



RESOLUTION NO. A- 82224

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

2 That the agreement titled Agreement Regarding the Annexation of Pine Lake (Annexation  
3 Agreement), which is attached hereto, marked as Attachment "A" and made a part hereof by  
4 reference, between the City of Lincoln, Pine Lake Association, and Sanitary and Improvement  
5 District No. 2, outlining certain conditions and understandings between the City and said Owners  
6 relating to the annexation of approximately 160 acres of property generally located at the intersection  
7 of South 84th Street and Pine Lake Road, is approved.

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

10 *1/25* BE IT FURTHER RESOLVED that the City Clerk is directed to return two fully executed  
11 copies of this Agreement to Rick Peo, Chief Assistant City Attorney, for distribution to the Owners.

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

Introduced by:

*Tony M. Werner*  
\_\_\_\_\_

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

Approved as to Form and Legality:

*Asst Rick Peo*  
\_\_\_\_\_  
City Attorney

Approved this *21<sup>st</sup>* day of *July*, 2003:  
*Celeen J. Seay*  
\_\_\_\_\_  
Mayor

ADOPTED  
JUL 21 2003  
BY CITY COUNCIL

**AGREEMENT REGARDING THE ANNEXATION  
OF PINE LAKE**

THIS AGREEMENT is made and entered into this 11<sup>th</sup> day of July, 2003, by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation (the "City"), **PINE LAKE ASSOCIATION**, a Nebraska nonprofit corporation (the "Association"), and **SANITARY AND IMPROVEMENT DISTRICT NO. 2**, of Lancaster County, Nebraska a body corporate and politic (the "SID").

WITNESSETH:

WHEREAS, the City is presently considering the annexation of the area comprised of Southeast Quarter (SE 1/4) of Section Fifteen (15), Township Nine (9) North, Range Seven (7), East of the 6th P.M., Lancaster County, Nebraska (hereinafter, referred to as the "Area");

WHEREAS, the parties are agreeable to such annexation provided that there is an agreement regarding cost responsibilities for the municipal services associated with annexation, maintenance responsibilities, ownership of recreational outlots, and other appropriate matters relating to the annexation.

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

**1. Annexation by City.** Notwithstanding any provisions to the contrary in the Covenant and Agreement dated September 5, 1961 entered into between the Association and the City, the City shall annex the Area on the terms and conditions set forth in the Agreement. Said Covenant and Agreement was filed of record in the office of the Register of Deeds of Lancaster County on September 19, 1961 and recorded in Book 84, Page 171. Upon annexation, the SID shall be merged with the City as provided by Nebraska law.

**2. Records.**

(a) Drawings and Records. The SID has provided to the City, or will provide, all of its drawings and records related to its infrastructure improvements (water, storm sewer, sanitary sewer, and roads). The drawings and records will be provided in their current condition, without warranty, and the SID shall have no obligation to provide any new or additional drawings or records.

**3. Sanitary Sewer.**

(a) Inspection of Existing Sewer Mains. The City has inspected, or will inspect, the existing sanitary sewer system which is used to provide sanitary services to the owners of lots in the Area (referred to individually as an "Owner" and collectively as the "Owners").

(b) Extension Required; Cost Responsibilities. The City shall identify the improvements that are needed to extend the City's sanitary sewer system to the Area and to connect the existing system operated by the SID to the City system. All costs to extend and connect the City system shall be borne by the City and any developer at the City's discretion, and neither the SID, the association, nor the Owners shall have any direct responsibility for such cost. Costs borne by the City shall be subject to approval of funding through its normal budgetary procedures. Costs of operation, repairs and maintenance arising after annexation shall be borne by the City, and the Owners will become subject to sewer charges by the Lincoln Wastewater System.

(c) New Trunk Lines. The City does not intend to construct, or approve the construction of, any sanitary sewer line in the area between the shoreline of Pine Lake and existing residences on lots which abut the shoreline. Any such lines are expected to be constructed in the existing right-of-way.

