

**AMENDMENT NO. 3 TO THE  
VILLAGE GARDENS  
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Amendment No. 3 to the Conditional Annexation and Zoning Agreement for Village Gardens ("Amendment 3") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, 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 has requested the City to annex approximately 40.68 acres of property which is legally described on Attachment "B-3", which is attached hereto and incorporated herein by this reference, hereinafter referred to as the "Annexed Property".

B. Owner is the owner of all of the Annexed Property except that portion designated as "LPS Property" on the site plan attached hereto as Attachment "A-3" and incorporated herein by this reference, which is owned by Lancaster County School District 001, a/k/a Lincoln Public Schools.

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

D. Owner has requested the City include the Annexed Property within the Village Gardens Planned Unit Development ("PUD").

E. The Annexed Property is subject to the Village Gardens Conditional Annexation and Zoning Agreement entered into the 14th day of February, 2005, approved by Resolution No. A-83211, by and between the City of Lincoln, Nebraska and Campbell Farm and Land Co. and Northwoods L.L.C, as amended ("Annexation Agreement"). Campbell Farm and Land Co. and Northwoods L.L.C. were collectively referred to in said agreements as the "Owner." Owner is the successor in interest to Campbell Farm and Land Co. and Northwoods L.L.C. The Annexed Property is part of the "Property" described in the Annexation Agreement and was included in and designated as part of the "Next Phase Property".

F. Capitalized terms not defined herein are defined in the Annexation Agreement.

G. Except to the extent amended by this Amendment 3, the terms of the original Annexation Agreement shall control and continue to be binding upon the parties.

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. **PUD.** The City agrees to approve the PUD for the Annexed Property.
3. **Change of Zone.** The City agrees to approve a change of zone rezoning the Annexed Property from AG Agricultural District to R-3 Residential District.
4. **Property Limits.** The Property boundaries generally shown on the Property Limits and Overall Phasing Exhibit marked as Attachment "A" to the Annexation Agreement is hereby replaced with Attachment "A-3" attached hereto and incorporated herein by this reference.
5. **Overall Utility Exhibit.** The Village Gardens Overall Utility Exhibit and Residential Paving Exhibit which are marked as Attachments "D" and "E", respectively, to the Annexation Agreement are hereby replaced with Attachments "D-3" and "E-3" attached hereto and incorporated herein by this reference.

6. **Development of Next Phase Property.**

A. Paragraph 7.B.(2) of the Annexation Agreement is hereby amended and restated as follows:

(2) Yankee Hill Road. Yankee Hill Road from South 56<sup>th</sup> Street to South 70<sup>th</sup> Street is shown in the Lincoln City – Lancaster County Comprehensive Plan as a major arterial and as an arterial road improvement during the 25-year planning period to be constructed from two lanes to four lanes plus center turn lanes with access points at S. 63<sup>rd</sup> Street and S. 65<sup>th</sup> Street, based upon the Owner's master plan. The City, at its expense and cost, will design and construct Yankee Hill Road, including the intersection and related right and left turn lanes at the S. 63<sup>rd</sup> Street point. Owner agrees that Owner shall pay the City the total cost incurred by the City necessary for the westbound to northbound right turn lane in Yankee Hill Road at S. 65<sup>th</sup> Street. Said payment shall be due and payable to the City within thirty (30) days following completion of the Yankee Hill Road improvements.

Notwithstanding the above Owner agrees that if any final plat development of the Next Phase Property under the PUD commences greater than one year prior to the City Public Works Director's best judgment of the City's anticipated date for constructing the above-described improvements to Yankee Hill Road, then Owner shall at its own cost and expense design and construct temporary right and left turn lanes at each final platted driveway street connection to Yankee Hill Road as required by the City. Access to Yankee Hill Road east of 65<sup>th</sup> Street is not covered by the Annexation Agreement at this time.

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.

