

07R-79

Introduce: 3-26-07

RESOLUTION NO. A- 84329

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

2 That the agreement titled Woodlands at Yankee Hill Conditional Annexation and Zoning  
3 Agreement, which is attached hereto, marked as Attachment "A" and made a part hereof by  
4 reference, between Carl and Vickie Schmidt, SAP-SE LLC, Midwest Net Lease Investors-SE LLC,  
5 and Calruby LLC, (collectively "Owner") and the City of Lincoln, Nebraska, outlining certain  
6 conditions and understandings relating to the annexation of approximately 194.83 acres of property  
7 owned by Owner generally located on the east side of 70th Street south of Yankee Hill Road, is  
8 approved.

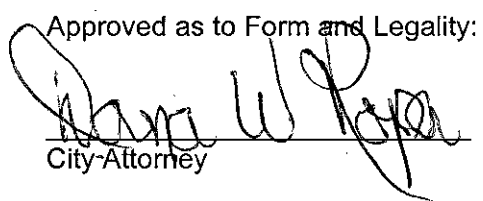
9 BE IT FURTHER RESOLVED that the Mayor is authorized to execute the Annexation  
10 Agreement on behalf of the City.


11 4/12 ✓ BE IT FURTHER RESOLVED that the City Clerk is directed to return two fully executed  
12 copies of this Agreement to Rick Peo, Chief Assistant City Attorney, for distribution to the Owner.

13 BE IT FURTHER RESOLVED that the City Clerk is directed to record the Annexation  
14 Agreement or a summary memorandum thereof with the Register of Deeds, filing fees to be paid  
15 by Carl and Vickie Schmidt, SAP-SE LLC, Midwest Net Lease Investors-SE LLC, and Calruby LLC.

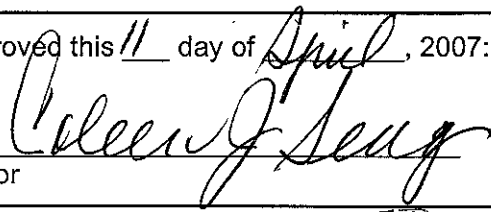
16 BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this  
17 Agreement to Michaela Hansen, Impact Fee Administrator:

See further Council Proceedings  
on next page.

Approved as to Form and Legality:  
  
City Attorney

Introduced by:  


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

Approved this 11 day of April, 2007:  
  
Mayor

**ADOPTED**  
APR 09 2007  
BY CITY COUNCIL

07R-79

4/2/07 Council Proceedings:

COOK Moved to waive the rules and amend Bill No. 07R-79 on this date.  
Seconded by Svoboda & carried by the following vote: AYES: Camp, Cook, Eschliman, Marvin, McRoy, Newman, Svoboda; NAYS: None.

COOK Moved to amend Bill No. 07R-79 as follows:

1. Paragraph 4 of the Agreement shall be amended to read as follows:

**4. Yankee Hill Road (70<sup>th</sup> - 84<sup>th</sup>) Improvements.**

A. Arterial Street Construction. Owner shall construct the Yankee Hill Road Arterial Street Impact Fee Facility Improvements, including right- and left-turn provisions at 70<sup>th</sup> Street, 73<sup>rd</sup> Street, 77<sup>th</sup> Street, and 81<sup>st</sup> Street as shown on Exhibit "C" attached pursuant to the City's Executive Order construction process. City shall budget and pay for one 12-foot wide lane at the same unit price provided in the successful bid for the project, and City obligates funding for its cost from existing Impact Fee funds in the Arterial Street Impact Fee Benefit District No. 6 Account. Turn lanes shall be constructed at a length and width acceptable to the City's Department of Public Works and Utilities. Owner shall request the Executive Order and provide all required bonds to guarantee construction of the Yankee Hill Road Arterial Street Impact Fee Facility Improvements and Site Related Turn Lanes on or before December 31, 2009. Owner's bond to guarantee Owner's share of the cost shall provide for retainage based only upon Owner's share of the cost, not the entire cost of construction of the Yankee Hill Road Street Impact Fee Facility Improvements. City shall pay its share of the cost by paying to the paving contractor the first, and subsequent progress payments on the project as they become due, up to the full amount of the City's share of the cost of the project. In the event City fails to budget and appropriate funds for its share of the cost of the Yankee Hill Road Arterial Street Impact Fee Facility Improvements, Owner may proceed to construct Yankee Hill Road as depicted on Exhibit "C-1", pages 1 and 2, and be reimbursed for same as provided in Paragraph 4.b. below.

2. Exhibit "C-1" attached hereto, consisting of two pages, shall be attached to the agreement.

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

MOTION TO AMEND BILL NO. 07R-79

I hereby move to amend Bill No. 07R-79 as follows:

1. Paragraph 4 of the agreement shall be amended to read as follows:

4. Yankee Hill Road (70th - 84th) Improvements.

A. Arterial Street Construction. Owner shall construct the Yankee Hill Road Arterial Street Impact Fee Facility Improvements, including right- and left-turn provisions at 70th Street, 73rd Street, 77th Street, and 81st Street as shown on Exhibit "C" attached pursuant to the City's Executive Order construction process. City shall budget and pay for one 12-foot wide lane at the same unit price provided in the successful bid for the project, and City obligates funding for its cost from existing Impact Fee funds in the Arterial Street Impact Fee Benefit District No. 6 Account. Turn lanes shall be constructed at a length and width acceptable to the City's Department of Public Works and Utilities. Owner shall request the Executive Order and provide all required bonds to guarantee construction of the Yankee Hill Road Arterial Street Impact Fee Facility Improvements and Site Related Turn Lanes on or before December 31, 2009. Owner's bond to guarantee Owner's share of the cost shall provide for retainage based only upon Owner's share of the cost, not the entire cost of construction of the Yankee Hill Road Street Impact Fee Facility Improvements. City shall pay its share of the cost by paying to the paving contractor the first, and any subsequent progress payments on the project as they become due, up to the full amount of the City's share of the cost of the project. In the event City fails to budget and appropriate funds for its share of the cost of the Yankee Hill Road Arterial Street Impact Fee Facility Improvements, Owner may proceed to construct Yankee Hill Road as depicted on Exhibit "C-1", pages 1 and 2, and be reimbursed for same as provided in Paragraph 4.B. below.

2. Exhibit "C-1" attached hereto, consisting of two pages, shall be attached to the agreement.

INTRODUCED BY:



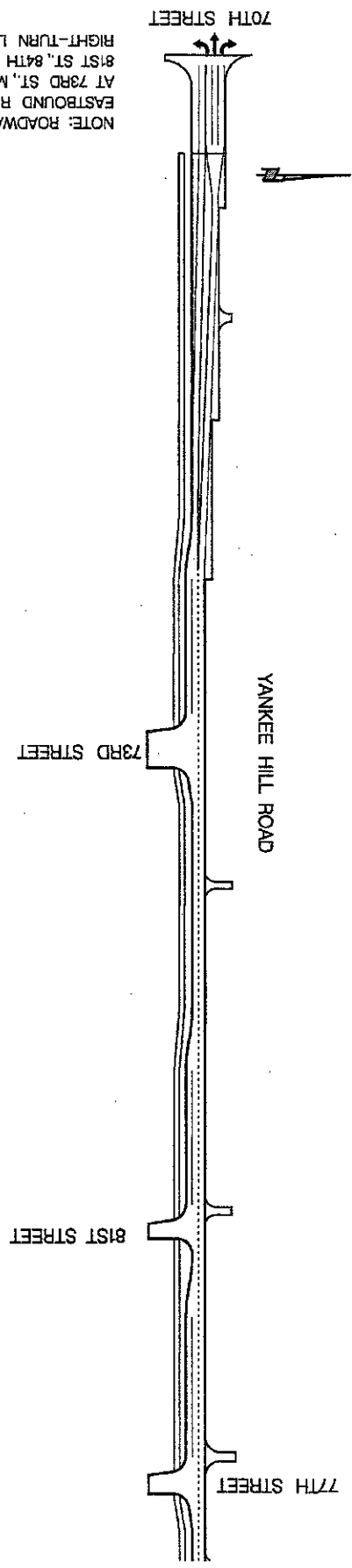
(G:\AF\5700-5799\5731.001 Krueger-Schmidt-Amigos-70th & Yankee Hill\MOTION TO AMEND BILL NO.07R-79 2nd version.wpd)

