



23R-595

Introduce: 11-20-23

RESOLUTION NO. A- **94363**

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

2 That the Conditional Zoning and Annexation Agreement for Market Pointe which is
3 attached hereto, marked as Attachment "A", and made a part hereof by reference, between the City
4 of Lincoln, and Baade Properties, LLC., ("Owner") for annexing the property generally located
5 northeast of S. 70th Street and Yankee Hill Road, re-zoning the property from AG Agricultural
6 District to R-3 Residential Planned Unit Development, and amending the Comprehensive Plan as
7 set forth in the Agreement, is hereby approved and the Mayor is authorized to execute the
8 Conditional Zoning and Annexation Agreement on behalf of the City.

9 BE IT RESOLVED that the City Clerk is directed to return one fully-executed copy of this
10 Agreement to Abigail Littrell, Assistant City Attorney, for distribution to the Developer.

11 BE IT FURTHER RESOLVED that the City Clerk is directed to file the Conditional
12 Zoning and Annexation Agreement for Market Pointe with the Lancaster County Register of Deeds
13 with the recording fees to be paid in advance by the Developer.

14 BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this
15 Agreement to Michaela Sweeney Impact Fee Administrator.

Introduced by:

Approved as to Form & Legality:

AYES: Beckius, Bowers, Carlson, Duden,
Shobe, Washington, Weber; NAYS: None.

City Attorney

Approved this 18th day of DEC, 2023:

Mayor

ADOPTED

DEC 11 2023

BY CITY COUNCIL

**CONDITIONAL ZONING AND ANNEXATION AGREEMENT
FOR
Market Pointe
(70th & Yankee Hill Road)**

This Conditional Zoning & Annexation Agreement (“Agreement”) real property generally located at the northeast corner of the intersection of S. 70th Street and Yankee Hill Road is made and entered into as of the date of execution by the last signatory hereto as indicated below by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation (“City”) and **BAADE PROPERTIES, LLC**, a Nebraska limited liability company (“Baade”).

RECITALS

A. Baade is the owner of a parcel of real estate legally described as:

Lot 74, located in the Southwest Quarter of Section 22, Township 9 North, Range 7 East of the 6th Principal Meridian, Lancaster County, Nebraska.

as shown on Exhibit “A” (the “**Baade Property**”).

The Baade Property is generally located northeast of the intersection of S. 70th Street and Yankee Hill Road, Lincoln, Nebraska. Baade has petitioned the City to:

1. Annex the Baade Property into the City’s corporate limits, (AN21010):
2. Change the zoning designation for the Baade Property from AG (Agricultural District) to R-3 PUD (Residential Planned Unit Development) (CZ21053 or “Market Pointe PUD”).

The site plan for the Market Pointe PUD is attached as Exhibit “B”: The Market Pointe PUD reflects a Development Plan which includes:

i) **Commercial Uses:** The development plan contemplates the following commercial uses:

- 55,000 square feet supermarket
- 34,000 square feet of retail
- Service Station (8 fueling positions)
- 1,900 square foot Restaurant with drive-through

ii) **Multifamily Use:** Up to 250 dwelling units of an apartment development oriented towards South 70th Street; and

iii) **Storage Unit Use:** 95,000 square feet of mini-warehousing uses located on the northern portion of the property adjacent to the railroad track.

3. Amend the Lincoln-Lancaster County 2050 Comprehensive Plan to revise the land use designations on certain portions of the Baade Property to conform to the Market Pointe development plan as shown on Exhibit “C” (CPA22002)

B. AN21010, CZ 21053, and CPA22002 are collectively referred to herein as the “Governmental Actions.”

C. Approval of Governmental Actions will allow Baade to develop the Baade Property into a mixed-use residential neighborhood, to include multifamily development, served by a neighborhood commercial center.

D. City is willing to approve the Governmental Actions conditioned upon Baade’s agreement to address the impact of the development of the area by developing the Baade Property consistent with the terms of this Agreement and the conditions of the Market Pointe PUD.

E. Certain property, generally located at the northwest corner of 70th Street and Yankee Hill Road (the “**Harvest Hills Property**”) will benefit from intersection improvements described in this Agreement. The Harvest Hills Property is legally described as:
Section 21, Tract 9, Range 7, 6th Principal Meridian, LOT 111 South East, Lincoln, Lancaster County, Nebraska

City is agreeable to directing impact fees from the Harvest Hills Property to reimburse Baade for impact fee eligible expenses in this Agreement. The entire Impact Fee Area Map, which includes the Baade Property and the Harvest Hills Property is attached here as Exhibit “D”

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the above recitals and the following terms and conditions, the parties agree as follows:

1. **City Approvals.** City agrees to approve the Governmental Actions.
2. **Street Improvements.** Baade and City agree on the following with regard to street improvements required to develop the Baade Property.
 - A. **70th and Bridle Lane.** Subject to the terms and conditions herein, City shall design and construct the roundabout improvements at 70th and Bridle Lane depicted herein and on Exhibit “E” (“**70th and Bridle Lane Intersection Improvements**”) which includes: i) the “**Roundabout**”; and ii) the box culvert located in the South 70th Street Right of way required for Baade’s preferred design and construction of the roundabout (“**Box Culvert**”), both of which are depicted on Exhibit “E”. City acknowledges that the Roundabout component of the 70th and Bridle Lane Intersection Improvements is an arterial street impact fee facility that serves both the Market Place development located on the Baade Property and also the Harvest

Hills Property, which will directly benefit from the 70th and Bridle Lane Intersection Improvements. The Parties acknowledge that the City of Lincoln Comprehensive Plan does not include 70th Street improvements in the 2050 Fiscally Constrained Urban Roadway Capital Projects and therefor City construction of the 70th and Bridle Lane Intersection is not presently planned to occur, under current plans, for the next twenty-seven (27) years. The City agrees to segregate arterial street impact fees collected by the City from development of the Impact Fee Area show on Exhibit "D", which includes: i) Market Point PUD on the Baade Property; and ii) from the Harvest Hills Property. When there are sufficient funds available to design, grade, pave, and implement the 70th and Bridle Lane Intersection Improvements, City shall do so. The Parties acknowledge that the Box Culvert depicted on Exhibit "E" is not an impact fee facility. Therefore, while the Roundabout component of the 70th and Bridle Lane Intersection Improvement may be funded by Arterial Street Impact Fees, the Box Culvert incorporated into the design of the intersection shall be fully funded by Baade. Baade shall advance all funds necessary to design and construct the Box Culvert prior to City Construction of the 70th and Bridle Lane Intersection Improvements. If the Box Culvert funds are not advanced prior to City-bidding of the 70th and Bridle Lane Intersection Improvements, City shall be entitled to construct the 70th Street Intersection Improvements by any design of its choosing. The City of Lincoln will not issue any building permit for the Baade Property until the 70th and Bridle Lane Intersection Improvements are underway.

B. **Baade's Option to Accelerate Construction of 70th & Bridle Lane Intersection**

Improvements and Directed Impact Fees. Pursuant to LMC Section 27.82.090.

Baade shall have the right to accelerate City construction of the 70th and Bridle Lane Intersection Improvements prior to collection of sufficient Arterial Street Impact Fees, or other funding, as described in paragraph 2.A above by making a Gap Contribution (defined below) to City to complete said improvements. The right to trigger City construction of the 70th & Bridle Lane Intersection Improvements shall be exercised in the following manner:

- i. Baade shall provide written notice to the Director of Transportation and Utilities of Baade's request to trigger construction of the 70th & Bridle Lane Intersection Improvements ("Trigger Notice").
- ii. Within thirty (30) days of receipt of the Trigger Notice, the City shall provide to Baade a statement of the amount of Arterial Street Impact Fees generated by the Impact Fee Area then collected and available ("**Available Arterial Street Impact Fees**"); and
- iii. Baade shall provide the City a bond, escrow, letter of credit, or other security agreement, approved by the City Attorney ("**Road Escrow**"), for one hundred ten percent (110%) of the difference between the City's estimated cost of \$2,420,000.00 to construct the 70th & Bridle Lane Intersection Improvements and the amount of the Available Arterial Street Impact Fees then-collected ("**Road Escrow Amount**"). Attached as Exhibit "E" is an Opinion of Probable Cost for the construction of the 70th and Bridle Lane Intersection Improvements. Said cost estimate is the sum of

Two Million, Four Hundred Twenty Thousand Dollars (\$2,420,000.00) (the “Project Cost”). If Baade exercises this option on a date five (5) years or later after execution of this agreement, City shall cause the preparation of a new estimated cost for the 70th and Bridle Lane Intersection Improvements.

iv. Upon receipt of the Road Escrow Amount City shall design and bid the 70th & Bridle Intersection Improvements as soon as reasonably possible. The City shall notify Baade of the actual bids and, in the event:

1. the actual lowest responsible bid exceeds the combined total of the Road Escrow Amount and Available Arterial Street Impact Fees, then Baade will increase the amount of the Road Escrow Amount held in the Road Escrow to cause the adjusted Road Escrow Amount to be equal to one hundred ten percent (110%) of the actual lowest responsible bid minus the Available Arterial Street Impact Fees; or
2. the actual lowest responsible bid is less than the combined total of the Road Escrow Amount and Available Arterial Street Impact Fees, then Baade may decrease the amount of the Road Escrow Amount held in the Road Escrow to be equal to one hundred ten percent (110%) of the lowest responsible bid minus the Available Arterial Street Impact Fees.

v. City shall first utilize the Available Arterial Street Impact Fees generated by the Impact Fee Area, if any, to fund such design, grading, and construction of the roundabout component of the 70th and Bridle Lane Intersection Improvements and then utilize the Road Escrow. City will

provide Baade an invoice or invoices for said actual additional amount. Baade shall be responsible for the full cost of design and construction of the Box Culvert and shall advance the city the funds to pay those costs without any expectation of reimbursement. If actual project costs for the 70th and Bridle Lane Intersection Improvements exceed the Road Escrow Amount in the Road Escrow, then Baade shall be responsible to advance the excess costs to the City.

- vi. City shall reimburse Baade for all funds expended on the roundabout component of the 70th and Bridle Intersection Improvements from the Arterial Street Impact Fees collected or to be collected in the future from the Impact Fee Area. Such reimbursement shall have first priority after the City funds the 70th & Bridle Intersection Improvements. Said reimbursement payments shall be made on a quarterly basis by City to Baade from arterial street impact fees generated from the Impact Fee Area as they become available. The agreement by the City to reimburse the Baade from arterial street impact fees generated by the Impact Fee Area is limited to the impact fees actually paid by development the Impact Fee Area and shall not constitute a general obligation of the City.
- vii. Baade and City recognize that the Impact Fee Area is estimated to generate Arterial Street Impact Fees in the amount of One Million Five Hundred Seventy-Four thousand Dollars (\$1,574,000.00), which represents Eight Hundred Forty-Six Thousand and no/1000 Dollars (\$846,000.00) less than the estimated cost of the 70th and Bridle Lane Intersection Improvements.

In recognition of the benefits to be realized in the development of the Baade Property by having the 70th and Bridle Lane Improvements constructed prior to City accumulating sufficient resources to construct said improvements, and City's commitment to construct the Box Culvert, Baade agrees to contribute the difference between the actual cost to construct the 70th and Bridle Lane Intersection and Arterial Street Directed Impact Fees generated in the Impact Fee Area ("**Baade's Gap Contribution**"). Baade's Gap Contribution includes costs associated with the box culvert component of the 70th and Bridle Lane Intersection Improvements and will not be reimbursable from Arterial Street Directed Impact Fees. Total reimbursable costs for the Roundabout are at this time estimated to be One Million Five Hundred Fifty Five Thousand Dollars (\$1,555,000.00).

C. **Yankee Hill Road.** Baade shall also be responsible for the design and construction of the right-in, right-out intersection at South 72nd Street and Yankee Hill Road ("**Yankee Hill Road Improvements**"). The Yankee Hill Road Improvements are generally shown on Exhibit "F".

D. **Street Improvements Prior to Occupancy.** City shall not issue any occupancy permits on the Baade Property until the 70th and Bridle Lane and Yankee Hill Road are complete.

2. **Notice.** Any notices required to be forwarded to a party hereto shall be deemed appropriately given or delivered if sent by registered or certified United States Mail, postage prepaid, return receipt requested, addressed or delivered personally as follows:

(1) If to the City:

Mayor
555 South 10th Street
Lincoln, Nebraska 68508

with a copy to:

City Attorney
555 South 10th Street
Lincoln, Nebraska 68508

- (2) If to Baade:
Alan Baade
5500 Saltillo Road
Roca, NE 68430

Any party hereto may change its address for notification purposes by written notice to all parties hereto in the manner and method set forth within this paragraph.

3. **Contribution to Rural Fire Protection District.** Baade understands and acknowledges that the City's annexation of the Baade Property or any portion thereof lying within the boundaries of the Southeast Rural Fire Protection district shall not be complete except upon the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of the Baade Property or any portion thereof being annexed. Baade has previously obtained a release of the Baade Property from the jurisdiction of the Southeast Rural Fire Protection District.
4. **Amendments.** This Agreement may only be amended or modified in writing signed by the Parties to this Agreement.
5. **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.

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 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, Developer, 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.
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 or unless otherwise stated herein.
11. **Default.** In the event the Developer defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the City may take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages

for its breach. In the event the City defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the Developer may take such remedies, legal or equitable, to enforce this Agreement or to obtain damages for its breach.

12. **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 Baade Property.
13. **Recordation.** This Agreement or a memorandum thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at the City's cost and expense.
14. **Authority.** The City has the authority to engage in the reimbursements to Developer described in this Agreement, and (i) has taken all steps to legally exercise that authority, and (ii) the reimbursements to Developer described in this Agreement will comply with all applicable laws.
15. **Exhibits.** The following Exhibits are attached to this Agreement and are incorporated herein by this reference:

Exhibit A – Badde Property

Exhibit B – Market Pointe PUD Site Plan

Exhibit C – Land use Map Amendment

Exhibit D – Impact Fee Area Map

Exhibit E – 70th and Bridle Lane Intersection Improvements

Exhibit F – Opinion of Probably Cost for 70th and Bridle Lane Intersection Improvements

Exhibit G – South 72nd and Yankee Hill Road Improvements

[SIGNATURE PAGES TO FOLLOW]

BAADE PROPERTIES, LLC, a Nebraska
limited liability company

By: Alan Baade
Alan Baade, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

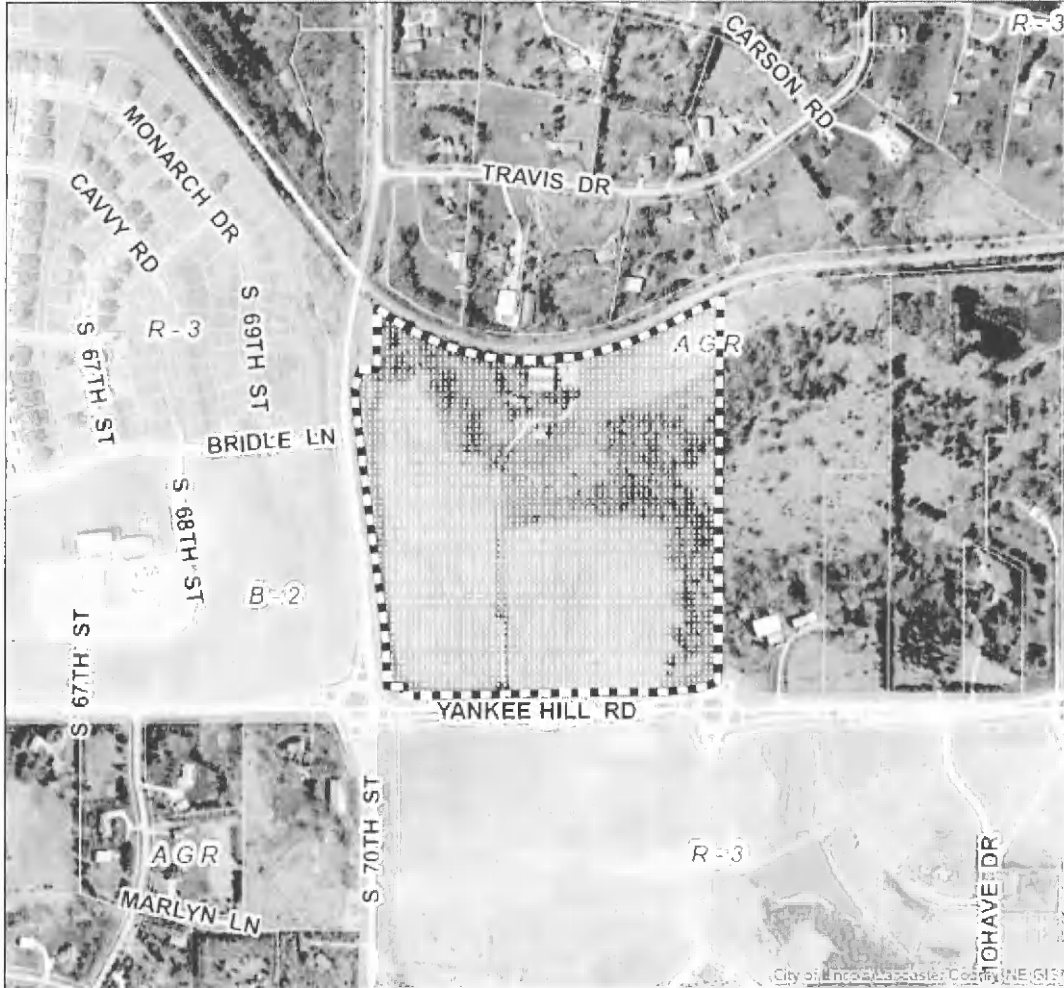
The foregoing was acknowledged before me this 11 day of December,
2023, by Alan Baade, Manager of Baade, LLC, a Nebraska limited liability company, on behalf of
the limited liability company.



