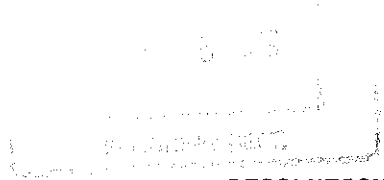


99R-111

Introduce: 4-5-99



**79410**

RESOLUTION NO. A-\_\_\_\_\_

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 near South 14th Street and Pine Lake Road which is attached  
 4 hereto, marked as Attachment "A" and made a part hereof by reference, between  
 5 the City and Krueger Development Company outlining certain conditions and  
 6 understandings between the City and Krueger Development Company relating to  
 7 the annexation and rezoning of approximately 118 acres of property generally  
 8 located west of South 14th Street and Pine Lake Road, Lancaster County,  
 9 Nebraska, is approved. The Mayor is authorized to execute the same on behalf  
 10 of the City.

11 BE IT FURTHER RESOLVED that the City Clerk is directed to return one  
 12 fully executed copy of this Agreement to Rick Peo, Assistant City Attorney,  
 13 for transmittal to Krueger Development Company.

Introduced by:

Ross E. Hecht

Approved as to Form and Legality:

AYES: Donaldson, Fortenberry, Hecht,  
 Johnson, Seng, Shoecraft, Wilson;  
 NAYS: None.

Rick Peo

Chief Assistant City Attorney

Staff Review Completed:

Administrative Assistant  
 Administrative Assistant

**APPROVED**

APR 14 1999

David R. Spang  
 MAYOR

**ADOPTED**

APR 12 1999

By City Council

**VAVRINA MEADOWS  
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Vavrina Meadows Conditional Annexation and Zoning Agreement ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 1999, by and between **Krueger Development, Inc.**, a Nebraska corporation, hereinafter referred to as "Krueger," and the **City of Lincoln, Nebraska**, a municipal corporation, hereinafter referred to as "City."

**R E C I T A L S**

A. Krueger has requested that the City annex Lots 52, 64, and 65 of Irregular Tracts, located in the West One-Half of Section 24, Township 9 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska, hereinafter referred to as the "Property."

B. Krueger has further requested the City to rezone those portions of the Property as legally described in Attachments "A" and "B", which are attached hereto and incorporated herein by this reference from AG Agricultural District to R-3 Residential District and B-2 Planned Neighborhood Business District, respectively.

C. Krueger has further indicated that in the near future Krueger will be requesting the annexation and rezoning of Lot 66, I.T. in the Southeast Quarter of Section 24, Township 9 North, Range 6 East of the 6th P.M., Lancaster County ("Dahlberg Property").

D. The City's approval of the change of zone of the property from AG Agricultural District to R-3 Residential District and B-2 Planned Neighborhood Business 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 Krueger have determined that the sanitary sewer capacity associated with the annexation and change of zone and the possible future annexation of the Dahlberg Property is inadequate to handle such development. In order to

provide water service to the Property, it will be necessary to extend the 24-inch water main in South 14th Street adjacent to the Property.

E. The City is willing to annex the Property and rezone the Property as requested provided that Krueger agrees to contribute Thirty-six Thousand Six Hundred Thirty Dollars (\$36,630.00) toward the construction of a 48-inch sanitary sewer trunk line along the BN tracks to the west of South 14th Street in order to provide sufficient storage capacity for the Property and further agrees to pay for a portion of the 24-inch water main in South 14th Street based upon the cost of a 6-inch equivalent main along residential frontage and an 8-inch equivalent main for commercial frontage of the Property on South 14th Street.

F. The development and operation of the Property as a B-2 Planned Neighborhood Business District 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 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 Krueger agrees to complete a traffic impact study prior to final platting, Vavrina Boulevard or Jeanette Lane west of 16th Street so that a determination may be made about right-of-way widths and turn lanes to the satisfaction of the Public Works and Utilities Department. The traffic impact study shall reflect Krueger's proposed rezoning and development of the 13-acre commercial area as a B-2 Planned Neighborhood Business District and shall specifically include the estimated trip generation and driveway volume for the peak hour.

G. City and Krueger agree that the 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 for the provision of water 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 Krueger under this Agreement. In addition, the City and Krueger have made an individualized determination and agree that the conditions placed upon Krueger 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 the B-2 Planned Neighborhood Business District and the R-3 Residential 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 the City. The City agrees to annex the Property.
2. Rezoning of the Property. The City agrees to rezone the Property from AG Agricultural District to R-3 Residential District and B-2 Planned Neighborhood Business District as legally described in Attachments "A" and "B", respectively.
3. Public Sanitary Sewer. Krueger understands and acknowledges that the Property is not presently sewerable by the City's public sanitary sewer system as there are limitations in the downstream trunk sewer capacity and that City does not intend to enhance its public sanitary sewer system to serve the Property within the next one to six years. Krueger further understands and acknowledges that the property owner to the south intends to construct a 48-inch sanitary sewer trunk line along the BN tracks to the west of South 14th Street and that such construction would provide sufficient storage capacity to enable Krueger's Property to be served. Krueger desires to be connected to the City's public sanitary sewer system and therefore agrees to participate in and contribute \$36,630.00 as Krueger's share of the cost of the construction of the 48-inch sanitary sewer trunk line to serve the Property. City agrees that in the event the

Dahlberg Property is annexed, the City will not require any additional contribution for the cost of the 48-inch trunk sewer in order for the Dahlberg Property to be connected to the City's sanitary sewer system.

