

THOMPSON CREEK

CONDITIONAL ANNEXATION AND ZONING AGREEMENT

This Thompson Creek Conditional Annexation and Zoning Agreement ("Agreement") is made and entered into this _____ day of _____, 2002, by and between Thompson Creek 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."

R E C I T A L S

A. Owner has requested the City to annex approximately 78.153 acres more or less of land generally located at South 56th Street and Union Hill Road. The approximately 78.153 acres is hereinafter referred to as the "Property" and is legally described and shown in Attachment A which is attached hereto and incorporated herein by this reference.

B. Owner has requested the City to rezone those portions of the Property as legally described in Attachments "B" and "C", which are attached hereto and incorporated herein by this reference, from AG Agriculture District to O-3 Office Park and R-3 Residential District, respectively.

C. Owner has requested the City to approve Owner's application to preliminarily plat the Property as Thompson Creek.

D. Owner has requested the City to approve Use Permit No. 141 for the O-3 designated property and Special Permit No. 1930 (community unit plan) for the R-3 designated property.

E. Owner is the legal owner of the Property.

F. The City is considering adopting an Impact Fee Ordinance based upon an Impact Fee Study prepared by Duncan Associates dated June, 2002, that would 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.

G. The City is willing to annex the Property, rezone the Property from AG Agricultural District to O-3 Office Park District and R-3 Residential District, and conditionally approve the preliminary plat, use permit, and special permit for the Property as requested by Owner, prior to the adoption of the Impact Fee Ordinance, provided Owner agrees to make certain improvements to the public street system, water system, and sanitary sewer system which are necessary in order to serve the Property and further agrees to pay any future impact fee imposed by the City 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. **Rezoning.** The City agrees to rezone the Property from AG Agricultural District to O-3 Office Park District and R-3 Residential District as legally described in Attachments "B" and "C".
3. **Preliminary Plat, Use Permit and Special Permit.** The City agrees to conditionally approve the Thompson Creek Preliminary Plat, Use Permit No. 141 and Special Permit No. 1930.
4. **Street Improvements.** The City and Owner covenant and agree that the Owner shall be responsible for the following street contribution and street improvements:
 - A. **South 56th Street Contribution.** Owner shall contribute to the City one-half of the equivalent cost to design, grade, and pave South 56th Street with curb and gutters along the approximately 1320 feet of frontage of the Thompson Creek Preliminary Plat as a "suburban cross section" (i.e. two through lanes each 17 feet in width and a median 28 feet in width). Said cost specifically excludes the cost of right-of-way, sidewalks or trails, and landscape screen or trees. The estimated cost of said 50% of the 1320 feet of suburban cross section is \$198,000. Said contribution shall be paid to the City within thirty days following

receipt of notice from the City that the City has entered into a contract to construct South 56th Street abutting the Thompson Creek Preliminary Plat as a suburban cross section.

In addition, if streets are final platted in Thompson Creek that intersect South 56th Street prior to the above-referenced construction of South 56th Street as a suburban cross section roadway, the Owner shall be responsible, at Owner's own cost and expense to pay the City's fixed fee for Engineering Services, to construct temporary widening of the existing South 56th Street rural cross section to provide left turn lanes at those intersections at a length and width determined by the City.

B. Conveyance of Right-of-way. Owner agrees to convey at no cost to the City additional right-of-way needed to equal 60 feet in width as measured from the centerline along the east half of South 56th Street abutting the Property.

5. Public Sanitary Sewer.

A. Construction. Owner understands and acknowledges that the Property is not presently sewerable by the City's public sanitary sewer system. Owner further understands and acknowledges that construction of sanitary sewer mains outside the boundaries of this preliminary plat through the Campbell property to the Beals Slough trunk sewer at Pine Lake Road is needed in order to make the Property sewerable. Owner further understands that the City does not intend to extend its public sanitary sewer system to serve the Property within the next one to six years. Owner desires to be immediately connected to the public sanitary sewer and therefore agrees to construct by executive order construction the above-described sanitary sewer mains including those mains larger than eight inches. The total cost of the design and construction, including payment of the City's fixed fee for Engineering Services, of the sewer mains shall be contracted for and paid by Owner.

B. Conveyance of Easement. Owner agrees to convey at no cost to the City the necessary permanent easements and temporary construction easements, including those through the Campbell property, for the extension of the sanitary sewer mains.

C. Sewering Other Properties. The City acknowledges that the Owner's oversizing of the sewer main described in subparagraph A above in excess of eight inches will sewer other property (hereinafter "Other Property") not subject to this Agreement. Therefore, if permitted by law, the City agrees to use its best efforts to charge the owners of the Other Property their fair share of the cost of oversizing said sewer main before said Other Property will be allowed to connect to said sewer system (hereinafter "connection fee"). At such time as an owner of the Other Property who has not contributed to the construction of the oversized sewer main seeks to be connected to the sewer, such owner shall be required to pay the connection fee and the City shall pay to Owner the amount of any connection fee so collected up to the amount of the difference between the cost of installation of an eight-inch sanitary sewer and the cost of the oversized sewer main. The City shall not be liable to Owner in the event of any failure on its part by negligence or otherwise to collect all or any part of the connection fee established hereunder. Notwithstanding the above, Owner understands and agrees that the City cannot contract away its police powers and legislative discretion and thus the duty of the City to use its best efforts to charge the owners of the Other Property their fair share of the cost of said oversized sewer main does not require the City Council for the City to adopt nor restrict the Council from adopting ordinances affecting the City's ability to charge property owners for the right to connect to the City's sewer system.