ADOPTED

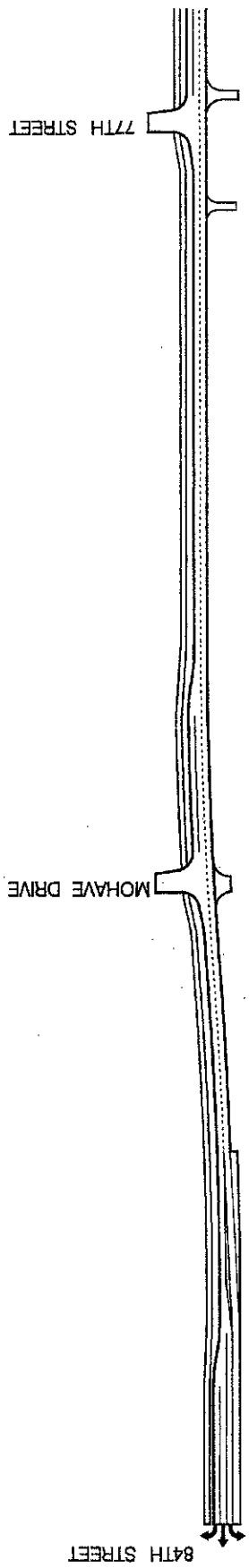
APR 2 - 2007

BY CITY COUNCIL

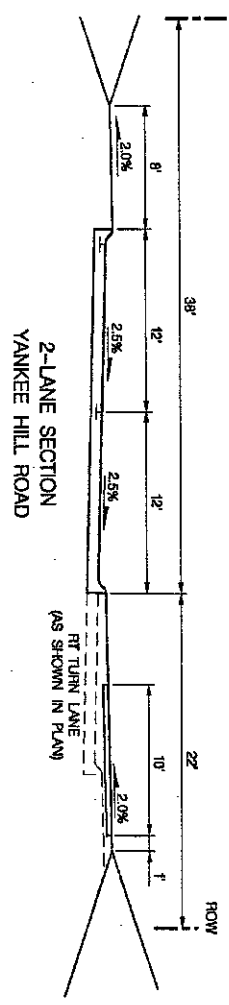
PROJ: 0243001.dwg  
 DESIGNED BY: JENNIFER L. BROWN  
 DRAWN BY: JENNIFER L. BROWN  
 DATE: 8/21/2007  
 CHECKED BY: JENNIFER L. BROWN  
 DATE: 8/21/2007  
 TITLE: 2-Lane DSW



NOTE: ROADWAY TO INCLUDE  
 EASTBOUND RIGHT-TURN LANES  
 AT 73RD ST., MOHAVE DR., 77TH ST.,  
 81ST ST., 84TH ST. AND WESTBOUND  
 RIGHT-TURN LANE AT 70TH ST.



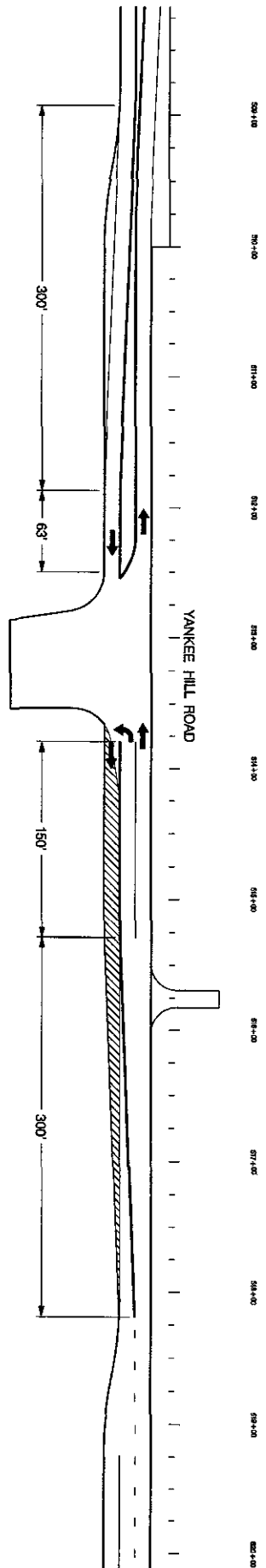
TYPICAL CROSS-SECTION




tabbles  
 5-1-p.1  
 EXHIBIT

tabbles  
**C-1 p. 2**  
**EXHIBIT**

SCALE: 1"=80'



DESIGN PARAMETERS  
 50 MPH DESIGN SPEED  
 25:1 TAPERS

LEGEND  
 ADDITIONAL PAVEMENT REQUIRED FOR TURN LANE (APPROX 400 SQ. YDS)

# CITY OF LINCOLN

Request for:  Ordinance  
 Resolution

(Do Not Write in this Space)

Bill Control No. *07R-79* Date: *3/16*

Docketing Date *3/26*; PH: *4-2-07*

(To Be Entered by City Clerk)

DATE March 14, 2007

REQUEST MADE BY  
Rick Peo

DEPARTMENT  
Law

DESIRED DOCKET DATE: March 26, 2007

IF EMERGENCY, GIVE REASON (See Art. 6, Sec. 2 of Charter)

Emergency Measure Required:

Yes  No

## REASONS OR JUSTIFICATION FOR PROPOSED LEGISLATION

To approve the Woodlands at Yankee Hill Conditional Annexation and Zoning Agreement between Carl and Vickie Schmidt, SAP-SE LLC, Midwest Net Lease Investors SE LLC, and Calruby LLC and the City of Lincoln, relating to the annexation of approximately 194 acres of property generally located on the east side of 70th Street south of Yankee Hill Road.

*07R-49*  
*07-45*  
*07-46*

FILED

MAR 16 2007

CITY CLERK'S OFFICE  
LINCOLN, NEBRASKA

REQUESTOR  
 DOES  DOES NOT

WISH TO REVIEW AND APPROVE THIS  
ORDINANCE PRIOR TO ITS INTRODUCTION

*Rick Peo*  
DIRECTOR'S SIGNATURE

*3-16-07*  
DATE

### TO BE USED BY THE FINANCE DEPARTMENT

BUDGET REVIEW DATE:

ACCOUNT NUMBER AND APPROPRIATE BALANCES DATE:

FUND AVAILABILITY APPROVED DATE:

DIRECTOR OF FINANCE SIGNATURE

### DISTRIBUTION

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

**THE WOODLANDS AT YANKEE HILL  
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This The Woodlands at Yankee Hill Conditional Annexation and Zoning Agreement (“Agreement”) is entered into between **Carl R. & Vicki A. Schmidt**, husband and wife; **SAP-SE, L.L.C.**, A Nebraska limited liability company; **Midwest Net Lease Investors-SE, L.L.C.**, a Nebraska limited liability company; and **Calruby, L.L.C.**, a Nebraska limited liability company (collectively, “Owner”) and the **City of Lincoln, Nebraska**, a municipal corporation (“City”).

**RECITALS**

A. Owner has requested the City to annex approximately 194.83 acres of land generally located on the east side of South 70th Street, south of Yankee Hill Road, legally described on Exhibit “A” attached (“Phase I Property”). Owner and City anticipate an additional 167 acres, legally described on Exhibit “B” attached, will be annexed at a later date (“Phase II Property”). The Phase I Property and Phase II Property are generally known as the Woodlands at Yankee Hill. The Phase I Property and the Phase II Property are collectively referred to as the “Property.”

B. Owner has requested a change of zone (“Change of Zone No. 05068”) to rezone approximately 162.98 acres of the Phase I Property from AG Agriculture District to R-3 PUD Planned Unit Development District. The portion of the Phase I Property within the proposed R-3 PUD district is legally described on Exhibit “B” attached. The R-3 PUD designation will also approve the associated development plan for 500 dwelling units and 324,000 square feet of office/medical, retail and commercial uses. It is anticipated that the Phase II Property will likewise be rezoned to R-3 PUD. It is further anticipated and the R-3 PUD designation and development plan for the Phase II Property will propose approximately 640 dwelling units and 276,000 square feet of office, retail and commercial uses, for a future combined total of 1140 dwelling units and 600,000 square feet of office, retail, and commercial uses.

C. The Phase I Property is located within a rural fire protection district. *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 Phase I 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 Phase I Property being annexed.

D. In order to provide water service to the Phase I Property, it will be necessary to obtain approval from Rural Water District No. 1, Lancaster County, Nebraska, hereinafter "District No. 1" in order for the City to furnish water to that portion of the Phase I Property located within the boundaries of District No. 1. The City is willing to annex the Phase I Property and rezone the Phase I Property as requested by Owner provided Owner agrees to pay all of the cost needed to obtain approval from District No. 1 for the City to furnish water for that portion of the Phase I Property located within the boundaries of District No. 1.

Therefore, the parties agree:

1. **Annexation:** The City agrees to annex the Phase I Property.

2. **Change of Zone:** The City agrees to approve Change of Zone No. 05068, designating the portion of the Phase I Property described on Exhibit "B" attached as R-3 PUD, and approving the associated development plan for 500 dwelling units and 324,000 square feet of office/medical, retail and commercial uses.

3. **Park Land Dedication.**

A. Dedication. As partial fulfillment of the 5.14 acre park dedication which could be required pursuant to Lincoln Municipal Code Section 26.23.160 for the proposed development of the Property, Owner agrees to dedicate at a location acceptable to the City 1.6 acres for a neighborhood park when the Phase I Property is final platted together with a 30-foot wide public access easement connecting the west side of the park to Waterfall. The Owner and City agree that the value of the park land and easement being dedicated is \$67,200.00.

