

(Substitute)
RESOLUTION NO. A- **79751**

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

2 That the agreement titled (Substitute) Vintage Heights Conditional Annexation
3 and Zoning Agreement ("Annexation Agreement"), which is attached hereto, marked as
4 Attachment "A" and made a part hereof by reference, between the City and Pine Lake
5 Development, L.L.C. (Owner) outlining certain conditions and understandings between
6 the City and said Owner relating to the annexation and rezoning of land generally
7 located at between Old Cheney Road and Pine Lake Road west of South 98th Street is
8 approved. The Mayor is authorized to execute the Annexation Agreement on behalf of
9 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 Owner.

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 Owner.

Introduced by:

Cynthia D. Johnson

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

Approved as to Form and Legality:

Rick Peo

City Attorney

Staff Review Completed:

Ann Hansen

Administrative Assistant

APPROVED

OCT 6 1999

Don Wesely

MAYOR

ADOPTED

SEP 27 1999

By City Council

99R-274

9/27/99 Council Proceedings:

JOHNSON Moved to have a substitute resolution for Bill No. 99R-274.

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

(Substitute)
VINTAGE HEIGHTS
CONDITIONAL ANNEXATION AND ZONING AGREEMENT

This Vintage Heights Conditional Annexation and Zoning Agreement ("Agreement") is made and entered into this _____ day of _____, 1999, by and between **Pine Lake Development, L.L.C.**, a Nebraska limited liability company, hereinafter 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 approximately 340.23 acres more or less of land generally located between Old Cheney Road and Pine Lake Road west of South 98th Street. The approximately 340.23 acres is hereinafter referred to as the "Annexed Property" as shown in City Bill No. 99-103 (Anx #99005) which is incorporated herein by this reference.

B. Owner has requested the City to rezone Lots 4 I.T., 37 I.T., 40 I.T., 42 I.T., 43 I.T., 49 I.T., a portion of the remaining portion of Lot 50 I.T., Lot 51 I.T., Lot 52 I.T., Lot 56 I.T., Lot 58 I.T., and Lot 59 I.T., all located in Section 14, Township 9 North, Range 7 East, from AG Agricultural District to R-3 Residential District. Said lots are hereinafter referred to as the "Rezoned Property" and are legally described in Attachment "A" which is attached hereto and incorporated herein by this reference.

C. Owner has requested the City to approve Owner's application to preliminarily plat Lots 4 I.T., 37 I.T., 40 I.T., 42 I.T., 43 I.T., 49 I.T., a portion of the remaining portion of Lot 50 I.T., and Lots 51 I.T., 52 I.T., 56 I.T., 58 I.T., and 59 I.T., all located in Section 14, Township 9 North, Range 7 East, as legally described in Attachment "B" which is attached

hereto and incorporated herein by this reference. Said lots are hereinafter referred to as the "Preliminary Plat Property." The Preliminary Plat Property is also subject to a request by the Owner for a special permit for a community unit plan to develop 392 multiple family dwelling units, 170 two-family dwelling units, 24 three-family dwelling units, 15 acreage single family dwelling units, and 360 single family lots on said property.

D. Owner is the legal owner of the Annexed Property, Rezoned Property, and Preliminary Plat Property.

E. In order to provide adequate sanitary sewer service to the Preliminary Plat Property, it will be necessary to transfer sewage from the Stevens Creek Basin into the Antelope Creek Basin. The City is willing to annex the Annexed Property, rezone the Rezoned Property from AG Agricultural District to R-3 Residential District, and approve the preliminary plat and community unit plan for the Preliminary Plat Property as requested by Owner, provided Owner agrees to pay \$40,341.00 to the City as Owner's share of the required future improvements to the Antelope Creek Basin sewer system which are necessary in order to provide capacity for the transfer of sewage over the ridge line as requested by Owner and other proposed subdivisions.

F. In order to provide adequate water service to the Preliminary Plat Property it will be necessary to construct a 16-inch water main in Pine Lake Road generally in the location shown on Attachment "C" and to construct a water booster pump station. In addition it will be necessary to obtain approval from Rural Water District No. 1, Lancaster County, Nebraska, hereinafter "District No. 1" in order for the City to furnish water to that portion of the Preliminary Plat Property located within the boundaries of District No. 1. The City is willing

to annex the Annexed Property, rezone the Rezoned Property, and approve the preliminary plat and the community unit plan for the Preliminary Plat Property as requested by Owner provided Owner agrees to pay all the costs of the water booster pump station and all of the cost needed to obtain approval from District No. 1 for the City to furnish water for that portion of the Preliminary Plat Property located within the boundaries of District No. 1.

G. 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 future improvements to the Antelope Creek Basin sewer system needed in order to provide capacity for the transfer of sewage over the ridge line by Owner and other proposed subdivisions; to pay the cost to construct the water booster station to enable water service to be provided to serve the Preliminary Plat Property and to pay the cost to obtain approval from District No. 1 to allow the City to furnish water to that portion of the Preliminary Plat Property lying within the boundaries of District No. 1, 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 the Preliminary Plat Property under the R-3 Residential District Zoning would have on the public sanitary sewer system and water system that serves the Preliminary Plat 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 Annexed Property.

