

SEP 29 1999

99R-239

Introduce: 8-30-99

RESOLUTION NO. A- 79735

1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

2 That the agreement titled Eagle Crest Conditional Annexation and Zoning
3 Agreement ("Annexation Agreement"), which is attached hereto, marked as Attachment
4 "A" and made a part hereof by reference, between the City and Hoegemeyer Palmer
5 Construction and Southeast Rural Fire Department (Owners) outlining certain
6 conditions and understandings between the City and said Owners relating to the
7 annexation and rezoning of approximately 19.12 acres of land generally located at
8 North 84th and Holdrege Streets, is approved. The Mayor is authorized to execute the
9 Annexation Agreement on behalf of the City.

10 BE IT FURTHER RESOLVED that the City Clerk is directed to return one fully
11 executed copy of this Agreement to Rick Peo, Assistant City Attorney, for distribution to
12 the Owners.

13 BE IT FURTHER RESOLVED that the City Clerk is directed to record the
14 Agreement or a summary memorandum thereof with the Register of Deeds, filing fees
15 to be paid by the Owners.

(See further Council Proceedings on next page.)

Approved as to Form and Legality:

Rick Peo

Chief Assistant City Attorney

Staff Review Completed:

Ann Harris

Administrative Assistant

Introduced by:

Cynthia Johnson

AYES: Camp, Cook, Fortenberry,
Johnson, McRoy, Seng, Shoecraft;
NAYS: None.

APPROVED

SEP 28 1999

Don Weisely
MAYOR

ADOPTED

SEP 20 1999

By City Council

99R-239

9/7/99 Council Proceedings:

JOHNSON Moved to continue Public Hearing & to delay Action on Bill 99R-239 for 1 week to 9/13/99.

Seconded by Camp & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng; NAYS: None; ABSENT: Shoecraft.

9/13/99 Council Proceedings:

JOHNSON Moved to continue Public Hearing & delay Action on Bill 99R-239 for 1 week to 9/20/99.

Seconded by Shoecraft & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

9/20/99 Council Proceedings:

JOHNSON Moved to accept a substitute agreement.

Seconded by Cook & carried by the following vote: AYES: Camp, Cook, Fortenberry, Johnson, McRoy, Seng, Shoecraft; NAYS: None.

Substitute

**EAGLE CREST
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Eagle Crest Conditional Annexation and Zoning Agreement ("Eagle Crest Agreement") is made and entered into this 28 day of September, 1999, by and between **Hoegemeyer Palmer Construction**, and **Southeast Rural Fire Department**, hereinafter collectively referred to as "Owner," and the **City of Lincoln, Nebraska**, a municipal corporation, hereinafter referred to as "City."

RECITALS

A. Owner has requested the City to annex the remaining portion of Lot 21, I.T., located in the Northwest Quarter of Section 23, Township 10 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska. The remaining portion of Lot 21 I.T. is legally described in Attachment "A" which is attached hereto and incorporated herein by this reference and is hereinafter referred to as "Lot 21."

B. Owner has requested City to rezone those portions of Lot 21 as legally described in Attachments "B" and "C", which are attached hereto and incorporated herein by this reference from AG Agricultural District to R-3 Residential District and from AG Agricultural District to O-3 Office Park District, respectively.

C. Pursuant to the Conditional Annexation and Zoning Agreement for Regent Heights 1st Addition and Northern Lights Addition ("Regents Heights Agreement"), the City and the developers of Regent Heights 1st Addition and Northern Lights Addition constructed certain sanitary sewer trunk lines (hereinafter "Sewer A" and "Sewer B") to sewer 254 acres of land within the preliminary plats of Regent Heights 1st Addition and Northern Lights

Addition. Said Sewer A and Sewer B can also sewer 746 acres of land outside of the boundaries of the preliminary plats for Regent Heights 1st Addition and Northern Lights Addition, including Lot 21.

D. In the Regent Heights Agreement, the City agreed to charge owners of land outside the boundaries of the preliminary plats for Regent Heights 1st Addition and Northern Lights Addition who benefit not from maintenance of Sewer A and Sewer B, but from the extension of Sewer A and Sewer B into an entirely new area, including Lot 21, should bear a fair share of the cost of Sewer A and Sewer B based upon a per-acre formula or some other fair share formula approved by the City.

E. The City is willing to annex and rezone Lot 21 as requested provided Owner agrees to contribute \$30,018.40 as Owner's fair share of the cost to construct Sewer A and Sewer B which sewers Lot 21 based upon a cost of \$1,570 per acre times the 19.12 acres being annexed.

F. In order to provide adequate water service to Lot 21, it will be necessary to extend the 12-inch water main located in South 84th Street, south of Eagle Crest Drive south to Elizabeth Drive, and to construct a 16-inch water main in Holdrege Street abutting Lot 21. The City is willing to annex and rezone Lot 21 as requested, provided Owner agrees to pay one-half of the estimated cost to construct an equivalent 6-inch water main in 84th Street toward construction of the 12-inch main located in 84th Street from south of Eagle Crest Drive south to Elizabeth Drive, and further agrees to pay one-half of the estimated cost to construct an equivalent 8-inch water main toward the construction of the 16-inch water main in Holdrege Street abutting Lot 21.

