



A91227

18R-176

Introduce: 7-30-18

RESOLUTION NO. **A-91227**

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

2 That Amendment No. 1 to the Wilderness Heights Conditional Annexation and Zoning Agreement  
3 approved on December 15, 2008 as City Council Resolution A-851859, which is attached hereto, marked  
4 as Attachment "A", and made a part hereof by reference, between the City of Lincoln, Nebraska and Lincoln  
5 Federal Bancorp, Inc., to develop the property within the Wilderness Heights on property generally located  
6 south of Yankee Hill Road along the east side of South 40<sup>th</sup> Street, is hereby approved and the Mayor is  
7 authorized to execute the Amendment No. 1 on behalf of the City.

8 BE IT FURTHER RESOLVED that the City Clerk is directed to return one fully executed copy of  
9 this Agreement to Tim Sieh, Assistant City Attorney, for distribution to the parties.

10 BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this Agreement  
11 to Michaela Dugan, Impact Fee Administrator.

See further Council Proceedings on next page.

Introduced by:

Approved as to Form & Legality:

AYES: Camp, Christensen, Eskridge, Gaylor  
Baird, Lamm, Raybould, Shobe; NAYS: None.

Jeffery R. Christensen  
City Attorney

Approved this 21<sup>st</sup> day of Aug., 2018:  
[Signature]  
Mayor

**ADOPTED**  
AUG 20 2018  
**BY CITY COUNCIL**

## 18R-176

### 08/13/18 Council Proceedings:

CHRISTENSEN Moved to delay action on Bill No. 18R-176 one week to 8/20/18.

Seconded by Eskridge & carried by the following vote: AYES: Christensen, Eskridge, Gaylor Baird, Lamm, Raybould, Shobe; NAYS: None; ABSENT: Camp.

### 8/20/18 Council Proceedings:

RAYBOULD Moved Motion to Amend #1 to amend Bill 18R-176 to adopt a substitute agreement attached hereto as Attachment "A".

Seconded by Christensen & carried by the following vote: AYES: Camp, Christensen, Eskridge, Gaylor Baird, Lamm, Raybould, Shobe; NAYS: None.

City Council Introduction: 7/30/2018

BILL NUMBER: 18R-176

Public Hearing: 8/6/2018

Date Factsheet Prepared: 7/24/2018

## FACTSHEET

**Instructions:** If a question does not apply, just put "NA". Please try to keep it to **ONE** page only. Submit **one original**, with your Request Form, to City Clerk.

**TITLE:** Approving an Amendment to the Wilderness Heights Conditional Annexation and Zoning Agreement.

**BOARD/COMMITTEE:**

**APPLICANT:**

**RECOMMENDATION:**

**STAFF  
RECOMMENDATION:**

**OTHER DEPARTMENTS  
AFFECTED:**

**SPONSOR:**

**OPPONENTS:**

### REASON FOR LEGISLATION

Approving an amendment to the Wilderness Heights Conditional Annexation and Zoning Agreement, approved as Resolution No. A-85189 on December 15, 2008 and amended by Resolution A-87461, between the City and Lincoln Federal Bancorp relating to property generally located south of Yankee Hill Road along the west side of South 40th Street.

### DISCUSSION / FINDINGS OF FACT:

See Planning Department Staff Report for related items Comprehensive Plan Amendment 15005, Change of Zone 15016A, Change of Zone 06075A, Change of Zone 07060B, Amendment to the Wilderness Commons Conditional Annexation and Zoning Agreement.

**POLICY OR PROGRAM CHANGE:** \_\_\_ Yes \_\_\_ No

**OPERATIONAL IMPACT ASSESSMENT:**

**COST OF TOTAL PROJECT:**

**RELATED ANNUAL OPERATING COSTS:**

**SOURCE OF FUNDS:**

**CITY:**

**NON CITY:**

**FACTSHEET PREPARED BY:** Tim Sieh

**DATE:** 7/24/2018

**REVIEWED BY:**

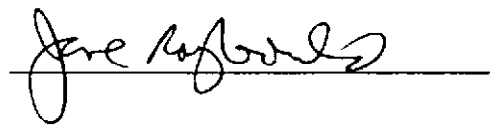
**DATE:**

18R-176

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 18R-176 to adopt a substitute agreement attached hereto as Attachment "A".

