

CERTIFICATE

STATE OF NEBRASKA)
)
COUNTY OF LANCASTER) ss:
)
CITY OF LINCOLN)

I, Joan E. Ross, City Clerk of the City of Lincoln, Nebraska, do hereby certify that the above and foregoing is a true and correct copy of Willowbrook Shopping Center Conditional Annexation and Zoning Agreement adopted by Resolution No. A-80572 of the City Council on December 4, 2000, as the original appears of record in my said office and is now in my charge remaining as City Clerk aforesaid.

In Witness Whereof, I have hereunto set my hand officially and affixed the seal of the City of Lincoln, Nebraska, this 15th day of December, 2000.

Joan E. Ross
Joan E. Ross, City Clerk

certify.jer

Ret to City Clerk

Dan Jolte
REGISTERED DEEDS
2000 DEC 21 A 11: 56
LANCASTER COUNTY, NE

INST. NO 8000
060907

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A. 80592
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Attachment A

**WILLOWBROOK SHOPPING CENTER
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

Long 3.00

This Willowbrook Shopping Center Conditional Annexation and Zoning Agreement ("Willowbrook Shopping Center Agreement") is made and entered into this 12th day of December, 2000, by and between Livingston Investments, Inc., ("Owner"), and the City of Lincoln, Nebraska, a municipal corporation, ("City").

RECITALS

- A. Owner has requested the City to annex the real estate legally described in Exhibit "A" which is attached hereto and incorporated herein by reference (hereinafter "Property"); to rezone that portion of the Property described in Exhibit "B" from AGR Agricultural Residential District to B-2 Planned Neighborhood Business District; and that portion of the Property described in Exhibit "C" from AGR Agricultural Residential to O-3 Office Park District; and to approve Use Permit #132 for use of the Property for a shopping center consisting of 186,909 square feet of floor area including retail sale of goods, office buildings, banks and financial companies, restaurants, dry cleaners and on- and off-site sale of alcoholic beverages ("Government Actions").
- B. Owner has prepared the Willowbrook Shopping Center Traffic Impact Study reflecting said proposed uses under Use Permit #132 and the estimated trip generation and discovery volume for the peak hours.
- C. In order to provide adequate sewer service to the Property, it will be necessary to extend a 27-inch sewer main located at approximately 60th and London Road to Pine Lake Road and a 15-inch sewer main east in Pine Lake Road, through the Property "A" as shown on Exhibit "D". The City is willing to approve the Governmental Actions as requested, provided Owner agrees to pay or arrange for private sector financing in concert with others 29 percent of the estimated cost to construct such sewer main.
- D. The development and operation of a portion of the Property as a B-2 Planned Neighborhood Business District under Use Permit #132 will cause increased traffic on the public street system that serves and provides access that will require road improvements, as called for in the Willowbrook Shopping Center Traffic Impact Study. Due to the possible inadequacy of the street system, the City is willing to approve the Governmental Actions as requested provided Owner agrees to make certain improvements to the public street system which serves the Property.
- E. As a condition of approval of the Governmental Actions and in order to protect and promote the public health, safety, and welfare, the City has required the execution and delivery of this Agreement which provides for the construction and allocation of costs relating to the above-described street improvements and sanitary sewer improvements. City and Owner agree that the City has a legitimate state interest in the public health,

City Clerk

safety, and welfare which is promoted by requiring Owner to pay Owner's fair share of the cost to construct street improvements and sanitary sewer 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 the Property as a B-2 Planned Neighborhood Business District under Use Permit #132 would have on the public sanitary sewer system, and street system that serves the Property.

NOW, THEREFORE, in order to fulfill the conditions of approval for the Governmental Actions and to ensure proper and timely funding and construction of the street improvements and sanitary sewer improvements associated with and made necessary by the use of the Property under said B-2 zoning and Use Permit #132, the City and Owner agree as follows:

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

2. Rezoning with Restrictions on Use. The City agrees to rezone the Property from AGR Agricultural Residential District to B-2 Neighborhood Business District and O-3 Office Park District as legally described in Exhibits "B" and "C", respectively.

