

RESOLUTION NO. A- 83813

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

2 That the agreement titled Schworer Conditional Annexation and Zoning Agreement,
3 which is attached hereto, marked as Attachment "A" and made a part hereof by reference, between
4 the City of Lincoln and Dennis R. Schworer, LLC, outlining certain conditions and understandings
5 relating to the annexation of approximately 11.1877 acres of property generally located at 33rd and
6 Superior Streets, is approved.

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

9 4/7 BE IT FURTHER RESOLVED that the City Clerk is directed to return two fully executed
10 copies of this Agreement to Rick Peo, Chief Assistant City Attorney, for distribution to the Owner.

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

Introduced by:

Jonathan Cook

Approved as to Form and Legality:

Thomas W. Royce
City Attorney

AYES: Camp, Cook, Eschliman,
Marvin, McRoy, Newman,
Svoboda; NAYS: None.

Approved this 12th day of Apr., 2006:
Colleen J. Seung
Mayor

ADOPTED
APR 10 2006
BY CITY COUNCIL

06R-57

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 06R-57 by substituting the attached Schworer Conditional Annexation and Zoning Agreement marked as Attachment "A" for the Schworer Conditional Annexation and Zoning Agreement attached to Bill No. 06R-57 as Attachment "A".

Introduced by:

Jonathan Cook

AYES: Camp, Cook, Eschliman,
Marvin, McRoy, Newman, Svoboda;
NAYS: None.

Approved as to Form & Legality:

ASD Riches
City Attorney

Requested by: Law Department

Reason for Request: To approve a revised Schworer Conditional Annexational and Zoning Agreement which eliminates provisions no longer necessary as a result of the Nebraska Supreme Court decision upholding the City's Impact Fee Ordinance.

ADOPTED
APR 10 2006
BY CITY COUNCIL

SCHWORER
CONDITIONAL ANNEXATION AND ZONING AGREEMENT
(REMAINING 11.1877 ACRES OF LOT 69, 6-10-7)

This Schworer Conditional Annexation and Zoning Agreement is made and entered into this 10th day of APRIL, 2006, by and between **Schworer Motor Company**, 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 is the owner of Lot 69, Irregular Tract, located in Section 6, Township 10 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska. Lot 69 is generally located on the east side of North 33rd Street and north of Superior Street.

B. Owner has requested the City to annex the remaining approximately 11.1877 acres of Lot 69 that is not currently annexed ("Annexed Property"). The Annexed Property is legally described on Exhibit A attached hereto.

C. Owner has requested a change of zone to rezone the Annexed Property and additional land from R-3 Residential District to H-3 Highway Commercial District for use as an automobile dealership, without submitting a preliminary plat covering all of Lot 69.

D. The City is not willing to approve the annexation and change of zone unless Owner submits a preliminary plat that provides for a future street from the existing street stub into Lot 69 at North 33rd Street extending east to the east boundary of Lot 69.

E. In order to satisfy Owner's desire and the City's concerns, the Owner has proposed to divide Lot 69 by deed into a North Lot and South Lot and to preliminary plat the North Lot showing the extension of a local street from the existing street stub into Lot 69 at North 33rd Street, east to the east boundary of Lot 69. Owner further proposes to only final plat the southwest corner of the North Lot needed for the auto dealership, and to request deferral of the construction of the street and other subdivision improvements until the northwest corner of the North Lot is final platted.

F. The City Administration is willing to support the Owner's proposal provided Owner agrees that no occupancy permit shall be issued for the auto dealership building(s) until the southwest corner of the North Lot is final platted.

G. 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.

H. 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 affirmed by the Nebraska Supreme Court.

I. Pursuant to the North 33rd Street Infrastructure Agreement approved by Resolution No. A-80046, Owner participated in the financing or construction of improvements qualifying Owner to an exemption from Water and Arterial Street Impact Fees.

J. The City is willing to annex the Annexed Property and approve the change of zone, provided Owner agrees to pay all wastewater impact fees imposed by the Impact Fee Ordinance necessitated by and attributable to the proposed development of the Annexed Property.