B. Reimbursement. The City agrees to reimburse Owner for the value of the 1.6 acres of parkland dedicated pursuant to Paragraph 3A above, without interest from Neighborhood Park and Trail Impact Fees collected against the entire development of the Property up to the Directed Neighborhood Park and Trail Impact Fee Amount of \$359,410, which reflects the amount attributable to 100% development of the proposed development of the Property in 2006 based upon the 2006 Impact Fee Schedule. Reimbursement shall be subject to the following conditions:

(1) Said reimbursement shall be paid quarterly from impact fees actually received from this development;

(2) Any reimbursement to be paid from Impact Fees shall not constitute a general obligation or debt of the City.



**4. Yankee Hill Road (70th - 84th) Improvements.**

A. Arterial Street Construction. Owner shall construct the Yankee Hill Road Arterial Street Impact Fee Facility Improvements, including right- and left-turn provisions at 70th Street, 73rd Street, 77th Street, and 81st Street as shown on Exhibit "C" attached pursuant to the City's Executive Order construction process. City shall budget and pay for one 12-foot wide lane at the same unit price provided in the successful bid for the project, and City obligates funding for its cost from existing Impact Fee funds in the Arterial Street Impact Fee Benefit District No. 6 Account. Turn lanes shall be constructed at a length and width acceptable to the City's Department of Public Works and Utilities. Owner shall request the Executive Order and provide all required bonds to guarantee construction of the Yankee Hill Road Arterial Street Impact Fee Facility Improvements and Site Related Turn Lanes on or before December 31, 2009. Owner's bond to guarantee Owner's share of the cost shall provide for retainage based only upon Owner's share of the cost, not the entire cost of construction of the Yankee Hill Road Street Impact Fee Facility Improvements. City shall pay its share of the cost by paying to the paving contractor the first, and any subsequent progress payments on the project as they become due, up to the full amount of the City's share of the cost of the project. In the event City fails to budget and appropriate funds for its share of the cost of the Yankee Hill Road Arterial Street Impact Fee Facility Improvements, Owner may proceed to construct Yankee Hill Road as depicted on Exhibit "C-1," pages 1 and 2, and be reimbursed for same as provided in Paragraph 4.B. below.

**B. Reimbursement.**

(1) **Directed Arterial Street Impact Fees.** The City agrees to reimburse Owner for the cost to construct the Yankee Hill Road Arterial Street Impact Fee Facility Improvements between 70th and 84th Streets without interest from Arterial Street Impact Fees collected against the entire development of the Property up to the Directed Arterial Street Impact Fee Amount of \$4,136,715 which reflects the amount attributable to 100% development of the proposed development of the Property in 2006 based upon the 2006 Arterial Street Impact Fee Schedule. Reimbursement shall be subject to the following conditions:

(a) Said reimbursement shall be paid quarterly from Impact Fees actually received from this development;

(b) Any reimbursement to be paid from Impact Fees shall not constitute a general obligation or debt of the City.

(2) **Owner's Cost in Excess of Directed Arterial Street Impact Fees.** In the event Owner's cost of construction of the improvements described in A above are in excess of the Arterial Street Impact Fee Amount (\$4,136,715), City agrees to use its best efforts to reimburse Owner with interest for the excess cost from other Arterial Street Impact Fees collected from this and/or other developments within the same benefit district within eleven (11) years from the date the improvements described in B.(1) above are substantially completed as determined by the City, subject to the following conditions:

(a) The reimbursement shall be repaid quarterly from Arterial Street Impact Fees collected from the same benefit district the Property is located in;

(b) Owner shall not be entitled to any reimbursement of said costs in excess of Impact Fees actually received; and

(c) Any reimbursement to be paid from such Impact Fees shall not constitute a general obligation or debt of the City.

Interest on the outstanding balance shall draw interest at the rate of two percent (2%) per annum, provided, however, interest shall not begin to accrue until Owner advances any excess funds to the City. Notwithstanding the above, the City's best efforts to reimburse Owner with Impact Fees collected from other developments within the same benefit district does not restrict the City from agreeing to reimburse future developers within the same benefit district from Directed Impact Fees collected against the entire development of their property if those developers fund the construction of Impact Fee Facility Improvements. If a developer does not fund the construction of Impact Fee Facility Improvements, the Impact Fees that are collected from that development shall be used to pay the oldest reimbursement obligation that the City may have in the same benefit district.

C. Site-Related Street Construction. Owner shall construct the Site Related Right-Turn Lanes at Mohave Drive and the driveway access into Block I through the City's executive order construction process at Owner's own cost and expense without any reimbursement from the City. Turn lanes shall be constructed at a length and width acceptable to the City's Department of Public Works and Utilities.

**5. Water Mains.** A 24-inch water main must be installed in South 84th from Amber Hill Road to Yankee Hill Road and a 16-inch water main must be installed in Yankee Hill Road from 84th Street to approximately 73rd Street and then extended south and west through the Phase I Property to 70th Street in order to provide water service to the Phase I Property and Phase II Property. City will not approve any application for building permit until the 16-inch main is installed. The City will use its best efforts to schedule the water mains for completion in the City's 2006-07 Capital Improvements Program; provided, however, Owner may construct the 16-inch water main through the City's executive order process. The 16-inch water main in Yankee Hill Road must be constructed prior to the pavement and installation of storm sewers in Yankee Hill Road. In order to locate the water main in the desired location and desired depth, a portion of a storm sewer culvert associated with the Yankee Hill Road improvements must be constructed along with the 16-inch water main. Owner understands and agrees that the construction of the storm sewer is considered a cost of the paving of Yankee Hill Road and not part of the cost to construct the 16-inch water main in Yankee Hill Road. Owner agrees to reimburse the City for the cost of the needed storm water culvert measuring approximately 75 feet to 80 feet of 60-inch RCP with an appropriate end treatment at an estimated cost of \$15,000.00, subject to reimbursement from Arterial Street

Impact Fees as provided in Paragraph 4.B above. In the event the Owner constructs the 16-inch water main through the executive order process, the water main will not be a reimbursable Water Impact Fee Facility Improvement as the water main will be constructed diagonally following the street pattern through the Property and will be tappable and specifically benefit the adjacent properties. However, the City does agree in such event to reimburse Owner for the cost of the 16-inch water main (except for the City's fixed fee for engineering services) abutting residential zoned property in excess of the equivalent cost of a 6-inch water line and for the cost of the 16-inch water main abutting commercial zoned property (except for the City's fixed fee for engineering services) in excess of the equivalent cost of an 8-inch water line following completion of construction.

**6. Sanitary Sewer.** In order to sewer the Phase I Property and Phase II Property, it will be necessary for the City's Beal Slough Trunk Sewer main to be extended from its existing termination point to 70th and Yankee Hill Road. Construction of said extension of the Beal Slough Trunk Sewer main from its existing termination point to approximately 1/4 mile north of Yankee Hill Road is expected to be completed by the City by December, 2007. City agrees to use its best efforts to complete the remaining portion of the above-described extension to Yankee Hill Road by August, 2008, provided however, Owner may construct said extension through the City's executive order process. If Owner does construct the extension to Yankee Hill Road, Owner may further extend the Beal Slough Trunk Sewer through the Phase I Property to the south line of the Phase I Property. City agrees that the extension of the sewer to the south line of the Phase I Property is an Impact Fee Facility Improvement which will be more than 15 inches in diameter and therefore not tappable and will not specifically benefit the adjacent property. City agrees to use its best efforts to reimburse Owner for the entire cost of the Trunk Sewer (including design, construction, and City's fixed fee for engineering services) from appropriated funds for the year one of the 2008-2014 Six Year Capital Improvements Program. Best efforts is contingent upon the City Council approving future rate increases. Failure of the City Council to approve future rate increases shall not eliminate the obligation to reimburse Owner for said sewer main but will only delay said reimbursement. Sanitary sewer shall be constructed prior to annexation of the Phase II Property. Owner shall 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.

If the City Council fails to approve future rate increases and funds to reimburse Owner are not appropriated in fiscal year 2008-2009, City also agrees that it shall segregate Wastewater Impact Fees collected from development within the Phase I Property and pay such fees to Owner until the entire cost of the trunk sewer is reimbursed to Owner. Use of impact fees to partially reimburse Owner during the period of any delay in reimbursement due to failure of the City Council to approve future rate increases shall not relieve the City of the obligation to reimburse Owner the entire

remaining balance due upon appropriation of sufficient funds in the Capital Improvement Program to do so.

**7. Future Cost Responsibilities.**

A. Phase I Property. Owner understands and acknowledges that the proposed development of the Phase I Property shall be subject to the payment of Impact Fees and Owner agrees to pay said Impact Fees if development occurs.

B. Phase II Property. Owner understands that the development of the Phase II Property shall be subject to payment of Impact Fees and Owner agrees to pay said Impact Fees if development occurs.