Introduced by:



AYES: Camp, Christensen, Eskridge, Gaylor Baird, Lamm, Raybould, Shobe; NAYS: None.

Approved as to Form and Legality:

  
City Attorney

Requested by: Law Department

Reason for Request: The substitute agreement is for the purpose of updating the exhibits and the references to those exhibits in the document as well as to make minor changes to the language in the agreement.

**ADOPTED**  
**AUG 20 2018**  
**BY CITY COUNCIL**

**AMENDED AND RESTATED CONDITIONAL ANNEXATION AND ZONING  
AGREEMENT  
WILDERNESS HEIGHTS**

This Combined, Amended, and Restated Conditional Annexation and Zoning Agreement is made and entered into this 29<sup>th</sup> day of Aug., 2018 by and between **LINCOLN FEDERAL BANCORP**, a federal corporation hereinafter referred to as “Wilderness Heights Owner” and the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation, hereinafter referred to as “City”.

**RECITALS**

A. The City and the Wilderness Commons Owners entered into the Wilderness Commons Conditional Annexation and Zoning Agreement through Resolution No. A-85188 approved by the City Council December 15, 2008. The City and the Wilderness Heights Owner also entered into the Wilderness Heights Conditional Annexation and Zoning Agreement through Resolution No. A-85189 approved by the City Council December 15, 2008. Then, in 2013, the City Council approved the Amendment No. 1 to the Wilderness Heights Conditional Annexation and Zoning Agreement by Resolution No. A-87461 on July 29, 2013. Finally, the City Council approved the Wilderness Hills Commercial Center PUD, South 40<sup>th</sup> Street Directed Arterial Street Impact Fee Agreement through Resolution No. A-90224 on February 6, 2017.

B. The area described as “Wilderness Heights” in this Agreement is the same area described as Wilderness Heights in the Wilderness Heights Conditional Annexation and Zoning Agreement and shall be referred to throughout this Agreement as “Wilderness Heights”. Wilderness Heights is more specifically described and shown on Exhibit A, which is attached hereto and incorporated herein by this reference.

C. Under the Wilderness Commons Agreement and the Wilderness Heights Agreement, as amended, the owners of the property included therein agreed with the owners to design, grade and construct that portion of South 40<sup>th</sup> Street from Yankee Hill Road to Willow Road as a four-lane arterial street subject to reimbursement from directed arterial street impact fees collected from the properties identified as unplatted Wilderness Hills, Wilderness Heights, and Wilderness Commons as previously shown in Exhibit D of the Wilderness Heights and Wilderness Commons Agreements. The City further agreed in the Wilderness Heights and Wilderness Commons Agreements to make “best efforts” to reimburse the owners of property included in those agreements from arterial street impact fees collected within the same benefit district as the S. 40<sup>th</sup> Street improvements being constructed.

D. To date, the S. 40<sup>th</sup> Street arterial street impact fee facilities have not been constructed south of Hohensee Drive.

E. Lincoln Federal Bancorp (“Owner”) continues to own the property previously included in the Wilderness Heights Conditional Annexation and Zoning Agreement.

F. The Owner is considering several development possibilities within the Wilderness Heights area that would be located south of the current terminus the four-lane improvements in S. 40<sup>th</sup> Street. The Owner has requested that the City allow the Owner to proceed with construction of these developments without completing the S. 40<sup>th</sup> Street arterial street improvements as otherwise required by the Wilderness Commons and Wilderness Heights Agreements.

G. The City has agreed, to assume the obligation to construct the S 40<sup>th</sup> Street impact fee facility improvements south of Yankee Hill Road using the arterial street impact fees realized

from improvements constructed within the boundaries of the Wilderness Commons area as well as other funds available to the City for such a purpose.

