

05R-113

Introduce: 6-6-05

RESOLUTION NO. A- 83383

1 BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

2 That the agreement titled Hartland's Garden Valley Addition Conditional Annexation and  
3 Zoning Agreement, which is attached hereto, marked as Attachment "A" and made a part hereof  
4 by reference, between the City of Lincoln and Hartland Homes, Inc. ("Owner"), outlining certain  
5 conditions and understandings relating to the annexation of approximately 90.05 acres of property  
6 generally located on the west side of N. 14th Street from Fletcher Ave. to Humphrey Ave., is  
7 approved.

8 BE IT FURTHER RESOLVED that the Mayor is authorized to execute the Annexation  
9 Agreement on behalf of the City.

10 6/24 BE IT FURTHER RESOLVED that the City Clerk is directed to return two fully executed  
11 copies of this Agreement to Rick Peo, Chief Assistant City Attorney, for distribution to the Owner.

12 BE IT FURTHER RESOLVED that the City Clerk is directed to record the Annexation  
13 Agreement or a summary memorandum thereof with the Register of Deeds, filing fees to be paid  
14 by the Owner.

Introduced by:

Jim A. Camp

AYES: Camp, Eschliman, McRoy,  
Svoboda; NAYS: Newman;  
ABSENT: Cook; ABSTAIN:  
Marvin.

Approved as to Form and Legality:

Randy W. Papp  
City Attorney

Approved this 23<sup>rd</sup> day of June, 2005:  
Colleen J. Seung  
Mayor

**ADOPTED**  
JUN 20 2005  
**BY CITY COUNCIL**

# CITY OF LINCOLN

Request for:  Ordinance  
 Resolution

(Do Not Write in this Space)

Bill Control No. 05R-113 Date: 5/24

Docketing Date 6/6; PH: 6-13-05

(To Be Entered by City Clerk)

<b>DATE</b>	May 24, 2005	<b>REQUEST MADE BY</b>	Rick Peo	<b>DEPARTMENT</b>	Law
<b>DESIRED DOCKET DATE:</b>	June 6, 2005	IF EMERGENCY, GIVE REASON (See Art. 6, Sec. 2 of Charter)			
<b>Emergency Measure Required:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					

## REASONS OR JUSTIFICATION FOR PROPOSED LEGISLATION

To approve the Hartland's Garden Valley Addition Conditional Annexation and Zoning Agreement between the City and Hartland Homes, Inc. relating to the annexation of approximately 90.05 acres, generally located on the west side of N. 14th Street from Fletcher Ave. to Humphrey Ave.

<b>REQUESTOR</b> <input type="checkbox"/> DOES <input checked="" type="checkbox"/> DOES NOT	WISH TO REVIEW AND APPROVE THIS ORDINANCE PRIOR TO ITS INTRODUCTION	 DIRECTOR'S SIGNATURE	5-24-05 DATE
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## TO BE USED BY THE FINANCE DEPARTMENT

<b>BUDGET REVIEW</b>	DATE:	<b>ACCOUNT NUMBER AND APPROPRIATE BALANCES</b>	DATE:	<b>FUND AVAILABILITY APPROVED</b>	DATE:
			DIRECTOR OF FINANCE SIGNATURE		

## DISTRIBUTION

Return two (2) copies to City Clerk for Docket Number

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**HARTLAND'S GARDEN VALLEY ADDITION  
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Hartland's Garden Valley Addition Conditional Annexation and Zoning Agreement ("Agreement") is made and entered into this 23<sup>rd</sup> day of June, 2005, by and between **Hartland Homes Inc.**, a Nebraska corporation, hereinafter referred to as "Owner," and the **City of Lincoln, Nebraska**, a municipal corporation, hereinafter referred to as "City."

**RECITALS**

A. Owner has requested the City to annex approximately 90.05 acres more or less of land generally located on the west side of North 14th Street from Fletcher Avenue to Humphrey Avenue. The approximately 90.05 acres is hereinafter referred to as the "Property" and is legally described on Exhibit A attached hereto.

B. Owner has requested a Change of Zone to rezone the Property from AG Agriculture District to R-3 Residential District.

C. Owner has requested the City to approve Special Permit No. 05015 (Hartland's Garden Valley Community Unit Plan for 326 single-family dwelling units).

D. The City has adopted Ordinance No. 18113, hereinafter referred to as the "Impact Fee Ordinance" based upon an Impact Fee Study prepared by Duncan Associates dated October, 2002, that went into effect on June 2, 2003. This Impact Fee Ordinance enables 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.

E. A Complaint for Declaratory and Injunctive Relief has been filed in the District Court of Lancaster County, Nebraska. This Complaint prays for judgment of the district court declaring the Impact Fee Ordinance invalid and unenforceable and for injunctive relief enjoining the imposition of impact fees. The District Court held the Impact Fee Ordinance to be valid and enforceable as an excise tax. The decision of the District Court has been appealed to the Nebraska Supreme Court.