3. Street Improvements. Owner agrees at Owner's own cost and expense to make through the City's executive order process certain improvements to public streets which serve the Property as follows:

- | | |
|--|---|
| 70 th Street & west main entrance | <ul style="list-style-type: none">● Dedicate right-of-way stub● Install traffic signal when warrants are met● Add a northbound right turn lane● Extend southbound left turn lane |
| 70 th Street and south entrance | <ul style="list-style-type: none">● Add a northbound right turn lane |
| 70 th Street and north entrance | <ul style="list-style-type: none">● Add a northbound right turn lane, or construct access to serve as an exit only |

Pine Lake Road and south main entrance

- Dedicate right-of-way stub Pine Lake Road and east entrance
- Add an eastbound left turn lane and westbound right turn lane at time of construction of the south main entrance
- Add a southbound right turn lane

The City and Owner have studied and identified the above street improvements associated with and made necessary by the Governmental Actions and the development and operation of a 186,909 square foot shopping center and a future office development on the O-3 zoned portion of the Property with a maximum floor to area ratio of 0.25 based upon the peak after (p.m.) motor vehicle trip generation rate of 993 entering and 1049 exiting trips. The City acknowledges the Owner's right to request different land uses and/or square footage amounts through amendments to Use Permit #132. The City further acknowledges the Owner's right to request a use permit for the O-3 zoned portion of the Property. In the event the Owner's combined land uses and square footage amounts Use Permit #132 and a future use permit for the O-3 portion of the Property with a floor to area ratio not to exceed 0.25 do not exceed the peak afternoon (p.m.) trip generation rate of 993 entering and 1049 exiting trips based upon the current trip generation rates for such land uses and square footage amounts as published by the Institute of Transportation Engineers, then the City will not require from the Owner any additional off-site road improvements or payment contributions for any additional off-site road improvements.

After completion of the above street improvements as set forth above, the City reserves the right to adjust the design and construction thereof to meet and accommodate needs arising from any such other development provided such adjustments in design and construction do not adversely affect the access and turning movements from the Property to and from South 70th Street or Pine Lake Road.

Prior to building permit approval, Owner shall either grade and construct the street improvements or provide the City with escrowed funds or other security satisfactory to the City to guarantee such grading and construction. Street improvements for 70th Street as set forth above shall be completed prior to occupancy of the Home Depot Building.

Owner further agrees, at no cost to the City, to provide easements along public rights-of-way as follows:

Pine Lake Road:	Dedicate a public access easement along Pine Lake Road 10 feet in width, providing that the City may acquire fee title to such right-of-way in the future for \$1.00; provided that such acquisition shall not affect the
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location of any future buildings or parking lots on Owner's property

70th Street: Dedicate a pedestrian way/landscaping easement 10 feet in width to provide for potential implementation of the proposed Public Way Corridor concept.

4. Phasing.

a. Owner agrees that if construction of buildings east of the drainage-way commences prior to the year 2006, Owner shall be responsible to construct under the City's executive order process, a minimum of two lanes, plus turn lanes of permanent paving in Pine Lake Road adjacent to the Property.

b. If construction on Owner's property commences during or after the year 2006, Owner shall be responsible to contribute to the City the City's cost of construction for the left and right turn lanes in Pine Lake Road at the south main entrance and the right turn lane in Pine Lake Road at the east entrance, if said turn lanes are constructed in conjunction with the City's Pine Lake Road project.

c. If the City's Pine Lake Road project is deferred beyond the year 2006, Owner shall be responsible for constructing through the City's executive order process asphalt turn lanes at said locations and shall be responsible to contribute to the City the difference (if any) between the cost of construction for such asphalt turn lanes and the cost Owner would have been responsible to pay under subparagraph 4.b above.

5. Public Sanitary Sewer. Owner understands and acknowledges that the Property will be made sewerable by the construction of the extension of the 27-inch sewer main located at approximately 60th and London Road. Owner desires to be connected to sewer and therefore agrees to pay at the time of construction 29 percent of the cost to extend the 27-inch sewer main to Pine Lake Road, and extend a 15-inch sewer main in Pine Lake Road through the Property. City agrees that City will pay 71 per cent of the cost of such sewer main to a maximum of \$500,000.00 exclusive of engineering, survey and inspection costs. Owner shall pay 100 percent of engineering, survey and inspection costs associated with the sewer extension. Owner shall construct the sewer through City's executive order process, and construction contracts shall be let only after competitive bidding in accordance with City procedures.