H. The City and the Owner have agreed that the Arterial Street Impact Fees anticipated to be collected from the Wilderness Heights area that were previously agreed to be directed toward the cost of constructing the Arterial Street Impact Fee Facility Improvements in South 40<sup>th</sup> Street improvements shall be instead directed toward the cost of constructing Arterial Street Impact Fee Facility Improvements in Yankee Hill Road between South 40<sup>th</sup> Street and South 48<sup>th</sup> Street.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do agree as follows:

1. **40<sup>th</sup> Street.** South 40<sup>th</sup> Street from Yankee Hill Road to Rokeby Road is presently a two –lane rural section roadway south of Hohensee Drive. Such section is shown in the Lincoln City-Lancaster County Comprehensive Plan to be constructed as an arterial street during the 25-year planning period with four through lanes plus turn lanes. City agrees to assume the obligation to construct South 40<sup>th</sup> Street previously accepted by the Owner and shall determine, at its sole discretion, when said arterial street improvements for South 40<sup>th</sup> Street from Yankee Hill Road to Rokeby Road shall be constructed as well as the ultimate design of said improvements. The foregoing notwithstanding, should it become necessary for the Owner to construct roundabout improvements at the intersection of S. 40<sup>th</sup> Street and Wilderness Hills Boulevard in order to comply with the requirements of the Wilderness Heights PUD, Owner shall, at its own expense, subject to reimbursement as described below, design, grade, and construct a roundabout, subject to review and approval by the City, at the intersection of South 40<sup>th</sup> Street and Wilderness Hills Boulevard. The City agrees to reimburse the Owner the cost to

design and construct said roundabout without interest from Directed Arterial Street Impact Fees collected against properties identified as unplatted Wilderness Commons, Wilderness Hills Commercial PUD, and Wilderness Creek on Exhibit B attached hereto and incorporated herein by this reference. The properties described as unplatted Wilderness Commons, Wilderness Hills Commercial PUD, and Wilderness Creek are more particularly described in Exhibit B which is attached hereto and incorporated herein by this reference. Said reimbursement is subject to the following conditions:

1. Said reimbursement shall be paid quarterly from Arterial Street Impact Fees actually received from the unplatted Wilderness Commons, Wilderness Hills Commercial PUD, and Wilderness Creek Properties as shown on Exhibit B; and
2. Any reimbursement to be paid from the Arterial Street Impact Fees shall not constitute a general obligation or debt of the City.

**2. Yankee Hill Road.**

a. Arterial Street Improvements. Yankee Hill Road between South 40<sup>th</sup> Street and South 56<sup>th</sup> Street is presently a two-lane rural section of roadway. Such section of Yankee Hill Road is shown in the Lincoln City-Lancaster County Comprehensive Plan as an arterial street during the 25-year planning period with two or four lanes plus intersection improvements. Owner agrees at its expense, subject to reimbursement as provided in subparagraph b. below, to design, grade, and construct that portion of Yankee Hill Road from South 40<sup>th</sup> Street to South 48<sup>th</sup> Street subject to review and approval by the City with tapering back to a two-lane road to occur east of 48<sup>th</sup> Street if Yankee Hill Road is constructed as a four-lane roadway.



b. Reimbursement for Arterial Street Improvements. The City agrees to reimburse Owners for the cost to construct Yankee Hill Road Impact Fee Facility Improvements without interest from Directed Impact Fees collected against the properties identified as unplatted Wilderness Heights on Exhibit C - Yankee Hill Road Directed Impact Fees attached hereto and incorporated herein by this reference (collectively "Yankee Hill Road Directed Impact Fee Reimbursement Properties"). Reimbursement shall be subject to the following conditions:

1. Said reimbursement shall be paid quarterly from Impact Fees actually received from development of the Yankee Hill Road Directed Impact Fee Reimbursement Properties.
2. Any reimbursement to be paid from Impact Fees shall not constitute a general obligation or debt of the City.
3. In the event Owners' cost of construction of the improvements described in subparagraph 2.a. above exceed the Arterial Street Impact Fees actually collected from the Yankee Hill Road Directed Impact Fee Reimbursement Properties, City agrees to use arterial street impact fees generated within the same impact fee benefit district as the Wilderness Heights area to reimburse Owners without interest for the actual cost of constructing the Yankee Hill Road Impact Fee Facility Improvements from South 40<sup>th</sup> Street to South 48<sup>th</sup> Street to the extent that the actual costs of such construction exceed the amount of Arterial Street Impact Fees collected from the unplatted Wilderness Heights Area described in Exhibit C. Owners shall not be entitled to any

reimbursement of costs for the Yankee Hill Road Arterial Street Impact Fee Facilities constructed between S. 40<sup>th</sup> Street and S. 48<sup>th</sup> Street beyond the actual cost incurred by Owners to construct said improvements. Owners shall coordinate with and publicly bid through the City of Lincoln Purchasing Division, according to the City's procurement requirements and procedures, the Arterial Street Impact Fee Facility Improvements.