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 Annexed Property.
2. **Change of Zone.** The City agrees to approve the change of zone rezoning the Annexed Property from R-3 Residential District to H-3 Highway Commercial District.
3. **Issuance of Occupancy Permit.** Owner agrees that no occupancy permits shall be issued for any building to be located on the Annexed Property until Lot 69 has been divided by deed into a North and a South Lot; the North Lot has been preliminary platted showing a local street from the existing street stub into the North Lot at North 33rd Street extended east to the east property line of the North Lot ("East-West Street"); and the southwest corner of the North Lot of the North Lot containing the building has been final platted. Owner further agrees that any buildings constructed on the Annexed Property shall be set back from the East-West Street as shown on the preliminary plat in accordance with the yard setback requirement in Lincoln Municipal Code §27.43.080.
4. **Timing of Improvements.** Owner agrees to install at Owner's own cost and expense any public or private improvement or facility required by Chapter 26.23 (Development Standards) of the Lincoln Municipal Code. City agrees to support any request of Owner to defer installation of said improvements until the northwest corner of the North Lot abutting the final plat of the southwest corner of the North Lot is final platted.

5. **Future Cost Responsibilities.** Owner understands that the proposed development of the Property shall be subject to the payment of wastewater impact fees and Owner agrees to pay said fees..

6. **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.

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

8. **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.

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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:

Jean E. Ross
City Clerk



THE CITY OF LINCOLN, NEBRASKA
a municipal corporation

By:

Coleen J. Seng
Coleen J. Seng, Mayor

SCHWORER MOTOR COMPANY
a Nebraska corporation

By:

Donna R. Schworer
President

EXHIBIT "A"

**LEGAL DESCRIPTION
ANNEXATION**

A LEGAL DESCRIPTION FOR A TRACT OF LAND COMPOSED OF A PORTION OF LOT 69 I.T., LOCATED IN THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 10 NORTH, RANGE 7 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, STATE OF NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 69 I.T., SAID POINT BEING **THE TRUE POINT OF BEGINNING**, THENCE SOUTH ON AN ASSUMED BEARING OF SOUTH 01 DEGREES 15 MINUTES 05 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 69 I.T., A DISTANCE OF 816.78 FEET TO A POINT, THENCE NORTH 75 DEGREES 05 MINUTES 00 SECONDS WEST, A DISTANCE OF 272.41 FEET TO A POINT, THENCE SOUTH 89 DEGREES 29 MINUTES 13 SECONDS WEST, A DISTANCE OF 494.68 FEET TO A POINT OF CURVATURE OF A NON TANGENT CURVE, THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A DELTA ANGLE OF 20 DEGREES 16 MINUTES 15 SECONDS, A RADIUS OF 530.00 FEET, A ARC LENGTH OF 187.51 FEET, A CHORD BEARING OF NORTH 12 DEGREES 49 MINUTES 13 SECONDS EAST, AND A CHORD DISTANCE OF 186.53 FEET TO A POINT, THENCE NORTH 22 DEGREES 57 MINUTES 21 SECONDS EAST, A DISTANCE OF 518.89 FEET TO A POINT OF CURVATURE, THENCE ALONG A CURVE IN A COUNTER CLOCKWISE DIRECTION, HAVING A DELTA ANGLE OF 04 DEGREES 23 MINUTES 42 SECONDS, A RADIUS OF 1,200.00 FEET, A ARC LENGTH OF 92.05 FEET, A CHORD BEARING OF NORTH 20 DEGREES 45 MINUTES 30 SECONDS EAST, AND A CHORD DISTANCE OF 92.03 FEET TO A POINT OF INTERSECTION WITH THE NORTH LINE OF SAID LOT 69 I.T., THENCE NORTH 89 DEGREES 24 MINUTES 30 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 69 I.T., A DISTANCE OF 499.37 FEET TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 487,337.85 SQUARE FEET OR 11.1877 ACRES, MORE OR LESS.

March 29, 2005
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MAR 31 2005

CITY OF LINCOLN
PLANNING DEPARTMENT

06R-57

4/10/06 Council Proceedings:

COOK Moved to amend Bill No. 06R-57 by substituting the Schworer Conditional Annexation and Zoning Agreement marked as Attachment "A" for the Schworer Conditional Annexation and Zoning Agreement attached to Bill No. 06R-57 as Attachment "A".

 Seconded by McRoy & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.