Thomas C. Huston
Notary Public

EXHIBIT A

The Baade Property



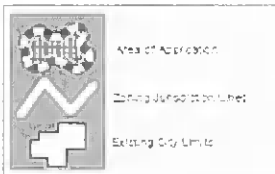
Annexation #: AN21010 &
 Change of Zone #: CZ21053 (AG to R-3)
 Market Pointe
 S 70th St & Yankee Hill Rd

Zoning:

- R-1 to R-8 Residential District
- AG Agriculture District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-6 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- E-1 Employment Center District
- P Public Use District



Two Square Miles:
 Sec.21 T09N R07E
 Sec.22 T09N R07E



Map © 2020 by the Department of Planning and Development of the City of Lincoln, Nebraska. AN21010

EXHIBIT B

Market Pointe PUD

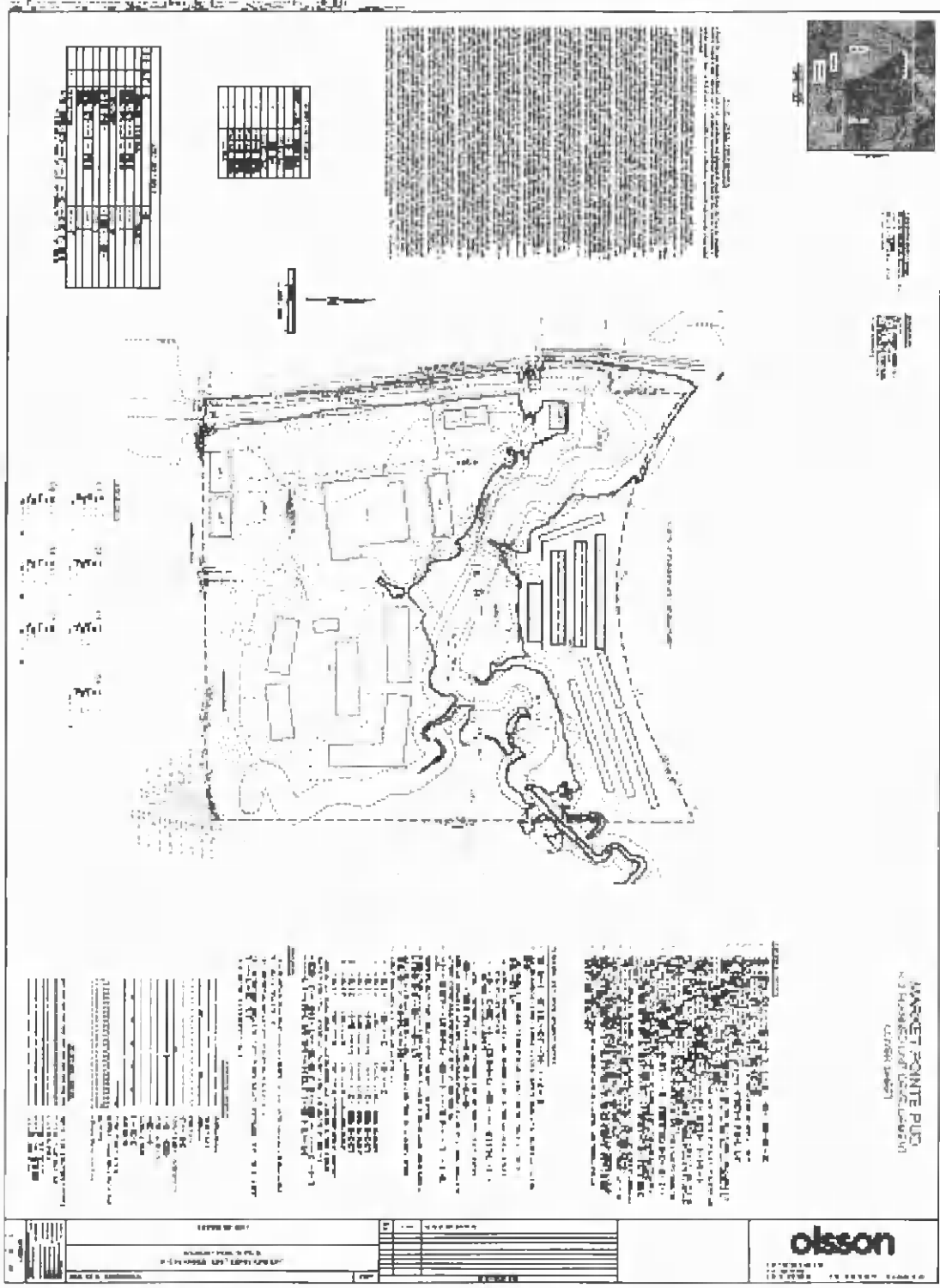


EXHIBIT C

Comprehensive Plan Amendment

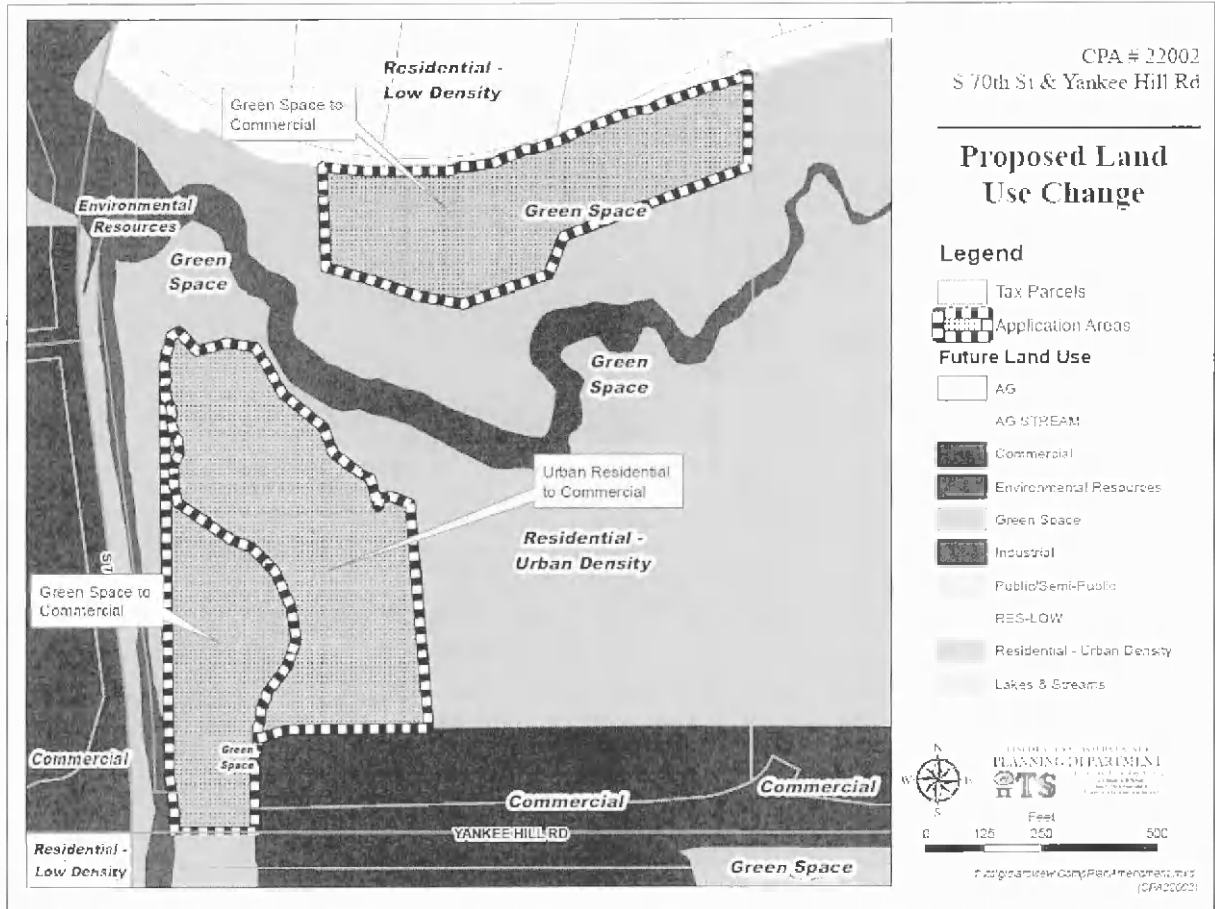


EXHIBIT D Impact Fee Area Map

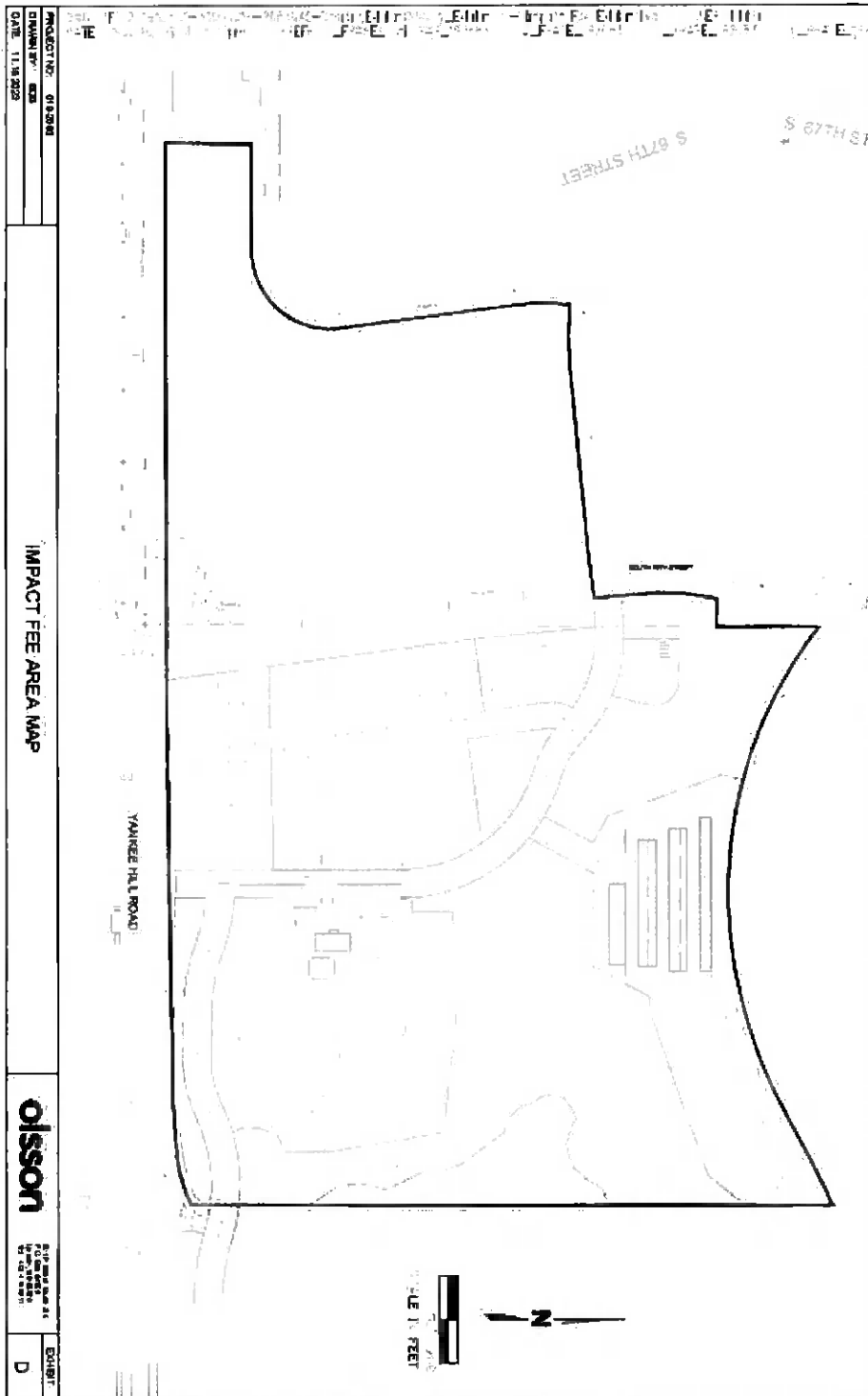


EXHIBIT E

70th and Bridle Lane Intersection Improvements

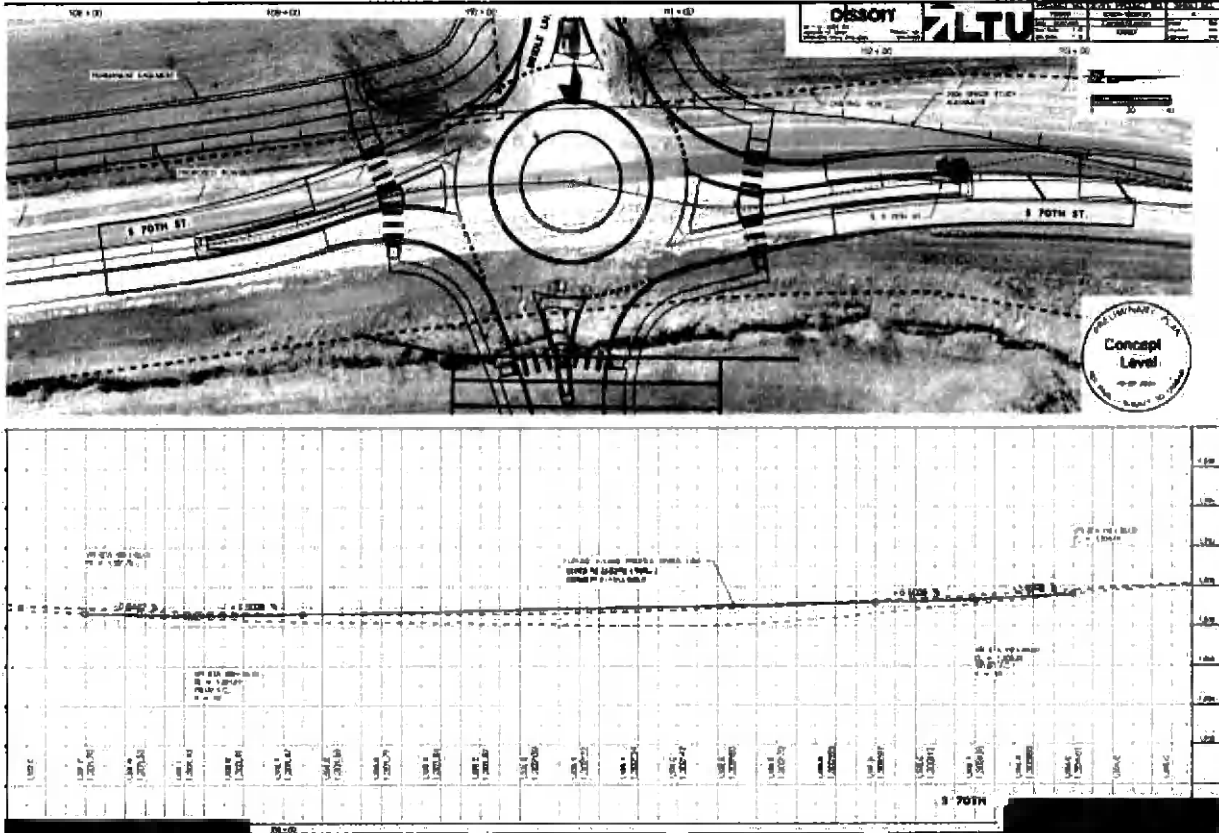
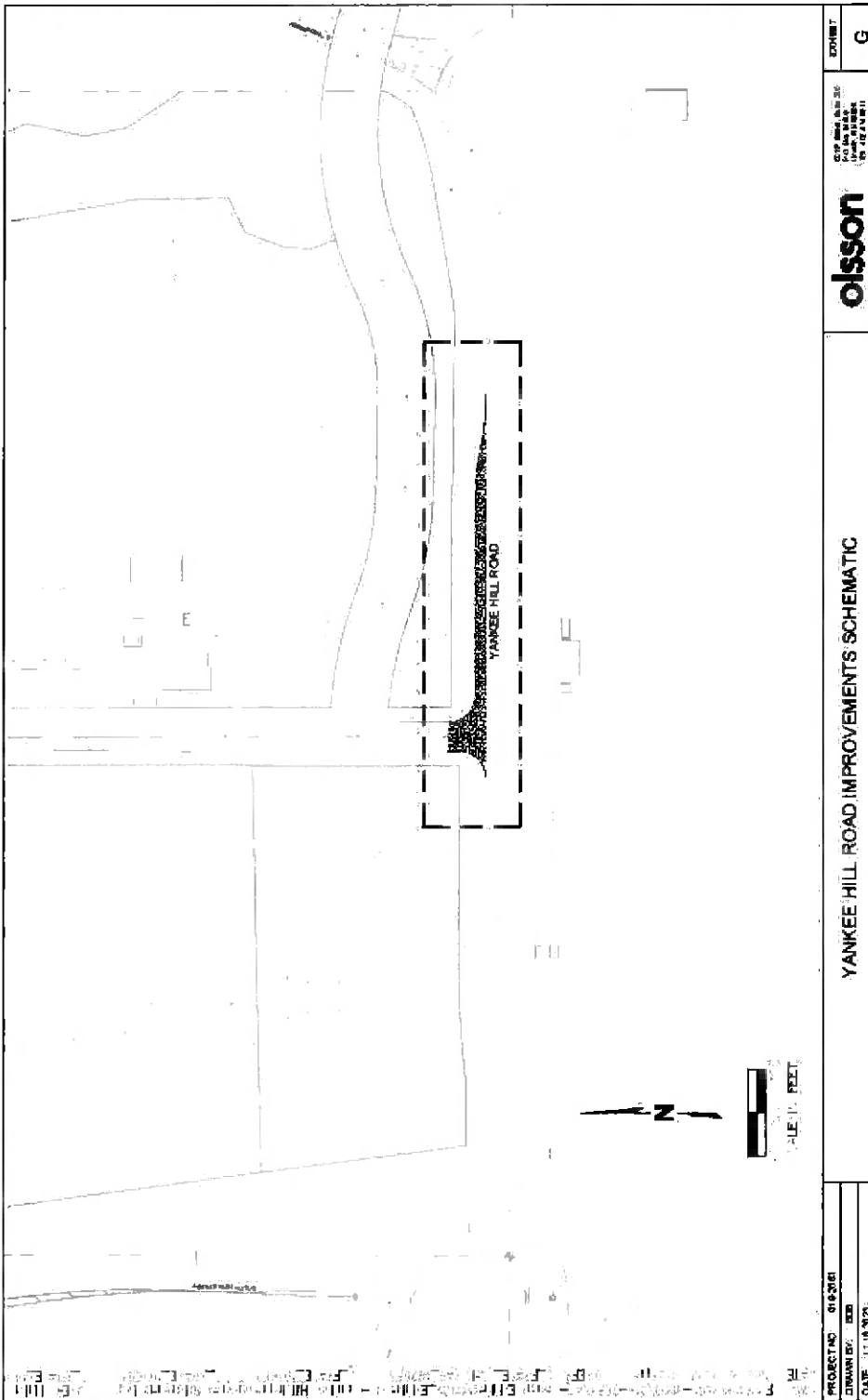


