

WOODLAND VIEW CONDITIONAL ANNEXATION AGREEMENT

This Woodland View Conditional Annexation Agreement ("Agreement") is made and entered into this _____ day of _____, 2005, by and between **Janet H. Broer and Erich H. Broer**, hereinafter referred to as "Owner," and the **City of Lincoln, Nebraska**, a municipal corporation, hereinafter referred to as "City."

R E C I T A L S

A. Owner has requested the City to annex approximately 24.33 acres more or less of land generally located southeast of S.W. 40th Street and West A Street. The approximately 24.33 acres is hereinafter referred to as the "Property" and is more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

B. Owner has requested the City to approve Change of Zone No. 04070 rezoning the Property from AGR Agricultural Residential District to R-3 Residential District.

C. Owner has requested the City to approve Preliminary Plat No. 04027 to preliminary plat the Property as Woodland View for 83 residential lots and one outlot.

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 decision of the District Court upholding the validity of the Impact Fee Ordinance has been appealed to the Nebraska Supreme Court.

F. The City is willing to annex the Property and grant the change of zone prior to a final determination as to the validity and enforceability of the Impact Fee Ordinance, provided Owner agrees to pay or cause to be paid all impact fees imposed by the Impact Fee Ordinance necessitated by and attributable to the proposed development of the Property or pay or cause to be paid an

equivalent in-lieu-of fee, in the event the Impact Fee Ordinance is held invalid or is otherwise unenforceable.

G. The Property is located in the Southwest Rural Fire District and 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.

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 and Preliminary Plat.** The City agrees to approve Change of Zone No. 04070 rezoning the Property to R-3 Residential District and agrees to approve the Woodland View Preliminary Plat for 83 residential lots.
3. **Payment of Impact Fees or In-Lieu-Of Fees.** As an inducement to the City to approve the annexation of the Property, to approve the Change of Zone rezoning the Property from AGR Agricultural Residential District to R-3 Residential District, and to approve the Woodland View Preliminary Plat, Owner voluntarily agrees not to object to or protest the City's imposition of impact fees pursuant to the Impact Fee Ordinance and Impact Fee Schedules adopted by the City Council. If Owner is the developer of any development which occurs on the Property, Owner agrees to pay all impact fees imposed as they become due and payable. Owner further agrees that if Owner is not the developer of any development which occurs on the Property, Owner shall require any such developer to pay all impact fees imposed as they become due and payable without objection or protest to the City's imposition of impact fees pursuant to the Impact Fee Ordinance and Impact Fee Schedules adopted by the City Council. Owner further agrees to require such developer to execute the form entitled "Non-Owner Developer Voluntary Payment of Impact Fees and Waiver of Refund"

attached hereto, marked as Exhibit B, and incorporated herein by reference. Owner further agrees that in the event the Impact Fee Ordinance is for any reason declared to be void, illegal, or otherwise unenforceable, then the Owner agrees, in lieu of impact fees, to pay or cause to be paid to the City in full, prior to the issuance of a building permit for development, or prior to the issuance of any other permit for development where a building permit is not required, or prior to engaging in a development for which no permit is required, an amount equal to the amount of the impact fees which would have been imposed under the Impact Fee Schedules in place on the date the Impact Fee Ordinance is held to be void, illegal, or otherwise unenforceable.

In the event impact fees for any such development are paid to the City and subsequently the Impact Fee Ordinance and impact fees thereunder are declared to be void, illegal, or otherwise unenforceable and ordered refunded, Owner agrees the City may keep and treat the impact fees so paid by Owner as the payment of in-lieu-of impact fees for said development instead of refunding said fees. Owner further agrees that if any impact fee paid by a developer other than the Owner is ordered refunded, Owner agrees to pay said amount to the City.

4. Contribution for Off-Site Sanitary Sewer Trunk Improvements. Owner understands and acknowledges that the City has concerns about the capacity of the West A trunk sewer which will sewer the property and that the City is aware of deficiencies in the trunk line which may be exacerbated by full development of the Property under the Change of Zone and Preliminary Plat. Owner further understands and acknowledges that, while the City is conducting a study to identify all deficiencies in the trunk line and how best to correct them, the City does not have monies available to make identified improvements in the current fiscal year. Therefore, as an inducement to the City to approve the Annexation, Change of Zone, and Preliminary Plat, Owner agrees to advance to the City a maximum of One Hundred Twenty-Five Thousand and 00/100ths Dollars (\$125,000.00) in order for the City to correct the deficiencies identified in the West A trunk sewer study which must be corrected in order to adequately sewer the property if the land area served by the trunk sewer is developed at a rate which necessitates correction of such deficiencies prior to funding being available in the City's Capital Improvement Plan. Said advance shall be paid to City within 30 days written notice from the City that the City has awarded the bid and entered into a contract for Phase 1 improvements to the West A trunk sewer prior to January 1, 2007. In order to guarantee payment of said advance, Owner agrees, prior to construction of any of Owner's sanitary sewer facilities to serve the Property, to provide the City a bond, escrow, letter of credit, or other

security agreement approved by the City Attorney in an amount of \$125,000.00. If Owner advances funding to the City pursuant to this paragraph, City agrees to repay such advance to Owner not later than three years from the date such advance is made by Owner.

5. Contribution for Southwest Rural Fire District Costs. Owner understands and acknowledges that the City may not annex the property lying within the boundaries of the Southwest 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. Owner desires to be annexed by the City and therefore agrees to pay, prior to annexation, the \$233.00 which the City has determined must be paid by the City to the Southwest Rural Fire District in order for the annexation to be complete.

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 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 former AGR Agricultural Residential District zoning 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. 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 Woodland View Preliminary Plat would have on the City's Impact Fee Facilities.

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:

THE CITY OF LINCOLN, NEBRASKA
a municipal corporation

City Clerk

By: _____
Coleen J. Seng, Mayor

By: _____
Janet H. Broer

By: _____
Erich H. Broer

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Coleen J. Seng, 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 _____, 2005, by Janet H. Broer.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2005, by Erich H. Broer.

Notary Public

**NON-OWNER DEVELOPER
VOLUNTARY PAYMENT OF IMPACT FEES
AND WAIVER OF REFUND**

Date: _____

Permit #: _____

Address: _____

Legal Description: _____

Name of Property Owner: _____

Amount of Impact Fee Paid: \$ _____

Check #: _____

The undersigned Permit Applicant understands and acknowledges that the above-described property is subject to the Woodland View Conditional Annexation Agreement and that pursuant to said Agreement, the owner of the above-described property has agreed that development of the property shall be subject to the voluntary payment of impact fees or payment of an equivalent fee in lieu of impact fees in the event impact fees are determined to be invalid. The undersigned is developing the property on behalf of or with permission of the owner and acknowledges that the undersigned is voluntarily paying this fee without protest or objection. In the event the Impact Fee Ordinance and impact fees thereunder are declared to be invalid, the undersigned agrees that the City may keep and treat the impact fees paid as the owner's equivalent payment in lieu of impact fees and the undersigned hereby waives any refund of said fees.

Name of Permit Applicant: _____

Address: _____

By: _____

Title: _____