



03R-123

Introduce: 5-12-03

RESOLUTION NO. A- 82140

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

2 That the agreement titled Pinecrest Conditional Annexation and Zoning Agreement, which
3 is attached hereto, marked as Attachment "A" and made a part hereof by reference, between the
4 City of Lincoln and Patrick Mooberry, outlining certain conditions and understandings between the
5 City and said Owner relating to the annexation of approximately 50 acres of property generally
6 located at N. 14th Street and Morton Road is approved.

7 BE IT FURTHER RESOLVED that the Mayor is authorized to execute the Annexation
8 Agreement on behalf of the City.

9 *gll* BE IT FURTHER RESOLVED that the City Clerk is directed to return one fully executed
10 copy of this Agreement to Rick Peo, Chief Assistant City Attorney, for distribution to the Owner.

11 BE IT FURTHER RESOLVED that the City Clerk is directed to record the Annexation
12 Agreement or a summary memorandum thereof with the Register of Deeds, filing fees to be paid
13 by the Owner.

See further Council Proceedings
on next page.

Approved as to Form and Legality:

City Attorney

Introduced by:

Ann A. Friendt
AYES: Camp, McRoy, Svoboda,
Werner; NAYS: Cook; ABSTAIN:
Newman; ABSENT: Friendt.

Approved this 11 day of June, 2003:

Calvin J. King

Mayor

ADOPTED

JUN 09 2003

BY CITY COUNCIL

Bill No. 03R-123

05/19/03 Council Proceedings:

FRIENDT Moved to continue P.H. & Action in two weeks to 6/2/03.
Seconded by Svoboda & carried by the following vote: AYES: Camp,
Cook, Friendt, McRoy, Seng, Svoboda, Werner; NAYS: None.

06/02/03 Council Proceedings:

COOK Moved to delay action on Bill No. 03R-123 for one week to 6/9/03.
Seconded by Friendt & carried by the following vote: AYES: Cook, Friendt,
Newman, Werner; NAYS: Camp, McRoy, Svoboda.

06/09/03 Council Proceedings:

SVOBODA Moved to amend Bill No. 03R-123 in the following manner:

1. That the Pinecrest Conditional Annexation and Zoning Agreement be amended by amending Section 19 to add the following paragraph at the end of that Section:

City acknowledges that City had included substantially identical provisions regarding Impact Fee Facilities in other "Conditional Annexation and Zoning Agreements" which also included this reservation of rights to sue the City to determine the validity of such provisions. If a lawsuit is brought challenging such provisions under any other "Conditional Annexation and Zoning Agreement" and the provisions in such agreement which relate to Impact Fee Facilities are held invalid due to lack of authority to require such provisions in exchange for annexation and/or the change of zone, the City agrees that Owner shall be entitled to the benefit of such judgment without the necessity of bringing a separate lawsuit challenging the Impact Fee Facility provisions in this Agreement.

Seconded by Werner & carried by the following vote: AYES: Camp, Cook,
McRoy, Svoboda, Werner; NAYS: None; ABSTAIN: Newman; ABSENT: Friendt.

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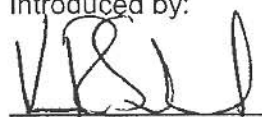
MOTION TO AMEND

I hereby move to amend Bill No. 03R-123 in the following manner:

1. That the Pinecrest Conditional Annexation and Zoning Agreement be amended by amending Section 19 to add the following paragraph at the end of that Section:

City acknowledges that City has included substantially identical provisions regarding Impact Fee Facilities in other "Conditional Annexation and Zoning Agreements" which also included this reservation of rights to sue the City to determine the validity of such provisions. If a lawsuit is brought challenging such provisions under any other "Conditional Annexation and Zoning Agreement" and the provisions in such agreement which relate to Impact Fee Facilities are held invalid due to lack of authority to require such provisions in exchange for annexation and/or the change of zone, the City agrees that Owner shall be entitled to the benefit of such judgment without the necessity of bringing a separate lawsuit challenging the Impact Fee Facility provisions in this Agreement.

Introduced by:



AYES: Camp, Cook, McRoy, Svoboda, Werner; NAYS: None; ABSTAIN: Newman; ABSENT: Friendt.

Approved as to Form & Legality:



Chief Assistant City Attorney

Requested by: Mark Hunzeker

Reason for Request: To allow the property owner to have the benefit of any judgment from any other lawsuit challenging the validity of the provisions in such other "Conditional Annexation and Zoning Agreement" holding that the City lacks authority to require contributions to the cost of construction of Impact Fee Facility Improvements in exchange for annexation and/or change of zone.