EXHIBIT F

Opinion of Probably Cost for 70th and Bridle Lane Intersection Improvements

70th Street, Bridle Lane Roundabout - Cost Estimate - Concept A		Project Number	
Line No/ Pay Item No	Description	Quantity/ Unit	Base Cost / Total Cost
GENERAL ITEMS			
01.00001	Mobilization (Approx. 10% of Total Project Cost)	1.00 LS	\$ 140,000.00 / \$ 140,000.00
01.01001	Cost Stationing	1.00 LS	\$ 21,000.00 / \$ 21,000.00
01.02001	Survey Monument and Box	1.00 EA	\$ 350.00 / \$ 350.00
01.04001	Paint & Sidewalk Rem	735.00 CY	\$ 25.00 / \$ 18,375.00
1.05001	Sealing, Type 'A'	435.00 LF	\$ 8.00 / \$ 3,480.00
01.17000	Contractor Quality Control Program (CQCP)	1.00 LS	\$ 20,000.00 / \$ 20,000.00
50.00001	Profile Existing Utility	5.00 EA	\$ 1,000.00 / \$ 5,000.00
EARTHWORK ITEMS			
02.01001	Gen Clearing & Grubbing	1.00 LS	\$ 25,000.00 / \$ 25,000.00
02.02012	Tree Rem (1.2" to 23")	20 EA	\$ 400.00 / \$ 8,000.00
02.05001	Excavation	1,000.00 CY	\$ 5.00 / \$ 5,000.00
02.05003	Excavation - Borrow	1,500.00 CY	\$ 3.00 / \$ 4,500.00
02.08001	Earthwork Measured in Embankment	2,500.00 CY	\$ 12.00 / \$ 30,000.00
PAVING ITEMS			
04.09108	PCC Pav w/ Int Curb, 6"	50.00 SY	\$ 80.00 / \$ 4,000.00
04.09170	DPCC Pav w/ Int Curb, 6"	2,200.00 SY	\$ 110.00 / \$ 242,000.00
04.08004	Conc Sidewalk, 4"	1,348.00 SF	\$ 6.50 / \$ 8,762.00
04.08009	Conc Sidewalk, 6"	80.00 SF	\$ 12.00 / \$ 960.00
04.08006	Conc Blanket, 6"	2,000.00 SF	\$ 6.88 / \$ 13,760.00
04.08209	Conc Blanket, 8"	160.00 SF	\$ 14.00 / \$ 2,240.00
04.08000	Conc Median Neger	4.00 EA	\$ 1,200.00 / \$ 4,800.00
04.08504	Conc Median Surface, 4"	1,605.00 SF	\$ 8.50 / \$ 13,642.50
04.11001	Detachable Warning Panel	280.00	\$ 32.00 / \$ 8,960.00
06.06001	Asph Conc, Type 1	100.00 TN	\$ 120.00 / \$ 12,000.00
06.06003	Asph Conc, Type 3	462.00 TN	\$ 140.00 / \$ 64,680.00
50.00040	Roundabout Median Neger	60.00 SY	\$ 200.00 / \$ 12,000.00
50.00040	PCC Pav Truck Apron (Colored & Stenciled), 6"	340.00 SY	\$ 135.00 / \$ 45,900.00
PAVEMENT MARKING ITEMS			
15.00001	PAVEMENT MARKING	1.00 LS	\$ 50,000.00 / \$ 50,000.00
SIGNING ITEMS - FOR INFORMATION ONLY			
15.00001	PAVEMENT MARKING	1.00 LS	\$ 5,000.00 / \$ 5,000.00
TRAFFIC CONTROL ITEMS			
15.00001	Traffic Control For Curb	1.00 LS	\$ 50,000.00 / \$ 50,000.00
STORM DRAINAGE ITEMS			
21.03315	RCP Storm Drain, CI 18, 16'	150.00 LF	\$ 75.00 / \$ 11,250.00
21.03318	RCP Storm Drain, CI 18, 18'	150.00 LF	\$ 90.00 / \$ 13,500.00
21.08001	Reinf Steel for Structures	65,720.00 LBS	\$ 2.50 / \$ 164,300.00
21.08002	Conc for Structures	436.00 CY	\$ 1,090.00 / \$ 474,740.00
21.07015	Storm Drain MH, 18" - 30"	3.00 EA	\$ 6,000.00 / \$ 18,000.00
21.08004	Storm Drain Inlet, Armored	2.00 EA	\$ 5,000.00 / \$ 10,000.00
21.08005	Curbed Storm Drain Inlet, Armored	2.00 EA	\$ 5,000.00 / \$ 10,000.00
TRAFFIC SIGNAL, ITS & LIGHTING ITEMS			
15.00001	PAVEMENT MARKING	1.00 LS	\$ 50,000.00 / \$ 50,000.00
COMMUNICATIONS ITEMS			
15.00001	PAVEMENT MARKING	1.00 LS	\$ 500.00 / \$ 500.00
LANDSCAPE ITEMS			
31.03001	Select Topsoil	120.00 CY	\$ 35.00 / \$ 4,200.00
EROSION & SEDIMENT CONTROL ITEMS			
15.00001	PAVEMENT MARKING	1.00 LS	\$ 60,000.00 / \$ 60,000.00
Subtotal = 1,677,964.50			
TOTAL CONSTRUCTION COSTS			
	Construction Contingency (10%)	1.00 LS	\$ 167,796.45 / \$ 167,796.45
	Estimated City Material Cost	1.00 LS	\$ 5,000.00 / \$ 5,000.00
	Change Order Contingency (5%)	1.00 LS	\$ 83,898.23 / \$ 83,898.23
	Total Estimated Construction Cost =	1.00 LS	\$ 1,934,659.18
PE COSTS			
	Final Engineering Design Costs	1.00 LS	\$ 212,812.44 / \$ 212,812.44
	Estimated City Administrative PE Costs (1% of Construction)	1.00 LS	\$ 19,346.59 / \$ 19,346.59
	Construction PE Costs =	1.00 LS	\$ 232,159.03
	Estimated City Administrative CE Costs (1% of Construction)	1.00 LS	\$ 19,346.59 / \$ 19,346.59
	Construction Engineering and Inspection	1.00 LS	\$ 203,139.14 / \$ 203,139.14
	Total \$ 70th Street, Bridle Lane Roundabout Concept Level Construction Cost Estimate =	1.00 LS	\$ 2,412,548.28
Right of Way Cost Estimate			
	Damages Associated with Right of Way Acquisition	1.00 LS	\$ 4,200.00 / \$ 4,200.00
	Right of Way Acquisition	1.00 LS	\$ 13,685.00 / \$ 13,685.00
	Permanent Easement Acquisition	1.00 LS	\$ 0.00 / \$ 0.00
	Temporary Easement Acquisition	1.00 LS	\$ 17,645.00 / \$ 17,645.00
	Subtotal =	1.00 LS	\$ 35,530.00
	Appraisal and Negotiation Costs	1.00 LS	\$ 1,800.00 / \$ 1,800.00
	Right of Way Contingency (20%)	1.00 LS	\$ 3,560.00 / \$ 3,560.00
	Total Right of Way Cost Estimate =	1.00 LS	\$ 39,890.00
Total \$ 70th Street, Bridle Lane Roundabout - Concept Level Cost Estimate = \$ 2,452,438.28			

EXHIBIT G
Yankee Hill Road Improvements.



PROJECT NO: 0182061	olsson	EXHIBIT
DRAWN BY: BCB		G
DATE: 11.18.2023		
YANKEE HILL ROAD IMPROVEMENTS SCHEMATIC		

23R-595

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 23R-595 introduced on November 20, 2023, with the Substitute Attachment "A" to 23R-595.

Introduced by:

Approved as to Form and Legality:



City Attorney

Requested by: Baade Properties, LLC.

Reason for Request: To define the Intersection Improvements eligible for reimbursement to include the costs of both the roundabout at S. 70th & Bridle Lane and the box culvert required for the construction of the roundabout.

VOID

SUBSTITUTE ATTACHMENT A

**CONDITIONAL ZONING AND ANNEXATION AGREEMENT
FOR
Market Pointe
(70th & Yankee Hill Road)**

This Conditional Zoning & Annexation Agreement (“Agreement”) real property generally located at the northeast corner of the intersection of S. 70th Street and Yankee Hill Road is made and entered into as of the date of execution by the last signatory hereto as indicated below by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation (“City”) and **BAADE PROPERTIES, LLC**, a Nebraska limited liability company (“Baade”).

RECITALS

A. Baade is the owner of a parcel of real estate legally described as:

Lot 74, located in the Southwest Quarter of Section 22, Township 9 North, Range 7 East of the 6th Principal Meridian, Lancaster County, Nebraska.
as shown on Exhibit “A” (the “Baade Property”).

The Baade Property is generally located northeast of the intersection of S. 70th Street and Yankee Hill Road, Lincoln, Nebraska. Baade has petitioned the City to:

1. Annex the Baade Property into the City’s corporate limits, (AN21010):
2. Change the zoning designation for the Baade Property from AG (Agricultural District) to R-3 PUD (Residential Planned Unit Development) (CZ21053 or “Market Pointe PUD”).



The site plan for the Market Pointe PUD is attached as Exhibit “B”: The Market Pointe PUD reflects a Development Plan which includes:

i) **Commercial Uses:** The development plan contemplates the following commercial uses:

- 55,000 square feet supermarket
- 34,000 square feet of retail
- Service Station (8 fueling positions)
- 1,900 square foot Restaurant with drive-through

ii) **Multifamily Use:** Up to 250 dwelling units of an apartment development oriented towards South 70th Street; and

iii) **Storage Unit Use:** 95,000 square feet of mini-warehousing uses located on the northern portion of the property adjacent to the railroad track.

3. Amend the Lincoln-Lancaster County 2050 Comprehensive Plan to revise the land use designations on certain portions of the Baade Property to conform to the Market Pointe development plan as shown on Exhibit “C” (CPA22002)

B. AN21010, CZ 21053, and CPA22002 are collectively referred to herein as the “Governmental Actions.”

C. Approval of Governmental Actions will allow Baade to develop the Baade Property into a mixed-use residential neighborhood, to include multifamily development, served by a neighborhood commercial center.

D. City is willing to approve the Governmental Actions conditioned upon Baade’s agreement to address the impact of the development of the area by developing the Baade Property consistent with the terms of this Agreement and the conditions of the Market Pointe PUD.

VOID

E. Certain property, generally located at the northwest corner of 70th Street and Yankee Hill Road (the “**Harvest Hills Property**”) will benefit from intersection improvements described in this Agreement. The Harvest Hills Property is legally described as:
Section 21, Tract 9, Range 7, 6th Principal Meridian, LOT 111 South East, Lincoln, Lancaster County, Nebraska

City is agreeable to directing impact fees from the Harvest Hills Property to reimburse Baade for impact fee eligible expenses in this Agreement. The entire Impact Fee Area Map, which includes the Baade Property and the Harvest Hills Property is attached here as Exhibit “D”

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the above recitals and the following terms and conditions, the parties agree as follows:

1. **City Approvals.** City agrees to approve the Governmental Actions.
2. **Street Improvements.** Baade and City agree on the following with regard to street improvements required to develop the Baade Property.

A. 70th and Bridle Lane. Subject to the terms and conditions herein, City shall design and construct the ~~roundabout~~intersection improvements at 70th and Bridle Lane depicted herein and on Exhibit “E” (“**70th and Bridle Lane Intersection Improvements**”) which includes: i) the “**Roundabout**”; and ii) the box culvert located in the South 70th Street Right of way required for ~~Baade’s preferred~~the final design and construction of the roundabout (“**Box Culvert**”), both of which are depicted on Exhibit “E”. City acknowledges that the Roundabout ~~component~~and the Box Culvert components of the 70th and Bridle Lane Intersection Improvements ~~is an~~are arterial street impact fee ~~facility~~facilities that ~~serve~~serve both the Market

VOID

Place development located on the Baade Property and also the Harvest Hills Property, which will directly benefit from the 70th and Bridle Lane Intersection Improvements. The Parties acknowledge that the City of Lincoln Comprehensive Plan does not include 70th Street improvements in the 2050 Fiscally Constrained Urban Roadway Capital Projects and therefore City construction of the 70th and Bridle Lane Intersection is not presently planned to occur, under current plans, for the next twenty-seven (27) years, absent the terms of this Agreement

The City agrees to segregate arterial street impact fees collected by the City from development of the Impact Fee Area ~~shown~~ shown on Exhibit "D", which includes: i) Market Point PUD on the Baade Property; and ii) from the Harvest Hills Property. When there are sufficient funds available to design, grade, pave, and implement the 70th and Bridle Lane Intersection Improvements, City shall do so. ~~The Parties acknowledge~~ Further, the City acknowledges that the Box Culvert depicted on Exhibit "E" is ~~not~~ an impact fee facility. ~~Therefore, while the Roundabout component of the 70th and Bridle Lane Intersection Improvement may be funded by~~ qualifies as an Arterial Street Impact Fees, the Box Culvert incorporated into Fee Facility due to the fact that the Roundabout requires the design construction of the intersection shall be fully funded by Baade. Baade shall advance all funds necessary to design and construct box culvert due to the Box Culvert prior to City Construction presence of the 70th and Bridle Lane Intersection Improvements. If the Box Culvert funds are not advanced prior Beal Slough floodway in and adjacent to City bidding of the 70th and Bridle Lane Intersection Improvements, City shall be entitled to construct the 70th Street Intersection Improvements by any design of its choosing Right of way. The City of

VOID

Lincoln will not issue any building permit for the Baade Property until the 70th and Bridle Lane Intersection Improvements are underway.

A.B. Baade's Option to Accelerate Construction of 70th & Bridle Lane Intersection Improvements and Directed Impact Fees. Pursuant to LMC Section 27.82.090. Baade shall have the right to accelerate City construction of the 70th and Bridle Lane Intersection Improvements prior to collection of sufficient Arterial Street Impact Fees, or other funding, as described in paragraph 2.A above by making a Gap Contribution (defined below) to City to complete said improvements. The right to trigger City construction of the 70th & Bridle Lane Intersection Improvements shall be exercised in the following manner:

- i. Baade shall provide written notice to the Director of Transportation and Utilities of Baade's request to trigger construction of the 70th & Bridle Lane Intersection Improvements ("Trigger Notice").
- ii. Within thirty (30) days of receipt of the Trigger Notice, the City shall provide to Baade a statement of the amount of Arterial Street Impact Fees generated by the Impact Fee Area then collected and available ("**Available Arterial Street Impact Fees**"); and
- iii. Baade shall provide the City a bond, escrow, letter of credit, or other security agreement, approved by the City Attorney ("**Road Escrow**"), for one hundred ten percent (110%) of the difference between the City's estimated cost of \$2,420,000.00 to construct the 70th & Bridle Lane Intersection Improvements and the amount of the Available Arterial Street Impact Fees then-collected ("**Road Escrow Amount**"). Attached as Exhibit

VOID

“E” is an Opinion of Probable Cost for the construction of the 70th and Bridle Lane Intersection Improvements. Said cost estimate is the sum of Two Million, Four Hundred Twenty Thousand Dollars (\$2,420,000.00) (the “Project Cost”). If Baade exercises this option on a date five (5) years or later after execution of this agreement, City shall cause the preparation of a new estimated cost for the 70th and Bridle Lane Intersection Improvements.

iv. Upon receipt of the Road Escrow Amount City shall design and bid the 70th & Bridle Intersection Improvements as soon as reasonably possible. The City shall notify Baade of the actual bids and, in the event:

1. the actual lowest responsible bid exceeds the combined total of the Road Escrow Amount and Available Arterial Street Impact Fees, then Baade will increase the amount of the Road Escrow Amount held in the Road Escrow to cause the adjusted Road Escrow Amount to be equal to one hundred ten percent (110%) of the actual lowest responsible bid minus the Available Arterial Street Impact Fees; or
2. the actual lowest responsible bid is less than the combined total of the Road Escrow Amount and Available Arterial Street Impact Fees, then Baade may decrease the amount of the Road Escrow Amount held in the Road Escrow to be equal to one hundred ten percent (110%) of the lowest responsible bid minus the Available Arterial Street Impact Fees.

v. City shall first utilize the Available Arterial Street Impact Fees generated by the Impact Fee Area, if any, to fund such design, grading, and

VOID

construction of ~~the roundabout component of~~ both the Roundabout and the Box Culvert comprising the 70th and Bridle Lane Intersection Improvements and then utilize the Road Escrow. City will provide Baade an invoice or invoices for said actual additional amount. ~~Baade shall be responsible for the full cost of design and construction of the Box Culvert and shall advance the city the funds to pay those costs without any expectation of reimbursement.~~ If actual project costs for the 70th and Bridle Lane Intersection Improvements exceed the Road Escrow Amount in the Road Escrow, then Baade shall be responsible to advance the excess costs to the City.

- vi. City shall reimburse Baade for all funds expended on ~~the roundabout component of~~ the 70th and Bridle Intersection Improvements from the *Arterial Street Impact Fees* collected or to be collected in the future from the Impact Fee Area. Such reimbursement shall have first priority after the City funds the 70th & Bridle Intersection Improvements. Said reimbursement payments shall be made on a quarterly basis by City to Baade from arterial street impact fees generated from the Impact Fee Area as they become available. The agreement by the City to reimburse the Baade from arterial street impact fees generated by the Impact Fee Area is limited to the impact fees actually paid by development the Impact Fee Area and shall not constitute a general obligation of the City.
- vii. Baade and City recognize that the Impact Fee Area is estimated to generate *Arterial Street Impact Fees* in the amount of One Million Five Hundred

Seventy-Four thousand Dollars (\$1,574,000.00), which represents Eight Hundred Forty-Six Thousand and no/1000 Dollars (\$846,000.00) less than the estimated cost of the 70th and Bridle Lane Intersection Improvements. In recognition of the benefits to be realized in the development of the Baade Property by having the 70th and Bridle Lane Improvements constructed prior to City accumulating sufficient resources to construct said improvements, Baade agrees to contribute the difference between the actual cost to construct the 70th and Bridle Lane Intersection and Arterial Street Directed Impact Fees generated in the Impact Fee Area (“Baade’s Gap Contribution.”). Baade agrees to loan the amount of the total project cost of \$2,420,000 to the City to be repaid to Baade from: i) the Impact Fees paid by the development of the Impact Fee Area; and ii) the sums advanced by the City following future appropriations in the Capital Improvement Plan, for this purpose, at City Council discretion. In recognition of the benefits to be realized in the development of the Baade Property by having the 70th and Bridle Lane Improvements constructed prior to City accumulating sufficient resources to construct said improvements, and City’s commitment to construct the Box Culvert, Baade agrees to contribute the difference between the actual cost to construct the 70th and Bridle Lane Intersection and Arterial Street Directed Impact Fees generated in the Impact Fee Area (“Baade’s Gap Contribution”). ~~Baade’s Gap Contribution includes costs associated with the box culvert component of the 70th and Bridle Lane Intersection Improvements and will not be~~

~~reimbursable from Arterial Street Directed Impact Fees. Total reimbursable costs for the Roundabout are at this time estimated to be One Million Five Hundred Fifty Five Thousand Dollars (\$1,555,000.00). Baade agrees to loan to the City: i) the Directed Impact Fee Amount of \$1,574,000; and ii) the Baade's Gap Contribution of \$846,000.00.~~

~~B.C.~~ **Yankee Hill Road.** Baade shall also be responsible for the design and construction of the right-in, right-out intersection at South 72nd Street and Yankee Hill Road ("Yankee Hill Road Improvements"). The Yankee Hill Road Improvements are generally shown on Exhibit "F".

~~C.D.~~ **Street Improvements Prior to Occupancy.** City shall not issue any occupancy permits on the Baade Property until the 70th and Bridle Lane and Yankee Hill Road are complete.

