



A93034

20R-69

Introduce: 2-24-20

RESOLUTION NO. A- 93034

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

2 That the Conditional Annexation Agreement which is attached hereto, marked as  
3 Attachment "A", and made a part hereof by reference, between the City of Lincoln and Hoy Prairie  
4 South, LLC, for the annexation and development of property generally located south of South 33<sup>rd</sup>  
5 Street and Rokeby Road and re-zoning the property from AG Agricultural District to R-3  
6 Residential District, as set forth in the Agreement, is hereby approved and the Mayor is authorized  
7 to execute the Conditional Annexation Agreement on behalf of the City.

8 BE IT RESOLVED that the City Clerk is directed to return one fully-executed copy of this  
9 Agreement to Tim Sieh, Assistant City Attorney, for distribution to the Property Owner.

10 BE IT FURTHER RESOLVED that the City Clerk is directed to file the Conditional  
11 Annexation Agreement for Reunion Ridge Addition with the Lancaster County Register of Deeds  
12 with the recording fees to be paid in advance by the Property Owner.

13 BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this  
14 Agreement to Michaela Dugan, Impact Fee Administrator.

See further Council  
Proceedings on next page.

Introduced by;

Approved as to Form & Legality:

AYES: Beckius, Bowers, Meginnis, Raybould, Shobe,  
Ward, Washington; NAYS: None.

City Attorney

Approved this 4<sup>th</sup> day of Nov, 2020.  
  
Mayor

**ADOPTED**

NOV 01 2021

**BY CITY COUNCIL**

**20R-69**

3/2/2020 Council Proceedings:

CHRISTENSEN Moved to place Bill No. 20R-69 on Pending, No Date Certain.

Seconded by Washington & carried by the following vote: AYES: Bowers, Christensen, Raybould, Shobe, Ward, Washington; NAYS: None; ABSENT: Meginnis.

10/18/21 Council Proceedings:

RAYBOULD Verbal motion to remove bill no. 20R-69 from pending list for action on 11/1/21.

Seconded by Shobe & carried by the following votes: AYES: Beckius, Bowers, Meginnis, Raybould, Shobe, Ward, Washington; NAYS: None.

**ANNEXATION AGREEMENT  
FOR  
REUNION RIDGE ADDITION**

This Annexation Agreement for ADDITION (“Agreement”) is made and entered into as of the date of execution by the last signatory hereto as indicated below by and between the **City of Lincoln, Nebraska**, a municipal corporation (“City”), and **HOY PRAIRIE SOUTH, LLC**, a Nebraska limited liability company (“Property Owner”).

**RECITALS**

1. The Property Owner is the owner and developer of the real estate legally described on Exhibit “A” (the “Property”). The property consists of The City and Property Owner desire to cause the urban development of the Property.

2. The Property is shown as Tier 1, Priority B (2025) on the 2040 Priority Growth Areas (Map 1.3 Growth Tiers with Priority Areas) in the Lincoln City-Lancaster County Comprehensive Plan.

3. The City and Property Owner desire that the Property be annexed pursuant to this Agreement.

4. Property Owner has requested that the City annex and rezone from AG Agricultural District to R-3 Residential District that portion of the Property legally described and shown on Exhibit “A”.

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants established herein, the parties do hereby agree as follows:

**I.**

**CONCURRENT APPROVAL OF FIRST PHASE GOVERNMENTAL ACTION;  
CONDITIONAL APPROVAL**

**A. Concurrent Approval.** The City, concurrently with the approval of this Agreement, is approving the following Governmental Actions:

1. Annexing the Property as legally described and shown on Exhibit A; and
2. Amending the City of Lincoln zoning district maps to rezone the Property from AG Agricultural District to R-3 Residential District as shown and legally described on Exhibit A.
3. Approval of a Community Unit Plan allowing for sixteen (16) single family dwelling units on the Property.

**B. Conditional Approval.** Approvals of the Governmental Actions are conditioned upon the terms, conditions and understandings as set forth in this Agreement being fulfilled. The parties understand and agree that, notwithstanding the conditional nature of such zoning approvals hereto, the City Council, on its own motion or at the request of any party hereto, may, in the exercise of its lawful legislative authority: (i) amend the Comprehensive Plan; (ii) extend the municipal corporate boundaries to include any contiguous or adjacent lands; (iii) rezone or revise the zoning designations applicable to the Property; or (iv) approve or amend plats, dedications, use permits, special permits, developments, community unit plans, building permits or other land use controls, as future circumstances may warrant.

