

**NORTH FORTY
CONDITIONAL ANNEXATION AGREEMENT**

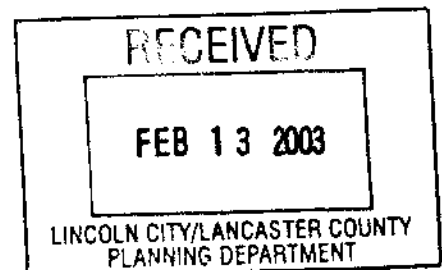
This North Forty Conditional Annexation Agreement ("North Forty Agreement") is made and entered into this 29 day of January, ²⁰⁰³~~2002~~, by and between **Dorothy C. Matson and Guy M. Matson, as co-trustees of the Dorothy C. Matson Revocable Trust**, hereinafter referred to as the "Matsons, and **North Forty Golf, Inc.**, a Nebraska corporation, and the **City of Lincoln, Nebraska**, a municipal corporation, hereinafter referred to as "City." The Matsons and North Forty Golf, Inc. are hereinafter collectively referred to as "Owners."

RECITALS

A. The Dorothy C. Matson Revocable Trust is the Owner of Lot 50, I.T., located in Section 15, Township 10 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, (hereinafter Lot 50) and North Forty Golf, Inc., is the Owner of Lots 84 and 85, I.T., located in Section 15, Township 10 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska (hereinafter Lots 84 and 85).

B. Owners have requested the City to annex Lot 50 and Lot 85 located in the Northeast Quarter of Section 15, Township 10 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, in order to administratively final plat a subdivision of said Lots 50 and 85 as North Forty Golf Addition in order to create a smaller residential lot for the existing Matson residences, together with a waiver of required subdivision improvements.

C. The annexation of Lots 50 and 85 would cause Lot 84 to fall within the annexation policy of the comprehensive plan and the City is only willing to annex Lots 50 and 85 upon condition that Lot 84 also be annexed.



D. Pursuant to the Conditional Annexation and Zoning Agreement for Regent Heights 1st Addition and Northern Lights Addition ("Regents Heights Agreement"), the City and the developers of Regent Heights 1st Addition and Northern Lights Addition constructed certain sanitary sewer trunk lines (hereinafter "Sewer A" and "Sewer B") to sewer 254 acres of land within the preliminary plats of Regent Heights 1st Addition and Northern Lights Addition. Said Sewer A and Sewer B can also sewer 746 acres of land outside of the boundaries of the preliminary plats for Regent Heights 1st Addition and Northern Lights Addition, including Lots 50, 84 and 85.

E. In the Regent Heights Agreement, the City agreed to charge owners of land outside the boundaries of the preliminary plats for Regent Heights 1st Addition and Northern Lights Addition who benefit not from maintenance of Sewer A and Sewer B, but from the extension of Sewer A and Sewer B into an entirely new area, including Lots 50, 84 and 85, should bear a fair share of the cost of Sewer A and Sewer B based upon a per-acre formula or some other fair share formula approved by the City.

F. The City is willing to annex Lots 50, 84 and 85, provided Owners agree to contribute \$15,291.80 for Lot 50 and \$57,995.80 for Lots 84 and 85 as Owners' fair share of the cost to construct Sewer A and Sewer B which sewers Lots 50, 84 and 85 based upon a cost of \$1,570 per acre times the 46.68 acres (9.740 acres/Lot 50 and 36.940 acres Lots 84 and 85) being annexed.

G. In order to provide adequate water service to Lots 50, 84 and 85, it will be necessary to extend the 16-inch water main located in Adams Street to 84th Street. The City is willing to annex Lots 50, 84 and 85, provided Owners agree to pay one-half of the estimated

cost to construct an equivalent 6-inch water main in Adams Street toward construction of the 16-inch main located in Adams Street from its existing terminus east to 84th Street.

H. The City is willing to annex Lots 50, 84 and 85 and approve the waiver/deferral of the land subdivision requirements for paving, sanitary sewer, storm sewer, water mains and sidewalks for the Administrative Final Plat of North Forty Golf Addition provided Owners agree to install such improvements at such time as Lots 50, 84 and 85 or any portion thereof are further subdivided, rezoned, or developed more intensively, whichever occurs first.

I. Owners agree that the City has a legitimate state interest in the public health, safety, and welfare which is promoted by requiring Owners to pay Owners' fair share of the cost to construct Sewer A and Sewer B to sewer Lots 50, 84 and 85, and to contribute to the cost to extend the water system to serve Lots 50, 84 and 85. In addition, the City and Owners have made an individualized determination and agree that the conditions placed upon Owners 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 Lots 50, 84 and 85 as envisioned in the City's Comprehensive Plan would have on the public sanitary sewer system and water system that serves Lots 50, 84 and 85.

