



\$80.50

04044960

INST. NO 2004

2004 JUL -7 A 10:54

044960

LANCASTER COUNTY, NE

STOCK

CODE

CHECKED

ENTERED

DATED

A-82842

### WILDERNESS HILLS CONDITIONAL ANNEXATION AND ZONING AGREEMENT

This Wilderness Hills Conditional Annexation and Zoning Agreement ("Agreement") is made and entered into this 30<sup>th</sup> day of June, 2004, by and between **Lincoln Federal Bancorp, Inc.**, a federal corporation, **Security Financial Life Insurance Co.**, a Nebraska corporation, **Buffalo Grass, LLC**, a Nebraska limited liability company, **B & J Partnership, Ltd.**, a Nebraska limited partnership, and **Allen R. Hohensee and Susan K. Hohensee**, husband and wife, hereinafter collectively referred to as "Owners," and the **City of Lincoln, Nebraska**, a municipal corporation, hereinafter referred to as "City."

#### RECITALS

A. Owners have requested the City to annex approximately 91.98 acres more or less of land generally located at the southeast corner of South 27th Street and Yankee Hill Road. The approximately 91.98 acres is hereinafter referred to as the "Property" and is legally described as:

A tract of land located in Section 30, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, consisting of Lot 5, part of Lot 12, Lot 14, Lot 15, part of Lot 16, part of Lot 17, part of Lot 22, part of Lot 33, Lot 35 I.T. located in the North Half of Section 30, Township 9 North, Range 7 East, and part of Lot 12 and part of Lot 16 I.T. located in the South Half of Section 30, Township 9 North, Range 7 East; and more particularly described as follows:

Referring to the north quarter corner of said Section; thence south 00 degrees 02 minutes 58 seconds west on an assumed bearing along the east line of the Northwest Quarter of said section, a distance of 50.01 feet to a point on the south right-of-way line of Yankee Hill Road; thence south 88 degrees 45 minutes 38 seconds west along said south line, a distance of 100.26 feet to the point of beginning; thence south 00 degrees 02 minutes 28 seconds west, a distance of 161.04 feet; thence south 05 degrees 44 minutes 43 seconds west, a distance of 140.69 feet to the point of curvature of a nontangent curve to the right having a central angle of 25 degrees 02 minutes 01 seconds, a radius of 2,033.00 feet, an arc length of 888.25 feet, a chord length of 881.20 feet and a chord bearing of south 12 degrees 29 minutes

City Clerk

26 seconds west; thence along said curve, a distance of 888.25 feet; thence south 25 degrees 00 minutes 27 seconds west, a distance of 151.43 feet; thence south 69 degrees 21 minutes 56 seconds east, a distance of 8.74 feet; thence south 20 degrees 38 minutes 04 seconds west, a distance of 87.08 feet; thence north 69 degrees 21 minutes 41 seconds west, a distance of 15.52 feet to the point of curvature of a nontangent curve to the left having a central angle of 17 degrees 16 minutes 22 seconds, a radius of 2,558.00 feet, an arc length of 771.16 feet, a chord length of 768.24 feet and a chord bearing of north 77 degrees 59 minutes 36 seconds west; thence along said curve, a distance of 771.16 feet; thence south 13 degrees 28 minutes 51 seconds east, a distance of 221.69 feet; thence south 12 degrees 35 minutes 31 seconds east, a distance of 83.37 feet; thence south 02 degrees 58 minutes 55 seconds east, a distance of 79.47 feet; thence south 00 degrees 07 minutes 52 seconds east, a distance of 63.45 feet; thence continuing southerly along said line, a distance of 495.27 feet; thence south 89 degrees 56 minutes 50 seconds west, a distance of 120.00 feet; thence south 00 degrees 07 minutes 52 seconds east, a distance of 15.60 feet; thence south 89 degrees 52 minutes 08 seconds west, a distance of 360.00 feet; thence north 00 degrees 07 minutes 52 seconds west, a distance of 5.02 feet; thence south 89 degrees 52 minutes 08 seconds west, a distance of 120.00 feet; thence south 00 degrees 07 minutes 52 seconds east, a distance of 500.68 feet to the point of curvature of a nontangent curve to the left having a central angle of 01 degrees 47 minutes 32 seconds, a radius of 1,898.24 feet, an arc length of 59.38 feet, a chord length of 59.37 feet and a chord bearing of south 83 degrees 46 minutes 12 seconds west; thence along said curve, a distance of 59.38 feet; thence south 82 degrees 52 minutes 26 seconds west, a distance of 566.38 feet to the point of curvature of a curve to the right having a central angle of 07 degrees 10 minutes 02 seconds, a radius of 1,542.00 feet, an arc length of 192.89 feet, a chord length of 192.77 feet and a chord bearing of south 86 degrees 27 minutes 27 seconds west; thence along said curve, a distance of 192.89 feet; thence north 89 degrees 57 minutes 32 seconds west, a distance of 116.47 feet; thence along the easterly right-of-way line of South 27th Street for the next 4 courses, north 00 degrees 00 minutes 54 seconds west, a distance of 99.32 feet; thence north 00 degrees 03 minutes 13 seconds west, a distance of 665.12 feet; thence north 89 degrees 28 minutes 16 seconds east, a distance of 9.44 feet; thence north 00 degrees 36 minutes 09 seconds east, a distance of 660.11 feet; thence north 89

