

**AMENDMENT NO. 2 TO THE
VILLAGE GARDENS
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Amendment No. 2 to the Conditional Annexation and Zoning Agreement for Village Gardens ("Amendment 2") is made and entered into this ____ day of _____, 2010, by and between the **City of Lincoln, Nebraska**, a municipal corporation, ("City"), and **Village Gardens Development Company, L.L.C.**, a Nebraska limited liability company ("Owner").

RECITALS

A. Owner is the Owner of approximately 15.5 acres of land composed of a portion of Lot 80, Irregular Tract, located in the South 1/2 of Section 21, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, hereinafter referred to as the "Property".

B. Owner has requested the City to annex the Property.

C. Owner has requested the City to rezone the Property from AG Agricultural District to R-3 Residential District.

D. The Property is located within Rural Water District No. 1 and the Southeast Rural Fire Protection District.

E. The Property is subject to the Village Gardens Conditional Annexation and Zoning Agreement entered into the 16th day of February, 2005, by and between the City of Lincoln, Nebraska and Campbell Farm and Land Co. and Northwoods L.L.C. Campbell Farm and Land Co. and Northwoods L.L.C. were collectively referred to in said agreements as the "Owner." The Property was included in and designated as part of the Next Phase Property. Owner is the successor in interest to Campbell Farm and Land Co. and Northwoods L.L.C.

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 a change of zone rezoning the Property from AG Agricultural District to R-3 Residential District.

3. Dedication of Street Right-of-Way. Owner agrees to dedicate at no cost to the City the additional right-of-way needed to provide 66 feet of right-of-way from the centerline of Yankee Hill Road adjacent to the Property to accommodate a future bike trail on the north side of Yankee Hill Road.

4. Rural Water District No. 1.

A. City Service. Owner understands and acknowledges that the City may not furnish water to serve that portion of the Property that lies within the boundaries of Rural Water District No. 1 Lancaster County Nebraska ("District No. 1") without consent and approval from District No. 1. Owner desires that all the Property be connected to the City's public water system. Therefore, Owner agrees to pay, prior to annexation of any portion of the Property that lies within the boundaries of District No. 1, all cost, if any, 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.

B. Relocation of District No. 1 Mains. Owner understands that the City intends to construct a future water main in Yankee Hill Road which will require relocation of existing District No. 1 water mains. Owner agrees, at no cost, to grant District No. 1 an easement within the proposed detention cell outlot shown on the Preliminary Plat for Village Meadows Addition #10001 for relocation of said District No. 1 mains, at such time as the easement location is identified and requested by District No. 1.

5. Contribution for Rural Fire District. Owner understands and acknowledges that the City may not annex the Property lying within the boundaries of a rural fire protection 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 amount the City has determined must be paid to the applicable rural fire district in order for the annexation to be complete, based upon the City's standard formula for calculating such costs. The parties do not anticipate there will be a cost associated with this annexation.

6. Village Gardens Conditional Annexation and Zoning Agreement. Except as amended by this Agreement, all the terms and conditions of the Village Gardens Conditional Annexation and Zoning Agreement applicable to the Property remain in full force and effect.

7. **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.

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

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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.

15. **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 its covenants and responsibilities as set forth in this Agreement, the City may, in its legislative authority, rezone the 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.

16. **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.

17. **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:

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

City Clerk

By: _____
Chris Beutler, Mayor of Lincoln

**Village Gardens Development Company,
L.L.C., a Nebraska limited liability company**

By: _____
Richard B. Campbell, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____,
2010, by Chris Beutler, 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 _____,
2010, by Richard B. Campbell, Manager of Village Gardens Development Company, L.L.C., a
Nebraska limited liability company, on behalf of said limited liability company.

Notary Public