the Southeast Quarter of Section 23, Township 9 North, Range 6 East of the 6<sup>th</sup> P.M. (the "Property").
2. The Property Owners have requested that the City annex the Property.
3. The Property Owners have requested that the City adopt an amendment to the zoning district map changing the zone on the Property "from AG to I-3 Employment Center District.
4. The Planning Director is willing to recommend amending the Lincoln City-Lancaster County Comprehensive Plan, as amended to designate the Property as "Blue Area" (Phase I) on Figure 65 of the Plan as part of the 1998-99 Annual Review. The City is willing to annex the Property and rezone the Property to I-3 Employment Center District, 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 uses under the proposed zoning.

5. The City and Property Owners recognize that the City does not currently have sufficient funds to devote to these areas to provide for the construction of all necessary infrastructure improvements. The City and Property Owners also recognize that, in order to support a current annexation and rezoning of the Property, it is necessary that the Property Owners assume certain cost responsibilities for various portions of the necessary municipal infrastructure improvements. The City and Property Owners are entering into this Agreement for the purpose of providing for the construction of the infrastructure improvements necessary for the area of the proposed annexation and rezoning and for the allocation of cost responsibilities for such infrastructure between the City and Property Owners.

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

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

A. **Concurrent Approval.** The City, concurrently with the approval of this Agreement, is:

1. Annexing the Property.
2. Approving a change to the Lincoln zoning district maps for the Property.
3. In addition, the City agrees as part of the 1998-1999 Comprehensive Plan Annual Review to propose amending the Lincoln City-Lancaster County Comprehensive

Plan, as amended, to designate the Property as "Blue Area" (Phase I) on Figure 65 of the Plan entitled the *Anticipated 2015 Lincoln Service Limit and Phasing Plan*.

**B. Conditional Approval.** 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; 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.

### **III. NECESSARY MUNICIPAL IMPROVEMENTS FOR THE PROPERTY**

**A. Costs 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 construction costs, engineering fees, testing expenses, publication costs, financing costs, and related miscellaneous costs.

**B. Water Mains.**

1. Water Main to be Constructed. The following water main must be constructed in order to serve the Property:

a. A 24-inch diameter water main will be constructed by the Property Owners, at their cost, from the terminus of the 24-inch water main to be located in

South 14<sup>th</sup> Street at the north boundary of the Property south approximately 638 feet in South 14<sup>th</sup> Street to the southern end of the Property.

2. Cost Responsibility for the Water Main. To defray the cost of the water main described above, the City shall contribute to the Property Owners the cost attributable to oversizing the water main with pipe, valves, fittings and all other accessories that are larger than 8-inch. The Property Owners shall convey to the City, at their cost and at no cost to the City, the temporary and permanent nonexclusive easements that are necessary for the construction and operation of the water main.

3. Responsibility for Completion of Work. The Property Owners shall construct or cause to be constructed the water main described above under the authority of an executive order issued by the Mayor of the City. The Property Owners agree to use their best efforts to complete the above-described water main by no later than June 30, 2003. In the event the City determines a need for the water main described above prior to its construction by the Property Owners, the City may cause the water main described above to be constructed as a City project. If the water main described above is constructed as a City project, the Property Owners shall contribute to the City, as part of the project, that portion of the project cost that is equivalent to the cost of constructing the water main with 8-inch pipe, valves, fittings and all other accessories.

4. Security. At the time this Agreement is finally executed by all of the Property Owners and the Mayor of the City, the Property Owners shall provide the City a bond, escrow, or other security agreement, approved by the City Attorney, in the amount of Twenty-two Thousand Three Hundred Thirty and no/100 Dollars (\$22,330) to insure

the Property Owners' (i) construction of the water main described above; or (ii) contribution to the City for construction of the water main described above.