2. Rezoning. The City agrees to rezone the Rezoned Property from AG Agricultural District to R-3 Residential District.

3. Preliminary Plat and CUP. The City agrees to approve the preliminary plat and community unit plan requested by the Owner for the Preliminary Plat Property.

4. Public Sanitary Sewer.

A. Owner's Responsibility. Owner agrees to pay \$40,341.00 as Owner's share of the required future improvements to the Antelope Creek Basin sewer system needed in order to provide capacity for the transfer of sewage over the ridge line by Owner and other proposed subdivisions payable within thirty (30) days following completion of said sewer improvements by the City.

Owner understands and acknowledges that the City's public sanitary sewer system is not adequate to serve the Preliminary Plat Property without extending the Antelope Creek sanitary sewer line. Owner desires to be connected to the City's public sanitary sewer system and therefore agrees to pay all the construction cost to extend the Antelope Creek sanitary sewer line. Owner shall construct or cause to be constructed said Antelope Creek sanitary sewer line under the authority of executive order issued by the Mayor of the City. All construction and easement costs related to the construction of the Antelope Creek sanitary sewer line shall be paid by Owner.

B. City's Responsibility. The City shall acquire the necessary right-of-way easement that is not located with the Preliminary Plat Property to permit the Owner to extend the Antelope Creek sanitary sewer line to service the Preliminary Plat Property. The City, with the cooperation of the Owner, shall acquire by voluntary means, and if necessary by

condemnation, all temporary and permanent nonexclusive easements necessary that is not located with the Preliminary Plat Property for the construction and operation of the Antelope Creek sanitary sewer line as soon as reasonably possible. Any right-of-way easement acquisition costs that the City may incur shall be reimbursed by the Owner and payable to the City within thirty (30) days following completion of said acquisition by the City.

5. Public Water.

A. Owner's Responsibility. Owner understands and acknowledges that the City may not furnish water to serve that portion of the Preliminary Plat Property lying within the boundaries of District No. 1 without the consent and approval of District No. 1. Owner desires to be connected to the City's public water system and therefore agrees to pay all the cost needed to obtain District No. 1's approval for the City to furnish water to the Preliminary Plat Property lying within the boundaries of District No. 1. Owner understands and acknowledges that the City's public water system is not adequate to serve the Preliminary Plat Property without the construction of a water booster pump station. Owner desires to be connected to the City's public water system and therefore agrees to pay all the cost to construct the booster pump station. Owner shall construct or cause to be constructed said booster pump station under the authority of executive order issued by the Mayor of the City. All costs related to the construction of the booster pump station shall be paid by Owner.

B. City's Responsibility. A 16-inch water main shall be constructed by the City at its expense generally in the location shown on Attachment "C" provided that the City Council designates said water main for construction as a City Capital Improvement Project. The City agrees to use its best efforts to include construction of the water main in its Capital

Improvement Program for its fiscal year 1999 - 2000 and, if so included, the City, with cooperation of the Owner, shall acquire all temporary and permanent nonexclusive easements necessary for the construction and operation of the water main and water booster pump station as soon as reasonably possible. The City further agrees to use its best efforts to complete the water main in the spring of 2000.

6. 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 \$40,341.00 to insure payment of the future improvements to the Antelope Creek sewer system.

(b) In the amount of \$34,000.00 to insure Owner's cost of obtaining District No. 1's approval for the City to furnish water to the Preliminary Plat Property lying within the boundaries of District No. 1, or approval from District No. 1, permitting the City to furnish water to the Preliminary Plat Property lying within the boundaries of District No. 1, in a written form acceptable to the City Attorney.

7. 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 limits 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 Preliminary Plat Property or any portion thereof which has been subject to annexation.

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 Preliminary Plat 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, 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.

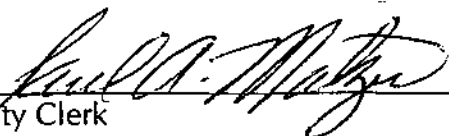
15. Assignment. In the case of the assignment of this Agreement by any of the parties, prompt written notice shall be given to the other parties who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability 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. Default. Owner and City agree that the annexation, change of zone, preliminary plat, and community unit plan 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 the Rezoned Property to its previous 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.

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

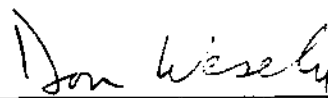
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

ATTEST:



City Clerk

THE CITY OF LINCOLN, NEBRASKA
A Municipal Corporation

By: 

Don Wesely, Mayor

PINE LAKE DEVELOPMENT, L.L.C.
a Nebraska limited liability company,

By: Robert D. Hampton
Title: Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

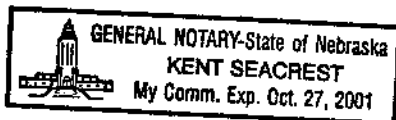
The foregoing instrument was acknowledged before me this 6 day of October, 1999, by Don Wesely, Mayor of the City of Lincoln, Nebraska on behalf of the City.



Joan E. Ross
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 27th day of September, 1999, by Robert D. Hampton of Pine Lake Development, L.L.C., a Nebraska limited liability company, on behalf of said company.