## II.

### CONTRIBUTION TO RURAL FIRE PROTECTION DISTRICT

Property Owner understands and acknowledges that the City's annexation of the Property or any portion thereof lying within the boundaries of the Southeast Rural Fire Protection District ("District") shall not be complete except upon the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of Property

or portion thereof being annexed. The Property Owner agrees to pay the City whatever amount which must be paid by the City to the District in order for the portion of the Property being annexed to be complete.

### III.

#### NOTICE

A. **Notice.** Any notices required to be forwarded to a party hereto shall be deemed appropriately given or delivered if sent by registered or certified United States Mail, postage prepaid, return receipt requested, addressed or delivered personally as follows:

- (1) If to the City:  
Mayor  
555 South 10th Street  
Lincoln, Nebraska 68508

with a copy to:

City Attorney  
575 South 10<sup>th</sup> Street  
Lincoln, NE 68508

- (2) If to the Property Owner:  
Hoy Property South, LLC  
3501 Rokeby Road  
Roca, Nebraska 68430

Any party hereto may change its address for notification purposes by written notice to all parties hereto in the manner and method set forth within this paragraph.

### IX.

#### MISCELLANEOUS

A. **Exhibits.** All of the Exhibits attached to this Agreement are incorporated herein by this reference.

B. **Amendments.** This Agreement may only be amended or modified in writing signed

by the parties to this Agreement.

C. **Further Assurances.** Property Owner and the City will use their 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 parties 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.

D. **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.

E. **Interpretations.** Any uncertainty or ambiguity existing herein shall not be interpreted against any 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.

F. **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.

G. **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, Property 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.

H. **Assignment.** In the case of the assignment of this Agreement by the Property Owner, prompt written notice shall be given to the City 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 City or unless otherwise stated herein.

I. **Default.** Time is agreed to be of the essence. In the event the Property Owner defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the City may take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach. In the event the City defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the Property Owner may take such remedies, legal or equitable, to enforce this Agreement or to obtain damages for its breach. No delay or omission of any party in exercising any remedies or power accruing upon any event of default shall impair any remedies or power or shall be construed to be a waiver of any event of default or any acquiescence therein.

J. **Copy of Notice of Default to Mortgagee.** Whenever a party shall deliver any notice or demand to a defaulting party with respect to any breach or default by defaulting party of its obligations or covenants in this Agreement, the party delivering such notice or demand shall at the same time forward a copy of such notice or demand to each holder of any mortgage, deed of trust or similar method of encumbrance (collectively "Mortgage") at the last address of such Mortgage holder as shown in the records of the Register of Deeds of Lancaster County as provided in such Mortgage of the defaulting party.

K. **Mortgage Holder's Option to Cure Defaults.** If fourteen (14) days after any notice or demand with respect to any breach or default as referred to in Article IX, Paragraph J such breach or default remains uncured, each such Mortgage holder shall have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage debt and the lien of its Mortgage.

L. **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.

M. **Recordation.** This Agreement or a memorandum thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at the City's cost and expense.

N. **Cooperation.** Each undersigned party will whenever it shall be necessary to do so by any other party, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, documents as may be necessary or proper to effectuate the covenants and agreements herein provided.

O. **Authority.** The City and Property Owner each represent and warrant that said party has the authority to enter into this Agreement and perform the party's obligations hereunder and has taken all steps to legally exercise that authority.