c. Notwithstanding the subparagraphs b.1.-b.3. above, Owners understand and agree that the City cannot contract away any of its police power and legislative discretion. Owners further understand and agree that the stated intent of the City to include funding in a future Capital Improvement Program does not require the City Council for the City of Lincoln to do so and Owners agree that the City shall not be liable to Owners in the event such funds as described in subparagraph b. above are not appropriated toward reimbursement of Owners for Yankee Hill Road Impact Fee Facility Improvements.

3. **Binding Effect.** This Agreement shall run with Wilderness Heights and be binding and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors, and assigns.
4. **Amendment.** This Agreement may only be amended or modified in writing signed by the parties to this Agreement.
5. **Further Assurances.** Each party will use 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 described herein and shall execute, acknowledge, and deliver any and all documents requested in order to satisfy the conditions set forth herein and carry out the intent and purpose of this Agreement.

6. **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.
7. **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.
8. **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.
9. **Relationship of the Parties.** Neither the method of computation of funding or any other provision 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 joint venture or of any association between the parties other than the contractual relationship stated in this Agreement.
10. **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.

11. **Default.** Owner and City agree that the annexation and change of zone previously approved by the City for Wilderness Heights promote the public health, safety, and welfare of the City and its citizens so long as Owner fulfills all of the conditions and responsibilities set forth in this Agreement. In the event Owner defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rezone the rezoned areas to their previous designations or such other designations as the City may deem appropriate under the 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.

12. **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 in the Impact Fee Ordinance.

13. **Recordation.** This Agreement or a memorandum thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at Owner’s cost and expense.

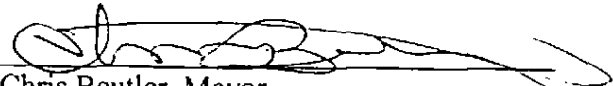
**14. Restatement of Previous Agreements.** This Agreement shall serve as a complete restatement and replacement of the terms and conditions of the Wilderness Heights Conditional Annexation and Zoning Agreement approved as City of Lincoln Resolution No. A-85189 on December 15, 2008 as well as any amendments thereto. All previous agreements and amendments thereto with respect to Wilderness Heights areas are hereby superseded and replaced in their entirety by this Agreement.

*SIGNATURE PAGES TO FOLLOW*

"CITY"

**CITY OF LINCOLN, NEBRASKA**

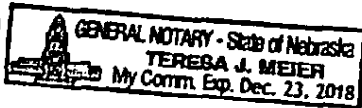
a municipal corporation

BY:   
Chris Beutler, Mayor

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing was acknowledged before me this 2<sup>nd</sup> day of August, 2018, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf the municipal corporation.

(Seal)

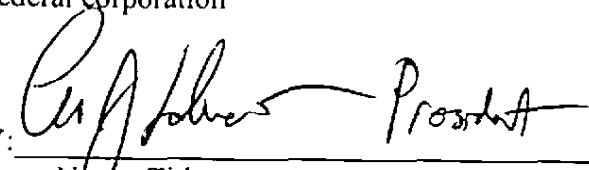


  
Notary Public

"WILDERNESS HEIGHTS OWNER"