Kent Seacrest
Notary Public

[code\agr\vintage heights annexation]

ATTACHMENT "A"

Vintage Heights Conditional Annexation and Zoning Agreement (Change of Zone)

A tract of land composed of Lots 4 I.T., 37 I.T., 40 I.T., 42 I.T., 43 I.T., 49 I.T., a portion of the remaining portion of Lot 50 I.T., Lots 51 I.T., 52 I.T., 56 I.T., 58 I.T., and 59 I.T., all located in Section 14; Township 9 North; Range 7 East of the 6th P.M., City of Lincoln, Lancaster County, Nebraska, and more particularly described as follows:

Commencing at the northeast corner of said Section 14; thence southerly on the east line of said Section 14, on an assumed bearing of south 00 degrees 11 minutes 08 seconds east, a distance of 450.54 feet to a point; thence north 89 degrees 48 minutes 52 seconds west, a distance of 33 feet to a point, said point being the true point of beginning; thence south 00 degrees 11 minutes 08 seconds west along the east line of said remaining portion of Lot 50 I.T., and the east line of said Lot 49 I.T., a distance of 2186.63 feet to the southeast corner of said Lot 49 I.T., thence south 00 degrees 11 minutes 16 seconds west along the east line of said Lots 51 I.T., 52 I.T., 58 I.T., and 59 I.T., a distance of 2237.49 feet to a point of deflection, thence north 89 degrees 48 minutes 44 seconds west along the south line of said Lot 59 I.T., a distance of 17.00 feet to a point of deflection; thence south 00 degrees 11 minutes 16 seconds west along the east line of said Lot 59 I.T., a distance of 350.00 feet to the southeast corner of said Lot 59 I.T., thence south 89 degrees 52 minutes 59 seconds west along the south line of said Lots 59 I.T., 37 I.T., 43 I.T., and 42 I.T., a distance of 1458.33 feet to a point of deflection; thence north 82 degrees 21 minutes 07 seconds west along the south line of said Lot 42 I.T., a distance of 222.04 feet to a point of deflection; thence south 83 degrees 46 minutes 03 seconds west along the south line of said Lot 42 I.T., a distance of 281.60 feet to a point of deflection, thence south 89 degrees 52 minutes 59 seconds west along the south line of said Lot 42 I.T., a distance of 562.80 feet to the southwest corner of said Lot 42 I.T.; thence north 00 degrees 40 minutes 49 seconds west along the west line of said Lot 42 I.T., a distance of 414.01 feet to the southeast corner of said Lot 40 I.T.; thence north 89 degrees 30 minutes 38 seconds west along the south line of said Lot 40 I.T., a distance of 790.03 feet to a point of deflection, thence south 00 degrees 40 minutes 32 seconds east along the east line of said Lot 40 I.T., a distance of 414.00 feet to the southeast corner of said Lot 40 I.T.; thence north 89 degrees 30 minutes 37 seconds west along the south line of said Lot 40 I.T., a distance of 403.21 feet to a point of intersection with the east line of said Lot 4 I.T.; thence south 00 degrees 14 minutes 46 seconds east along the east line of said Lot 4 I.T., a distance of 50.00 feet to the southeast corner of said Lot 4 I.T.; thence north 89 degrees 30 minutes 37 seconds west along the south line of said Lot 4 I.T., a distance of 150.01 feet to the southwest corner of said Lot 4 I.T.; thence north 00 degrees 14 minutes 46 seconds west along the west line of said Lots 4 I.T., and 40 I.T., a distance of 1321.98 feet to the northwest corner of said Lot 40 I.T., thence south 89 degrees 39 minutes 11 seconds east along the north line of said Lot 40 I.T., a distance of 1333.64 feet to the northeast corner of said Lot 40 I.T.; thence north 00 degrees 40 minutes 35 seconds west along the west line of said Lot 42 I.T., a distance of 1325.47 feet to the northwest corner of Lot 42 I.T.; thence south 89 degrees 49 minutes 04 seconds east along the north line of said Lot 42 I.T., a distance of 767.16 feet to a southwest corner of said remaining portion of Lot 50 I.T., thence north 00 degrees 10 minutes 56 seconds east along the west line of said

