



A85102

08R-260

Introduce: 10-13-08

RESOLUTION NO. A- 85102

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

2 That the agreement titled Pine Woods Conditional Annexation and Zoning Agreement,

3 which is attached hereto, marked as Attachment "A" and made a part hereof by reference, between

4 Realty Trust Group, Inc. and the City of Lincoln, Nebraska, outlining certain conditions and

5 understandings relating to the annexation of approximately 4.87 acres of property generally located

6 on the west side of South 70th Street and south of Pine Lake 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 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

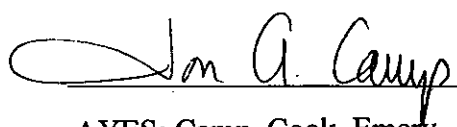
12 Agreement or a summary memorandum thereof with the Register of Deeds, filing fees to be paid

13 by Realty Trust Group, Inc.

14 BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this

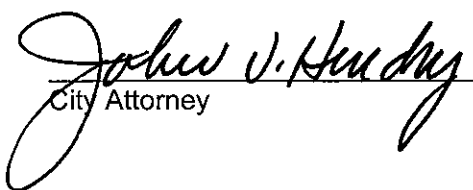
15 Agreement to Michaela Hansen, Impact Fee Administrator.

Introduced by:


  
\_\_\_\_\_

AYES: Camp, Cook, Emery,  
Marvin, Spatz, Svoboda; NAYS:  
None; ABSENT: Eschliman.

Approved as to Form and Legality:

  
City Attorney

**ADOPTED**  
OCT 27 2008  
BY CITY COUNCIL

Approved this 31 day of Oct, 2008:  
  
\_\_\_\_\_  
Mayor

# CITY OF LINCOLN

Request for:  Ordinance  
 Resolution

(Do Not Write in this Space)

Bill Control No. 08R-260 Date: 10/3

Docketing Date 10/13 PH: 10/20

(To Be Entered by City Clerk)

<b>DATE</b> October 2, 2008	<b>REQUEST MADE BY</b> Rick Peo	<b>DEPARTMENT</b> Law
<b>DESIRED DOCKET DATE:</b> Oct. 13, 2008	IF EMERGENCY, GIVE REASON (See Art. 6, Sec. 2 of Charter)	
<b>Emergency Measure Required:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

REASONS OR JUSTIFICATION FOR PROPOSED LEGISLATION

Approving the Pine Woods Conditional Annexation and Zoning Agreement between the City and Realty Trust Group, Inc., relating to the annexation of approximately 4.87 acres of property generally located on the west side of South 70th Street and south of Pine Lake Road.

**FILED**  
 CITY CLERK'S OFFICE  
 2008 OCT 3 AM 9 19  
 CITY OF LINCOLN  
 NEBRASKA

<b>REQUESTOR</b> <input type="checkbox"/> DOES <input type="checkbox"/> DOES NOT	WISH TO REVIEW AND APPROVE THIS ORDINANCE PRIOR TO ITS INTRODUCTION	 DIRECTOR'S SIGNATURE	<u>10-2-08</u> DATE
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**TO BE USED BY THE FINANCE DEPARTMENT**

<b>BUDGET REVIEW</b>	<b>DATE:</b>	<b>ACCOUNT NUMBER AND APPROPRIATE BALANCES</b>	<b>DATE:</b>	<b>FUND AVAILABILITY APPROVED</b>	<b>DATE:</b>
				_____ DIRECTOR OF FINANCE SIGNATURE	

**DISTRIBUTION**

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

**PINE WOODS  
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Pine Woods Conditional Annexation and Zoning Agreement ("Agreement") is made and entered into this day of \_\_\_\_\_, 2008, by and between **REALTY TRUST GROUP, INC.**, a corporation, 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 4.87 acres more or less of land generally located on the west side of South 70th Street and south of Pine Lake Road. The approximately 4.87 acres is hereinafter referred to as the "Property" and is legally described as Lot 66, Irregular Tract, located in the NE 1/4 of Section 21, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska.