degrees 28 minutes 17 seconds east, a distance of 682.00 feet; thence north 00 degrees 03 minutes 32 seconds west, a distance of 1,273.77 feet; thence north 88 degrees 45 minutes 38 seconds east, a distance of 676.55 feet; thence north 00 degrees 03 minutes 50 seconds west, a distance of 10.00 feet; thence north 88 degrees 45 minutes 38 seconds east, a distance of 1,138.23 feet to the point of beginning; containing 91.98 acres, more or less;

B. Owners have requested the City to approve Special Permit No. 1999 (Wilderness Hills Community Plan for 640 dwelling units).

C. Owners have requested the City to approve Use Permit No. 154 for 494,500 square feet of office/commercial floor area.

D. Owners have requested the City to approve Change of Zone No. 3423 rezoning Owners' property from AG Agricultural District to R-3 Residential District, R-5 Residential, O-3 Office Park District, and B-2 Planned Neighborhood Business District.

E. 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 will go into effect on June 2, 2003. This Impact Fee Ordinance will enable 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.

F. 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.

G. Pursuant to the Conditional Annexation and Zoning Agreement for Yankee Hill Road Vicinity (Yankee Hill Agreement), the City and the developers of Wilderness Ridge constructed certain sanitary sewer trunk lines (hereinafter "Sewer A" and "Sewer B") to sewer 725 acres of land within the preliminary plat of Wilderness Ridge Addition. Said Sewer A and Sewer B can also sewer 312 acres of land outside of the boundaries of the preliminary plat for Wilderness Ridge, including the Property.

H. In the Yankee Hill Agreement, the City agreed to charge owners of land outside the boundaries of the preliminary plat for Wilderness Ridge Addition who benefit from the extension of Sewer A and Sewer B into an entirely new area, including the Property, a fair share of the cost of Sewer A and Sewer B based upon a per-acre formula or some other fair share formula approved by the City.

I. Resolution No. A-88021 adopted by the City Council of the City of Lincoln on May 7, 2001 established a connection fee of \$351.25 per acre for those other property owners whose land is included within the 312 acres of land outside the preliminary plat for Wilderness Ridge Addition and sewerable by Sewer A and Sewer B.

J. The City is willing to annex the Property as requested by Owners provided Owners agree (1) to contribute \$32,307.98 as Owners' fair share of the cost to construct Sewer A and Sewer B based upon the cost of \$351.25 per acre times 91.98 acres being annexed and (2) to make certain site-related improvements to South 27<sup>th</sup> Street and Yankee Hill Road which are necessary in order to serve the Property.

K. The City is willing to annex the Property, grant the special permit, grant the use permit and approve the change of zone as requested by Owners, prior to a determination as to the validity and enforceability of the Impact Fee Ordinance, provided Owners agree 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 and Use Permit.** The City agrees to approve Special Permit No. 1999 for a Community Unit Plan for 640 dwelling units and Use Permit No. 154 for 494,500 square feet of office/commercial floor area.
3. **Change of Zone 3423.** The City agrees to approve Change of Zone No. 3423.

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

A. Water Distribution Impact Fee Facility Contribution. Owners agree to contribute \$101,980.67 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. Owners agree to contribute \$145,999.33 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. Owners agree to contribute \$118,250.00 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. Lincoln Federal Bancorp, Inc. agrees to contribute \$72,965.00 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.

E. Arterial Street Impact Fee Facility Contribution. Owners agree to contribute \$1,630,199.00 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 2004 based upon the 2004 Impact Fee Schedules for said Impact Fee Facilities.

