

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 05061A**, an amendment to the **Southwest Village Planned Unit Development**, requested by the Horseman's Benevolent & Protection Association, to show a horse race course, simulcast facility, barns and accessory buildings, on property generally located at Highway 77 and West Denton Road.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 07/11/12
Administrative Action: 07/11/12

RECOMMENDATION: Conditional Approval, with one amendment, subject to a revised annexation agreement (8-0: Gaylor Baird, Butcher, Cornelius, Esseks, Francis, Hove, Lust and Sunderman voting 'yes'; Weber absent).

STAFF RECOMMENDATION: Conditional Approval.

ASSOCIATED REQUESTS: Amendment No. 1 to the Highway 77 & Warlick Boulevard Conditional Annexation and Zoning Agreement (12R-219).

FINDINGS OF FACT:

1. This is a request to amend the Southwest Village PUD to show a horse race course, simulcast facility, barns and accessory buildings to the southwest of 1st Street and West Denton Road; to allow all B-2 zoning district conditional and special permitted uses as permitted uses; and to show a new AG area by eliminating the R-5 area and moving the I-3 area. The approval of this amendment to the PUD will permit 1,300,000 square feet of commercial floor area, 410 dwelling units and certain uses in the B-2, I-3 and AG areas as described on the site plan and Development Plan. The applicant is also requesting to waive the requirement for all of 1st Street to be paved.
2. The staff recommendation of conditional approval is based upon the "Analysis" as set forth on p.5-7, concluding that the proposed development of the horse race course within the Southwest Village PUD is in conformance with the Comprehensive Plan. The proposed use will have less traffic impact than the proposed commercial and residential uses approved with the original PUD. The conservation easements will preserve flood storage and the Cardwell Branch flood prone area. The property to the north, south and west of the race course area is currently undeveloped and used as farm land. To the east is Highway 77 and a tree farm. There should not be any significant impact on surrounding properties. The staff presentation is found on p.11-12.
3. The applicant's testimony is found on p.12-14, wherein a motion to amend Condition #2.9 concerning turn lanes at the Phase 2 driveway, was submitted by the applicant and accepted by the staff (p.27). Also see Minutes, p.13.
4. Testimony in support is found on p.14-15.
5. There was no testimony in opposition.
6. On July 11, 2012, the Planning Commission agreed with the staff recommendation and voted 8-0 to recommend conditional approval, subject to a revised annexation agreement, with amendment to Condition #2.9 as requested by the applicant and agreed upon by staff. The conditions of approval are found on p.7-10. The "Development Plan" is found on p.28-72.
7. The associated Amendment No. 1 to the Highway 77 & Warlick Boulevard Conditional Annexation and Zoning Agreement is also being introduced on September 10, 2012, Bill No. 12R-219). The applicant and staff have agreed on moving back the timeframe to construct a sewer trunk line to serve this general area, revising the escrow amount to cover the cost of operating the temporary pump station over the next 6 years, and changes to street and water line improvements based on changes to the designation of arterial streets in this area.

FACTSHEET PREPARED BY: Jean L. Preister
REVIEWED BY: Marvin Krout, Director of Planning
REFERENCE NUMBER: FS\CC\2011\CZ05061A+ PUD

DATE: September 4, 2012
DATE: September 4, 2012

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for July 11, 2012 PLANNING COMMISSION MEETING

****As Amended and Recommended for Conditional Approval by Planning Commission:
July 11, 2012****

PROJECT #: Change of Zone No. 05061A Southwest Village

PROPOSAL: Amendment to the Southwest Village Planned Unit Development (PUD), to show a horse race course, simulcast facility, barns and accessory buildings to the southwest of 1st Street and West Denton Road; to allow all B-2 zoning district conditional and special permitted uses as permitted uses; to show a new AG area by eliminating the R-5 area and moving the I-3 area, and to waive the requirement for all of 1st Street to be paved.

LOCATION: Generally located at Highway 77 and West Denton Road

LAND AREA: Approximately 237 acres

EXISTING ZONING: B-2 Planned Unit Development

WAIVER /MODIFICATION REQUEST: Waive the requirement for 1st Street to be paved.

CONCLUSION: The proposed development of the horse race course within the Southwest Village Planned Unit Development is in conformance with the Comprehensive Plan. The proposed use will have less traffic impact than the proposed commercial and residential uses approved with the original PUD. The conservation easements will preserve flood storage and the Cardwell Branch flood prone area. The property to the north, south and west of the horse course area is currently undeveloped and used as farm land. To the east is Highway 77 and a tree farm. There should not be any significant impact on surrounding properties.

<u>RECOMMENDATION:</u>	Conditional Approval
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GENERAL INFORMATION:

LEGAL DESCRIPTION: That part of lot 23 NE lying north of the creek inside the Lincoln City Limits; Lot 20, 21, 29, 30 I.T.; all located in the NE ¼ of Section 22-9-06; Outlot C and E Southwest Village Addition; Outlots A and B, Southwest Village 1st Addition all located in the SE ¼ of Section 15-09-06, Lancaster County, Nebraska

EXISTING LAND USE: Vacant land zoned for commercial and residential development. The land is currently being farmed.

SURROUNDING LAND USE AND ZONING:

North: AG Agricultural; Farm Land
South: AG Agricultural; Farm Land
East: AG Agricultural; Tree Farm, Highway 77 and Farm Land
West: R-4 and R-3 Residential; one single family residential unit
AGR Agricultural Residential; acreages
AG Agriculture; Farm Land

HISTORY:

June 12, 2006 City Council approved a change of zone (CZ05061) for a Planned Unit Development overlay and for a change of zone from AG Agricultural District and AGR Agricultural Residential to B-2 Planned Neighborhood Business to allow approximately 160 dwelling units and approximately 1,300,000 square feet of office, retail, commercial and industrial floor area. City Council also approved the annexation (AN05014) of 463.8 acres of property generally located at South Folsom Street and West Denton

COMPREHENSIVE PLAN SPECIFICATIONS: This area is shown as commercial and industrial in the Future Land Use Map of the 2040 Comprehensive Plan.(page 1.8)

Existing businesses flourish and there are opportunities for new businesses within Lincoln and the incorporated communities. The Plan provides new employment locations and supports retention of existing businesses.(page 1.3)

Residential, commercial, and industrial development takes place in the City of Lincoln and within incorporated towns. This ensures that there are convenient jobs and a healthy tax base to support public safety, infrastructure and other services within the communities. While location in the cities and towns of the county is a priority, unique site requirements of a business may necessitate consideration of other suitable and appropriate locations in the county.(page 1.3)

LPlan 2040 describes a community that values natural and human resources, supports advances in technology, and encourages development that improves the health and quality of life of all citizens.(page 1.4)

Natural features such as tree masses in areas for future development are integrated into new development to provide for green spaces within the built environment. (Page 1.4)

Guiding Principles for Mixed Use Redevelopment (page 6.2)

- Target existing underdeveloped or redeveloping commercial and industrial areas in order to remove blighted conditions and more efficiently utilize existing infrastructure.
- Occur on sites supported by adequate road and utility capacity.
- Be located and designed in a manner compatible with existing or planned land uses.
- Enhance entryways when developing adjacent to these corridors.
- Incorporate and enhance street networks with multiple modes of transportation in order to maximize access and mobility options.
- Encourage residential mixed use for identified corridors and redeveloping Regional, Community, Neighborhood, and Mixed Use Office Centers identified as nodes.

UTILITIES: The existing Southwest Village temporary sewer lift station will be utilized to serve this property. Issues regarding improvements to water lines will be addressed in the revised annexation agreement.

TRAFFIC ANALYSIS: Although S. 1st Street is designated as a future minor arterial today, it is paved from the intersection of S. 1st and West Denton to the south for approximately 900 feet then tapers into a gravel road. In Phase II, when the horse race course is built, the developer is only proposing to rebuild S. 1st Street to the southernmost access point of the horse course but will be dedicating additional right-of-way and grading that right-of-way to the southern property line.

Although South Folsom was shown as a four-lane arterial street on the previous plan the Comprehensive Plan no longer designates Folsom as a minor arterial roadway. Folsom is shown on this plan as a short collector street providing access for the horse course and the property to the west access to W. Denton Road.

The Nebraska Department of Roads (NDOR) is completing plans to upgrade Highway 77, including a revised Highway 77/West Denton Road/Warlick Blvd interchange. The right-of-way required to accommodate the revised interchange has been acquired since the previous plan was approved.

West Denton Road is a two-lane urban street. The Comprehensive Plan designates it as a principal arterial to be built as a four-lane with center turn lane. However, no funds are programmed in the CIP to improve it. West Denton Road 1,000' west of the interchange will be improved as a four-lane arterial street as part of the State highway project. The City has constructed 2 lanes of West Denton Road from Folsom to Amaranth, the remainder is to be constructed per the annexation agreement.

PUBLIC SERVICE: City services are provided, including police and fire protection. The nearest fire stations are Station #4 at South 27th Street and Old Cheney Road, and Station #13 at West A Street and South Coddington Avenue.

REGIONAL ISSUES: The approved PUD is currently an undeveloped area within the City of Lincoln corporate City Limits. Although it is zoned for commercial development and is served by a lift station for sanitary sewer service, it lacks water infrastructure and requires road improvements. It is not likely that the City will be constructing a trunk sewer in this area for many years. Land to the west and north of the PUD are shown as future urban residential lots that are in the Tier 1 Priority A and B areas. This means that although the area inside the city limits is ready for development the area outside the city limits likely won't develop for another 15 to 20 years. The land south of the PUD (south of Cardwell Branch creek) is shown as Tier 2 in the Comprehensive Plan meaning development is not expected to happen in this area for at least another 50 years.

ENVIRONMENTAL CONCERNS: Protection of the Cardwell Branch stream corridor and associated wetlands and sensitive areas.

AESTHETIC CONSIDERATIONS: This development is adjacent to Highway 77 which is considered a Primary Entryway Corridor into the City of Lincoln in the 2040 Comprehensive Plan. All buildings within the Southwest Village PUD shall be subject to the Architectural Design Standards (included in the development plan). Each building's elevations shall be first submitted to the Developer's Coordinating Architect for review and approval. Then a letter of approval from the Developer's Coordinating Architect (which shall describe how the elevations conform to the Architectural Design Standards) along with the building elevations shall be submitted to the Planning Director for review and approval, prior to issuance of a building permit.

ALTERNATIVE USES: The PUD could remain as it is approved today for commercial, industrial and residential uses with a conservation easement over a large portion of the area south of W. Denton Road.

ANALYSIS:

1. This amendment to the PUD will allow the Lincoln Race Course that is currently located at the former State Fair Park site (Innovation Campus) to move to the southwest corner of Southwest 1st and West Denton Road.
2. The build out of the Race Course is to be phased. Phase One will include the simulcast building. In Phase Two, the Horseman's Benevolent & Protection Association (HBPA) plans to construct the race course, grandstand, and other buildings associated with the new Lincoln Race Course.
3. The maximum allowable floor area in the B-2 and I-3 areas of the PUD has been reduced from 1,300,000 square feet to 1,000,000 SF. This area will have 300,000 square feet designated as Office / Industrial Use, and 700,000 SF of Commercial / Retail uses. In addition to the commercial square footage this amendment would permit the development of 250 dwelling units in the B-2 area. The I-3 Area in the PUD has been reduced to the Southeast corner of South 1st Street and West Denton Road. The Southwest corner is now the AG Area of the PUD.

If the horse race course does not develop the AG area will be approved for 300,00 square feet of commercial uses and 160 dwelling units as is approved in today's PUD. The AG area shall not exceed 100,000 square feet of retail of the 300,000 square feet of commercial uses in this area.

4. A new use labeled "New Lincoln Race Course" has been added and is located within the AG Area of the PUD. The proposed Race Course, simulcast facility, clubhouse, grandstand, barns, and accessory buildings shall be permitted within the AG Area. 60,000 SF of Commercial / Retail uses have been assigned to the AG area.

5. Attached is a Development Plan for the PUD which includes uses, setbacks, signs, parking as well as lot and area requirements for the individual development areas. It includes Architectural Design Standards. At the time of this staff report it also includes reference/ language for 2 conservation easements.

The Development Plan has been amended to allow all conditional and special permitted uses allowed in the B-2 zoning district as by right uses in the B-2 area. The AG area of the development plan allows for a mix of uses allowed in the AG zoning district and other commercial uses. It does not follow specific AG zoning district regulations. The I-3 area allows for light manufacturing uses that might not otherwise be allowed in the B-2 area and follows the height and lot requirements of the I-3 zoning district.

6. An additional 250 dwelling units has been added to the B-2 area north of W. Denton Road. The 250 Dwelling units is to provide for multifamily within the development, any residential dwelling units above the first floor of a retail, office, or service use would not count against the 250 unit cap in the B-2 area.
7. The impacts to the existing floodplain and the amount of impervious area have been reduced substantially from the current approved plan for the area south of West Denton Road. The proposal is for 3 areas for floodplain protection and conservation. The interior of the Race Course and Lot 1 Block 5 will provide floodplain storage and site storm water detention. Portions of the infield may be used for other Race Course / Equestrian activities. These areas are proposed to have a conservation easement protecting floodplain storage. A separate conservation easement protecting the floodplain/floodprone area as well as natural & biological resources shall cover the Cardwell Branch channel area south of the Race Course. The total area of easements are significantly less than what was previously planned, however, the previous plan removed approximately 35 acres from the floodplain. The proposed race course removes 9 acres of land from the floodplain. The proposed plan also increases the flood storage volume of the site 7.5%, from the previous 9.1 Acre-Feet to a proposed 9.7 Acre-Feet.
8. South 1st Street is designated as an arterial roadway in the current Comprehensive Plan. The approved PUD and previous Comprehensive Plan planned for Folsom Street as the arterial roadway south of West Denton Road. South 1st Street has been revised to show 120' of Right of way. The horizontal alignment has been revised to allow the race course to fit on the property. Access points on 1st Street have been adjusted to "best fit" the arterial roadway design standards, while still maintaining the planned access of the current PUD. Folsom Street is planned to access the northwest portion of the Race Course and allow access to the neighboring property to the west as a local street instead of a minor arterial.
9. The Southwest Village annexation agreement will be amended to reflect the changes in the site plan. A draft amendment to the agreement will be submitted separately. The amendment will address several infrastructure issues including but not limited to funding

for a 16 inch water main in S. 1st Street and a 16 inch water main West Denton Road, the timing of construction of S. 1st Street and the acceptance and timing of the future trunk sewer.

10. Public Works and Utilities has requested that the paving of South 1st Street be extended and widened sufficiently to provide right and left turn lanes at West Blue Flag Court and to the driveway on the west side of 1st opposite Blue Flag. They have also request a south bound right and left turn provision at the Phase 2 driveway to the parking lot and a north bound paved left turn lane to this driveway. The cross sections and road surfacing shown do not meet this requirement. The site plans do not show 70 feet of right of way per subdivision requirements for the access points to 1st Street. This should be corrected on the plans.

In addition Public Works and Utilities requests more detail concerning the grading proposed in the various phases of the grading of the site and the arterial streets, West Denton Road and SW 1st Street. In particular, clarification is need regarding the grading proposed for West Denton in the area where there is more ROW existing than is required to provide the standard 120/130 feet wide grading area for an arterial street. It may be useful to provide some cross sections to show the intent of the grading.