**8. Development of Phase II Property.**

A. Annexation and Rezoning of the Phase II Property. City and Owner agree that the Phase II Property will be annexed, rezoned, platted, and developed in accordance with Recital B.

B. Future Infrastructure Improvements. The City and Owner agree that the infrastructure improvements identified in this agreement will serve development of the Phase II Property as described herein and will promote the general health and welfare of the City. In the event the Owner makes material modification(s) to the proposed development of the Phase II Property that would negatively impact the site-related and Impact Fee Facility wastewater, water, and arterial street improvements described herein, then the Owner and City agree that there will need to be appropriate amendment(s) to this Annexation Agreement to reflect such changes prior to the City's approval of the annexation of the Phase II Property.

**9. Contribution for Rural Fire District.** Owner understands and acknowledges that the City may not annex the Phase I Property lying within the boundaries of the Southeast 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 the amount which must be paid to the Southeast Rural Fire Protection District in order for the annexation to be complete. The parties anticipate that no payment shall be required.

**10. District No. 1.** Owner understands and acknowledges that the City may not furnish water to serve that portion of the Phase I Property lying within the boundaries of District No. 1 without the consent and approval of District No. 1. Owner desires to be connected to the City's public water system and therefore agrees to pay all the cost needed to obtain District No. 1's approval for the City to furnish water to the Phase I Property lying within the boundaries of District No. 1.

**11. Binding Effect.** This Agreement shall be binding upon the parties and their respective successors in interest and shall run with the Phase I Property.

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

**13. Further Assurances.** The parties shall use their best reasonable efforts to successfully perform this Agreement. The parties shall cooperate in good faith and shall perform any and all acts and execute, acknowledge, and deliver any and all documents reasonably requested in order to satisfy the conditions and carry out the intent and purposes of this Agreement.

**14. Governing Law.** 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.** No uncertainty or ambiguity shall 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, 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.

**18. Assignment.** In the case of the assignment of this Agreement by any of the parties, prompt written notice and a copy of the assignment shall be given to the other parties by the assignor. Assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a written release is executed and delivered by the other parties to this Agreement.

**19. 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 the

Change of Zone or pursue 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, including any fees charged by the City. 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. 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 expense.

Dated: April 11, 2007.

ATTEST:

Jean E. Roca  
City Clerk



**THE CITY OF LINCOLN, NEBRASKA**  
a municipal corporation

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

**CARL R. SCHMIDT AND  
VICKI A. SCHMIDT, Husband and Wife**

Carl R. Schmidt  
Carl R. Schmidt (Husband)

Vicki A. Schmidt  
Vicki A. Schmidt (Wife)

**SAP-SE, L.L.C.,**  
a Nebraska limited liability company

By: Scott Thompson  
Managing Member

MIDWEST NET LEASE INVESTORS- SE,  
a Nebraska limited liability company

By: *Scott Thompson*  
Managing Member

CALRUBY, LLC,  
a Nebraska limited liability company

By: *Richard C. Kneal*  
Managing Member

STATE OF NEBRASKA     )  
  )ss.  
COUNTY OF LANCASTER    )

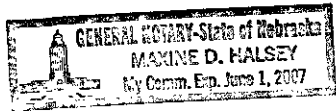
The foregoing instrument was acknowledged before me this 11th day of April, 2007, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.



*Judith A. Roscoe*  
Notary Public

STATE OF NEBRASKA     )  
  )ss.  
COUNTY OF LANCASTER    )

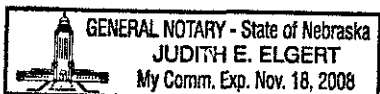
The foregoing instrument was acknowledged before me this 4th day of April, 2007, by Carl R. Schmidt and Vicki R. Schmidt, husband and wife.



*Maxine D. Halsey*  
Notary Public

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF LANCASTER )

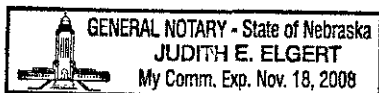
The foregoing instrument was acknowledged before me this 3rd day of April, 2007, by Kent C. Thompson, Managing Member of SAP-SE, a Nebraska limited liability company, on behalf of said company.



Judith E. Elgert  
Notary Public

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF LANCASTER )

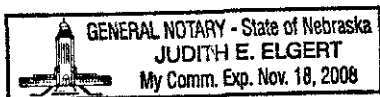
The foregoing instrument was acknowledged before me this 3rd day of April, 2007, by Kent C. Thompson, Managing Member of Midwest Net Lease Investors- SE, a Nebraska limited liability company, on behalf of said company.



Judith E. Elgert  
Notary Public

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 3rd day of April, 2007, by Richard C. Krueger, Managing Member of Calruby, LLC, A Nebraska limited liability company, on behalf of said company.



Judith E. Elgert  
Notary Public



**THE WOODLANDS AT YANKEE HILL  
LEGAL DESCRIPTION  
ANNEXATION**

**EXHIBIT "A"**

A legal description of a portion of Lot 26, 31, 32, 33, 34, 37, Lot 36 I.T., Lot 29 I.T., Lot 20 I.T. and Lot 1 Cheney Cemetery Addition all located in Section 27, Township 9 North, Range 7 East of the 6<sup>th</sup> P.M., Lancaster County, Nebraska and more particularly described as follows:

Referring to the Northwest Corner of said Section 27; thence in a Southerly direction on the West line of the Northwest Quarter of said Section 27 for a distance of 45.00 feet.

THENCE in an Easterly direction on a line parallel to the North line of said Northwest Quarter for a distance of 100.00 feet to the Northwest Corner of Lot 33 of Irregular Tracts and the **POINT OF BEGINNING**.

THENCE South 89 degrees 38 minutes 09 seconds East, for a distance of 200.00 feet

THENCE North 89 degrees 18 minutes 25 seconds East, for a distance of 650.33 feet

THENCE South 89 degrees 38 minutes 09 seconds East, for a distance of 384.81 feet

THENCE North 00 degrees 36 minutes 57 seconds East, for a distance of 33.00 feet

THENCE South 89 degrees 38 minutes 09 seconds East, for a distance of 75.05 feet

THENCE South 00 degrees 21 minutes 51 seconds West, for a distance of 582.87 feet

THENCE South 20 degrees 21 minutes 12 seconds East, for a distance of 483.94 feet

THENCE South 89 degrees 25 minutes 08 seconds East, for a distance of 1722.89 feet

THENCE North 76 degrees 10 minutes 57 seconds East, for a distance of 659.08 feet

THENCE South 89 degrees 52 minutes 24 seconds East, for a distance of 957.41 feet

THENCE South 00 degrees 07 minutes 52 seconds West, for a distance of 105.65 feet

THENCE South 89 degrees 38 minutes 27 seconds East, for a distance of 400.00 feet

THENCE South 00 degrees 07 minutes 52 seconds West, for a distance of 427.77 feet

THENCE North 89 degrees 52 minutes 08 seconds West, for a distance of 792.10 feet

THENCE South 65 degrees 32 minutes 10 seconds West, for a distance of 957.86 feet

THENCE North 89 degrees 25 minutes 09 seconds West, for a distance of 1001.41 feet

THENCE South 39 degrees 14 minutes 59 seconds West, for a distance of 1080.54 feet

THENCE South 28 degrees 41 minutes 03 seconds West, for a distance of 215.40 feet

THENCE South 44 degrees 55 minutes 26 seconds West, for a distance of 399.47 feet

THENCE South 39 degrees 14 minutes 59 seconds West, for a distance of 1038.36 feet

THENCE North 00 degrees 13 minutes 46 seconds East, for a distance of 240.39 feet

THENCE North 46 degrees 43 minutes 05 seconds West, for a distance of 364.62 feet

THENCE North 89 degrees 59 minutes 40 seconds West, for a distance of 630.67 feet

THENCE North 00 degrees 57 minutes 52 seconds East, for a distance of 767.34 feet

THENCE North 00 degrees 00 minutes 34 seconds East, for a distance of 32.72 feet

THENCE North 00 degrees 39 minutes 03 seconds East, for a distance of 1667.34 feet

THENCE North 27 degrees 11 minutes 11 seconds East, for a distance of 111.89 feet

THENCE North 00 degrees 39 minutes 02 seconds East, for a distance of 838.29 feet to the **POINT**

**OF BEGINNING**.

Said property contains 194.83 acres more or less.

**THE WOODLANDS AT YANKEE HILL  
LEGAL DESCRIPTION  
PHASE II ANNEXATION**

A portion of Lot 66 I.T. lying in the Northwest Quarter of Section 26, Township 9 North, Range 7 East and the North 600 feet of the East 400 feet of Lot 1, Cheney Cemetery Addition located in Section 27, Township 9 North, Range 7 East of the 6th P.M., Lancaster County Nebraska and more particularly described as follows:

Beginning at the Northwest Corner of the Northwest Quarter of Section 26 Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, thence in an Easterly direction on the North line of the Northwest Quarter of said Section 26 and on an assumed bearing of South 89 degrees 23 minutes 33 seconds East for a distance of 1375.00 feet.