**5. Sewer A and Sewer B Connection Fee.** Owners understand and acknowledge that the Property was made sewerable by the construction of Sewer A and Sewer B described in Recital G above and that Owners did not participate in, nor contribute Owners' fair share of the cost of construction of Sewer A and Sewer B to serve the Property. Owners therefore agree to pay prior to annexation a connection fee of \$351.25 per acre times the 91.98 acres being annexed for a total connection fee of \$32,307.98.

**6. Site-Related Street Improvements.**

A. Right-turn Lanes. Owners agree that Owners shall at their own cost and expense design and construct 150-foot right-turn lanes in 27th Street for the northbound-to-eastbound driveway located between Yankee Hill Road and Wilderness Hill Boulevard and in Yankee Hill Road for the eastbound-to-southbound driveway located between 27th Street and 30th Street.

B. Traffic Signals. Owners agree that Owners shall be responsible for all costs associated with design and construction of the traffic signal located at the intersection of South 27th Street and Wilderness Hills Boulevard. Owners further agree that Owners shall be responsible for one-half of the costs associated with the design and construction of a traffic signal at the intersection of Yankee Hill Road and 30th Street. The construction of these traffic signals shall only occur when (1) either Warrant #1 (Eight Hour Vehicular Volume) and/or Warrant #7 (Crash Experience) are met as identified in the "Manual on Uniform Traffic Control Devices"; and (2) the traffic signals are recommended by the City for installation.

**7. Restrictions on Development.** Owners agree that Yankee Hill Road and 27th Street abutting the Property must be under contract as a City project or an approved executive order has been issued to construct said streets as provided below before the City will approve any final plat of Wilderness Hills for commercial development under Use Permit No. 154. South 27th Street and Yankee Hill Road shall be constructed as a four-lane urban cross-section road with left- and right-turn lanes at intersections of public and private streets shown on the approved Use Permit No. 154 plans and traffic impact study.

**8. Reimbursement for Executive Order Construction of Impact Fee Facility Improvements.** In the event the Owners construct by executive order construction any portion of the street improvements described in paragraph 7 of this Agreement, the City agrees (a) to reimburse Owners for Owners' cost (except for the City's fixed fee for engineering services) to construction the intersection at South 27th and Yankee Hill Road within sixty (60) days following completion of the executive order work; and (b) in City's fiscal year 2006-2007 to reimburse Owners for all other costs for the above-described street improvements (except for the City's fixed fee for engineering services) in excess of Owners' Arterial Street

Impact Fee Facility Contribution of \$1,630,199.00. The estimated reimbursement for the cost to construct the intersection of South 27th and Yankee Hill Road is \$299,000. In addition, if the Impact Fee Ordinance is finally determined to be valid and enforceable, the City agrees in 2006-2007 to reimburse Owners for Owners' remaining cost (i.e., the Arterial Street Impact Fee Facility Contribution) (except for the City's fixed fee for engineering services) without interest, subject to the following conditions: (1) The reimbursement shall be repaid from arterial street impact fees collected from the same benefit district the Property is located in; (2) in no event shall reimbursement exceed the amount of the impact fees that would otherwise be due for the entire development of the Property; (3) Owners shall not be entitled to any reimbursement of said contribution in excess of impact fees actually received from development of the Property; (4) any reimbursement to be paid from impact fees shall not constitute a general obligation or debt of the City; and (5) no reimbursement shall be made prior to and unless the Impact Fee Ordinance is finally determined to be valid and enforceable.

**9. Future Cost Responsibilities.** Owners understand and acknowledge that it is the City's position that the Impact Fee Facility Contributions by Owners under paragraph 4 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, Owners understand that the proposed development of the Property shall be subject to the payment of impact fees.

**10. Guaranteed Payment of Contributions.**

A. Water Distribution, Water System, Wastewater, Neighborhood Park & Trail, and Arterial Street Impact Fee Facility Contributions. (1) Owners shall, prior to the approval of each final plat of the Property zoned residential, 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 residential lots within each final plat compared to the approved full residential development of the Property under this Agreement. (2) Owners shall, prior to approval of the

first final plat of the Property zoned commercial, provide the City a bond, escrow, letter of credit or other security agreement approved by the City Attorney equal to the full amount of the Water Distribution, Water System, Wastewater, and Arterial Street Impact Fee Facility contributions attributable to full commercial development of the Property under this Agreement, except that Owners may provide the guarantee for the commercial portion of the \$1,069,239 Arterial Street Impact Fee Facility Contribution attributable to full commercial development of the Property in the following three phases:

Phase 1. One-third of the Arterial Street Contribution (Commercial) shall be guaranteed as provided above prior to approval of the first final plat of any portion of the Property zoned commercial.