11. The Developer's request to waive or modify the following design standards for paving of SW 1st Street adjacent to this project south of the southern most access point should be acceptable and justifiable. It is part of the approval of this application.
12. There has not been a request to waive any sidewalks with this application and therefore sidewalks should be shown on both sides of all streets.
13. Public Works and Utilities notes that on Sheet 9 of 20 a "proposed water quality area " is shown in portions of the south side of the West Denton ROW and an open drainage ditch handling runoff from a 48" storm sewer. Without further detail and understanding of the proposal there could be additional questions to the acceptability of this design. Public Works and Utilities believe that this area is in ROW that is under the control of Nebraska Department of Roads (NDOR) and may also require NDOR' approval of the concept.

CONDITIONS OF APPROVAL:

This approval permits 1,300,000 square feet of commercial floor area, 410 dwelling units and certain uses in the B-2, I-3 and AG areas as described on the site plan and the Development Plan and a waiver of paving of S. 1st Street south of the southern most driveway as shown on the site plan.

Site Specific Conditions:

1. The Developer signs the revised annexation agreement before the City Council approves the change of zone.
2. Before receiving building permits or before a final plat is approved the developer shall cause to be prepared and submitted to the Planning Department a revised and reproducible final plot plan including 5 copies with all required revisions and documents as listed below upon approval of the planned unit development by the City Council.
 - 2.1 Add as note #1 on Page 1 "Refer to Southwest Village Development Plan for Zoning and Design Standards Requirements."
 - 2.2 Show either a 20 foot or 10 foot setback along West Denton Road on all sheets.
 - 2.3 Revise note #7 to eliminate the last line about pole and off premises signs and add "All signs shall be in conformance with the Southwest Village PUD Development Plan."
 - 2.4 Remove note #16 pertaining to the lift station. It is redundant.
 - 2.5 Revise note #18 to say "Additional sidewalk connections consistent with the incentive criteria of Chapter 3.105 Section 3 of the City of Lincoln Design Standards to be approved by administrative amendment prior to approval of the final plat."
 - 2.6 On page 5 show the western property line and the 50 foot setback.
 - 2.7 Show sidewalks on both sides of S. 1st Street and Folsom Street.
 - 2.8 Show a 16" water main in W. Denton Road on all plan sheets.
 - 2.9 Show a south bound right and left turn provision at the Phase 2 driveway to the parking lot and a north bound paved left turn lane to this driveway, or, at the time of the Phase 2 construction, provide a traffic intersection analysis that shows these intersection improvements are not necessary to meet the intent of the Access Management Policy. Show 70 feet of right of way per subdivision requirements for the access points to 1st Street. **(**Per Planning Commission, at the request of the applicant and agreed upon by staff: 7/11/12**)**

- 2.10 Revise plan sheets to the satisfaction of Public Works and Utilities Watershed Management Division.
- 2.11 Provide additional detail concerning the grading proposed in the various phases of the grading plan regarding the site and arterial streets to the satisfaction of Public Works and Utilities Engineering Services Division.
3. Before receiving building permits, the developer shall provide the following documents to the Planning Department:
 - 3.1 Verification from the Register of Deeds that the letter of acceptance as required by the approval of the planned unit development has been recorded.
 - 3.2 Verification that the required easements and right-of-way has been dedicated as shown on the site plan are recorded with the Register of Deeds.
4. Prior to the issuance of a building permit:
 - 4.1. The construction plans must substantially comply with the approved plans.

Standard Conditions:

5. The following conditions are applicable to all requests:
 - 5.1 Before occupying the dwelling units/buildings all development and construction shall substantially comply with the approved plans.
 - 5.2 All privately-owned improvements shall be permanently maintained by the owner or an appropriately established homeowners association approved by the City Attorney.
 - 5.3 The physical location of all setbacks and yards, buildings, parking and circulation elements, and similar matters must be in substantial compliance with the location of said items as shown on the approved site plan.
 - 5.4 The terms, conditions, and requirements of the ordinance shall run with the land and be binding upon the permittee, its successors and assigns.

- 5.5 The applicant shall sign and return the letter of acceptance to the City Clerk. This step should be completed within 60 days following the approval of the special permit. The City Clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefore to be paid in advance by the applicant. Building permits will not be issued unless the letter of acceptance has been filed.
- 5.6 The site plan as approved with this ordinance voids and supersedes all previously approved site plans, however all ordinances approving previous permits remain in full force and effect unless specifically amended by this ordinance.

Prepared by:
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DATE: June 28, 2012

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CHANGE OF ZONE NO. 05061A

PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 11, 2012

Members present: Gaylor Baird, Butcher, Cornelius, Esseks, Francis, Hove, Lust and Sunderman; Weber absent.

Staff recommendation: Conditional approval.

Ex parte communications: Francis disclosed that she received a couple of phone calls when this hit the newspaper and the people she talked to were opposed. She suggested they come to the meeting and voice those opposition or write a letter.

Staff presentation: **Christy Eichorn of Planning staff** provided information about the location of the project; what is approved today; and what the applicant is asking be approved with this amendment.

The project is located on West Denton Road just west of Hwy 77. Today the area is in an approved PUD, meaning it is an overlay district, so although it says it has B-2 zoning, the B-2 is the underlying zoning. With the PUD, there is a development agreement that goes with the site plan that talks about how uses are to be approved in this area. The applicant has requested a change to mostly everything south of West Denton Road. The area generally is bounded on the east by Hwy 77, with significant floodplain and agricultural land to the south and bounded by Cardwell Branch on the south. There is more significant floodplain and acreages on the west side of the property. The area to the north currently does not have any development plans. It is an area that came into the city and was included in the annexation agreement but currently, there is one single-family residential house on that property. The property to the north is still zoned AG and used for agricultural purposes.

Eichorn then reviewed the proposal in relation to the 2040 Priority Growth Area map. Everything to the south is for long term future development.

The PUD is currently approved for a total of 1,300,000 sq. ft. of commercial floor area, 300,000 sq. ft. of which is reserved for office or industrial use. With the proposed horse race course on the south side, they would be reducing the overall commercial square footage to 1,000,000 sq. ft. of commercial, within which 700,000 sq. ft. could be used for retail but still retaining 300,000 for office or industrial use, keeping this is as a mixed use development. Some potential additional dwelling units were shown north of West Denton Road. The approved PUD showed

160 dwelling units where the horse track is planned to go. Those dwelling units have been moved to the north, providing for a mix of residential, commercial and office for that area to the north. If the race course does not happen, the overall PUD would retain the 1,300,000 sq. ft. of commercial space.

Eichorn then addressed the note in the development plan that says any use allowed today in the B-2 zoning district is allowed by right in the PUD, particularly in the area north of West Denton Road. This change is being made because there is a four-lane arterial north of West Denton Road on Folsom; we have Hwy 77 to the east; we have what will someday be a four-lane arterial in West Denton Road; and the floodplain and the creek to the south. This is a development that is contained within itself and when we have conditions associated with a use, it is to protect existing uses in that area. Because of the demographics of this area and the geographical nature, it just made sense to allow the uses in the district without any additional restrictions, particularly when there is not much development outside this area. However, there are some acreages and AGR zoned properties just to the west.

Eichorn clarified that this amendment does not change anything north of West Denton Road, but because we are making a change to the PUD we have to talk about it as one big entity.

Proponents

1. Rick Kiolbasa, the developer, stated that there are five entities plus the city that have been involved working on this proposal to allow some development to occur. Nothing has happened for five or six years after spending several million dollars on this site. He has been working with the race track representatives to see how they can fit into this piece.

Kiolbasa then showed the layout of the race track. The area north of West Denton Road will essentially stay the same. The first phase will be the simulcast facility, sports bar and restaurant, anticipating breaking ground this fall. Essentially, in 3-5 years, they would expand into doing the grandstand area, the additional parking and the race track. There is space for 1,000 horses and 1-mile track, making them competitive nationally.

With regard to the traffic plan, Kiolbasa pointed out that with 1,000,000 sq. ft., they have already built a lot of roads, water lines and sewer lines.

2. Mark Palmer of Olsson Associates appeared on behalf of the applicant and submitted a request to amend Condition #2.9, which refers to the phased development:

Show a south bound right and left turn provision at the Phase 2 driveway to the parking lot and a north bound paved left turn lane to this driveway, or, at the time of the Phase 2 construction, provide a traffic intersection analysis that shows these intersection improvements are not necessary to meet the intent of the Access Management Policy. Show 70 feet of right of way per subdivision requirements for the access points to 1st Street.

1st street is being realigned. It is a gravel road and they will be doing a slight realignment of that road to the east on property that the developers are purchasing. It is a gravel road with very minimal traffic from the south and they have been working with the city on the extent of the cost to the developer. The initial access will be Blue Flag Court. There is a future access at Folsom Street shown off of West Denton Road to circulate vehicles through the development, and an additional access on 1st Street. They have discussed paving that road and extending the pavement. It is floodplain property and it is on the edge of the Comprehensive Plan for 2040 growth. Therefore, they do not see any access needed other than for farming. Engineering Services had requested additional turn lanes at the intersection, but the developer would prefer to take a better snapshot and better analysis of the actual traffic during the Phase 2 construction and provide the improvements that are necessary to maintain the traffic that will be out there at that time.

Palmer agreed with all other conditions of approval. They have worked with the City and Watershed Management on the floodplain impacts. There will definitely be a lot less intensive floodplain impacts than previously planned on the original PUD. The interior of the race course will be green space and some floodplain storage. It is a less intensive use than what was previously planned.

Kiolbasa advised that they did hold a neighborhood meeting. The race track is a part of the overall development. There will still be some apartments, hotels and hopefully retail. They have restricted the PUD to not allow any sort of motorized racing, etc. There will be a land use restriction agreement in place for those types of uses.

Esseks observed that the first component will be the simulcast building and inquired whether this in some way will attract other development. Kiolbasa acknowledged that they have had additional interest expressed in the site since this proposal came forward. The biggest hurdle was getting something across the highway and the attraction that a race track provides and the ability to have a restaurant and bar really does help with that.

Lust asked the developer whether he is sure that Wal-Mart is not going to move in there. Kiolbasa's response was, "we are all sure."

Hove inquired whether any TIF funds were used to develop this infrastructure. Kiolbasa stated that all improvements were developer funded – no TIF – but the developer will be reimbursed through impact fees for some of the facilities. Wal-Mart was going to be located on the north side.

3. Alan Wood appeared on behalf of the **Horseman’s Benevolent & Protection Association (HBPA)** and advised that the hours of operation for the simulcast facility are intended to be 11:00 a.m. until 5:00 p.m. There will also be some operation between 7:00 p.m. and 10:30 or 11:00 p.m., but it is not anticipated that there will be any traffic during the time people are leaving for work or coming home from work. The simulcast facility will not generate that much traffic. The live racing will develop in four or five years.

Lust assumed there might be restaurant-type traffic in the evening hours. Wood acknowledged that this was discussed at the neighborhood meeting and the neighbors were satisfied. He also advised that there will be a deed restriction such that the height of the horse barns will not exceed 24’.

Butcher asked Wood to discuss the operation of the track itself. Wood understands that there will be evening races, but they would occur after rush hour. There would be day time racing on Saturdays and Sundays. **Lynne Schuller, Executive Director of Horseman’s Benevolent & Protection Association**, stated that currently, their post times are at 6:45 p.m. on Friday evening and then 2:00 p.m. on Saturday and Sunday. Most of the traffic is well after rush hour and then on the weekends.

Esseks asked what kind of traffic is anticipated at this facility when fully developed. Schuller indicated that they are currently achieving an average crowd of 3500 for a time period of 4-5 hours. It concentrates for about an hour or two and then tapers off on either side.

Support

1. Tom Huston testified in support on behalf of **SouthPort Ventures Company, LLC**, which owns the parcel in the northwest quadrant of this development, previously identified as the former Wal-Mart site. Any activity at this site is going to be a good thing. His client does not want the amendment to restrict the amount of square footage previously allocated north of Denton Road, and it does not. His client is satisfied.

2. Pat Dussault, 130 W. Winfield, testified in support. He owns one property removed to the south across Cardwell Branch. He stated that he is generally in support and appreciates the efforts to take any motorized racing off the table. This discussion has removed a lot of his

concerns. He did request clarification as to the lighting that will be used at the race course, etc., and what other venues might be permitted at the facility, such as concerts.

Dennis Bartels of Public Works stated that the amendment to Condition #2.9 presented by the applicant has been reviewed by Public Works and he is satisfied with it.

There was no testimony in opposition.

Response by the Applicant:

With regard to the planned use of the infield in the race track, Alan Wood, attorney for the Horseman's Benevolent & Protection Association, stated that there is reservation in the PUD for festival use and outdoor activities. The race track is an expensive installation, with a surface that has to be protected for the horses. Therefore, it does not lend itself to a large rock concert type setting. He does not believe that there is any contemplation on the part of HBPA for a concert venue or anything of the like.

Schuller added that they do have bands that play during live racing in Omaha, but Omaha is a different business model than Lincoln. Omaha only had 6 live racing days this year, so to promote those six days, they make it more of a festival type atmosphere with bands playing when the races are over. There is nothing in this development agreement that would prohibit that, but as long as HBPA is the owner, there would never be a motorized activity on that surface.

ACTION BY PLANNING COMMISSION:

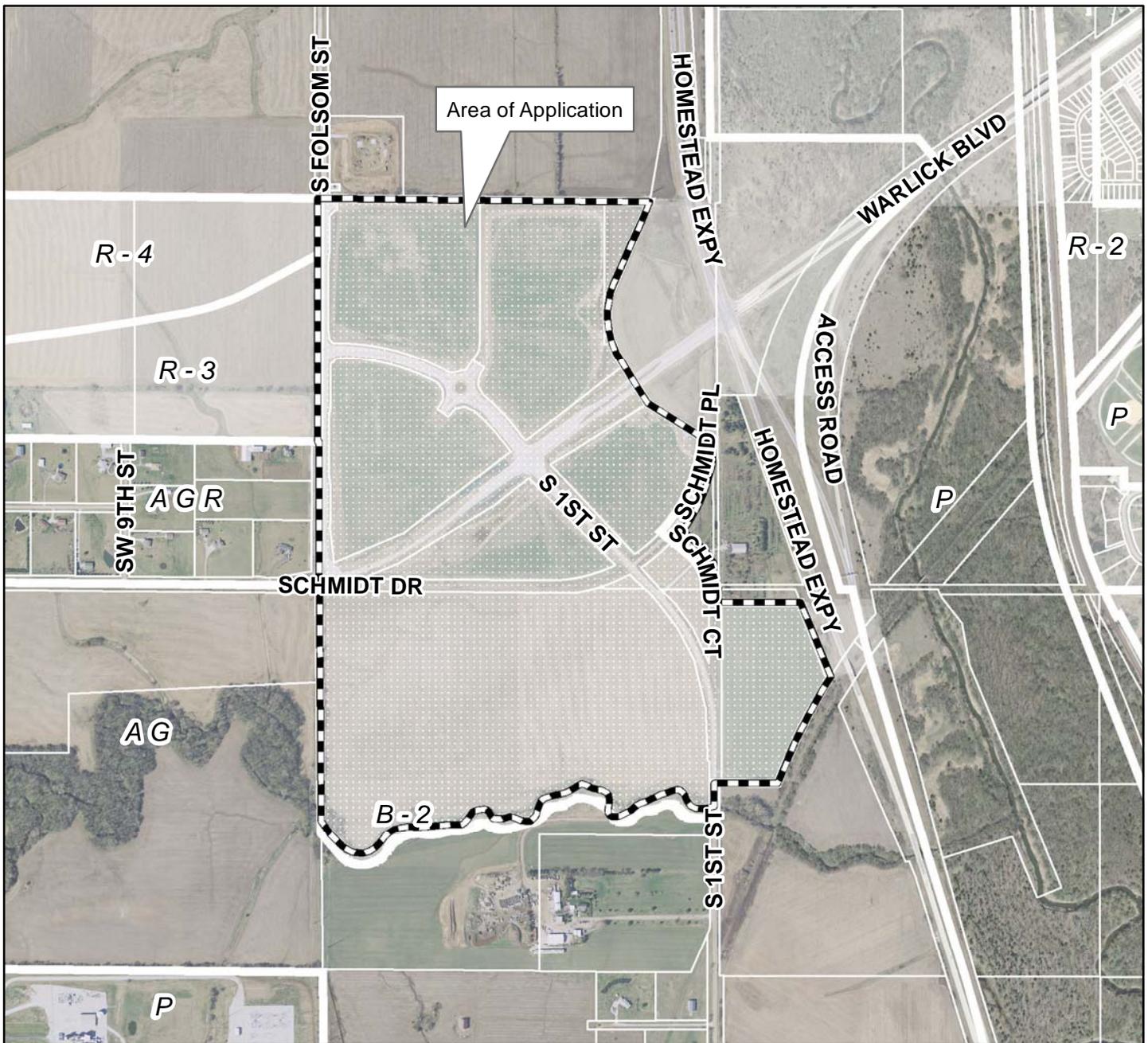
July 11, 2012

Lust moved to approve the staff recommendation of conditional approval, with the amendment to Condition #2.9 requested by the applicant, seconded by Sunderman.