B. Paragraph 7.B.(3) of the Annexation Agreement is hereby deleted.

C. Paragraph 7.B.(4) of the Annexation Agreement is hereby renumbered, amended, and restated as follows:

(3) Neighborhood Park. Owner and City acknowledge that City is negotiating with LPS for the purchase of a portion of the LPS Property for the location of a neighborhood park. In the event the negotiations between the City and LPS are not successful, during the final platting of the Next Phase Property Owner shall work with the City to find a location for a neighborhood park within the Property for the City to acquire and shall enter into a written agreement with the City to outline the construction and maintenance of the park and the respective costs of each party.

D. Paragraph 7.B.(5) of the Annexation Agreement is hereby renumbered as paragraph 7.B.(4) Water.

E. Paragraph 7.B.(5) shall be added as follows:

(5) Blanchard Blvd. No more than 66 lots shall be platted in Phase II of the PUD until an Executive Order for the extension of Blanchard Blvd. to connect to Pine Lake Road is approved by the City. Lots south of Bridle Lane will not be counted within the 66 lots.

7. **Contribution for Rural Fire District.** Owner understands and acknowledges that the City may not annex the Annexed 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, but shall not be required to pay any amount to the applicable rural fire district in order for the annexation to be complete as there are no current outstanding obligations of the district.

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

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 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, rescind the PUD and 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.

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. **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.





VILLAGE GARDENS  
 PROPERTY LIMITS AND OVERALL PHASING EXHIBIT

**MOUSSON**  
 ASSOCIATES

11111 Lakewood Blvd. Suite 1111  
 Lakewood, CO 80401-4002  
 TEL: 303.474.6211  
 FAX: 303.474.6100

EXHIBIT  
 A-3

**ATTACHMENT "B-3"**  
**ANNEXATION AND CHANGE OF ZONE**  
**LEGAL DESCRIPTION**

A LEGAL DESCRIPTION FOR A TRACT OF LAND COMPOSED OF LOT 86 I.T., A PORTION OF LOT 81 I.T., AND A PORTION OF LOT 83 I.T., ALL LOCATED IN THE SOUTH HALF OF SECTION 21, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

