

RESOLUTION NO. A- 80837

1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:
 2 That the agreement titled Conditional Annexation and Zoning Agreement
 3 (Annexation Agreement), which is attached hereto, marked as Attachment "A" and
 4 made a part hereof by reference, between the City of Lincoln and Krueger Development
 5 Inc. (Owner) outlining certain conditions and understandings between the City and said
 6 Owner relating to the annexation of land generally located northeast of South 14th
 7 Street and Yankee Hill Road is approved.

8 BE IT FURTHER RESOLVED that 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, Chief Assistant City Attorney, for
 12 distribution to the Owner.

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

See further Council Action on next page.

Introduced by:

Don A. Camp
 AYES: Camp, Cook, Hortenberry,
 Johnson, McRoy, Seng, Shoecraft;
 NAYS: None.

ADOPTED

Approved as to Form and Legality:
Rick Peo
 Chief Assistant City Attorney

MAY 7 2001

By City Council

Staff Review Completed:
Ann Hurrell
 Administrative Assistant

Approved this 11 day of May, 2001:
Don Weesely
 Mayor

VAVRINA MEADOWS 1ST
CONDITIONAL ANNEXATION AND ZONING AGREEMENT

This Vavrina Meadows 1st Conditional Annexation and Zoning Agreement ("Agreement") is made and entered into this 11th day of May, 2001, by and between **Krueger Development, Inc.**, a Nebraska corporation, hereinafter referred to as "Krueger," and the **City of Lincoln, Nebraska**, a municipal corporation, hereinafter referred to as "City."

RECITALS

A. Krueger has requested that the City annex Lots 20, 21, 22, and 23 of Irregular Tracts, located in Section 24, Township 9 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska, hereinafter referred to as the "Vavrina 1st Property."

B. Krueger has further requested the City to rezone those portions of the Vavrina 1st Property as legally described in Attachments "A", "B", and "C", which are attached hereto and incorporated herein by this reference from AG Agricultural District to R-3 Residential District, B-2 Planned Neighborhood Business District, and H-4 General Commercial District respectively.

C. Pursuant to the Conditional Annexation and Zoning Agreement for Yankee Hill Road Vicinity (Yankee Hill Agreement), the City and the developers of Wilderness Ridge constructed certain sanitary sewer trunk lines (hereinafter "Sewer A" and "Sewer B") to sewer 725 acres of land within the preliminary plat of Wilderness Ridge Addition. Said Sewer A and Sewer B can also sewer 312 acres of land outside of the boundaries of the preliminary plat for Wilderness Ridge, including the Vavrina 1st Property.

D. In the Yankee Hill Agreement, the City agreed to charge owners of land outside the boundaries of the preliminary plat for Wilderness Ridge Addition who benefit from the extension of Sewer A and Sewer B into an entirely new area, including the Vavrina 1st Property, 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. In the Vavrina Meadows Conditional Annexation and Zoning Agreement, the City agreed to accept Krueger's contribution of \$36,630 as Krueger's share of the cost of construction of Sewer A to serve property identified in the Vavrina Meadows Conditional Annexation and Zoning Agreement as the Dahlberg Property. The City further agreed not to require any additional contribution from Krueger for the cost of Sewer A in order for the Dahlberg Property to be connected to the City's sanitary sewer system.

F. The City is willing to annex the Vavrina 1st Property as requested by Krueger provided Krueger agrees (1) to contribute an amount not to exceed \$48,667 as Krueger's fair share of the cost to construct Sewer A and Sewer B which sewers the 41.67 non-Dahlberg Property acres of the Vavrina 1st Property based upon a cost not to exceed \$1,100 per acre times the 41.67 non-Dahlberg Property acres being annexed and (2) to contribute \$2,830 as Krueger's fair share of the cost to construct Sewer B which sewers the 39.87 Dahlberg Property acres of the Vavrina 1st Property based upon a cost of \$71.00 per acre times the 39.87 acres being annexed.