F. The City is willing to annex the Property, approve the change of zone, and grant the special permit prior to a determination as to the validity and enforceability of the Impact Fee Ordinance, provided Owner agrees to make a guaranteed nonrefundable contribution to the cost of improving the City's Water System, Water Distribution, Wastewater System, Neighborhood Park & Trail, and Arterial Street Impact Fee Facilities necessitated by and attributable to the proposed development of the Property in the event the Impact Fee Ordinance is held invalid or is otherwise unenforceable.

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. **Special Permit.** The City agrees to approve Special Permit No. 05015 for a Community Unit Plan for 326 single-family dwelling units.

3. **Contributions for Impact Fee Facility Improvements.**

A. Water Distribution Impact Fee Facility Contribution. Owner agrees to contribute \$103,342.00 toward the cost of making Impact Fee Facility Improvements to the City's Water Distribution Impact Fee Facilities attributable to the proposed development of the Property.

B. Water System Impact Fee Facility Contribution. Owner agrees to contribute \$166,260.00 toward the cost of making Impact Fee Facility Improvements to the City's Water System Impact Fee Facilities attributable to the proposed development of the Property.

C. Wastewater Impact Fee Facility Contribution. Owner agrees to contribute \$133,334.00 toward the cost of making Impact Fee Facility Improvements to the City's Wastewater Impact Fee Facilities attributable to the proposed development of the Property.

D. Neighborhood Park and Trail Impact Fee Facility Contribution. Owner agrees to contribute \$106,276.00 toward the cost of making Impact Fee Facility Improvements to the City's Neighborhood Park and Trail Impact Fee Facilities attributable to the proposed development of the Property. However the City understands and acknowledges that Owner will be dedicating park land having a value of \$88,000.00 as provided in paragraph 4 below. The City agrees that the park land dedication is a Neighborhood Park and Trail Impact Fee Facility and that the dedication qualifies as a Neighborhood Park and Trail Impact Fee Facility Contribution. The City further agrees Owner may apply the \$88,000.00 value of the park land being dedicated towards satisfaction of the above Neighborhood Park and Trail Impact Fee Facility Contribution. In addition, in the event the Impact Fee Ordinance is finally determined to be valid and enforceable, the City agrees to reimburse Owner \$88,000.00 for said park land dedication subject to the following conditions:

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

(ii) In no event shall reimbursement exceed the impact fees that would otherwise be due for the entire development of the Property;

(iii) Owner shall not be entitled to any reimbursement of the \$88,000.00 in excess of impact fees actually received from development of the Property;

(iv) Any reimbursement to be paid from impact fees shall not constitute a general obligation or debt of the City; and

(v) No reimbursement shall be made prior to and unless the Impact Fee Ordinance is finally determined to be valid and enforceable.

E. **Arterial Street Impact Fee Facility Contribution.** Owner agrees to contribute \$611,576.00 toward the cost of making Impact Fee Facility Improvements to the City's Arterial Street Impact Fee Facilities attributable to the proposed development of the Property.

The Contributions for the above-described Impact Fee Facility Improvements reflect the amounts attributable to 100% development of the proposed development of the Property in 2005 based upon the 2005 Impact Fee Schedules for said Impact Fee Facilities. The Contributions for the above-described Water Distribution, Water System, and Wastewater Impact Fee Facility Improvements reflect the amount attributable to the proposed development of the Property consisting of 326 single-family detached dwelling units with each dwelling unit having a 3/4-inch water meter. Owner agrees that if water meters in excess of 3/4 inch are installed, said required contributions shall be increased accordingly based upon the size of the meter and number of dwelling units involved.

**4. Park Land Dedication.** As fulfillment of the park dedication requirements in Lincoln Municipal Code §26.23.160, Owner agrees to dedicate 1.8 acres for a neighborhood park. Owner as a voluntary donation hereby offers to dedicate an additional 1.0 acres of land for the neighborhood park and City hereby agrees to accept said donation. The total 2.8 acres of land to be dedicated as parkland is described as Outlot A, Block 6, on the Hartland's Garden Valley Community Unit Plan. The park shall have street frontage and Owner shall provide at no cost to the City all of the sidewalks, utilities and paving in the public right-of-way abutting the park. Owner further agrees, at Owner's own cost and expense, to plant required street trees abutting the parkland, except that the City agrees to plant two street trees where Owner previously proposed two buildable lots. Owner agrees to consult with the City's Department of Parks and Recreation prior to removal of any existing trees located on the land to be dedicated for the park. The Owner and City agree that the value of the 1.8 acres of park land being dedicated is \$88,000.00.