2. **Notice.** Any notices required to be forwarded to a party hereto shall be deemed appropriately given or delivered if sent by registered or certified United States Mail, postage prepaid, return receipt requested, addressed or delivered personally as follows:

(1) If to the City:

Mayor
555 South 10th Street
Lincoln, Nebraska 68508

with a copy to:

City Attorney
555 South 10th Street
Lincoln, Nebraska 68508

(2) If to Baade:

Alan Baade
5500 Saltillo Road
Roca, NE 68430

VOID

Any party hereto may change its address for notification purposes by written notice to all parties hereto in the manner and method set forth within this paragraph.

3. **Contribution to Rural Fire Protection District.** Baade understands and acknowledges that the City's annexation of the Baade Property or any portion thereof lying within the boundaries of the Southeast Rural Fire Protection district shall not be complete except upon the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of the Baade Property or any portion thereof being annexed. Baade has previously obtained a release of the Baade Property from the jurisdiction of the Southeast Rural Fire Protection District.
4. **Amendments.** This Agreement may only be amended or modified in writing signed by the Parties to this Agreement.
5. **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.
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 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, Developer, 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.
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 or unless otherwise stated herein.
11. **Default.** In the event the Developer defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the City may take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach. In the event the City defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the Developer may take such remedies, legal or equitable, to enforce this Agreement or to obtain damages for its breach.
12. **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 Baade Property.
13. **Recordation.** This Agreement or a memorandum thereof shall be filed in the Office of the

Register of Deeds of Lancaster County, Nebraska at the City's cost and expense.

14. **Authority**. The City has the authority to engage in the reimbursements to Developer described in this Agreement, and (i) has taken all steps to legally exercise that authority, and (ii) the reimbursements to Developer described in this Agreement will comply with all applicable laws.

15. **Exhibits**. The following Exhibits are attached to this Agreement and are incorporated herein by this reference:

Exhibit A – Badde Property

Exhibit B – Market Pointe PUD Site Plan

Exhibit C – Land use Map Amendment

Exhibit D – Impact Fee Area Map

Exhibit E – 70th and Bridle Lane Intersection Improvements

Exhibit F – Opinion of Probably Cost for 70th and Bridle Lane Intersection Improvements

Exhibit G – South 72nd and Yankee Hill Road Improvements

[SIGNATURE PAGES TO FOLLOW]

VOID

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date and year first above written.

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: _____
Leirion Gaylor Baird, Mayor of Lincoln

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Leirion Gaylor Baird, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public

VOID

BAADE PROPERTIES, LLC, a Nebraska
limited liability company

By: _____
Alan Baade, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

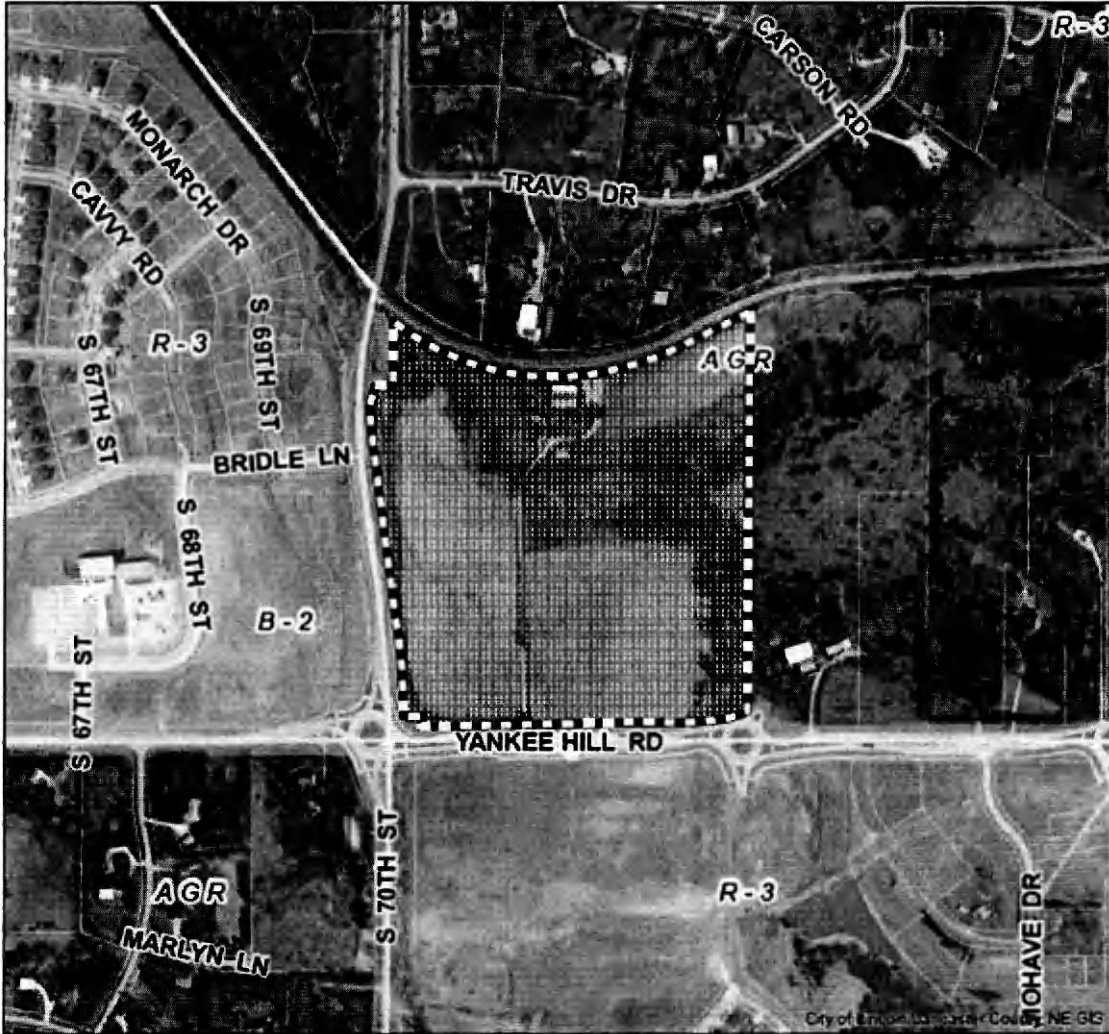
The foregoing was acknowledged before me this ____ day of _____,
2023, by Alan Baade, Manager of Baade, LLC, a Nebraska limited liability company, on behalf of
the limited liability company.

Notary Public

VOID

EXHIBIT A

The Baade Property



Annexation #: AN21010 &
 Change of Zone #: CZ21053 (AG to R-3)
 Market Points
 S 70th St & Yankee Hill Rd

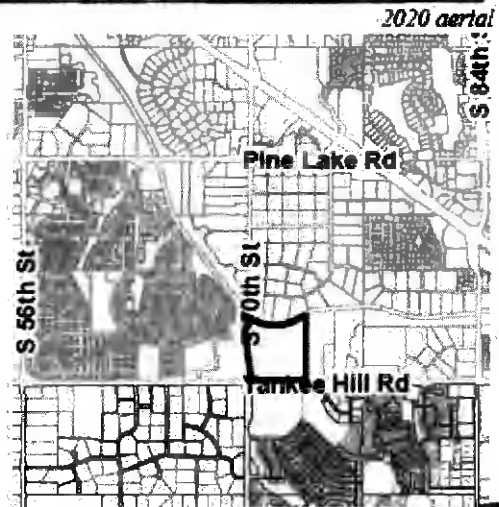
Zoning:

- R-1 to R-4 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- I-1 Interstate Commercial District
- I-2 Highway Business District
- I-3 Highway Commercial District
- I-4 General Commercial District
- I-5 Industrial District
- I-6 Industrial Park District
- I-7 Employment Center District
- P Public Use District



Two Square Miles:

Sec.21 T09N R07E
 Sec.22 T09N R07E



VOID

EXHIBIT B

Market Pointe PUD

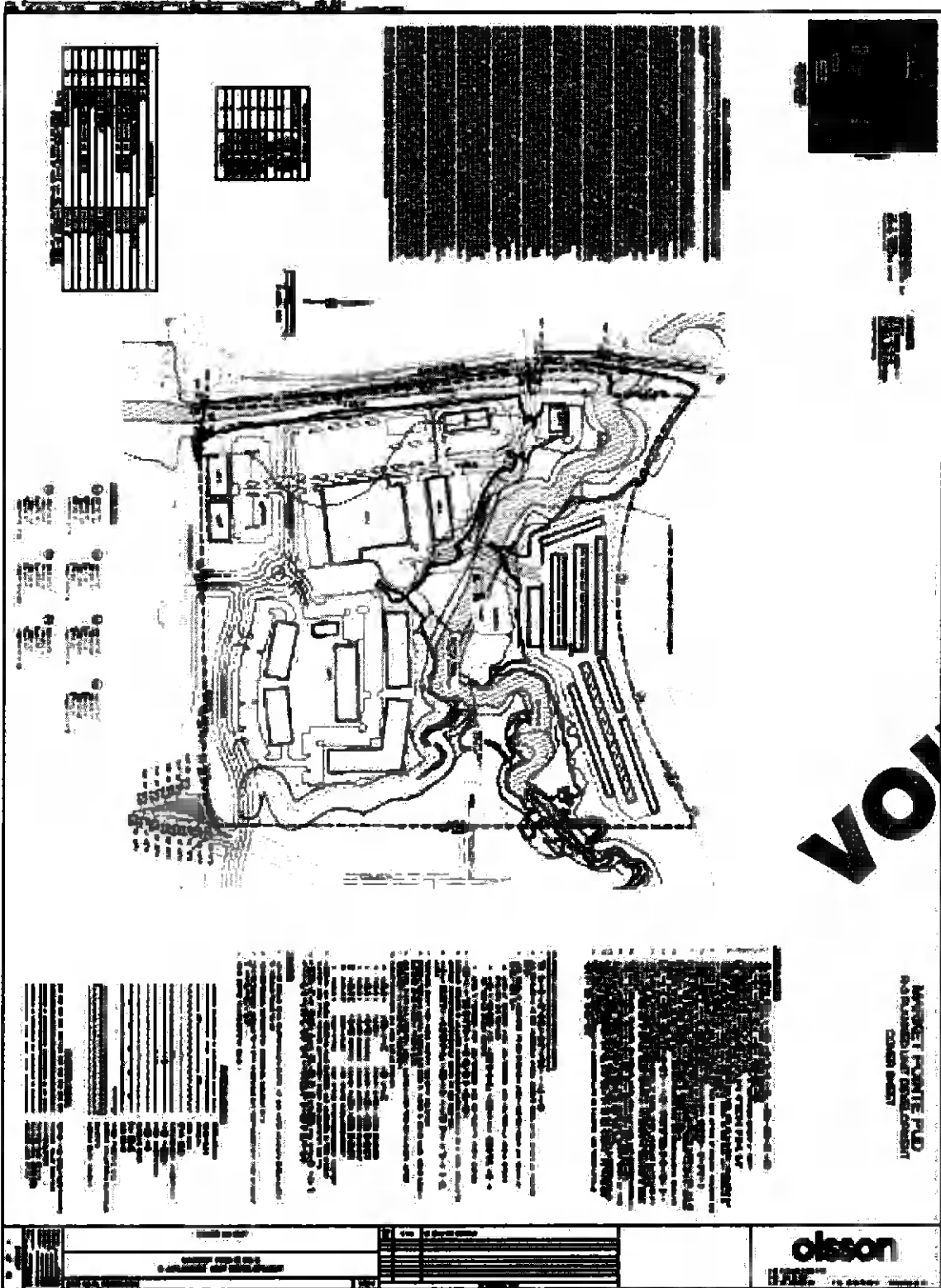
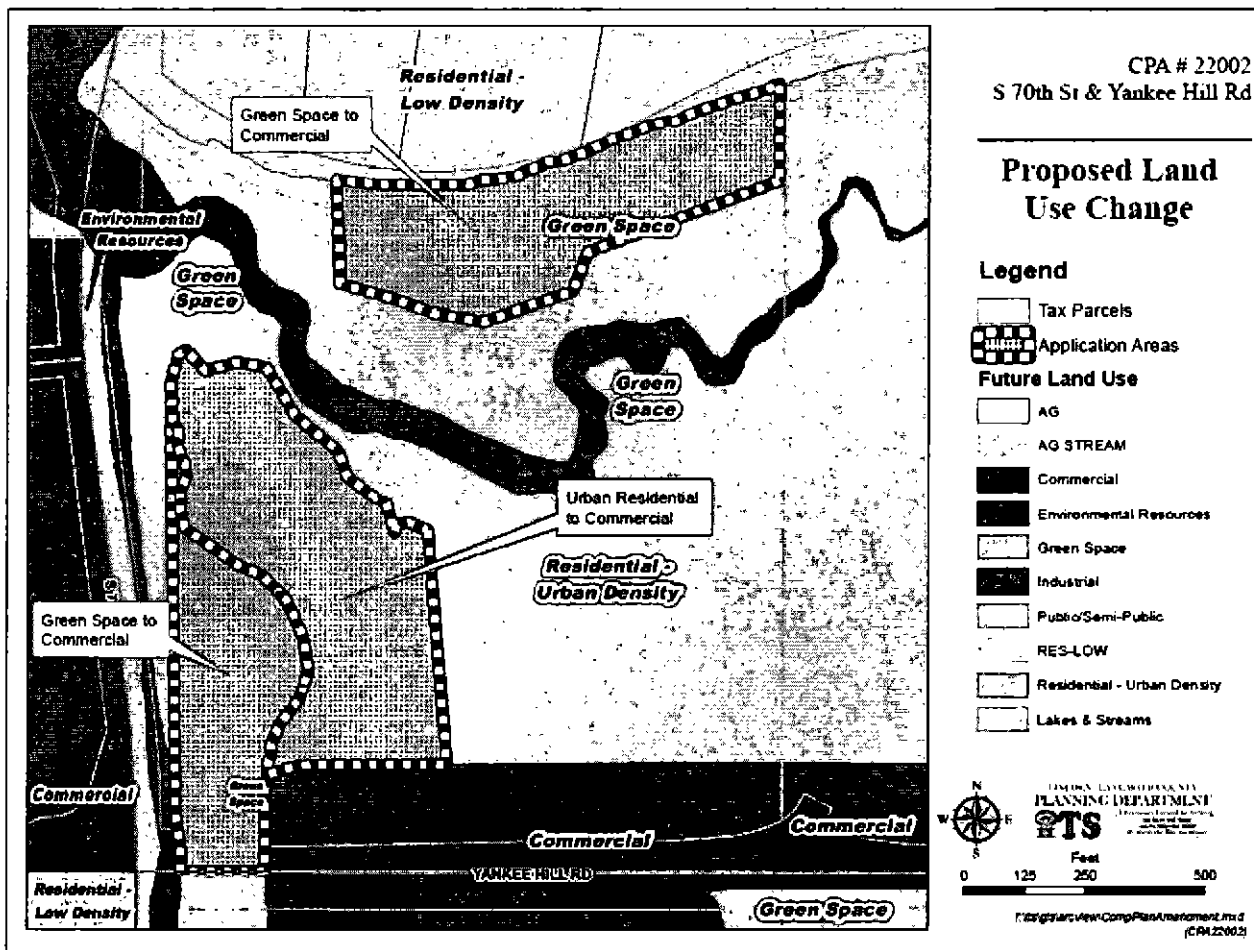