**LINCOLN FEDERAL BANCORP,**

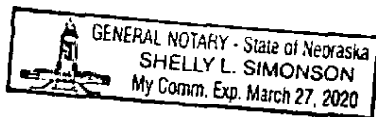
a federal corporation

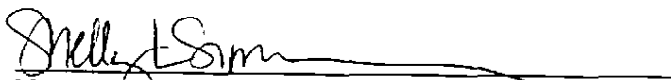
BY:  President  
Name, Title

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

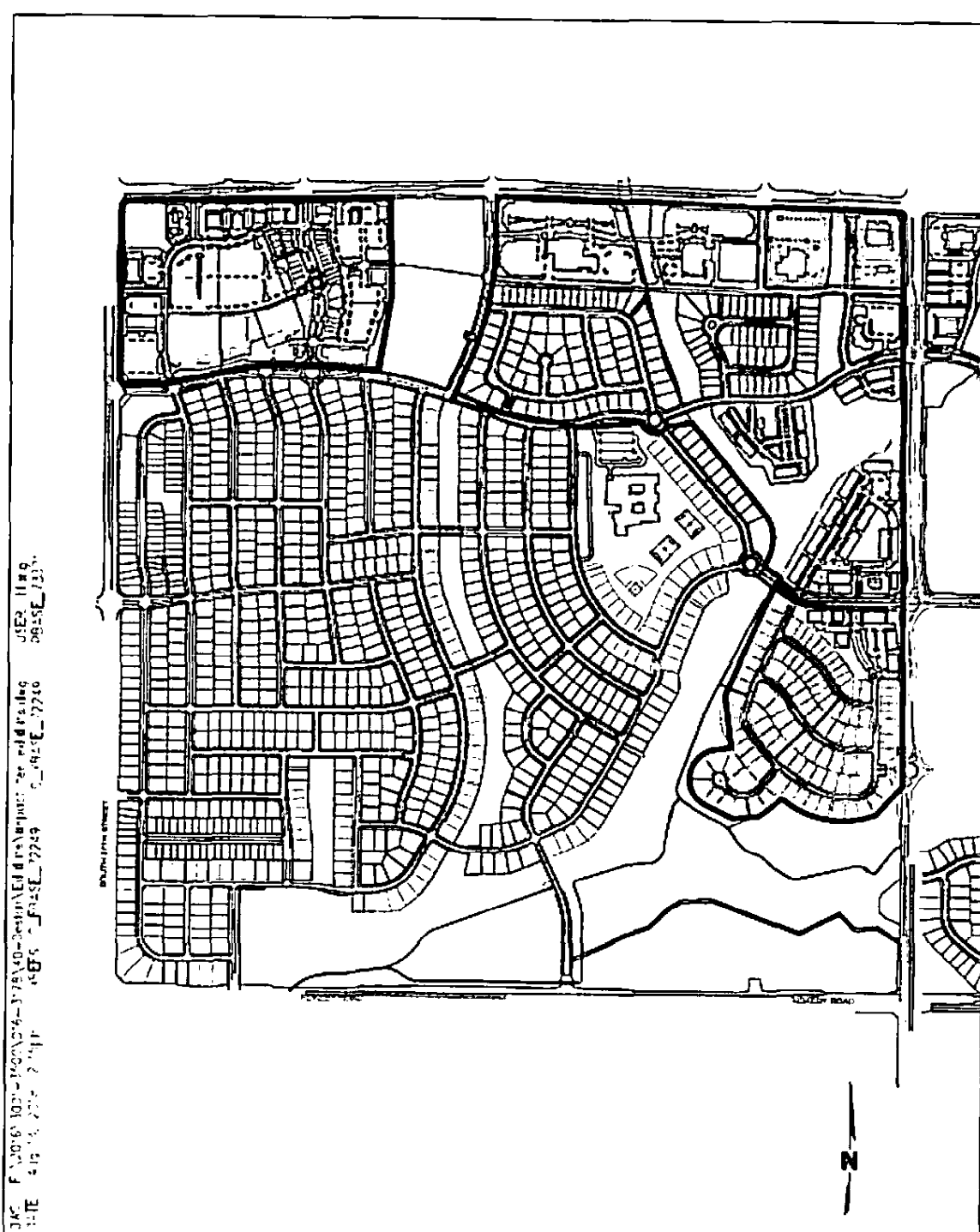
The foregoing was acknowledged before me this 17<sup>th</sup> day of August, 2018, by Leo J. Schumacher, President of the Lincoln Federal Bancorp, a federal corporation, on behalf of the corporation.

(Seal)