4. Extension of Public Water. Krueger understands and acknowledges that the City's public water system is not available to serve the Property. Krueger desires to be connected to the City's public water system and therefore agrees to pay a portion of the cost to extend the 24-inch water main in South 14th Street to serve the Property. Krueger shall construct or cause to be constructed said water main under the authority of an executive order issued by the Mayor of the City. All costs related to the construction of the water main shall be paid by Krueger, except that the City agrees to subsidize Krueger for the cost of such water main which exceeds the cost of an equivalent 6-inch water main for 970 feet of residential frontage and an equivalent 8-inch water main for 1,025 feet of commercial frontage on South 14th Street. In the event the City determines a need for the water main described above prior to construction by Krueger, 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, Krueger shall contribute to the City, as part of the project, that portion of the project cost that is equivalent to the cost of constructing a 6-inch water main for 970 feet of residential frontage and equivalent to the cost of constructing an 8-inch water main for 1,025 feet of commercial frontage on South 14th Street.

5. Parks. Krueger acknowledges that additional outdoor recreational facilities are needed to meet the needs of full development of the Property under R-4 and B-2 zoning and agrees to convey or dedicate to the City, at no cost and at the City's sole option, either one or both of the two outlots designated as Outlots "E" and "F" in the preliminary plat of Vavrina Meadows for use as "mini-parks." Krueger further agrees to contribute \$16,700.00 per mini-park to be used by the City solely for development of playground equipment, benches, basketball

courts, and other equipment for the mini-parks. Krueger agrees to install street trees and sidewalks in the public right-of-way adjacent to the mini-park(s) and to complete the concrete work in the mini-park(s) to the satisfaction of the Director of the Department of Parks and Recreation. The City agrees to install the equipment within six months following Krueger's construction and pavement of the street adjacent to the mini-park(s). The outlot or outlots to be conveyed to the City shall not be conveyed until such time as said outlot or outlots have been graded to the satisfaction of the Director of Parks and Recreation.

6. Maintenance of Parks. Krueger agrees to mow the grass area in the two mini-parks at Krueger's own cost and expense; provided that Krueger may be relieved of this responsibility upon creation of a homeowners association to be responsible for said mowing. The City agrees to be responsible for trash collection, maintenance of the equipment, and liability for the Property.

7. Traffic Impact Study. Krueger agrees to complete a traffic impact study at Krueger's own cost and expense prior to final platting of Vavrina Boulevard or Jeanette Lane west of 16th Street so that a determination may be made about right-of-way widths and turn lanes to the satisfaction of the Public Works and Utilities Department. The traffic impact study shall reflect Krueger's proposed rezoning and development of the 13-acre commercial area as a B-2 Planned Neighborhood Business District and shall specifically include the estimated trip generation and driveway volume for the peak hour.

8. Use Permits. Krueger agrees that no use permits shall be issued for use of the Property until after Krueger has submitted to and the City has approved the traffic impact study referred to in Paragraph 7 above. Krueger further agrees to construct the street improvements, if any, identified in the traffic impact study as needed to meet and accommodate the projected adverse effects of the use of the B-2 Planned Neighborhood Business District property.

9. Security. Simultaneous with the execution of this agreement by Krueger, Krueger shall provide the City a bond, escrow, or other security agreement, approved by the City Attorney, as follows:

(a) In the amount of \$36,630.00 to insure construction of the sanitary sewer referred to in paragraph 3 above.

(b) In the amount of \$33,400.00 to insure Krueger's contribution of \$16,700.00 per mini-park as provided for in Paragraph 5 above.

(c) In the amount of \$65,000.00 to insure Krueger's (i) construction of the water main described in paragraph 4 above; or (ii) contribution to the City for construction of said water main.

10. Level of Service and Proposed Land Uses. By acceptance of the construction and/or payment for off-site improvements identified in the traffic impact study, the City in no way warrants or assures any particular level of service on the public streets and roads serving the Property for the development contemplated under the changes of zone.

11. 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 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 major commercial development in the area.

12. 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.

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

14. 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.

15. 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.

16. 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.

17. 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.

18. 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, Krueger, 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.

19. 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.

20. Default. Krueger and City agree that the annexation and changes of zone promote the public health, safety, and welfare so long as Krueger fulfills all of the conditions and responsibilities set forth in this Agreement. In the event Krueger defaults in fulfilling any of its 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.

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

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

ATTEST:

**THE CITY OF LINCOLN, NEBRASKA**  
A Municipal Corporation

\_\_\_\_\_  
City Clerk

By: Dale L. Young

Dale Young, Mayor

KRUEGER DEVELOPMENT, INC.

By: Richard C. Krueger  
President

STATE OF NEBRASKA     )  
                                  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1999, by Dale Young, Mayor of the City of Lincoln, Nebraska on behalf of the City.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA     )  
                                  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of April, 1999, by Richard C. Krueger, President of Krueger Development, Inc., a Nebraska corporation, on behalf of said corporation.



Julia E. Elgert  
Notary Public

[agr\krueger.anx]