

**CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

THIS CONDITIONAL ANNEXATION AND ZONING AGREEMENT ("Agreement") is made and entered into this 24 day of AUGUST, 2015, by and between the **PAR 5 PARTNERS, LLC**, an Arizona limited liability company, hereinafter referred to as "Owner," and the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation, hereinafter referred to as "City."

**RECITALS**

A. Owner is the owner of Lots 73 and 81, Irregular Tracts, located in the Southeast Quarter of Section 3, Township 10 North, Range 7 East of the 6th Principal Meridian, Lancaster County, Nebraska ("Property").

B. The Property is located outside of the corporate limits of the City of Lincoln and is zoned AG Agricultural District.

C. Owner is requesting the City to annex the Property and to re-zone the Property from AG Agricultural District to I-2 Industrial Park District in anticipation of Owner constructing an approximately 25,000 square foot office building and later constructing an approximately 50,000 square foot food processing distribution facility.

D. It is a policy of the City to not re-zone AG Agricultural District zoned land until such land is annexed into the corporate limits.

E. In order for the Property to be served by the City's public wastewater system and water system, an 8-inch sanitary sewer main will need to be extended from either Havelock Avenue to the north boundary of the Property or from Fletcher Avenue to the south boundary of the Property, and the 16-inch water main in North 84th Street will need to be extended from Havelock Avenue north along North 84th Street to the access entry point to the Property. The 8-inch sanitary sewer main is a site-related, non-impact-fee-facility improvement which must be installed at the Owner's own cost and expense. The 16-inch water main is an impact fee facility

improvement; however, the City does not currently have sufficient funds or plans for the extension of the 16-inch water main to serve the Property.

F. Pursuant to the Conditional Annexation and Zoning Agreement for Regent Heights 1st Addition and Northern Lights Addition ("Regents Heights Agreement"), the City and the developers of Regent Heights 1st Addition and Northern Lights Addition constructed certain sanitary sewer trunk lines (hereinafter "Sewer A" and "Sewer B") to sewer 254 acres of land within the preliminary plats of Regent Heights 1st Addition and Northern Lights Addition. However, since Sewer A and Sewer B can also sewer an additional 746 acres of land outside of the boundaries of the preliminary plats for regent Heights 1st Addition and Northern Lights Addition, including the Property, the City agreed to charge owners of land outside the boundaries of the preliminary plats for Regent Heights 1st Addition and Northern Lights Addition who did not pay their fair share of the costs of Sewer A and Sewer B but benefit from the extension of Sewer A and Sewer B to sewer their property, a fair share of the cost of Sewer A and Sewer B based upon a per-acre formula of \$1,570 per acre. Annexation of the Property as requested by the Owner will require the Owner to contribute \$70,304.60 as the Owner's fair share of the cost to construct Sewer A and Sewer B which sewers the Property being annexed based upon a cost of \$1,570.00 per acre times the 44.78 acres being annexed.

G. The current access to the Property off of North 84th Street is not adequate to service the proposed development of the Property. Future development of the Property will require Owner to dedicate additional right-of-way and the construction of a right-turn lane to provide safer ingress and egress to and from the Property.

H. The Property is located within the Waverly 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 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.

I. As an inducement for the City to annex the Property and rezone the Property to I-2 Industrial Park District, Owner has represented to the City that Owner is willing, at its own cost and expense, to extend the City’s public wastewater system, extend the water system (subject to reimbursement) to serve the Property, preliminary plat the Property, dedicate the necessary right-of-way for North 84th Street, construct a right-turn lane, pay the Regent Heights Sewer A and Sewer B connection fee, and pay the amount due and owing to the Waverly Rural Fire Protection District in order to make the annexation complete.

NOW, THEREFORE, in consideration of the above recitals and mutual covenants contained herein, the parties agree as follows:

1. **Annexation by the City.** The City agrees to annex the Property.
2. **Change of Zone.** The City agrees to re-zone the Property from AG Agriculture District to I-2 Industrial Park District.
3. **Public Water.** Owner agrees that as part of the construction of the new office building or any other new building on the Property, Owner at its own cost and expense, subject to reimbursement from the City, shall extend the 16-inch water main in North 84th Street from Havelock Avenue north to the access entry point of the Property. Owner understands and acknowledges that although the 16-inch water main is an impact fee facility improvement to be paid for by the City as a capital improvements project, the cost to extend the 16-inch water main is not shown in the City’s current 6-year Capital Improvements Project (CIP) and that Owner’s reimbursement for the cost to extend the 16-inch water line will be deferred until such time as

there is sufficient development to be served by the new water line to justify it being extended and included as a capital improvement project in the CIP. The City agrees to re-evaluate the need for this 16-inch water main extension within the funding constraints of the CIP as it is developed every two years. The City agrees that until such new development occurs, Owner may continue to use the existing building and existing well.

