

23R-595 Introduce: 11-20-23

RESOLUTION NO. A- 94363

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

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

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

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

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

Introduced by:

Approved as to Form & Legality:

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

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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):
- 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
- Storage Unit Use: 95,000 square feet of mini-warehousing uses located on the northern portion of the property adjacent to the railroad track.
- 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. <u>Street Improvements.</u> 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:
 - 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. <u>Yankee Hill Road</u>. 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 <u>Exhibit "F"</u>.
- D. <u>Street Improvements Prior to Occupancy</u>. City shall not issue any occupancy permits on the Baade Property until the 70th and Bridle Lane and Yankee Hill Road are complete.
- 2. <u>Notice</u>. 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. <u>Amendments</u>. This Agreement may only be amended or modified in writing signed by the Parties to this Agreement.
- 5. <u>Further Assurances</u>. 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. <u>Interpretations</u>. 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. <u>Construction</u>. 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. <u>Binding Effect</u>. 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. <u>Recordation</u>. 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. <u>Authority</u>. 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

<u>Exhibit F</u> – 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

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

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

GENERAL NOTARY - State of Nebrasika KIM BEHRIENS My Comm. Exp. July 27, 2027

Notary Public

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 <u>II</u> day of <u>December</u>, 2023, by Alan Baade, Manager of Baade, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

GENERAL NOTARY - State of Necraska
THOMAS C. HUSTON
My Comm. Exp. December 17, 2026