ADOPTED
JUN 09 2003
BY CITY COUNCIL

**PINECREST
CONDITIONAL ANNEXATION AGREEMENT**

This Pinecrest Conditional Annexation Agreement ("Agreement") is made and entered into this 11TH day of June, 2003, by and between **Pinecrest Partners**, a general partnership, 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 49.58 acres more or less of land generally located at North 14th Street and Morton Road. The approximately 49.58 acres is hereinafter referred to as the "Property" and is legally described as:

A portion of Lot 5, a portion of Lot 6, Grove Park Subdivision, Lots 1 - 38 inclusive, Clason and Fletchers Subdivision, Lot 24 I.T., Lot 25 I.T., vacated Orchard Road, vacated east-west alley, and the vacated unnamed right-of-way adjacent to Lots 1 - 16 Clason and Fletchers Subdivision; all located in the Northeast Quarter of Section 2, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska, and more particularly described as follows:

Commencing at the southeast corner of the said Northeast Quarter; thence west along the south line of said Northeast Quarter, on an assumed bearing of north 89 degrees 37 minutes 50 seconds west, a distance of 33.00 feet to the point of beginning; thence continuing north 89 degrees 37 minutes 50 seconds west, along the south line of said Northeast Quarter, a distance of 1,320.85 feet to a point; thence north 00 degrees 07 minutes 06 seconds west, a distance of 33.00 feet to the southeast corner of said Lot 16, Clason and Fletchers Subdivision; thence north 89 degrees 37 minutes 50 seconds west, along the south line of said Lots 16 - 23, Clason and Fletchers Subdivision, a distance of 299.97 feet to the southwest corner of said Lot 23, Clason and Fletchers Subdivision; thence north 00 degrees 01 minutes 42 seconds east, along the west line of said Lots 23 - 38, Clason and Fletchers Subdivision, a distance of 598.12 feet to the northwest corner of lot 38, Clason and Fletchers Subdivision; thence north 89 degrees 40 minutes 04 seconds west, along the south line of said Lot 5, Grove Park Subdivision, a distance of 197.55 feet to a point on the southerly line of Interstate Highway 80 right-of-way; thence north 55 degrees 14 minutes 13 seconds

east, along the southerly line of Interstate Highway 80 right-of-way, said line being a north line of said Lot 5, a north line of Lot 6, a northwest line of Lot 24 I.T., and the north line of said Lot 25 I.T., a distance of 2,174.36 feet to the north corner of said Lot 25 I.T.; thence south 03 degrees 36 minutes 47 seconds east, along an east line of said Lot 25 I.T., a distance of 446.70 feet to a point that is 33.00 feet west of the east line of said Northeast Quarter; thence south 00 degrees 08 minutes 47 seconds east, along an east line of said Lot 25 I.T., and the east line of said Lot 24 I.T., said line also being 33.00 feet west of and parallel to the east line of said Northeast Quarter, a distance of 1,436.70 feet to the point of beginning.

B. Owner has requested the City to approve Special Permit No. 1991 (Pinecrest Community Plan).

C. Owner has requested the City to approve Owner's application to preliminarily plat the Property as Pinecrest (Preliminary Plat No. 02020).

D. The City has adopted Ordinance No. 18113, hereinafter referred to as the "Impact Fee Ordinance" based upon an Impact Fee Study prepared by Duncan Associates dated October, 2002, that will go into effect on June 2, 2003. This Impact Fee Ordinance will enable the City to impose a proportionate share of the cost of improvements to the water and wastewater systems arterial streets and neighborhood parks and trails necessitated by and attributable to new development.

E. A Complaint for Declaratory and Injunctive Relief has been filed in the District Court of Lancaster County, Nebraska. This Complaint prays for judgment of the district court declaring the Impact Fee Ordinance invalid and unenforceable and for injunctive relief enjoining the imposition of impact fees.

F. The City is willing to annex the Property, grant the special permit, and conditionally approve the preliminary plat as requested by Owner, prior to a determination as to the validity and enforceability of the Impact Fee Ordinance, provided Owner agrees to make certain site-related improvements to the public street system which are necessary in order to serve the Property and further agrees to contribute to the cost of improving the City's Water System, Water Distribution, Wastewater System, Neighborhood Park & Trail, and

Arterial Street Impact Fee Facilities necessitated by and attributable to the proposed development of the 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 Property.

2. **Preliminary Plat/CUP.** The City agrees to approve the Pinecrest Preliminary Plat and Special Permit No. 1991 for a Community Unit Plan for 288 dwelling units.

3. **Site-Related Street Improvements.** The City and Owner covenant and agree that the Owner shall be responsible for the following site-related street improvements:

A. Construction – Temporary Improvement. If streets are final platted in Pinecrest that intersect North 14th Street, the Owner shall be responsible, at Owner's own cost and expense to pay the City's fixed fee for Engineering Services and to construct temporary widening of the existing North 14th Street. Owner understands and agrees that Owner shall not be entitled to any reimbursement for the cost to construct temporary widening of the existing North 14th Street.

B. Construction – Morton Street. Owner agrees to petition for and participate in a paving district for the construction of Morton Street, provided the City agrees to annex and include land on the south side of Morton Street as part of the district. In the alternative, Owner may elect, at Owner's own cost and expense, to construct or cause to be constructed such paving under authority of an executive order issued by the Mayor of the City of Lincoln. The paving district must be ordered constructed or the executive order issued before the City will approve any final plat of Pinecrest with buildable lots that abut Morton Street.

4. **Contributions for Impact Fee Facility Improvements.**

A. Water Distribution Impact Fee Facility Contribution. Owner agrees to contribute \$68,882 toward the cost of making Impact Fee Facility Improvements to the City's Water Distribution Impact Fee Facilities attributable to the proposed development of the Property.