

RESOLUTION NO. A- 83059

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

2 That the agreement titled Vintage Heights 4th Addition Conditional Annexation and  
3 Zoning Agreement, which is attached hereto, marked as Attachment "A" and made a part hereof  
4 by reference, between the City of Lincoln and Pine Lake Development, L.L.C., outlining certain  
5 conditions and understandings relating to the annexation of approximately 10.23 acres of property  
6 generally located at South 98th Street and Old Cheney 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 *11/2* BE IT FURTHER RESOLVED that the City Clerk is directed to return two fully executed  
10 copies 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 City.

See further Council Proceedings  
on next page.

Introduced by

*[Handwritten signature]*

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

Approved as to Form and Legality:

*[Handwritten signature]*  
City Attorney

Approved this <sup>4th</sup> *29* day of *Oct.*, 2004:  
*[Handwritten signature]*  
Mayor

**ADOPTED**

OCT 25 2004

BY CITY COUNCIL

See further Council Proceedings  
on next page.

**04R-274 act**

10/11/04 Council Proceedings:

COOK Moved to delay action on Bill No. 04R-274 for one week to 10/18/04.  
Seconded by Camp & carried by the following vote: AYES: Camp, Cook, Friendt,  
McRoy, Newman, Svoboda, Werner; NAYS: None.

10/18/04 Council Proceedings:

CAMP Delayed action on Bill No. 04R-274 for 1 week to 10/25/04.  
Seconded by Svoboda & carried by the following vote: AYES: Camp, Cook,  
Friendt, McRoy, Newman, Svoboda, Werner; NAYS: None.

10/25/04 Council Proceedings:

SVOBODA Moved to amend Bill No. 04R-274 by substituting the attached "Substitute  
Vintage Heights 4<sup>th</sup> Addition Conditional Annexation Agreement" for the Vintage Heights  
4<sup>th</sup> Conditional Annexation Agreement marked as Attachment A to Bill N. 04R-274.  
Seconded by McRoy & carried by the following vote: AYES: Camp, Cook,  
Friendt, McRoy, Svoboda, Werner; NAYS: None; ABSENT: Newman.

04R-274

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 04R-274<sup>by</sup> substituting the attached "Substitute Vintage Heights 4th Addition Conditional Annexation Agreement" for the Vintage Heights 4th Conditional Annexation Agreement marked as Attachment A to Bill No. 04R-274.

Introduced by:

VRSCW

Approved as to Form & Legality:

Asst Rick Peo  
City Attorney

Requested by: Rick Peo

Reason for Request: To approve the Substitute Vintage Heights 4th Addition Conditional Annexation Agreement wherein the Owner agrees not to object to the payment of impact fees and further agrees to pay an in-lieu-of impact fee in the event the Impact Fee Ordinance is declared invalid.

**ADOPTED**  
**OCT 25 2004**  
**BY CITY COUNCIL**

**SUBSTITUTE**  
**VINTAGE HEIGHTS 4TH ADDITION**  
**CONDITIONAL ANNEXATION AGREEMENT**

This Vintage Heights 4th Addition Conditional Annexation Agreement ("Agreement") is made and entered into this 29<sup>th</sup> day of October, 2004, by and between **Pine Lake Development, L.L.C.**, a Nebraska limited liability company, 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 10.23 acres more or less of land generally located at South 98th Street and Old Cheney Road. The approximately 10.23 acres is hereinafter referred to as the "Property" and is legally described as:

A portion of Lot 67, located in the Northeast Quarter of Section 14, Township 9 North, Range 7 East of the 6th P.M., Lincoln, Lancaster County, Nebraska, and being more particularly described as follows:

Referring to the northeast corner of said Section 14; thence on the east line of said Section 14; thence on the east line of said Section 14, south 00 degrees 11 minutes 08 seconds west (an assumed bearing), 49.92 feet; thence north 89 degrees 48 minutes 52 seconds west, 50.00 feet to the point of beginning also being on the west right-of-way line of South 98th Street; thence on the west right-of-way line of said South 98th Street for the next three calls, south 00 degrees 11 minutes 08 seconds west, 100.00 feet; thence south 89 degrees 48 minutes 52 seconds east, 16.50 feet; thence south 00 degrees 11 minutes 08 seconds west, 300.60 feet; thence north 89 degrees 48 minutes 52 seconds west, 1,113.67 feet; thence north 00 degrees 11 minutes 08 seconds east, 402.46 feet to the south right-of-way line of Old Cheney Road; thence on the south right-of-way line of said Old Cheney Road, south 89 degrees 43 minutes 02 seconds east, 1,097.17 feet to the point of beginning, containing 445,505.62 square feet (10.23 acres) more or less;