Notary Public

EXHIBIT A

The Baade Property

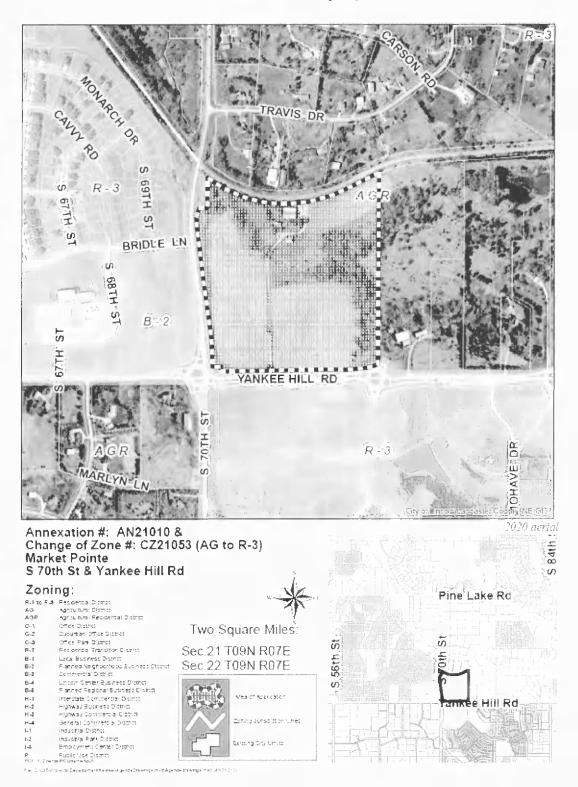


EXHIBIT B

Market Pointe PUD

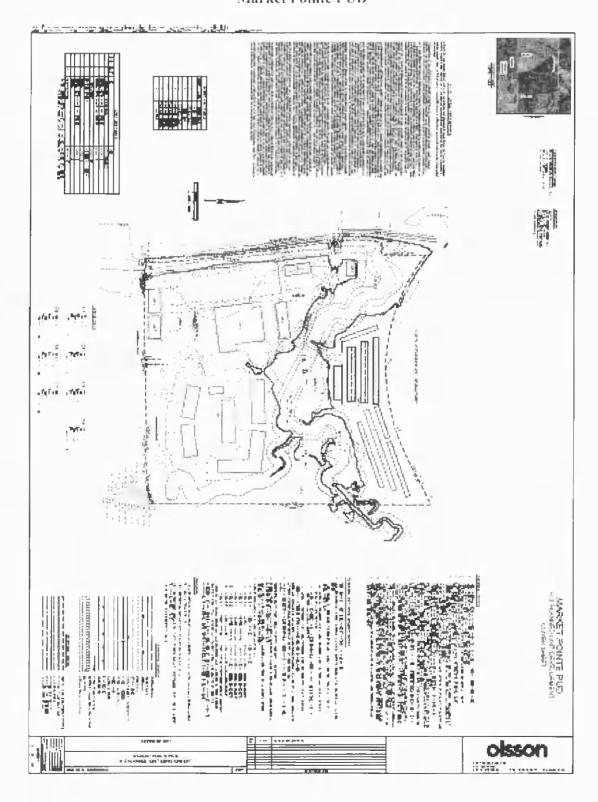


EXHIBIT C Comprehensive Plan Amendment

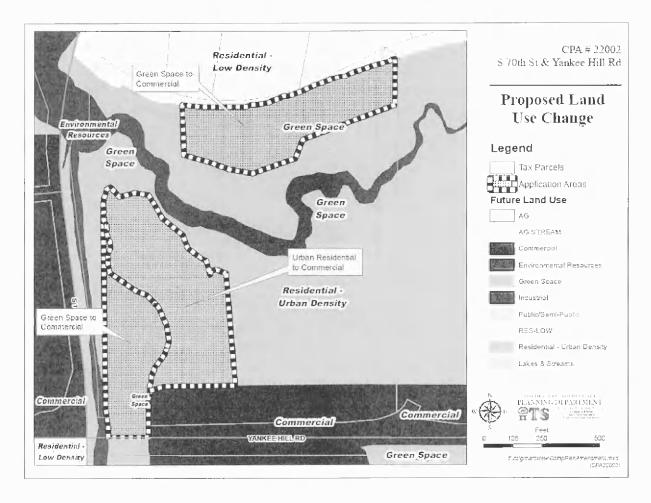
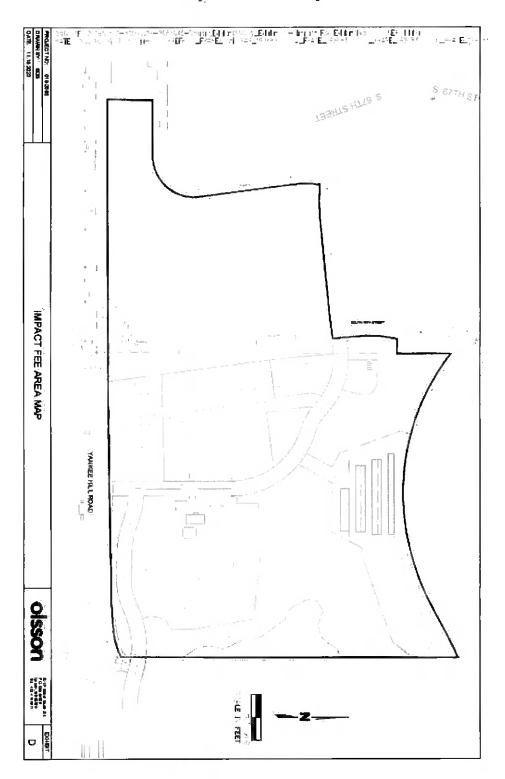


EXHIBIT D Impact Fee Area Map



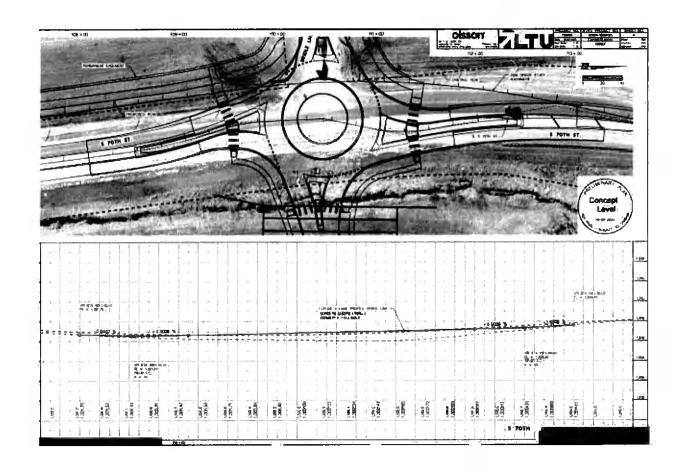
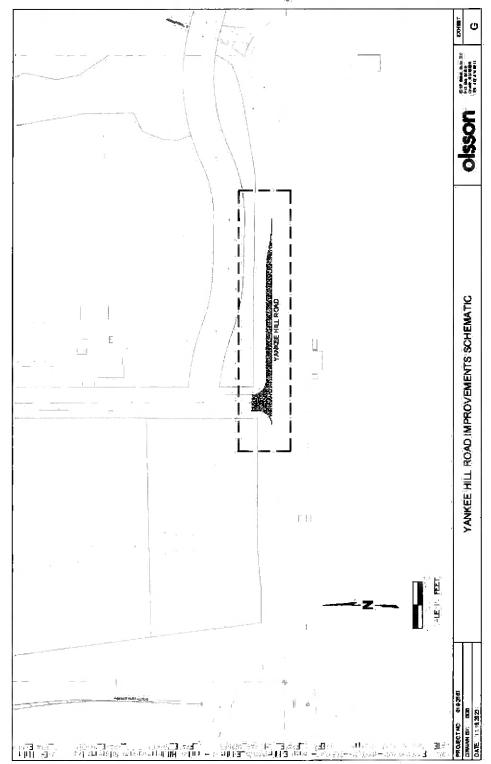