Lust stated that she is happy to see something going into this area with a lot of money invested by the city.

Francis believes this is a good use for that area and she looks forward to seeing some growth out there.

Motion for conditional approval, as amended, carried 8-0: Gaylor Baird, Butcher, Cornelius, Esseks, Francis, Hove, Lust and Sunderman voting 'yes'; Weber absent. This is a recommendation to the City Council.



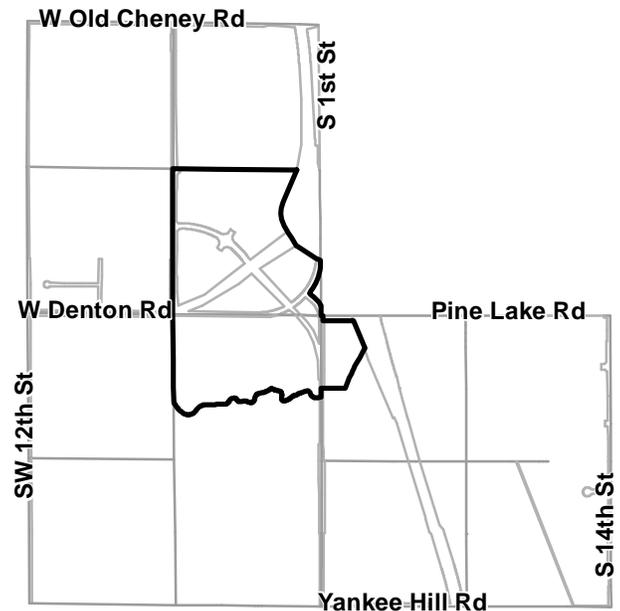
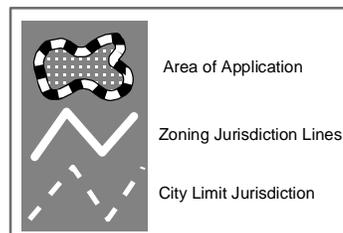
2010 aerial

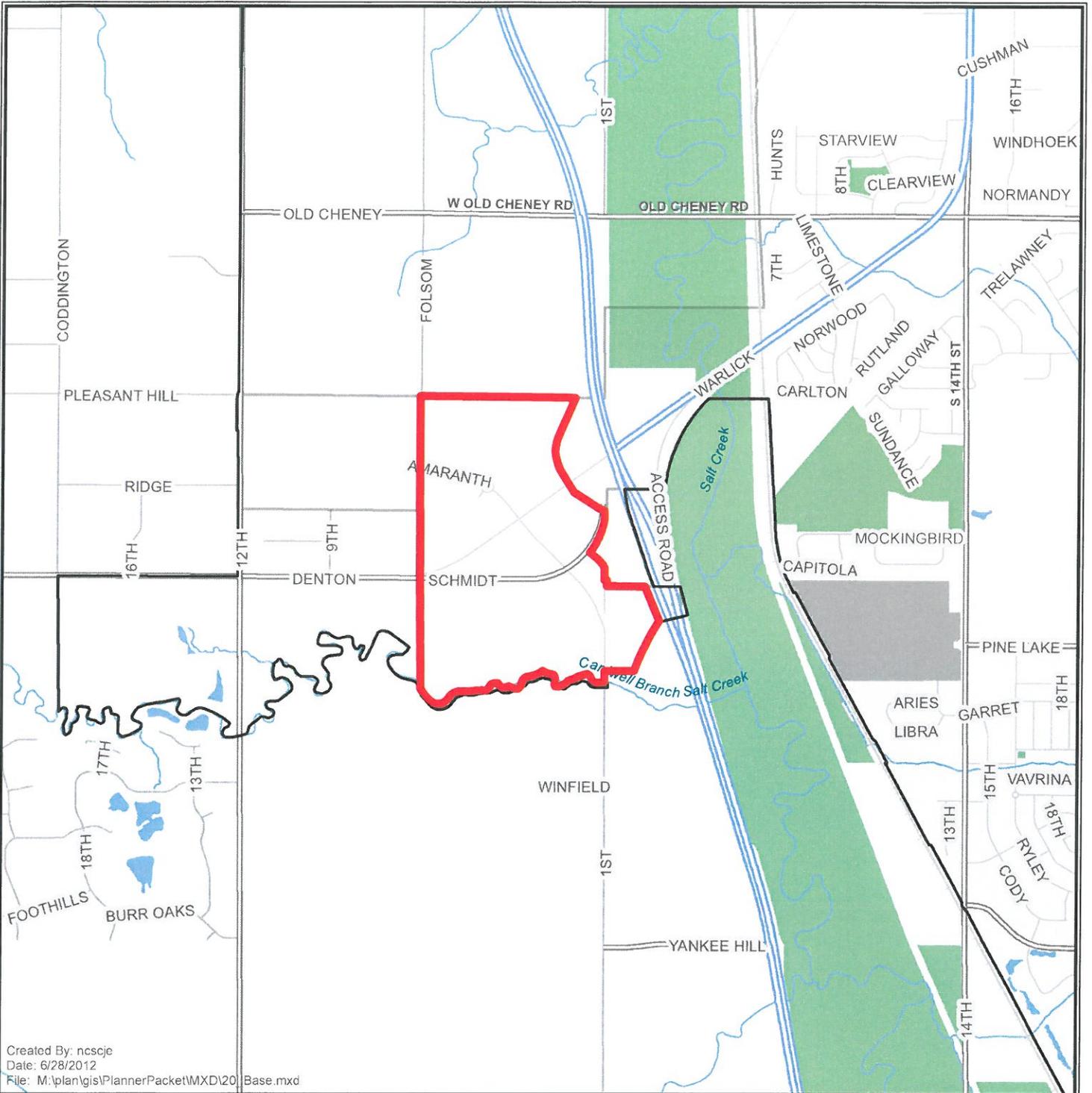
Change of Zone #05061A Southwest Village PUD Hwy 77 & W Denton Rd

Zoning:

- R-1 to R-8 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
- 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
- I-3 Employment Center District
- P Public Use District

Three Square Miles
Sec. 15 T09N R06E
Sec. 22 T09N R06E
Sec. 23 T09N R06E





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 Date: 6/28/2012
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LINCOLN - LANCASTER COUNTY
PLANNING DEPARTMENT



Information Technology Services
 535 South 10th Street
 Lincoln, Nebraska 68508
 Ph: 402.441.7491 Fax: 402.441.6977

Sections: 15-09-06, 14-09-06, 22-09-06,
 23-09-06

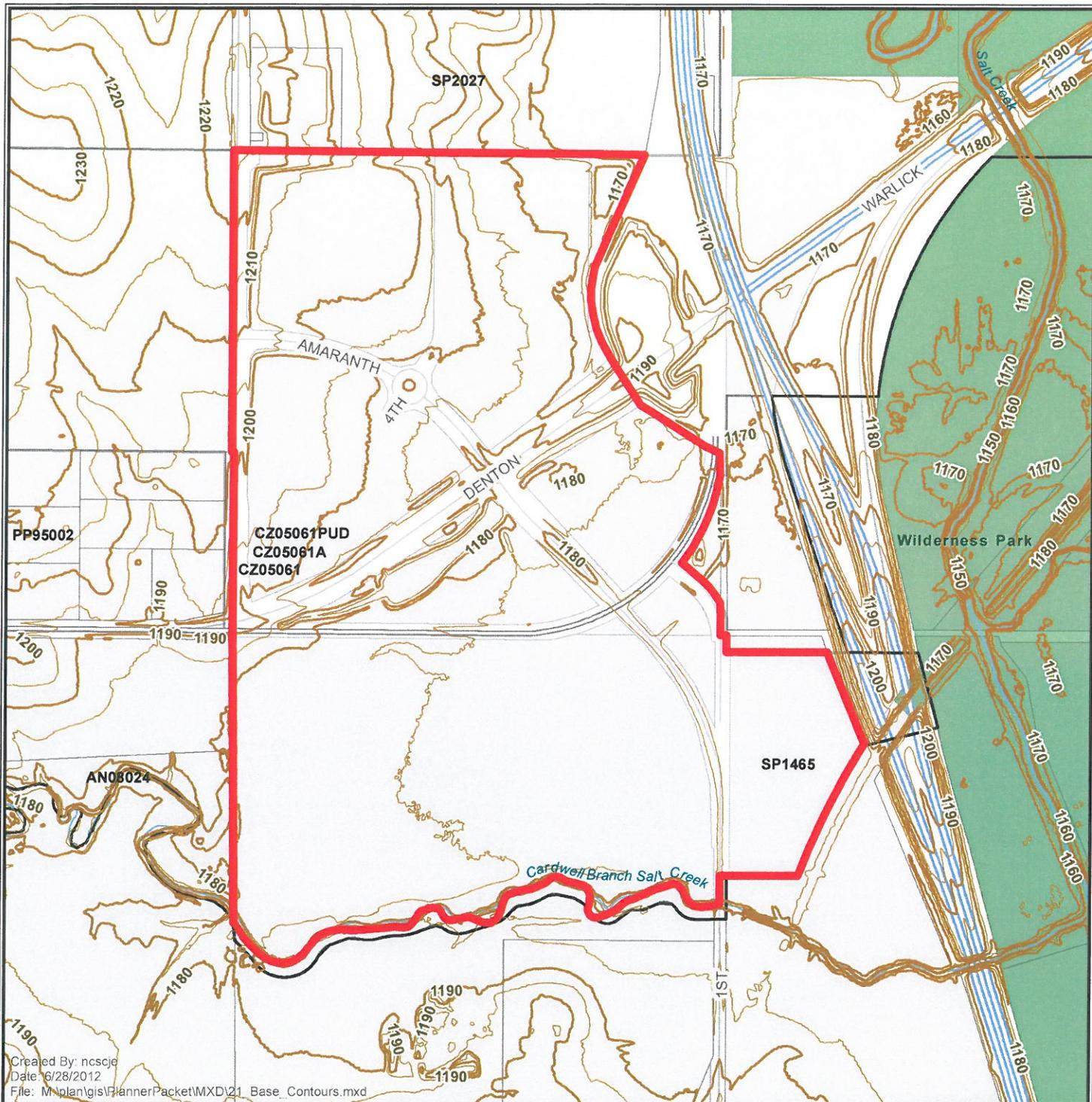


Consult the detailed Application information at
<http://www.lincoln.ne.gov/asp/city/plan/permap.asp>

Application Number
CZ05061A

017





LINCOLN - LANCASTER COUNTY
PLANNING DEPARTMENT



Information Technology Services
535 South 10th Street
Lincoln, Nebraska 68508
Ph: 402.441.7491 Fax: 402.441.8377

Sections: 15-09-06, 14-09-06, 22-09-06,
23-09-06



Consult the detailed Application information at
<http://www.lincoln.ne.gov/asp/city/plan/permap.asp>

Application Number

CZ05061A

2010 Contours

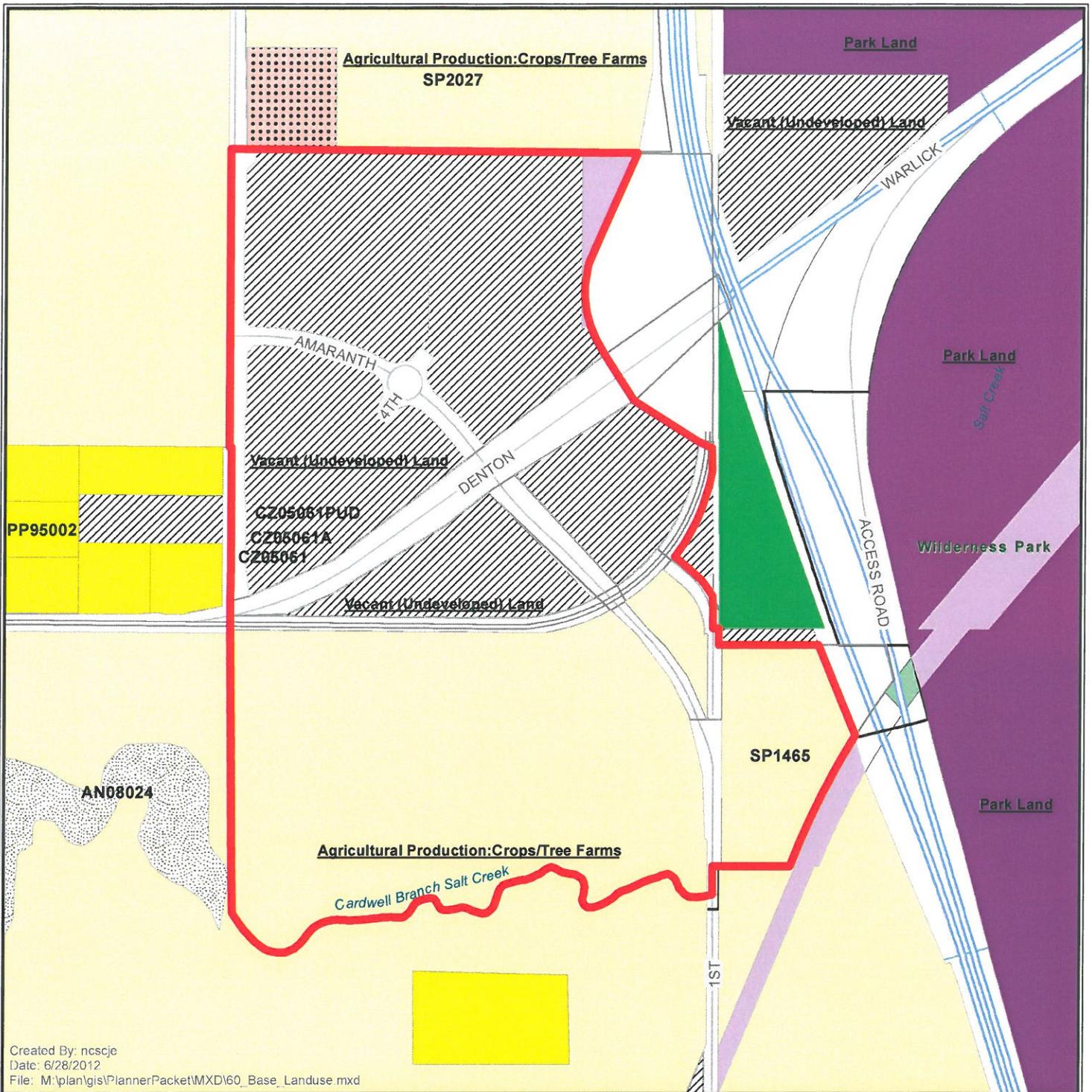


018

Location Overview



Lincoln's Future Service Limit
Shown as Black Outline

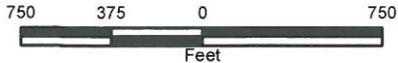


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LINCOLN - LANCASTER COUNTY
PLANNING DEPARTMENT



Sections: 15-09-06, 14-09-06, 22-09-06,
 23-09-06



Consult the detailed Application information at
<http://www.lincoln.ne.gov/asp/city/plan/permapp.asp>