THENCE in a Southerly direction on a bearing of South 00 degrees 07 minutes 52 seconds West on a line parallel to the West line of the Northwest Quarter of said Section 26 for a distance of 1398.57 feet

THENCE North 89 degrees 52 minutes 08 seconds West for a distance of 1424.95 feet to a point 50.00 feet West of the East line of the Northeast Quarter of Section 27 Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska.

THENCE North 00 degrees 07 minutes 52 seconds East on a line 50.00 feet West of and parallel to the East line of the Northeast Quarter of said Section 27 for a distance of 427.77 feet to the Southeast Corner of the North 600.00 feet of the East 400.00 feet of Lot 1 In CHENEY CEMETERY ADDITION.

THENCE North 89 degrees 38 minutes 27 seconds West on the South line of the North 600.00 feet of the East 400.00 feet of Lot I In CHENEY CEMETERY ADDITION for a distance of 400.00 feet to the Southwest Corner of the North 600.00 feet of the East 400.00 feet of Lot 1 in CHENEY CEMETERY ADDITION.

THENCE North 00 degrees 07 minutes 52 seconds East on the West line of the North 600.00 feet of the East 400.00 feet of Lot 1 in CHENEY CEMETERY ADDITION for a distance of 600.00 feet to the Northwest Corner of the North 600.00 feet of the East 400.00 feet of Lot 1 in CHENEY CEMETERY ADDITION.

THENCE South 89 degrees 38 minutes 47 seconds East on the North line of the North 600.00 feet of the East 400.00 feet of Lot 1 in CHENEY CEMETERY ADDITION extended East for a distance of 450.00 feet to a point on the East line of the Northeast Quarter of said Section 27.

THENCE North 00 degrees 07 minutes 52 seconds East on the East line of the Northeast Quarter of said Section 27 for a distance of 382.39 feet to the **POINT OF BEGINNING**.

Together with and subject to covenants, easements, and restrictions of record.

Said property contains 51.01 acres more or less.

Also Including all right-of-way adjacent to the property mentioned above.

# EXHIBIT "C"

PROJECT NO.	SHEET NO.
Date: 09-21-06 Not to Scale	Drawn: MDS Checked: TAC Approved: TAC

PLOT: 05249001.dwg  
 PEN: \\yahoos\pen\shw\_f\pen\table.tbl  
 USER: mshamer  
 DATE: 2/6/2007  
 DGN: ...Yankee Hill Annexation.DGN

84TH STREET



YANKEE HILL ROAD

81ST STREET

77TH STREET

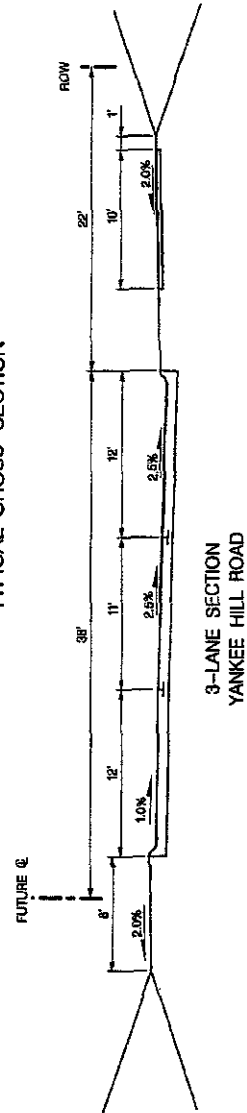
MOHAVE DRIVE

73RD STREET

YANKEE HILL ROAD

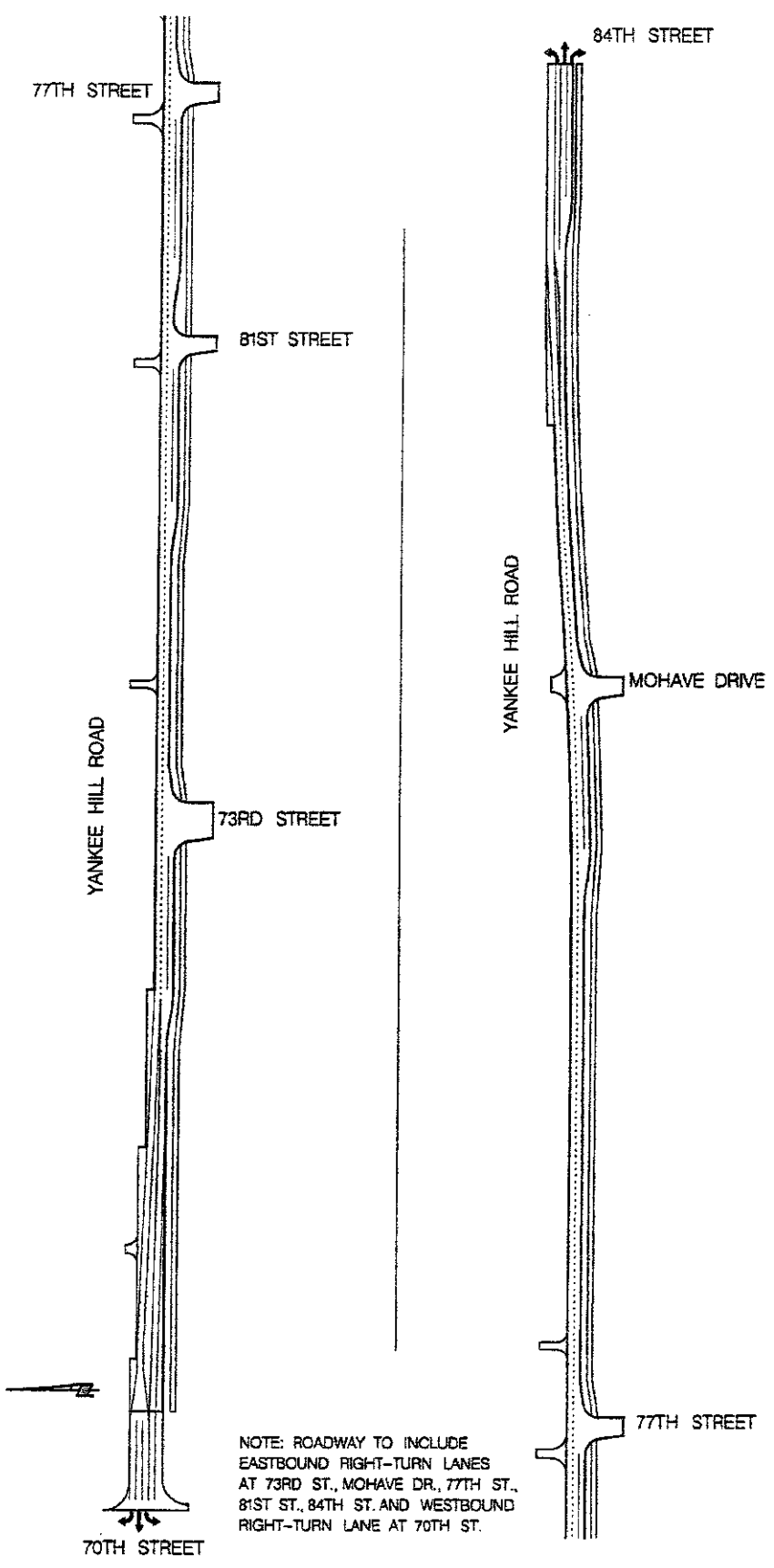
70TH STREET

TYPICAL CROSS-SECTION

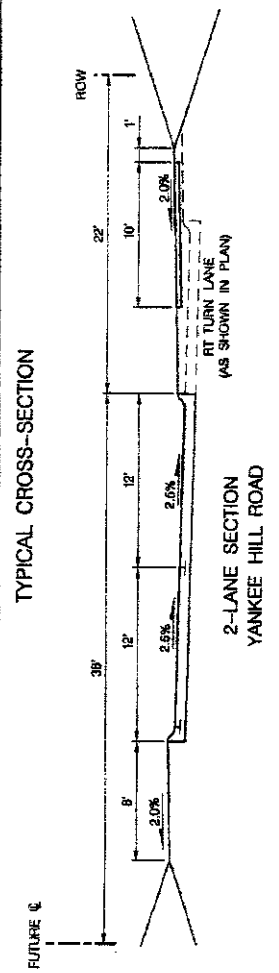


NOTE: ROADWAY TO INCLUDE EASTBOUND  
 RIGHT-TURN LANES AT 73RD ST., MOHAVE DR.,  
 77TH ST., 81ST ST., 84TH ST. AND WESTBOUND  
 RIGHT-TURN LANE AT 70TH ST.