(d) Ownership of Sanitary Sewer System; Treatment Plant; Decommissioning. Upon annexation, the sanitary sewer system shall be owned by the City in the existing condition as of such date, as provided by Nebraska law. The City will accept ownership of the sanitary sewer system in its "as is" condition at the date of annexation. The SID's sewer treatment plant is located on a portion of Outlot A that is titled to the SID. The City has or shall, at its cost, properly dismantle, decommission and abandon the existing sewage disposal plant. Until decommissioned and abandoned, the City shall be responsible for operation and maintenance of the treatment plant.

#### 4. Water System.

(a) Construction Required; Cost Responsibilities. The City has identified the below list of improvements that have been made or will be made to extend the City system and to connect the Owners to the City water system. All costs to extend and to connect shall be borne by the City, and neither the SID, the Association nor any Owner shall have any direct responsibility for such cost. Costs borne by the City shall be subject to approval of funding through its normal budgetary procedures.

1. Barkley Drive at 84th , connect existing six-inch main to 24-inch main in 84th, to be completed by the contractor with the street widening project in 2003-05.
2. South of the Golf and Tennis Assoc. drive at 84th, connect existing eight-inch main to the 24-inch main, has been completed by LWS.
3. Water Tower Court at 84th, connect existing six-inch main to 24-inch main in 84th, to be completed by the contractor with the street widening project in 2003-05.

4. East Shore Drive at Pine Lake Road, connect existing six-inch main to 24-inch main in Pine Lake Road has been completed by LWS staff.
5. West Shore Drive at Pine Lake Road, connect existing six-inch main to 24-inch main in Pine Lake Road, to be done in conjunction with development on south side of Pine Lake Road and possible roadway intersection reconfiguration in the next few years.

The following is a list of locations where connections will be made to adjacent developments as they occur:

1. Pine Ridge Lane on west border of the SID, will require a 200 foot  $\pm$  extension of a new main.
2. North Shore Drive on west border of SID, will require a 200 foot  $\pm$  extension of a new main.
3. 80th Street on north border of SID, will require a 150 foot  $\pm$  extension of a new main.
4. Just east of existing East Shore Drive, connecting a new main in the Pine Lake Plaza development to the south of Pine Lake Road to the six-inch main running east of East Shore Drive. The town house lots in Pine Lake Plaza will tap this existing east-west six-inch main east of East Shore Drive.

The following is a list of locations where existing SID water mains will be cut off and/or abandoned.

1. Connection of Well #2 at the south end of the dam, summer of 2002.
2. Connection of Well #3 on East Shore Drive just south of North Shore Drive, summer of 2002.
3. Connections of Well #1 on East Shore Drive about 200 feet north of Pine Lake Road, and on West Shore Drive about 100 feet north of Pine Lake Road, summer of 2002.
4. East side of Perry Circle behind the curb, after all connection made in 84th Street on 2003-04.
5. East of water tower, near the Golf and Tennis Clubhouse, after all connection made in 84th Street on 2003-04.

6. Pending findings of the Street Division of Public Works, LWS has interest in abandoning the water main located on the dam structure, to avoid the potential liability of damage from a broken main.

(b) Meters. City at its own cost and expense has replaced water meters in the Area which were converted to the City water system. Based on City ordinance, after annexation, the City shall have title to and shall be solely responsible to maintain, repair, and replace all meters and related meter apparatus two inches in size or smaller, unless such repair or replacement is caused by the negligence or willful act of the Owner. Meters larger than two inches will be the responsibility of the Owner.

(c) Hydrants. The City has inspected the fire hydrants in the Area and has determined that the hydrants are "Lincoln" threads.

(d) Water Pressure; Looped System. The City will provide reasonable notice to the Owners in advance of any changes which may increase pressure and the possible consequences to residential appliances, plumbing and systems. The City's construction of the improvements and connections described in subparagraph "a" above will provide a fully looped system. The City and/or a developer will bear all costs related to construction of a looped system and pumps.