Application Number

CZ05061A

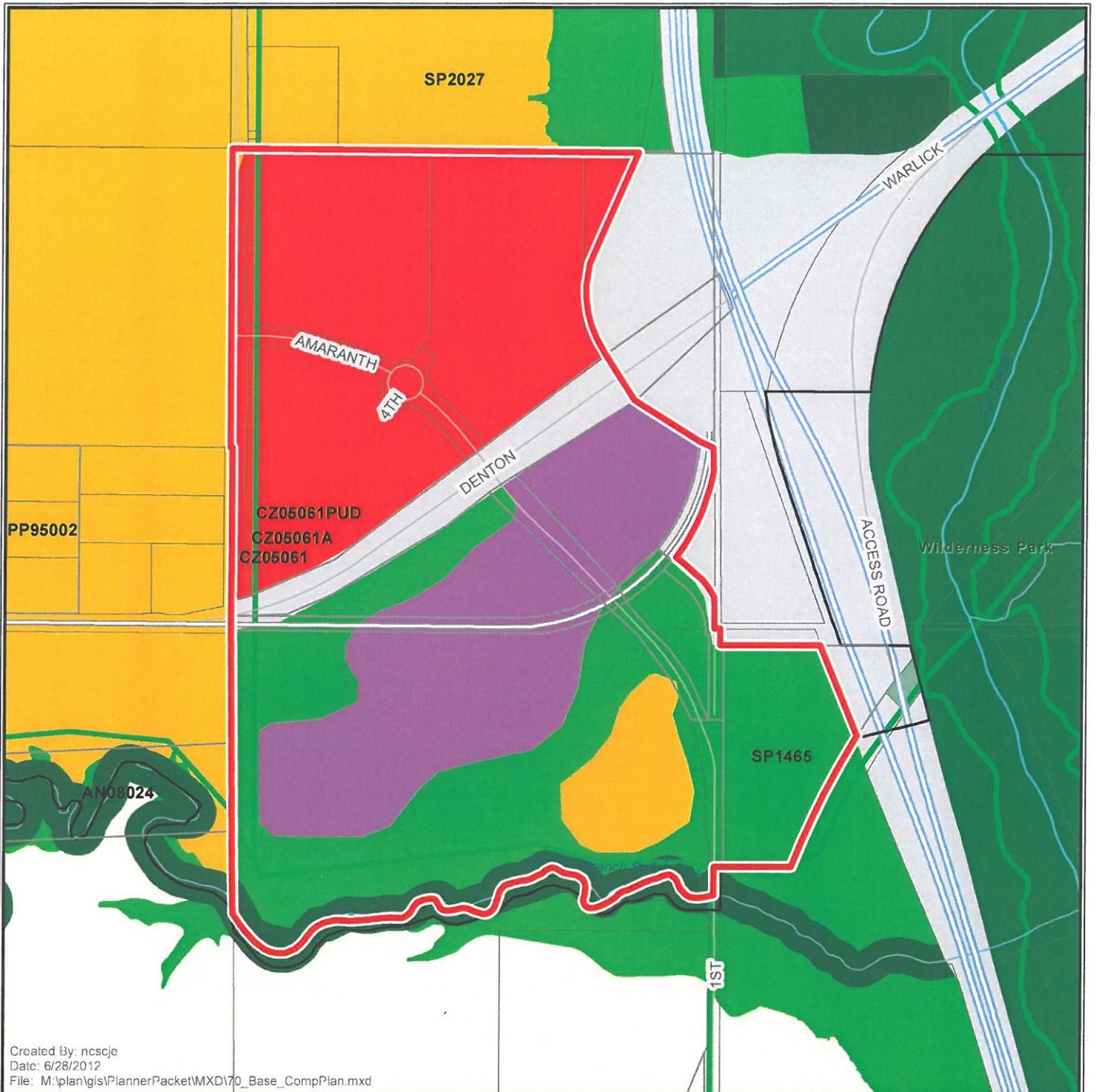
Existing Landuse

- | | |
|-----------------------|-----------------------------|
| 11 - SF Detached | 41-44 - Pub/Semi-Pub |
| 12 - Duplex | 51 - Parks |
| 13 - SF Attached | 52 - Open Space |
| 14 - Multiple | 53 - Golf Course |
| 15,16,18 - GQ/SH/BB | 61,62 - Lakes/Streams |
| 17 - MH/TC | 63 - Wetlands |
| 21,22 - Commercial | 64 - Environmental Preserve |
| 23 - Parking Lot | 65 - Forest/Woodland |
| 24 - Parking Garage | 81 - Ag: Crops/Tree farm |
| 31 - Light Industrial | 82 - Ag: Livestock/Animal |
| 32 - Heavy Industrial | 83 - Mining/Extraction |
| 33 - Utility Facility | 84 - Pasture/Grassland |
| 34 - Railroad | 90 - Vacant/Undevel |
| 35 - Airport | |

019

Location Overview





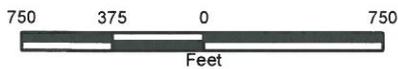
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LINCOLN - LANCASTER COUNTY
PLANNING DEPARTMENT



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 555 South 10th Street
 Lincoln, Nebraska 68508
 Ph: 402.441.7491 Fax: 402.441.6977

Sections: 15-09-06, 14-09-06, 22-09-06,
 23-09-06



Application Number CZ05061A

Future Landuse(2040 Comp. Plan)



Potential Large
 Employer
 Opportunity Areas

- Open Space
- Res - Low Density Beyond 2040
- Agricultural
- Residential - Low Density
- Residential - Urban Density
- Ag Stream Corridor
- Commercial
- Industrial
- Public & Semi-Public
- Lakes & Streams
- Environmental Resources

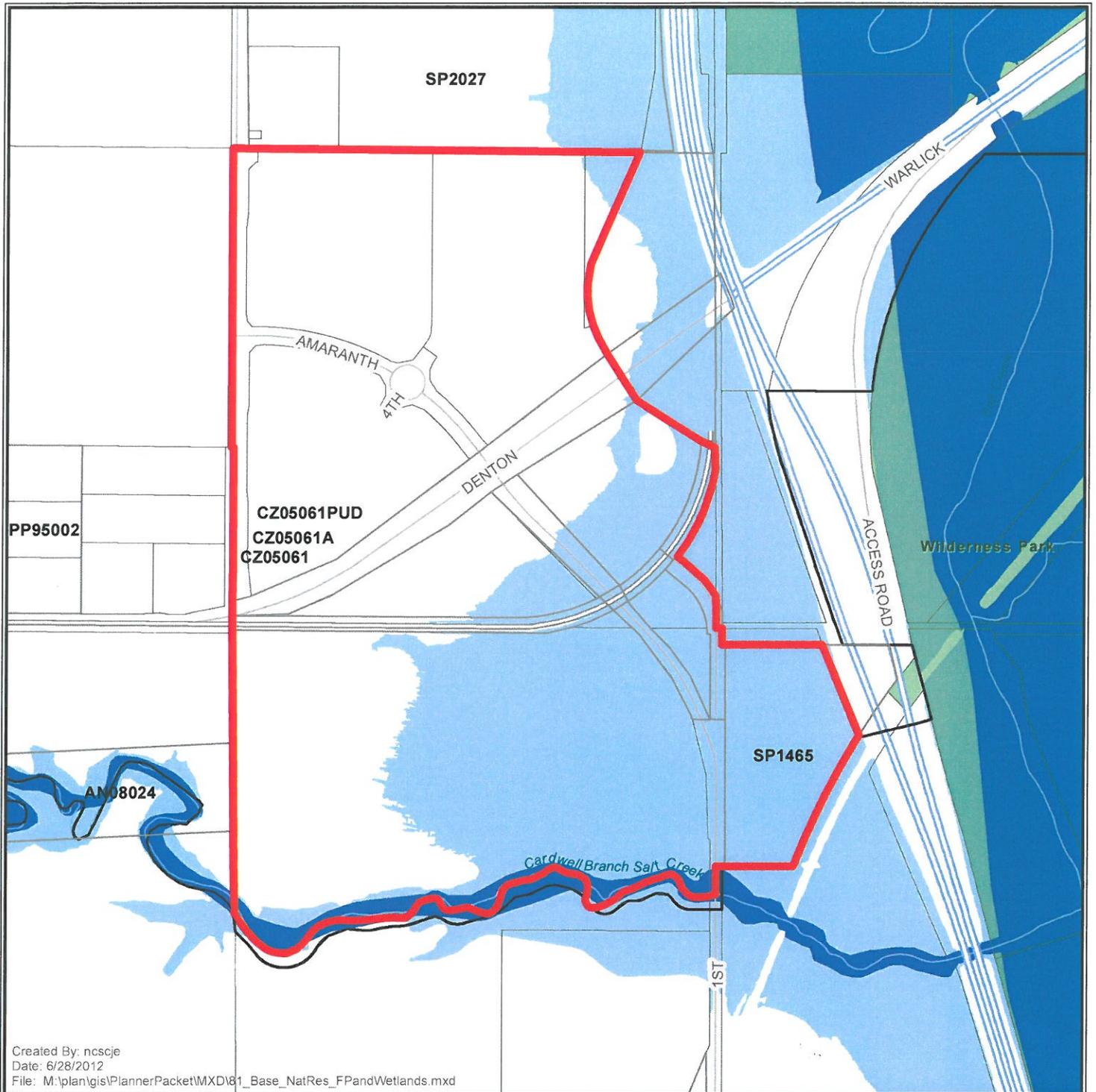
020

Location Overview



Lincoln's Future Service Limit
 Shown as Black Outline

Consult the detailed Application information at
<http://www.lincoln.ne.gov/asp/city/plan/permap.asp>



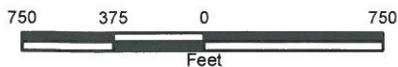
Created By: ncsjcj
 Date: 6/28/2012
 File: M:\plan\gis\PlannerPacket\MXD\81_Base_NatRes_FPandWetlands.mxd

LINCOLN - LANCASTER COUNTY
PLANNING DEPARTMENT



Information Technology Services
 555 South 10th Street
 Lincoln, Nebraska 68508
 Ph: 402.441.7491 Fax: 402.441.8377

Sections: 15-09-06, 14-09-06, 22-09-06,
 23-09-06



Consult the detailed Application information at
<http://www.lincoln.ne.gov/asp/city/plan/permap.asp>

Application Number CZ05061A

Natural Resources - Floodplain and Wetlands

FEMA Floodplain Saline Wetlands NWI Wetlands

- | | | |
|---------------|--------------|---------|
| Floodplain | Category I | Lakes |
| Floodway | Category II | Rivers |
| Salt Creek | Category III | Marshes |
| Storage Areas | Category IV | |

Location Overview



Lincoln's Future Service Limit
 Shown as Black Outline

021

CHANGE OF ZONE #05061A
MOTION TO AMEND

I hereby move to amend Condition 2.9 recommended by the Lincoln City/Lancaster County Planning Staff Report for Change of Zone #05061A to read as follows:

2.9 2.3⁹ Show a south bound right and left turn provision at the Phase 2 driveway to the parking lot and a north bound paved left turn lane to this driveway, or, at the time of the Phase 2 construction, provide a traffic intersection analysis that shows these intersection improvements are not necessary to meet the intent of the Access Management Policy. Show 70 feet of right of way per the subdivision requirements for the access points on 1st Street.

Introduced by:

Approved as to Form & Legality:

City Attorney

Staff Review Completed:

Administrative Assistant

Requested by: Olsson Associates

RECEIVED

JUL 11 2012

Lincoln/Lancaster Co.
Planning Department

**Southwest Village
Planned Unit Development**

**DEVELOPMENT
PLAN**

Warlick Boulevard
& US Highway 77 Area

RECEIVED

SEP - 4 2012

Lincoln/Lancaster Co.
Planning Department

_____, 2012

Introduction

Southwest Village Planned Unit Development (“PUD”) is located near U.S. Highway 77 and Warlick Boulevard. The PUD is intended to provide planned residential, office, retail, services, hotel and light industrial facilities as a mixed-use employment and commercial center in an attractive setting. The mixed use area would protect the 100 year flood prone areas and provide open space and other public amenities through the protection of a written conservation easement. The PUD is authorized and submitted as a planned unit development district pursuant to Chapter 27.60 of the Lincoln Municipal Code, as may be amended from time to time. The PUD includes three sub-areas:

- B-2 Area
- I-3 Area
- AG Area

The attached Site Map shows the property subject to the PUD (“Property”) and the three overlay sub-areas. The buildings located within the Property are required to comply with the Architectural Design Standards that are attached hereto as Exhibit “A”.

Development Plan

This Development Plan for the Southwest Village PUD (“Development Plan”) describes the regulatory land use provisions. The Development Plan is comprised of two parts: PUD Regulations and PUD Permit.

Part 1. PUD Regulations: The PUD Regulations have the following four sections:

- 1a. **Property PUD:** Regulations applicable for the entire Property comprising the Southwest Village PUD;
- 1b. **B-2 Area:** Regulations applicable to those portions of the Property marked B-2 Area; and
- 1c. **I-3 Area:** Regulations applicable to those portions of the Property marked I-3 Area; and
- 1d. **AG Area:** Regulations applicable to those portions of the Property marked AG Area.

The PUD Regulations contain various references to Lincoln Municipal Code (“L.M.C.”) provisions and corresponding City of Lincoln Design Standards (“Design Standards”).

Part 2. PUD Permit: Architectural and engineering site maps and illustrations of the uses of the Property, including corresponding notes, shall apply to the Property (“PUD Permit”). The PUD Permit also designates AG “Conservation Use Areas” which are subject to written conservation easements in form

substantially similar to the Conservation Easements attached hereto as Exhibit "B". The Conservation Easement along the creek must be granted to the City prior to a building permit or final plat on any portion of the PUD located south of Schmidt Drive. The Conservation Easement for flood storage and open space must be granted prior to approval of a building permit in Phase II as described on the PUD permit.

