

**GRAND TERRACE
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Grand Terrace Conditional Annexation and Zoning Agreement (“Agreement”) is made and entered into this _____ day of _____ 2006, by and between **Dubois, LLC**, a Nebraska limited liability company, hereinafter referred to as “Owner,” **Clarendon Hills Road Improvement District** ____, hereinafter referred to as “District,” and the **City of Lincoln, Nebraska**, a municipal corporation, hereinafter referred to as “City.”

RECITALS

A. Owner is the legal owner of approximately 70 acres of land generally located west of South 84th Street and south of Highway 2 and legally described as the remaining portion of Lot 59 I.T., located in the Northeast Quarter (NE 1/4) of Section 22, Township 9 North, Range 7 East, Lancaster County, Nebraska, and more particularly described as follows:

Referring to the east quarter corner of said Section 22; thence on the south line of the Northeast Quarter of said Section, N89°47'01"W, 130.83 feet to the point of beginning; thence N89°47'29"W, 374.95 feet; thence N89°46'28"W, 505.25 feet; thence N89°46'48"W, 300.14 feet; thence N89°51'01"W, 60.06 feet; thence N89°45'58"W, 294.90 feet; thence N89°45'49"W, 294.97 feet; thence N89°45'19"W, 314.54 feet; thence N89°48'04"W, 207.98 feet; thence westerly on a 910.27 foot radius curve to the right, an arc length of 234.61 feet (long chord bears N81°55'30"W, 233.96 feet); thence N00°04'24"E, 555.09 feet; thence N00°00'08"W, 245.08 feet; thence N00°01'41"E, 481.52 feet; thence S89°49'12"E, 1538.96 feet; thence S89°50'56"E, 210.68 feet; thence S56°57'12"E, 193.02 feet; thence S49°09'10"E, 301.29 feet; thence S53°30'20"E, 300.04 feet; thence S10°15'34"E, 164.12 feet; thence S25°21'05"E, 12.51 feet; thence southerly on a curve to the left with a radius of 469.95 feet, an arc length of 171.83 feet (long chord bears S09°11'28"E, 170.87 feet); thence southerly on a curve to the left with a radius of 585.00 feet, an arc length of 413.96 feet (long chord bears S11°24'16"E, 405.38 feet); thence S31°40'37"E, 115.97 feet to the point of beginning, containing 3,036,268 square feet (69.70 acres), more or less.

The remaining portion of Lot 59, I.T., is hereinafter referred to as the “Property.”

B. Owner has requested the City to approve Annexation No. 06001 to annex the Property.

C. Owner has requested the City to approve Change of Zone No. 06001 to rezone the Property from AG Agriculture District to R-3 Residential District.

D. Owner has requested the City approve Special Permit No. 06001 (Grand Terrace Community Unit Plan) for 485 dwelling units (216 dwelling units unassigned).

E. The Property is located within a 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 provision of §31-766 and shall not be subject to further tax levy or other changes by the district, except that before the annexation is complete, the municipality shall assume and pay that portion of all outstanding obligations to 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 Owner, provided Owner agrees to pay all costs needed for the City to assume and pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the Property being annexed.

F. The Property is surrounded by existing subdivisions (Amber Hill Estates, Portsche Heights and Clarendon Hills) with gravel streets and an average lot size of about 3+ acres. In addition, Lot 59 has no direct arterial access which means that all the traffic created by the potential 485 new dwelling units would access through the existing gravel streets within Amber Hill Estates, Portsche Heights, and Clarendon Hills.

G. The Clarendon Hills Road Improvement District was created to pave the gravel streets shown on Exhibit A with asphalt pavement specified as Superpave SPL. The paved width to be 22 feet and the pavement either 6-inch or 8-inch thick as shown on Exhibit A.

H. The District is willing to support the Annexation, Change of Zone, and Special Permit for Grand Terrace Community Unit Plan, provided Owner agrees to contribute \$285,000 toward the cost of the paving improvements shown on Exhibit A.