B. Owner has requested approval of the City for a Change of Zone No. 08041 from AGR Agricultural Residential District to R-3 Residential District over the Property and also Lot 64, Irregular Tract, located in the NE 1/4 of Section 21, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska ("Lot 64"), designated as an Overlay Planned Unit Development District with a Development Plan that proposes modifications to the Zoning Ordinance and Land Subdivision Ordinance to allow approximately 11 dwelling units and approximately 53,000 square feet of medical office/retail floor area in the underlying R-3 zoned area ("Pine Woods PUD").

C. The City is willing to annex the Property and approve Change of Zone No. 08041 provided that Owner agrees to construct temporary turn lanes in South 70th Street and Pine lake Road, and to eliminate the temporary drive to South 70th Street when Revere Lane is extended west

of 70th Street, in order to address the impacts attributable to this development, subject to reimbursement as provided for in this Agreement.

D. The Property is located within the Southeast Rural Fire Protection District. *Neb. Rev. Stat.* § 35-514, dealing with the City's annexation of territory from rural fire protection districts, provides in part that: "(7) Areas duly incorporated within the boundaries of a municipality shall be automatically annexed from the boundaries of the district notwithstanding the provisions of §31-766 and shall not be subject to further tax levy or other charges by the district, except that before the annexation is complete, the municipality shall assume and pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the area annexed or incorporated." The City is willing to annex the Property as requested by , provided Owner agrees to reimburse City for that portion of all outstanding obligations of the district the City is required to assume and pay.

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.** The City agrees to approve Change of Zone No. 08041 as set forth above.
3. **South 70th Street.**

A. Elimination of driveway. Owner agrees that the access driveway onto South 70th Street for the Pine Woods PUD is temporary and the driveway approach shall be removed and new curb constructed at Owner's own cost and expense at such time as Revere Lane is extended west of South 70th Street and South 69th Street is extended to the south of the Pine Woods PUD.

B. Temporary turn lanes. Owner shall design and construct at Owner's own cost and expense temporary turn lanes in Pine Lake Road and South 70th Street at a length and width determined by the Department of Public Works and Utilities. If the City decides to construct permanent paving in Pine Lake Road prior to the final platting and construction of 69th Street, the City may include in said paving project the construction of a right turn lane in Pine Lake Road for eastbound to southbound traffic if Owner agrees, prior to the start of construction, to pay the City the contract cost of construction of the turn lane and the 69th Street intersection. If the City decides to construct permanent paving in 70th Street prior to the construction of the temporary driveway connection to 70th Street by Owner, and Revere Lane is not platted and paved to 69th Street, the City may include in said paving project the construction of the temporary driveway and right turn lane in 70th Street for southbound to westbound traffic if Owner agrees, prior to the start of construction, to pay City's contracted cost of the temporary turn lane and driveway and Owner agrees to remove the turn lane and driveway when Revere Lane access is available to this annexed property. Owner agrees to convey or dedicate at no cost to the City ten (10) feet of additional right-of-way for South 70th Street along the south 100 feet of Lot 66 needed for the future right turn lane at Revere Lane.

4. **Contribution for Rural Fire District.** Owner understands and acknowledges that the City may not annex the Property lying within the boundaries of the Southeast Rural Fire District except by the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of the Property being annexed. Owner desires to be annexed by the City and therefore agrees to pay the amount which must be paid to the Southeast Rural Fire Protection District in order for the annexation to be complete. The parties anticipate that since the District has no bonded indebtedness, no payment will be required.

5. **Binding Effect.** This Agreement shall run with the Property and Lot 64 and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns.

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

7. **Further Assurances.** Each party will use 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.

8. **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.

9. **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.

10. **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.

11. **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.

**12. 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.

**13. Default.** Owner and City agree that the annexation and change 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 their covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rezone the Rezoned Property to its previous designation 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.

**14. 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.

**15. 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.