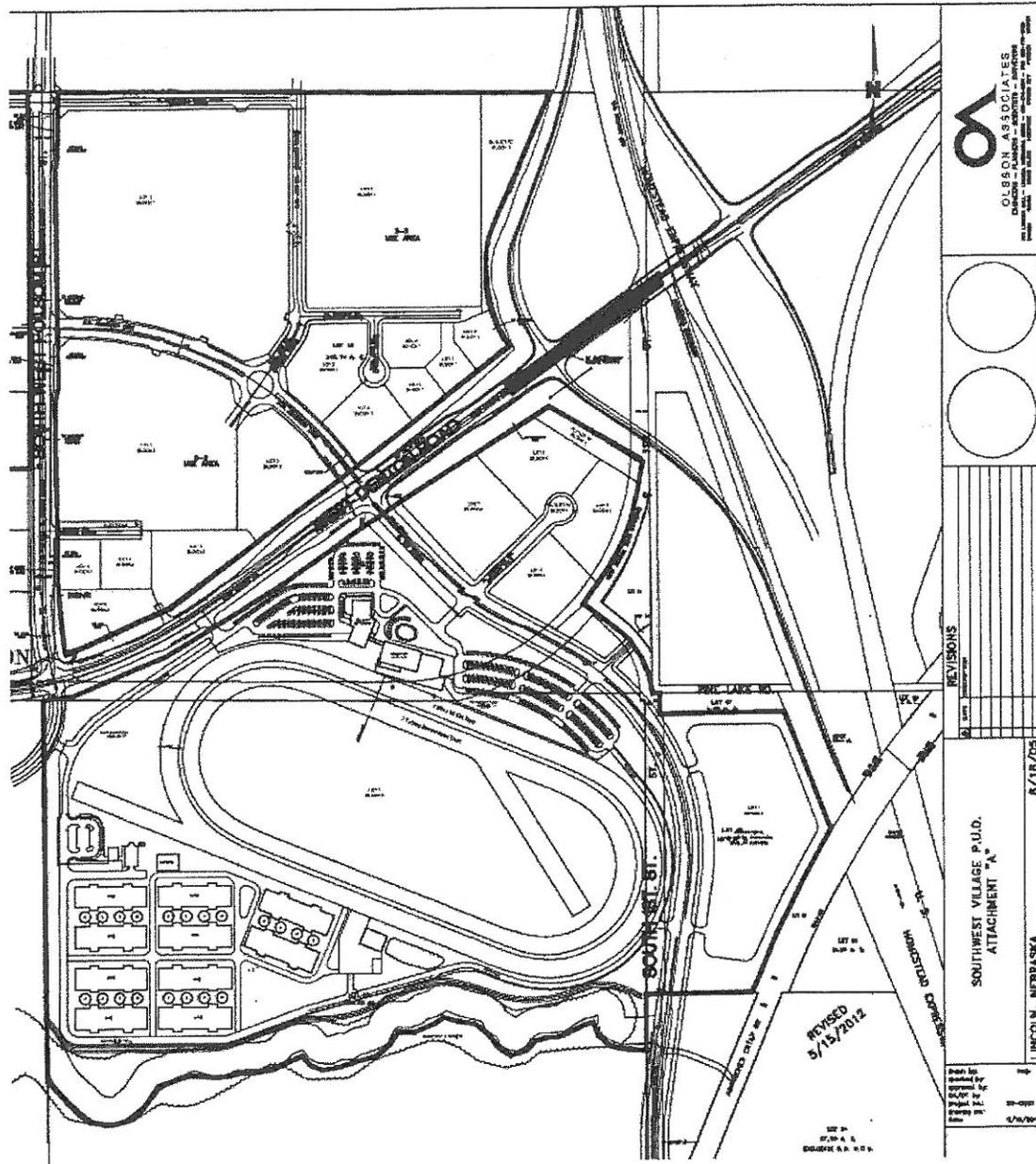
The Development Plan components modify the use limitations and regulations of the L.M.C. The Development Plan is designed to regulate buildings on private properties to shape the public realm and help create quality streets, plazas, open space and other public spaces.

Southwest Village PUD

The Southwest Village PUD is authorized and approved as a planned unit development district pursuant to Chapter 27.60 of the L.M.C., as may be amended from time to time. A separate use permit is not necessary or required to permit any use permit use. This Southwest Village PUD will replace any required use permit under the L.M.C. and any applicable ordinances, regulations, codes, and design standards. Unless otherwise stated herein, a separate special permit is not required for any permitted special use.

After approval of the Southwest Village PUD, building permits, certificates of occupancy and final plats of the property will be issued or approved upon general compliance with the Development Plan as approved, or as amended. In circumstances where there are minor variations from the Development Plan, the Planning Director or his/her designee, shall review the proposal and determine if the proposal is in general conformance with the spirit and intent of the approved PUD. After the City Council has approved the PUD, the Planning Director is authorized to approve amendments to the Development Plan pursuant to L.M.C. §27.60.060. In circumstances where there are conflicts between the PUD Regulations and the PUD Permit, the PUD Permit shall control.

Site Plan



Part 1: PUD Regulations

The PUD Regulations are comprised of four sections:

- 1a. **Property PUD:** Regulations applicable for the entire Property comprising the Southwest Village PUD;
- 1b. **B-2 Area:** Regulations applicable to those portions of the Property marked B-2 Area;
- 1c. **I-3 Area:** Regulations applicable to those portions of the Property marked I-3 Area; and
- 1d. **AG Area:** Regulations applicable to those portions of the Property marked AG Area.

Part 1a: Property PUD – General Regulations

These General Regulations are applicable for the entire Property comprising the Southwest Village PUD. Should the terms of these General Regulations and the Area Regulations conflict, these General Regulations shall control.

- (a) Definitions.
(1) A “commercial building” shall mean an office, nonprofit religious, education, and philanthropic institutions, banks, savings and loan association, credit union, and finance companies.
- (b) General Regulations. Any development, including building and open land uses, except farming and the sale of farm products, shall be prohibited on the Property prior to the approval of a PUD Permit in conformance with the requirements of this Development Plan.
- (c) Use Regulations.
(1) Uses within the B-2 and I-3 Areas shall be a mix of uses and shall be governed by the following land use chart:

Uses	Floor Area (Square Feet)
Office and Industrial	300,000*
Commercial/Retail	700,000
Hotel/Motel	250 Rooms
Residential	250 dwelling units
Total	1,000,000**

*The PUD must have at least an aggregate of 300,000 square feet of office and/or light industrial uses.

**The B-2 and I-3 Areas shall not exceed an aggregate of 1,000,000 square feet of office, industrial and commercial/retail square feet.

(i) For purposes of the specific regulations described in this section, banks, savings and loan associations, credit unions, and finance companies may be counted as office use in paragraph (c)(1) above.

(ii) For purposes of the specific regulations described in this section, hotels and motels, up to the maximum 250 allowed rooms, shall not be counted towards the office, commercial/retail or industrial numbers stated in paragraph (c)(1) above.

(iii) For purposes of the specific regulations described in this section, dwellings located above the first story of a building shall not be

counted as part of the 250 dwelling units permitted in paragraph (c)(1) above, if the first story of the building is used for a nondwelling use.

(iv) The chart attached hereto as Exhibit "C" and incorporated herein by this reference shall be completed in conjunction with each building permit issued within the PUD.

(2) Uses within the AG Area shall be governed by the following land use chart:

Uses	Floor Area (Square Feet)
Horse Racing Track, Grandstand and Related Facilities	
Commercial/Retail	60,000

In the event a horse racing track is not constructed within the AG Area, the following land use chart shall govern the AG Area; provided that, revised PUD Plans are submitted to the City and approved by administrative amendment:

Uses	Floor Area (Square Feet)
Office, Industrial and other Permitted Uses	200,000
Commercial/Retail	100,000*
Residential	160 dwelling units
Total	300,000

*The AG Area shall not exceed an aggregate of 100,000 square feet of commercial/retail square feet. The chart attached hereto as Exhibit "C" and incorporated herein by this reference shall be completed in conjunction with each building permit issued within the AG Area.

(d) Specific Regulations.

(1) The pedestrian system within the PUD will provide several entry points from the adjacent streets and adequate internal circulation for pedestrians and shall meet the City of Lincoln Pedestrian Design Standards.

(e) Subdivision.

(1) Southwest Village PUD Permit shall be deemed a preliminary plat.

(2) The PUD Permit shall meet the definition and usage of preliminary plat as that term is used in the L.M.C. The Development Plan includes the general form and contains the information typically required of a preliminary plat. The

Planning Director may add or delete any informational requirements in order to determine potential impacts.

(3) Lot lines and lot numbers do not need to be submitted with the Southwest Village PUD. A total maximum number of dwelling units is stated on the Southwest Village PUD. Instead, lot lines and lot numbers will be submitted with the final plat(s) and no amendments to the PUD will be necessary. The Southwest Village PUD, in conjunction with the final plat(s), will conform to the requirements of Chapter 26.15.

(4) Section 26.11.030 (b), (c) and (d), Staff Review of Preliminary Plat, shall not apply. Instead, per the PUD Ordinance (27.60.040) upon filing of a development plan, together with all maps, data and information required, the application shall be reviewed and a staff report shall be prepared for the Planning Commission.

(5) Section 26.11.110, Responsibilities for Improvements in Collector and Major Streets, is hereby modified so that the subdivider shall not have any responsibilities for Major Streets, except for the payment of Impact Fees or any alternative sums as provided in the Southwest Village Annexation Agreement.

(6) The property may be subdivided into lots of record, including horizontal air rights subdivision, provided the lots comply with the City Design Standards.

(f) Development Plan Standards.

(1) Pursuant to Section 26.23.125, Pedestrian Ways, block lengths may exceed 1000' in areas where the Southwest Village PUD is attempting to avoid crossing or connecting through the minimum flood corridor, conservation easement area, or Highway 77 as shown in the Southwest Village PUD and will not require a pedestrian way easement.

(2) Pursuant to Section 26.23.130, Block Sizes, block lengths may exceed 1320' in areas where the Southwest Village PUD is attempting to avoid crossing the minimum flood corridor, conservation easement area, or Highway 77 as shown in the Southwest Village PUD.

(3) Pursuant to Section 26.23.140, Lot, Southwest Village PUD's side lines of lots will be set to provide the best buildable area based on street patterns, conservation easement areas, Highway 77 and amenities on the site.

(g) Sewer Design Standards.

(1) Sanitary Design Sewer Design Standards, Section 2, Sanitary Sewer Policies Section shall be modified to allow a temporary force main and pump that is designed and operated pursuant to the City's temporary force main and pump policies.

(h) Parking.

(1) Parking spaces are permitted in any required rear yard; provided that there shall be a five (5) feet minimum open space buffer between the lot line and the parking spaces.

(2) Notwithstanding any contrary provision stated in the L.M.C., all required B-2 Area and I-3Area parking spaces shall be provided either (i) on the same lot as the use for which they are required, (ii) off-premise in the cross-parking easement area or (iii) shared parking pursuant to Section 27.67.040(f).

- (i) Signage.
 - (1) Off-premise signs (billboards) are prohibited within all areas of the PUD, except that ground signs which serve to advertise conducted business within the PUD but are off the premise on which the ground sign is located are permitted within the PUD. This provision does not allow any additional signs beyond the number allowed in the B-2, I-3 and AG Areas.
 - (2) No pole signs will be permitted within the PUD.

- (j) Chapter 2.00 Sanitary Sewer Design Standards.
 - (1) Pursuant to Section 3, Design and Construction, no manholes shall exceed 15' deep and no sewer mains shall exceed 18' in depth, except for those sections of line extending under the U.S. Highway 77 and Warlick Boulevard interchange improvements.

- (k) Pursuant to Section 2, Policies, the distance between intersections of streets along the major streets will be a minimum of 1,000 feet and a maximum of a quarter mile, except for the section of major street between the Warlick Boulevard and South 1st Street intersection and the Cardwell Lane and South 1st Street intersection, which will be a minimum of 800 feet.

Part 1b: B-2 Area

Regulations applicable to those portions of the Property marked B-2 Area.

B-2 Area

This area is intended to provide a developing area for planned retail, service and office uses to serve neighborhoods. This area includes a PUD Permit to provide for the integration of the business area with adjacent residential areas and thus reduce the adverse impact on residential areas through enhanced design.

1. Scope of Regulations.

The regulations set forth in this chapter, or set forth elsewhere in this title when referred to in this chapter, are the regulations in the B-2 Area.

2. General Purpose.

The regulations for the B-2 Area set forth in this chapter are established to permit the development of local retail shopping, services and office facilities and related activities which will provide for planned and controlled consumer services on a neighborhood level, promote healthful economic growth, create a desirable environment, best complement the general land use pattern of the community, and assist in implementing the established goals and policies of the community

3. Permitted Uses.

All permitted uses, permitted conditional uses and permitted special uses allowed within the B-2 Planned Neighborhood Business District, as it currently exists and as it may be amended from time to time, shall be permitted uses within the B-2 Area. A building or premises in the B-2 Area may be used for any permitted use.

4. Accessory Uses.

Accessory uses permitted in the B-2 Area are accessory buildings and uses customarily incident to the permitted uses.

5. Parking Regulations.

All parking within the B-2 Area shall be regulated in conformance with the provisions of Chapter 27.67 relating to the B-2 Planned Neighborhood Business District. (

6. Sign Regulations.

Signs within the B-2 Area shall be regulated in conformance with the provisions of Chapter 27.69 relating to the B-2 Planned Neighborhood Business District.

7. Grading and Land Disturbance Regulations.

Grading and land disturbance within the B-2 Area shall be regulated in conformance with the provisions of Chapter 27.81.

8. Height and Area Regulations.

The maximum height and minimum lot requirements within the B-2 Area shall be per Chapter 27.72 Height and Lot Regulations relating to the B-2 Planned Neighborhood Business District, with the exception of the required front yard, which shall be as shown on the Southwest Village PUD Site Plan.

9. Architectural Design Standards.

(a) The buildings located within the B-2 Area shall comply with the Architectural Design Standards that are attached hereto as Exhibit "A".

(b) All buildings within the B-2 Area shall be subject to the Architectural Design Standards. Each building's elevation shall be first submitted to the property owner's architectural review committee for review and approval. Then a letter of approval from the architectural review committee (which shall describe how the elevations conform to the Architectural Design Standards) along with the building elevations shall be submitted to the Planning Director for review and approval, prior to issuance of a building permit.

Part 1d: I-3 Area

Regulations applicable to those portions of the Property marked I-3 Area.

I-3 Area

1. Scope of Regulations.

The regulations set forth in this chapter, or set forth elsewhere in this title when referred to in this chapter, are the district regulations in the I-3 Area.

2. General Purpose.

The regulations for the I-3 Area set forth in this chapter are established to permit the development of attractive office and light industrial facilities as employment centers for location of plant facilities or headquarters of major employers. The I-3 Area is also intended to provide such employment centers with the surrounding support uses, including complementary office and retail use complementing the general land use pattern of the community and assisting the implementation of the adopted goals and polices of the community.

3. Use Regulations.

(a) A building or premises in the I-3 Area may be used for any permitted use allowed within the I-3 Employment Center District, as it currently exists and as it may be amended from time to time.

(b) A building or premises in the I-3 Area may be used for any permitted conditional use within the I-3 Employment Center District, as it currently exists and as it may be amended from time to time, that conforms with the conditions prescribed in the I-3 Employment Center District.

(c) A building or premises in the I-3 Area may be used for any permitted special use allowed within the I-3 Employment Center District, as it currently exists and as it may be amended from time to time, provided that a special permit for such use has been obtained in conformance with the requirements of the I-3 Employment Center District and L.M.C. Chapter 27.63, with the exception of the sale of alcoholic beverages for consumption on the premises and the sale of alcoholic beverages for consumption off the premises, which uses shall be permitted uses in the I-3 Area.