EXHIBIT C

Comprehensive Plan Amendment



VOID

EXHIBIT D

Impact Fee Area Map

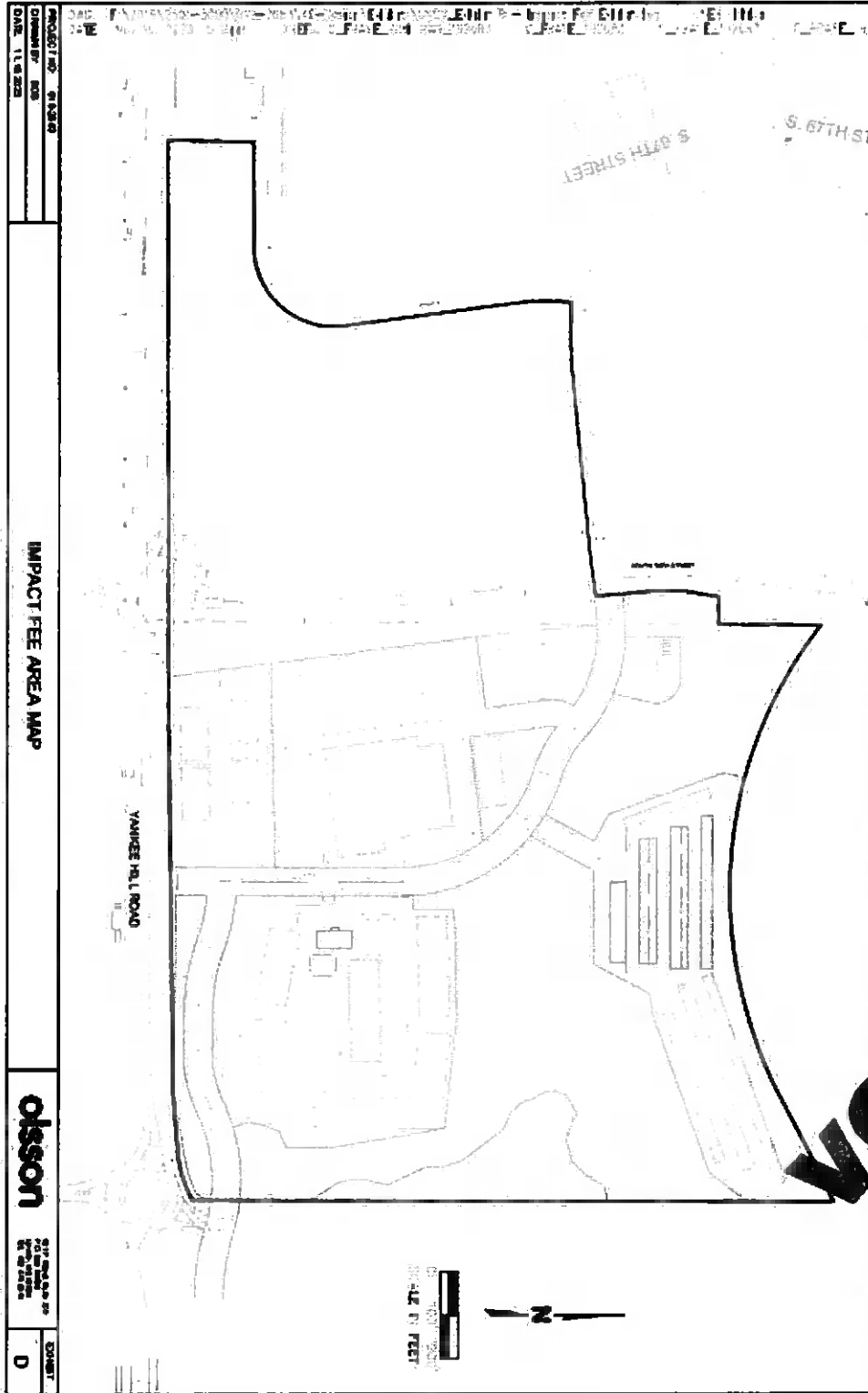
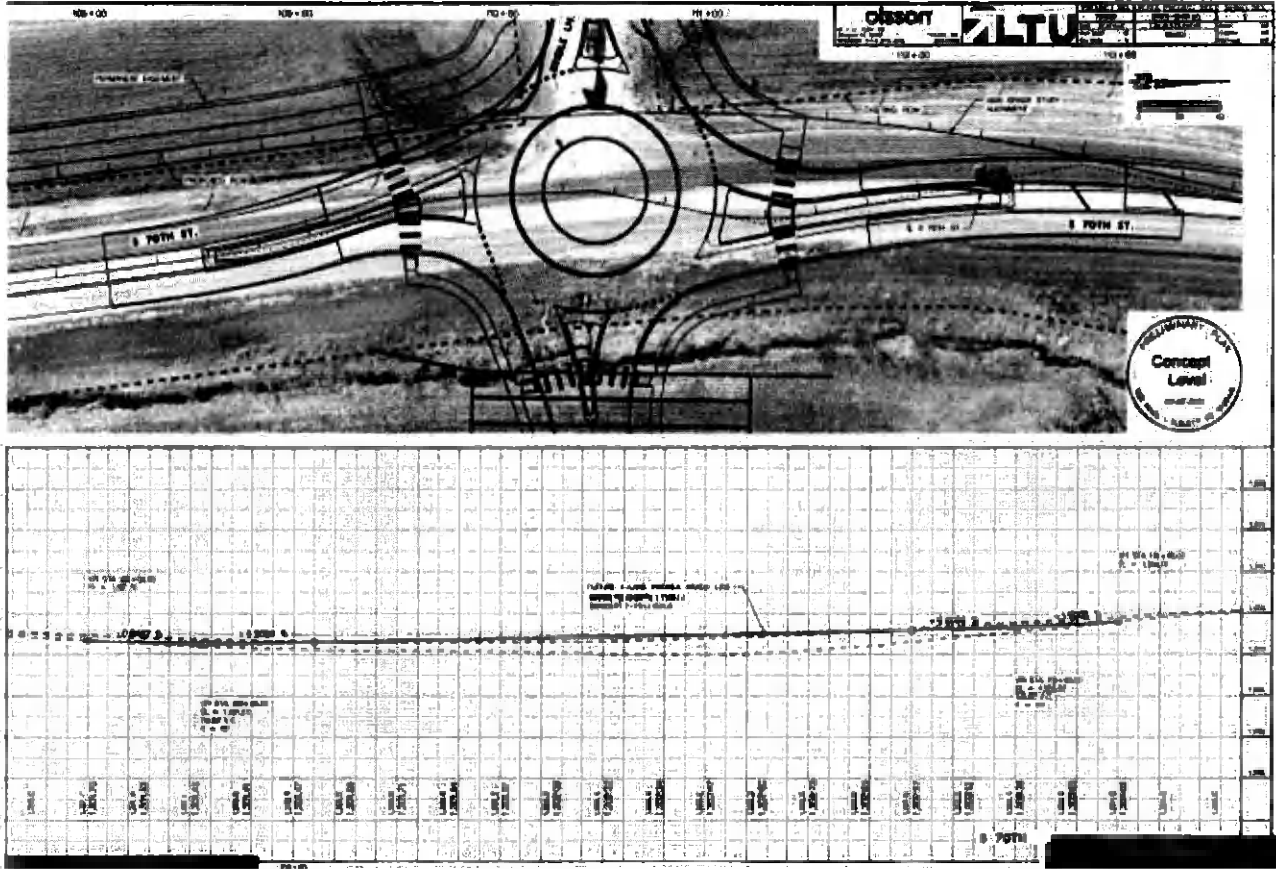


EXHIBIT E

70th and Bridle Lane Intersection Improvements



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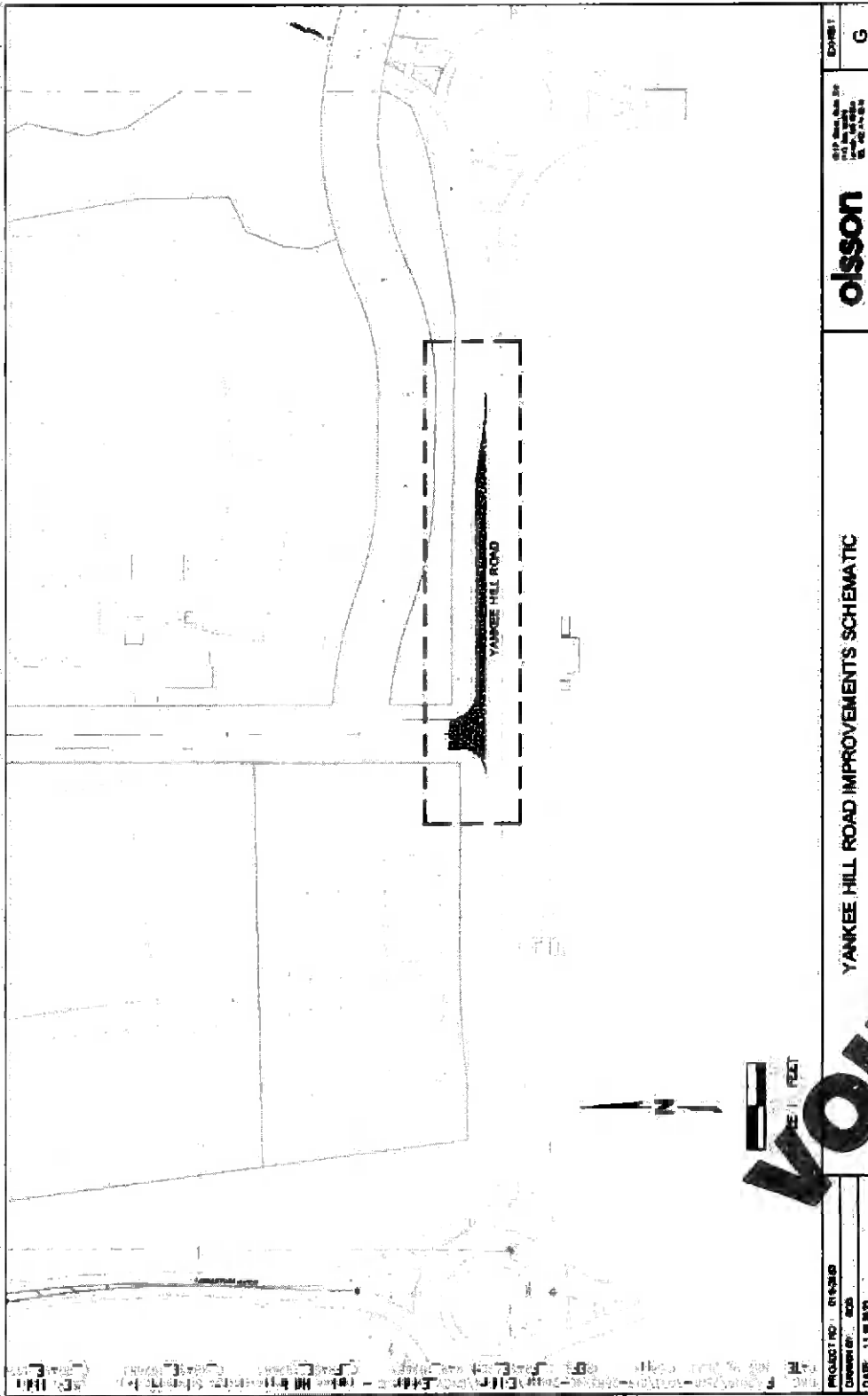
EXHIBIT F

Opinion of Probably Cost for 70th and Bridle Lane Intersection Improvements

70th Street, Bridle Lane Roundabout - Cost Estimate - Concept A		Project Number			
Line No	Pay Item No	Description	Quantity/Unit	Base Cost	Total Cost
GENERAL ITEMS					
01.00001		Mobilization (Assumed 70% of Total Project Cost)	1.00 LS	\$ 140,000.00	\$ 140,000.00
01.01001		Const Staking	1.00 LS	\$ 21,000.00	\$ 21,000.00
01.02001		Survey Monument and Box	1.00 EA	\$ 350.00	\$ 350.00
01.04001		Paint & Sidewalk Rem	735.00 CY	\$ 25.00	\$ 18,375.00
1.05001		Sawing, Type "A"	435.00 LF	\$ 8.00	\$ 3,480.00
01.17000		Contractor Quality Control Program (CQCP)	1.00 LS	\$ 20,000.00	\$ 20,000.00
50.00001		Protect Existing Utility	5.00 EA	\$ 1,000.00	\$ 5,000.00
EARTHWORK ITEMS					
02.01001		Gen Clearing & Grubbing	1.00 LS	\$ 25,000.00	\$ 25,000.00
02.02012		Tree Rem (2" to 23")	20 EA	\$ 450.00	\$ 9,000.00
02.05001		Excavation	1,000.00 CY	\$ 5.00	\$ 5,000.00
02.05003		Excavation - Borrow	1,500.00 CY	\$ 10.00	\$ 15,000.00
02.08001		Earthwork Measured in Embankment	2,500.00 CY	\$ 12.00	\$ 30,000.00
PAVING ITEMS					
04.00100		PCC Pav w/ Int Curb, 6"	50.00 SY	\$ 80.00	\$ 4,000.00
04.00170		DPCC Pav w/ Int Curb, 9"	2,300.00 SY	\$ 110.00	\$ 242,500.00
04.00304		Conc Sidewalk, 4"	1,350.00 SF	\$ 6.50	\$ 8,827.00
04.00309		Conc Sidewalk, 9"	50.00 SF	\$ 17.00	\$ 850.00
04.00500		Conc Bikeway, 4"	2,500.00 SF	\$ 6.50	\$ 16,250.00
04.00509		Conc Bikeway, 9"	150.00 SF	\$ 14.00	\$ 2,100.00
04.00600		Conc Median Nose	4.00 EA	\$ 1,200.00	\$ 4,800.00
04.00604		Conc Median Surfacing, 4"	1,005.00 SF	\$ 8.50	\$ 13,542.50
04.11001		Detachable Warning Panel	280.00 SF	\$ 32.00	\$ 8,960.00
05.00001		Asph conc, Type 1	180.00 TN	\$ 120.00	\$ 21,600.00
05.00003		Asph Conc, Type 3	452.00 TN	\$ 140.00	\$ 64,680.00
50.00040		Roundabout Median Nose	60.00 SY	\$ 200.00	\$ 12,000.00
50.00040		PCC Pav Truck Apron (Colored & Stenciled), 9"	340.00 SY	\$ 135.00	\$ 45,900.00
PAVEMENT MARKING ITEMS					
			1.00 LS	\$ 50,000.00	\$ 50,000.00
SIGNING ITEMS - FOR INFORMATION ONLY					
			1.00 LS	\$ 5,000.00	\$ 5,000.00
TRAFFIC CONTROL ITEMS					
15.00001		Traffic Control For Const	1.00 LS	\$ 60,000.00	\$ 60,000.00
STORM DRAINAGE ITEMS					
21.00001		RCP Storm Drain, 18"	150.00 LF	\$ 75.00	\$ 11,250.00
21.00010		RCP Storm Drain, 24"	150.00 LF	\$ 90.00	\$ 13,500.00
21.00001		Rebar Steel for Structures	65,720.00 LBS	\$ 2.50	\$ 164,300.00
21.00002		Concrete Structures	435.00 CY	\$ 1,200.00	\$ 522,000.00
21.07015		Storm Drain MH, 15" - 30"	3.00 EA	\$ 6,000.00	\$ 18,000.00
21.07020		Storm Drain Inlet, Arroyo	2.00 EA	\$ 5,000.00	\$ 10,000.00
21.08005		Casted Storm Drain Inlet, Arroyo	2.00 EA	\$ 5,000.00	\$ 10,000.00
TRAFFIC SIGNAL, ITS & LIGHTING ITEMS					
			1.00 LS	\$ 98,000.00	\$ 98,000.00
COMMUNICATIONS ITEMS					
			1.00 LS	\$ 600.00	\$ 600.00
LANDSCAPE ITEMS					
31.00001		Select Topsoil	120.00 CY	\$ 35.00	\$ 4,200.00
EROSION & SEDIMENT CONTROL ITEMS					
		Erosion Control	1.00 LS	\$ 20,000.00	\$ 20,000.00
Subtotal = 1,877,364.50					
TOTAL CONSTRUCTION COSTS					
		Construction Contingency (10%)	1.00 LS	\$ 187,736.45	\$ 187,736.45
		Estimated City Material Cost =	1.00 LS	\$ 5,000.00	\$ 5,000.00
		Change Order Contingency (5%)	1.00 LS	\$ 93,898.00	\$ 93,898.00
		Total Estimated Construction Cost =	1.00 LS	\$ 1,934,638.95	\$ 1,934,638.95
PE COSTS					
		Final Engineering Design Costs =	1.00 LS	\$ 212,812.44	\$ 212,812.44
		Estimated City Administrative PE Costs (1% of Construction) =	1.00 LS	\$ 19,346.39	\$ 19,346.39
Construction/CE COSTS					
		Estimated City Administrative CE Costs (1% of Construction) =	1.00 LS	\$ 19,346.39	\$ 19,346.39
		Construction Engineering and Inspection =	1.00 LS	\$ 203,130.14	\$ 203,130.14
Total 70th Street, Bridle Lane Roundabout Concept Level Construction Cost Estimate = 2,399,674.37					
Right of Way Cost Estimate					
		Damages Associated with Right of Way Acquisition	1.00 LS	\$ 4,200.00	\$ 4,200.00
		Right of Way Acquisition	1.00 LS	\$ 13,685.00	\$ 13,685.00
		Permanent Easement Acquisition	1.00 LS	\$ -	\$ -
		Temporary Easement Acquisition	1.00 LS	\$ -	\$ -
		Subtotal =		\$ 17,885.00	\$ 17,885.00
		Appraisal and Negotiation Costs	1.00 LS	\$ 1,800.00	\$ 1,800.00
		Right of Way Contingency (20%)	1.00 LS	\$ 3,560.00	\$ 3,560.00
Total Right of Way Cost Estimate = 20,245.00					
Total 70th Street, Bridle Lane Roundabout - Concept Level Cost Estimate = \$ 2,419,919.37					

VOID

EXHIBIT G
Yankee Hill Road Improvements



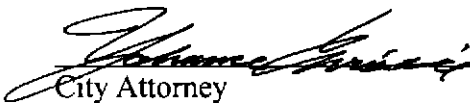
23R-595

MOTION TO AMEND NO. 2

I hereby move to amend Bill No. 23R-595 introduced on November 20, 2023, with the Substitute Attachment "A" to 23R-595.

Introduced by:

Approved as to Form and Legality:



City Attorney

Requested by: Baade Properties, LLC.

Reason for Request: To define the Intersection Improvements eligible for reimbursement to include the delta between the cost of: i) the box culvert required by the roundabout; and b) the box culver required by turn lanes, the Applicant's original design proposal.

VOID

**CONDITIONAL ZONING AND ANNEXATION AGREEMENT
FOR
Market Pointe
(70th & Yankee Hill Road)**

This Conditional Zoning & Annexation Agreement (“Agreement”) real property generally located at the northeast corner of the intersection of S. 70th Street and Yankee Hill Road is made and entered into as of the date of execution by the last signatory hereto as indicated below by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation (“City”) and **BAADE PROPERTIES, LLC**, a Nebraska limited liability company (“Baade”).

RECITALS

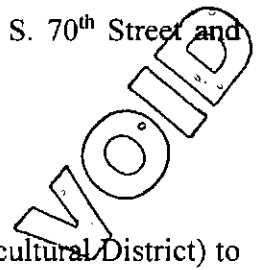
A. Baade is the owner of a parcel of real estate legally described as:

Lot 74, located in the Southwest Quarter of Section 22, Township 9 North, Range 7 East of the 6th Principal Meridian, Lancaster County, Nebraska.

as shown on Exhibit “A” (the “Baade Property”).

The Baade Property is generally located northeast of the intersection of S. 70th Street and Yankee Hill Road, Lincoln, Nebraska. Baade has petitioned the City to:

1. Annex the Baade Property into the City’s corporate limits, (AN21010):
2. Change the zoning designation for the Baade Property from AG (Agricultural District) to R-3 PUD (Residential Planned Unit Development) (CZ21053 or “Market Pointe PUD”).



The site plan for the Market Pointe PUD is attached as Exhibit “B”: The Market Pointe PUD reflects a Development Plan which includes:

i) **Commercial Uses:** The development plan contemplates the following commercial uses:

- 55,000 square feet supermarket
- 34,000 square feet of retail
- Service Station (8 fueling positions)
- 1,900 square foot Restaurant with drive-through

ii) **Multifamily Use:** Up to 250 dwelling units of an apartment development oriented towards South 70th Street; and

iii) **Storage Unit Use:** 95,000 square feet of mini-warehousing uses located on the northern portion of the property adjacent to the railroad track.

3. Amend the Lincoln-Lancaster County 2050 Comprehensive Plan to revise the land use designations on certain portions of the Baade Property to conform to the Market Pointe development plan as shown on Exhibit “C” (CPA22002)

B. AN21010, CZ 21053, and CPA22002 are collectively referred to herein as the “Governmental Actions.”

C. Approval of Governmental Actions will allow Baade to develop the Baade Property into a mixed-use residential neighborhood, to include multifamily development, served by a neighborhood commercial center.

D. City is willing to approve the Governmental Actions conditioned upon Baade’s agreement to address the impact of the development of the area by developing the Baade Property consistent with the terms of this Agreement and the conditions of the Market Pointe PUD.

VOID

E. Certain property, generally located at the northwest corner of 70th Street and Yankee Hill Road (the “**Harvest Hills Property**”) will benefit from intersection improvements described in this Agreement. The Harvest Hills Property is legally described as:

Section 21, Tract 9, Range 7, 6th Principal Meridian, LOT 111 South East, Lincoln, Lancaster County, Nebraska

City is agreeable to directing impact fees from the Harvest Hills Property to reimburse Baade for impact fee eligible expenses in this Agreement. The entire Impact Fee Area Map, which includes the Baade Property and the Harvest Hills Property is attached here as Exhibit “D”

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the above recitals and the following terms and conditions, the parties agree as follows:

1. **City Approvals.** City agrees to approve the Governmental Actions.
2. **Street Improvements.** Baade and City agree on the following with regard to street improvements required to develop the Baade Property.

