

98R-27

Introduce: 2-2-98

RESOLUTION NO. A- 78620

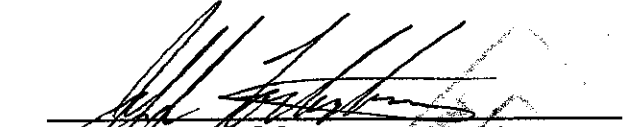
1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:
 2 That the Conditional Annexation and Zoning Agreement for property
 3 generally located at 27th and West "A" Streets, which is attached hereto,
 4 marked as Attachment "A" and made a part hereof by reference, between the City
 5 and Commercial Contractors Equipment and B & J Partnership outlining certain
 6 conditions and understandings relating to the annexation and rezoning of
 7 property generally located at 27th and West "A" Streets, Lancaster County,
 8 Nebraska, is approved. The Mayor is authorized to execute the same on behalf
 9 of the City.

10 BE IT FURTHER RESOLVED that the City Clerk is directed to return one 3/19/98
 11 fully executed copy of this Agreement to Rick Peo, Assistant City Attorney,
 12 for transmittal to Commercial Contractors Equipment and B & J Partnership.

13 BE IT FURTHER RESOLVED that the City Clerk shall file said Agreement
 14 with the Register of Deeds of Lancaster County, Nebraska, filing fees to be
 15 paid in advance by Commercial Contractors Equipment and B & J Partnership.

(See further Council Action on page 2)

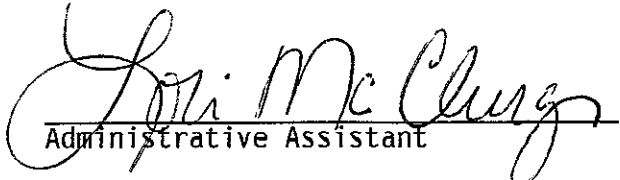
Introduced by:


 AYES: Donaldson, Fortenberry,
 Johnson, Seng, Wilson;
 NAYS: Shoecraft;
 ABSENT: Young.

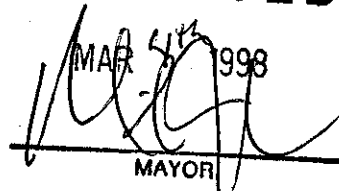
Approved as to Form and Legality:


 Assistant City Attorney

Staff Review Completed:


 Administrative Assistant

APPROVED


 MAR 5 1998
 MAYOR

ADOPTED

MAR 2 1998

By City Council

98R-27

2/9/98 Council Proceedings:

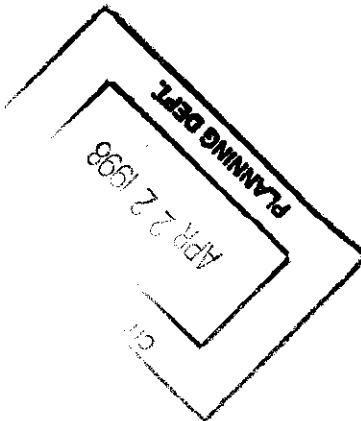
SENG Moved to continue Pub. Hearing & delay Action to 2/17/98.
Seconded by Donaldson & carried by the following vote: AYES: Donaldson,
Fortenberry, Johnson, Seng, Shoecraft, Wilson, Young; NAYS: None.

2/17/98 Council Proceedings:

SHOECRAFT Moved to delay action for 2 weeks to 3/2/98.
Seconded by Seng & carried by the following vote: AYES: Donaldson, Fortenberry,
Johnson, Seng, Shoecraft, Wilson, Young; NAYS: None.

2/23/98 Council Proceedings:

SENG Moved to remove Bill 98R-27 from Pending for action on 3/2/98.
Seconded by Young & carried by the following vote: AYES: Donaldson, Fortenberry,
Johnson, Seng, Shoecraft, Wilson, Young; NAYS: None.



**CONDITIONAL
ANNEXATION AND ZONING AGREEMENT**

THIS CONDITIONAL ANNEXATION AND ZONING AGREEMENT is made and entered into on this 4TH day of MARCH, 1998, by and between **B & J Partnership**, a Nebraska partnership, and **Commercial Contractors Equipment, Inc.**, a Nebraska corporation, hereinafter collectively referred to as "Owners," and the **City of Lincoln, Nebraska**, a municipal corporation, hereinafter referred to as "City."

RECITALS

A.

Owners have requested that the City annex Lot 53, I.T., except the west 530 feet thereof, located in the NE 1/4 of Section 32, Township 10 North, Range 6 East, and all of the SE 1/4 of the SE 1/4 of Section 29, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska, hereinafter referred to as the "Property."

B.

Owners have further requested the City to rezone the Property from AGR Agricultural Residential District to H-4 General Commercial District.

C.

The City's approval of the change of zone of the Property from AGR Agricultural Residential District to H-4 General Commercial District will cause increased wastewater flow into the public sanitary sewer system that serves the Property. Based upon preliminary projections of wastewater flow, the City and Owners have determined that the sanitary sewer capacity associated with the annexation and change of zone based upon an assumed full development of H-4 General Commercial District uses and permitted square footage amounts on the property is inadequate to handle such full development.

D.

Due to the inadequate sewer capacity, the City is willing to annex the Property and to rezone the Property as requested provided that Owners agree that the Property will be developed solely as a Planned Service Commercial Development pursuant to Lincoln Municipal Code Section 27.63.470 and further restricted to uses that do not generate a large amount of wastewater.

E.

