

**AGREEMENT REGARDING THE ANNEXATION  
OF FIRETHORN**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation (the “City”); **FIRETHORN GOLF COMPANY, L.L.C.**, a Nebraska limited liability company; and **FIRETHORN UTILITY SERVICE COMPANY** (hereinafter “FUSC”). Firethorn Golf Company, L.L.C. and FUSC are hereinafter collectively referred to as “Firethorn.”

**RECITALS**

A. The City is presently considering Firethorn’s request that the City annex a portion of the area included within the Firethorn Community Unit Plan (Special Permit No. 872E), hereinafter referred to as the “Property.” The Property is legally described on Attachment A and incorporated herein by this reference.

B. The parties are agreeable to such annexation provided there is an agreement regarding cost responsibilities for municipal services associated with annexation, maintenance responsibilities, and other appropriate matters relating to the annexation.

C. 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 of furnish water service to that portion of the Property located within the boundaries of District No.1. The City is willing to annex the Property as requested by Firethorn provided Firethorn 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.

D. 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 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 Firethorn provided Firethorn 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.

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties agree as follows:

**1. Annexation by City.** The City shall annex the Property on the terms and conditions set forth in this Agreement.

2. **City Approvals.** The City agrees to approve Change of Zone No. 06077 to rezone the Property from AG-R Agricultural Residential District to R-1 Residential District, and the Firethorn Amendment to the Community Unit Plan Special Permit No. 872F.

3. **Records.** Firethorn shall provide to the City all of its drawings and records related to its infrastructure improvements (water, storm sewer, sanitary sewer, all meters and roads). The drawings and records will be provided in their current condition, without warranty, and Firethorn shall have no obligation to provide any new or additional drawings or records.

4. **Sanitary Sewer.**

(a) **Private Sanitary Sewer System.** Firethorn will maintain the existing private sanitary sewer system that currently sewers the Property. The system currently utilizes a pump station in the northeast corner of the Property ("Pump Station") to pump the wastewater to a constructed wetland treatment system. Firethorn at its own cost and expense shall properly abandon the constructed wetland treatment system and construct a force main from the Pump Station approximately 4,700 feet Southwest to Manhole E1W-23 at 85th Street and Pioneers Boulevard. Firethorn will remain responsible for all maintenance on the private sanitary sewer system

(b) The City will accept the existing wastewater flow from Firethorn at Manhole E1W-23. Prior to any additional development occurring Firethorn, at its own cost and expense through the City's Executive Order construction process, shall replace a section of undersized eight-inch sanitary sewer main in Pioneers Boulevard, from Manhole D1E-297 to D1E-294, approximately 1240 feet, with a ten-inch diameter pipe. The City is responsible for all maintenance and repairs on City's sanitary system starting at Manhole E1W-23. The maximum allowable development is three hundred (300) units/residences, in addition to the existing 129 units/residences and the clubhouse, without additional infrastructure upsizing. Until such time as individual water meters are installed on all of the existing residences within Firethorn, FUSC will install a city-approved meter on the main lift station pump to meter the flow of wastewater through the force main and pay the City wastewater fees and service charges at the rate in effect for each billing per unit (1 unit equals 100 cubic feet or 748 gallons) charged to residential customers based on the total cubic feet of wastewater being forced through the main. FUSC will be reimbursed for such wastewater fees and service charges from the homeowners within Firethorn. At such time as water meters are installed in all of the existing residences within Firethorn, the City will bill individual homeowners and Firethorn, with respect to the clubhouse, the wastewater fee based on the previous winter's water usage and the discharge meter will be discontinued. The City and FUSC will coordinate such change in billing, which is estimated to occur in Spring 2009 with the wastewater fees based on the 2008-09 winter water usage.

(c) **Pump Station.** The existing Pump Station will be replaced by a new pump station to be owned, maintained and operated by FUSC. FUSC will remove the new pump station when construction of the public trunk sewer to serve the Property is completed.