C. **Sewers.** The City and Property Owners acknowledge the Property is not sewerable today. The Property Owners agree they will show what is necessary to sewer the Property to the satisfaction of the Director of the Public Works Department when they apply for a use permit on the Property. In addition, the Property Owners further agree to construct at their own cost and expense the additional sewer improvements identified as being necessary to sewer the Property.

D. **Streets.** The Property Owners agree that the City's future planned improvements to South 14<sup>th</sup> Street may not be sufficient to handle the impact of full development of the Property under I-3 zoning and that a traffic impact study is necessary to determine whether additional off-site transportation improvements are needed. The Property Owners agree to complete and submit a traffic study to the City at the time the Property Owners apply for a use permit on all or any portion of the Property. The Property Owners further agree to construct or pay their fair share (ie. "rough proportionality") of the cost of construction of any additional off-site road improvements identified in the traffic study as being necessary to mitigate the projected adverse effects the proposed development of the Property will have on traffic on the public street system that serves and provides access to the Property.

E. **Trails and Parks.** The City and Property Owners acknowledge that additional trails and parks may be needed to meet the needs of full development of the Property under I-3 zoning. The Property Owners agree that they will address to the satisfaction of the Director of Parks & Recreation what additional trails and parks are needed to meet the needs of full

development under I-3 zoning at such time as the Property Owners apply for a Preliminary Plat, Use Permit, or Special Permit for the Property.

**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**

Except as stated herein, 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 request future traffic studies or 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.

**VI.  
DEFAULT**

The parties agree that the rezoning of the Property promotes 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 the Property Owners default 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 the Property 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:

Seacrest & Kalkowski, P.C.  
ATTN: Kent Seacrest  
1111 Lincoln Mall, Suite 330  
Lincoln, Nebraska 68508

**VIII.  
BINDING EFFECT**

This Agreement shall run with the land and shall be binding upon and nure 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.



**XIV.**  
**TERMINATION AND RELEASE**

This Agreement shall terminate when all of the requirements identified in Section III have been completed and paid for. At such time as this Agreement is terminated, the parties shall execute and record a written Acknowledgment of Termination and Release, which instrument shall provide and acknowledge that each of the parties has fulfilled and satisfied its obligations and agreements hereunder, and that the parties have no further rights, duties, agreements, obligations or liabilities hereunder.

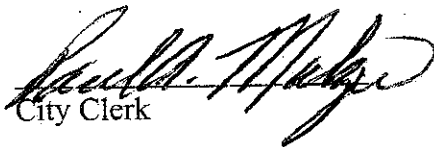
**XV.**  
**MEMORANDUM**

This Agreement or a summary memorandum thereof shall be recorded by the City with the Register of Deeds of Lancaster County, filing fees therefore to be paid in advance by the Property Owners.

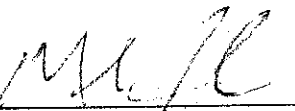
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.


**City of Lincoln, Nebraska,**  
a municipal corporation

ATTEST:

  
\_\_\_\_\_  
Paula M. Mudge  
City Clerk

By:

  
\_\_\_\_\_  
Mike Johannis, Mayor

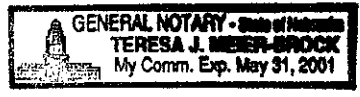
  
\_\_\_\_\_  
John Rallis, a married person

Gary A. Pickering  
Gary Pickering, a married person

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 22ND day of APRIL, 1998 by Mike Johanns, Mayor of the City of Lincoln, Nebraska, on behalf of the City of Lincoln, Nebraska.

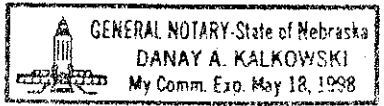
Teresa J. Meier-Brock  
Notary Public



STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 10 day of March, 1998 by John Rallis, a married person.

Danay A. Kalkowski  
Notary Public



STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 10 day of March, 1998 by Gary Pickering, a married person.

Danay A. Kalkowski  
Notary Public