6. Security. Prior to issuance of building permits on the Property or Executive Orders for sewer construction, Owner shall provide the City a bond, escrow, or other

security agreement, approved by the City Attorney in an amount sufficient to insure Owner's completion of construction of the street improvements pursuant to paragraph 3 above, and insure payment of 29 percent of the estimated cost of construction of the sewer main pursuant to paragraph 5 above.

7. 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.

8. 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.

9. Essential Nexus. 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 70th Street and Pine Lake Road and sanitary sewer 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 the Property under the B-2 Planned Neighborhood Business District and O-3 Office Park District zoning would have on the public sanitary sewer system, water system, and street system that serves the Property.

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 the Property.

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 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.

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.

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

Jean E. Ross
City Clerk

By: Don Wesely
Don Wesely, Mayor

LIVINGSTON INVESTMENTS, INC., A
Nebraska Corporation

By: Maryb Livingston
President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 12th day of December, 2000, by Don Wesely, Mayor of the City of Lincoln, Nebraska, on behalf of the City.



Judith A. Roscoe
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 4th day of December, 2000, by Maryb Livingston, President of Livingston Investments, Inc., a Nebraska corporation, on behalf of the corporation.

Mark A. Hunzeker
Notary Public

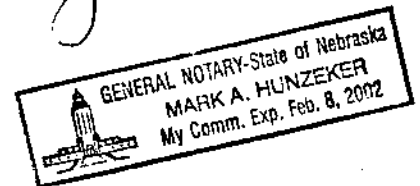


EXHIBIT "A"

**Lot 75 IT in the Southwest Quarter of Section 15, Township 9
North, Range 7 East of the 6th P.M., Lancaster County, Nebraska**

EXHIBIT "B"

That portion of Lot 75, IT located in the SW 1/4 Section 15-T9N-R7E of the 6th Principal Meridian, Lancaster County, Nebraska, described as follows:

Commencing at the Southwest corner of said Section 15, and extending thence north 00°-17'-14" west, on the west line of said Section 15, 133.35 feet;
thence north 89°-42'-46" east, 61.64 feet to the point of beginning;
thence north 00°-39'-06" east, 699.60 feet;
thence north 00°-23'-57" west, 58.84 feet;
thence north 44°-35'-45" east, 21.21 feet;
thence north 89°-35'-45" east, 35.00 feet;
thence north 00°-24'-14" west, 80.00 feet;
thence south 89°-35'-45" west, 35.00 feet;
thence north 45°-24'-09" west, 21.21 feet;
thence north 00°-24'-14" west, 444.19 feet;
thence north 00°-00'-48" west, 73.89 feet;
thence north 08°-01'-14" east, 141.47 feet;
thence north 46°-47'-10 east, 63.95 feet, to the southwesterly line of Nebraska Highway 2;
thence south 54°-28'-24" east, on said southwesterly line, 1344.65 feet;
thence south 35°-31'-36" west, 326.56 feet;
thence south 66°-12'-14" west, 65.12 feet;
thence south 47°-09'-41" west, 107.70 feet;
thence south 88°-15'-10" west, 105.95 feet;
thence south 47°-09'-41" west, 53.85 feet;
thence south 05°-19'-41" west, 128.35 feet;
thence south 15°-59'-35" west, 71.40 feet;
thence south 87°-44'-27" west, 52.81 feet;
thence south 89°-46'-10" west, 106.98 feet;
thence south 57°-06'-11" west, 102.18 feet;
thence south 80°-49'-21" west, 102.18 feet;
thence south 64°-23'-20" west, 100.32 feet;
thence south 62°-41'-08" west, 100.60 feet;
thence south 72°-46'-32" west, 81.57 feet;
thence north 89°-20'-55" west, 54.82 feet to the point of beginning, containing 24.27 acres.

EXHIBIT "C"

That portion of Lot 75, IT located in the SW 1/4 Section 15-T9N-R7E of the 6th Principal Meridian, Lancaster County, Nebraska, described as follows:

Commencing at the Southwest corner of said Section 15, and extending thence north 89°-57'-21" east, on the south line of said Section 15, 1036.02 feet;
thence north 00°-02'-39" west, 50.00 feet, to the point of beginning;
thence north 00°-02'-39" west, 606.07 feet;
thence north 35°-31'-36" east, 326.56 feet, to the southwesterly line of Nebraska Highway No. 2;
thence south 54°-28'-24" east, on said southwesterly line, 152.96 feet;
thence south 54°-28'-23" east, 625.52 feet;
thence south 39°-20'-34" east, 93.29 feet;
thence south 43°-45'-27" west, 181.58 feet;
thence south 45°-48'-02" west, 171.49 feet;
thence south 69°-20'-34" west, 273.04 feet;
thence south 89°-57'-21" west, 63.60 feet;
thence south 89°-57'-21" west, 314.40 feet, to the point of beginning, containing 11.59 acres.