EXHIBIT F
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	Manufacture III	TOTAL CONSTRUCTION COSTS SUPPLIES AND CONSTRUCTION CONTINUED TO CONSTRUCTION CONTINUED TO CONSTRUCTION CONTINUED COSTS (10%) Bits construction Continued Construction Costs (10%) PE COSTS Estimated City Administrative PE Costs (1% of Construction) Total S 70th Street, Bridle Lave Recordabout Construction Total S 70th Street, Bridle Lave Recordabout Construction Damantees Associated with Right of Way Againstian	1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00	LS LS LS LS LS LS	PELL	107,790,00 5,000,00 63,890,00 934,846,50 212,812,441 10,346,50 203,136,141 Estimate	3 1677061 3 1677061 5 1838,5001 5 1,834,661 5 19,346 5 19,346
	Manufacture III	TOTAL CONSTRUCTION COSTS Construction Contingency (10%) Been represented the second cost of the second cos	1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00	LS LS LS LS LS LS LS LS	I (E)	107.799.00 5.000.00 5.000.00 53.888.00 934.648.50 10.348.50 19.348.50 19.348.50 4.200.00 13.885.00	3 16,706,1 3 16,706,1 3 12,000,1 5 12,000,1 5 12,000,1 5 10,344,654,1 5 10,346,1 5
	Way Cost Fo	TOTAL CONSTRUCTION COSTS Construction Contingency (10%) Use a property of the Cost of Contingency (10%) Use a property of the Cost of Contingency (10%) Experience of Costs of Contingency (5%) PE COSTS Entirely City Administrative PE Costs (1% of Construction) = Estimated City Administrative PE Costs (1% of Construction) = Construction/CE COSTS 17 Estimated City Administrative CE Costs (1% of Construction) = Total S 70th Street, Bridle Laws Recordabout Contents Total S 70th Street, Bridle Laws Recordabout Contents Connected Associated with Right of Way Acquisition Right of Way Acquisition	1.00 Example 1.00	LS L		107.799.00 83.698.00 934.644.50 212.812.441 10.346.50 203.136.141 Estimate 4.200.00 13.685.00	3 16,7001 3 16,7001 5 23,0001 5 21,804,650 5 10,346; 5 10,346; 5 10,346; 5 22,231,130,130,130,130,130,130,130,130,130,1
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	Manage of the Control	TOTAL CONSTRUCTION COSTS Construction Contingency (10%) Best construction Contingency (10%) Best construction Contingency (15%) Construction Contingency (15%) Final Engineer Construction Cost = Engineer Contingency (15%) Engineer Contingency (15%)	1.00 1.00 1.00 1.00 1.00 1.00 1.00 1.00			107,790,00 83,890,00 93,890,00 103,465,60 10,346,50 10,346,50 10,346,50 13,885,00	107.7001 107.70
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	Manage of the Control	TOTAL CONSTRUCTION COSTS Representation and accommendation of the Construction Contingency (10%) assessment and accommendation Estimated City Material Cast. Change Order Contingency (5%) Representation Costs (10% of Construction (10%) Administrative PE Costs (10% of Construction) (10%) Administrative CE Costs (10%) (1.00 (167,799,00 # 5,000,00 83,898,00 954,848,50 10,348,54 10,348,54 10,348,54 12,348,54 12,348,54 12,348,54 13,348,54 13,348,54 13,348,54 14,200,00 13,885,00	3 1677601 3 1677601 5 167801 5 1836.561 5 1836.561
	Management Tu	TOTAL CONSTRUCTION COSTS Construction Contingency (10%) Use of purposes and the second seco	1.00 (167,799,00 # 5,000,00 83,898,00 954,848,50 10,348,54 10,348,54 10,348,54 12,348,54 12,348,54 12,348,54 13,348,54 13,348,54 13,348,54 14,200,00 13,885,00	3 1677601 3 1677601 5 167801 5 1836.561 5 1836.561

EXHIBIT G Yankee Hill Road Improvements.



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.



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):
- 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.
- 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 <u>Exhibit "C"</u> (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. <u>City Approvals.</u> City agrees to approve the Governmental Actions.
- 2. <u>Street Improvements.</u> 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 roundaboutintersection 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 serves 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 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- 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 showshown 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 <u>"E"</u> 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 priorBeal 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



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:
 - 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



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 eomponent 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.

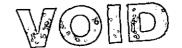
- B:C. Yankee Hill Road. Baade shall also be responsible for the design and construction of the right-in, right-out intersection at South 72nd Street and Yankee Hill Road ("Yankee Hill Road Improvements"). The Yankee Hill Road Improvements are generally shown on Exhibit "F".
- C.D. Street Improvements 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. <u>Notice</u>. 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.
- Amendments. This Agreement may only be amended or modified in writing signed by the Parties to this Agreement.
- 5. <u>Further Assurances</u>. 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. <u>Interpretations</u>. 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. <u>Binding Effect</u>. 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. <u>Authority</u>. 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]



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)
	t was acknowledged before me this day of layor of the City of Lincoln, Nebraska, a municipal corporation.
	Notary Public