remaining portion of Lot 50 I.T., a distance of 130.00 feet to a point of deflection; thence south 89 degrees 49 minutes 04 seconds east along the west line of said remaining portion of Lot 50 I.T., a distance of 31.33 feet to a point of deflection; thence north 00 degrees 10 minutes 56 seconds east along the west line of said remaining portion of Lot 50 I.T., a distance of 379.00 feet to a point of deflection; thence north 15 degrees 17 minutes 08 seconds west along the west line of said remaining portion of Lot 50 I.T., a distance of 193.40 feet to a point of deflection, thence north 01 degrees 39 minutes 50 seconds west along the west line of said remaining portion of Lot 50 I.T., a distance of 102.28 feet to a point of deflection; thence south 65 degrees 34 minutes 11 seconds west along the west line of said remaining portion of Lot 50 I.T., a distance of 76.00 feet to a point of deflection; thence north 24 degrees 25 minutes 49 seconds west along the west line of said remaining portion of Lot 50 I.T., a distance of 120.00 feet to a point of deflection; thence north 65 degrees 34 minutes 11 seconds east along the west line of said remaining portion of Lot 50 I.T., a distance of 29.00 feet to a point of deflection; thence north 24 degrees 25 minutes 49 seconds west along the west line of said remaining portion of Lot 50 I.T., a distance of 158.71 feet to a point of deflection, thence north 29 degrees 33 minutes 43 seconds east along the west line of said remaining portion of Lot 50 I.T., a distance of 36.21 feet to a point of deflection; thence north 65 degrees 34 minutes 11 seconds east along the west line of said remaining portion of Lot 50 I.T., a distance of 122.71 feet to a point of deflection; thence north 24 degrees 25 minutes 49 seconds west along the west line of said remaining portion of Lot 50 I.T., a distance of 73.45 feet to a point of deflection; thence south 78 degrees 29 minutes 26 seconds east, a distance of 621.26 feet to a point, thence south 89 degrees 48 minutes 52 seconds east, a distance of 195.52 feet to a point; thence north 00 degrees 11 minutes 08 seconds east, along a westerly line of said Lot 50 I.T. and its extension, a distance of 1127.80 feet to a point of deflection; thence south 89 degrees 49 minutes 03 seconds east, a distance of 1089.11 feet to the true point of beginning; said tract contains a calculated area of 257.52 acres, or 11217541.68 square feet more or less.

ATTACHMENT "B"

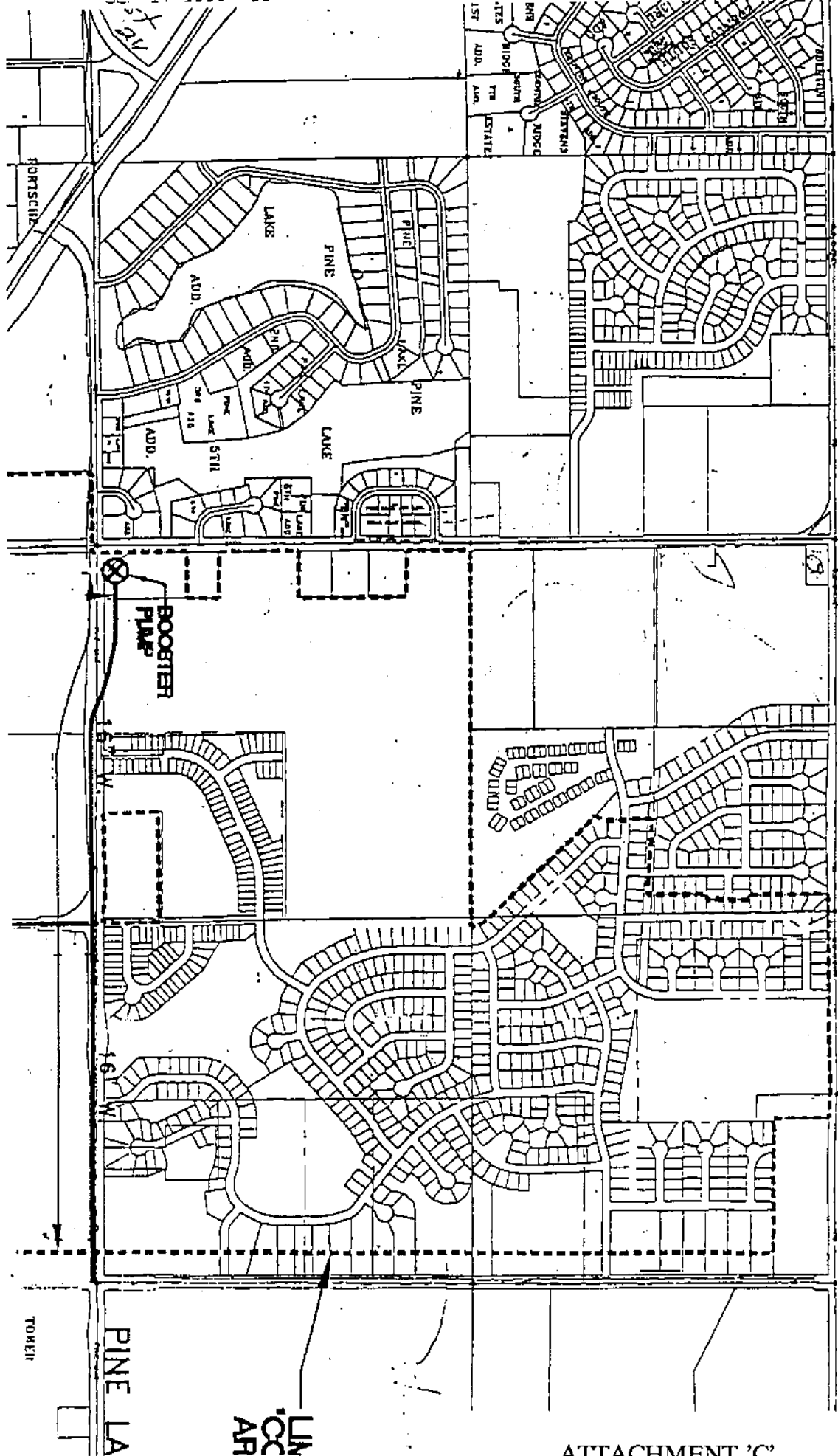
Vintage Heights Conditional Annexation and Zoning Agreement Community Unit Plan