B. Owner has requested the City to approve Special Permit No. 1762B to expand the boundaries of the Vintage Heights Community Unit Plan and to revise dwelling units.

C. Owner has requested the City to approved Change of Zone No. 04021 to rezone the Property from AGR Agricultural Residential District to R-3 Residential District.

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 went into effect on June 2, 2003. This Impact Fee Ordinance enables 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 only willing to annex the Property, approve the change of zone, and grant the special permit prior to a determination as to the validity and enforceability of the Impact Fee Ordinance provided Owner agrees to pay all impact fees imposed by the Impact Fee Ordinance, except as provided in paragraph 3 below, necessitated by and attributable to the proposed development of the Property, or pay an equivalent in-lieu-of fee, in the event the Impact Fee Ordinance is held invalid or is otherwise unenforceable.

G. In order to provide water service to the Property it will be necessary to obtain approval from Rural Water District No. 1, Lancaster County, Nebraska, hereinafter "District No. 1" in order for the City to furnish water to that portion of the Property located within the boundaries of District No. 1. The City is willing to annex the Property, rezone the Property, and approve the Special Permit as requested by Owner provided Owner agrees to pay all of the cost needed to obtain approval from District No. 1 for the City to furnish water for that portion of the Property located within the boundaries of District No. 1.

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. **Change of Zone/Special Permit.** The City agrees to approve Change of Zone 04021 and Special Permit No. 1762B.

**3. Partial Category Exemption from Water and Wastewater Impact Fees.**

Owner understands that the proposed development of the Property shall be subject to the payment of impact fees or an in-lieu-of fee, except that any final platted lots that are partially in the area of the previous Vintage Heights annexation are exempt from water and wastewater impact fees or water and wastewater in-lieu-of fees. For example, if Lots 2 and 20, Block 29 on the Community Unit Plan are final platted as shown those lots would be exempt from water and wastewater impact fees or water and wastewater in-lieu-of fees as a portion of those lots were previously annexed and granted a category exemption from those impact fees.

**4. Future Cost Responsibilities.** As an inducement for the City to approve the annexation of the Property, to approve Change of Zone No. 04021 rezoning the Property from AGR Agricultural Residential District to R-3 Residential District, and to approve Special Permit No. 1762B to expand the boundaries of the Vintage Heights Community Unit Plan and revise the dwelling units, Owner voluntarily agrees not to object to or protest the City's imposition of impact fees pursuant to the Impact Fee Ordinance and Impact Fee Schedules adopted by the City Council and Owner further agrees to pay all impact fees imposed as they become due and payable. Owner further agrees that in the event the Impact Fee Ordinance is for any reason declared to be void, illegal, or otherwise unenforceable, then the Owner agrees in-lieu-of impact fees to pay to the City in full, prior to the issuance of a building permit for development, or prior to the issuance of any other permit for development where a building permit is not required, or prior to engaging in a development for which no permit is required, an amount equal to the amount of the impact fees which would have been imposed under the Impact Fee Schedules in effect on the date the Impact Fee Ordinance is held to be void, illegal, or otherwise unenforceable.

In the event impact fees for any such development are paid to the City and subsequently the Impact Fee Ordinance and impact fees thereunder are declared to be void, illegal, or otherwise unenforceable and ordered refunded, Owner agrees the City may keep and treat the impact fees so paid as the payment of in-lieu-of impact fees for said development instead of refunding said fees.

5. **Public Water.** Owner understands and acknowledges that the City may not furnish water to serve that portion of the Property lying within the boundaries of District No. 1 without consent and approval of District No. 1. Owner desires to be connected to the City's public water system and therefore agrees to pay, prior to annexation, all the cost needed to obtain District No. 1's approval for the City to furnish water to the Property lying within the boundaries of District No. 1.