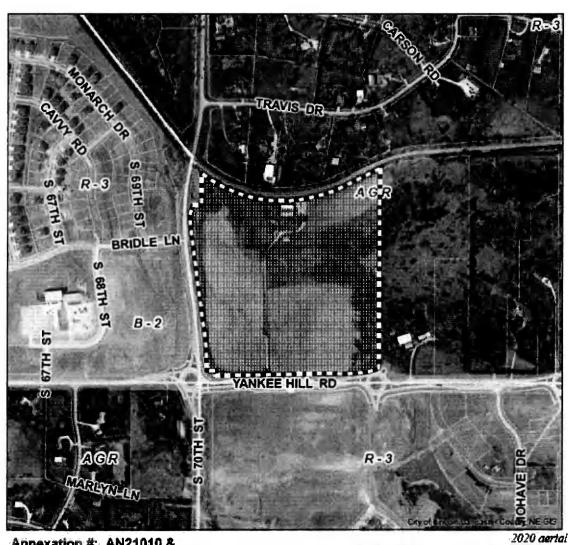
Notary Public



BAADE PROPERTIES, LLC, a Nebraska

EXHIBIT A

The Baade Property





Zoning:





EXHIBIT B

Market Pointe PUD

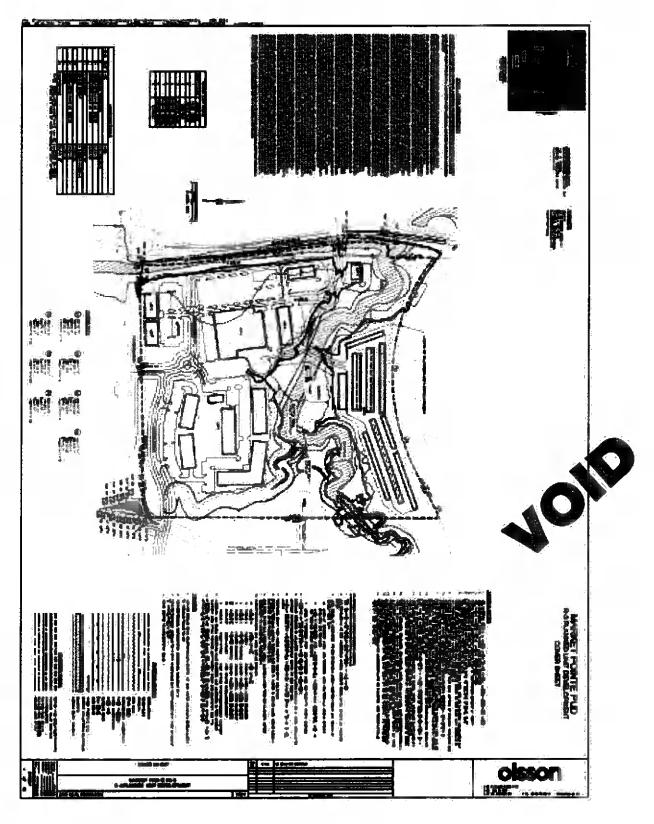


EXHIBIT C Comprehensive Plan Amendment

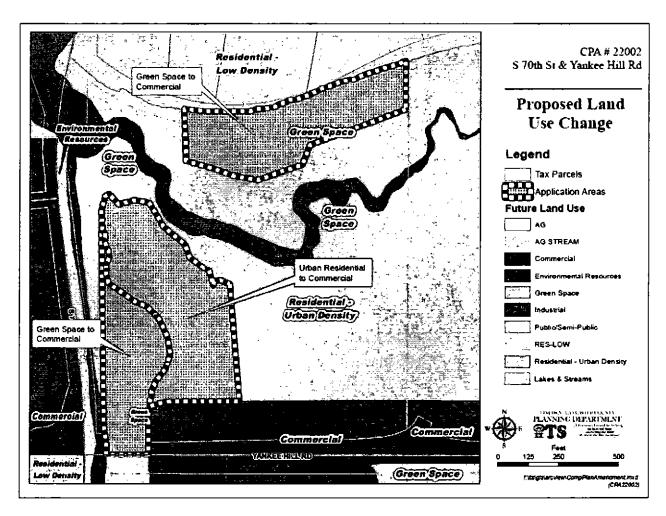




EXHIBIT D

Impact Fee Area Map

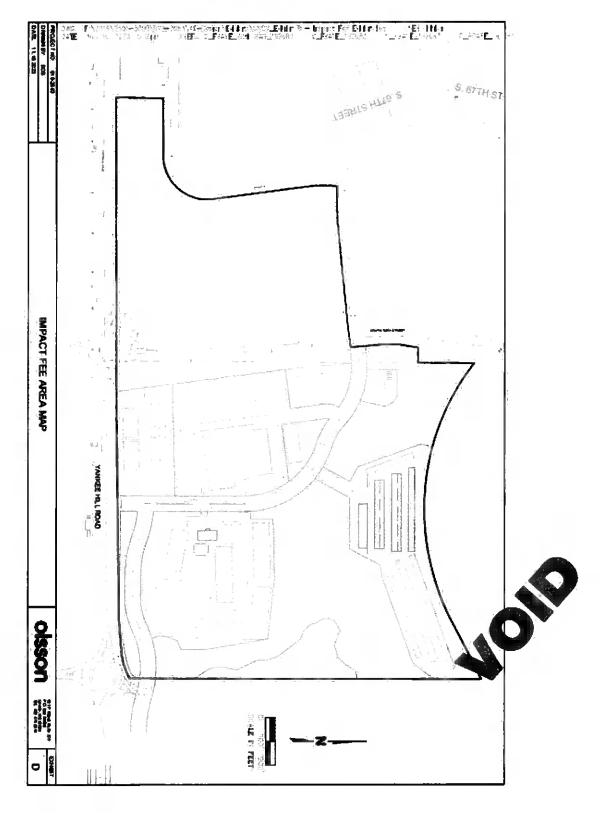


EXHIBIT E

70th and Bridle Lane Intersection Improvements

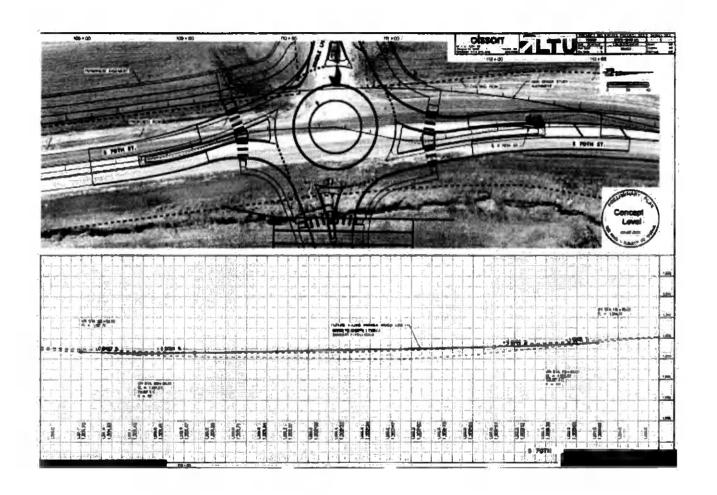
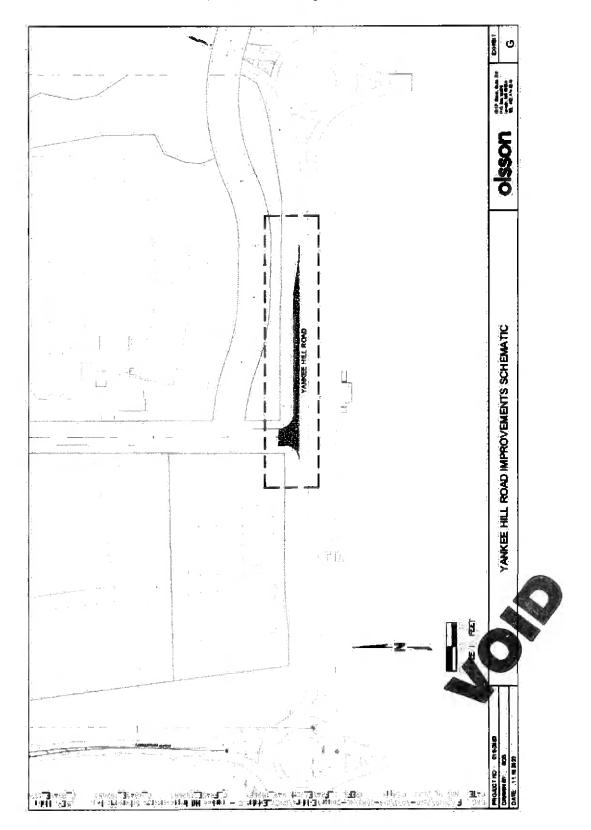




EXHIBIT F
Opinion of Probably Cost for 70th and Bridle Lane Intersection Improvements

100		Laws Roundabout - Cost Estimate - Concept &	-		Proper Humber	
Ne No	Pay hern No.	GENERAL ITEMS	Quantity	Unit	Base Cost	Total Co
	01.00001	Michigration (Arguna, 10% of Trabil Project Cast)	1.00	LS	\$ 140,000,00	3 140,000 0
37-	01.01001	Const Staking Survey Monument and Box	1.00	LS EA	\$ 21,000.00 \$ 350.00	
	01.04001	Pavt & Sidewalk Rem	735.00	CY	\$ 25.00	\$ 18,375.0
	1.05001	Swin No. 'A'	- 435.00	F	8.00	
0.0	59,90001	Contractor Quality Control Pregram (CQCP) Potnois Existing Utility	5.00	EA	\$ 20,000.00	\$ 20,000,0 \$ 5,000,0