4. Accessory Uses.

Accessory uses permitted in the I-3 Area are accessory buildings and uses customarily incident to the permitted uses, except that early childhood care facilities and schools are not a permitted accessory use to a church in the I-3 Area. Accessory uses involving the open storage of materials or other articles shall only be allowed in areas enclosed or otherwise adequately screened from public view with an enclosure or screen at least six feet in height.

5. Parking Regulations.

All parking within the I-3 Area shall be regulated in conformance with the provisions of Chapter 27.67 relating to the I-3 Employment Center District.

6. Sign Regulations.

Signs within the I-3 Area shall be regulated in conformance with the provisions of Chapter 27.69 relating to the I-3 Employment Center District.

7. Grading and Land Disturbance Regulations.

Grading and land disturbance within the I-3 Area shall be regulated in conformance with the provisions of Chapter 27.81.

8. Height and Area Regulations.

The maximum height and minimum lot requirements within the I-3 Area shall be per Chapter 27.72 relating to the I-3 Employment Center District, with the exception of the required front yard, which shall be as shown on the Southwest Village PUD Site Plan.

9. Architectural Design Standards.

(a) The buildings located within the I-3 Area shall comply with the Architectural Design Standards that are attached hereto as Exhibit "A".

(b) All buildings within the I-3 Area shall be subject to the Architectural Design Standards. Each building's elevation shall be first submitted to the property owner's architectural review committee for review and approval. Then a letter of approval from the architectural review committee (which shall describe how the elevations conform to the Architectural Design Standards) along with the building elevations shall be submitted to the Planning Director for review and approval, prior to issuance of a building permit.

Part 1d: AG Area

Regulations applicable to those portions of the Property marked AG Area.

AG AREA

1. Scope of Regulations.

The regulations set forth in this chapter, or elsewhere in this title when referred to in this chapter, are the district regulations in the AG agriculture district except as otherwise noted in the PUD.).

2. Permitted Uses.

A building or premises shall be permitted to be used for the following purposes in the AG Area:

- (a) Agriculture, except confined feeding facilities for livestock or poultry;
- (b) Horse racing track, grandstand, and related facilities;
- (c) Breeding, raising, management, and sale of horses;
- (d) Stables and riding academies;
- (e) Public uses: including but not limited to public parks, playgrounds, golf courses, and recreational uses; fire stations; public elementary and high schools, or private schools having a curriculum equivalent to a public elementary or public high school; and public utilities and utility distribution systems;
- (f) Stores and shops for sale of goods and merchandise at retail;
- (g) Restaurants;
- (h) Broadcast towers;
- (i) Pet cemeteries;
- (j) Veterinary facilities;
- (k) Recreational facilities;
- (l) Clubs;
- (m) Sale of alcoholic beverages for consumption on and off the premises;
- (n) Caretaker residence to be used in connection with the horse racing track and related facilities.

3. Permitted Conditional Uses.

A building or premises may be used for the following purposes in the AG Area in conformance with the conditions prescribed herein:

- (a) Tents and other temporary structures: Tents or other temporary structures shall be permitted for the temporary or seasonal sales of goods at retail under the following conditions:
 - (1) A tent or other temporary structure shall not reduce the amount of on-site parking to less than the minimum required;
 - (2) A tent or other temporary structure shall not remain on the premises for more than 180 consecutive days;

(3) A tent or other temporary structure shall comply with all applicable building and life safety codes;
 A tent or other temporary structure need not be shown on the approved use permit site plan.

4. Accessory Uses.

Accessory uses permitted in the AG Area are accessory buildings and uses customarily incident to any of the permitted uses in the AG Area.

5. Parking Regulations.

All parking within the AG Area shall be regulated in conformance with the provisions of Chapter 27.67 of the L.M.C. relating to the AG Agricultural District.

6. Sign Regulations.

Signs within the AG Area shall be regulated in conformance with the provisions of Chapter 27.69 of the L.M.C. relating to the B-2 Planned Neighborhood Business District. The simulcast building, grandstand and stables may each be considered a main building for purposes of Chapter 27.69. In addition, the AG Area shall be considered a separate "Center" for purposes of Chapter 27.69.

7. Grading and Land Disturbance Regulations.

Grading and land disturbance within the AG Area shall be regulated in conformance with the provisions of Chapter 27.81 of the L.M.C.

8. Height and Area Regulations.

Table 27.07.080(a)							
	Lot Area	Avg. Lot Width	Frontage	Req'd Front Yard	Req'd Side Yard	Req'd Rear Yard	Height
All Permitted Uses	14 acres	550'	550'	*	50'	50'	40'***
*The required front yard setbacks are shown on the Southwest Village PUD Site Plan. ***Except (i) as otherwise limited by the Architectural Design Standards, and (ii) a grandstand associated with a horse racing track may be up to 70' in height.							

9. Architectural Design Standards.

(a) The buildings located within the AG Area shall comply with the Architectural Design Standards that are attached hereto as Exhibit "A".

(b) All buildings within the AG Area shall be subject to the Architectural Design Standards. Each building's elevation shall be first submitted to the property owner's architectural review committee for review and approval. Then a letter of approval from the architectural review committee (which shall describe how the elevations conform to the Architectural Design Standards) along with the building elevations shall be submitted to the Planning Director for review and approval, prior to issuance of a building permit.

Exhibit "A"

**ARCHITECTURAL DESIGN
STANDARDS**

**Southwest Village PUD
Warlick Boulevard & U.S. Highway 77
Lincoln, Nebraska**

1. DESIGN REVIEW PROCESS

All buildings within the Southwest Village PUD shall be subject to the Architectural Design Standards. Each building's elevation shall be first submitted to the Developer's Coordinating Architect for review and approval. Then a letter of approval from the Developer's Coordinating Architect (which shall describe how the elevations conform to the Architectural Design Standards) along with the building elevations shall be submitted to the Planning Director for review and approval, prior to issuance of a building permit. The Planning Director may waive any requirement described herein or approve building that may not meet the specific requirements of the Architectural Design Standards, but are consistent with sound community urban design elements.

2. DEFINITIONS

Appearance. The outward aspect visible to the public.

large rear door access and a retail appearance to the front.

Bufferyard. A landscaped area intended to separate and partially obstruct the view of two adjacent land uses or properties from one another. Various built landscape features maybe included within the bufferyard that may include pedestrian walkways, retaining walls signage or utilities.

Landscape. Plant materials, topography, and other natural physical elements combined in relation to one another and to man-made structures.

City. City of Lincoln

Mechanical equipment. Equipment, devices, and accessories, the use of which relates to water supply, drainage, heating, ventilating, air conditioning, and similar purposes.

Cohesiveness. Unity of composition between design elements of a building or a group of buildings and the landscape development.

Plant materials. Trees, shrubs, vines, ground covers, grass, perennials, annuals, and bulbs.

Flex Space / Industrial Building. A generic term for uses combining light manufacturing and warehousing with store front retailing. Usually having a

Screening. Structure of planting that conceals from view from public ways the area behind such structure or planting.

Shrub. A multi-stemmed woody plant other than a tree.

permanent or temporary location on or in the ground.

Structure. Anything constructed or erected, the use of which requires

3. GEOGRAPHIC AREA

Reserved for future use.

4. SOUTHWEST VILLAGE VISION

It is anticipated that the B-2 and I-3 Areas will be built out with the following project types:

- Retail, Office and Commercial Buildings
- Flex Space Buildings and Light Industrial Buildings -Residential Buildings

It is anticipated that the AG Area will be built out with the following project types:

- Agricultural Facilities

These building types and land uses are described in the PUD Development Plan.

As a gateway development to the City of Lincoln, it is important for Southwest Village covenants pull the diverse project types listed above together into a development that has a sense of place and visual continuity created by common:

- Style
- Site Elements
- Building Materials
- Color Palettes

Each of the unifying elements listed above are discussed in more detail within their respective sections of this document.

5. THE STYLE OF SOUTHWEST VILLAGE

I. BUILDING MASSING

A. Walls

1. All facades of each building must be designed to be architecturally interesting through the use of massing and horizontal plane changes to create shadows and depth. Building elements such as covered arcades, stepping the facade or recessed entries are suggested to create this building massing requirements. Building facades not visible from public right of ways may provide less interesting design.

B. Roofs

1. If any building incorporates a sloping roof or awning structure, the slope of that roof or awning shall be 6/12 to provide consistency through the project. Building roofs in the AG Area that are located more than 600 feet from public right-of-way may provide a lower slope design.
2. All buildings that have "flat" or low slope roofs shall be parapetted to hide the ballasting from public view.

II. BUILDING MATERIALS WITHIN THE B-2 AND I-3 AREAS

A. Retail, Commercial and Office Buildings over 100,000 S.F. Footprint.

1. Building facades visible from the public right of ways shall be composed of following percentages of building material cumulated over all visible facades.
 - A. 50% or more but not to exceed 80%, Clay Brick or "Quick Brick" or equal, in the earth tone color ranges and Glass with natural aluminum mullions. Glass may be tinted or reflective of a density to conceal interior furnishing in Office Buildings and Flex Space.
 - B. 50% or less but not less than 20% Synthetic Stucco (EFIS), Painted Rock faced Concrete Block, Precast Concrete, or fiber cement board siding in the earth tones.
 - C. 10% of the façade may be a coordinating color material that is not listed in the previous material list.

B. Retail, Commercial and Office Buildings under 100,000 S.F., but more than 25,000 S.F.

1. Building facades visible from the public right of ways shall be composed of the following percentages of building material cumulated over all visible facades.
 - A. 75% or more, but not to exceed 90%, Clay Brick or "Quick Brick" or equal, in the earth tone color ranges and Clear Glass with natural aluminum mullions.
 - B. 25% or less, but not less than 10% Synthetic Stucco (EFIS), Painted Rock faced Concrete Block, Precast Concrete, wood siding or fiber cement board siding in the earth tones.
 - C. 10% of the façade maybe a coordinating color or material that is not listed in the previous material list.

C. Retail, Commercial and Office Buildings under 25,000 S.F.

- A. 90% or more Clay Brick in earth tone color ranges and glass with natural aluminum mullions. Glass may be tinted or reflective of a density to conceal interior furnishing in Office Buildings and Flex Space.
- B. 10% of the façade may be a coordinating color material that is not Clay Brick and Glass. Glass may be tinted or reflective of a density to conceal

interior furnishing in Office Buildings and Flex Space.

D. Flex Space Buildings or Industrial Buildings

1. Flex Space Building facades visible from the public right of ways shall be composed of the following building material cumulated over all visible facades.
 - A. 80% Decorative Block, "Quick Brick" or equivalent, or Brick and clear or tinted glass. Glass may be tinted or reflective of a density to conceal interior furnishing in Office Buildings and Flex Space.
 - B. 10% synthetic Stucco (EIFS), painted rock faced concrete block or laminated panels in natural aluminum color.
 - C. 10% of the façade maybe a coordinating color or material that is not listed as an accent to the design.
2. Facades of Flex Space Buildings not visible from public right of ways may be painted rock faced CMU.

E. Roof Materials for all Buildings other than residential

1. Any awning or sloping roof shall be constructed of standing seam metal, natural or faux tile.

F. Residential Buildings

1. Residential Building shall be composed of
 - A. At least 20% Clay Brick
 - B. No more than 20% Rock face CMU paint
 - C. Remainder Glass and Fiber Cement Board Siding
2. Building massing will be as follows:
 - A. Three story maximum height (45 feet)
 - B. The garage entrance would be setback from the main face of the building at minimum of six feet.
 - C. The streets would be 22 feet wide and the face of the garage would be setback 28 feet from the back of the curb of the private drive.
3. Roofing material shall be asphalt shingles.

III. BUILDING MATERIALS WITHIN THE AG AREA.

A. Agricultural Facility buildings over 1,000 Square Feet:

1. Building facades visible from the public right-of-ways and within 600 feet of said public right-of-way shall be composed of the following percentages of building material cumulated over all visible facades:
 - a. 70-80% integrally colored rock faced or burnished block, Clay Brick or "Quick Brick" or equal, in the earth tone color ranges. Glass may be tinted or reflective of a density to conceal interior furnishings.

b. 10-20% Synthetic Stucco (EIFS), Stucco, integrally colored rock faced or burnished block, Precast Concrete, Laminated Panels, Wood Siding or Fiber Cement Board Siding in the earth tones.

c. 10% of the façade may be a coordinating or accent color material that is not listed in the previous material list.

2. Facades of buildings located more than 600 feet from a public right-of-way may be prefabricated metal buildings.

3. Building massing for any structure located more than 600 feet from public right-of-way shall be restricted in general height to 24 feet. Any cupolas, clerestories, or architectural accent elements may extend above the 24 feet within reason.

4. Any awning or sloping roof on a building located within 600 feet of public-right-of-way shall be constructed of standing seam metal, natural or faux tile.

6. SITE ELEMENTS

I. SITE REQUIREMENTS

A. Public Sidewalks.

1. All public right of ways shall be provided with a concrete walk per City of Lincoln standards. All buildings within Southwest Village must have pedestrian walkways and public walks connected to the perimeter.

B. Buffering, a required Bufferyard plan is required.

C. Interior Green Space

1. A five foot wide green space shall be provided along all interior lot lines unless lots are combined.

2. Parking lots shall be planted per City of Lincoln requirements. A minimum of 6% of the total parking lot area shall be pervious and planted with trees, shrubs and perennials.

D. Plant Materials

1. Plant Materials shall meet City of Lincoln's size standards.

E. Roof Top Mechanical Screens. All roof top mechanical units shall be substantially screened from view from public right-of-ways through the use of permanent architectural screens that are integrated with the overall design of the building.

1. The screen shall be constructed from the following:
 - a. Building Materials listed for the building's project type.
 - b. Pitched roof elements comprised of standing seam metal roofing.
- F. Ground Level Mechanical Screens. All ground level mechanical units shall be screened from view from public right-of-ways through the use of architectural screens that are integrated with the overall design of the building.
1. The screen shall be constructed from the following:
 - a. Building Materials listed for the building's project type.
- G. Refuse Screening. All trash or refuse receptacles shall be screened from view from public right-of-ways through the use of architectural screens that are integrated with the overall design of the building and located next to the building.
1. The screen shall be constructed from the following:
 - a. Building Materials listed for the building's project type.
 2. If the refuse container is integrated with the dock area then the dock screening shall be sufficient.
- H. Dock Screening (No loading dock shall face a public R.O.W., without proper screening. All loading docks shall be screened from view from public right-of-ways through the use of one of the following:
1. Architectural screens that are integrated with the overall design of the building.
 - a. The screen shall be constructed from the following:
Building Materials listed for the building's project.
 2. Landscape screen of a density to screen 80% of the dock area from view within 3 years of planting. View shall be 80% screened all 12 months of the year.

7. COLOR PALETTES

- In order to encourage a proper balance of vitality and cohesiveness within the Southwest Village development, color ranges have been developed. The inspiration for these color ranges is native Nebraska landscape colors. Any material or paint must coordinate with these sample color ranges. Ten percent (10%) of any facade may have an accent color that is compatible with these color ranges.

8. SIGNAGE

All signage shall comply with the City of Lincoln Sign Regulations, as modified by the Development Plan.

Signage requirements specific to the Southwest Village Development are as follows:

1. All wall signs shall be individual can letters. Color of letters is up to the Building Owner or Tenant.
2. No pole signs are allowed.