Phase 2. The original contribution of \$1,060,239 shall be recalculated based upon the Arterial Street Impact Fee Schedule in effect on the date one year following approval of the first final plat of any portion of the Property zoned commercial ("One Year Date") and one-third of said recalculated amount shall be guaranteed as provided above on or before the One Year Date.

Phase 3. The original contribution of \$1,060,239 shall be recalculated based upon the Arterial Street Impact Fee Schedule in effect on the date two years following the approval of the first final plat of the Property zoned commercial ("Two Year Date") and one-third of said recalculated amount shall be guaranteed as provided above on or before the Two Year Date.

Owners understand and agree that if the guarantee for the second and third phase payments are not timely provided, the City may withhold approval of all pending or subsequent applications for building permits, final plats, or administrative amendments in regards to any portion of the Property zoned commercial until the guarantee is provided or the required contribution paid.

The above required 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.

B. 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 Owners to guarantee the above-described Contributions.

**11. 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.

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

**13. 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.

**14. 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.

**15. 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.

**16. 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.

17. **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, Owners, 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.

18. **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.

19. **Default.** Owners and City agree that the annexation, special permit, use permit, and change of zone promote the public health, safety, and welfare so long as Owners fulfills all of the conditions and responsibilities set forth in this Agreement. In the event Owners default 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 and use permit and rezone the Rezoned 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.

20. **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.

21. **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 and

adequate neighborhood parks and trails as provided for in the Impact Fee Ordinance which is promoted by requiring Owners to pay their 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 Owners under this Agreement. In addition, City has made an individualized determination and found that the conditions placed upon Owners 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 and Wilderness Hills Community Unit Plan (Special Permit No. 1999), Use Permit No. 154, and Change of Zone No. 3423 would have on the City's Impact Fee Facilities.

**22. Reservation of Rights and Waivers.** Notwithstanding any other provision of this Agreement, Owners reserve 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 Owners' understanding that Owners' 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 Owners' rights to a judicial determination of the essential nexus, rough proportionality or other issue of federal or state constitutionality of such requirements and/or the procedure by which Owners' 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, Owners release and discharge 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 Owners may now have with respect to or arising from Owners' request for annexation and applications for special permit, use permit and change of zone approval described in Recitals A, B, C, and D of this Agreement and the City's negotiations, considerations and actions taken thereon, including but not limited to: a) claims for violation of Owners' rights under the United States



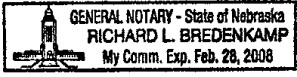


STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of June, 2004, by Leo G. Schunacker, President of Lincoln Federal Bancorp, Inc., a federal corporation, on behalf of said corporation.

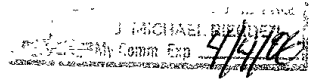
[Signature]  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )



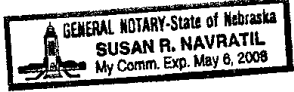
The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of June, 2004, by William L. Schrecke, Vice Pres of Security Financial Life Insurance Co., a Nebraska corporation, on behalf of said corporation.

[Signature]  
Notary Public



STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

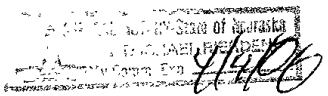
The foregoing instrument was acknowledged before me this 28 day of June, 2004, by Donald W. Linscott, President of Buffalo Grass, LLC, a Nebraska limited liability company, on behalf of said company.



[Signature]  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of June, 2004, by Clay Smith, General Partner of B & J Partnership, Ltd., a Nebraska limited partnership, on behalf of said partnership.



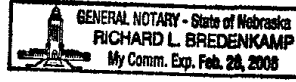
[Signature]  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of June, 2004, by **Allen R. Hohensee**, a married person.

  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )



The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of June, 2004, by **Susan K. Hohensee**, a married person.

  
Notary Public

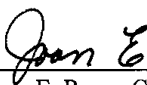



CERTIFICATE

STATE OF NEBRASKA        )  
                                  )  
COUNTY OF LANCASTER    ) ss:  
                                  )  
CITY OF LINCOLN            )

I, Joan E. Ross, City Clerk of the City of Lincoln, Nebraska, hereby certify that the foregoing is a true and correct copy of **Wilderness Hills Conditional Annexation and Zoning Agreement approved by the Lincoln City Council Resolution No. A-82842 adopted on June 28, 2004**, as the original appears of record in my said office.

In Witness Whereof, I have hereunto set my hand officially and affixed the seal of the City of Lincoln, Nebraska, July 1, 2004.

  
Joan E. Ross, City Clerk



certify.wpd

*Ret to City Clerk*