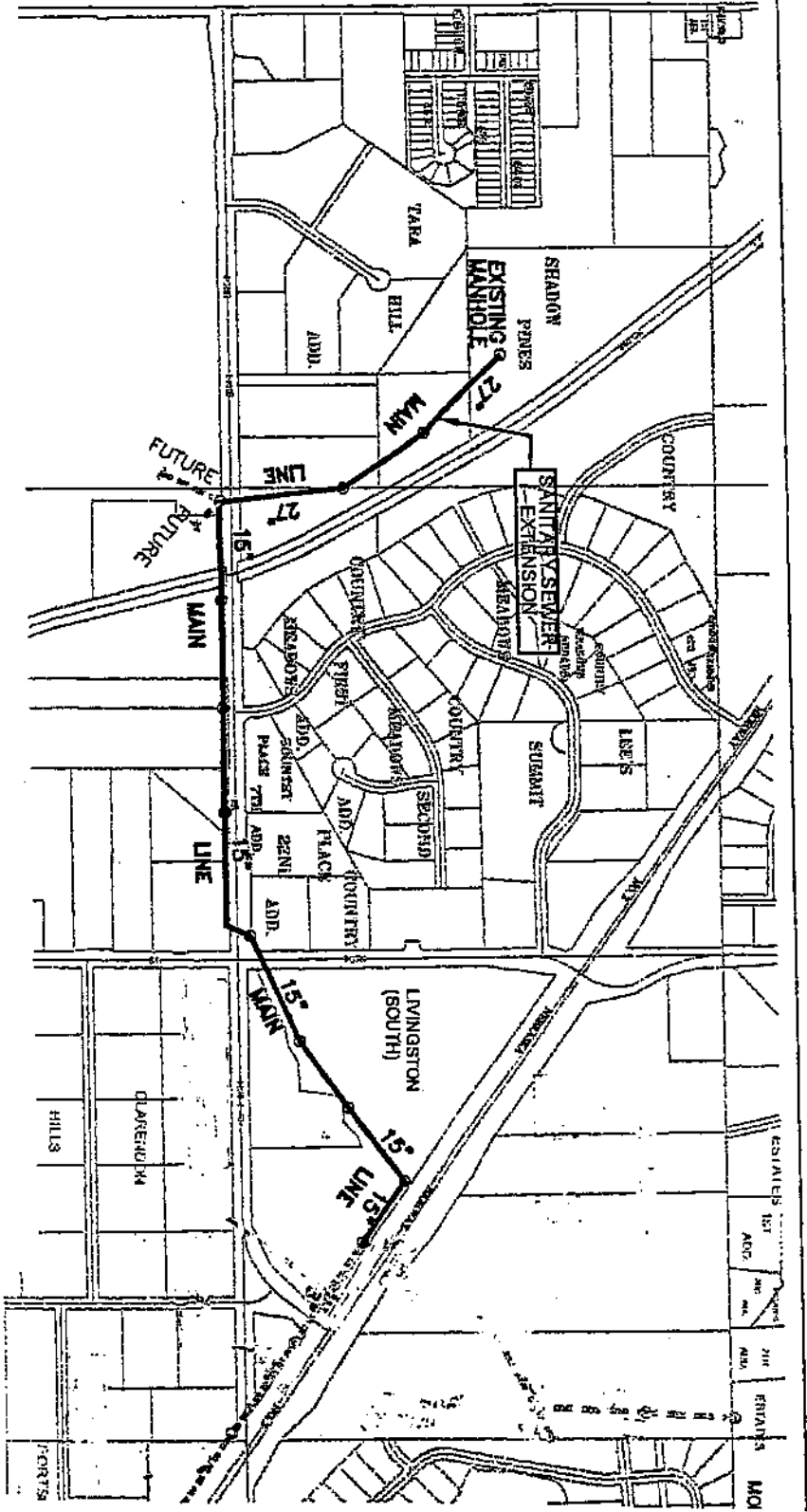


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