9. EXCEPTIONS

The following exceptions may be considered at the discretion of the City of Lincoln.

1. **BUILDING MATERIAL EXCEPTION FOR RETAIL AND FLEX SPACE OFFICE BUILDINGS** (not allowed for Office Buildings).
 - a. If the building is properly screened (landscape buffer, another building within a development, etc.) so that any given façade cannot be seen from a public right-of-way, then that specific façade may be constructed entirely of secondary Building materials as outlined for that specific building type.
2. **BUILDING MATERIAL EXCEPTION FOR ALL BUILDING TYPES**
 - a. If a particular building goes beyond the norm in complexity and detail of building forms and/or commonality of materials and colors, then the City may choose to relax the Building Material requirements (e.g. Let stucco or synthetic stucco (E.I.F.S.) become a primary building material).

Exhibit "B"

CONSERVATION EASEMENT AGREEMENT
(Preservation of Minimum Flood Corridor along Creek)

THIS CONSERVATION EASEMENT AGREEMENT is entered into as of the ____ day of _____, 200_, by and between **the Nebraska Horsemen's Benevolent & Protective Association, Inc.**, a Nebraska nonprofit corporation ("Owner"), **LeGrande Excavating, Inc.**, a Nebraska corporation ("Owner"), **the City of Lincoln, Nebraska** ("City"), and the **Lower Platte South Natural Resources District** ("NRD").

RECITALS

Owner is the owner in fee simple of certain land ("Real Property") legally described as: _____ **[Insert Legal Description]**, Lancaster County, Nebraska, including the portions thereof referred to herein as the "Easement Area"; the Easement Area is more particularly described as follows:

The Easement Area is shown on the attached Exhibit "A", which is made a part of this agreement by this reference.

The City and NRD desire to acquire and Owner is willing to convey a permanent Conservation Easement to preserve the flood storage capacity, the Minimum Flood Corridor, and other natural resources over the Easement Area.

NOW, THEREFORE, in consideration of the approval of the Amended Southwest Village PUD, which allowed areas of encroachment and development in the floodprone area generally designated as Agricultural Stream Corridor in the Lincoln-Lancaster County Comprehensive Plan, Owner hereby grants and conveys to City and NRD for their benefit and the benefit of the public a conservation easement over the Easement Area to restrict the use of the Easement Area to open space to protect and preserve the floodplain/floodprone area, drainageway, wetlands, and tree masses that occur on the land, to protect other water resources and biologic resources of the floodplain/floodprone area as identified on Exhibit "A", and to restrict development and

future use of the Easement Area that will impair or interfere with the open space values and natural resources of the Easement Area.

The terms, conditions, and covenants of the conservation easement hereby created are as follows:

1. Use of Easement Area.

A. Compatible Uses. The Easement Area shall be used only for purposes compatible with open space, recreational, or wetlands management practices. Nothing herein shall be construed to give the general public the right of access or use of the Easement Area. Notwithstanding the “Non-Compatible Uses” listed in subsection B below, the following uses are compatible with the purposes of the Easement Area:

- i. Gravity flow sanitary sewer line and related improvements to provide permanent sanitary sewer as generally shown on Exhibit “A”. The exact route will be approved in advance by the Director of Public Works & Utilities. The Easement Area will be restored following disturbance to the maximum extent practicable.
- ii. Roadway or utility crossings necessary for the functional uses of adjacent lands constructed in accordance with the flood regulations, provided the Easement Area is restored following disturbance to the maximum extent practicable.
- iii. Public sanitary sewer lines generally along the stream alignment necessary for the functional uses of adjacent lands, as approved in advance by the Director of Public Works & Utilities, provided the Easement Area is restored following disturbance to the maximum extent practicable.
- iv. Road and utility corridors necessary for the functional uses of adjacent lands, as approved in advance by the Director of Public Works & Utilities, provided the Easement Area is restored following disturbance to the maximum extent practicable.
- v. Trails or other public or private recreational or educational components and activities as approved in advance in the Lincoln-Lancaster Comprehensive Plan or by the Director of Public Works & Utilities.
- vi. Stream rehabilitation and water quality projects as approved in advance by the Director of Public Works & Utilities.
- vii. Protection, maintenance and enhancement of the Easement Area.
- viii. Easement Area rehabilitation necessary to protect abutting, downstream or upstream properties as approved in advance by the Director of Public Works & Utilities.
- ix. Removal of dead, diseased or dangerous trees or bushes.

- x. Temporary access and construction easements to allow installation, maintenance, repair and replacement of utilities and fences abutting the Easement Area conforming to the City's Design Standards
- xi. Stormwater drainage and outlet improvements conforming to the City's Design Standards necessary for the functional drainage of uses of adjacent lands.
- xii. Control or removal of insects, pests and other matters that are a danger to public health as determined in advance by the Director of the City-County Health Department.

B. Non-Compatible Uses. Subject to the "Compatible Uses" in subsection A above, the following uses and practices, although not an exhaustive recital of the inconsistent uses and practices, are inconsistent with the purposes of this Conservation Easement and shall be prohibited within the Easement Area:

- i. Construction or placing of roadways, buildings, camping accommodations, or mobile homes, fences, signs, billboards or other advertising material, or any other structure.
- ii. Filling, excavating, dredging, mining or drilling, removal of top soil, sand, gravel, rock, minerals, or other materials.
- iii. Building of roads or changing in the topography of the land in any manner excepting the maintenance of the items described in subsection A above, or any work requested by the City.
- iv. Dumping of ashes, trash, garbage, or other unsightly or offensive material.
- v. Changing the topography of the land by placing of soil or other substances or materials such as landfill or dredging spoils.
- vi. Commercial or residential development of any nature.
- vii. Human introduction of non-native plant or animal species which may compete with and result in the decline or elimination of native animal species, unless approved in advance by the Director of Parks and Recreation.
- viii. Any other act which would be detrimental to the wildlife habitat, wetlands or natural resources of the Easement Area.
- ix. Operation of motorized vehicles, except as necessary in the use of the area as provided herein.
- x. The broadcast application of pesticides, herbicides and insecticides at any time. Spot application of herbicides for the control of noxious weeds as provided by state law will be permitted.
- xi. Outside of areas historically in agricultural use within ten (10) years from the dedication of this Easement, cultivation, planting, or

drilling of row crops, small grains, and forages or production of farm animals.

- xii. Removal of tree masses.
- xiii. Any other use which is not in conformance with the Amended Southwest Village PUD, including the Conservation Easement Planting Plan, the Proposed Conditions Drainage Plan, and the Hydrologic and Hydraulic Study, as the same may be amended from time to time; provided that the hydrology of the Easement Area or the land upstream does not negatively impact the Easement Area.
- xiv. Sedimentation of the Easement Area due to grading or construction activities outside the Easement Area.

2. **Term.** The term of this Conservation Easement will be in perpetuity unless earlier terminated pursuant to any of the following provisions:

- i. By the City and NRD pursuant to the provisions of Neb. Rev. Stat. § 76-2,113.
- ii. By the Lancaster County District Court pursuant to the provisions of Neb. Rev. Stat. § 76-2,114.

The parties agree that termination of this Agreement may be total and affect the entire Easement Area, or may be partial and result in the termination of the easement over only a portion of the Easement Area.

3. **Condition of the Easement Area at Time of Grant.** The condition of the Easement Area without limiting the generality of the terms is defined to mean the open space, flood storage capacity, drainageway, wetlands, tree masses, and the functional integrity of other water resources and biologic resources of the floodplain/floodprone area identified on Exhibit A, as evidenced by reports, photographs and scientific documentation on file with the City's Planning Department. Notwithstanding the foregoing, at the time of building permit for Phase 1 of the Amended Southwest Village PUD, Grantor shall complete the grading and plantings within a twenty (20) foot wide area as measured from the top of the stream bank immediately adjacent to the Cardwell Branch within the Easement Area in accordance with the Amended Southwest Village PUD. In addition, at the time of building permit for Phase 2 of the Amended Southwest Village PUD, Grantor shall complete the grading and plantings within the Easement Area in accordance with the Amended Southwest Village PUD.

4. **Protection and Maintenance of the Easement Area.**

A. Owner agrees to pay any real estate taxes, estate taxes or assessments levied by competent authorities on the Easement Area, including but not limited to any tax or assessment affecting the easement granted herein. Owner retains the

right to challenge the assessed value of the property and to challenge the validity of any such tax or assessment.

B. Owner shall cooperate with and assist the City and NRD at the City or NRD's cost in applying for, obtaining, protecting, maintaining and enhancing the Easement Area, including any and all surface water and ground water rights and privileges related to the Easement Area by signing applications which the City deems necessary or desirable for the management, maintenance or development of the Easement Area for the purposes provided for herein.

C. The Owners shall, at Owners' sole cost and expense, maintain the Easement Area. Maintenance shall consist of routine noxious weed control, routine weed and brush control, routine removal of trash and debris, and routine non-structural maintenance of stream bed and bank stability measures following installation. If Owners fails to maintain the Easement Area the City and/or NRD may carry out such maintenance and bill the cost thereof to Owners. Owners shall pay said cost within thirty days from receipt of said billing.

5. **Inspections and Access by City and NRD.** The City and NRD shall have the right of reasonable ingress and egress to and from the Easement Area from public roads and streets and from adjacent properties for its employees, contractors, vehicles and equipment for the purpose of revegetating and for inspecting, maintaining, protecting or enhancing the floodprone area within the Easement Area as the City or NRD may deem necessary or desirable. Any such access from adjacent areas shall be used so as to not damage adjacent areas or crops or improvements which are now or which in the future may be on adjacent areas, and shall use public right-of-way or private streets to the fullest extent practicable.

6. **Enforcement.** The Owner, City and NRD may enforce the provisions of this Conservation Easement by any proceeding at law or in equity, including but not limited to, the right to require restoration of the Easement Area to the condition at the time of this grant, except for the Compatible Uses described in subsection 1 A above. The Owner, City or NRD may seek an injunction restraining any person from violating the terms of this Conservation Easement and that the City or NRD may be granted such injunction without posting of any bond whatsoever. The Owner, City and NRD do not waive or forfeit the right to take any action as they deem necessary to insure compliance with the covenants and purposes of this grant by any prior failure to act. Owner further agrees that should Owner undertake any activity requiring the approval of the City and NRD without or in advance of securing such approval, or undertake any activity in violation of the terms of this Conservation Easement that City and NRD shall have the right to enforce the restoration of that portion of the Easement Area affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the cost of such restoration shall be paid by Owner. In any suit to enforce this Easement or for the alleged violation of this Easement, reasonable attorney fees of the successful party shall be paid by the unsuccessful party to the extent permitted by law.

7. **Title to Easement Area.** Owner covenants that Owner is the owner of marketable title to all of the Easement Area, has legal right, title and capacity to grant the Conservation Easement granted herein subject to easements and restrictions of record and farm tenant in possession, if any.

8. **Transfer of Interest.**

A. **Owner's Title to Easement Area.** If the land subject to this Conservation Easement Agreement or any interest therein is subsequently transferred by Owner to a third party, Owner shall use its best efforts to notify the City and NRD in writing prior to the transfer of the land and the document transferring the interest shall be made subject to this Conservation Easement Agreement.

B. **City and NRD's Conservation Easement.** The City and NRD, at their expense, will record this Conservation Easement. The City and NRD shall have the right to transfer this Conservation Easement to any public agency, charitable organization or trust that, at the time of transfer, is an organization qualified to assume the responsibility imposed on the City and NRD by this Conservation Easement Agreement.

9. **Binding Affect.** The Conservation Easement granted herein shall run with the land and shall inure to the benefit of and be binding upon the heirs, successors and assigns of Owner, City and NRD.

10. **Approvals.** Any approval required under this Agreement shall not be unreasonably withheld.

11. **Recordation.** The parties agree that this Agreement shall be duly filed by the City and NRD with the Lancaster County Register of Deeds upon execution and acceptance by the City and NRD.

12. **Severability.** If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Conservation Easement and the application of such provisions to persons or circumstances other than those to which it is found to be invalid shall not be affected thereby.

13. **Assignment.** The Owner may assign in writing and record of record all or parts of its right, title and interest hereunder to a homeowners association properly created under Nebraska law and approved in advanced by the City Attorney. Upon such written assignment and recording, then the Owner will automatically be released from any assigned right, title or interest.

14. **Further Assurances.** The parties acknowledge that the Owner will be platting, subdividing and developing the Owner's adjacent properties, subject to the City of Lincoln's approval. Each undersigned party will, whenever it shall be reasonably requested to do so by the other, promptly execute, acknowledge, and deliver, or cause to

be executed, acknowledged, or delivered, any and all such further conveyances, confirmations, instruments, or further assurances and consents as may be necessary or proper, in order to effectuate the covenants and agreements herein provided. Each of the undersigned parties shall cooperate in good faith with the other and shall do any and all other 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

“Owner”

**NEBRASKA HORSEMEN’S
BENEVOLENT & PROTECTIVE
ASSOCIATION, INC.**, a Nebraska
nonprofit corporation

By: _____
Title: _____

“Owner”

LEGRANDE EXCAVATING, INC.,
a Nebraska corporation,

By: _____
Norman H. LeGrande, President

“City”

CITY OF LINCOLN, NEBRASKA, a
municipal corporation

Attest:

By: _____
City Clerk

By: _____
Chris Beutler, Mayor

"NRD"

**LOWER PLATTE SOUTH
NATURAL RESOURCES
DISTRICT**

By: _____
Glenn D. Johnson, General Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as _____ of Nebraska Horsemen's Benevolent & Protective Association, Inc., a Nebraska nonprofit corporation, on behalf of the nonprofit corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Norman H. LeGrande, President of LeGrande Excavating, Inc., a Nebraska corporation, on behalf of the corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the City.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Glenn D. Johnson, General Manager, on behalf of the Lower Platte South Natural Resources District.

Notary Public

CONSERVATION EASEMENT AGREEMENT
[Preservation of Flood Storage Capacity in Race Course Infield]

THIS CONSERVATION EASEMENT AGREEMENT is entered into this ____ day of _____, 20__, by and between **the Horsemen's Benevolent and Protective Association** ("Owner"), **LeGrande Excavating, Inc.** ("Owner"), the City of Lincoln, Nebraska ("City"), and **Lower Platte South Natural Resources District** ("NRD").

RECITALS

I.

Owner is the owner in fee simple of certain land ("Real Property") legally described as:

****Need legal description for conservation easement area.*

II.

The City and NRD desire to acquire and Owner is willing to convey a permanent Conservation Easement to preserve the flood storage capacity and other natural resources over the Easement Area.

NOW, THEREFORE, in consideration of approval of the Amended Southwest Village PUD, Owner hereby grants and conveys to City and NRD for their benefit and the benefit of the public, a conservation easement over the Easement Area to restrict the use of the Easement Area to open space and to protect and preserve the floodplain/floodprone area, the flood storage capacity of the easement area, and to protect other water resources and biologic resources of the floodplain/floodprone area, and to allow the Owner to maintain and manage the Easement Area as an attractive and recreational infield for the planned New Lincoln Race Course making up a portion of the Easement Area.