(e) Ownership of Water System; Water Wells; Water Tower. The existing water system operated by the SID consists of three water wells, one of which is located on Outlot A (Well No. 1), a second located on Outlot C (Well No. 2), and a third located on Outlot M (Well No. 3). The system includes a water tower located on Outlot G as well as mains, valves, hydrants, and appurtenances related thereto. Upon annexation, the water system shall be owned by the City in its existing condition as of such date as provided by Nebraska law. The City will accept ownership of the water system, without warranty, in its "as is" condition on the date of annexation. It is understood and agreed that the City will have no continuing use for either the water wells or the water tower as above described, and agrees, as soon as practicable after annexation, to transfer ownership of the three water wells and the water tower, together with the sites upon which they are located, to Pine Lake Association for a nominal consideration. The Association agrees to accept ownership and maintenance responsibility of the three wells and the water tower and to pay said nominal consideration. Subject to requirements of the State of Nebraska, Department of Health, and the Lincoln Lancaster County Health Department, such wells may be used for non-domestic purposes of the Association and the Association shall be responsible for operation, maintenance or decommissioning of such wells. The water tower may be utilized by the Association for such purposes as it deems appropriate, and shall be operated, maintained and repaired by the Association and, in the event of removal of the tower, such removal shall be effected at no cost to the City.

The parties understand and agree that the water well located on Outlot A (Well No.2) is no longer functional and the SID agrees to properly abandon and cap such well prior to annexation at its own cost and expense.

**6. Storm Sewer.**

(a) Inspection of Existing System. The City has inspected, or will inspect, all existing storm sewer and drainage facilities within the Area. The City will provide a copy of the inspection report to the SID and the Association.

(b) Extension Required; Cost Responsibilities. All costs to extend and to connect the Area to the City storm sewer system shall be borne by the City and any developer at the City's discretion, and the Owners shall have no direct responsibility for such cost. Costs of operations, repairs and maintenance arising after annexation shall be borne by the City. Costs borne by the City shall be subject to approval of funding through its normal budgetary procedures. City accepts the existing storm sewer system, except for open drainage ditches across private property, in its "as is" condition at the date of annexation, without warranty. To the extent feasible it is the intent of the City to release drainage easements for the open drainage ditches across private property following annexation and to transfer ownership and maintenance responsibility for such drainage ditches to the owners of such property

**7. Streets and Other Improvements.**

(a) Interior Road System.

1. Inspection of Roads. The City has inspected the intersections of the existing interior road system within the Area, and has identified intersection sight distance problems and will provide notice to the Owners of lots which have such obstructions and sight distance problems.
2. Ownership of Roads. Upon annexation, the interior roads shall be owned by the City in the existing condition as of such date, as provided by Nebraska law. The City shall be responsible for maintenance, repair and snow removal of the existing roads in the Area and all appurtenances thereto.
3. Road Over Dam. If, following annexation, the Association petitions to vacate the road over the Dam and if said road is vacated, it will be conveyed to the Association without any additional consideration, subject to the City retaining a public access easement over said road for vehicular and pedestrian traffic.

It is understood and agreed that the dam upon which West Shore Drive is situated is owned by Pine Lake Association and will not be modified without the approval of Pine Lake Association. After annexation the Association shall remain solely responsible for the cost of maintaining and repairing the dam.

4. No Paving Assessments for Certain Roads. The City agrees that it will not assess to abutting property owners any costs relating to future paving, if the same should be provided, of the following roads:
  - A. Pine Ridge Lane (existing or relocated) from the westerly right-of-way line of West Shore Drive, west.
  - B. North Shore Drive from the westerly right-of-way line of West Short Drive, west.
  - C. West Shore Drive from the south right-of-way line of North Shore Drive, south to the northerly right-of-way (extended) of Pine Ridge Lane.

(b) Sidewalks. It is understood that future installation of sidewalks may be required in accordance with the standard policies and procedures of the City.

(c) Bridle Paths. The City agrees to assign to Pine Lake Association all those 20-foot bridle path easements (but not utility easements) dedicated through the platting of Pine Lake Addition, Pine Lake Fourth Addition, and Pine Lake Fifth Addition for the use and benefit of the public and owners within the Area.

(d) Pine Lake. The City acknowledges that Pine Lake is a private recreational improvement and shall remain so after the annexation for the exclusive use and benefit of residents of the Area.