PROJ: 06240001 010  
 PKN: ..Nashley\Yan\Yan\_PEN\ASLS.TBL  
 USER: foodman  
 DATE: 3/20/2007  
 DATE: ..Yankee Hill Association\_2-Lane.DGN



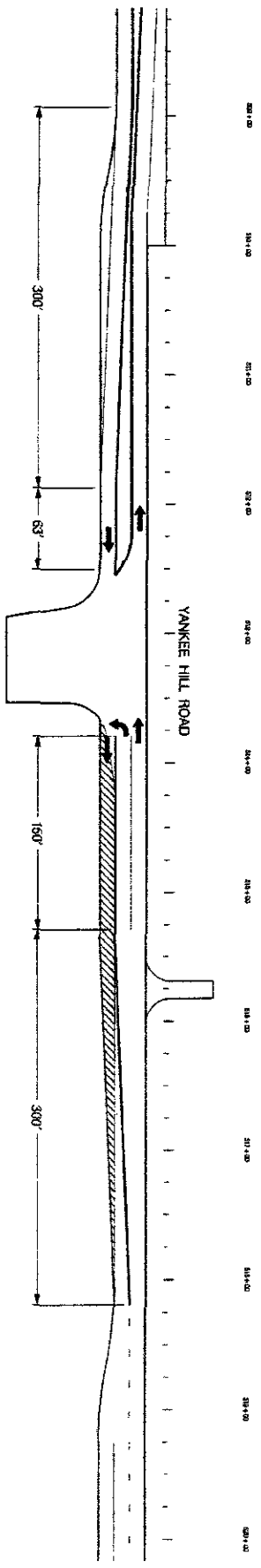
NOTE: ROADWAY TO INCLUDE  
 EASTBOUND RIGHT-TURN LANES  
 AT 73RD ST., MOHAVE DR., 77TH ST.,  
 81ST ST., 84TH ST. AND WESTBOUND  
 RIGHT-TURN LANE AT 70TH ST.



**EXHIBIT**  
 C-1 p.1

tabbles  
 C-1 p. 2  
 EXHIBIT

SCALE: 1"=80'



DESIGN PARAMETERS  
 50 MPH DESIGN SPEED  
 20:1 TAPERS



LEGEND  
 ADDITIONAL PAVEMENT REQUIRED  
 FOR TURN LANE (APPROX 400 SQ. YDS)

# The Woodlands

At Yankee Hill

Approximately 360 Acres

Residential	828 Units	240.85 Acres	67%
Commercial	618,000 sq.ft.	60.92 Acres	17%
Apartments	450 Units	21.23 Acres	6%
Open Space/Parks/Trails		32.50 Acres	9%
Other Residential (Daycare, Assisted Living, Etc.)		4.50 Acres	1%

If you have any questions,  
please call Judy with Krueger Development at 423-7377  
or Brian Will at the Planning Department at 441-6362