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 approve Change of Zone No. 06001 to rezone the Property from AG Agricultural District to R-3 Residential District.
3. **Special Permit.** The City agrees to approve Special Permit No. 06001, Grand Terrace Community Unit Plan, for up to 485 dwelling units.
4. **District Street Improvements.** Owner agrees that Owner shall contribute a subsidy of \$285,000 (“Road Subsidy”) to the District and the District agrees to pave the gravel roads shown on Exhibit A to benefit all of the properties in the District and which will also provide the paved access from the Property to South 70th Street Pine Lake Road and 84th Street as required by the City of Lincoln.

No final plats shall be approved by the City until the street improvements are either constructed, under contract by the District or the Road Subsidy has been deposited in cash or certified funds by Owner with the City and/or District as set forth below. Owner shall pay the Road Subsidy of \$285,000 to the District in cash or certified funds within seven (7) days of its award of a contract to pave the roads or pay the amount to the City at the time of approval of a final plat, whichever occurs first. If Owner pays the Road Subsidy to the City in cash or certified funds, said amount paid to the City shall be \$220,000 in cash or certified funds with the balance of \$65,000 being paid in cash or certified funds directly to the District. The City agrees to immediately release the \$220,000 to the District upon receipt of contract to pave the roads.

5. **Public Water Main.**

A. **Extension.** Owner agrees that Owner shall be responsible for all costs associated with the extension of the 12-inch water main across Highway 2 to serve the Property. This 12-inch water main shall be constructed prior to the final platting of any lots within the area designated as Phases 4 and 5 on Special Permit No. 06001. The City agrees to reimburse Owner for

the difference between the cost of the 12-inch water main and the cost of a typical 6-inch water main following completion of construction. Notwithstanding the above, Owner understands and agrees that if the City subsidy for the cost in excess of a typical 6-inch water main will exceed \$10,000.00, the contract for the construction of the 12-inch water main shall be awarded only after competitive bidding in accordance with City procedures.

B. Easement. The City, if necessary, shall acquire all temporary and permanent easements required for the extension of the water main across Highway 2 to serve the Property as soon as reasonably possible. The costs of the temporary and permanent easements, including but not limited to the amount of any condemnation award, court costs, expert witness fees, testing fees, and interest shall be reimbursed to City by Owner. Owner agrees to grant to City at no cost all temporary and permanent easements necessary for the water main within the Property. The City is authorized to utilize condemnation, if necessary, to acquire the temporary and permanent easements.

6. Sanitary Sewer.

A. Extension. Owner agrees that Owner shall be responsible for all costs associated with the extension of the sanitary sewer main across Highway 2 to serve the Property in a location reasonably acceptable to the City, except as provided in paragraph 9 below.

B. Owner agrees that Lots 16 - 20, Block 2, as shown on the Grand Terrace Community Unit Plan are located in a different drainage basin and cannot be connected to the sewer being extended across Highway 2 to serve the remainder of the Property, but rather must be served by the Beal's Slough trunk sewer. Owner understands that the City has not identified funds in the City's Capital Improvement Program to extend the Beal's Slough trunk sewer to a point where it can serve these lots and Owner agrees that these lots may not be final platted into buildable lots until sewer service is available.

C. Easement. The City, if necessary, shall acquire all temporary and permanent easements necessary for the extension of the sanitary sewer line across Highway 2 to serve the Property as soon as reasonably possible. The costs of the temporary and permanent easements,

including but not limited to the amount of any condemnation award, court costs, expert witness fees, testing fees and interest shall be reimbursed to City by Owner. Owner agrees to grant to City at no cost all temporary and permanent easements necessary for the sanitary sewer line within the Property. The City is authorized to utilize condemnation, if necessary, to acquire the temporary and permanent easements.