Lots 4 I.T., 37 I.T., 40 I.T., 42 I.T., 43 I.T., 49 I.T., a portion of the remaining portion of Lot 50 I.T., Lots 51 I.T., 52 I.T., 56 I.T., 58 I.T., and 59 I.T., all located in Section 14, Township 9 North, Range 7 East of the 6th P.M., City of Lincoln, Lancaster County, Nebraska, and more particularly described as follows:

Commencing at the northeast corner of said Section 14, thence southerly on the east line of said Section 14, on an assumed bearing of south 00 degrees 2 minutes 08 seconds west, a distance of 450.54 feet to a point; thence north 89 degrees 48 minutes 52 seconds west, a distance of 33 feet to a point, said point being the true point of beginning; thence south 00 degrees 11 minutes 08 seconds west along the east line of said remaining portion of Lot 50 I.T. and the east line of said Lot 49 I.T., a distance of 2186.63 feet to the southeast corner of said Lot 49 I.T.; thence south 00 degrees 11 minutes 16 seconds west along the east line of said Lots 51 I.T., 52 I.T., 58 I.T., and 59 I.T., a distance of 2237.49 feet to a point of deflection; thence north 89 degrees 48 minutes 44 seconds west along the south line of said Lot 59 I.T., a distance of 17.00 feet to a point of deflection; thence south 00 degrees 11 minutes 16 seconds west along the east line of said Lot 59 I.T., a distance of 350.00 feet to the southeast corner of said Lot 59 I.T.; thence south 89 degrees 52 minutes 59 seconds west along the south line of said Lots 59 I.T., 37 I.T., 43 I.T., and 42 I.T., a distance of 1458.33 feet to a point of deflection; thence north 82 degrees 21 minutes 07 seconds west along the south line of said Lot 42 I.T., a distance of 222.04 feet to a point of deflection; thence south 83 degrees 46 minutes 03 seconds west along the south line of said Lot 42 I.T., a distance of 281.60 feet to a point of deflection; thence south 89 degrees 52 minutes 59 seconds west along the south line of said Lot 42 I.T., a distance of 562.80 feet to the southwest corner of said Lot 42 I.T.; thence north 00 degrees 40 minutes 35 seconds west along the west line of said Lot 42 I.T., a distance of 414.01 feet to the southeast corner of said Lot 40 I.T.; thence north 89 degrees 30 minutes 38 seconds west along the south line of said Lot 40 I.T., a distance of 790.03 feet to a point of deflection; thence south 00 degrees 40 minutes 32 seconds east along the east line of said Lot 40 I.T., a distance of 414.00 feet to the southeast corner of said Lot 40 I.T.; thence north 89 degrees 30 minutes 37 seconds west along the south line of said Lot 40 I.T., a distance of 403.21 feet to a point of intersection with the east line of said Lot 4 I.T.; thence south 00 degrees 14 minutes 46 seconds east along the east line of said Lot 4 I.T., a distance of 50.00 feet to the southeast corner of said Lot 4 I.T.; thence north 89 degrees 30 minutes 37 seconds west along the south line of said Lot 4 I.T., a distance of 150.01 feet to the southwest corner of said Lot 4 I.T.; thence north 00 degrees 14 minutes 46 seconds west along the west line of said Lots 4 I.T. and 40 I.T., a distance of 1321.98 feet to the northwest corner of said Lot 40 I.T.; thence south 89 degrees 39 minutes 11 seconds east along the north line of said Lot 40 I.T., a distance of 1333.64 feet to the northeast corner of said Lot 40 I.T., thence north 00 degrees 40 minutes 35 seconds west along the west line of said Lot 42 I.T., a distance of 1325.47 feet to the