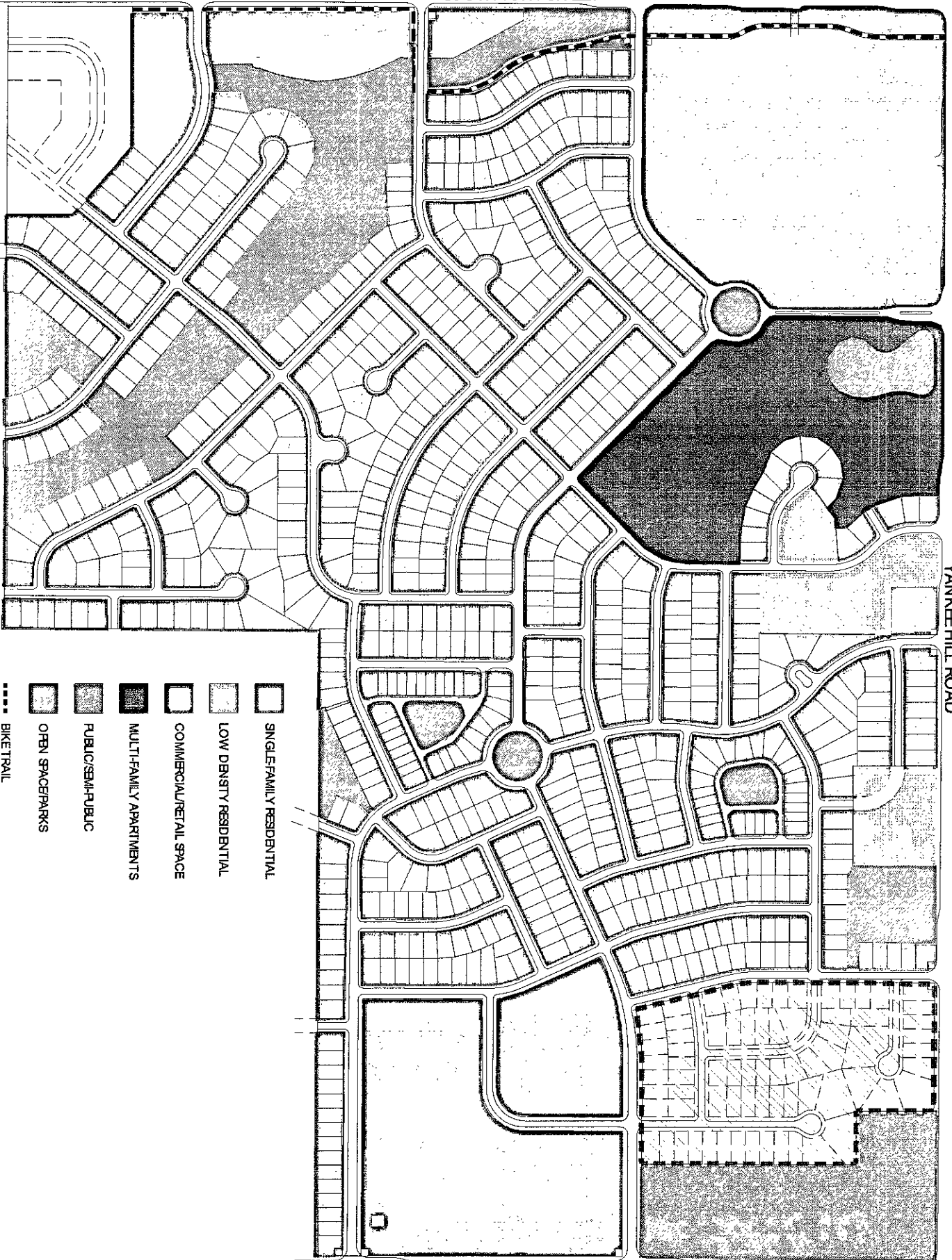
## KRUEGER

## development

8200 Cody Drive, Suite F  
Lincoln, Ne 68512  
1.402.423.7377  
www.kruegerdevelopment.com

Imperium augendum est  
A D M D C C C L X X X V

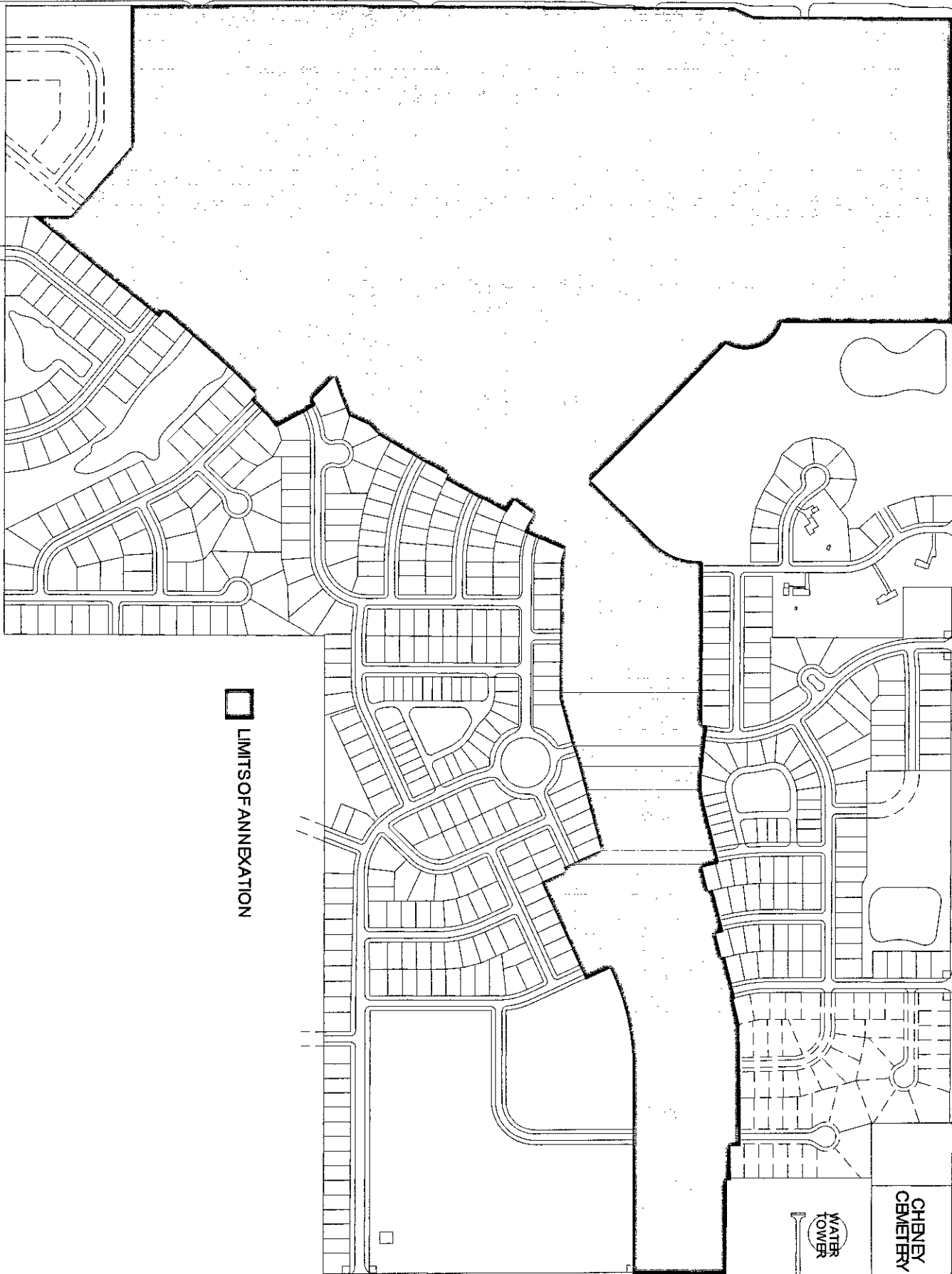
SOUTH 70TH STREET



YANKEE HILL ROAD

SOUTH 84TH STREET

SOUTH 70TH STREET



YANKEE HILL ROAD

□ LIMITS OF ANNEXATION

WATER TOWER

CHENEY CEMETERY

SOUTH 84TH STREET





REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
CORPS OF ENGINEERS, OMAHA DISTRICT  
NEBRASKA REGULATORY OFFICE - KEARNEY  
1430 CENTRAL AVENUE, SUITE 4  
KEARNEY, NEBRASKA 68847-6856

<https://www.nwo.usace.army.mil/html/od-rne/nehome.html>

August 16, 2006

Mr. Rick Krueger  
Krueger Development, Inc.  
8200 Cody Drive, Suite F  
Lincoln, Nebraska 68512

RE: NE 2005-11414

Dear Mr. Krueger:

Enclosed is a Department of the Army Permit, Number **NE 2005-11414**. This project involves the construction of "The Woodlands at Yankee Hill." The work will be carried out in accordance with final plans received on June 23, 2006. The project is located in Northeast ¼, Northwest ¼, and Southwest ¼ of Section 27, Township 9 North, Range 7 East, Lancaster County, Nebraska.

Check #022717 for \$100 dated August 15, 2006, for processing fee, was received on August 16, 2006, with the signed permit.

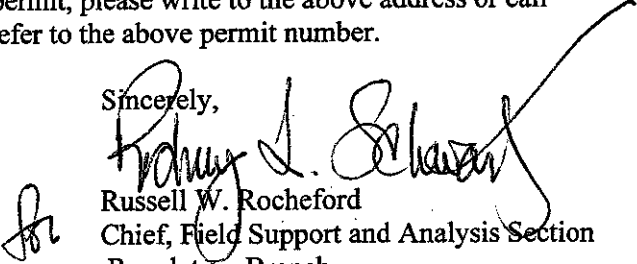
Please note the special condition(s) on pages 2-3 of the permit.

The attached compliance certification form must be signed and returned to this office upon completion of the authorized work. A compliance inspection will be scheduled soon thereafter.

Should you, at any time, become aware that either an endangered and/or threatened species exists within the project area, you must immediately notify this office. In addition, you are responsible for all work accomplished in accordance with the terms and conditions of this permit. If a contractor or other authorized representative will be performing the work authorized by this permit on your behalf, we strongly recommend that they be provided a copy of this letter and the permit so that they are aware of the limitations of the permit. Any activity which fails to comply with all the terms and conditions of the permit will be considered unauthorized and subject to appropriate enforcement action.

If you have any questions regarding this permit, please write to the above address or call Mr. Keith Tillotson at (308) 234-1403 and refer to the above permit number.

Sincerely,

  
Russell W. Rocheford  
Chief, Field Support and Analysis Section  
Regulatory Branch

Enclosure

Copy Furnished:

EPA Region VII (Elidora Chamberlain)  
NDEQ (Terry Hickman)

**COMPLIANCE CERTIFICATION  
KEARNEY REGULATORY OFFICE**

**Permit Number:** NE 2005-11414

**Name of Permittee:** Krueger Development, Inc. Rick Krueger  
Lancaster County

**Date of Issuance:** August 16, 2006

*Upon completion of the activity authorized by this permit (and any required mitigation), sign this certification and return it to the following address:*

*Kearney Regulatory Office  
1430 Central Avenue  
Kearney, Nebraska 68847*

*Please note that the permitted activity is subject to a compliance inspection by a US Army Corps of Engineers representative. If you fail to comply with permit conditions the permit may be subject to suspension, modification or revocation.*

**CERTIFICATION:**

*I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of said permit, and required mitigation (if any) was completed in accordance with permit conditions.*

---

*Signature of Permittee*

## DEPARTMENT OF THE ARMY PERMIT

Permittee: **Krueger Development, Inc.**

Permit No: **NE 2005-11414**

Issuing Office: **Omaha District, Corps of Engineers**

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

### Project Description:

Place fill in 2.28 acres of wetlands for the construction of road crossings and lots for "The Woodlands at Yankee Hill". Compensate for wetland losses through the establishment on site of a minimum of 4.56 acres of wetlands. The work, including construction of mitigation wetlands, will be carried out in accordance with the document received on June 23, 2006, "Compensatory Mitigation Plan for Wetland Impacts for the Proposed Development 'The Woodlands at Yankee Hill'".

### Project Location:

Unnamed tributaries of Beal Slough, Northeast ¼, Northwest ¼, and Southwest 1/4 of Section 27, Township 9 North, Range 7 East, Lancaster County, Nebraska

### Permit Conditions:

#### General Conditions:

1. The time limit for completing the work authorized ends on **August 31, 2009**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

**Special Conditions:**

See page 4.

**Further Information:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
  - ( ) Section 10 of the River and Harbors Act of 1899 (33 U.S.C. 403).
  - ( **X** ) Section 404 of the Clean Water Act (33 U.S.C. 1344).
  - ( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
  - a. This permit does not obviate the need to obtain other Federal, state, tribal, or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
  - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.

- e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. **Reliance on Applicant's Data:** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of this permit.
  - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Extensions.** General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Richard C. Kline  
(PERMITTEE)

AUGUST 15, 2006  
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

JOEL R. CROSS  
LIEUTENANT COLONEL, CORPS OF ENGINEERS  
(DISTRICT ENGINEER)

By: Russell W. Rochford (DATE) 8/21/06  
for Russell/W Rochford  
Chief, Field Support and Analysis Section  
Regulatory Branch

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEEE)

(DATE)

SPECIAL CONDITIONS

1. After a detailed and careful review of all of the conditions contained in this permit, the Permittee does acknowledge that, although said conditions were required by the Corps of Engineers, nonetheless, the Permittee agreed to those conditions voluntarily to facilitate issuance of the permit and the Permittee will comply fully with all the terms of the permit conditions.
2. The Permittee shall notify the Kearney Regulatory Office when work on the project commences and immediately upon project completion.
3. Prior to construction, the permittee shall provide to the Kearney Office the proposed date of commencement of any filling activity and the completion date of the project.
4. Concurrent with construction, silt curtains or other sediment control measures will be employed to reduce soil erosion and sedimentation into waters of the U.S. The amount of sediment entering waters of the U.S. and leaving the site shall be reduced to the maximum extent practicable. If the permittee fails to institute all appropriate measures, the Corps of Engineers reserves the option to halt all earthmoving operations until the erosion/sedimentation problems are corrected.
5. All areas disturbed by construction shall be revegetated with appropriate perennial, native grasses and forbs and maintained in this condition. Reed Canary Grass (*Phalaris arundinacea*), Purple Loosestrife (*Lythrum salicaria*) and Smooth Brome (*Bromus inermis*) are NOT appropriate choices of vegetation. The disturbed areas shall be reseeded concurrent with the project or immediately upon completion. Revegetation shall be acceptable when ground cover of desirable species reaches 75%. If this seeding cannot be accomplished by September 15 the year of project completion, then an erosion blanket shall be placed on the disturbed slopes adjacent to the channel. The erosion blanket shall remain in place until ground cover of desirable species reaches 75%. If the seeding can be accomplished by September 15, all seeded areas shall be properly mulched to prevent additional erosion.
6. Compensate for the loss of 2.28 acres of wetlands due to filling by establishing at least 4.56 acres of wetlands onsite. Mitigation will be carried out according to the document titled "Compensatory Mitigation Plan for Wetland Impacts for the Proposed Development 'The Woodlands at Yankee Hill'". Construction of the mitigation wetlands will be concurrent with filling activities in waters of the United States due to project construction. The annual monitoring report will be submitted to the Corps of Engineers by December 31 each year.
7. The deed restriction submitted with the mitigation plan will be filed with the Lancaster County Register of Deeds and a copy forwarded to the Corps of Engineers within 90 days of permit issuance.