G. Pursuant to the Yankee Hill Agreement, the City and the developers of Wilderness Ridge constructed an approximately 3,500 linear foot 16-inch water main in South 14th Street and Yankee Hill Road to provide water to the land included within the preliminary

plat of Wilderness Ridge Addition. Said 16-inch water main can also provide water to land outside of the boundaries of the preliminary plat for Wilderness Ridge, including the Vavrina 1st Property.

H. In the Yankee Hill Agreement, the City agreed to charge owners of land outside the boundaries of the preliminary plat for Wilderness Ridge Addition who benefit from the extension of the 24-inch water into an entirely new area, including the Vavrina 1st Property, a fair share of the cost of the 24-inch water based upon the total costs of constructing a typical 6-inch water line abutting a residential area and the total cost of constructing a typical 8-inch water line abutting a commercial area.

I. The City is willing to annex the Vavrina 1st Property and rezone the Vavrina 1st Property as requested provided that Krueger agrees to contribute toward the construction of the 24-inch water main in South 14th Street and Yankee Hill Road the cost of a 6-inch equivalent main along residential frontage and an 8-inch equivalent main for commercial frontage of the Vavrina 1st Property.

J. The development and operation of the Vavrina 1st Property as a B-2 Planned Neighborhood Business District and H-4 General Commercial District will cause increased traffic on the public street system that serves and provides access to the Vavrina 1st Property that may require off-site road improvements. Due to the inadequacy of the street system, the City is willing to annex the Vavrina 1st Property and rezone the Vavrina 1st Property as requested provided there is an agreement regarding cost responsibilities for improvements to the public street system which serves the Vavrina 1st 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 Vavrina 1st Property.
2. Rezoning of the Property. The City agrees to rezone the Vavrina 1st Property from AG Agricultural District to R-3 Residential District, B-2 Planned Neighborhood Business District, and H-4 General Commercial District as legally described in Attachments "A", "B", and "C", respectively.

3. Sewer Main Extension. Krueger understands and acknowledges that the Vavrina 1st Property was made sewerable by the construction of Sewer A and Sewer B pursuant to the Yankee Hill Agreement and that Krueger, except for the Dahlberg Property, did not participate in, nor contribute Krueger's fair share of the cost of the construction of Sewer A and Sewer B to serve the Vavrina 1st Property. Krueger desires to be connected to Sewer A and Sewer B and therefore agrees to pay at the time of annexation a connection fee as established by the City of not to exceed \$1,100 per acre times the 41.67 non-Dahlberg Property acres and a connection fee of \$71.00 per acre times the 39.87 Dahlberg Property acres for a total connection fee of not to exceed \$48,667.

4. 24-Inch Water Main in South 14th Street and Yankee Hill Road. Krueger understands and acknowledges that the Vavrina 1st Property was made waterable by the construction of the 24-inch water main in South 14th Street and Yankee Hill Road pursuant to the Yankee Hill Agreement and that Krueger did not participate in, nor contribute Krueger's fair share of the cost of the construction of the 24-inch water main to serve the Vavrina 1st Property. Krueger desires to be connected to the 24-inch water main and therefore agrees to

pay at the time of annexation a connection fee based upon the equivalent \$27.50/ft. cost of constructing a 6-inch water main along the property's residential frontage on South 14th Street and Yankee Hill Road (approximately 450 feet) and the equivalent \$30.00/ft. cost of constructing an 8-inch water main along the property's commercial frontage on South 14th Street and Yankee Hill Road (approximately 3,300 feet).

5. Street Improvements.

(a) Contribution. Krueger agrees to contribute \$305,000.00 as Krueger's share of the cost for the design and construction of road improvements in Yankee Hill Road (from South 14th Street to Wilderness Ridge Road) and in South 14th Street (from 635 feet south of Infinity Court to Yankee Hill Road). This is in addition to Krueger's payment of \$208,000 in South 14th Street (from 635 feet south of Infinity Court, north to 525 feet south of Pine Lake Road). Said contribution shall be paid to the City within thirty (30) days notice from the City that the road improvements have been completed.