(d) **Transfer of Ownership.** Upon completion of the public gravity trunk sewer to serve the Property, Firethorn shall have the right, but not the obligation, to convey the internal sewer mains throughout the Property to the City and the City agrees to accept ownership of the internal sewer mains

and incorporate them into the City's Wastewater System. Notwithstanding the above, Firethorn agrees that the City may inspect the mains prior to accepting ownership thereof. Firethorn further agrees to repair any deficiencies noted at no cost to the City, but Firethorn shall not be required to cause the system to comply with current City standards. Firethorn further agrees to convey or grant to the City thirty-foot wide permanent easements in order to maintain, repair, replace, or reconstruct the internal sewer mains located on the Property. Firethorn further agrees to convey at no cost any other permanent and temporary easements necessary for the City to install the permanent gravity sewers to serve Firethorn and/or adjacent properties, at such locations as are reflected on the approved site plan for Special Permit No. 872F or otherwise acceptable to Firethorn. Firethorn will not be responsible for the installation of such future internal sewer mains reflected on the plat necessary to connect the real property located upstream on the south side of Pioneers Boulevard to the trunk sewer main to be constructed in South 98<sup>th</sup> Street, except that Firethorn shall be responsible for the cost to extend the Firethorn system from the pump station to such trunk sewer main. The City reserves the right to tie onto the Firethorn system upon completion of the public gravity trunk sewer main to serve the Property and the real property located upstream on the south side of Pioneers Boulevard.

(e) Inspections of Connections to Private Sanitary Sewer System. FUSC shall use its best efforts to inspect each residence at Firethorn to verify that heat pumps and sump pumps are not connected to the private sanitary sewer system. FUSC further agrees to disconnect or cause any heat pumps and/or sump pumps so connected to be disconnected from the private sanitary sewer system prior to the City receiving discharge from the pump station. FUSC will produce a written report summarizing the sump and heat pump disconnections. In the event FUSC is unable to obtain access to any residences at Firethorn, the City will assist FUSC with obtaining access for such inspection.

## **5. Water.**

(a) Water System. Firethorn shall construct an entirely new water distribution system to serve the Property generally as shown on Attachment B attached hereto, including a 16-inch water main in Pioneers Boulevard from 85th Street to 95th Street adequate to loop all parts of the system serving the Property. The work, including a street grade study in Pioneers Boulevard to determine an acceptable location for installation of the main with respect to future street alignment and grades, shall be performed under the City's Executive Order contract process. All costs to construct the new water distribution system and connect the Property to the City water system shall be borne by Firethorn, except that the City agrees to subsidize Firethorn for the cost of the 12-inch water main in excess of the equivalent cost of an 8-inch water main within sixty (60) days following completion of construction (except for the City's fixed fee for engineering services). The City agrees to reimburse Firethorn for the cost of the 16-inch water main in excess of the equivalent cost of an 8-inch water main from Directed Water Distribution Impact Fees from existing and new residences within the Property and any additional property developed which is served by such 16-inch water main. Reimbursement shall be subject to the following conditions:

- (i) The reimbursement shall be paid quarterly from the Water Distribution Impact Fees collected from the Property;

- (ii) Firethorn shall not be entitled to any reimbursement of said costs in excess of the Water Distribution Impact Fees actually received;
- (iii) Any reimbursement to be paid from such Impact Fees shall not constitute a general obligation or debt of the City.

Notwithstanding the foregoing, the City agrees to use its best efforts to reimburse Firethorn for the cost of the 16-inch water main in excess of the equivalent cost of an 8-inch water main within seven (7) years from the date the Property is annexed if funding for such improvements is included in the City's Six-Year Capital Improvement Program. Firethorn understands and agrees that if the amount of the City's subsidies exceeds \$10,000, the contract for the construction of the water mains shall be awarded only after competitive bidding in accordance with City procedures. Firethorn agrees to complete said work within two years from the date the Property is annexed by the City.

(b) Water Meters. Firethorn understands and acknowledges that each person connecting to the City's water system is responsible to obtain a tap permit and pay for the water meter, the new supply pipe, stop box, service pipe and meter valves.

(c) Water Pressure. Firethorn will provide reasonable notice to the lot owners in advance of any changes which may increase pressure and the possible consequences to residential appliances, plumbing and systems.

(d) Ownership of Existing Water Main. The existing private water distribution system owned by FUSC may continue to be owned, maintained and operated by FUSC, but only for irrigation and heat pump use. Every property connected to the private water system for either irrigation or heat pump purposes shall have a backflow preventer installed behind the new water meter at no cost to the City. A backflow preventer shall also be required for any property served by a private well, in addition to the City's public water system.

(e) Easements. Required easements for construction of the public water mains to serve the Property will be dedicated by Firethorn to the City without cost, at such locations as are acceptable to Firethorn.

## **6. Streets and Other Improvements.**

(a) Roads. FUSC will continue to own and maintain the private roadway system located upon the Property. Firethorn will be responsible at its own cost and expense to construct asphalt paved left-turn lanes at all existing intersections with Pioneers Boulevard and Van Dorn Street. These intersection improvements shall be constructed through the City's executive order construction process and shall be completed by November 30 following the approval of this Agreement by the City.