	POST MADE	EARTHWORKTENS		797	220 11 1500	Total Control
_	02.01001	Gen Clearing & Grubbing Tree Rem (12" to 23")	1,00	LS EA	\$ 25,000.00 \$ 450.00	
	02.05001	Excavation	1,000,00	CY	3 5.00	\$ 5,000.0
Ĭ	05 00000	Exceptation - Borrow	1,500,00	CY	\$ 10.00	15,000.0
	02.08001	Earthwork Measured in Einhankment PAWING ITEMS	2,500.00	CY.	\$ 12.00	\$ 30,000,0
450	04.00106	PCC Pavt w Int Curb. 6" DPCC Pavt w Int Curb. 9"	50.00 2.200.00	SY	\$ 80.00	\$ 242,000.0
	04.09304	OPCC Pavil of Int Curb. 9'	2,200,00 1,350,00	SY	\$ 110.00	
	04.09309		50.00 2.500.00		\$ 12.00 \$ 0.50	
	04.00506	Conc Sidewalt, 6"				
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	04.11001	Detectable Warning Panel	280.00		\$ 32.00	8,960.0
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	_	TOTAL CONSTRUCTION COSTS		-	Subtotal =	1,677,364.
		Construction Contingency (10%)	1.00	LS	\$ 167,798.00	\$ 167,796.0
100	40,000	Estimated City Material Cost =	1.00	LS	\$ 5,000,00	5 5000.0
		Change Order Contingency (5%) Total Estimated Construction Cost =	1.00	S	\$ 83,898.00 \$ 1,934,658.50	\$ 83,898.0 \$ 1,934,658.5
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		Right of Way Contingency (20%)		LS	Cost Estimate	