7. Contribution for Rural Fire District Costs. Owner understands and acknowledges that the City may not annex the property lying within the boundaries of the Southwest 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, prior to annexation, the \$345.88 which the City has determined must be paid by the City to the Southwest Rural Fire District in order for the annexation to be complete.

8. Park Land Dedication. As fulfillment of park dedication requirements in Lincoln Municipal Code §26.23.160, Owner agrees to dedicate 1.40 acres of land within the Property for a neighborhood park. The location and configuration of this land shall be subject to approval by the Director of the Parks and Recreation Department. The City shall reimburse the Owner for dedication of the 1.40 acres of neighborhood parkland in the amount agreed to by the Owner and City or at its appraised fair market value from Neighborhood Park and Trail Impact Fees.

9. Reimbursement for Construction and Dedication of Impact Fee Facility Improvements. The City agrees to reimburse Owner for the value of the 1.4 acres of parkland dedicated pursuant to Paragraph 8, without interest from Neighborhood Park and Trail Impact Fees collected against the entire development of the Property up to the Directed Neighborhood Park and Trail Impact Fee Amount of \$91,785, which reflects the amount attributable to 100% development of the proposed development of the Property in 2006 based upon the 2006 Impact Fee Schedule. Reimbursement shall be subject to the following conditions:

(1) Said reimbursement shall be paid quarterly from impact fees actually received from this development;

(2) Any reimbursement to be paid from Impact Fees shall not constitute a general obligation or debt of the City.

In the event the value of the 1.4 acres of park land described above is in excess of the Neighborhood Park and Trail Impact Fee Amount of \$91,785, the City agrees to use its best efforts to reimburse Owner with interest for the excess value from other Neighborhood Park and Trail Impact Fees collected from this and/or other developments within the same benefit district within eleven (11) years from the date of the dedication:

(1) The reimbursement shall be repaid quarterly from Neighborhood Park and Trail Impact Fees collected from the same benefit district the Property is located in;

(2) Owner shall not be entitled to any reimbursement of said costs in excess of Impact Fees actually received; and

(3) Any reimbursement to be paid from such Impact Fees shall not constitute a general obligation or debt of the City.

Interest on the outstanding balance in excess of the directed impact fee amount of \$91,785 shall draw interest at the rate of two percent (2%) per annum, provided, however, interest shall not begin to accrue until Owner dedicates the parkland to the City. Notwithstanding the above, the City's best efforts to reimburse Owner with Impact Fees collected from other developments within the same benefit district does not restrict the City from agreeing to reimburse future developers within the same benefit district from Directed Impact Fees collected against the entire development of their property if those developers dedicate parkland and/or construct Neighborhood Park and Trail Impact Fee Facility Improvements. If a developer does not fund the construction of Impact Fee Facility Improvements, the Impact Fees that are collected from that development shall be used to pay the oldest reimbursement obligation that the City may have in the same benefit district.

10. Future Cost Responsibilities. Owner understands and acknowledges that the proposed development of the Property shall be subject to the payment of Impact Fees and Owner agrees to paid said Impact Fees if development occurs.

11. 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.

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

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. Default. Owner and City agree that the annexation, change of zone, and preliminary plat 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 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.

20. 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. (Chapter 27.82 of the Lincoln Municipal Code).

21. 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: _____

Mayor

DUBOIS, LLC
a Nebraska limited liability company

Witness

By: _____
Manager

**CLARENDON HILLS ROAD
IMPROVEMENT DISTRICT**

BY: Board of Trustees

Thomas Goeglien

Susan Kirkpatrick

Steven Nickel

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Coleen Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by _____, Manager of Dubois, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Thomas Goeglien, Trustee of the Clarendon Hills Road Improvement District, on behalf of said District.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Susan Kirkpatrick, Trustee of the Clarendon Hills Road Improvement District, on behalf of said District.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Steven Nickel, Trustee of the Clarendon Hills Road Improvement District, on behalf of said District.

Notary Public