5. **Restriction on Development.** Owner understands and acknowledges that a 24-inch water main must be installed in North 14th Street from Fletcher Avenue to Humphrey Avenue in order to provide water service to the Property and that the City will not approve any application for building permit until the 24-inch main is installed. Said water main is required to be installed by Stonebridge Creek, LLC pursuant to the Stonebridge Creek Conditional Annexation and Zoning Agreement. Notwithstanding the above, the City agrees that if said water main is not installed by Stonebridge Creek, LLC by June 1, 2006, Owner may construct said water main through the City's executive order process and City shall reimburse Owner for said cost within sixty (60) days following completion of construction.

6. **Sanitary Sewer.** Owner agrees to construct through the City's executive order process the Wastewater Impact Fee Facility sanitary sewer main as shown on the approved Site Plan. The City agrees to reimburse Owner for said cost within sixty (60) days following completion of construction. The sanitary sewer shall be constructed prior to commencing Phase 2 of the project as shown in the approved Community Unit Plan. Owner agrees to convey at no cost to the City the necessary easement for said sanitary sewer together with such temporary construction easements as may be necessary for construction of the sanitary sewer main.

7. **Future Cost Responsibilities.** Owner understands and acknowledges that it is the City's position that the Impact Fee Facility Contributions by Owner under paragraph 3 of this Agreement do not address all the impacts the proposed development of the Property will have on the City's Impact Fee Facilities as set forth in the Impact Fee Study prepared by Duncan Associates dated October, 2002. Therefore, Owner understands that the proposed development of the Property shall be subject to the payment of impact fees.

8. **Guaranteed Payment of Contributions.**

A. Water Distribution, Water System, Wastewater, Neighborhood Park & Trail, and Arterial Street Impact Fee Facility Contributions. Owner shall, prior to the

approval of each final plat of the Property, provide the City a bond, escrow, letter of credit, or other security agreement approved by the City Attorney in an amount equal to a proportionate share of the Water Distribution, Water System, Wastewater, Neighborhood Park & Trail, and Arterial Street Impact Fee Facility Contributions attributable to full development of the lots within each final plat compared to the approved full development of the Property under this Agreement. Owner's proportionate payments of the Water Distribution, Water System, Wastewater, Neighborhood Park & Trail, and Arterial Street Impact Fee Facility Contributions shall be paid to City within thirty days written notice from the City that the following two events have occurred: (i) the City has awarded a bid and entered into a contract for the improvement of an eligible Water Distribution, Water System, Wastewater, Neighborhood Park and Trail, and/or Arterial Street Impact Fee Facility Improvement, and (ii) a final judgment of a court of competent jurisdiction has declared the Impact Fee Ordinance invalid and unenforceable. Notwithstanding the above, the amount of the bond, escrow, letter of credit, or other security agreement for the Neighborhood Park and Trail Impact Fee Facility Improvement Contribution may be reduced by \$88,000.00 which constitutes the value of the park land dedication provided for in paragraph 4 above.

B. **Release of Guarantee.** In the event a final judgment of a court of competent jurisdiction has declared the Impact Fee Ordinance valid and enforceable, the City agrees to release the bond, escrow, letter of credit, or other security agreement provided by Owner to guarantee the above-described Contributions.

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 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 and special permit 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 rescind said special permit 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. **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.

19. **Fair Share.** The City believes that it 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 arterial streets and the provision of adequate water and wastewater service an adequate neighborhood parks and trails as provided for in the Impact Fee Ordinance which is promoted by requiring Owner to pay its fair share of the cost to construct such Impact Fee Facilities and that an essential nexus exists between the City's legitimate interests and the conditions placed upon Owner under this Agreement. In addition, City has made an individualized determination and found that the conditions placed upon Owner 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 the annexation, change of zone, and Hartland's Garden Valley Community Unit Plan (Special Permit No. 05015) would have on the City's Impact Fee Facilities.

20. **Reservation of Rights and Waivers.** Notwithstanding any other provision of this Agreement, Owner reserves the right to sue the City to determine the validity of the provisions of this Agreement which relate to Impact Fee Facilities. No provision of

this Agreement which recites Owner's understanding that Owner's development will be subject to payment of impact fees, or acknowledges that Impact Fee Facility Contributions required by this Agreement do not address all the impacts the proposed development of the Property will have on Impact Fee Facilities, shall have the effect of waiving Owner's rights to a judicial determination of the essential nexus, rough proportionality or any other issue of federal or state constitutionality of such requirements and/or the procedure by which Owner's applications were approved, or the validity of such requirements under the Statutes of Nebraska, the Lincoln City Charter, or Lincoln Municipal Code. In consideration of the foregoing reservation of rights, and notwithstanding such reservation, Owner releases and discharges the City, all past, present and future members of the City Council of the City, in their official and individual capacities, the past or present Mayor or any department director, and all other officers agents, and employees of the City in their official and individual capacities from any and all causes of action for money damages, penalties or attorneys fees which Owner may now have with respect to or arising from Owner's request for annexation and application for special permit approval described in Recitals A and B of this Agreement and the City's negotiations, considerations and actions taken thereon, including but not limited to: a) claims for violation of Owner's rights under the United States Constitution, under 42 U.S.C. section 1983 and attorneys fees under 42 U.S.C. section 1988; b) claims for just compensation for a temporary taking of the Property pursuant to the Fifth Amendment of the United States Constitution and Article I, Section 21 of the Nebraska Constitution; and c) claims under the City's home rule charter, ordinances and regulations.