EXHIBIT G Yankee Hill Road Improvements



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:

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.

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 <u>Exhibit "B"</u>: 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.
- 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 <u>Exhibit "C"</u> (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. <u>City Approvals.</u> 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 roundaboutintersection 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 serves 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 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, 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 showshown 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 cligible 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 Interaction Improvements. If box culvert due to the Box Culvert funds are not advanced prior to City-biddingpresence 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 designRight 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:
 - 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 Lees

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 Nincteen 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.

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 ("Bantle'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. <u>Yankee Hill Road.</u> 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. <u>Street Improvements Prior to Occupancy</u>. City shall not issue any occupancy permits on the Baade Property until the 70th and Bridle Lane and Yankee Hill Road are complete.
- 2. <u>Notice</u>. 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.

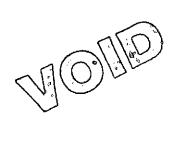
3. <u>Contribution to Rural Fire Protection District</u>. Baade understands and acknowledges that the City's annexation of the Baade Property or any portion thereof lying within the boundaries of the Southeast Rural Fire Protection district shall not be complete except upon the City assuming and paying that portion of all outstanding obligations of the Pistrict 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.
- Amendments. This Agreement may only be amended or modified in writing signed by the Parties to this Agreement.
- 5. <u>Further Assurances</u>. 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. <u>Governing Law</u>. 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. <u>Interpretations</u>. 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. <u>Construction</u>. 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 contraction 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. <u>Binding Effect</u>. 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. <u>Authority</u>. 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 Pr	roperty
<u>Exhibit B</u> – Market P	ointe PUD Site Plan
Exhibit C – Land use	Map Amendment
Exhibit D - Impact F	ee Area Map
Exhibit E - 70th and	Bridle Lanc Intersection Improvements
Exhibit F – Opinion	of Probably Cost for 70th and Bridle Lane Intersection
Improvements	
Exhibit G – South 72	nd and Yankee Hill Road Improvements
[SIGNA	ATURE PAGES TO FOLLOW]
IN WITNESS WHEREOF, the parti	es 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)
COUNTY OF LANCASTER) ss.)
	ras acknowledged before me this day of or of the City of Lincoln, Nebraska, a municipal corporation
	12