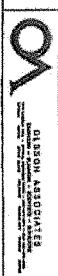
COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 86 I.T., SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF EXBURY ROAD AND ON THE NORTH LINE OF THE SOUTH HALF OF SAID SECTION 21, SAID POINT BEING **THE TRUE POINT OF BEGINNING**; THENCE EASTERLY ALONG THE NORTH LINE OF SAID LOT 86 I.T., THE NORTH LINE OF LOT 81 I.T., AND THE NORTH LINE OF LOT 83 I.T., SAID LINE BEING THE NORTH LINE OF THE SOUTH HALF OF SAID SECTION 21, ON AN ASSUMED BEARING OF S89°58'04"E, A DISTANCE OF 1,304.22' TO A POINT; THENCE S00°01'56"W, A DISTANCE OF 22.32' TO A POINT; THENCE S26°54'20"W, A DISTANCE OF 180.00' TO A POINT OF CURVATURE FOR A NON-TANGENT CURVE IN A COUNTER CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 03°50'31", A RADIUS OF 530.00', AN ARC LENGTH OF 35.54', A TANGENT LENGTH OF 17.78', A CHORD LENGTH OF 35.53', AND A CHORD BEARING OF S65°00'56"E TO A POINT; THENCE S12°53'26"W, A DISTANCE OF 622.22' TO A POINT; THENCE S12°54'59"W, A DISTANCE OF 68.89' TO A POINT; THENCE S15°26'56"W, A DISTANCE OF 60.62' TO A POINT; THENCE S19°35'05"W, A DISTANCE OF 60.62' TO A POINT; THENCE S23°57'27"W, A DISTANCE OF 67.57' TO A POINT; THENCE S28°39'20"W, A DISTANCE OF 70.16' TO A POINT; THENCE S31°02'56"W, A DISTANCE OF 28.16' TO A POINT; THENCE S58°57'04"E, A DISTANCE OF 25.98' TO A POINT; THENCE S31°02'56"W, A DISTANCE OF 60.00' TO A POINT; THENCE N58°57'04"W, A DISTANCE OF 10.00' TO A POINT; THENCE S31°03'03"W, A DISTANCE OF 130.21' TO A POINT; THENCE S60°06'12"E, A DISTANCE OF 262.13' TO A POINT; THENCE S29°53'48"W, A DISTANCE OF 120.00' TO A POINT; THENCE S60°06'12"E, A DISTANCE OF 22.58' TO A POINT; THENCE S29°53'48"W, A DISTANCE OF 72.00' TO A POINT; THENCE N60°06'12"W, A DISTANCE OF 10.00' TO A POINT; THENCE S26°49'28"W, A DISTANCE OF 139.01' TO A POINT; THENCE S27°06'49"W, A DISTANCE OF 66.77' TO A POINT OF INTERSECTION WITH A WEST LINE OF LOT 81 I.T.; THENCE N60°32'27"W ALONG A WEST LINE OF SAID LOT 81 I.T., A DISTANCE OF 63.05' TO A POINT; THENCE N29°27'33"E ALONG A WEST LINE OF SAID LOT 81 I.T., A DISTANCE OF 29.55' TO A POINT; THENCE N60°32'27"W ALONG A WEST LINE OF SAID LOT 81 I.T., A DISTANCE OF 60.00' TO A POINT; THENCE N57°53'59"W ALONG A WEST LINE OF SAID LOT 81 I.T., A DISTANCE OF 123.35' TO A POINT; THENCE N77°13'30"W ALONG A WEST LINE OF SAID LOT 81 I.T., A DISTANCE OF 75.42' TO A POINT; THENCE N32°15'57"W ALONG A WEST LINE OF SAID LOT 81 I.T., A DISTANCE OF 70.17' TO A POINT; THENCE N27°08'05"W ALONG A WEST LINE OF SAID LOT 81 I.T., A DISTANCE OF 131.20' TO A WEST CORNER OF SAID LOT 81 I.T., SAID POINT BEING A SOUTH CORNER OF LOT 86 I.T.; THENCE N27°07'40"W ALONG A WEST LINE OF SAID LOT 86 I.T., SAID LINE BEING A EAST RIGHT-OF-WAY LINE OF BRIDLE LANE, A DISTANCE OF 60.00' TO A POINT, SAID POINT BEING A POINT OF CURVATURE FOR A NON-TANGENT CURVE IN A CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF 27°04'05", A RADIUS OF 420.00', AN ARC LENGTH OF 198.42' ALONG A SOUTH LINE OF SAID LOT 86 I.T., SAID LINE BEING A NORTH LINE OF SAID RIGHT-OF-WAY, A TANGENT LENGTH OF 101.10', A CHORD LENGTH OF 196.58', AND A CHORD BEARING OF S76°24'46"W TO A POINT; THENCE S89°56'49"W ALONG A SOUTH LINE OF SAID LOT 86 I.T., SAID LINE BEING A NORTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 403.17' TO THE SOUTHWEST CORNER OF SAID LOT 86 I.T.; THENCE N00°18'19"E ALONG THE WEST LINE OF SAID LOT 86 I.T., A DISTANCE OF