6. **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.

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

8. **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.

9. **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.

10. **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.

11. **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.

12. **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

individualized determination and have found 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 of the Property under the annexation, Change of Zone No. 04021, and Vintage Heights Community Unit Plan (Special Permit No. 1762B) would have on the City's Impact Fee Facilities.

17. **Recordation.** This Agreement or a memorandum thereof 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:

*[Signature]*  
City Clerk



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

By:

*[Signature]*  
Coleen J. Seng, Mayor

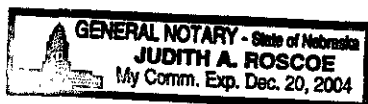
**PINE LAKE DEVELOPMENT, L.L.C.,**  
a Nebraska limited liability company,

By:

*[Signature]*  
Robert Hampton, Managing Member

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me this 29th day of October, 2004, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.



*[Signature]*  
Notary Public



partnership or of joint venture or of any association between the parties other than the contractual relationship stated in this Agreement.

**13. 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.

**14. Default.** Owner and City agree that the annexation, change of zone, and special permit 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 rescind said special permit or take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach.

**15. Definitions.** For purposes of this Agreement, the words and phrases "cost" or "entire cost" of a type of improvement shall be deemed to include all design and engineering fees, testing expenses, construction costs, publication costs, financing costs, and related miscellaneous costs. For the purposes of this Agreement the words and phrases "building permit", "development", "Impact Fee Facility", "Impact Fee Facility Improvement", and "site-related improvements" shall have the same meaning as provided for said words and phrases in the Impact Fee Ordinance.

**16. Fair Share.** Owner agrees that the City has a legitimate interest in the public health, safety and welfare and in providing for the safe and efficient movement of vehicles on the public arterial streets and the provision of adequate water and wastewater service and adequate neighborhood parks and trails as provided for in the Impact Fee Ordinance which is promoted by requiring Owner to pay its fair share of the cost to construct such Impact Fee Facilities and to pay the cost to obtain approval from District No. 1 to allow the City to furnish water to the Property lying within the boundaries of District No. 1 and that an essential nexus exists between the City's legitimate interests and the conditions placed upon Owner under this Agreement. In addition, City and Owner have each made an

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 21st day of October, 2004, by Robert Hampton, Managing Member of Pine Lake Development, L.L.C., on behalf of said limited liability company.



Christine K. Middleton  
Notary Public

# CITY OF LINCOLN

Request for:  Ordinance  
 Resolution

(Do Not Write in this Space) ✓

Bill Control No. 04R-274 Date: 9/24

Docketing Date 10/4 PH: 10/11

(To Be Entered by City Clerk)

DATE September 24, 2004	REQUEST MADE BY Rick Peo	DEPARTMENT Law
DESIRED DOCKET DATE: October 4, 2004	IF EMERGENCY, GIVE REASON (See Art. 6, Sec. 2 of Charter)	
Emergency Measure Required: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

## REASONS OR JUSTIFICATION FOR PROPOSED LEGISLATION

To approve Vintage Heights 4th Addition Annexation and Zoning Agreement between the City and Pine Lake Development, L.L.C., relating to the annexation of approximately 10.23 acres, generally located at South 98<sup>th</sup> Street and Old Cheney Road.

FILED  
CITY CLERK'S OFFICE  
2004 SEP 24 A 10:43  
CITY OF LINCOLN  
NEBRASKA

REQUESTOR <input type="checkbox"/> DOES <input type="checkbox"/> DOES NOT	WISH TO REVIEW AND APPROVE THIS ORDINANCE PRIOR TO ITS INTRODUCTION	 DIRECTOR'S SIGNATURE	9-24-04 DATE
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### TO BE USED BY THE FINANCE DEPARTMENT

BUDGET REVIEW	DATE:	ACCOUNT NUMBER AND APPROPRIATE BALANCES	DATE:	FUND AVAILABILITY APPROVED	DATE:
			DIRECTOR OF FINANCE SIGNATURE		

### DISTRIBUTION

Return two (2) copies to City Clerk for Docket Number