(e) Roadways and Ditches. After annexation, the Owner of the respective lot or outlot shall have no maintenance responsibility for existing roadway improvements except that mowing and keeping ditches and driveway pipes free of obstructions shall be the responsibility of the adjacent property owner. This responsibility shall extend to and include that portion of the public right-of-way from the edge of pavement to the property line.

## **8. Transfer of SID Outlots to Pine Lake Association.**

(a) As soon as practicable after the effective date of annexation, the City agrees to declare surplus and to convey Outlots G, H, I, J, K, L, M, and N, Pine Lake Fifth Addition, and Outlot AAA, Pine Lake Eighth Addition, together with the water well (No. 3) and water tower

located thereon, to the Association for One Dollar (\$1.00) and other good and valuable consideration. The transfer will be by quitclaim deed and will be subject to and conditioned upon the following:

1. The use of the property conveyed shall be restricted to private park and recreational facilities, including the par three golf course and tennis courts for the use and benefit of the residents of the Area and members of the Pine Lake Golf and Tennis Club, provided that such use may be conditioned upon paying such reasonable charges as may be established for use of the facilities.
2. Such conveyance shall be subject to such utility easements as the City may deem necessary to reserve over the properties conveyed.
3. Such conveyance shall be subject to the platted 20 foot bridle path easements assigned to the Association, the use of which shall be limited to and for the residents of the Area.
4. The conveyance shall include a covenant that the Association may use rents and profits derived from its ownership of the properties conveyed only for operation, maintenance, and repair of, and for recreational improvements to, any and all outlots owned by Pine Lake Association located within the Area and facilities located thereon; for maintenance of the bridle path easements dedicated through the platting of Pine Lake Addition, Pine Lake Fourth Addition, and Pine Lake Fifth Addition; and for the payment of insurance premiums for insuring of the outlots and facilities, and taxes and special assessments, if any.

The City further agrees to assign all of its rights, rents and profits derived from any and all leases over said property to the Association.

(b) At such time as the sewer treatment plant located on Outlot A, Pine Lake Addition is decommissioned by the City and the property is declared surplus. The City, at the option of the association, convey to the Association for nominal consideration that certain real estate formally owned by the SID and serving as the site for the sewage plant under that instrument found at Deed Book 656, Page 590 and shall release all unneeded easements for sanitary sewer over said Outlot A as dedicated in the same instrument.

(c) As soon as practical after the date of annexation, the City shall convey, by quitclaim deed, any interest it may have in Outlots A and C, Pine Lake Addition relating to the sites for water wells on said outlots including, but not limited to the property for a pump house and well described in the instrument recorded at Deed Book 656, Page 590.



**9. Equestrian Character of Pine Lake.** The City further acknowledges that a portion of Lot 42, Pine Lake Addition is used and maintained as a stable for horses and confirms that said lot is currently zoned AGR Agricultural Residential, and that a stable for horses is a permitted use under the AGR Agricultural District Regulations. The City confirms that the existing use is hereby recognized as a legal use of the property and may continue as a nonconforming use in the event of any change of zone, subject to the nonconforming use provisions of the Lincoln Zoning Ordinance then in effect.

The parties agree that under the existing definition of the term "premises" in Lincoln Municipal Code § 6.02.460 Pine Lake Stables may aggregate the available acreage of Lot 42 together with the acreage, as calculated, of the bridle paths located within the Southeast Quarter of Section 15, Township 9 North, Range 7 East of the 6th P.M. and the available acreage of Outlot A, Pine Lake Addition, to meet the minimum acreage requirements under the City's animal control regulations (Chapter 6.04 of the Lincoln Municipal Code) which requires 1.5 acres for each animal when three or more large animals are kept on the premises for the keeping of large animals on the condition, and only so long as, the Pine Lake Association grants to Pine Lake Stables, Inc. a nonexclusive license to use such areas for that purpose.

**10. Right-of-Way and Easements.**

(a) The Association agrees to grant or convey fee title the City, without any additional consideration, the land needed in Outlot A, Pine Lake Addition to relocate Pine Ridge Lane.