City acknowledges that City has included substantially identical provisions regarding Impact Fee Facilities in other "Conditional Annexation and Zoning Agreements" which also included this reservation of rights to sue the City to determine the validity of such provisions. If a lawsuit is brought challenging such provisions under any other "Conditional Annexation and Zoning Agreement" and the provisions in such agreement

which relate to Impact Fee Facilities are held invalid due to lack of authority to require such provisions in exchange for annexation and/or the special permit, the City agrees that Owner shall be entitled to the benefit of such judgment without the necessity of bringing a separate lawsuit challenging the Impact Fee Facility provisions in this Agreement, provided the statute of limitations in which to bring said lawsuit has not expired.

21. **Recordation.** This Agreement or a memorandum or notice 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:

Joan E. Ross  
City Clerk



THE CITY OF LINCOLN, NEBRASKA  
a municipal corporation

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

HARTLAND HOMES, INC.,  
a Nebraska corporation

By: [Signature]  
Duane Hartman, President

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of June, 2005, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.



Teresa J. Meier  
Notary Public

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me this 20 day of May, 2005, by Duane Hartman, President of Hartland Homes, Inc., on behalf of said corporation.



Susan P. Krejdl  
Notary Public

# HARTLAND'S GARDEN VALLEY

## AREA OF ANNEXATION

### LEGAL DESCRIPTION:

Lots 1 through 4, Block 1, Lots 1 and 4, Block 2 and the North Half of Lot 2, Block 2, and That part of North 11th Street which lies between Blocks 1 and 2, Garden Valley, Located in the Southeast Quarter of Section 35, Township 11 North, Range 6 East of the 6th. P.M., Lincoln, Lancaster County Nebraska, and more particularly described as follows:

Beginning at the Northeast corner of said Block 1; thence along the East line of said Block, said line also being the West Right-of-Way line of North 14th Street S 00°12'41" W a distance of 1267.75' to the Southeast corner of said Block 1; thence along the North Right-of-Way line of Southwick Avenue, now known as Pennsylvania Avenue, N 89°51'18" W a distance of 1946.44' to the Southwest corner of said Lot 4, Block 2; thence along the West line of said Lots 4 and 1, N 00°21'42" E a distance of 949.20' to a point on the West line of said Lot 1; thence N 89°54'10" W a distance of 626.06' to a point on the East line of said Lot 2; thence along said line, said line also being the East Right-of-Way line of North 7th Street N 00°25'29" E a distance of 316.23' to the Northwest corner of said Lot 2, Block 2; thence along the North line of said Blocks 2 and 1, said line also being the South Right-of-Way line of Humphrey Avenue S 89°55'07" E a distance of 2568.83'; to the point of beginning, having an area of 2661359.87 square feet or 61.096 acres, more or less.

and

Lot 2 and Lot 3 except the South 7.00 feet, Block 4, and the East Half of Lots 1 and 4 except the South 7.00 feet, Block 3, and That part of North 11th Street which lies between Blocks 3 and 4, Garden Valley, Located in the Southeast Quarter of Section 35, Township 11 North, Range 6 East of the 6th. P.M., Lincoln, Lancaster County Nebraska, and more particularly described as follows:

Beginning at the intersection of the East line of said Lot 3, Block 4 and the North Right-of-Way line of Fletcher Avenue; thence along the North Right-of-Way line of Fletcher Avenue N 89°46'39" W a distance of 1004.56' to a point on the North Right-of-Way line of Fletcher Avenue; thence N 00°18'05" E a distance of 1255.54' to a point on the North line of said Lot 1, Block 3; thence along the North line of said Blocks 3 and 4, said line also being the South Right-of-Way line of Southwick Avenue S 89°51'18" E a distance of 1003.83' to the Northeast corner of said Lot 2, Block 4; thence along the East line of said Lots 2 and 3, Block 4 for the next three calls S 00°17'39" W a distance of 599.34'; thence S 00°21'07" W a distance of 374.41'; thence S 00°06'04" W a distance of 283.15' to the point of beginning, having an area of 1261076.4 square feet or 28.95 acres, more or less.