A. **70th and Bridle Lane.** Subject to the terms and conditions herein, City shall design and construct the ~~roundabout~~intersection improvements at 70th and Bridle Lane depicted herein and on Exhibit “E” (“**70th and Bridle Lane Intersection Improvements**”) which includes: i) the “**Roundabout**”; and ii) the box culvert located in the South 70th Street Right of way required for ~~Baade’s preferred~~the final design and construction of the roundabout (“**Box Culvert**”), both of which are depicted on Exhibit “E”. City acknowledges that the Roundabout component and the Box Culvert components of the 70th and Bridle Lane Intersection Improvements ~~is an~~are arterial street impact fee ~~facility~~facilities that ~~serve~~serve both the Market

Place development located on the Baade Property and also the Harvest Hills Property, which will directly benefit from the 70th and Bridle Lane Intersection Improvements. The Parties acknowledge that the City of Lincoln Comprehensive Plan does not include 70th Street improvements in the 2050 Fiscally Constrained Urban Roadway Capital Projects and therefore City construction of the 70th and Bridle Lane Intersection is not presently planned to occur, under current plans, for the next twenty-seven (27) years absent the terms of this Agreement

A. The City agrees to segregate arterial street impact fees collected by the City from development of the Impact Fee Area ~~show~~shown on Exhibit "D", which includes: i) Market Point PUD on the Baade Property; and ii) from the Harvest Hills Property. When there are sufficient funds available to design, grade, pave, and implement the 70th and Bridle Lane Intersection Improvements, City shall do so. ~~The Parties acknowledge~~ Further, the City acknowledges that the "Cost Differential" (defined below) relating to the cost of installing the Box Culvert ~~depicted on Exhibit "E"~~ is ~~not an~~ eligible cost for an impact fee facility. ~~Therefore, while the Roundabout component of the 70th and Bridle Lane Intersection Improvement may be funded by and qualifies as an Arterial Street Impact Fees, the Box Culvert incorporated into Fee Facility due to the design of the intersection shall be fully funded by Baade. Baade shall advance all funds necessary to design and construct the Box Culvert prior to City Construction~~ fact that the Roundabout requires the construction of the 70th and Bridle Lane Intersection Improvements. ~~If box culvert due to the Box Culvert funds are not advanced prior to City bidding~~ presence of the 70th and Bridle Lane Intersection Improvements, City shall be entitled Beal Slough floodway in and adjacent to construct the 70th Street Intersection

~~Improvements by any design~~Right of way. The “Cost Differential” equals the difference between: A) the cost of its choosing installing the Box Culvert required to support the Roundabout; and B) the cost of installing the Box Culvert required if turn lanes were to be constructed for the intersection improvements at the intersection of South 70th Street and Bridle Lane. The City of Lincoln will not issue any building permit for the Baade Property until the 70th and Bridle Lane Intersection Improvements are underway.

B. Baade’s Option to Accelerate Construction of 70th & Bridle Lane Intersection

Improvements and Directed Impact Fees. Pursuant to LMC Section 27.82.090.

Baade shall have the right to accelerate City construction of the 70th and Bridle Lane Intersection Improvements prior to collection of sufficient Arterial Street Impact Fees, or other funding, as described in paragraph 2.A above by making a Gap Contribution (defined below) to City to complete said improvements. The right to trigger City construction of the 70th & Bridle Lane Intersection Improvements shall be exercised in the following manner:

- i. Baade shall provide written notice to the Director of Transportation and Utilities of Baade’s request to trigger construction of the 70th & Bridle Lane Intersection Improvements (“Trigger Notice”).
- ii. Within thirty (30) days of receipt of the Trigger Notice, the City shall provide to Baade a statement of the amount of Arterial Street Impact Fees generated by the Impact Fee Area then collected and available (“**Available Arterial Street Impact Fees**”); and

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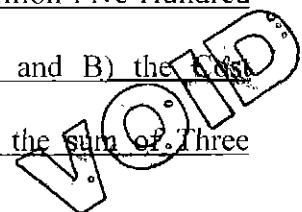
- iii. Baade shall provide the City a bond, escrow, letter of credit, or other security agreement, approved by the City Attorney (“**Road Escrow**”), for one hundred ten percent (110%) of the difference between the City’s estimated cost of \$2,420,000.00 to construct the 70th & Bridle Lane Intersection Improvements and the amount of the Available Arterial Street Impact Fees then-collected (“**Road Escrow Amount**”). Attached as Exhibit “E” is an Opinion of Probable Cost for the construction of the 70th and Bridle Lane Intersection Improvements. Said cost estimate is the sum of Two Million, Four Hundred Twenty Thousand Dollars (\$2,420,000.00) (the “Project Cost”). If Baade exercises this option on a date five (5) years or later after execution of this agreement, City shall cause the preparation of a new estimated cost for the 70th and Bridle Lane Intersection Improvements.
- iv. Upon receipt of the Road Escrow Amount City shall design and bid the 70th & Bridle Intersection Improvements as soon as reasonably possible. The City shall notify Baade of the actual bids and, in the event:
1. the actual lowest responsible bid exceeds the combined total of the Road Escrow Amount and Available Arterial Street Impact Fees, then Baade will increase the amount of the Road Escrow Amount held in the Road Escrow to cause the adjusted Road Escrow Amount to be equal to one hundred ten percent (110%) of the actual lowest responsible bid minus the Available Arterial Street Impact Fees; or
 2. the actual lowest responsible bid is less than the combined total of the Road Escrow Amount and Available Arterial Street Impact Fees;

VOID

then Baade may decrease the amount of the Road Escrow Amount held in the Road Escrow to be equal to one hundred ten percent (110%) of the lowest responsible bid minus the Available Arterial Street Impact Fees.

v. City shall first utilize the Available Arterial Street Impact Fees generated by the Impact Fee Area, if any, to fund such design, grading, and construction of ~~the roundabout component of both the Roundabout and the Box Culvert comprising~~ the 70th and Bridle Lane Intersection Improvements and then utilize the Road Escrow. City will provide Baade an invoice or invoices for said actual additional amount. ~~Baade shall be responsible for the full cost of design and construction of the Box Culvert and shall advance the city the funds to pay those costs without any expectation of reimbursement.~~ If actual project costs for the 70th and Bridle Lane Intersection Improvements exceed the Road Escrow Amount in the Road Escrow, then Baade shall be responsible to advance the excess costs to the City.

vi. City shall reimburse Baade for all funds expended on the ~~roundabout component of the 70th and Bridle Intersection Improvements from the Arterial Street Impact Fees collected or to be collected in the future from the Impact Fee Area.~~ 70th and Bridle Intersection Improvements limited to:
A) the cost of the Roundabout projected to be One Million Five Hundred Sixty Thousand and NO/100 Dollars (\$1,560,000); and B) the Cost Differential attributable to the Box Culvert equal to the sum of Three



Hundred Nineteen Thousand and NO/100 Dollars (\$319,000) for a total reimbursement equal to the sum of One Million Eight Hundred Seventy-Nine Thousand and NO/100 Dollars (\$1,879,000) ("Reimbursement Amount") subject to the limitations and provisions of subparagraph (vii) below. Such reimbursement shall have first priority after the City funds the 70th & Bridle Intersection Improvements. Said reimbursement payments shall be made on a quarterly basis by City to Baade from arterial street impact fees generated from the Impact Fee Area as they become available. The agreement by the City to reimburse the Baade from arterial street impact fees generated by the Impact Fee Area is limited to the impact fees actually paid by development the Impact Fee Area and shall not constitute a general obligation of the City.

- vii. Baade and City recognize that the Impact Fee Area is estimated to generate Arterial Street Impact Fees in the amount of One Million Five Hundred Seventy-Four thousand Dollars (\$1,574,000.00), which represents Eight Hundred Forty-Six Thousand and no/1000 Dollars (\$846,000.00) (less than the estimated cost of the 70th and Bridle Lane Intersection Improvements. In recognition of the benefits to be realized in the development of the Baade Property by having the 70th and Bridle Lane Improvements constructed prior to City accumulating sufficient resources to construct said improvements, Baade agrees to contribute the difference between the actual cost to construct the 70th and Bridle Lane Intersection and Arterial Street Directed Impact Fees generated in the Impact Fee Area ("Baade's Gap

Contribution.). Baade agrees to loan the amount of the total project cost of \$2,420,000 to the City and the City shall reimburse Baade the Reimbursement Amount from: i) the Impact Fees paid by the development of the Impact Fee Area; and ii) the sums advanced by the City following future appropriations in the Capital Improvement Plan, for this purpose, at City Council discretion. In recognition of the benefits to be realized in the development of the Baade Property by having the 70th and Bridle Lane Improvements constructed prior to City accumulating sufficient resources to construct said improvements, and ~~City's commitment to construct the Box Culvert, Baade agrees to contribute the difference between the actual cost to construct the 70th and Bridle Lane Intersection and Arterial Street Directed Impact Fees generated in the Impact Fee Area ("Baade's Gap Contribution").~~ Baade's Gap Contribution includes costs associated with the box culvert component of the 70th and Bridle Lane Intersection Improvements and will not be reimbursable from Arterial Street Directed Impact Fees. Total reimbursable costs for the Roundabout are at this time estimated to be One Million Five Hundred Fifty Five Thousand Dollars (\$1,555,000.00). Baade agrees to loan to the City: i) the Directed Impact Fee Amount of \$1,574,000; and ii) the Baade's Gap Contribution of \$846,000.00.

- C. **Yankee Hill Road.** Baade shall also be responsible for the design and construction of the right-in, right-out intersection at South 72nd Street and Yankee Hill Road

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(“Yankee Hill Road Improvements”). The Yankee Hill Road Improvements are generally shown on Exhibit “F”.

D. **Street Improvements Prior to Occupancy**. City shall not issue any occupancy permits on the Baade Property until the 70th and Bridle Lane and Yankee Hill Road are complete.

2. **Notice**. Any notices required to be forwarded to a party hereto shall be deemed appropriately given or delivered if sent by registered or certified United States Mail, postage prepaid, return receipt requested, addressed or delivered personally as follows:

(1) If to the City:

Mayor
555 South 10th Street
Lincoln, Nebraska 68508

with a copy to:

City Attorney
555 South 10th Street
Lincoln, Nebraska 68508

(2) If to Baade:

Alan Baade
5500 Saltillo Road
Roca, NE 68430

Any party hereto may change its address for notification purposes by written notice to all parties hereto in the manner and method set forth within this paragraph.

3. **Contribution to Rural Fire Protection District**. Baade understands and acknowledges that the City’s annexation of the Baade Property or any portion thereof lying within the boundaries of the Southeast Rural Fire Protection district shall not be complete except upon the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of the Baade Property or any portion

VOID

thereof being annexed. Baade has previously obtained a release of the Baade Property from the jurisdiction of the Southeast Rural Fire Protection District.

4. **Amendments**. This Agreement may only be amended or modified in writing signed by the Parties to this Agreement.
5. **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.
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 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, Developer, 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.

VOID

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 or unless otherwise stated herein.
11. **Default**. In the event the Developer defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the City may take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach. In the event the City defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the Developer may take such remedies, legal or equitable, to enforce this Agreement or to obtain damages for its breach.
12. **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 Baade Property.
13. **Recordation**. This Agreement or a memorandum thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at the City's cost and expense.
14. **Authority**. The City has the authority to engage in the reimbursements to Developer described in this Agreement, and (i) has taken all steps to legally exercise that authority, and (ii) the reimbursements to Developer described in this Agreement will comply with all applicable laws.
15. **Exhibits**. The following Exhibits are attached to this Agreement and are incorporated herein by this reference:

VOID

Exhibit A – Badde Property

Exhibit B – Market Pointe PUD Site Plan

Exhibit C – Land use Map Amendment

Exhibit D – Impact Fee Area Map

Exhibit E – 70th and Bridle Lane Intersection Improvements

Exhibit F – Opinion of Probably Cost for 70th and Bridle Lane Intersection
Improvements

Exhibit G – South 72nd and Yankee Hill Road Improvements

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date
and year first above written.

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: _____
Leirion Gaylor Baird, Mayor of Lincoln

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____
2023, by Leirion Gaylor Baird, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

VOID

Notary Public

VOID

BAADE PROPERTIES, LLC, a Nebraska limited liability company

By: _____
Alan Baade, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

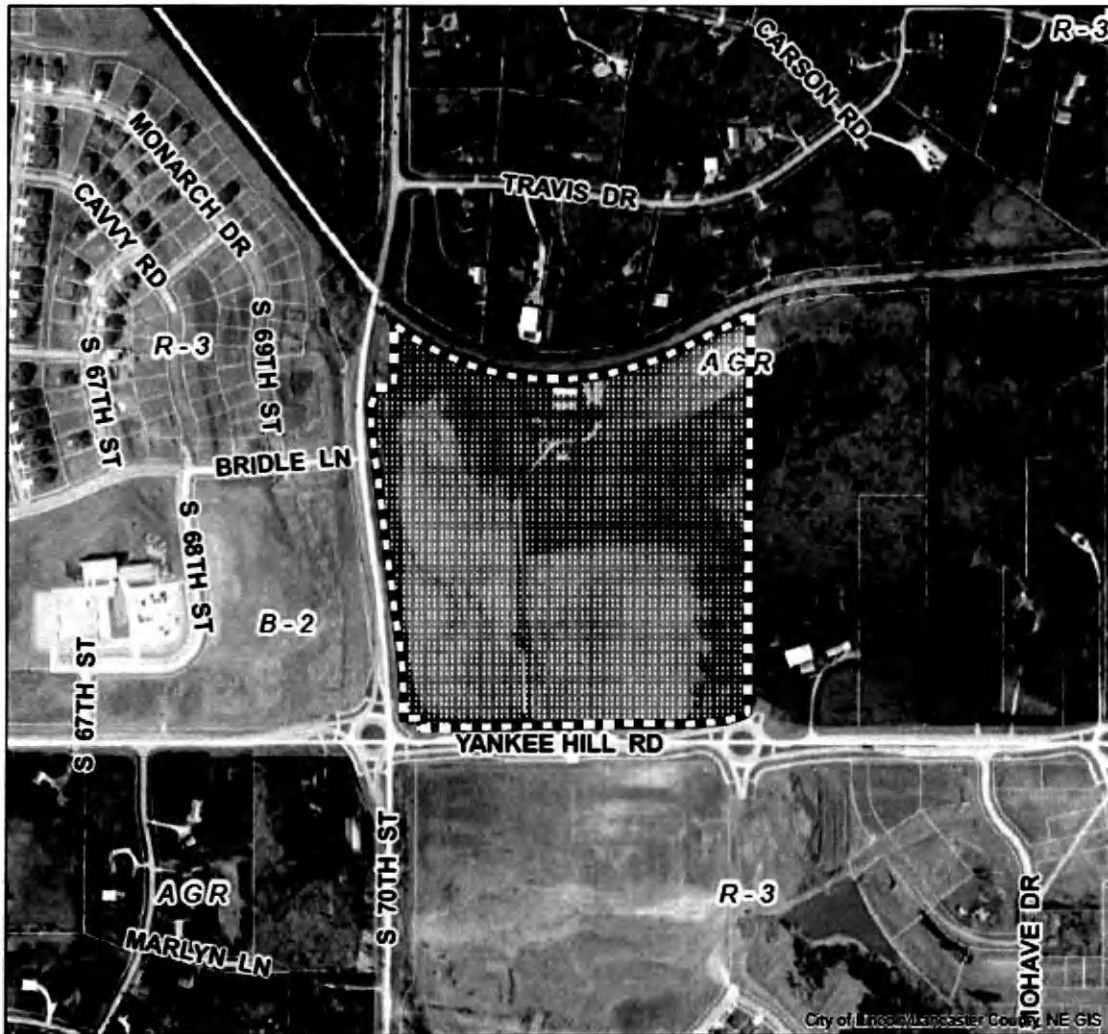
The foregoing was acknowledged before me this ____ day of _____, 2023, by Alan Baade, Manager of Baade, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

Notary Public

VOID

EXHIBIT A

The Baade Property



**Annexation #: AN21010 &
Change of Zone #: CZ21053 (AG to R-3)
Market Pointe
S 70th St & Yankee Hill Rd**

Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-3 Suburban Office District
- O-4 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-5 Commercial District
- B-5 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Intermediate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District



Two Square Miles:

Sec.21 T09N R07E
Sec.22 T09N R07E

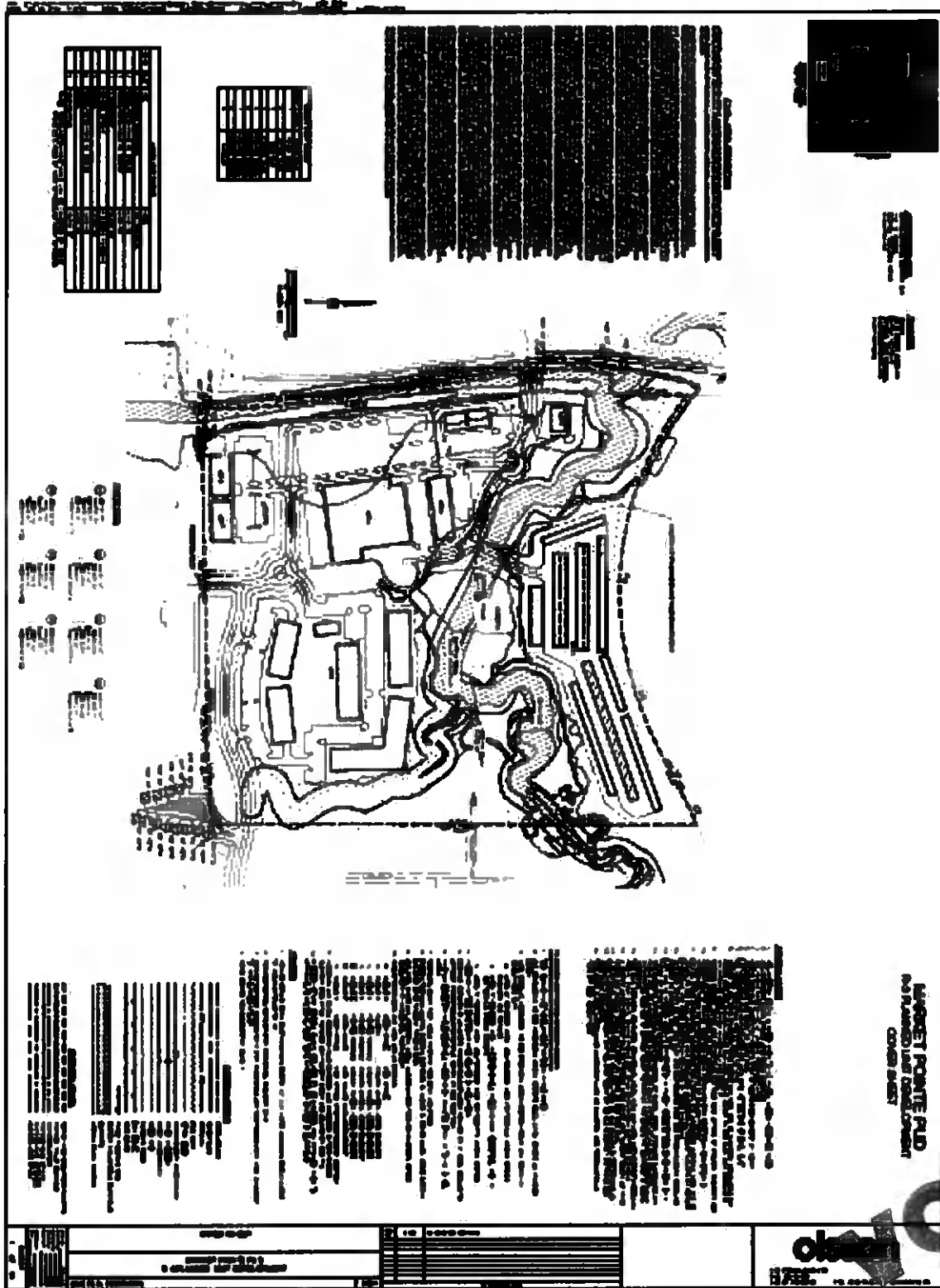


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EXHIBIT B

Market Pointe PUD

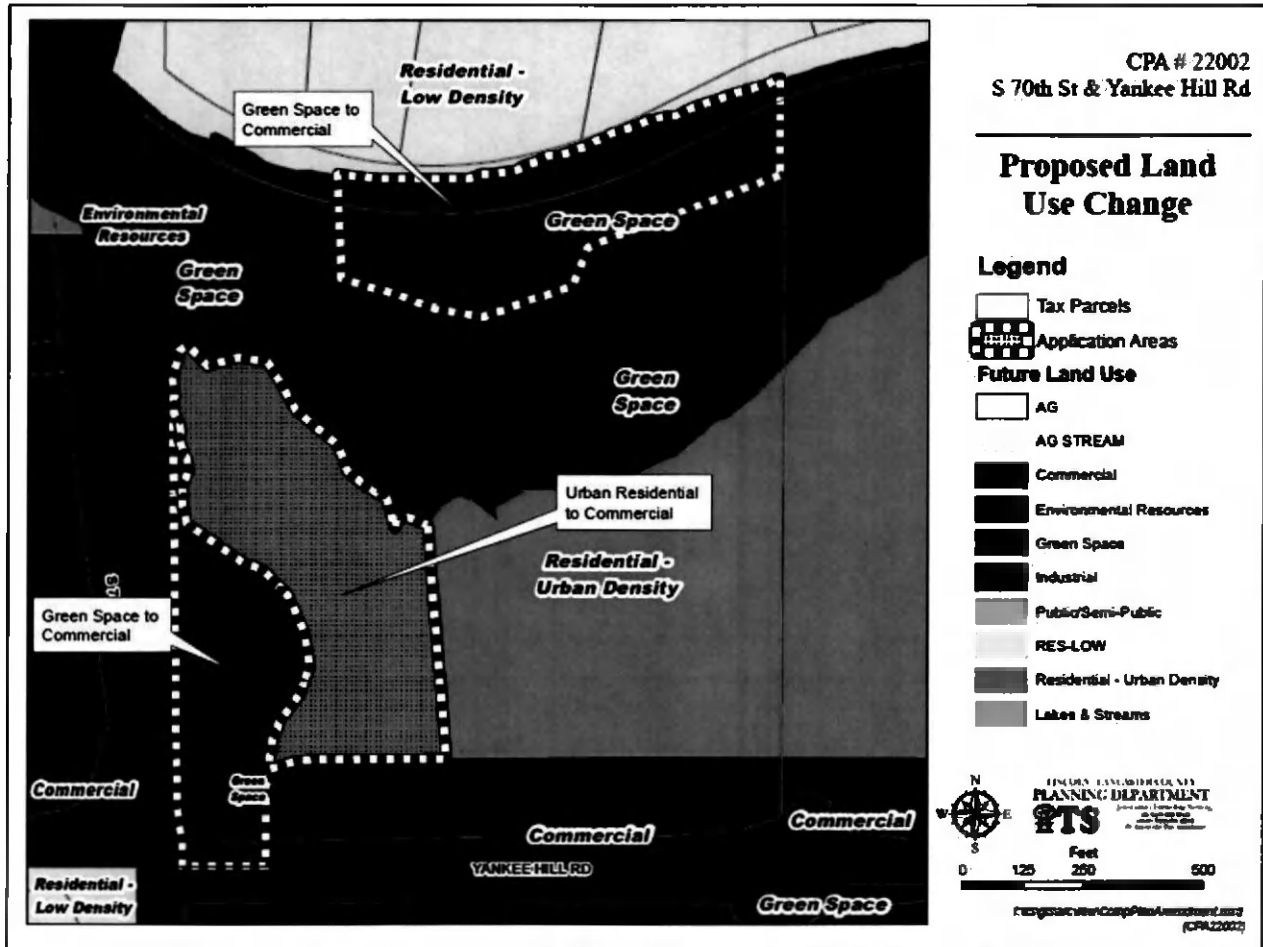


MARKET POINTE PUD
NO PLANNED LANE CLOSURES
CONSTRUCTION

6/7/00

EXHIBIT C

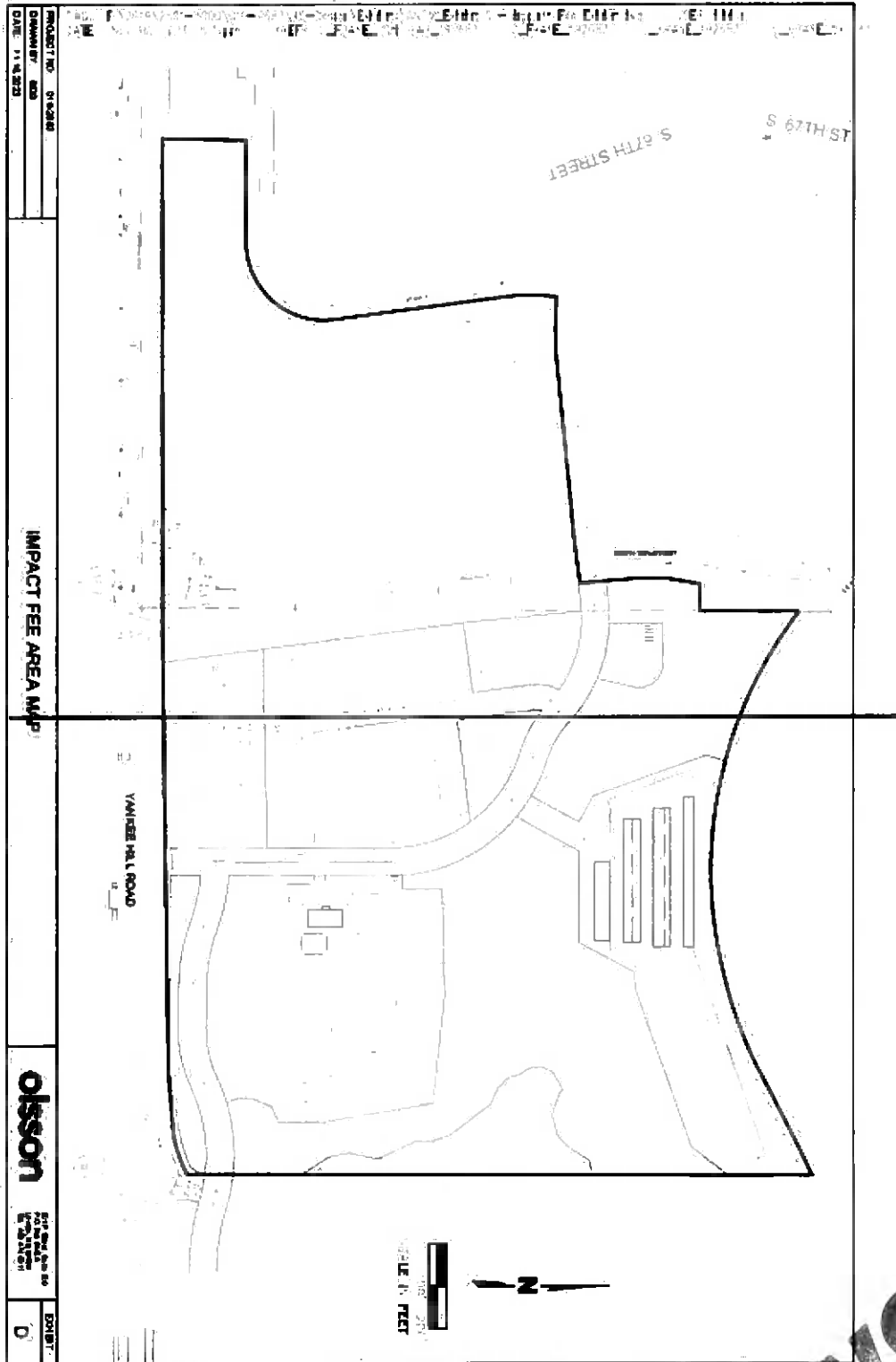
Comprehensive Plan Amendment



VOID

EXHIBIT D

Impact Fee Area Map



PROJECT NO. 01-2418
DATE 11/14/20

IMPACT FEE AREA MAP

Olsson

ENGINEERS
ARCHITECTS

EXHIBIT D

EXHIBIT E

VOID

70th and Bridle Lane Intersection Improvements

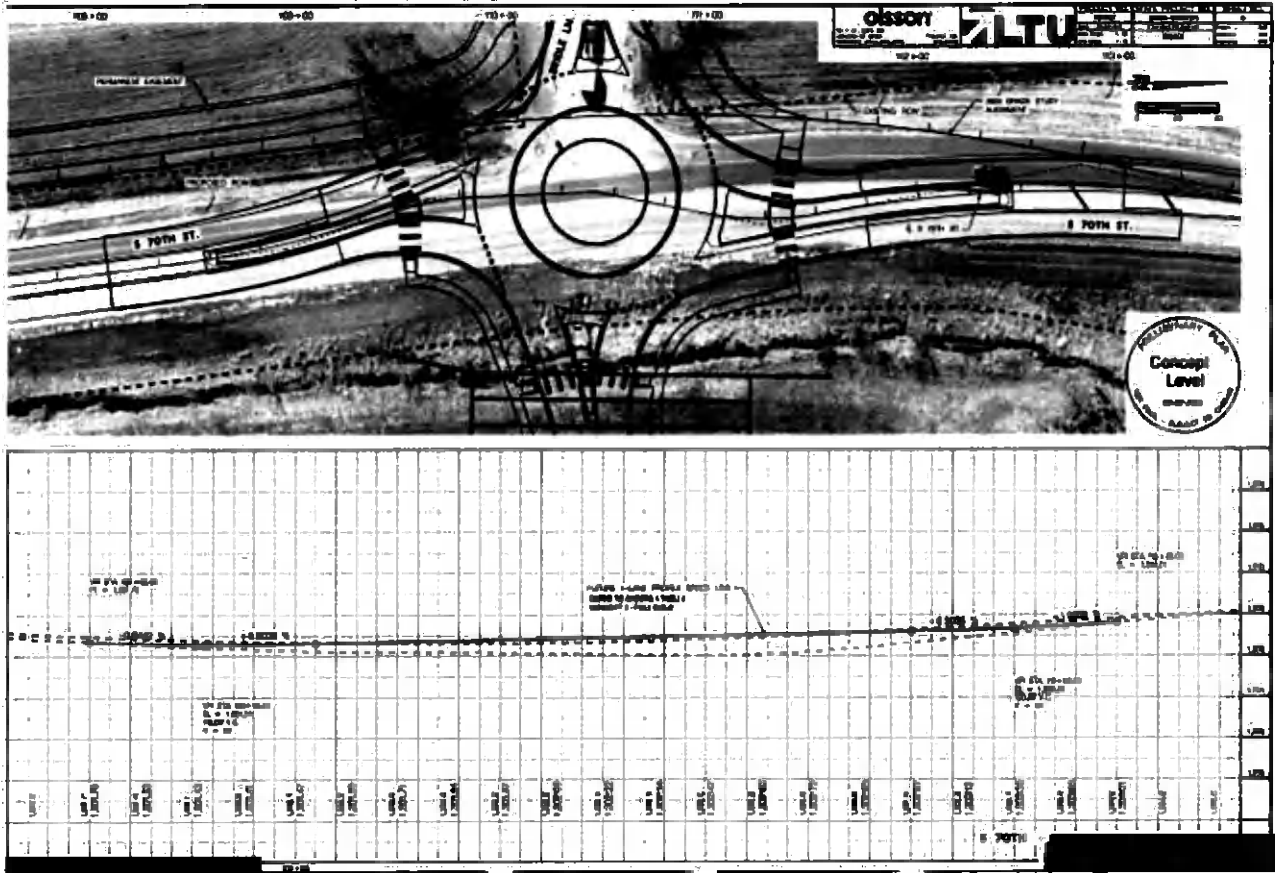


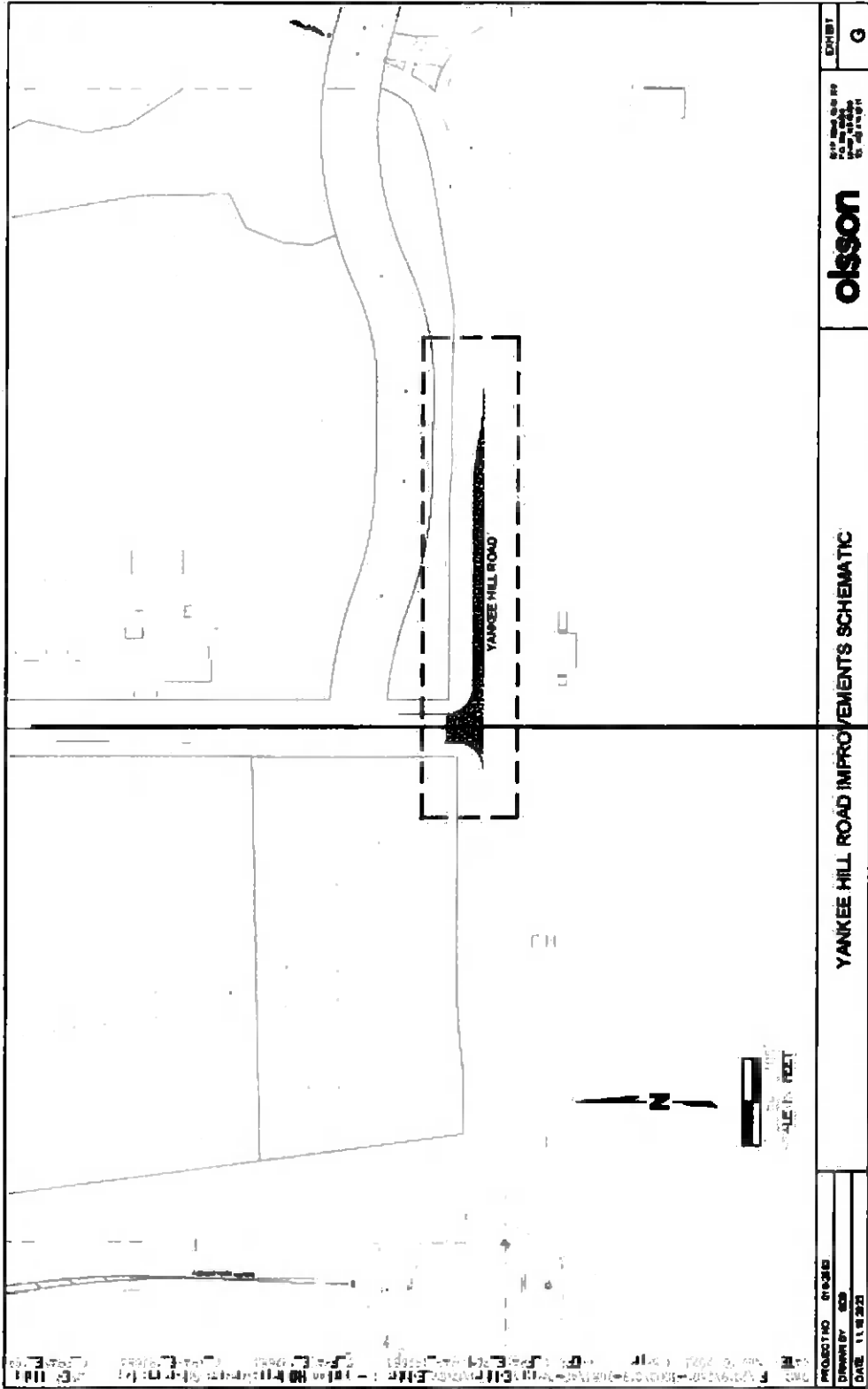
EXHIBIT F

VOID

Opinion of Probably Cost for 70th and Bridle Lane Intersection Improvements

70 th Street, Bridle Lane Roundabout - Cost Estimate - Concept 4		Project Number			
Line No	Pay Item No	Description	Quantity Unit	Base Cost	Total Cost
GENERAL ITEMS					
01.00001		Mobilization (Approx. 10% of Total Project Cost)	1.00 LS	\$ 140,000.00	\$ 140,000.00
01.01001		Const Staking	1.00 LS	\$ 21,000.00	\$ 21,000.00
01.03001		Survey Measurement and Box	1.00 EA	\$ 350.00	\$ 350.00
01.04001		Pave & Sidewalk Rem	735.00 CY	\$ 25.00	\$ 18,375.00
1.05001		Sewers Type "A"	435.00 LF	\$ 8.00	\$ 3,480.00
01.17000		Contractor Quality Control Program (CQCP)	1.00 LS	\$ 20,000.00	\$ 20,000.00
50.00001		Pothole Existing Utility	5.00 EA	\$ 1,000.00	\$ 5,000.00
EARTHWORK ITEMS					
02.01001		Gen Clearing & Grubbing	1.00 LS	\$ 25,000.00	\$ 25,000.00
02.02012		Tree Rem (12" to 24")	20 EA	\$ 450.00	\$ 9,000.00
02.05001		Excavation	1,000.00 CY	\$ 5.00	\$ 5,000.00
02.05003		Excavation - Narrow	1,500.00 CY	\$ 10.00	\$ 15,000.00
02.08001		Earthwork Measured in Embankment	2,500.00 CY	\$ 12.00	\$ 30,000.00
PAVING ITEMS					
04.09106		PCC Pav w/ Int Curb, 6"	50.00 SY	\$ 80.00	\$ 4,000.00
04.09179		DPCC Pav w/ Int Curb, 6"	2,200.00 SY	\$ 110.00	\$ 242,000.00
04.09304		Conc Sidewalk, 4"	1,350.00 SF	\$ 6.50	\$ 8,827.50
04.09309		Conc Sidewalk, 9"	80.00 SF	\$ 12.00	\$ 960.00
04.09509		Conc Bikeway, 6"	2,500.00 SF	\$ 6.50	\$ 16,250.00
04.09509		Conc Bikeway, 9"	160.00 SF	\$ 14.00	\$ 2,240.00
04.09600		Conc Median Nose	4.00 EA	\$ 1,200.00	\$ 4,800.00
04.09604		Conc Median Surfacing, 4"	1,605.00 SF	\$ 8.50	\$ 13,642.50
04.11001		Detachable Warning Panel	280.00 SF	\$ 32.00	\$ 8,960.00
08.00001		Asph conc, Type 1	100.00 TN	\$ 120.00	\$ 12,000.00
08.00003		Asph Conc, Type 3	482.00 TN	\$ 140.00	\$ 67,480.00
50.00040		Roundabout Median Nose	60.00 SY	\$ 200.00	\$ 12,000.00
50.00040		PCC Pav Truck Apron (Colored & Stenciled), 9"	340.00 SY	\$ 135.00	\$ 45,800.00
PAVEMENT MARKING ITEMS					
			1.00 LS	\$ 50,000.00	\$ 50,000.00
SIGNING ITEMS - FOR INFORMATION ONLY					
			1.00 LS	\$ 5,000.00	\$ 5,000.00
TRAFFIC CONTROL ITEMS					
15.00001		Traffic Control For Const	1.00 LS	\$ 50,000.00	\$ 50,000.00
STORM DRAINAGE ITEMS					
21.03015		RCP Storm Drain, CI 18, 15'	50.00 LF	\$ 70.00	\$ 3,500.00
21.03018		RCP Storm Drain, CI 18, 10'	150.00 LF	\$ 60.00	\$ 9,000.00
21.08001		Rebar Steel for Structure	64,720.00 LBS	\$ 2.80	\$ 184,200.00
21.08002		Chase for Structures	435.00 CY	\$ 1,000.00	\$ 435,000.00
21.07015		Storm Drain Int, 15' - 30'	3.00 EA	\$ 8,000.00	\$ 24,000.00
21.08004		Storm Drain Int, Armand	2.00 EA	\$ 5,000.00	\$ 10,000.00
21.08005		Cured Storm Drain Int, Armand	2.00 EA	\$ 5,000.00	\$ 10,000.00
TRAFFIC SIGNAL, ITS & LIGHTING ITEMS					
			1.00 LS	\$ 46,000.00	\$ 46,000.00
COMMUNICATIONS ITEMS					
			1.00 LS	\$ 300.00	\$ 300.00
LANDSCAPE ITEMS					
31.03001		Salix Tassel	120.00 CY	\$ 35.00	\$ 4,200.00
EROSION & SEDIMENT CONTROL ITEMS					
			1.00 LS	\$ 60,000.00	\$ 60,000.00
Subtotal = 1,677,864.50					
TOTAL CONSTRUCTION COSTS					
		Construction Contingency (10%)	1.00 LS	\$ 167,786.45	\$ 167,786.45
		Estimated City Material Cost =	1.00 LS	\$ 5,000.00	\$ 5,000.00
		Change Order Contingency (5%)	1.00 LS	\$ 83,893.23	\$ 83,893.23
		Total Estimated Construction Cost =	1.00 LS	\$ 1,934,544.18	\$ 1,934,544.18
PE COSTS					
		Final Engineering Design Costs =	1.00 LS	\$ 212,612.44	\$ 212,612.44
		Estimated City Administrative PE Costs (1% of Construction) =	1.00 LS	\$ 19,345.44	\$ 19,345.44
CONSTRUCTION COSTS					
		Estimated City Administrative CE Costs (1% of Construction) =	1.00 LS	\$ 19,345.44	\$ 19,345.44
		Construction Engineering and Inspection =	1.00 LS	\$ 203,130.74	\$ 203,130.74
		Total PE & CE Costs =	1.00 LS	\$ 434,393.62	\$ 434,393.62
Right of Way Cost Estimate					
		Damages Associated with Right of Way Acquisition =	1.00 LS	\$ 4,200.00	\$ 4,200.00
		Right of Way Acquisition =	1.00 LS	\$ 13,685.00	\$ 13,685.00
		Permanent Easement Acquisition	1.00 LS	\$ -	\$ -
		Temporary Easement Acquisition	1.00 LS	\$ -	\$ -
		Subtotal =		\$ 17,885.00	\$ 17,885.00
		Appraisal and Negotiation Costs	1.00 LS	\$ 1,000.00	\$ 1,000.00
		Right of Way Contingency (20%)	1.00 LS	\$ 3,580.00	\$ 3,580.00
		Total Right of Way Cost Estimate =		\$ 22,465.00	\$ 22,465.00
Total & 70th Street, Bridle Lane Roundabout - Concept Level Cost Estimate = \$ 2,184,368.80					

VOID



PROJECT NO. 010316	olsson	DATE: 11.18.2023	EXHIBIT
DRAWN BY: GSB		SCALE: AS SHOWN	G
YANKEE HILL ROAD IMPROVEMENTS SCHEMATIC			

VOID

Inst # 2023038330 Thu Dec 28 11:26:03 CST 2023
Filing Fee: \$88.00
Lancaster County, NE Assessor/Register of Deeds Office
cpongm Office AGRMT
Pages 14



**CONDITIONAL ZONING AND ANNEXATION AGREEMENT
FOR
Market Pointe
(70th & Yankee Hill Road)**

This Conditional Zoning & Annexation Agreement (“Agreement”) real property generally located at the northeast corner of the intersection of S. 70th Street and Yankee Hill Road is made and entered into as of the date of execution by the last signatory hereto as indicated below by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation (“City”) and **BAADE PROPERTIES, LLC**, a Nebraska limited liability company (“Baade”).

RECITALS

A. Baade is the owner of a parcel of real estate legally described as:

1-1

Lot 74, located in the Southwest Quarter of Section 22, Township 9 North, Range 7 East of the 6th Principal Meridian, Lancaster County, Nebraska.
as shown on Exhibit “A” (the “**Baade Property**”).

The Baade Property is generally located northeast of the intersection of S. 70th Street and Yankee Hill Road, Lincoln, Nebraska. Baade has petitioned the City to:

1. Annex the Baade Property into the City’s corporate limits, (AN21010);
2. Change the zoning designation for the Baade Property from AG (Agricultural District) to R-3 PUD (Residential Planned Unit Development) (CZ21053 or “Market Pointe PUD”).

The site plan for the Market Pointe PUD is attached as Exhibit "B": The Market Pointe PUD reflects a Development Plan which includes:

i) **Commercial Uses:** The development plan contemplates the following commercial uses:

- 55,000 square feet supermarket
- 34,000 square feet of retail
- Service Station (8 fueling positions)
- 1,900 square foot Restaurant with drive-through

ii) **Multifamily Use:** Up to 250 dwelling units of an apartment development oriented towards South 70th Street; and

iii) **Storage Unit Use:** 95,000 square feet of mini-warehousing uses located on the northern portion of the property adjacent to the railroad track.

3. Amend the Lincoln-Lancaster County 2050 Comprehensive Plan to revise the land use designations on certain portions of the Baade Property to conform to the Market Pointe development plan as shown on Exhibit "C" (CPA22002)

B. AN21010, CZ 21053, and CPA22002 are collectively referred to herein as the "Governmental Actions."

C. Approval of Governmental Actions will allow Baade to develop the Baade Property into a mixed-use residential neighborhood, to include multifamily development, served by a neighborhood commercial center.

D. City is willing to approve the Governmental Actions conditioned upon Baade's agreement to address the impact of the development of the area by developing the Baade Property consistent with the terms of this Agreement and the conditions of the Market Pointe PUD.

E. Certain property, generally located at the northwest corner of 70th Street and Yankee Hill Road (the “**Harvest Hills Property**”) will benefit from intersection improvements described in this Agreement. The Harvest Hills Property is legally described as:

Section 21, Tract 9, Range 7, 6th Principal Meridian, LOT 111 South East, Lincoln, Lancaster County, Nebraska

City is agreeable to directing impact fees from the Harvest Hills Property to reimburse Baade for impact fee eligible expenses in this Agreement. The entire Impact Fee Area Map, which includes the Baade Property and the Harvest Hills Property is attached here as Exhibit “D”

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the above recitals and the following terms and conditions, the parties agree as follows:

1. **City Approvals.** City agrees to approve the Governmental Actions.
2. **Street Improvements.** Baade and City agree on the following with regard to street improvements required to develop the Baade Property.

A. **70th and Bridle Lane.** Subject to the terms and conditions herein, City shall design and construct the roundabout improvements at 70th and Bridle Lane depicted herein and on Exhibit “E” (“**70th and Bridle Lane Intersection Improvements**”) which includes: i) the “**Roundabout**”; and ii) the box culvert located in the South 70th Street Right of way required for Baade’s preferred design and construction of the roundabout (“**Box Culvert**”), both of which are depicted on Exhibit “E”. City acknowledges that the Roundabout component of the 70th and Bridle Lane Intersection Improvements is an arterial street impact fee facility that serves both the Market Place development located on the Baade Property and also the Harvest

Hills Property, which will directly benefit from the 70th and Bridle Lane Intersection Improvements. The Parties acknowledge that the City of Lincoln Comprehensive Plan does not include 70th Street improvements in the 2050 Fiscally Constrained Urban Roadway Capital Projects and therefore City construction of the 70th and Bridle Lane Intersection is not presently planned to occur, under current plans, for the next twenty-seven (27) years. The City agrees to segregate arterial street impact fees collected by the City from development of the Impact Fee Area show on Exhibit "D", which includes: i) Market Point PUD on the Baade Property; and ii) from the Harvest Hills Property. When there are sufficient funds available to design, grade, pave, and implement the 70th and Bridle Lane Intersection Improvements, City shall do so. The Parties acknowledge that the Box Culvert depicted on Exhibit "E" is not an impact fee facility. Therefore, while the Roundabout component of the 70th and Bridle Lane Intersection Improvement may be funded by Arterial Street Impact Fees, the Box Culvert incorporated into the design of the intersection shall be fully funded by Baade. Baade shall advance all funds necessary to design and construct the Box Culvert prior to City Construction of the 70th and Bridle Lane Intersection Improvements. If the Box Culvert funds are not advanced prior to City-bidding of the 70th and Bridle Lane Intersection Improvements, City shall be entitled to construct the 70th Street Intersection Improvements by any design of its choosing. The City of Lincoln will not issue any building permit for the Baade Property until the 70th and Bridle Lane Intersection Improvements are underway.