(b) The Association agrees to grant to the City without any additional consideration, thirty-foot wide (30') permanent easements for a new sewer main to replace the treatment plant and all other thirty-foot wide (30') permanent easements the City needs over, through, and across Association property in order to provide water, storm sewer and sanitary sewer service to the Area. The Association further agrees to grant to City without additional consideration any temporary construction easement the City needs in order to relocate Pine Ridge Lane and/or provide water, storm sewer, and sanitary sewer service to the area, to decommission the sanitary sewer treatment plant and such other permanent and temporary easements as may be necessary to carry out this Agreement

**11. Miscellaneous.**

(a) Costs. For the purposes of this Agreement, "cost" or "entire cost" of a type of improvement shall be deemed to include all construction costs, engineering fees, testing expenses, publication costs, financing costs, and related miscellaneous costs.

(b) Third Party Beneficiaries. The Owners and Pine Lake Golf and Tennis Club, a Nebraska nonprofit corporation, are intended third party beneficiaries of this Agreement.

(c) Limits of Authority. The parties to this Agreement acknowledge that the SID and the Association have negotiated and entered into this Agreement to facilitate the orderly transition of the Area if the City annexes the Area. The Association has no authority to bind any individual property owner or entity to the terms of this Agreement, and no individual or entity shall be deemed to be bound nor to have waived any right to object in any manner to annexation of the Area, to any provision hereof, or to any other matter associated with this Agreement. The Association has no ability to raise funds from its members for the purposes described in this Agreement, and it assumes no obligation, financial or otherwise, for itself or any of its members, with respect to any financial obligation hereunder.

(d) Survival. This provisions of this Agreement shall survive the annexation of the Area by the City.

(e) Further Assurances. The parties agree to use their best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. The parties shall cooperate in good faith with the others 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 to carry out the intents and purposes of this Agreement. The Association agrees to promote this Agreement to the Owners.

(f) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

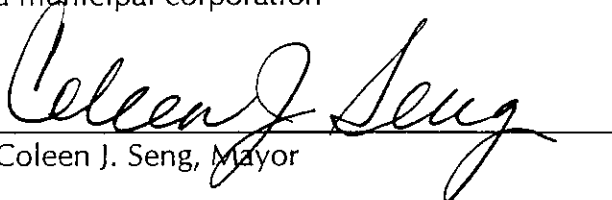
(g) Binding Effect. Each party represents that the execution and delivery of this Agreement has been duly authorized by all required governmental or private acts and boards, and shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

(h) Interpretations. Each party to this Agreement has had legal representation. Any uncertainty or ambiguity existing herein shall not be interpreted against any other party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of construction of contracts generally.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date and year first above written.

**CITY OF LINCOLN, NEBRASKA**  
a municipal corporation

By:

  
Coleen J. Seng, Mayor

SANITARY AND IMPROVEMENT DISTRICT  
NO. 2 OF LANCASTER COUNTY, NEBRASKA

By: Gary Costes  
Chairman

PINE LAKE ASSOCIATION  
a Nebraska nonprofit corporation

By: Beau B. Alby  
President

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

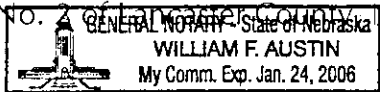
The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of July, 2003, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.



Joan E. Ross  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of September, 2003, by Gary Costes, Chairman, Sanitary and Improvement District No. 2 of Lancaster County, Nebraska.



William F. Austin  
Notary Public

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of July, 2003, by BEVAN B. ALVEY, President, Pine Lake Association, a Nebraska nonprofit corporation.



Rhonda L. Paulsen  
Notary Public

The legal description of the property contained in the “Agreement Regarding The Annexation of Pine Lake” is described as follows:

Pine Lake Addition, Pine Lake 2<sup>nd</sup> Addition, Pine Lake 3<sup>rd</sup> Addition,  
Pine Lake 4<sup>th</sup> Addition, Pine Lake 5<sup>th</sup> Addition, Pine Lake 6<sup>th</sup> Addition,  
Pine Lake 8<sup>th</sup> Addition, Pine Lake 9<sup>th</sup> Addition, Lot 6 I.T. and Lot 16 I.T.  
located in Section 15, Township 9 North, Range 7 East of the 6<sup>th</sup> P.M.,  
Lancaster County, Nebraska.