  
Notary Public

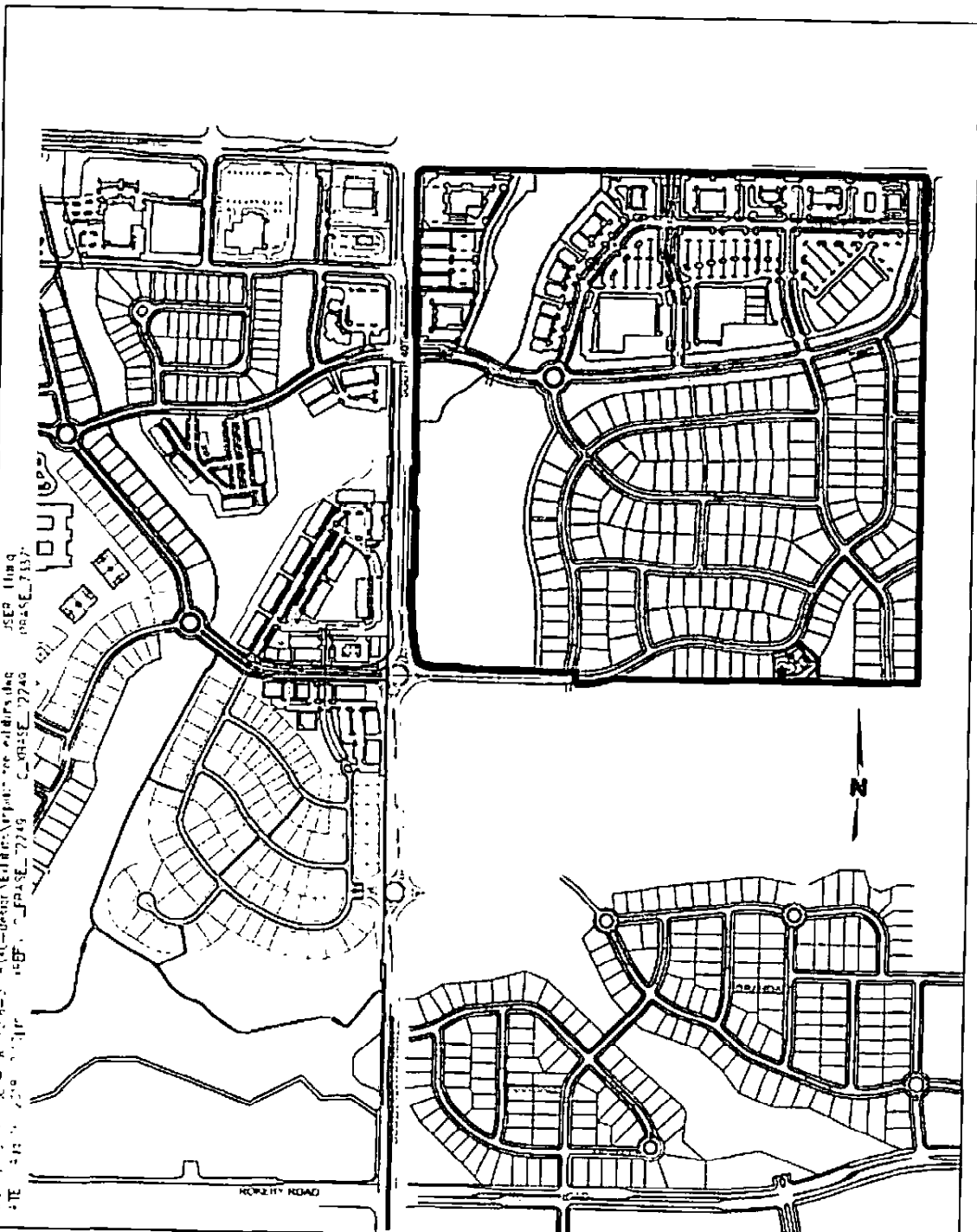




JAC: F:\006\1007-1600\074-378\10-Design\ED\plan\plan: per add to file  
 DATE: 4/15/18 2:11P  
 SITE: 074SE\_7749 074SE\_7740 085SE\_1337  
 JSE2 11/19 085SE\_1337

PROJECT NO. 016-3178	WILDERNESS COMMONS, WILDERNESS HILLS COMMERCIAL PUD, AND WILDERNESS CREEK	 601 P Street, Suite 200 P.O. Box 66024 Lincoln, NE 68524 TEL: 402 474 8311 FAX: 402 474 8182	EXHIBIT
DRAWN BY: EAH			B
DATE: 07/26/18			





PROJECT NO. 016-3178  
 DRAWN BY: EAH  
 DATE: 07/20/18

**WILDERNESS HEIGHTS  
 DIRECTED IMPACT FEE AREA**



611 P Street, Suite 200  
 P.O. Box 64408  
 Lincoln, NE 68528  
 TEL: 402.474.8311  
 FAX: 402.474.8140

EXHIBIT  
 C