Notary Public	



Notary Public

BAADE PROPERTIES, LLC, a Nebraska



EXHIBIT A

The Baade Property







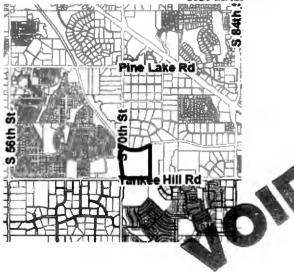


EXHIBIT B

Market Pointe PUD

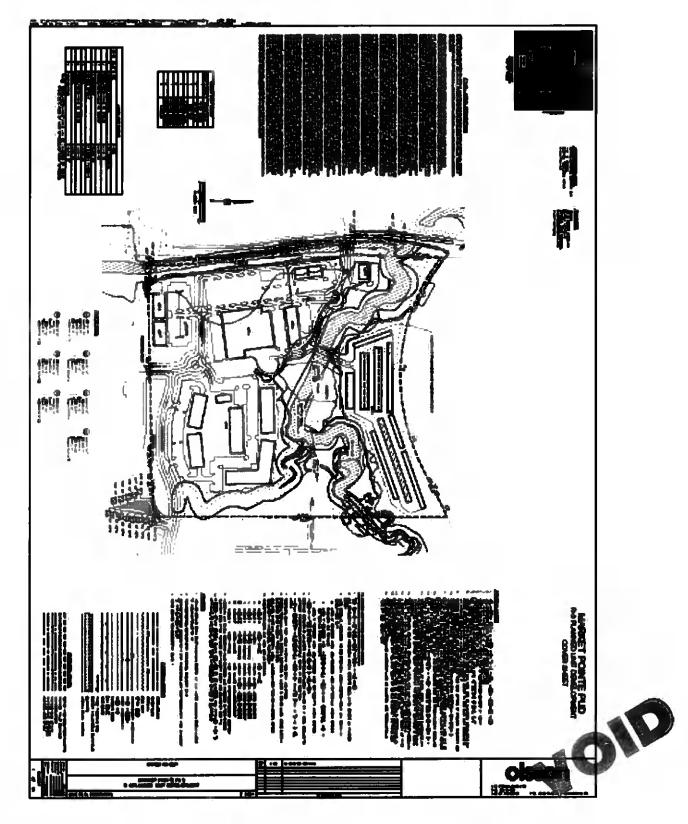


EXHIBIT C Comprehensive Plan Amendment

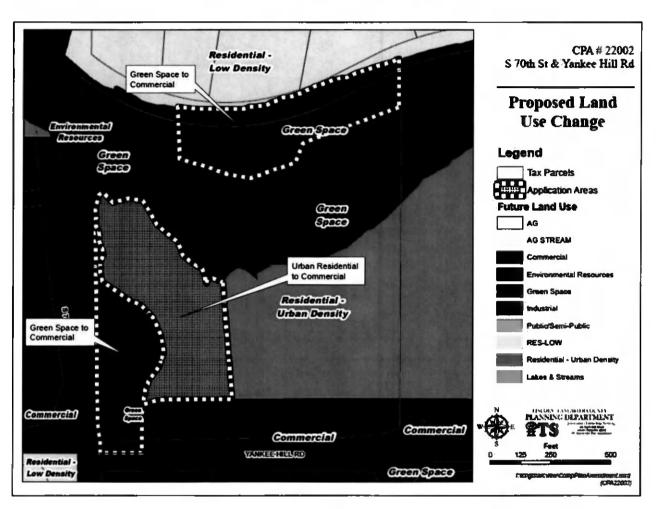




EXHIBIT D

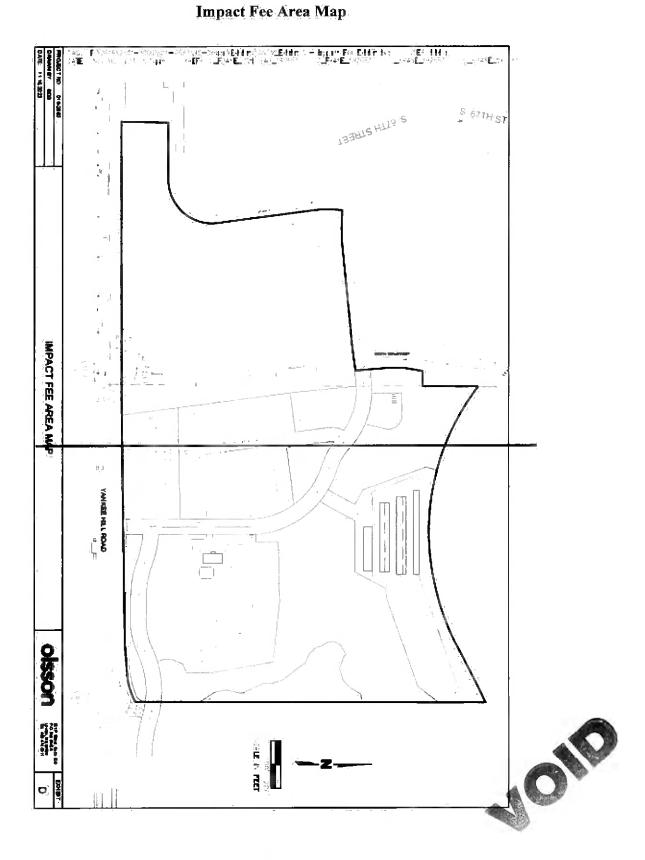


EXHIBIT E



70th and Bridle Lane Intersection Improvements

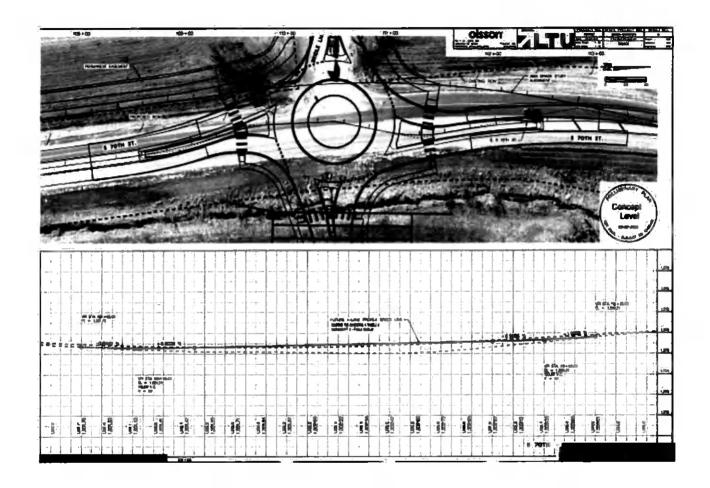
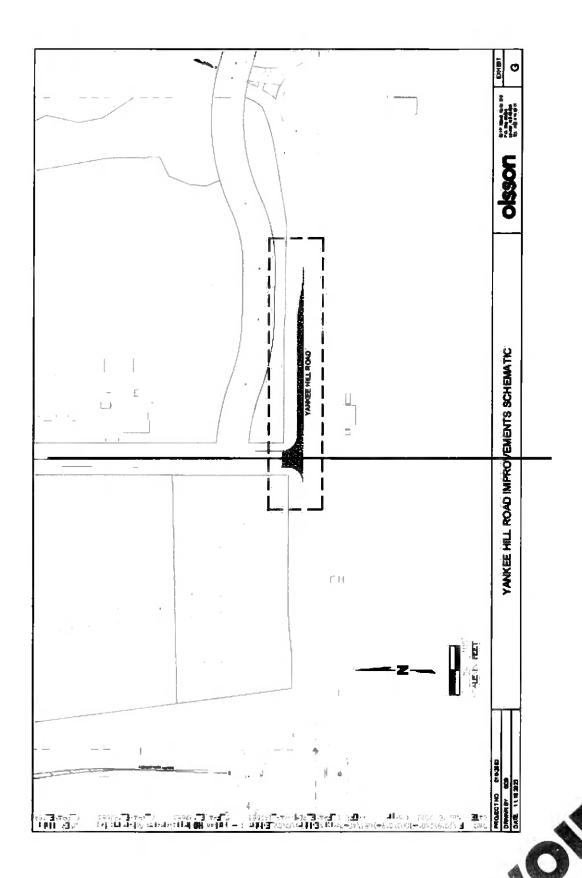


EXHIBIT F



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

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01.01001	Const Staking Survey Monument and Box		LS	3	21,000.00 350.00		350.0
01.04001	Part & Sidewalk Rem	735.00		3	25.00		18,375.0
1.05001	Saving Type "A"	405.00		3	8.00		3,480.0
50,00001	Contractor Quality Control Program (CQCP) Pothole Existing Utility	1.00	EA	3	1,000.00		5,000.0
130,00001	EARTHWORK ITEMS	***	-		1,000,00		23000
02.01001	Gen Clearing & Grutbing			\$	25,000.00		25,000.0
02.02012	Tree Rem (12" to 23")		EA	3	450.00		9,000.0
02.05001	Exception - Borrow	1,000,00		3	5.00 10.00		5,000.0
02.08001	Earthwork Measured in Embankment	2,500.00		\$	12.00		30,000.0
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04.09106	PCC Pav w/ Int Curb, 6" DPCC Pavt w/ Int Curb, 9"	2,200.00	SY	3	110.00	3	4,000.0 242,000.0
04.00304	Cone Sidewalk 4"	1,350.00		ŝ	6.50		8,827.0
04.09309	Conc Sidewalk, 9"	80.00		\$	12.00	3	960.0 16.250.0
04.09508	Conc Biberray, 6"	2,500,00		3	6.50		
04.09509	Conc Bitesay, 9* Conc Median Nose	160.00		1	1,200.00		2,240.0 4,800.0
04.00604	Conc Median Surfacing, 4"	1,605.00	SF	\$	8.50		13,642.5
04.11001	Delectable Warring Panel	290.00		3	32.00	_	8,960.8
06.06003	Asph conc, Type 1 Asph Conc, Type 3	100.00	IN	2	120.00 140.00	3	12,000.0 64,680.0
50.00040	Roundabout Median Nose	60.00		3	200.00		12,000.0
50.00040	PCC Pavt Truck Apron (Colored & Stenciled), 9'	340.00	SY	5	135.00	3	45,900.0
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Attachment A

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



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):
- 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 <u>Exhibit "B"</u>: 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
