

RESOLUTION NO. A- **79834**

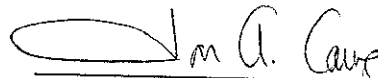
1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

2 That the agreement titled View Pointe West 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 David Chambers and
5 Ellie Chambers (Owners) outlining certain conditions and understandings between the
6 City and said Owners relating to the annexation and rezoning of approximately 60 acres
7 of land generally located at N. W. 56th Street, south of West Adams 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 Owners.

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

Introduced by:



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

Approved as to Form and Legality:



Chief Assistant City Attorney

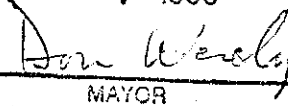
Staff Review Completed:



Administrative Assistant

APPROVED

NOV 9 1999


MAYOR

ADOPTED

NOV 1 1999

By City Council

99R-307

10/25/99 Council Proceedings:

CAMP Moved to delay action on Bill #99R-307 for one week to 11/1/99.
 Seconded by Cook & carried by the following vote: AYES: Camp, Cook,
 Johnson, McRoy, Seng, Shoecraft; NAYS: None; ABSENT: Fortenberry.

**CONDITIONAL
ANNEXATION AND ZONING AGREEMENT**

THIS CONDITIONAL ANNEXATION AND ZONING AGREEMENT is made and entered into on this 9 day of November, 1999, by and between **David Chambers and Ellie Chambers, husband and wife**, hereinafter referred to as "Owners," and the **City of Lincoln, Nebraska, a municipal corporation**, hereinafter referred to as "City."

RECITALS

A.

Owners have requested the City to annex a portion of Lot 9, Irregular Tract, in the Northeast Quarter of Section 13, Township 10 North, Range 5 East of the 6th P.M., Lancaster County, Nebraska, not already located within the corporate limits of the City, hereinafter referred to as "Property."

B.

Owners have further requested the City to rezone portions of the Property as described in Change of Zone No. 3162 from R-3 Residential District to AG Agricultural District and from AG Agricultural District to R-3 Residential District.

C.

Owners have further requested the City to approve the preliminary plat and special permit for the community unit plan for the Property.

D.

Public water and sanitary sewer mains are not available to serve the Property. In addition, the rural roadways are not sufficient to serve the Property.

E.

The City is willing to approve the requests of the Owners in Recitals A, B, and C above ("Governmental Actions"), provided that there is an agreement acknowledging that the Property is not presently served by public water and sanitary sewer mains and further providing that the Owners will agree to extend the public water and sanitary sewer mains at Owners' own cost and expense and that the proposed lots adjacent to NW 56th Street will not be final platted until NW 56th Street is paved to rural street standards.

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

1. Action by City. The City agrees concurrently with the approval of this Agreement to approve the requested Governmental Actions.
2. Extension of Public Water. Owners understand and acknowledge that the City's public water system is not available to serve the Property. Owners desire to be connected to the City's public water system and therefore agree to pay a portion of the cost to extend the 12-inch water main in NW 56th Street to serve the Property. Owners 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 Owners, except that the City agrees to subsidize Owners for the cost of such water main which exceeds the cost of an equivalent 6-inch water main where the proposed 12-inch water main abuts the plat. In the event the City determines a need for the water main described above prior to construction by Owners, the City may cause the water main described above to be constructed as a City project. If the water main described above is

constructed as a City project, Owners shall contribute to the City, as part of the project, that portion of the project cost that is equivalent to the cost of constructing a 6-inch water main where the 12-inch water main abuts the plat.

In order to guarantee Owners' construction of said 12-inch water main or contribution to the City for construction of said water main, the Owners agree to post a bond, escrow, or other acceptable security with the City in the amount determined by the Department of Public Works.

3. Extension of Public Sanitary Sewer. Owners understand and acknowledge that the Property is not presently serviceable by the City's public sanitary sewer system, and that the City does not intend to extend its public sanitary sewer system to serve the Property within the next one to six years. Owners therefore agree to construct by executive order of construction an 8-inch sewer main extension outside the boundaries of the preliminary plat to the existing trunk sewer north of Adams Street. The total cost of construction of the sewer main extension is estimated to be \$ 52,800.⁰⁰ and the actual cost of design and construction shall be paid by Owners pursuant to the Mayor's executive order. In order to guarantee construction of said sanitary sewer main, the Owners agree, pursuant to the Mayor's executive order construction process, to post a bond, escrow, or other acceptable security with the City in the amount to be determined by the Department of Public Works. Construction of said sanitary sewer main extension shall be completed not later than one year from the date of this Agreement.

4. Paving of NW 56th Street. In consideration of the Owners oversizing the sanitary sewer main extension to be constructed by Owners pursuant to paragraph 2 above,

the City agrees to pay for the rural standard street improvement of NW 56th Street adjacent to the limits of the preliminary plat. Owners understand and acknowledge that the proposed lots adjacent to NW 56th Street. Property may not be final platted until said improvements to NW 56th Street are completed and that the City has not established a time frame as to when said street improvements will be completed.

5. Essential Nexus. The City and Owners agree that an essential nexus exists between the Governmental Actions requested of the City and the Owners' construction of the public water and sanitary sewer main extensions being required herein. Further, Owners agree that the cost responsibilities imposed upon Owners by this Agreement are roughly proportional, both in nature and extent of the impact of the Owners' development of the Property pursuant to the Governmental Actions.

6. 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.

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

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

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

14. Default. Owners and City agree that the City's approval of the requested Governmental Actions 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 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.

15. 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: David & Ellie Chambers
6305 West Adams Street
Lincoln, NE 68524

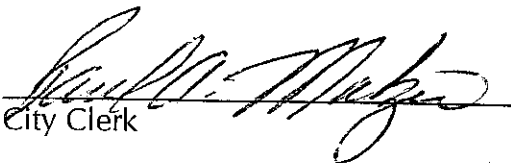
If to City: Mayor
County-City Building
555 South 10th Street
Lincoln, NE 68508

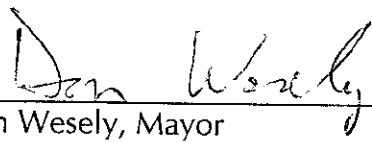
Any party hereto may change its address for notification purposes by written notice to all parties hereto in the manner and method set forth in this section.

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: 
Don Wesely, Mayor

David Chambers

Ellie Chambers

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 9 day of November, 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 25 day of October, 1999, by David Chambers and Ellie Chambers, husband and wife.

Diane M. Loth
Notary Public

[code\agr\Chambers Annex]