**4. Public Sanitary Sewer.** Owner agrees, at its own cost and expense, to extend an 8-inch sanitary sewer main from either Havelock Avenue north to the north boundary of the Property or from Fletcher Avenue to south boundary of the Property. Owner further agrees to be responsible at its own cost and expense to perform the engineering work needed to determine the best route for the sanitary sewer main extension.

**5. Regent Heights Sanitary Sewer Connection Fee.** Owner understands and acknowledges that the Property was made sewerable by the construction of Sewer A and Sewer B pursuant to the Conditional Annexation and Zoning Agreement for Regent Heights 1st Addition and Northern Lights 1st Addition (“Regent Heights Agreement”) and that the Owner did not participate in, nor contribute the Owner’s fair share of the cost of the construction of Sewer A and Sewer B to serve the Property being annexed. The Owner desires the Property being annexed to be connected to Sewer A and Sewer B and therefore agrees to pay at the time of annexation a connection fee of One Thousand Five Hundred Seventy and 00/100ths Dollars (\$1,570.00) per acre times the 44.78 acres being annexed for a total connection fee of \$70,304.60.

**6. Fire Protection Services.** Owner understands and acknowledges that until such time as the public water system is extended to serve the Property City fire protection services available to the Property will not have fire hydrants and the Fire Department will have to use water from less desirable alternative means.

**7. North 84th Street/Dedication of Right-of-Way.** Owner understands and agrees that before the approval of any final plat of the Property or issuance of a building permit for any

new building to be constructed on the Property, the Owner shall dedicate in such final plat or by deed the additional right-of-way needed along North 84th Street to provide 70 feet of right-of-way from the centerline of North 84th Street abutting the Property.

**8. North 84th Street Access.** Owner acknowledges and agrees that access to the Property from North 84th Street is only sufficient for use of the existing building. Owner agrees that prior to construction of the new office building or any other new building on the Property, Owner shall be required to dedicate 10 feet of right-of-way (over and above that needed to provide 70 feet of right-of-way from the centerline of North 84th Street) and construct a right-turn lane in North 84th Street, from the existing entrance to a point 400 feet north of the entrance, to serve the Property. Owner further understands and agrees that no additional access to North 84th Street to serve the Property will be granted.

**9. Contribution for Rural Fire District.** Owner understands and acknowledges that the City's annexation of the Property lying within the boundaries of the Waverly Rural Fire 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 the Property being annexed. The parties anticipate that the amount will be \$0.00. However, in the event said amount is in excess of \$0.00, Owner agrees to pay the City whatever amount which must be paid by the City to Waverly Rural Fire District in order for the annexation to be complete.

**10. Preliminary Plat.** Owner agrees, prior to any further development of the Property, to submit a preliminary plat that identifies a future lot and street plan. The preliminary plat shall include a grading and drainage plan. Notwithstanding the above, the existing building may be remodeled and the parking lot expanded without submittal of the preliminary plat.

**11. Binding Effect.** This Agreement shall run with the land and be binding upon and inure to the benefit and burden of successors and assigns of the respective parties.

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

13. **Governing Law.** All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

14. **Authority.** This Agreement has duly executed and delivered by the parties and constitutes a legal, valid and binding obligation of each party, enforceable against the same in accordance with its terms.

15. **Recording.** This Agreement or summary memorandum thereof shall be recorded by the City with the Register of Deeds of Lancaster County, filing fees therefor to be paid in advance by the Owner.

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: \_\_\_\_\_  
Chris Beutler, Mayor of Lincoln

**PAR 5 PARTNERS, LLC**  
an Arizona limited liability company

By:  \_\_\_\_\_  
Name: TOM REED  
Title: MANAGER

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2015, 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 24 day of AUGUST, 2015, by TOM PETT, MANAGER of Par 5 Partners, LLC, an Arizona limited liability company.



David John McChesney  
Notary Public