- Multifamily Use: Up to 250 dwelling units of an apartment development oriented towards South 70th Street; and
- Storage Unit Use: 95,000 square feet of mini-warehousing uses located on the northern portion of the property adjacent to the railroad track.
- 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 <u>Exhibit "C"</u> (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:

Sec

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.
- 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:
 - 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. <u>Street Improvements Prior to Occupancy</u>. City shall not issue any occupancy permits on the Baade Property until the 70th and Bridle Lane and Yankee Hill Road are complete.
- 2. <u>Notice</u>. 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.
- Amendments. This Agreement may only be amended or modified in writing signed by the Parties to this Agreement.
- 5. <u>Further Assurances</u>. 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. <u>Interpretations</u>. 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. <u>Construction</u>. 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. <u>Default</u>. 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]

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 Paird, 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.

GENERAL NOTARY - State of Nebraska KIM BEHRENS My Comm. Exp. July 27, 2027

Notary Public

BAADE PROPERTIES, LLC, a Nebraska limited liability company

By: Hlan Bade, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

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

GENERAL NOTARY - State of Nebraska
THOMAS C. HUSTON
My Comm. Exp. December 17, 2026

Notary Public . Wente

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 <u>Approving the Annexation Agreement</u> between the City and Baade Properties, LLC., for the property generally located at S. 70th and <u>Yankee Hill Rd</u>, as approved by <u>Resolution A-94363</u> by the Lincoln City Council on <u>December 11, 2023</u>, 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 <u>December</u>, 2023.

City Clerk