northwest corner of Lot 42 I.T.; thence north 89 degrees 47 minutes 53 seconds west along the south line of Lot 56 I.T., a distance of 1323.66 feet to the southwest corner of Lot 56 I.T.; thence north 00 degrees 25 minutes 55 seconds west along the west line of Lot 56 I.T., a distance of 1318.58 feet to the northwest corner of Lot 56 I.T.; thence south 89 degrees 57 minutes 42 seconds east along the north line of Lot 56 I.T., a distance of 343.46 feet to a point of deflection; thence south 08 degrees 04 minutes 26 seconds east along the east line of Lot 56 I.T., a distance of 165.28 feet to a point of deflection; thence south 16 degrees 01 minutes 11 seconds east along the east line of Lot 56 I.T., a distance of 44.97 feet to a point of deflection; thence south 40 degrees 01 minutes 36 seconds west along the east line of Lot 56 I.T., a distance of 30.00 feet to a point of deflection; thence south 49 degrees 58 minutes 24 seconds east along the east line of Lot 56 I.T., a distance of 99.99 feet to a point of deflection; thence north 40 degrees 01 minutes 36 seconds east along the east line of Lot 56 I.T., a distance of 28.97 feet to a point of deflection; thence south 48 degrees 01 minutes 52 seconds east along the east line of Lot 56 I.T., a distance of 215.96 feet to a point of deflection; thence south 43 degrees 00 minutes 18 seconds east along the east line of Lot 56 I.T., a distance of 1041.42 feet to a point of deflection, thence south 39 degrees 42 minutes 56 seconds east along the east line of Lot 56 I.T., a distance of 79.72 feet to a point of deflection; thence south 29 degrees 16 minutes 04 seconds east along the east line of Lot 56 I.T., a distance of 33.53 feet to a point of deflection; thence south 13 degrees 19 minutes 23 seconds east along the east line of Lot 56 I.T., a distance of 31.95 feet to a point of deflection; thence south 07 degrees 06 minutes 08 seconds east along the east line of Lot 56 I.T., a distance of 23.76 feet to a point of intersection with the north line of said Lot 42 I.T., thence south 89 degrees 49 minutes 04 seconds east along the north line of said Lot 42 I.T., a distance of 697.24 feet to a southwest corner of said remaining portion of Lot 50 I.T.; thence north 00 degrees 10 minutes 56 seconds east along the west line of said remaining portion of Lot 50 I.T., a distance of 130.00 feet to a point of deflection; thence south 89 degrees 49 minutes 04 seconds east along the west line of said remaining portion of Lot 50 I.T., a distance of 31.33 feet to a point of deflection; thence north 00 degrees 10 minutes 56 seconds east along the west line of said remaining portion of Lot 50 I.T., a distance of 379.00 feet to a point of deflection; thence north 15 degrees 17 minutes 08 seconds west along the west line of said remaining portion of Lot 50 I.T., a distance of 193.40 feet to a point of deflection; thence north 01 degrees 39 minutes 50 seconds west along the west line of said remaining portion of Lot 50 I.T., a distance of 102.28 feet to a point of deflection; thence south 65 degrees 34 minutes 11 seconds west along the west line of said remaining portion of Lot 50 I.T., a distance of 76.00 feet to a point of deflection; thence north 24 degrees 25 minutes 49 seconds west along the west line of said remaining portion of Lot 50 I.T., a distance of 120.00 feet to a point of deflection; thence north 65 degrees 34 minutes 11 seconds east along the west line of said remaining portion of Lot 50 I.T., a distance of 29.00 feet to a point of deflection; thence north 24 degrees 25 minutes 49 seconds west along the west line of said remaining portion of Lot 50 I.T., a distance of 158.71 feet to a point of deflection, thence north 29 degrees 33 minutes 43 seconds east along the west line of said remaining portion of Lot 50 I.T., a distance of 36.21 feet to a point of deflection; thence north 65 degrees 34 minutes 11 seconds east along the west line

of said remaining portion of Lot 50 I.T., a distance of 122.71 feet to a point of deflection; thence north 24 degrees 25 minutes 49 seconds west along the west line of said remaining portion of Lot 50 I.T., a distance of 73.45 feet to a point of deflection; thence south 78 degrees 29 minutes 26 seconds east, a distance of 621.26 feet to a point; thence south 89 degrees 48 minutes 52 seconds east, a distance of 195.52 feet to a point; thence north 00 degrees 11 minutes 08 seconds east, along a westerly line of said Lot 50 I.T. and its extension, a distance of 1127.78 feet to a point of deflection; thence south 89 degrees 48 minutes 52 seconds east, a distance of 1089.67 feet to the true point of beginning. Said tract contains a calculated area of 282.88 acres, or 12,322,242.64 square feet more or less.



ATTACHMENT C

OLD 1

AGREEMENT FOR ESCROW OF SECURITY FUND

WHEREAS, Pine Lake Development, LLC of Lincoln, Nebraska, hereinafter called "Permittee" has made application to the City of Lincoln for permission to contribute to the improvements in the Antelope Sewer Repairs in Vintage Heights located at 84th & Old Cheney, Lincoln, Lancaster County, Nebraska; and

WHEREAS, the conditions of Ordinance No.99-103, require the posting of certain performance bonds in connection with the contribution of improvements in Antelope Trunk Sewer Repairs.

NOW, THEREFORE, IT IS AGREED by and between Pine Lake Development, LLC, Permittee, and the City of Lincoln, Nebraska, a municipal corporation, hereinafter called "City", as follows:

1. That prior to construction of the aforesaid improvements, Permittee shall deposit the sum of **Forty Thousand Three Hundred Forty One and No/100 Dollars, (\$40,341.00)** with **Union Bank** as escrow agent for the City, the same to be held in escrow as security to guarantee the contribution to the repairs in Antelope Trunk Sewer.

The said escrow fund to construct improvements consisting of contribution to the Antelope Trunk Sewer repairs shall be allocated to the specified improvements.

2. The funds designated for any one improvement less the retainage, if any, may be partially released from escrow by **Union Bank** when authorized by the City Engineer in accordance with Executive Order Number _____. The final release of the funds in the account designated as the security shall not be made until the improvement has been completed by the City and the City has certified to **Union Bank** that the construction has been completed for that improvement and the funds can be released. The retainage, if any, shall be held by the escrow agent until authorized by executive order of the Mayor of Lincoln to release it to the Permittee.

3. This Agreement shall be contingent upon its execution by the parties hereto the deposit of the required security funds with **Union Bank** as escrow agent for the City of Lincoln, and acceptance of this Agreement by said escrow agent.