(b) Optional Executive Order Construction. In lieu of the contribution described in subparagraph (a) above, the City shall have the option to require the owner to construct the road improvements in Yankee Hill Road (from South 14th Street to Wilderness Ridge road) and in South 14th Street (from 635 feet south of Infinity Court to Yankee Hill Road) through the City's executive order process. In the event the City exercises this option the City shall contribute toward the total cost of the said street improvements all cost in excess of \$305,000.00. Due to the amount of the subsidy being provided, the construction of said street improvements shall be bid and awarded only after competitive bidding in accordance with City procedures.

(c) Dedication. Krueger agrees to dedicate 80 feet of right-of-way for South 16th Street in order to provide sufficient space for construction of a 10-foot wide bike trail and space for two rows of street trees.

(d) Street Trees. Krueger agrees to pay for all street trees in South 16th Street.

(e) Bike Path. Krueger agrees to pay for 4/10 of the bike bath in South 16th Street.

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

(a) In the amount of \$48,667 to insure Krueger's contribution for the construction of sanitary Sewer A and Sewer B referred to in paragraph 3 above.

(b) In the amount of \$112,375 to insure Krueger's contribution for the construction the 24-inch water main as provided for in Paragraph 4 above.

(c) In the amount of \$305,000 to insure Krueger's contribution for the construction of the road improvements referred to in paragraph 5.

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 Vavrina 1st 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 Vavrina 1st 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. 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.

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

11. 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.

12. 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.

13. 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.

14. 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.

15. Relationship of Parties. Neither the method of computation of funding or any other provisions contained in this Agreement or any acts of any party shall be deemed or construed by the City, Krueger, or by any third person to create the relationship of partnership or of joint venture or of any association between the parties other than the contractual relationship stated in this Agreement.

16. 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.

17. Default. Krueger and City agree that the annexation and changes of zone promote the public health, safety, and welfare so long as Krueger fulfills all of the conditions

and responsibilities set forth in this Agreement. In the event Krueger defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rezone the Vavrina 1st 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.

18. Essential Nexus. City and Krueger agree that the City has a legitimate state interest in promoting the health, safety, and welfare and providing for the safe and efficient receipt of wastewater within the public sanitary sewer system for the provision of water and for the safe and efficient movement of motor vehicles upon the public street system and that an essential nexus exists between the City's above interest and the conditions placed upon Krueger under this Agreement. In addition, the City and Krueger have made an individualized determination and agree that the conditions placed upon Krueger under this Agreement are related both in nature and extent and are in rough proportionality to the projected adverse effects, full development and operation of the Vavrina 1st Property under the B-2 Planned Neighborhood Business District, H-4 Highway Commercial District, and the R-3 Residential District zoning would have on the public sanitary sewer system, water system, and street system that serves the property.

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

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

ATTEST:

CITY OF LINCOLN, NEBRASKA,
A Municipal Corporation

Jan E. Rose
City Clerk

By: Don Wesely
Don Wesely, Mayor

KRUEGER DEVELOPMENT, INC.,
A Nebraska Corporation

By: Richard C. Krueger
President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

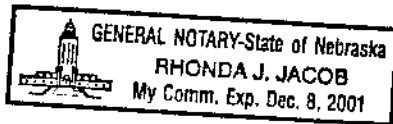
The foregoing instrument was acknowledged before me this 11 day of May, 2001, by Don Wesely, Mayor of the City of Lincoln, Nebraska, on behalf of the City.



Judith A. Roscoe
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 20th day of APRIL, 2001, by RICHARD C. KRUEGER, President of Krueger Development, Inc., a Nebraska corporation, on behalf of said corporation.



Rhonda J. Jacob
Notary Public