April 02, 2007

Richard C. Krueger  
3AP-SE llc & Midwest Net Lease  
PO Box 6896  
Lincoln, NE 68506-0896

**Re: Issuance of stormwater discharge authorization for The Woodlands at Yankee Hill, proposed land disturbance located at S. 70th St. & Yankee Hill Road in Lincoln, Nebraska (SWPPP Approval Number: 06D154).**

Dear Applicant(s):

This is to acknowledge receipt of the CSW-NOI form for the project reference above. This project has approval to stabilize specified disturbed areas in conformance with an approved SWPPP and authorizes discharge for storm water from a construction site greater than 1 acre of disturbed area.

Submission of this NOI fulfills the notification requirements set forth in the City of Lincoln Ordinances and Design Standards, and the NPDES General permit for Storm Water Discharges from Construction Sites (NPDES Permit NER 100000). The application will be forwarded to the Nebraska Department of Environmental Quality where discharge authorization may be granted 7 days after the Department receives the completed CSW-NOI form.

**The conditions on a construction site can change daily; your SWPPP is a dynamic plan and may have to be adapted to the current conditions on the project to be in compliance.**

**Please submit a written Notice of Start prior to project start-up, and a written Notice of End upon 95% permanent site stabilization.**

If you have any questions, please feel free to call our office.

Sincerely,

J.B. Dixon  
Stormwater Specialist

JBD/jbd

pc: Lyle Loth, E.S.P., Inc., 601 Old Cheney Road, Suite A, Lincoln, NE 68512-  
Gary Lacy, City of Lincoln Watershed Management Div.  
Ron Rehtus, City of Lincoln, Building & Safety Department  
Jamic Petersen, Nebraska Department of Environmental Quality

BW

## COPY FOR YOUR INFORMATION

April 2, 2007

Dear Members of the Lincoln City Council:

I am a property owner that owns land and a home across from the proposed Woodlands at Yankee Hill Development. I am opposed to parts of this proposed development and I am opposed to the timing of this development. It is my opinion that the zoning change to allow commercial development at this sight should be denied and I believe the entire project should be postponed until adequate infrastructure exists to support it.

When we purchased our home seven years ago, we researched the area and read the Comprehensive Plan. I even paid a visit to the Planning Department and talked to one of the staff members. We knew that someday there would be homes across the street from us, but we had no idea that commercial development would be allowed. It is time for the City Council to say "NO" to projects that deviate from the Comprehensive Plan. There have been far too many exceptions made to the Comprehensive Plan in order to accommodate developers and land speculators. People make home purchase plans based on the information found in the Comprehensive Plan. It's time to stick to those plans. My neighbors and I find ourselves in a situation very similar to the acreage owners on south 66<sup>th</sup> Street off of Highway 2. Those homeowners and taxpayers bought land and built their dream homes with the assurance that the property to the east of them would someday be homes and not commercial space. Then a wealthy developer requested a change in zoning and now these families, who invested their hard earned money, have a view of Home Depot. The Comprehensive Plan called for no commercial development between 56<sup>th</sup> Street and 84<sup>th</sup> Street on Highway 2. This kind of preferential treatment toward developers at the expense of individual property owners must stop now.

I have no doubt that the Woodlands at Yankee Hill development will move forward at some point, but I am opposed to the commercial aspect of the development and I have serious concerns whether the existing infrastructure is in place to support such a large development. Some of my concerns are as follows:

- Why are lots smaller than the Comprehensive Plan calls for being allowed? Why isn't the reasoning for this waiver explained in the Staff Report? Is this just going to be a fancy trailer park?



- Why is 600,000 square feet of commercial space being allowed, when the Comprehensive Plan calls for neighborhood centers to be 50,000 to 250,000 square feet? Isn't there enough commercial space to serve this area at 84<sup>th</sup> & Hwy. 2, 70<sup>th</sup> & Hwy 2 and 56<sup>th</sup> & Highway 2? The commercial area developing at 84<sup>th</sup> & Hwy 2 and to the east is mammoth in size. Surely the Woodlands at Yankee Hill would be adequately served by this area and the other nearby commercial areas.
- Why is the Greenprint challenge in the Comprehensive Plan being ignored? Wouldn't the land in question be better suited for a park than the flat cornfield that is currently Jensen Park? Why not sell and develop the cornfield that is Jensen Park and use this more attractive land for parks?
- Has an environmental study been done in the area? It is rich in wildlife now (turkey, deer, etc.). This wildlife will be destroyed by the development. Why not sell the Jensen Park cornfield to a developer and use this more attractive land for parks?
- Why is the Comprehensive Plan concept of "effective land use transitions" being ignored? This development is bordered on two sides by acreages and the development plan calls for commercial space and high density residential next to the acreages? Where is the "transition" in this? What buffer areas exist in the plan? The Planning Department claims that 70<sup>th</sup> Street is a "buffer". Surely they can't be serious? Couldn't more upscale lots be sold close to the adjoining acreages, then gradually phase into other housing types?
- Why is the road issue being ignored? The Planning Department itself says, "The development will be served by the adjacent arterial streets, which are not improved to City standards." And from page 6, paragraph 4 of the Planning Staff Report "Generally, the required public infrastructure is not in place to serve this development. Additional improvements are required in the surrounding arterial streets to serve this development, improvements which are not currently funded in the six-year CIP." This section of 70<sup>th</sup> Street is already very busy and the section near Pine Lake Road is dangerous because of the lack of turning lanes, the hill just to the south of Pine Lake and the stoplight at Pine Lake. With the increased traffic caused by this development it is just a matter of time before someone dies on this stretch of road.
- It is also time to install infrastructure BEFORE development occurs, which is the logical way to go. The city is full of examples where the necessary infrastructure was installed well after area development. South 84<sup>th</sup> Street and Pine Lake Road are two prime examples. A more recent example is the 1-mile stretch of Yankee Hill Road between 40<sup>th</sup> and 56<sup>th</sup> that remains unpaved. ALL of these streets should have been four laned before extensive commercial and residential developments were installed along them.

- The nearest fire department is at 84<sup>th</sup> & South Streets. Is it prudent to have the nearest fire station 5 miles from the commercial section of the development? Can the city afford to have this area inadequately covered for even a year or two until a closer firehouse is built?
- While probably legal, the manner in which "contiguous" annexation is being achieved is sneaky at best and not in the best interests of ethical government. It is this kind of maneuver that creates public skepticism of government.
- Why is the Lincoln Police Department's concern about the waiver in block length's being ignored by the developers plan? Why isn't the reasoning for this waiver explained in the Staff Report?
- How will this area be served by law enforcement? Will LPD have to drive through county jurisdiction to get to this area? Will additional county law enforcement be provided for the adjoining acreage developments that will see increased traffic because of this development? There is currently very little in the way of traffic enforcement done in this area.
- Where will these kids go to school? The nearest elementary school is Cavett and it is already so crowded that portable units are being used.
- Why are many elements of the current Comprehensive Plan being ignored? For example, the Comprehensive Plan requires new development to be compatible with character of neighborhood and adjacent uses (i.e., parking at rear, similar setback, height and land use). The developer's plan calls for a radical change in the character of the neighborhood and does not even attempt a "gradual transition".
- The Comprehensive Plan also states that "similar housing types face each other: single family faces single family, change to different use at rear of lot." You have a number of \$300,000 acreages to the north and west and the proposed development borders these properties with commercial space, apartments, town homes and alternative residential use (group homes, assisted living, etc.). How does this maintain the intent of the plan?
- The Comprehensive Plan says that "Expansion in existing centers should not encroach, or expand to encroach, on existing neighborhoods, and commercial areas must be screened from residential areas. Commercial development across from existing acreages is definitely an "encroachment". Why is this not being addressed in the developer's proposal? In addition, why is the developer being allowed to wait until permit time to outline what screening will be build, planted or constructed?

It is time to honor the commitments made in the Comprehensive Plan so that citizens making future purchase decisions can be assured that their property won't someday overlook a Home Depot or Walmart. If the Comprehensive Plan is going to be consistently ignored by the Planning Commission and City Council, which seems to be the case now, then I would suggest throwing it away and disbanding the Planning Commission and Planning Department all together. If the developers get the final say on all future growth, then let's at least save some tax dollars by not wasting money on an expensive Comprehensive Plan, Planning Department and Planning Commission.

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