6. Public Water Main. Owner agrees to construct by executive order construction a 24-inch water main in South 56th Street from Union Hill Road to the south limits of the Thompson Creek Preliminary Plat. The actual cost of the design and construction of the water main in South 56th Street, including payment of the City's fixed fee for Engineering Services, shall be contracted for and paid by Owner.

7. Security.

A. Owner shall provide the City a bond, escrow, or other security agreement, approved by the City Attorney to insure Owner's share of the cost of the water and sanitary

sewer improvements described in this Agreement as part of the executive order construction process or at the time of final platting of the Property, whichever occurs first.

B. Simultaneous with the execution of this Agreement by Owner, Owner shall provide the City a bond, escrow, or other security agreement approved by the City Attorney in the amount of One Hundred Ninety-Eight Thousand Dollars (\$198,000) to insure Owner's contribution for the equivalent cost to pave South 56th Street along the frontage of the preliminary plat as a "suburban cross section."

8. Future Cost Responsibilities. Owner understands and acknowledges that the South 56th Street right-of-way dedication and contribution and the public sanitary sewer and water main improvements to be constructed by the Owner under this Agreement do not reflect all the impacts the proposed development of the Property would have on the City's public facilities as set forth in the Impact Fee Study prepared by Duncan Associates dated June 25, 2002. The Owner agrees that by making the dedication, contribution, and improvements outlined in this Agreement, Owner shall not be relieved of any future obligation to pay any impact fee imposed on this proposed development of the Property which are required to be paid pursuant to the provisions of any impact fee ordinance adopted by the City Council for the City. However, to the extent impact fees are imposed pursuant to any impact fee ordinance, credit shall be granted against any street impact fee equal to the contribution paid by Owner pursuant to paragraph 4.A. above, provided however, in the event the amount of credit exceeds the impact fees that would otherwise be due from the entire development of the property, Owner shall not be entitled to refund of the excess credits. Nor shall owner not be entitled to any credit for the cost to construct temporary widening of the existing South 56th Street rural cross section to provide left turn lanes at those intersections at a length and width determined by the City as required by paragraph 4.A. above. In addition, credit against any sanitary sewer impact fee shall be granted equal to any amounts which have not been reimbursed to Owner pursuant to paragraph 5.C. above to oversize the sewer main for the benefit of the owners of Other Property described in paragraph 5.A. above.

The Owner further agrees that, by making the dedication, contribution and improvements outlined in this Agreement, Owner shall not be relieved of any future obligation to dedicate land for, contribute to the cost of construction of, or to construct public facilities or improvements which are attributable to proposed changes in land use, zoning, or intensity of development which have the effect of causing the need for addition public improvements in the immediate area of such development.

9. 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 Preliminary Plat Property.

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

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. Default. Owner and City agree that the annexation, change of zone, preliminary plat, and community unit plan 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 rezone the Rezoned Property to its previous designations 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.

18. Cost Defined. 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, but shall exclude City personnel costs.

19. Fair Share. Owner and City agree 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 streets and the provision of adequate sanitary sewer and water service which is promoted by requiring Owner to pay its fair share of the cost to construct the sanitary sewer, water, and street improvements 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 made an individualized determination and agree that the conditions placed upon Owner under this Agreement including the obligation to pay future impact fees which are imposed pursuant to the provisions of any impact fee ordinance, or to dedicate land for, contribute to the cost of the construction of, or to construct public facilities or improvements relating to future changes to development of the Property 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 Change of Zone from AG Agricultural District to O-3 Office Park District and R-3 Residential District Use Permit No. 141 and Special Permit No. 1930 would have on the City's sanitary sewer and water system, arterial streets and parks and trails.

20. 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:

THE CITY OF LINCOLN, NEBRASKA
a municipal corporation

City Clerk

By: _____
Don Wesely, Mayor

THOMPSON CREEK, LLC, Owner
a Nebraska limited liability company

By:

Title: Manager

STATE OF NEBRASKA)
) ss.)
COUNTY OF LANCASTER

The foregoing instrument was acknowledged before me this ____ day of _____, 2002, by Don Wesely, Mayor of the City of Lincoln, Nebraska on behalf of the City.

Notary Public

STATE OF NEBRASKA)
) ss.)
COUNTY OF LANCASTER

The foregoing instrument was acknowledged before me this ____ day of _____, 2002, by _____, Manager of Thompson Creek, LLC, a Nebraska limited liability company, on behalf of said limited liability company.

Notary Public

[code\agr\Thompson creek annexation clean of 6/25/02]