P. **Release of Buildable Lot.** Notwithstanding any contrary provisions herein, any Buildable Lot shall automatically be deemed released from all of the terms of this Agreement without further written release. For the purposes of this Agreement, "Buildable Lot" shall mean a buildable lot of record (excluding outlots) as defined by the City subdivision ordinance being (a) less than ten acres in size, (b) within a lawful final plat of the Property or a portion of the Property and (c) conveyed in fee title (or leased in writing for a term of three years or more) to an Unrelated Third Party. Notwithstanding any contrary provision herein, any Buildable Lot Owner shall automatically be deemed released from this Agreement without further written release. For the purposes of this Agreement, "Buildable Lot Owner" shall mean the grantee under a deed conveying fee title (or a lessee under a written lease having a term of three years or more) to a Buildable Lot who is an Unrelated Third Party. Any such conveyance (or lease) of a Buildable Lot shall not



terminate the liability of the grantor (lessor) Property Owner and its successors and assigns to perform its obligations under this Agreement, unless a specific release in writing is given and signed by the parties to this Agreement. An "Unrelated Third Party" means a person, corporation, partnership, trust or other entity who is not the Property Owner or its successor or assign and is not an Affiliate under this Agreement. "Affiliate" means: (i) any officer, director, employee or blood related family member of a Party; and (ii) any corporation, partnership, trust or other entity controlling, controlled by or under common control with a Party or any person described in (i) above; and (iii) any officer, director, trustee, general partner or employee of any person described in (ii) above. For purposes of this definition, the term "control" shall also mean the control or ownership of ten percent (10%) or more of the beneficial ownership or fifty percent (50%) of the memberships in the entity referred to.

**Q. Condemnation.** The City, at its expense, including, but not limited to, acquisition costs, condemnation awards, court costs, expert witness fees, testing fees, interest, and City staff time, acquire the remaining balance of any and all right of way and temporary and permanent easements necessary for the design, grading, construction and operation of the impact fee facilities described in this Agreement. The City is authorized to utilize condemnation, if necessary, to acquire such right of way and temporary and permanent easements described in this Paragraph.

**R. Authority.** All necessary actions to duly approve the execution, delivery, and performance of this Agreement has been undertaken by each party and this Agreement constitutes a valid and binding agreement of the parties, enforceable in accordance with its terms.

**S. Contingency.** This Agreement is contingent upon the City and Property Owner executing and delivering the Annexation Agreement and the City approving the Annexation Agreement and the First Phase Governmental Action.

T. Amendments. This Agreement may only be amended or modified in writing signed by the City and the Property Owner.

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

Dated as of Nov, 4<sup>th</sup>, 2019<sup>21<sup>st</sup></sup> by the City.

“CITY”

CITY OF LINCOLN, NEBRASKA,  
a municipal corporation

By: Leirion Gaylor Baird  
Leirion Gaylor Baird, Mayor

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of November, 2019<sup>21<sup>st</sup></sup>, by Leirion Gaylor Baird, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the municipal corporation.



Soulinnee Phan  
Notary Public

**HOY PRAIRIE SOUTH, LLC**  
a Nebraska limited liability company

By: 

Debra Hoy, Member  
3501 Rokeby Road  
Roca, NE 68430

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this 27 day of January, ~~2019~~ 2020, by Debra Hoy, Member, on behalf of Hoy Prairie South, LLC a Nebraska limited liability company.

  
Notary Public



## EXHIBIT A

### LEGAL DESCRIPTION:

A part of Lot 36 of Irregular Tracts located in the Northeast Quarter of Section 31, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, more particularly described as follows:

Commencing at the North Quarter Corner of said Section 31; Thence on an assumed bearing of  $S00^{\circ}01'22''W$  on the west line of the Northeast Quarter of said Section 31, a distance of 318.43 feet to the northwest corner of said Lot 36, also the POINT OF BEGINNING;

Thence on the north line of said Lot 36,  $N89^{\circ}59'29''E$ , a distance of 658.24 feet to the common corner of said Lot 36 and Lot 35 of Irregular Tracts in the Northeast Quarter of said Section 31;

Thence on the common line of said Lot 35 and 36,  $S00^{\circ}28'02''W$ , a distance of 737.49 feet;

Thence  $N89^{\circ}31'58''W$ , a distance of 156.82 feet;

Thence  $N57^{\circ}11'16''W$ , a distance of 500.93 feet;

Thence  $N39^{\circ}58'53''W$ , a distance of 74.60 feet to a point on the west line of the Northeast Quarter of said Section 31, also a point on the west line of said Lot 36;

Thence on the west line of the Northeast Quarter of said Section 31, also the west line of said Lot 36,  $N00^{\circ}01'22''E$ , a distance of 464.6 feet to the POINT OF BEGINNING, containing a calculated area of 405,147.66 square feet or 9.30 acres.