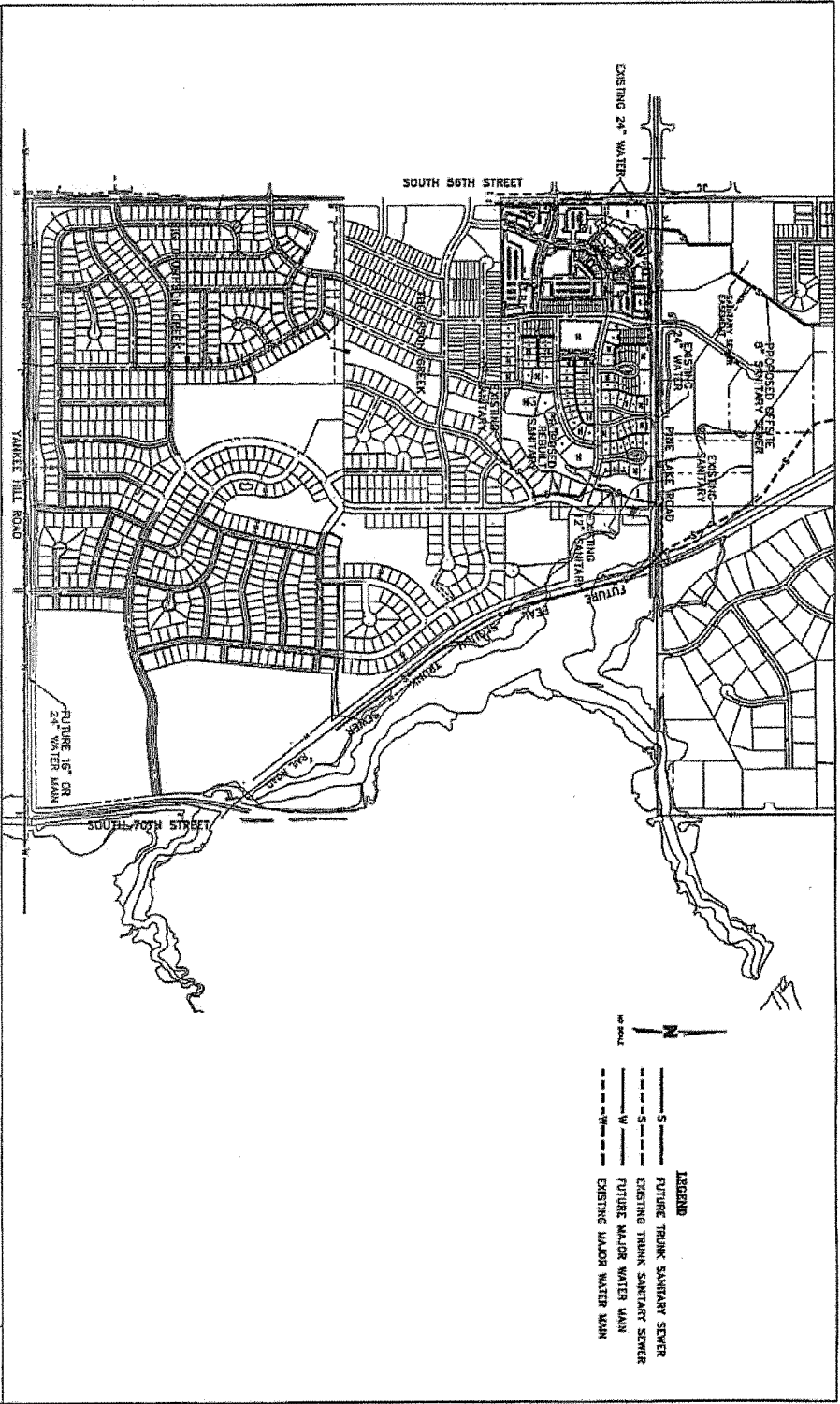
1,306.93' TO A WEST CORNER OF SAID LOT 86 I.T., SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE OF EXBURY ROAD, SAID POINT ALSO BEING THE POINT OF CURVATURE FOR A NON-TANGENT CURVE IN A COUNTER CLOCKWISE DIRECTION HAVING A CENTRAL ANGLE OF  $42^{\circ}12'23''$ , A RADIUS OF 60.00', AN ARC LENGTH OF 44.20' ALONG A WEST LINE OF SAID LOT 86 I.T., SAID LINE BEING A EAST LINE OF SAID RIGHT-OF-WAY, A TANGENT LENGTH OF 23.16', A CHORD LENGTH OF 43.21', AND A CHORD BEARING OF  $N26^{\circ}46'42''E$  TO A POINT; THENCE  $N05^{\circ}40'30''E$  ALONG A WEST LINE OF SAID LOT 86 I.T., SAID LINE BEING A EAST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 96.88' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 1,772,138.06 SQUARE FEET OR 40.68 ACRES, MORE OR LESS.

PROJECT NO. 2002-0206  
 DRAWN BY: MB  
 DATE: 12/29/04

VILLAGE GARDENS  
 OVERALL UTILITY EXHIBIT



ATTACHMENT  
 D-3



PROJECT NO. 2002-0206  
 DRAWN BY: RB  
 DATE: 2/23/05

VILLAGE GARDENS  
 RESIDENTIAL PAVING EXHIBIT



ATTACHMENT  
 E-3