4. Permitte agrees to pay any and all fees charge by **Union Bank** as escrow agent for the City of Lincoln under the terms of this Agreement.

5. **Union Bank** shall be liable as a depository only.

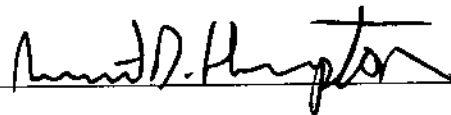
6. Upon deposit of the security fund as provided in this Agreement, the City agrees to waive the requirement that Permittee post performance bonds for completion of the aforesaid improvements.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this _____ day of _____, 19_____.

ATTEST:

PINE LAKE DEVELOPMENT LLC

By: _____

By: 

Title: _____

Title: Manager

CITY OF LINCOLN, NEBRASKA
a municipal corporation,

City Clerk

Mayor

Approved:

City Attorney

ACCEPTANCE OF ESCROW AGREEMENT

Union Bank (Bank) hereby agrees to the terms and instructions listed above and acknowledges that it has accepted a deposit in the sum of **Forty Thousand Three Hundred Forty One and No/100 Dollars. (\$40,341.00)** from **Pine Lake Development LLC** (Permittee) to be held in escrow (Escrow Account No. _____) by **Union Bank** as escrow agent for the City of Lincoln, Nebraska, a municipal corporation, to ensure construction of the improvements listed in the above and foregoing Agreement and further agrees not to release any of said monies placed on deposit to secure construction of said improvements until it has received written authorization from City of Lincoln, in accordance with paragraph 2 of the "Agreement for Escrow of Security Fund".

DATED this 27 day of September, 1999.

ATTEST:

UNION BANK

By: _____

Title: _____

By: 

Title: ST

AGREEMENT TO RELEASE AND RELINQUISH

This Agreement to Release and Relinquish ("Agreement") is entered into this 27th day of September, 1999, by and between Rural Water District No. 1, Lancaster County, Nebraska ("RWD No. 1") and Pine Lake Development, L.L.C., a Nebraska limited liability company ("PLD").

RECITALS

A. PLD has requested the City of Lincoln, Nebraska ("City") to annex approximately 340.23 acres, more or less, of land as shown in City Bill No. 99-103 (Anx #99005) hereinafter referred to as "City Annexed Property."

B. PLD is the legal owner of the City Annexed Property.

C. A portion of the City Annexed Property is located within the boundaries of RWD No. 1 as generally shown and legally described on Exhibit "A," which is attached hereto and incorporated herein by this reference, and hereinafter referred to as "RWD No. 1 Annexed Property."

D. Presently, there are three existing RWD No. 1 water customers (individually "Existing Customer" and collectively "Existing Customers") in RWD No. 1 Annexed Property and the potential for five RWD No. 1 water customers in RWD No. 1 Annexed Property based upon twenty (20) acres for each potential customer (individually "Potential Customer" and collectively "Potential Customers").

E. In order for the City to annex the RWD No. 1 Annexed Property and exclusively provide the area with City water and water service, the City has required PLD to obtain the consent of RWD No. 1 and pay all the costs needed to obtain RWD No. 1's consent.

NOW THEREFORE, in consideration of the mutual covenants contained herein and the agreement of PLD to make payment to RWD No. 1, the parties agree as follows:

1. **Release and Relinquishment.** With the exception of reserved easement rights as provided in paragraph 5 of this Agreement, RWD No. 1 for itself, its officers, directors, employees, agents, successors and assigns hereby releases, relinquishes and assigns to the City the priority rights and privileges of RWD No. 1 to provide water and water services to RWD No. 1 Annexed Property, more specifically described on Exhibit "A," including easements, water lines and related equipment located in RWD No. 1 Annexed Property; provided that, RWD No. 1, at its expense, will continue to provide water and water service to the Existing Customers, including maintenance, repair and replacement, if necessary, to related water lines and equipment, until the Existing Customers connect to the City's water service or abandon RWD No. 1 water service (collectively "Abandonment"). Until Abandonment, RWD No. 1 shall be entitled to bill and to receive the normal and customary water revenues from the Existing Customers; provided that, RWD No. 1 will not charge the City nor any of the Existing Customers any charge or fee for Abandonment. At the time City water and water service is supplied to the RWD No. 1 Annexed Property, PLD agrees to reimburse RWD No. 1 for

the cost of any labor or materials incurred by RWD No. 1 in terminating and capping of water service to the RWD No. 1 Annexed Property. Subject to the terms stated herein, RWD No. 1 hereby consents to the City's annexation of the RWD No. 1 Annexed Property and to provide future City water and water service to RWD No. 1 Annexed Property, including, but not limited to, Existing Customers and Potential Customers in RWD No. 1 Annexed Property

2. **Payment Amount.** PLD agrees to pay to RWD No. 1, in exchange for the release and relinquishment by RWD No. 1, the sum of \$5,500.00 for each Existing Customer located within the area described on Exhibit "A" and the sum of \$3,500.00 for each Potential Customer located within the area described on Exhibit "A" on or before the date the City provides the first water service to a residential or commercial customer in the RWD No. 1 Annexed Property. The parties agree that, for purposes of this Agreement, there are three Existing Customers and five Potential Customers.