The development and operation of the Property as a Planned Service Commercial Development will cause increased traffic on the public street system that serves and provides access to the Property that may require off-site road improvements. Due to the possible inadequacy of the street system, the City is willing to annex the Property and to rezone the Property as requested provided there is an agreement regarding cost responsibilities for improvements to the public street system which serves the Property and that Owners agree to complete a Traffic Impact Study as part of the Planned Service Commercial Development special permit process.

F.

City and Owners agree that City has a legitimate state interest in promoting the health, safety and welfare and providing for the safe and efficient receipt of wastewater within the public sanitary sewer system and for the safe and efficient movement of motor vehicles upon the public street system and that an "essential nexus" exists between the City's above interest and the conditions placed upon Owners under this Agreement. In addition, the City and Owners have made an individualized determination and agree that the conditions placed upon the Owners under this Agreement are related both in nature and extent and are in rough proportionality to the projected adverse effects, full development and operation of the Property

under H-4 General Commercial District zoning would have on the public sanitary sewer system and street system that serves the Property.

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

1. Annexation by City. The City agrees to annex the Property.

2. Rezoning of the Property. The City agrees to rezone the Property from AGR Agricultural Residential District to H-4 General Commercial District.

3. Building Permits. Owners agree that no building permits shall be issued for construction on the Property until after Owners have applied for and received from the City a special permit under the H-4 General Commercial District for a Planned Service Commercial Development. Notwithstanding the uses allowed in the H-4 General Commercial District for a Planned Service Commercial Development, Owners agree that no portion of the Property shall be used for any of the following purposes:

- a. Automobile and motorcycle sales;
- b. Dwellings for caretakers employed and required to reside on the premises;
- c. Ambulance services;
- d. Hospitals, clinics for animals, and open kennels;
- e. Restaurants;
- f. Service stations;
- g. Stores or shops for retail sales and services;
- h. Clubs;
- i. Private recreational facilities;
- j. Early childhood care facilities;
- k. Churches;
- l. Private schools;

- m. Banks, savings and loan associations, credit unions, and finance companies;

In addition, Owners agree that office space will be limited as follows: (i) accessory offices for a primary use shall not exceed 10,000 square feet; (ii) offices as a primary use shall not exceed 10,000 square feet per ten acres of the total area of the Property within the H-4 zoning district.

4. Traffic Impact Study. Owners agree to prepare a Traffic Impact Study reflecting Owners' proposed development under a special permit for a Planned Service Commercial Development and the estimated trip generation and driveway volume for the peak hours. Owners further agree to construct the street improvements, if any, identified in the Traffic Impact Study as needed to meet and accommodate projected adverse effects of the Planned Service Commercial Development.

5. Construction Standards. All sanitary sewer and street construction required by this Agreement shall be completed in accordance with the City of Lincoln 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.

6. Level of Service and Proposed Land Uses. Notwithstanding the approval of a Planned Service Commercial Development for the Property, the City may withhold building permits for approved uses in the Planned Service Commercial Development when such land uses and square footage amounts, based upon the Owners' projected wastewater flows, would exceed the sewer capacity of the public sanitary sewer system. In addition, the city may withhold building permits for uses approved in the Planned Service Commercial Development until such time as Owners agree to construct and pay for off-site road improvements identified as being necessary in the Traffic Impact Study.

7. Restrictive Covenants. Owners agree that no building permits will be issued for any portion of the Property zoned H-4 General Commercial District until restrictive

covenants are filed against the Property prohibiting the use of the Property except as a Planned Service Commercial Development as restricted by this Agreement. City agrees to consider amending this Agreement and the Restrictive Covenants in order to allow additional uses provided that Owners first prepare a Traffic Impact Study and a Sewer Capacity Study and agree to construct any street or sewer improvements identified in said studies as being necessary to accommodate the potential adverse effects such expanded uses would have upon the public street system and sanitary sewer system which serves the Property.

8. 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 property.

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

10. 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.

11. 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.

12. 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.

13. 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.

14. 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, Owners, 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.

15. 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.

16. Time is of the Essence. Time is of the essence under this Agreement.

17. Default. Owners and City agree that the annexation and changes of zone 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 their covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rezone the Property to its previously 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.

18. Notice. Any notices required to be forwarded to a party hereto shall be deemed appropriately sent if deposited in the United States mail, sufficient postage prepaid, addressed as follows:

If to Owners: B & J Partnership
300 Speedway Circle
Lincoln, NE 68502

If to City: Mayor
County-City Building
555 South 10th Street
Lincoln, NE 68508

Any party hereto may change its address for notification purposes by written notice to all parties hereto in the manner and method set forth in this section.

19. Recordation. This Agreement shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at Owners' cost and expense.

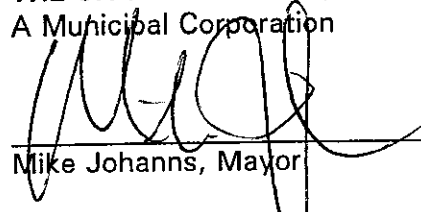
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

ATTEST:


City Clerk

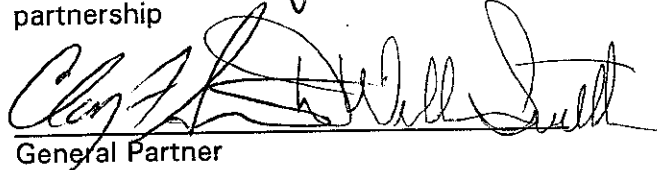
THE CITY OF LINCOLN, NEBRASKA
A Municipal Corporation

By:


Mike Johanns, Mayor

B & J PARTNERSHIP, a Nebraska
partnership

By:


General Partner

**COMMERCIAL CONTRACTORS
EQUIPMENT, INC.**, a Nebraska corporation

By:


President