$120.50

BLOCK

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INST. NO 2005

025483

2005 MAY 11 A 11:00

LANCASTER COUNTY, NE

CODE
CHECKED
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EDITED

File Against: Lots 34, IT in North 1/2 of Sec. 21, T9N,R7E and Lots 56,58,60,69, 70, IT IN South 1/2 of Section 21, T9N,R7E, Lancaster Co., NE

VILLAGE GARDENS
CONDITIONAL ANNEXATION AND ZONING AGREEMENT

This Conditional Annexation and Zoning Agreement for Village Gardens ("Agreement") is made and entered into this 16th day of February, 2005, by and between the **City of Lincoln, Nebraska**, a municipal corporation, ("City"), **Campbell Farm and Land Co.,** a Nebraska corporation, and **Northwoods, L.L.C.,** a Nebraska limited liability company, (collectively "Owner").

RECITALS

A. Owner is the Owner of approximately 220 acres of land located in Section 21, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska, hereinafter referred to as the "Property". The Property boundaries are generally shown on the Property Limits and overall Phasing Exhibit marked as Attachment "A" attached hereto and incorporated herein by this reference.

B. Owner has requested the City to annex approximately 80 acres of the Property, hereinafter referred to as the "Phase I Property." The Phase I Property is more particularly described on Attachment "B" attached hereto and incorporated herein by this reference. The remaining portion of the Property is hereinafter referred to as the "Next Phase Property."

C. Owner has requested the City to rezone those portions of the Phase I Property as shown on Attachment "C" which is attached hereto and incorporated herein by reference from AG Agricultural District to R-3 Residential District and B-3 Commercial District.

D. Owner has requested the City to approve a planned unit development ("PUD") for the Phase I Property, which includes a R-3 PUD and a B-3 PUD.

E. Owner and City anticipate that the Next Phase Property, or portions thereof, will be annexed, rezoned, and platted at a later date. The parties recognize and understand as part of this Agreement that Owner and City are incorporating the Owner's Master Plan for the property merely as an illustrated master plan and are preliminarily agreeing to future responsibilities with respect to future annexation, residential rezoning, and platting of

City Clerk -

the Next Phase Property or portions thereof at a later date based upon said Master Plan, provided that necessary infrastructure improvements identified in Village Gardens Overall Utility Exhibit, the Residential Paving Exhibit and the Commercial Paving Exhibit prepared by Olsson Associates dated December 29, 2004 are constructed and available to serve development of the Next Phase Property.

The Overall Utility Exhibit, the Residential Paving Exhibit and the Commercial Paving Exhibit are attached hereto, marked as Attachments D, E, and F respectively and are incorporated herein by this reference.

F. The City has adopted Ordinance No. 18113, hereinafter referred to as the "Impact Fee Ordinance" based upon an impact fee study prepared by Duncan Associates dated October 2002 that went into effect on June 2, 2003. This Impact Fee Ordinance enables the City to impose a proportional share of the cost of improvement to the water, wastewater systems, arterial streets, and neighborhood parks and trails, necessitated by and attributable to new development.

G. A Complaint for Declaratory and Injunctive Relief has been filed in the District Court of Lancaster County, Nebraska. This Complaint prayed for judgment of the district court declaring the Impact Fee Ordinance invalid and unenforceable and for injunctive relief enjoining the imposition of impact fees. The District Court found the Impact Fee Ordinance to be valid and enforceable as an excise tax. The decision of the District Court has been appealed to the Nebraska Supreme Court.

H. The City is willing to annex the Phase I Property, grant the PUD, and approve the change of zone as requested by Owner prior to determination as to the validity and enforceability of the Impact Fee Ordinance, provided Owner agrees to make a guaranteed non-refundable contribution to the cost of improving the City's Water System, Water Distribution, Wastewater System, Neighborhood Parks & Trail, and Arterial Street Impact Fee Facilities necessitated by and attributable to the proposed development of the Phase I Property in the event the Impact Fee Ordinance is held invalid or is otherwise unenforceable.

I. The Property is located within a rural fire protection district. Neb. Rev. Stat. §35-514 dealing with the City's annexation of territory from rural fire protection districts, provides in part that "(7) Areas duly incorporated within the boundaries of a municipality

shall be automatically annexed from the boundaries of the district notwithstanding the provision of §31-766 and shall not be subject to further tax levy or other changes by the district, except that before the annexation is complete, the municipality shall assume and pay that portion of all outstanding obligations to the district which would otherwise constitute an obligation of the area annexed or incorporated." The City is willing to annex the Property as requested by Owner, provided Owner agrees to pay all costs needed for the City to assume any pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the Property being annexed.

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

1. **Annexation by the City.** The City agrees to annex the Phase I Property.

2. **PUD.** The City agrees to approve the PUD for the Phase I Property.

3. **Change of Zone.** The City agrees to approve a change of zone rezoning the Phase I Property from AG Agricultural District to R-3 Residential District and B-3 Commercial District as provided in Recital C above.

4. **Contributions for Impact Fee Facility Improvements.** Owner agrees to contribute $115,356, $185,649, $148,890, $81,626, and $1,018,347, toward the cost of making Water Distribution, Water System, Wastewater, Neighborhood Park & Trail, and Arterial Street Impact Fee Facility Improvements to the City's Water Distribution, Water System, Wastewater, Neighborhood Park & Trail, and Arterial Street Impact Fee Facilities attributable to the proposed development of the Property, respectively.

The contributions for the above-described Impact Fee Facility Improvement reflect the amounts attributable to 100% development of the Phase I Property as proposed in the PUD in 2005 based upon 2005 Impact Fee Schedules for said Impact Fee Facilities.

5. **Development of Phase I Property.**

A. Street Improvements. Pine Lake Road is shown in the City's 2004/2010 Six-Year Capital Improvement Program to be improved by the City, at its expense, from a two-lane rural cross section county road to an urban cross section four-lane arterial with curb, gutter, raised medians and right and left turn lanes at South 56th Street and Pine Lake Road intersection and the standard one-fourth mile point (South 59th Street) and one-half mile point (Blancard Boulevard) along Pine Lake Road and the

standard on-fourth mile point (Boboli Lane) along South 56th Street in 2005/2006 as shown on the Residential Paving Exhibit (Attachment E) and Commercial Paving Exhibit (Attachment F).

(1) Additional Right-turn Lanes in Pine Lake Road. Owner agrees that Owner shall pay the City the total costs incurred by the City to design and construct 150-foot right-turn lanes in Pine Lake Road for the Village Gardens commercial driveway approximately 500 feet east of 56th Street and for the intersection at 61st Street.

(2) Additional Right-turn Lane in 56th Street. Owner agrees to pay City the total costs incurred by City to design and construct a 150-foot right-turn lane in 56th Street for the Village Gardens commercial driveway located approximately 400 feet south of Pine Lake Road.

(3) Reimbursement for Additional Right-turn Lanes. Owner's payment of the City's cost to design and construct the additional right-turn lanes described in subparagraphs A(1) and A(2) above shall be due and payable to the City within thirty days following completion of the improvements to Pine Lake Road.

(4) Timing of Construction. The City agrees to use its best efforts to complete the above-described improvements to Pine Lake Road, including the 56th Street intersection improvements in 2005/2006. However, Owner agrees that if final plat development of the Phase I Property under the PUD commences greater than one year prior to the City Public Works Director's best judgment of the City's anticipated date for constructing the above-described improvements to Pine Lake Road and 56th Street, then Owner shall at its own cost and expense design and construct temporary right and left turn lanes at each final platted driveway and street connection to Pine Lake Road and 56th Street except for Blanchard Blvd. as required by the City.

B. Dedication of Street Right-of-Way. Owner agrees to dedicate at no cost to the City the additional right-of-way needed to provide 60 feet of right-of-way from the centerline of Pine Lake Road adjacent to the Phase I Property. In the alternative, the Owner may provide said additional right-of-way as a mixture of fee title (50 feet) and permanent easement (10 feet) provided the permanent easement is for full street right-of-way purposes including future street paving and not limited to landscaping, screening, street trees, sidewalks, and/or pedestrian access.

C. Sanitary Sewers. In order to gravity sewer the northwest portion of the Phase 1 Property, an off-site 8-inch sanitary sewer outlet needs to be constructed generally as shown on the Overall Utility Exhibit (Attachment "D"). When completed, the off-site Sanitary Sewer will be available to sewer the northwest portion of Phase I Property and other properties that are not subject to this Agreement (collectively "Other Properties"). Prior to approval of any final plat of the applicable portion of the northwest portion of the Phase I Property, the Sanitary Sewer must be resolved to the City's reasonable satisfaction and a definite process identified to construct said Sanitary Sewer. There are several ways this Sanitary Sewer could be resolved and constructed:

(1) The Other Properties, at their expense, may construct said Sanitary Sewer prior to the approval of any final plat of the applicable portion of the northwest portion of the Phase 1 Property;

(2) The Other Properties and/or Owner may request the construction of a special assessment district for the design and construction of the Sanitary Sewer and the City Council, at its election, may approve said special assessment district and order the construction of said Sanitary Sewer and then assess the applicable portion of the Other Properties and the Phase 1 Property the Sanitary Sewer cost on a front foot basis or other fair assessment formula;

(3) The Owner, (perhaps along with other potential Other Properties), may elect to design and construct the Sanitary Sewer through the City's executive order process and following the City's competitive bidding process. If this third technique is utilized by the Owner, then the City agrees to acquire all necessary temporary and permanent easements for the Sanitary Sewer and the Owner agrees to reimburse City for the City's cost of acquisition, including but not limited to the amount of any condemnation award, court costs, expert witness fees, attorney fees, and interest. and potentially be eligible for reimbursement by the City. Under this third technique, the City and Owner acknowledge that the Sanitary Sewer will potentially sewer Other Properties that are not subject to this Agreement. However, if permitted by law and in order to be fair, the City agrees to charge the owners of said Other Properties a fair share cost of the design, construction and temporary and permanent easement costs of said 8-inch sewer main based upon a per front foot formula or some other "fair share" formula approved by the

City in order to permit said Other Properties to be zoned, subdivided, or connected to said 8-inch sanitary sewer at a cost roughly equivalent to that paid by Owner on a per front foot basis. If said connection is made within six years from the date of this Agreement, the City agrees to pay the amount of any connection fee so collected to Owner. Notwithstanding the above, Owner understands and agrees that the City cannot contract away its police powers and its legislative discretion and thus the duty of the City to use its best efforts to charge the owners of the Other Properties their fair share of the cost of constructing the 8-inch sanitary sewer does not require the City Council for the City to adopt nor restrict the Council from adopting ordinances affecting the City's ability to charge property owners for the right to connect to the City's sanitary sewer system.

D. Parks and Trails.

(1) Primary Trail. Owner shall dedicate or grant to City, at no cost to the City, a 20 feet wide easement for a hiker/biker trail "(Primary Trail") , including the trail crossing underneath Blanchard Boulevard as described in Subparagraph (2) below. The location of the Primary Trail will be generally as shown on the Primary Trail Exhibit, attached hereto marked as Attachment "G" and incorporated herein by this reference.

(2) Primary Trail Crossing. Owner is designing and will construct, at it's own cost and expense, a storm sewer conduit underneath Blanchard Boulevard which the City has determined is of sufficient size to accommodate the Primary Trail Crossing underneath Blanchard Boulevard. The City, at its expense, shall be responsible to pay for all costs associated with the design and construction of the Primary Trail underneath Blanchard Boulevard, including but not limited to trail pavement leading to, through and from the underneath crossing, lighting and electricity for the lighting. However, the City shall not be responsible for any of the cost to design and construct the storm sewer conduit which will be used to accommodate the Primary Trail Crossing.

(3) Grading, Construction and Maintenance of the Primary Trail. The City shall design, grade and construct the Primary Trail at is own cost and expense. The City agrees that the Primary Trail will not be constructed until the Owner has constructed the Blanchard Boulevard connection to Pine Lake Road. The City further agrees to consult with the Owner prior to commencing any grading or construction of the Primary Trail to make sure Owner has no development problems with the timing of said grading or

construction. Owner agrees to grant the City, at no cost to City, any temporary construction easements needed in order for the City to grade and construct the Primary Trail. Owner understands that the grading and construction of the Trail is not anticipated to occur prior to the City's fiscal year 2009-2010 or later. The City, at its expense, will have maintenance, repair and replacement responsibilities for the Primary Trail, including the underneath crossing of Blanchard Boulevard.

7. Development of Next Phase Property.

A. Potential Phasing of the Next Phase Property. Owner believes that the Next Phase Property will be annexed, rezoned, platted, and developed in accordance with Owner's Master Plan and generally as shown on the Property Limits and Overall Phasing Exhibit (Attachment "A"). The City and Owner agree that the proposed phases shown on Attachment "A" are not binding and the phases may be developed out of sequence as shown on Attachment "A". The City and Owner further agree that the subsequent phases designated on Attachment "A" may develop in smaller geographic areas or in subphases.

B. Future Infrastructure Improvements. The City and Owner agree that the infrastructure improvements identified in the Overall Utility Exhibit (Attachment D) and the Residential Paving Exhibit (Attachment E) and the Commercial Paving Exhibit (Attachment F) show both the arterial street (Pine Lake Road, South 56th Street, and Yankee Hill Road) right turn and left turn site-related improvements and Impact Fee Facility wastewater, water, and street improvements necessary to serve all phases of the Next Phase Property in accordance with the Owner's Master Plan and to promote the general health and welfare of the City. In the event the Owner does not follow the Master Plan or makes material modification(s) to the Master Plan as it relates to rezoning and platting that would negatively impact the site-related and Impact Fee Facility wastewater, water and street improvements as shown on Attachments D, E or F, then the Owner and City agree that there will need to be appropriate amendment (s) to this Annexation Agreement to reflect such changes in the Master Plan as it relates to rezoning and platting, prior to the City's approval of the annexation of the Next Phase Property.

(1) Wastewater. Owner understands that the City, at its expense, intends to extend the Beal Slough trunk sewer as shown on the Overall Utility Exhibit

(Attachment D). Owner understands and agrees that the Next Phase Property is not sewerable until such time as the Beal Slough trunk sewer is extended as shown on Attachment D. Owner agrees that the Beal Slough sanitary trunk sewer shall be constructed and available to sewer the Next Phase Property prior to approval of any final plat of the Next Phase Property that would require the sewer. The City agrees to use its best efforts to construct the Beal Slough trunk sewer in the time line shown on the existing fiscal year 2005/2006 Six-Year Capital Improvement Program. However, said best efforts may be contingent upon the City Council approving future rate increases: 7% in fiscal year 2005/2006.

(2) Yankee Hill Road. Yankee Hill Road from South 56th Street to South 70th Street is shown in the Lincoln City – Lancaster County Comprehensive Plan as an urban/rural principle arterial and as an arterial road improvement during the 25-year planning period to be constructed from two lanes to four lanes plus center turn lanes at the ¼ mile and ½ mile points. Based upon the Owner's master plan there will be street access points at Blanchard Boulevard and S. 65th Street. Until the Next Phase Property along Yankee Hill Road and the abutting neighboring property (Wilson tract) to the east along Yankee Hill Road are final platted and until the City completes its Yankee Hill Road street design, the City is unable to determine if the Next Phase Property's S. 65th Street access point on Yankee Hill Road is a ¼ mile point which the City would be responsible to fund and construct. The City, at its expense and cost, will design and construct Yankee Hill Road, including the intersection and related right and left turn lanes at the ¼ mile and ½ mile (Blanchard Boulevard) points. In the event S. 65th Street is deemed a ¼ mile point by the City, then the City, at its expense and cost, will design and construct the related right and left turn lanes. In the event S. 65th Street is not deemed by the City to be the ¼ mile point, then Owner agrees that Owner shall pay the City the total cost incurred by the City necessary for the right and left turn lanes on S. 65th Street access point to Yankee Hill Road. Said payment, if required, shall be due and payable to the City within thirty (30) days following completion of the Yankee Hill Road improvements. Notwithstanding the above Owner agrees that if any final plat development of the Next Phase Property under the PUD commences greater than one year prior to the City Public Works Director's best judgment of the City's anticipated date for constructing the above-described improvements

to Yankee Hill Road, then Owner shall at its own cost and expense design and construct temporary right and left turn lanes at each final platted driveway street connection to Yankee Hill Road as required by the City.

(3)– Parks and Trails.– The parties anticipate the construction of secondary trails to serve the Phase I Property and the Next Phase Property. The specific location of the secondary trails and the manner of funding of their construction shall be determined by amendments to this Agreement or as conditions to the final plat at such time as the Next Phase Property is final platted.

(4)- Tot Lot Park and Neighborhood Park. Owner agrees that Owner will donate land to the City during the final platting of the Next Phase Property for both a tot lot park and a neighborhood park. City and Owner will finalize specific locations for both public parks at the time of such final platting. At the time of the final plat of the tot lot park and neighborhood park, the City and Owner will agree which party will be responsible for implementing the design and construction of the playground equipment, grass/landscaping and related improvements for said parks. City agrees that it will fund the initial and replacement base line playground equipment, standard grass/landscaping and related improvements for said parks. Owner, at Owner's own cost and expense, may supersize or enhance the initial and replacement improvements.

The City, at its expense, agrees to be responsible for the implementation of trash collection, maintenance of the playground improvements in the tot lot park and the neighborhood park, replacement of standard grass/landscaping and liability for the public use of the parks (collectively "City Park Responsibilities"). Owner, at its expense, agrees to mow and provide baseline maintenance for the tot lot park and neighborhood park excluding the City Park Responsibilities (collectively "Owner Park Responsibilities"); provided that, the City contributes to Owner the equivalent cost for 17 mowings per year and other baseline maintenance costs and expenses. In order to calculate that City contribution, City will determine what portion of its annual public park maintenance cost is attributable for mowing and other baseline maintenance (excluding costs for the City Park Responsibilities). Owner agrees to indemnify and hold the City harmless against and will reimburse the City upon demand for any payment, loss, cost, or expense made or incurred by or asserted against the City in respect of any damages or injuries arising out of or

resulting from Owner's negligent or intentional misconduct in carrying out the Owner Park Responsibilities in the tot lot or neighborhood park not contributed by the negligence or willful misconduct of the City or its agents, contractors or employees.

The City acknowledges that the Owner intends to create a homeowners association and assign in writing to the homeowner association all or parts of the Owner's responsibilities, liabilities, costs and indemnifications stated in this paragraph 7 B. (4) (collectively "Responsibilities"). Upon legal creation of said homeowners association and approval of its legal form by the City Attorney, and upon written assignment of all or parts of the Owner's Responsibilities and delivery of said written assignment to the City, then the Owner shall automatically be released from said assigned Responsibilities.

Owner or the homeowners association is, for the purposes of mowing and maintaining the tot lot and neighborhood park arising out of this Agreement, a volunteer or independent contractor and shall not be deemed an employee of the City.

The parties agree that the Owner, at its election, may donate a third public park to the City and that the construction, trash collection, maintenance, mowing, liability, indemnification and assignment for said third public park shall be the same stipulations as provided above for the tot lot park and neighborhood park except that the City shall not be responsible to contribute baseline equipment and standard grass/landscaping for said third park.

(5) Water. Owner understands and acknowledges that the City may not furnish water to serve that portion of the Next Phase Property that lies within the boundaries of Rural Water District No. 1 Lancaster County Nebraska ("District No. 1") without the consent and approval from District No. 1. City understands that the Owner has a written license agreement with District No. 1, which may entitle the Owner or City to be relieved from paying all or a portion of the normal and customary costs needed to obtain District No. 1's approval for the City to furnish water to the Next Phase Property lying within the boundaries of District No. 1. Owner desires that all the Next Phase Property be connects to the City's Public water system. Therefore, Owner agrees to pay prior to annexation of any portion of the Next Phase Property that lies within the boundaries of District No. 1, all the cost needed to obtain District No. 1's approval for the City to furnish water to the Next Phase Property lying within the boundaries of District No. 1, subject to

any and all Owner's/City's rights, title and interest in the license agreement for a possible relieve from paying of all or a portion of said normal and customary costs. Owner understands that the City intends to construct a future 16-inch or 24-inch water main in Yankee Hill Road as shown on the Overall Utility Exhibit (Attachment "D"). Subject to the District No. 1 approval described above, the City acknowledges that the Next Phase Property can be properly served by the existing water main lines in Pine Lake Road and South 56th Street in the event the water main in Yankee Hill Road is not constructed prior to any approvals of any final plat of the Next Phase Property.

8. Future Cost Responsibilities.

A. Phase I Property. Owner understands and acknowledges that it is the City's position that the Impact Fee Facility Contributions by Owner under paragraph 4 of this Agreement do not address all the impacts of the proposed development of the Phase I Property will have on the City's Impact Fee Facility as set forth in the Impact Fee Study prepared by Duncan & Associates dated October 2002. Therefore, Owner understands that the proposed development of the Phase I Property shall be subject to the payment of Impact Fees.

B. Next Phase Property. Owner understands that the development of the Next Phase Property shall be subject to payment of Impact Fees. However, Owner further agrees that in the event the Impact Fee ordinance is for any reason declared to be void, illegal, or otherwise unenforceable, then the Owner agrees in lieu of Impact Fees to pay to the City in full prior to the issuance of a building permit for development, or prior to the issuance of any other permit for development where a building permit is not required, or prior to engaging in a development for which no permit is required, an amount equal to the amount of the Impact Fees which would have been imposed under the Impact Fee Schedules in effect on the date the Impact Fee Ordinance is held to be void, illegal, or otherwise unenforceable. Notwithstanding the above, Owner agrees that in the event the City creates or establishes a new system which enables the City to impose a proportionate share of the cost of required improvements to the City's water and wastewater systems, arterial streets, and neighborhood parks and trails on those developments which create the need for them, then the Next Phase Property will be subject to said new system.

9. Guaranteed Payment of Impact Fee Facility Contributions. Owner shall, prior to the approval of each final plat of the Phase I Property provide the City a bond, escrow, letter of credit, or other security agreement, approved by the City Attorney, in an amount equal to the proportionate share of the Water Distribution, Water System, Wastewater, Neighborhood Park and Trail, and Arterial Street Impact Fee Facility Contributions attributable to full development of the lots within each final plat compared to the approved full development of the Phase I Property under this Agreement.

The above required payments of the Water Distribution, Water System, Wastewater, Neighborhood Park and Trail, and Arterial Street Impact Fee Facility Contributions shall be paid to City within thirty days written notice from the City that the following two events have occurred:

(1) The City is awarded a bid and entered into a contract for the improvement of an eligible water distribution, water system, wastewater, neighborhood park and trail, and/or Arterial Street Impact Fee Facility Improvement, and

(2) A final judgment of a court of competent jurisdiction has declared the Impact Fee Ordinance invalid and unenforceable.

In the event that final judgment of a court of competent jurisdiction has declared the Impact Fee Ordinance valid and enforceable, the City agrees to release the bond, escrow, letter of credit, or other security agreement provided by Owner to guarantee the above-described contributions.

10. Contribution for Rural Fire District. Owner understands and acknowledges that the City may not annex the Property lying within the boundaries of a rural fire protection district except by the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of the Property being annexed. Owner desires to be annexed by the City and therefore agrees to pay, prior to annexation, the $2,113.76 the City has determined which must be paid to the applicable rural fire protection district in order for the annexation to be complete, based upon the City's standard formula for calculating such costs.

11. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns and shall inure to and run with the Property.

12. Amendments. This Agreement may only be amended or modified in writing signed by the parties to this Agreement.

13. Further Assurances. Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

14. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

15. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

16. Construction. Whenever used herein, including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

17. Relationship of Parties. Neither the method of computation of funding or any other provisions contained in this Agreement or any acts of any party shall be deemed or construed by the City, Owner, or by any third person to create the relationship of partnership or of joint venture or of any association between the parties other than the contractual relationship stated in this Agreement.

18. Assignment. In the case of the assignment of this Agreement by any of the parties, prompt written notice shall be given to the other parties who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations

hereunder, unless a specific release in writing is given and signed by the other parties to this Agreement or unless otherwise stated herein.

19. Default. Owner and City agree that the annexation, PUD and change of zone promote the public health, safety and welfare so long as Owner fulfills all of the conditions and responsibilities set forth in this Agreement. In the event Owner defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the City may in its legislative authority rescind said PUD and rezone the Phase I Property to its previous designation or such other designations as the City may deem appropriate under the then existing circumstances, or take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach. In the event the City defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the Owner may take such remedies, legal or equitable, to enforce this Agreement or to obtain damages for its breach.

20. Definitions. For purposes of this Agreement, the words and phrases "cost" or "entire cost" of a type of improvement shall be deemed to include all design and engineering fees, testing expenses, construction costs, publication costs, financing costs, and related miscellaneous costs. For the purposes of this Agreement, the words and phrases "building permit," "development," "Impact Fee Facility," "Impact Fee Facility Improvement," and "site-related improvements" shall have the same meaning as provided for said words and phrases in the Impact Fee Ordinance.

21. Fair Share. The City believes that it has a legitimate interest in the public health, safety and welfare and in providing for the safe and efficient movement of vehicles on the public arterial streets and the provision of adequate water and wastewater service and adequate neighborhood parks and trails as provided for in the Impact Fee Ordinance which is promoted by requiring Owner to pay their fair share of the cost to construct such Impact Fee Facilities and that an essential nexus exists between the City's legitimate interests and the conditions placed upon Owner under this Agreement. In addition, City has made an individualized determination and found that the conditions placed upon Owner under this Agreement are related both in nature and extent and are in rough proportionality to the projected adverse effects that full development of the Phase I

Property under the annexation, PUD, and change of zone would have on the City's Impact Fee Facilities.

22. Reservation of Rights and Waivers. Notwithstanding any other provision of this Agreement, Owner reserves the right to sue the City to determine the validity of the provisions of this Agreement which relate to Impact Fee Facilities. No provision of this Agreement which recites Owner's understanding that Owner's development will be subject to payment of impact fees, or acknowledges that Impact Fee Facility Contributions required by this Agreement do not address all the impacts the proposed development of the Phase I Property will have on Impact Fee Facilities, shall have the effect of waiving Owner's rights to a judicial determination of the essential nexus, rough proportionality or other issue of federal or state constitutionality of such requirements and/or the procedure by which Owner's applications were approved, or the validity of such requirements under the Statutes of Nebraska, the Lincoln City Charter, or Lincoln Municipal Code. In consideration of the foregoing reservation of rights, and notwithstanding such reservation, Owner release and discharge the City, all past, present and future members of the City Council of the City, in their official and individual capacities, the past or present Mayor or any department director, and all other officers agents, and employees of the City in their official and individual capacities from any and all causes of action for money damages, penalties or attorneys fees which Owner may now have with respect to or arising from Owner's request for annexation and applications for PUD and change of zone approval described in the Recitals of this Agreement and the City's negotiations, considerations and actions taken thereon, including but not limited to: a)claims for violation of Owner's rights under the United States Constitution, under 42 U.S.C. Section 1983 and attorneys fees under 42 U.S.C. Section 1988; b) claims for just compensation for a temporary taking of the Property pursuant to the Fifth Amendment of the United States Constitution and Article I, Section 21 of the Nebraska Constitution; and c) claims under the City's home rule charter, ordinances and regulations.

City acknowledges that City has included substantially identical provisions regarding Impact Fee Facilities in other "Conditional Annexation and Zoning Agreements" which also included this reservation of rights to sue the City to determine the validity of

such provisions. If a lawsuit is brought challenging such provisions under any other "Conditional Annexation and Zoning Agreement" and the provisions in such agreement which relate to Impact Fee Facilities are held invalid due to lack of authority to require such provisions in exchange for annexation, special permit, use permit and/or the change of zone, the City agrees that Owner shall be entitled to the benefit of such judgment without the necessity of bringing a separate lawsuit challenging the Impact Fee Facility provisions in this Agreement, provided that the statute of limitations in which to bring said lawsuit has not expired.

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

ATTEST:

Teresa J. Meier
City Clerk

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: Coleen J. Seng
Coleen J. Seng, Mayor

CAMPBELL FARM AND LAND CO.,
a Nebraska corporation

By: Richard B. Campbell
Richard B. Campbell, President

NORTHWOODS, L.L.C.
a Nebraska limited liability company

By: Richard B. Campbell
Richard B. Campbell, Managing Member

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 16th day of Feb, 2005, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

GENERAL NOTARY - State of Nebraska
JUDITH A. ROSCOE
My Comm. Exp. Dec. 20, 2008

Judith A. Roscoe
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 7 day of February, 2005, by Richard B. Campbell, President of Campbell Farm and Land Co., a Nebraska corporation, on behalf of said corporation.

GENERAL NOTARY-State of Nebraska
CASSIE L. PRIEFERT
My Comm. Exp. April 5, 2008

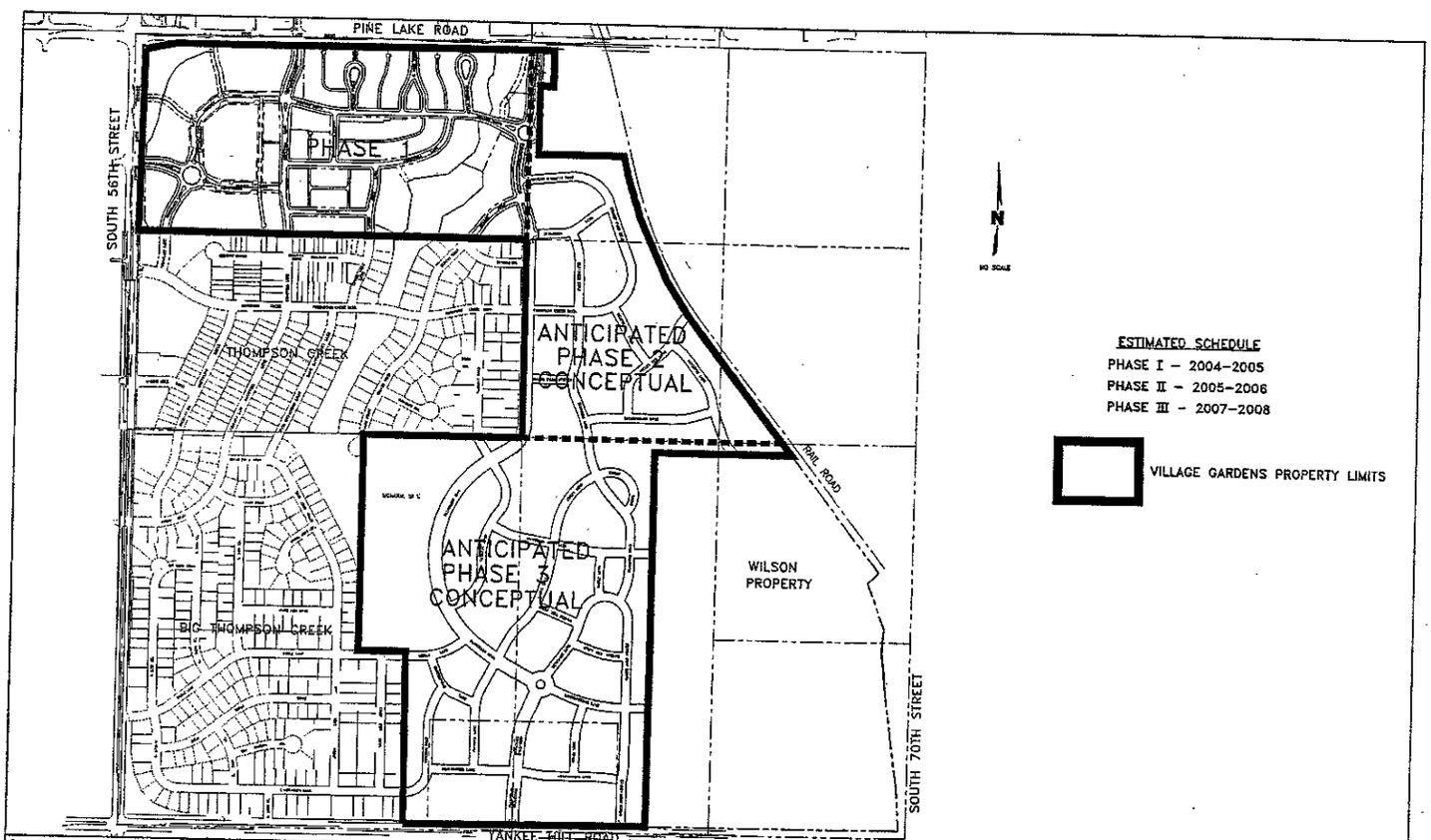
Cassie L. Priefert
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

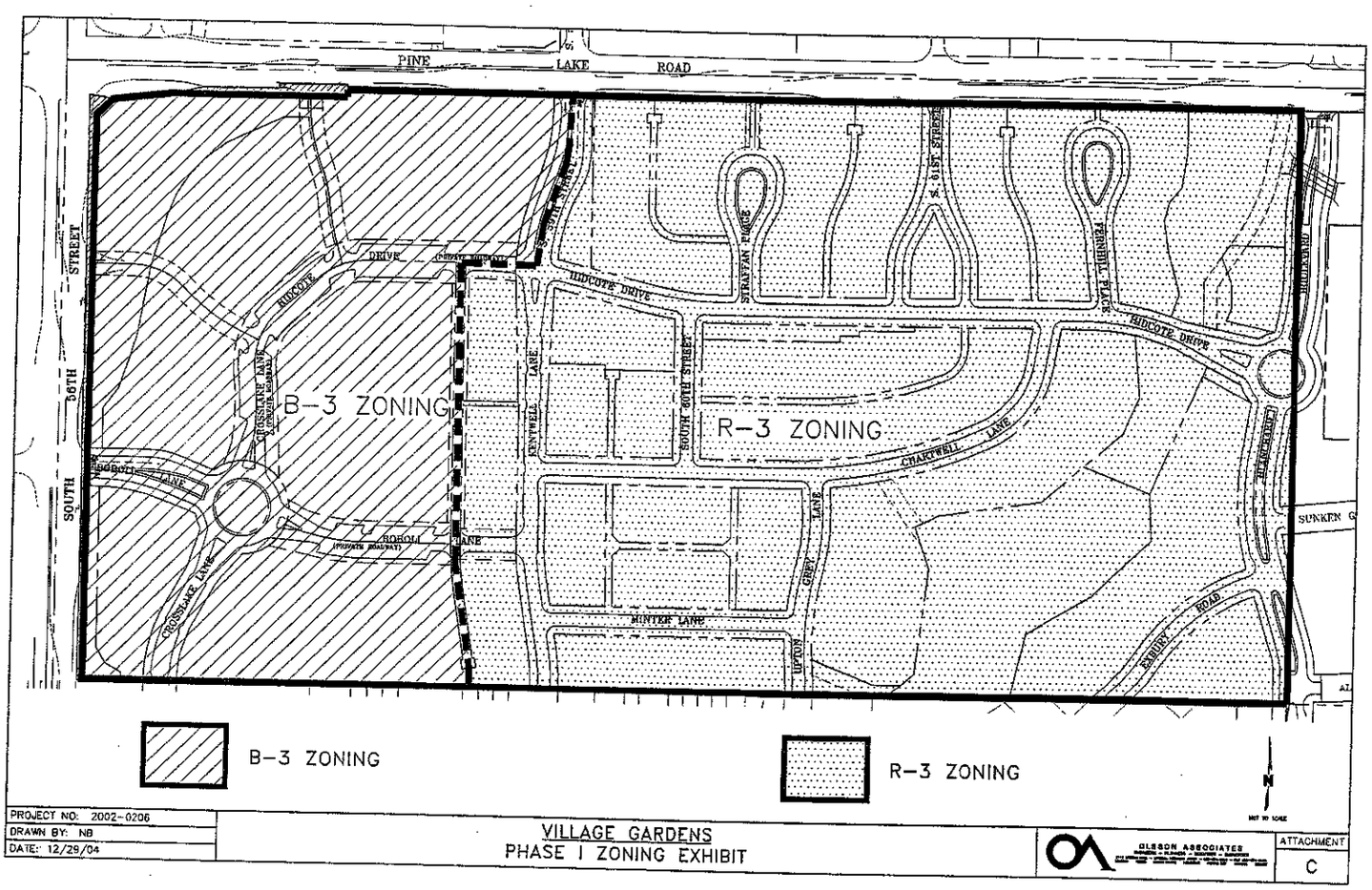
The foregoing instrument was acknowledged before me this 7 day of February, 2005, by Richard B. Campbell, managing member of Northwoods, L.L.C., a Nebraska limited liability company, on behalf of said limited liability company.

GENERAL NOTARY-State of Nebraska
CASSIE L. PRIEFERT
My Comm. Exp. April 5, 2008

Cassie L. Priefert
Notary Public



PROJECT NO: 2002-0206 DRAWN BY: NB DATE: 12/29/04	VILLAGE GARDENS PROPERTY LIMITS & OVERALL PHASING EXHIBIT	OLSSON ASSOCIATES ATTACHMENT A


PINE
LAKE
ROAD
SOUTH 56TH STREET
DRIVE
HIDCOTE
CROSSLAKE LANE
B-3 ZONING
ROBOLI
LANE
CROSSLAKE LANE
SOUTH 60TH STREET
HIDCOTE DRIVE
STRATFAN PLACE
FARNHILL PLACE
KENTWELL LANE
CHARTWELL LANE
GREY LANE
MINTER LANE
UPTON
R-3 ZONING
EDBURY ROAD
SUNKEN G
B-3 ZONING
R-3 ZONING
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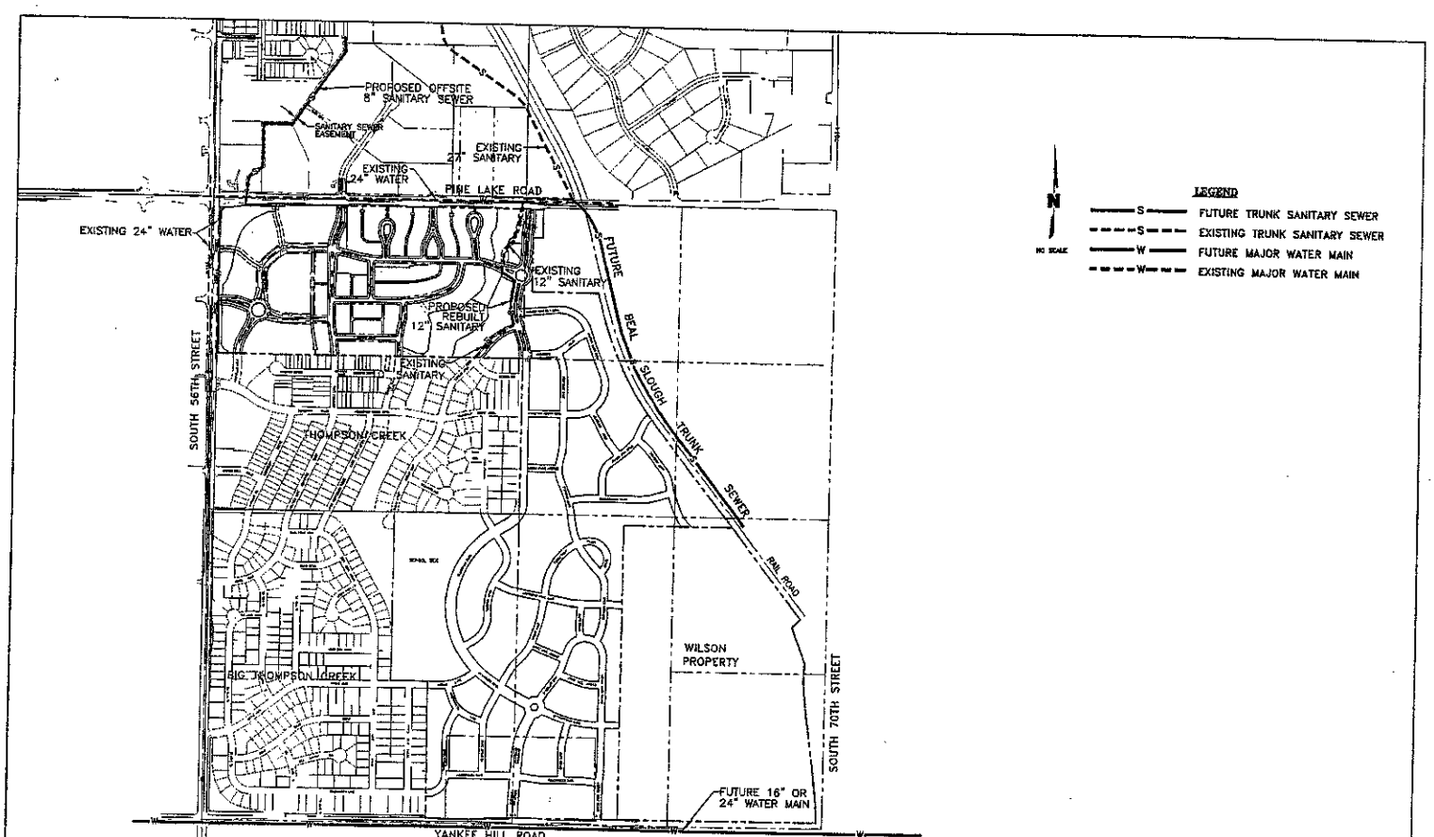
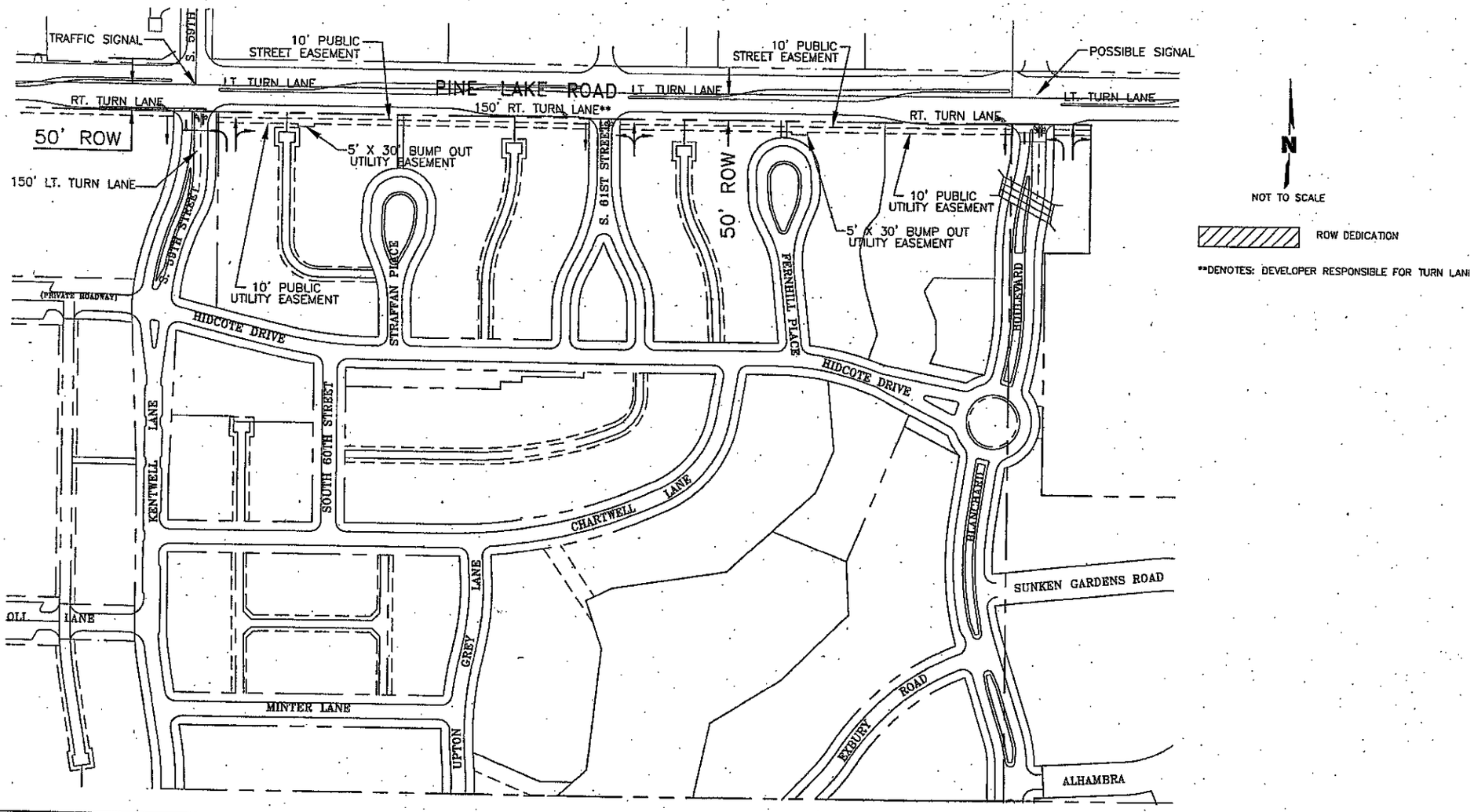
NOT TO SCALE
PROJECT NO: 2002-0206
DRAWN BY: NB
DATE: 12/29/04
VILLAGE GARDENS
PHASE I ZONING EXHIBIT
OLSON ASSOCIATES
ATTACHMENT
C



PROJECT NO: 2002-0208 DRAWN BY: NB DATE: 12/29/04	VILLAGE GARDENS OVERALL UTILITY EXHIBIT	OLSSON ASSOCIATES ATTACHMENT D

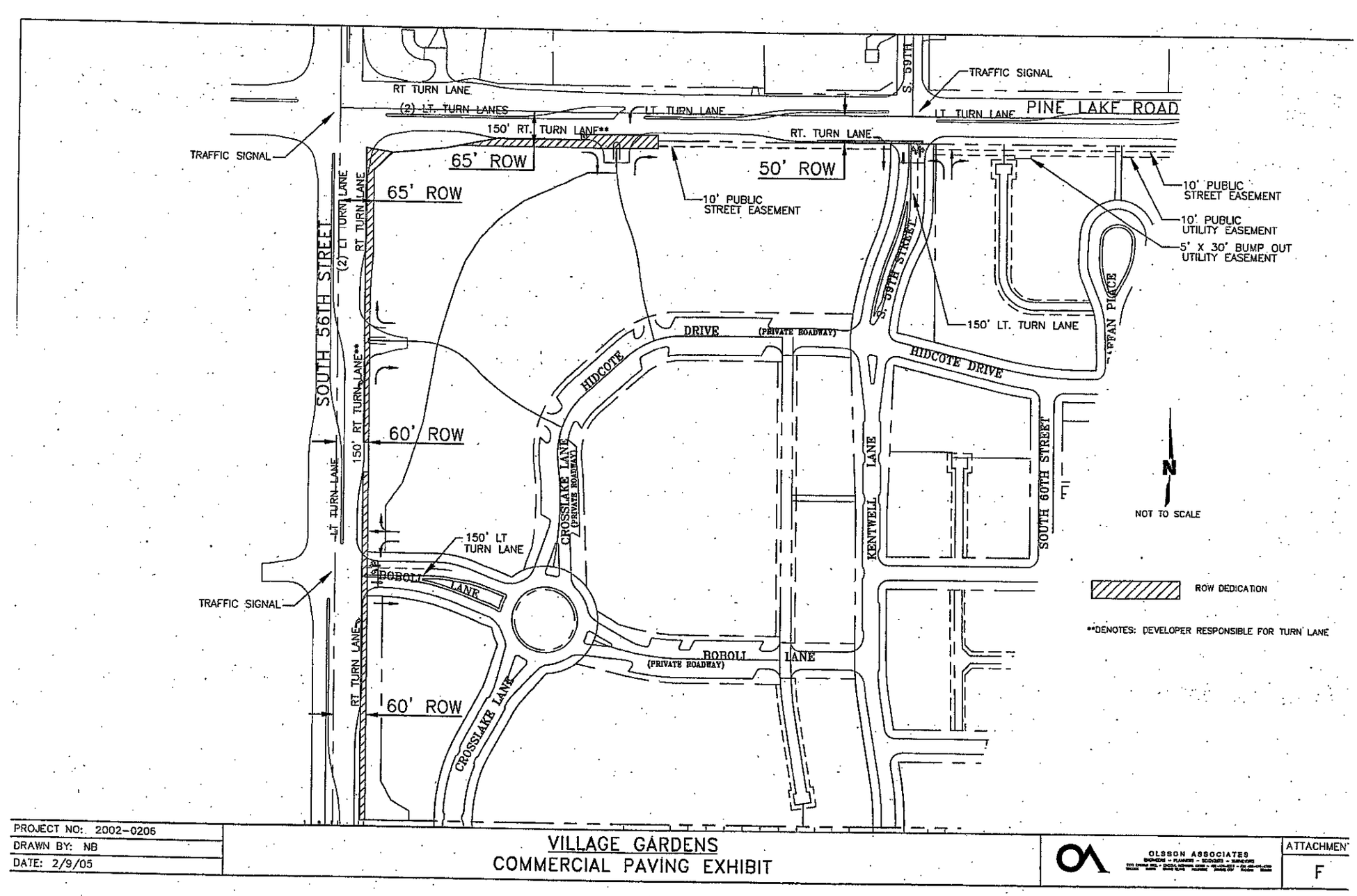


PROJECT NO: 2002-0206
DRAWN BY: NB
DATE: 2/09/05

VILLAGE GARDENS
RESIDENTIAL PAVING EXHIBIT

OLSSON ASSOCIATES
ENGINEERS - PLANNERS - SURVEYORS

ATTACHMENT
E



PROJECT NO: 2002-0205
DRAWN BY: NB
DATE: 2/9/05

VILLAGE GARDENS
COMMERCIAL PAVING EXHIBIT

OLSSON ASSOCIATES

ATTACHMENT
F

PHASE I PUD LEGAL DESCRIPTION

A LEGAL DESCRIPTION FOR A TRACT OF LAND COMPOSED OF LOT 34 I.T., LOCATED IN THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 34 I.T., SAID POINT BEING 50.00 FEET EAST OF THE WEST LINE OF SAID NORTHWEST QUARTER, AND 72.53 FEET SOUTH OF THE NORTH LINE OF SAID NORTHWEST QUARTER, SAID POINT BEING THE TRUE POINT OF BEGINNING , THENCE ON AN ASSUMED BEARING OF SOUTH 81 DEGREES 28 MINUTES 42 SECONDS EAST ALONG A NORTH LINE OF SAID LOT 34 I.T., SAID LINE BEING THE SOUTH LINE OF PINE LAKE ROAD RIGHT-OF-WAY, A DISTANCE OF 50.60 FEET TO A NORTH CORNER OF SAID LOT 34 I.T., THENCE NORTH 84 DEGREES 19 MINUTES 14 SECONDS EAST ALONG A NORTH LINE OF SAID LOT 34 I.T., SAID LINE BEING THE SOUTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 100.47 FEET TO A NORTH CORNER OF SAID LOT 34 I.T., THENCE NORTH 78 DEGREES 43 MINUTES 14 SECONDS EAST ALONG A NORTH LINE OF SAID LOT 34 I.T., SAID LINE BEING A SOUTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 101.96 FEET TO A NORTH CORNER OF SAID LOT 34 I.T., THENCE SOUTH 89 DEGREES 58 MINUTES 02 SECONDS EAST ALONG A NORTH LINE OF SAID LOT 34 I.T., SAID LINE BEING A SOUTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 154.93 FEET TO A NORTH CORNER OF SAID LOT 34 I.T., THENCE NORTH 00 DEGREES 01 MINUTES 58 SECONDS EAST ALONG A WEST LINE OF SAID LOT 34 I.T., SAID LINE BEING A EAST LIN OF SAID RIGHT-OF-WAY, A DISTANCE OF 10.00 FEET TO A NORTH CORNER OF SAID LOT 34 I.T., THENCE SOUTH 89 DEGREES 58 MINUTES 02 SECONDS EAST ALONG A NORTH LINE OF SAID LOT 34 I.T., SAID LINE BEING A SOUTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 145.09 FEET TO A NORTH CORNER OF SAID LOT 34 I.T., THENCE SOUTH 00 DEGREES 01 MINUTES 58 SECONDS WEST ALONG A EAST LINE OF SAID LOT 34 I.T., SAID LINE BEING A WEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 10.00 FEET TO A NORTH CORNER OF SAID LOT 34 I.T., THENCE SOUTH 89 DEGREES 58 MINUTES 02 SECONDS EAST ALONG A NORTH LINE OF SAID LOT 34 I.T., SAID LINE BEING A SOUTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 299.98 FEET TO A NORTH CORNER OF SAID LOT 34 I.T., THENCE NORTH 00 DEGREES 01 MINUTES 58 SECONDS EAST ALONG A WEST LINE OF SAID LOT 34 I.T., SAID LINE BEING A EAST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 5.00 FEET TO A NORTH CORNER OF SAID LOT 34 I.T., THENCE SOUTH 89 DEGREES 58 MINUTES 02 SECONDS EAST ALONG A NORTH LINE OF SAID LOT 34 I.T., SAID LINE BEING A SOUTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 199.99 FEET TO A NORTH CORNER OF SAID LOT 34 I.T., THENCE SOUTH 00 DEGREES 01 MINUTES 58 SECONDS WEST ALONG A EAST LINE OF SAID LOT 34 I.T., SAID LINE BEING A WEST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 5.00 FEET TO A NORTH CORNER OF SAID LOT 34 I.T., THENCE SOUTH 89 DEGREES 58 MINUTES 02 SECONDS EAST ALONG A NORTH LINE OF SAID LOT 34 I.T., SAID LINE BEING A SOUTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 1,538.62 FEET TO THE NORTHEAST CORNER OF SAID LOT 34 I.T., SAID POINT BEING ON THE EAST LINE OF SAID NORTHWEST QUARTER, THENCE SOUTH 00 DEGREES 16 MINUTES 19 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 34 I.T., SAID LINE BEING THE EAST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 1,269.14 FEET TO THE SOUTHEAST CORNER OF SAID LOT 34 I.T., THENCE NORTH 89 DEGREES 57 MINUTES 40 SECONDS WEST ALONG A SOUTH LINE OF SAID LOT 34 I.T., A DISTANCE OF 2,584.05 FEET TO THE SOUTHWEST CORNER OF SAID LOT 34 I.T., THENCE NORTH 00 DEGREES 04 MINUTES 00 SECONDS EAST ALONG A WEST LINE OF SAID LOT 34 I.T., SAID LINE BEING THE EAST LINE OF SOUTH 56TH STREET RIGHT-OF-WAY, A DISTANCE OF 643.00 FEET TO A WEST CORNER OF SAID LOT 34 I.T., THENCE SOUTH 89 DEGREES 56 MINUTES 00 SECONDS EAST ALONG A NORTH LINE OF SAID LOT 34 I.T., SAID LINE BEING A SOUTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 10.00 FEET TO A WEST CORNER OF SAID LOT 34 I.T., THENCE NORTH 00 DEGREES 04 MINUTES 00 SECONDS EAST ALONG A WEST LINE OF SAID LOT 34 I.T., SAID LINE BEING A EAST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 55.00 FEET TO A WEST CORNER OF SAID LOT 34 I.T., THENCE NORTH 89 DEGREES 56 MINUTES 00 SECONDS WEST ALONG A SOUTH LINE OF SAID LOT 34 I.T., SAID LINE BEING A NORTH LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 10.00 FEET TO A WEST CORNER OF SAID LOT 34 I.T., THENCE NORTH 00 DEGREES 04 MINUTES 00 SECONDS EAST ALONG A WEST LINE OF SAID LOT 34 I.T., SAID LINE BEING A EAST LINE OF SAID RIGHT-OF-WAY, A DISTANCE OF 548.31 FEET TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 3,279,091.77 SQUARE FEET OR 75.27 ACRES, MORE OR LESS.

October 12, 2004
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PROJECT NO: 2002-0206	VILLAGE GARDENS	OLSSON ASSOCIATES	ATTACHMENT
DRAWN BY: NB	PHASE I LEGAL DESCRIPTION		B
12/29/04			

CERTIFICATE

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

I, Joan E. Ross, City Clerk of the City of Lincoln, Nebraska, hereby certify that the foregoing is a true and correct copy of **Village Gardens Conditional Annexation and Zoning Agreement, dated February 16, 2005, as approved by Resolution No. A-83211 adopted by the by the Lincoln City Council on February 14, 2005,** as the original appears of record in my said office.

In Witness Whereof, I have hereunto set my hand officially and affixed the seal of the City of Lincoln, Nebraska, on February 23, 2005.

Joan E. Ross, City Clerk

certify.wpd

Ret to City Clerk