The terms, conditions, and covenants of the conservation easement hereby created are as follows:

1. Use of Easement Area.

A. Compatible Uses. The Easement Area shall be used only for purposes compatible with open space and recreational purposes. Notwithstanding subsection B, "Non-Compatible Uses" below, the following uses are compatible with the purposes of the Easement Area:

- i. Areas already in agricultural use at the time this easement is dedicated may continue in such use.
- ii. Roadway or utility crossings necessary for the functional use of adjacent lands constructed in accordance with the flood regulations.
- iii. Public sanitary sewer lines along the stream alignment necessary for the functional use of adjacent lands, as approved in advance by the Director of Public Works & Utilities, provided the corridor is restored following disturbance to the maximum extent practicable.
- iv. Stream rehabilitation, water quality projects, or protection/restoration of other natural resources.
- v. Storm drain and outlet improvements conforming to the City's design standards necessary for the functional drainage of adjacent lands.
- vi. Introduction of native and non-native plants, flowers, grasses and other plant materials and permanent landscape features association with the recreational use of the Easement Area.
- vii. Recreational uses including ballfields, picnic areas, festival grounds, parking and related accessory uses, provided they do not impair or interfere with the flood storage capacity of the Easement Area.

B. Non-Compatible Uses. The following uses and practices, although not an exhaustive recital of the inconsistent uses and practices, are inconsistent with the purposes of this Conservation Easement and shall be prohibited within the Easement Area:

- i. Construction or placement of fill material, buildings, or mobile homes or other structures not previously identified on the Amended Southwest Village PUD plan;
- ii. Filling, excavating, dredging, mining or drilling, removal of top soil, sand, gravel, rock, minerals, or other materials;
- iii. Dumping of ashes, trash, garbage, or other unsightly or offensive material;
- iv. Changing the topography of the land by placing of soil or other substances or materials such as landfill or dredging spoils;
- v. Residential development of any nature;

- vi. The broadcast application of herbicides at any time, except for that which is needed for areas already in agricultural use at the time this easement is dedicated. Spot application of herbicides for the control of noxious weeds as provided by state law will be permitted;
- vii. Motorized Racing, Cultivation, planting, or drilling of row crops, small grains, and forages, such as alfalfa and forage sorghum within areas not already in agricultural use at the time of the dedication of this easement;
- viii. Changing the hydrology of the Easement Area or the land upstream in a way that negatively impacts the easement area;
- ix. Sedimentation of the Easement Area due to grading or construction activities outside the Easement Area;
- x. Any other use or practice that would adversely impact or interfere with the flood storage capacity of the Easement Area.

2. **Term.** The term of this Conservation Easement will be in perpetuity unless earlier terminated pursuant to any of the following provisions:

- i. By the City and NRD pursuant to the provisions of Neb. Rev. Stat. § 76-2,113.
- ii. By the Lancaster County District Court pursuant to the provisions of Neb. Rev. Stat. § 76-2,114.

The parties agree that termination of this Agreement may be total and affect the entire Easement Area, or may be partial and result in the termination of the easement over only a portion of the Easement Area.

3. **Condition of the Easement Area at Time of Grant.** The condition of the Easement Area without limiting the generality of the terms is defined to mean the open space, flood storage capacity of the Easement Area, and the functional integrity of other water resources and biologic resources of the floodplain/floodprone area, as evidenced by reports, photographs and scientific documentation on file with the City's Planning Department.

4. **Protection and Maintenance of the Easement Area.**

A. Owner agrees to pay any real estate taxes, estate taxes or assessments levied by competent authorities on the Easement Area, including but not limited to any tax or assessment affecting the easement granted herein. Owner retains the right to challenge the assessed value of the property and to challenge the validity of an any such tax or assessment.

B. Owner shall cooperate with and assist the City and NRD at the City or NRD's cost in applying for, obtaining, protecting, maintaining and enhancing any and all surface water and ground water rights and privileges related to the Easement Area by signing applications which the City deems necessary or desirable for the management, maintenance or development of the Easement Area for the purposes provided for herein.

C. The Owner shall, at Owner's sole cost and expense, maintain the Easement Area. Maintenance shall consist of routine mowing, weed and brush control, routine removal of trash and debris, as well as routine non-structural maintenance of stream bed and bank stability measures following installation. If Owner fails to maintain the Easement Area the City and/or NRD may carry out such maintenance and bill the cost thereof to Owner. Owner shall pay said cost within thirty days from receipt of said billing.

5. **Inspections and Access by City.** The City and NRD shall have the right of reasonable ingress and egress to and from the Easement Area from public roads and streets and from adjacent properties for its employees, contractors, vehicles and equipment for the purpose of revegetating and for inspecting, maintaining, protecting or enhancing the floodplain/floodprone area within the Easement Area, including but not limited to stream stabilization projects, as the City or NRD may deem necessary or desirable. Such right of access will be modified as reasonably necessary upon subdivision or development of said adjacent properties.

6. **Enforcement.** Owner agrees that the City and NRD may enforce the provisions of this Conservation Easement by any proceeding at law or in equity. Owner further agrees that should Owner undertake any activity requiring the approval of the City and NRD without or in advance of securing such approval, or undertake any activity in violation of the terms of this Conservation Easement that City and NRD shall have the right to enforce the restoration of that portion of the Easement Area affected by such activity as agreed to herein. In such case, the cost of such restoration and the City's and/or NRD's cost of suit, including reasonable attorney fees, shall be paid by Owner to the extent allowed by law.

7. **Title to Easement Area.** Owner covenants that Owner is the owner of marketable title to all of the Easement Area, has legal right, title and capacity to grant the Conservation Easement granted herein subject to easements and restrictions of record.

8. **Transfer of Interest.**

A. **Owner's Title to Easement Area.** If the land subject to this Conservation Easement Agreement or any interest therein is subsequently transferred by Owner to a third party, Owner shall use its best efforts to notify the City and NRD in writing prior to the transfer of the land and the document transferring the interest shall be made subject to this Conservation Easement Agreement.

B. **City and NRD's Conservation Easement.** The City and NRD shall have the right to transfer this Conservation Easement to any public agency, charitable organization or trust that, at the time of transfer, is an organization qualified to assume the responsibility imposed on the City and NRD by this Conservation Easement Agreement.

9. **Binding Affect.** The Conservation Easement granted herein shall run with the land and shall inure to the benefit of and be binding upon the heirs, successors and assigns of Owner, City and NRD.

10. **Approvals.** Any approval required under this Agreement shall not be unreasonably withheld.

11. **Recordation.** The parties agree that this Agreement shall be duly filed by the City and NRD with the Lancaster County Register of Deeds upon execution and acceptance by the City and NRD.

12. **Severability.** If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Conservation

Easement and the application of such provisions to persons or circumstances other than those to which it is found to be invalid shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

“Owner”

**NEBRASKA HORSEMEN’S
BENEVOLENT & PROTECTIVE
ASSOCIATION, INC.**, a Nebraska
nonprofit corporation

By: _____
Title: _____

“Owner”

LEGRANDE EXCAVATING, INC.,
a Nebraska corporation,

By: _____
Norman H. LeGrande, President

“City”

Attest:

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: _____
City Clerk

By: _____
Chris Beutler, Mayor

“NRD”

**LOWER PLATTE SOUTH NATURAL
RESOURCES DISTRICT**

By: _____
Glenn D. Johnson, General Manager

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STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, as _____ of Nebraska Horsemen's Benevolent & Protective Association, Inc., a Nebraska nonprofit corporation, on behalf of the nonprofit corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Norman H. LeGrande, as President of LeGrande Excavating, Inc., a Nebraska corporation, on behalf of the corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the City.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Glenn D. Johnson, General Manager, on behalf of the Lower Platte South Natural Resources District.

Notary Public

AFTER RECORDING, RETURN TO: _____

CONSERVATION EASEMENT AGREEMENT
[Preservation of Flood Storage Capacity]

THIS CONSERVATION EASEMENT AGREEMENT is entered into this ____ day of _____, 20__, by and between **LeGrande Excavating, Inc.**, a Nebraska corporation, (“Owner”), the **City of Lincoln, Nebraska** (“City”), and **Lower Platte South Natural Resources District** (“NRD”).

RECITALS

I.

Owner is the owner in fee simple of certain land (“Real Property”) legally described as:

Lot 49, Irregular Tracts, Northwest 1/4, Section 23, Township 9 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska, except that portion of Lot 49, Irregular Tracts, more fully described on Exhibit “A” attached hereto.

II.

The City and NRD desire to acquire and Owner is willing to convey a permanent Conservation Easement to preserve the flood storage capacity and other natural resources over the Easement Area.

NOW, THEREFORE, in consideration of approval of the Amended Southwest Village PUD, Owner hereby grants and conveys to City and NRD for their benefit and the benefit of the public, a conservation easement over the Easement Area to restrict the use of the Easement Area to open space and to protect and preserve the floodplain/floodprone area, the flood storage capacity of the easement area, and to protect other water resources and biologic resources of the floodplain/floodprone area, and to allow the Owner to maintain and manage the Easement Area.

The terms, conditions, and covenants of the conservation easement hereby created are as follows:

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1. Use of Easement Area.

A. Compatible Uses. The Easement Area shall be used only for purposes compatible with open space and recreational purposes. Notwithstanding subsection B, "Non-Compatible Uses" below, the following uses are compatible with the purposes of the Easement Area:

- i. Areas already in agricultural use at the time this easement is dedicated may continue in such use.
- ii. Roadway or utility crossings necessary for the functional use of adjacent lands constructed in accordance with the flood regulations.
- iii. Public sanitary sewer lines along the stream alignment necessary for the functional use of adjacent lands, as approved in advance by the Director of Public Works & Utilities, provided the corridor is restored following disturbance to the maximum extent practicable.
- iv. Stream rehabilitation, water quality projects, or protection/restoration of other natural resources.
- v. Storm drain and outlet improvements conforming to the City's design standards necessary for the functional drainage of adjacent lands.
- vi. Introduction of native and non-native plants, flowers, grasses and other plant materials and permanent landscape features association with the recreational use of the Easement Area.
- vii. Recreational uses including ball fields, picnic areas, festival grounds, parking and related accessory uses, provided they do not impair or interfere with the flood storage capacity of the Easement Area. Notwithstanding any language to the contrary in paragraph B. below, construction of improvements (including placement of fill, excavation and grading), application of pesticides and herbicides, and minor changes to the hydrology of the Easement Area shall be permitted in conjunction with the foregoing uses. All uses contemplated by this provision shall be subject to the requirements of Chapter 27.53 of the Lincoln Municipal Code as it exists on the date of this easement, or such successor provisions as may be adapted hereafter.

B. Non-Compatible Uses. The following uses and practices, although not an exhaustive recital of the inconsistent uses and practices, are inconsistent with the purposes of this Conservation Easement and shall be prohibited within the Easement Area:

- i. Construction or placement of fill material, , buildings, or mobile homes or other structures not previously identified on the Amended Southwest Village PUD plan;
- ii. Filling, excavating, dredging, mining or drilling, removal of top soil, sand, gravel, rock, minerals, or other materials;

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- iii. Dumping of ashes, trash, garbage, or other unsightly or offensive material;
- iv. Changing the topography of the land by placing of soil or other substances or materials such as landfill or dredging spoils;
- v. Residential development of any nature;
- vi. The broadcast application of pesticides at any time, except for that which is needed for areas already in agricultural use at the time this easement is dedicated. Spot application of pesticides for the control of noxious weeds as provided by state law will be permitted;
- vii. Cultivation, planting, or drilling of row crops, small grains, and forages, such as alfalfa and forage sorghum within areas not already in agricultural use at the time of the dedication of this easement;
- viii. Changing the hydrology of the Easement Area or the land upstream in a way that negatively impacts the easement area;
- ix. Sedimentation of the Easement Area due to grading or construction activities outside the Easement Area;
- x. Any other use or practice that would adversely impact or interfere with the flood storage capacity of the Easement Area.

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3. **Condition of the Easement Area at Time of Grant.** The condition of the Easement Area without limiting the generality of the terms is defined to mean the open space, flood storage capacity of the Easement Area, and the functional integrity of other water resources and biologic resources of the floodplain/floodprone area, as evidenced by reports, photographs and scientific documentation on file with the City's Planning Department.

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B. Owner shall cooperate with and assist the City and NRD at the City or NRD's cost in applying for, obtaining, protecting, maintaining and enhancing any and all surface water and ground water rights and privileges related to the Easement Area by signing applications which the City deems necessary or desirable for the management, maintenance or development of the Easement Area for the purposes provided for herein.

C. The Owner shall, at Owner's sole cost and expense, maintain the Easement Area. Maintenance shall consist of routine mowing, weed and brush control, routine removal of trash and debris. If Owner fails to maintain the Easement Area the City and/or NRD may carry out such maintenance and bill the cost thereof to Owner. Owner shall pay said cost within thirty days from receipt of said billing.

5. **Inspections and Access by City.** The City and NRD shall have the right of reasonable ingress and egress to and from the Easement Area from public roads and streets and from adjacent properties for its employees, contractors, vehicles and equipment for the purpose of revegetating and for inspecting, maintaining, protecting or enhancing the floodplain/floodprone area within the Easement Area, including but not limited to stream stabilization projects, as the City or NRD may deem necessary or desirable. Such right of access will be modified as reasonably necessary upon subdivision or development of said adjacent properties.

6. **Enforcement.** Owner agrees that the City and NRD may enforce the provisions of this Conservation Easement by any proceeding at law or in equity. Owner further agrees that should Owner undertake any activity requiring the approval of the City and NRD without or in advance of securing such approval, or undertake any activity in violation of the terms of this Conservation Easement that City and NRD shall have the right to enforce the restoration of that portion of the Easement Area affected by such activity as agreed to herein. In such case, the cost of such restoration and the City's and/or NRD's cost of suit, including reasonable attorney fees, shall be paid by Owner to the extent allowed by law.

7. **Title to Easement Area.** Owner covenants that Owner is the owner of marketable title to all of the Easement Area, has legal right, title and capacity to grant the Conservation Easement granted herein subject to easements and restrictions of record.

8. **Transfer of Interest.**

A. **Owner's Title to Easement Area.** If the land subject to this Conservation Easement Agreement or any interest therein is subsequently transferred by Owner to a third party, Owner shall use its best efforts to notify the City and NRD in writing prior to the transfer of the land and the document transferring the interest shall be made subject to this Conservation Easement Agreement.

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10. **Approvals.** Any approval required under this Agreement shall not be unreasonably withheld.

11. **Recordation.** The parties agree that this Agreement shall be duly filed by the City and NRD with the Lancaster County Register of Deeds upon execution and acceptance by the City and NRD.

12. **Severability.** If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Conservation Easement and the application of such provisions to persons or circumstances other than those to which it is found to be invalid shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

“Owner”

LEGRANDE EXCAVATING, INC.,
a Nebraska corporation

By: _____
Norman H. LeGrande, President

“City”

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

ATTEST:

City Clerk

By: _____
Chris Beutler, Mayor

“NRD”

**LOWER PLATTE SOUTH NATURAL
RESOURCES DISTRICT**

By: _____
Glenn D. Johnson, General Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Norman H. LeGrande, President of LeGrande Excavating, Inc., a Nebraska corporation, on behalf of the corporation.

Notary Public

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STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the City.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Glenn D. Johnson, General Manager, on behalf of the Lower Platte South Natural Resources District.

Notary Public

Exhibit "C"
LAND USE FOR
B-2 AND I-3 AREAS

Lot/Block/Addition	Square Footage of Commercial/Retail Use	Square Footage of Office and Industrial Uses	Hotel/Motel Rooms	Residential Dwelling Units
Total				

LAND USE FOR
AG AREA

Lot/Block/Addition	Square Footage of Commercial/Retail Use	Square Footage of Office, Industrial and Other Permitted Uses
Total		