(b) 98th Street. 98th Street may remain as a gravel road until such time as the County and/or the City paves the roadway.

7. **Parks.** Firethorn shall have the right, but not the obligation, to donate an approximately one-fourth (1/4) acre of land measuring at least 100 feet by 100 feet as a neighborhood park in a location and configuration satisfactory to the Parks and Recreation Department. Firethorn further agrees to permanently and continuously be responsible for mowing the grass; provided that such obligation may be transferred to a permanent lawfully created association of property owners who agree to be responsible for such mowing. Neighborhood Park & Trail Impact Fees shall not be due with respect to the existing residences at Firethorn and shall only be collected from the construction of new residences on the Property. The City agrees to accept the donation and further agrees that any Neighborhood Park & Trail Impact Fees collected from development on the Property will be spent on equipping the park.

8. **Security.** Firethorn shall provide the City a bond, letter of credit, escrow or other security agreement, approved by the City Attorney to insure Firethorn's obligations for the cost of the improvements described in this Agreement upon annexation of the Property. The City shall release such security in phases as and when construction of the improvements described in this Agreement is completed.

9. **District No. 1.** Firethorn 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 the consent and approval of District No. 1. Firethorn desires to be connected to the City's public water system and therefore agrees to pay 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.

10. **Contribution for Rural Fire District.** Firethorn 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. Firethorn 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 no payment shall be required.

11. **Future Cost Responsibilities.** Firethorn understands and acknowledges that the proposed development of the Property, including the connection to the City water and wastewater system shall be subject to the payment of impact fees. Specifically, new lots developed within the Property being annexed will pay Arterial Street Impact Fees based upon the Impact Fee Schedule in effect on the date the Property is developed. Existing residences will not be required to pay Arterial Street Impact Fees. Existing residences and new lots developed on the Property will pay Water Distribution, Water Supply, and Wastewater Impact Fees based upon the Impact Fee Schedules in effect on the date of connection. Notwithstanding the above, Firethorn Golf Company, LLC agrees to be responsible for the payment of Water Distribution and Water System Impact Fees for the 129 existing residences within the Property based on a one inch (1") water meter and any connections of the golf course clubhouse and other facilities to the City water and wastewater system. The impact fee will be based upon the Impact Fee Schedule in effect on the date of connection to the City water system. Firethorn Golf Company, LLC will be further responsible for payment of the Wastewater Impact Fee for the existing 129 residences within the Property based on a one inch (1") water meter. The impact fee will be based upon the Impact Fee Schedule in effect on the date the individual residence

is connected to the City water system. Residents of the area being annexed will pay the standard City water and sewer rates upon connection. In the event any of the owners of existing 129 residences elect to install a water meter larger than one inch (1”), such owner shall be responsible for the additional Water Distribution, Water System and Wastewater Impact Fees due as a result of any increase in the size of the water meter.

**12. Conservation Easements.** The City shall execute and record the amendments to the Declarations of Protective Covenants, Conditions and Restrictions Pursuant to the Conservation and Preservation Easement Act recorded in the Office of the Register of Deeds of Lancaster County, Nebraska as Instrument No. 98-049864 and No. 98049865, in the form attached hereto as Exhibit A-1 and A-2.

**13. 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.

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

**15. 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.

**16. 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.

**17. 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.

**18. 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.

**19. 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, Firethorn, 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.

**20. 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.

**21. Default.** Firethorn and City agree that the annexation promotes the public health, safety, and welfare so long as Firethorn fulfills all of the conditions and responsibilities set forth in this Agreement. In the event Firethorn defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, the City may take such remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach.

**22. 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.

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

**24. Engineering Services.** Uniform procedure for the selection of professional consultants set forth in Executive Order No. 58026 dated August 5, 2003, need not be utilized to select the engineer to design the required improvements to be installed by Firethorn under this Agreement. Olsson Associates has performed preliminary design work and the continued utilization of Olsson Associates will avoid delay, inefficiencies, lack of coordination, and duplication of effort. Notwithstanding the above, the use of Olsson Associates or any other engineer is subject to the City’s prior approval of the engineer’s scope of services and engineer’s fee.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date and year first above written.

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

By: \_\_\_\_\_  
Coleen J. Seng, Mayor

**FIRETHORN GOLF COMPANY, L.L.C.**  
a Nebraska limited liability company

By: \_\_\_\_\_  
Title: \_\_\_\_\_