3. **Manner of Payment.** PLD may, at its option, make payment of the consideration as recited herein to RWD No. 1 upon the execution of this Agreement or, in the alternative, PLD may post security for payment to RWD No. 1 in the manner provided in paragraph 4 of this Agreement.

4. **Security.** Payment by PLD of the payments due to RWD No. 1, as established in paragraph 3 hereof, shall be secured by an irrevocable letter of credit issued in a form and by a financial institution acceptable to RWD No. 1. The letter of credit shall be delivered to RWD No. 1 upon execution of this Agreement and shall be for the full amount of \$34,000.00. Said letter of credit shall entitle RWD No. 1 to draw upon it for payment of the amount due under paragraph 3 hereof upon certification by an authorized representative of RWD No. 1 that the events giving rise to the duty to make payment as set forth in paragraph 3 have occurred, that written demand was made by RWD No. 1 upon PLD for said payment, and that more than 30 days have passed since such demand was mailed to PLD. The final expiration date of the letter of credit shall be not less than three years from the date of this Agreement or upon full disbursement of funds and shall be subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision) International Chamber of Commerce Publication. RWD No. 1 shall provide a copy to PLD of any drafts drawn upon the letter of credit at the time that the same is presented to the financial institution.

In lieu of the irrevocable letter of credit, PLD may, at its option, deliver to RWD No. 1 a certificate of deposit made payable to RWD No. 1 or PLD in the full amount of the payment as set forth in paragraph 3. RWD No. 1 shall be entitled, upon failure of PLD to make payment within 30 days after written notice as aforesaid, to cash said certificate of deposit upon its due date and retain the proceeds thereof. In the event that PLD makes payment within 30 days after demand as aforesaid, RWD No. 1 shall return possession of the certificate of deposit to PLD.

5. **Easements.** Except as provided herein, RWD No. 1 hereby assigns to the City all of its right, title and interest in and to all right of way easements in favor of RWD No. 1 encumbering the real estate described on Exhibit "A" with the exception that (i) RWD No. 1 reserves

in and to itself all necessary easement rights to continue to provide water and water service to the Existing Customers until Abandonment, at which time any applicable easement shall automatically terminate, and (ii) RWD No. 1 reserves in and to itself all rights granted to it by right of way easement for the purpose of operating supply lines and water mains in the general area of 91st Street and Pine Lake Road and in the general area of 98th Street traversing west along the south side of Old Cheney Road, said easement areas to be specifically described by official survey at the expense of RWD No. 1 on or before the date of Abandonment. PLD, to the extent that it owns or controls the right to grant right of way easements, shall cooperate fully in granting or obtaining the aforesaid right of way easements.

6. **Register of Deeds.** An original executed and acknowledged copy of this Agreement shall be filed of record with the office of the Register of Deeds of Lancaster County, Nebraska, and indexed against the real estate described on Exhibit "A."

7. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the respective parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officer or agent this Agreement in duplicate, each of which shall be deemed an original, the same being accomplished on the date first above written.

"RWD No. 1"
RURAL WATER DISTRICT NO. 1,
LANCASTER COUNTY, NEBRASKA

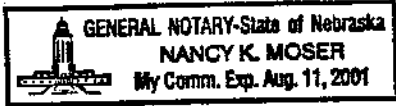
By: Claude F. Jensen
Claude Jensen, Chairman Board of Directors

"PLD"
PINE LAKE DEVELOPMENT, L.L.C., a
Nebraska limited liability company

By: Robert D. Hampton
Robert D. Hampton, Managing Member

STATE OF NEBRASKA)
)ss
COUNTY OF LANCASTER)

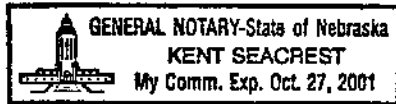
The foregoing instrument was acknowledged before me on the ____ day of September, 1999, by Claude Jensen, as Chairman of the Board of Directors of Rural Water District No. 1, Lancaster County, Nebraska.



Nancy K. Moser
Notary Public

STATE OF NEBRASKA)
)ss
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me on the 27th day of September, 1999, by Robert D. Hampton, as Managing Member of Pine Lake Development, L.L.C., a Nebraska limited liability company, on behalf of the limited liability company.



Kent Seacrest
Notary Public

EXHIBIT "A"

Commencing at the northwest corner of the Northeast Quarter of the Northeast Quarter of Section 14, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska: thence south along the west line of the Northeast Quarter of the Northeast Quarter of Section 14 a distance of 660 feet; thence east along a line parallel to and 660 feet south from the north line of Section 14 to a point 660 feet west from the east line of Section 14; thence south along a line parallel to and 660 feet west from the east line of Section 14 to a point 660 feet north from the south line of Section 14; thence west along a line parallel to and 660 feet north from the south line of Section 14 to a point 660 feet west from the north-south centerline of Section 14; thence south along a line parallel to and 660 feet west from the north-south centerline of Section 14 to the south line of Section 14; thence east along the south line of Section 14 a distance of 1,980 feet to the southeast corner of Section 14; thence north along the west line of Section 14 to the northeast corner of Section 14; thence west along the north line of Section 14 a distance of 1,320 feet to the point of beginning; all of said tract located in Section 14, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska.