

**AMENDMENT NO. 4 TO
THE WOODLANDS AT YANKEE HILL
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Amendment No. 4 to The Woodlands at Yankee Hill Conditional Annexation and Zoning Agreement ("Agreement") is entered into this ____ day of _____, 2014, by and between **Lewis-Starostka, Inc.**, a Nebraska corporation; **3AP-SE, L.L.C.**, a Nebraska limited liability company; **Midwest Net Lease Investors-SE, L.L.C.**, a Nebraska limited liability company; **R.C. Krueger Development Company**, a Nebraska corporation; **Double D Land Company, LLC**, a Nebraska limited liability company; and **Calruby, L.L.C.**, a Nebraska limited liability company, (collectively, "Owner") and the **City of Lincoln, Nebraska**, a municipal corporation ("City").

RECITALS

A. The parties, collectively known as Owner or their predecessors in interest, entered into the Woodlands at Yankee Hill Conditional Annexation and Zoning Agreement ("Annexation Agreement") dated August 11, 2007.

B. Under the Annexation Agreement the Owner agreed to construct the Yankee Hill Road Arterial Street Impact Fee Facility Improvements subject to reimbursement from the City on or before December 31, 2009.

C. Subsequently the parties collectively known as Owner or their predecessors in interest, entered into Amendment No. 1 to the Annexation Agreement dated May 6, 2009.

D. Under Amendment No. 1 and Amendment No. 3 to the Annexation Agreement, the City and Owner agreed to extend construction of the Yankee Hill Road Arterial Street Impact Fee Facility Improvements subject to reimbursement from the City until December 31, 2012 and then further extended until December 31, 2014, respectively.

E. City now desires to assume responsibility for the construction of said Yankee Hill Road Arterial Street Impact Fee Facility Improvements. In addition, the City agrees to assume responsibility for construction of Site-Related Street Construction, more specifically construction of right-turn lanes from Yankee Hill Road to Mohave Drive and to one private drive subject to the Owner's continuing obligation to fund said Site-Related Street Construction.

F. City further desires to acquire Owner's right to the preliminary engineering work prepared by Schemmer for the Yankee Hill Road Arterial Street Impact Fee Facility Improvements.

G. Owner is willing to consent to the City's assumption of the responsibility for construction of the Yankee Hill Road Arterial Street Impact Fee Facility Improvements and convey Owner's interest in the preliminary engineering work prepared by Schemmer provided City reimburses Owner the actual cost incurred by Owner for such work in the amount of \$69,502.54. Further, Owner is willing to consent to City's construction of right-turn lanes at Mohave Drive and the driveway access into Lot 1 located approximately one-fourth mile east of the intersection of 70th Street and Yankee Hill Road and agrees to reimburse the City for the cost associated with said Site-Related Street Construction. The cost associated with each turn lane to be constructed is \$11,000, and Owner agrees that the total cost may be withheld from the payment due to Owner for the preliminary engineering work discussed in Recital F above.

H. Owner desires, and City consents, to amending the terms of the Agreement by directing impact fees collected from the Property after approval of this Amendment to Rokeby Road Arterial Street Impact Fee Facility Improvements from 70th Street to 84th Street.

NOW, THEREFORE, in consideration of the above Recitals and mutual covenants contained herein, the Owner and City agree as follows:

1. That subparagraph A, Arterial Street Construction, of paragraph 4, Yankee Hill Road (70th - 84th) Improvements, be amended to read as follows:

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

A. Arterial Street Construction. ~~Owner~~ City shall construct the Yankee Hill Road Arterial Street Impact Fee Facility Improvements, including right- and left-turn provisions at 70th Street, 73rd Street, 77th Street, and 81st Street as shown on Exhibit "C" ~~attached pursuant to the City's Executive Order construction process. City shall budget and pay for one 12-foot wide lane at the same unit price provided in the successful bid for the project, and City~~

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

~~B. — Reimbursement.~~

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

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

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

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

~~the date the improvements described in B.(1) above are substantially completed as determined by the City, subject to the following conditions:~~

- ~~(a) The reimbursement shall be repaid quarterly from Arterial Street Impact Fees collected from the same benefit district the Property is located in;~~
- ~~(b) Owner shall not be entitled to any reimbursement of said costs in excess of Impact Fees actually received; and~~
- ~~(c) Any reimbursement to be paid from such Impact Fees shall not constitute a general obligation or debt of the City. Interest on the outstanding balance shall draw interest at the rate of two percent (2%) per annum, provided, however, interest shall not begin to accrue until Owner advances any excess funds to the City. Notwithstanding the above, the City's best efforts to reimburse Owner with Impact Fees collected from other developments within the same benefit district does not restrict the City from agreeing to reimburse future developers within the same benefit district from Directed Impact Fees collected against the entire development of their property if those developers fund the construction of Impact Fee Facility Improvements. If a developer does not fund the construction of Impact Fee Facility Improvements, the Impact Fees that are collected from that development shall be used to pay the oldest reimbursement obligation that the City may have in the same benefit district.~~

€ B. Site-Related Street Construction. Owner City shall construct the Site Related Right-Turn Lanes at Mohave Drive and the driveway access into Block 1 through the City's executive order construction process in conjunction with its construction of improvements to Yankee Hill Road as described herein at Owner's own cost and expense without any reimbursement from the City. Turn lanes shall be constructed at a length and width acceptable to the City's Department of Public Works and Utilities. Owner shall pay the City the cost of constructing the right-turn lane to Mohave Drive and the driveway access into Block 1.

2. Following execution of this Amendment No. 4, all Arterial Street Impact Fees collected against the remaining development of the Property shall be used to construct the Arterial Street Impact Fee Facility Improvements in Rokeby Road from 70th Street to 84th Street.

3. That this Amendment No. 4 be filed of record against the Phase I Property at City's cost and expense.

4. That all other terms and conditions of The Woodlands at Yankee Hill Conditional Annexation and Zoning Agreement (as amended by Amendment No. 1, Amendment No. 2, and Amendment No. 2) shall remain in full force and effect.

5. City and Owner agree that the actual cost for the preliminary engineering work performed by Schemmer for the Yankee Hill Road Impact Fee Facility Improvements is \$69,502.54. Owner agrees that City may withhold from the costs to be paid to Owner the amount of \$22,000 as payment for the construction of right turn lanes from Yankee Hill Road to Owner's Property making the total payment to be made to Owner \$47,502.54. Owner further agrees that upon said payment, Owner's ownership and/or rights to use said preliminary engineering work shall transfer to the City.

ATTEST:

THE CITY OF LINCOLN, NEBRASKA
a municipal corporation

City Clerk

By: _____
Chris Beutler, Mayor of Lincoln

LEWIS-STAROSTKA, INC.
a Nebraska corporation

Ellie J. Lewis, President

3AP-SE, L.L.C.,
a Nebraska limited liability company

By: _____
Richard C. Krueger, Manager

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

By: _____
Managing Member

R.C. KRUEGER DEVELOPMENT COMPANY

a Nebraska corporation

By: _____
President

DOUBLE D LAND COMPANY, L.L.C.
a Nebraska limited liability company

By: _____
Richard C. Krueger, Member

By: _____
Michael D. Weatherl, Member

CALRUBY, LLC,
a Nebraska limited liability company

By: _____
Managing Member

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Ellie J. Lewis, President of Lewis-Starostka, Inc., a Nebraska corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, on behalf of Richard C. Krueger, Manager of 3AP-SE, a Nebraska limited liability company, on behalf of said company.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, Managing Member of Midwest Net Lease Investors-SE, a Nebraska limited liability company, on behalf of said company.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, President of R.C. Krueger Development Company, a Nebraska corporation, on behalf of said corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____ and _____ Members of Double D Land Company, L.L.C., a Nebraska limited liability company, on behalf of said company.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, Managing Member of Calruby, LLC, A Nebraska limited liability company, on behalf of said company.

Notary Public

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