G. The development and operation of Lot 21 as an O-3 Office Park District will cause increased traffic on the public street system that serves and provides access to Lot 21 that may require off-site road improvements. Due to the possible inadequacy of the street system, the City is willing to annex Lot 21 and rezone Lot 21 as requested provided there is an agreement regarding cost responsibilities for improvements to the public street system which serves Lot 21 and that Owner agrees to complete a traffic impact study prior to making application for a use permit on that portion of Lot 21 zoned O-3 Office park District 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 Owner's O-3 zoning and development of the O-3 zoned area under the requested use permit and shall specifically include the estimated trip generation and driveway volume for the peak hour.

H. City and Owner agree that the City has a legitimate state interest in the public health, safety, and welfare which is promoted by requiring Owner to pay Owner's fair share of the cost to construct Sewer A and Sewer B to sewer Lot 21; to contribute to the cost to extend the water system to serve Lot 21; and to provide 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 Owner under this Agreement. In addition, the City and Owner have made an individualized determination and agree that the conditions placed upon Owner 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 Lot 21 under the O-3 Office Park District and the R-3 Residential District zoning would have on the public sanitary sewer system, water system, and street system that serves Lot 21.

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 Lot 21.
2. Rezoning of Lot 21. The City agrees to rezone Lot 21 from AG Agricultural District to R-3 Residential District and from AG Agricultural District to O-3 Office Park District as legally described in Attachments "B" and "C", respectively.

3. Public Sanitary Sewer. Owner understands and acknowledges that Lot 21 was made sewerable by the construction of Sewer A and Sewer B pursuant to the Regent Heights Agreement and that the Owner did not participate in, nor contribute Owner's fair share of the cost of the construction of Sewer A and Sewer B to serve Lot 21. Owner desires to be connected to Sewer A and Sewer B and therefore agrees to pay at the time of connection a connection fee of One Thousand Five Hundred Seventy and 00/100ths Dollars (\$1,570.00) per acre times 19.12 acres for a total connection fee of \$30,018.40.

4. Extension of Public Water. Owner understands and acknowledges that the City's public water system is not available to serve Lot 21. Owner desires to be connected to the City's public water system and therefore agrees to pay a portion of the cost to extend the 12-inch water main in North 84th Street and the 16-inch water main in Holdrege Street to serve Lot 21. Owner shall construct or cause to be constructed said water mains under the authority of an executive order issued by the Mayor of the City. All costs related to the construction of the water mains shall be paid by Owner, except that the City agrees to subsidize Owner for the cost of such water main which exceeds the cost of one-half of an equivalent 6-inch water main for Lot 21's residential frontage along 84th Street and which exceeds the cost of one-half of an equivalent 8-inch water main for Lot 21's O-3 Office Park

District frontage on Holdrege Street. In the event the City determines a need for either or both of the water mains described above prior to construction by Owner, the City may cause either or both of the water mains described above to be constructed as a City project. If the 12-inch water main in 84th Street described above is constructed as a City project, Owner shall contribute to the City, as part of such project, that portion of the project cost that is equivalent to one-half of the cost of constructing a 6-inch water main for Lot 21's residential frontage along 84th Street. If the 16-inch water main in Holdrege Street described above is constructed as a City project, Owner shall contribute to the City, as part of such project, that portion of the project cost that is equivalent to one-half of the cost of constructing an 8-inch water main for Lot 21's O-3 Office Park District frontage on Holdrege Street. Said contribution shall be paid to the City within thirty (30) days of receipt of notice that the water main or mains shall be constructed as a City project.

5. Traffic Impact Study. Owner agrees to complete a traffic impact study at Owner's own cost and expense prior to submitting an application for a use permit on the O-3 zoned portion of Lot 21 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 Owner's proposed development of the O-3 zoned area and shall specifically include the estimated trip generation and driveway volume for the peak hour.

6. Use Permits. Owner agrees that no use permits shall be issued for use of the O-3 zoned portion of Lot 21 until after Owner has submitted to and the City has approved the traffic impact study referred to in Paragraph 5 above. Owner 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 O-3 Office Park District portion of Lot 21.

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

(a) In the amount of \$30,018.40 to insure payment of the connection fee to Sewer A and Sewer B referred to in paragraph 3 above.

(b) In the amount of \$24,900.00 to insure (i) Owner's portion of the cost of construction of the 12-inch and 16-inch water mains described in paragraph 4 above; or (ii) Owner's payment of the contribution to the City for construction of said water mains.

8. 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 Lot 21 for the development contemplated under the changes of zone.

9. 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 Lot 21 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.

10. 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 Lot 21.

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

12. 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.

13. 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.

14. 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.

15. 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.

16. 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, Owner, 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.

17. 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.

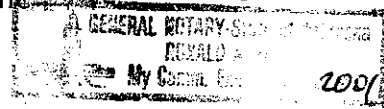
18. Default. Owner and City agree that the annexation and changes of zone promote the public health, safety, and welfare so long as Owner fulfills all of the conditions and responsibilities set forth in this Agreement. In the event Owner defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rezone Lot 21 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.

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

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 20 day of Sept, 1999, by Bruce Palmer, President of Hoegemeyer Palmer Construction on behalf of said company.

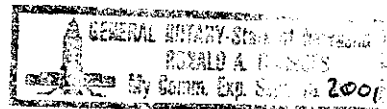
Ronald A. Janniges
Notary Public



STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 20 day of Sept, 1999, by Ronald Olson, Board Member on behalf of the Rural Southeast Fire Department.

Ronald A. Janniges
Notary Public



[agr/eagle crest annexation]