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

1. Annexation by the City. The City agrees to annex Lots 50, 84 and 85.
2. Public Sanitary Sewer. Owners understand and acknowledge that Lots 50, 84 and 85 were made sewerable by the construction of Sewer A and Sewer B pursuant to the Regent Heights Agreement and that the Owners did not participate in, nor contribute Owners'

fair share of the cost of the construction of Sewer A and Sewer B to serve Lots 50, 84 and 85. Owners therefore agree to pay at the time of connection a connection fee of One Thousand Five Hundred Seventy and 00/100ths Dollars (\$1,570.00) per acre times 46.68 acres for a total connection fee of \$73,287.60. Notwithstanding the above, if the lot created in the North Forty Golf Addition for the existing Matson residence is sewerable to the development to the west and not through Sewer A and Sewer B, the connection fee may be reduced proportionately.

3. Extension of Public Water. Owners understand and acknowledge that the City's public water system is not adequate to serve Lots 50, 84 and 85 without water in Adams Street. Owners desire the right to be connected to the City's public water system and therefore agree to pay a portion of the cost to extend the 16-inch water main in Adams Street to serve Lots 50, 84 and 85. 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. Said work may be deferred until such time as Lots 50, 84 and 85 or any portion thereof are rezoned, resubdivided, or further developed, whichever occurs first. If said work is deferred, all costs related to the construction of the water main shall be paid by North Forty Golf, Inc., except that the City agrees to subsidize North Forty Golf, Inc. for the cost of such water main which exceeds the cost of one-half of an equivalent 6-inch water main for Lots 50, 84 and 85's frontage along Adams Street. Notwithstanding the above, in the event the City determines a need for the water main described above prior to construction by North Forty Golf, Inc., the City may cause the water main described above to be constructed as a City project. If the 16-inch water main in Adams Street described above is constructed as a City project, the Matsons and North Forty Golf, Inc. shall each contribute to the City, as part of such project, that portion

of the project cost that is equivalent to one-half of the cost of constructing an 6-inch water main for their respective frontage along Adams Street. Said contribution shall be paid to the City within thirty (30) days of receipt of notice that the water main shall be constructed as a City project.

4. Construction of Deferred Subdivision Improvements. North Forty Golf, Inc. agrees to construct all paving, sanitary sewer, water mains, storm sewer and sidewalks required under the City's Land Subdivision Ordinance for North Forty Golf Addition at such time as Lots 50, 84 and 85, or any portion thereof, are further subdivided, rezoned or developed more intensively, whichever occurs first.

5. Impact Fees. Owners understand and acknowledge that the City is presently in the process of adopting impact fees for water, wastewater, arterial streets and neighborhood parks and trails. Owners understand and acknowledge that the sewer connection fee, water construction cost in Adams Street, and the future construction of the paving, water main, sanitary sewer, and sidewalk improvements required for North Forty Golf Addition as outlined in this Agreement to be paid by Owners do not exempt or relieve Owners of any future obligation to pay any impact fee imposed on future development of the Property which is required to be paid pursuant to the provisions of any impact fee ordinance adopted by the City Council of the City of Lincoln. Any and all impact fees related to the development of Lots 50, 84 and 85 when said lots are further subdivided, rezoned or developed more intensively shall be the sole responsibility of North Forty Golf, Inc.

6. 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 Lots 50, 84 and 85 or any portion thereof which has been subject to annexation 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 development, including necessary street widening, traffic signals and added turn lanes necessitated, in the opinion of the City, by major development in the area. If any decision by North Forty Golf, Inc. to further subdivide, rezone or develop Lots 50, 84 and 85 requires the Matsons to pay any future costs assessed as a result of such development, then North Forty Golf, Inc. agrees to pay such costs on behalf of the Matsons.

7. 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 Lots 50, 84 and 85.

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

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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 take such remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach.

16. 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:

Joan E. Rice
City Clerk



THE CITY OF LINCOLN, NEBRASKA
A Municipal Corporation

By:

Don Wesely
Don Wesely, Mayor

Dorothy C. Matson
Dorothy C. Matson, Co-trustee of the
Dorothy C. Matson Revocable Trust

Guy M. Matson
Guy M. Matson, Co-trustee of the
Dorothy C. Matson Revocable Trust

NORTH FORTY GOLF, INC.
A Nebraska Corporation

By:

James B. White
James B. White, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 27th day of January, 2002, by Don Wesely, Mayor of the City of Lincoln, Nebraska on behalf of the City.

GENERAL NOTARY - State of Nebraska
JUDITH A. ROScoe
My Comm. Exp. Dec. 29, 2003

Judith A. Roscoe
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 30 day of December, 2002, by Dorothy C. Matson, Co-trustee of the Dorothy C. Matson Revocable Trust, on behalf of said Revocable Trust.

GENERAL NOTARY - State of Nebraska
CHERYL ENO
My Comm. Exp. July 8, 2003

Cheryl Eno
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 30 day of December, 2002, by Guy M. Matson, Co-trustee of the Dorothy C. Matson Revocable Trust, on behalf of said Revocable Trust.

GENERAL NOTARY - State of Nebraska
CHERYL ENO
My Comm. Exp. July 8, 2003

Cheryl Eno
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 30 day of December, 2002, by James B. White, President of North Forty Golf, Inc., a Nebraska corporation, on behalf of the corporation.

GENERAL NOTARY - State of Nebraska
CHERYL ENO
My Comm. Exp. July 8, 2003

Cheryl Eno
Notary Public