B. **Baade's Option to Accelerate Construction of 70th & Bridle Lane Intersection Improvements and Directed Impact Fees.** Pursuant to LMC Section 27.82.090.

Baade shall have the right to accelerate City construction of the 70th and Bridle Lane Intersection Improvements prior to collection of sufficient Arterial Street Impact Fees, or other funding, as described in paragraph 2.A above by making a Gap Contribution (defined below) to City to complete said improvements. The right to trigger City construction of the 70th & Bridle Lane Intersection Improvements shall be exercised in the following manner:

- i. Baade shall provide written notice to the Director of Transportation and Utilities of Baade's request to trigger construction of the 70th & Bridle Lane Intersection Improvements ("Trigger Notice").
- ii. Within thirty (30) days of receipt of the Trigger Notice, the City shall provide to Baade a statement of the amount of Arterial Street Impact Fees generated by the Impact Fee Area then collected and available ("**Available Arterial Street Impact Fees**"); and
- iii. Baade shall provide the City a bond, escrow, letter of credit, or other security agreement, approved by the City Attorney ("**Road Escrow**"), for one hundred ten percent (110%) of the difference between the City's estimated cost of \$2,420,000.00 to construct the 70th & Bridle Lane Intersection Improvements and the amount of the Available Arterial Street Impact Fees then-collected ("**Road Escrow Amount**"). Attached as Exhibit "E" is an Opinion of Probable Cost for the construction of the 70th and Bridle Lane Intersection Improvements. Said cost estimate is the sum of

Two Million, Four Hundred Twenty Thousand Dollars (\$2,420,000.00) (the “Project Cost”). If Baade exercises this option on a date five (5) years or later after execution of this agreement, City shall cause the preparation of a new estimated cost for the 70th and Bridle Lane Intersection Improvements.

iv. Upon receipt of the Road Escrow Amount City shall design and bid the 70th & Bridle Intersection Improvements as soon as reasonably possible. The City shall notify Baade of the actual bids and, in the event:

1. the actual lowest responsible bid exceeds the combined total of the Road Escrow Amount and Available Arterial Street Impact Fees, then Baade will increase the amount of the Road Escrow Amount held in the Road Escrow to cause the adjusted Road Escrow Amount to be equal to one hundred ten percent (110%) of the actual lowest responsible bid minus the Available Arterial Street Impact Fees; or
2. the actual lowest responsible bid is less than the combined total of the Road Escrow Amount and Available Arterial Street Impact Fees, then Baade may decrease the amount of the Road Escrow Amount held in the Road Escrow to be equal to one hundred ten percent (110%) of the lowest responsible bid minus the Available Arterial Street Impact Fees.

v. City shall first utilize the Available Arterial Street Impact Fees generated by the Impact Fee Area, if any, to fund such design, grading, and construction of the roundabout component of the 70th and Bridle Lane Intersection Improvements and then utilize the Road Escrow. City will

provide Baade an invoice or invoices for said actual additional amount. Baade shall be responsible for the full cost of design and construction of the Box Culvert and shall advance the city the funds to pay those costs without any expectation of reimbursement. If actual project costs for the 70th and Bridle Lane Intersection Improvements exceed the Road Escrow Amount in the Road Escrow, then Baade shall be responsible to advance the excess costs to the City.

- vi. City shall reimburse Baade for all funds expended on the roundabout component of the 70th and Bridle Intersection Improvements from the Arterial Street Impact Fees collected or to be collected in the future from the Impact Fee Area. Such reimbursement shall have first priority after the City funds the 70th & Bridle Intersection Improvements. Said reimbursement payments shall be made on a quarterly basis by City to Baade from arterial street impact fees generated from the Impact Fee Area as they become available. The agreement by the City to reimburse the Baade from arterial street impact fees generated by the Impact Fee Area is limited to the impact fees actually paid by development the Impact Fee Area and shall not constitute a general obligation of the City.
- vii. Baade and City recognize that the Impact Fee Area is estimated to generate Arterial Street Impact Fees in the amount of One Million Five Hundred Seventy-Four thousand Dollars (\$1,574,000.00), which represents Eight Hundred Forty-Six Thousand and no/1000 Dollars (\$846,000.00) less than the estimated cost of the 70th and Bridle Lane Intersection Improvements.

In recognition of the benefits to be realized in the development of the Baade Property by having the 70th and Bridle Lane Improvements constructed prior to City accumulating sufficient resources to construct said improvements, and City's commitment to construct the Box Culvert, Baade agrees to contribute the difference between the actual cost to construct the 70th and Bridle Lane Intersection and Arterial Street Directed Impact Fees generated in the Impact Fee Area ("**Baade's Gap Contribution**"). Baade's Gap Contribution includes costs associated with the box culvert component of the 70th and Bridle Lane Intersection Improvements and will not be reimbursable from Arterial Street Directed Impact Fees. Total reimbursable costs for the Roundabout are at this time estimated to be One Million Five Hundred Fifty Five Thousand Dollars (\$1,555,000.00).

C. **Yankee Hill Road.** Baade shall also be responsible for the design and construction of the right-in, right-out intersection at South 72nd Street and Yankee Hill Road ("**Yankee Hill Road Improvements**"). The Yankee Hill Road Improvements are generally shown on Exhibit "F".

D. **Street Improvements Prior to Occupancy.** City shall not issue any occupancy permits on the Baade Property until the 70th and Bridle Lane and Yankee Hill Road are complete.

2. **Notice.** Any notices required to be forwarded to a party hereto shall be deemed appropriately given or delivered if sent by registered or certified United States Mail, postage prepaid, return receipt requested, addressed or delivered personally as follows:

(1) If to the City:

Mayor
555 South 10th Street
Lincoln, Nebraska 68508

with a copy to:

City Attorney
555 South 10th Street
Lincoln, Nebraska 68508

(2) If to Baade:
Alan Baade
5500 Saltillo Road
Roca, NE 68430

Any party hereto may change its address for notification purposes by written notice to all parties hereto in the manner and method set forth within this paragraph.

3. **Contribution to Rural Fire Protection District.** Baade understands and acknowledges that the City's annexation of the Baade Property or any portion thereof lying within the boundaries of the Southeast Rural Fire Protection district shall not be complete except upon the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of the Baade Property or any portion thereof being annexed. Baade has previously obtained a release of the Baade Property from the jurisdiction of the Southeast Rural Fire Protection District.
4. **Amendments.** This Agreement may only be amended or modified in writing signed by the Parties to this Agreement.
5. **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.

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 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, Developer, 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.
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 or unless otherwise stated herein.
11. **Default**. In the event the Developer defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the City may take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages

for its breach. In the event the City defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the Developer may take such remedies, legal or equitable, to enforce this Agreement or to obtain damages for its breach.

12. **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 Baade Property.
13. **Recordation.** This Agreement or a memorandum thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at the City's cost and expense.
14. **Authority.** The City has the authority to engage in the reimbursements to Developer described in this Agreement, and (i) has taken all steps to legally exercise that authority, and (ii) the reimbursements to Developer described in this Agreement will comply with all applicable laws.
15. **Exhibits.** The following Exhibits are attached to this Agreement and are incorporated herein by this reference:

Exhibit A – Badde Property

Exhibit B – Market Pointe PUD Site Plan

Exhibit C – Land use Map Amendment

Exhibit D – Impact Fee Area Map

Exhibit E – 70th and Bridle Lane Intersection Improvements

Exhibit F – Opinion of Probable Cost for 70th and Bridle Lane Intersection Improvements

Exhibit G – South 72nd and Yankee Hill Road Improvements

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date and year first above written.

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: Leirion Gaylor Baird
Leirion Gaylor Baird, Mayor of Lincoln

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 18 day of December, 2023, by Leirion Gaylor Baird, Mayor of the City of Lincoln, Nebraska, a municipal corporation.



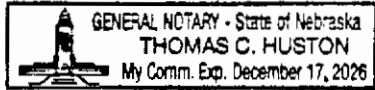
Kim Behrens
Notary Public

BAADE PROPERTIES, LLC, a Nebraska limited liability company

By: Alan Baade
Alan Baade, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 11 day of December, 2023, by Alan Baade, Manager of Baade, LLC, a Nebraska limited liability company, on behalf of the limited liability company.



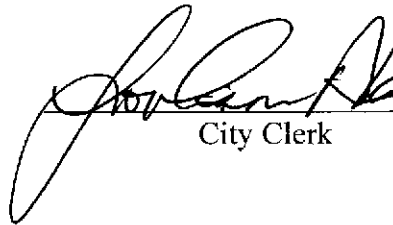
Thomas C. Huston
Notary Public

CERTIFICATE

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

I, Soulinnee Phan, City Clerk of the City of Lincoln, Nebraska, do hereby certify that the above and foregoing is a true and correct copy of the Approving the Annexation Agreement between the City and Baade Properties, LLC., for the property generally located at S. 70th and Yankee Hill Rd., as approved by Resolution A-94363 by the Lincoln City Council on December 11, 2023, as the original appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand officially and affixed the seal of the City of Lincoln, Nebraska, on the 27th day of December, 2023.


City Clerk

