

**MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between the Lancaster County Agricultural Society, hereinafter referred to as the "Society" and the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as the "City".

**RECITALS**

**I.**

The Society is the owner of approximately 160 acres of real property located generally in the vicinity of 84th and Havelock Avenue in the north half of Section 11, Township 10 North, Range 7 East, Lancaster County, Nebraska ("Property").

**II.**

The Society is desirous of obtaining a Comprehensive Plan commercial designation on approximately 14.4 acres of land located on the northwest corner of the Property as shown on Attachment A hereto ("NW Corner"). Thereafter Society desires to rezone the NW Corner to H-4 General Commercial District and to develop said NW Corner under a planned service commercial development special permit generally in accordance with the concept commercial development plan as shown on Attachment A. In that regard, the Society as the first step in this process has made application for a Comprehensive Plan Amendment designated as Comprehensive Plan Amendment No. 05011, hereinafter referred to as the "Comprehensive Plan Amendment."

**III.**

The City is agreeable to proceeding with the Comprehensive Plan Amendment for the NW Corner and to thereafter support rezoning of the NW Corner and approval of the commercial development plan as described in Recital II above, subject to the terms and conditions of this agreement.

**IV.**

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 and arterial streets necessitated by and attributable to new development.

V.

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.

VI.

The City Administration is willing to support annexation of the NW Corner and approval of the change of zone as requested by Society prior to determination as to the validity and enforceability of the Impact Fee Ordinance, provided Society agrees to make a guaranteed non-refundable contribution to the cost of improving the City's Water System, Water Distribution, Wastewater System, and Arterial Street Impact Fee Facilities necessitated by and attributable to the proposed development of the NW Corner in the event the Impact Fee Ordinance is held invalid or is otherwise unenforceable.

NOW THEREFORE, in consideration of the mutual promises contained herein, the Society and City agree as follows:

1. **Floodplain Fill Permit; Restriction.** The Society currently has a floodplain fill permit (Fill Permit No. FP030035) approved by the City that allows the placement of 57,900 cubic yards of fill material in the NW Corner of the Property. The Society agrees that upon approval of the H-4 zoning on the NW Corner, Society shall apply for and cause an amendment to said fill permit to be completed which removes the 2.6 acres located east of the future north/south driveway accessing Havelock Avenue as shown on Attachment B from the boundaries of the fill permit thereby eliminating 45,800 cubic yards of fill from the approved fill permit.
2. **Compensatory Fill.** Fill Permit No. FP030035 further authorizes (and will continue to authorize after the above-described amendments) the placement of 10,600 cubic yards of compact fill on 2.9 acres of floodplain located in the NW Corner within the area encompassed by the requested Comprehensive Plan Amendment. Society agrees that placement of this fill will be accomplished by compensatory storage from other areas in the floodway or floodplain located on the Property. Society agrees prior to placement of said fill to provide the City with a study demonstrating that the fill will cause a no net rise in the floodplain or floodway. The compensatory storage required will be 10,600 cubic yards.
3. **Green Space Reservation.** The proposed change of designation from Public/Semi-Public and Green Space to Commercial and the associated change of

zone to H-4 and development under a planned service commercial development special permit will eliminate 2.9 acres of land within the floodplain, presently serving as green space. In order to compensate for this loss of green space, the Society agrees to preserve approximately 5.8 acres in open space uses, such as farming, ball fields, pedestrian or horse trails or grass areas (which grass areas may be occasionally used as unpaved overflow parking for large events occurring at the Lancaster Event Center) representing a 2:1 ratio of preservation of space to the amount lost. The area to be reserved is shown on Attachment B. This designation of open space will be formalized in the special permit issued to the Society for its commercial uses. It is understood and agreed that the 5.8 acres reserved for open space may be relocated in the course of approval of such permit or amendments thereto. Any use of this area, as shown in Attachment B or as it may be configured from time to time, by others other than the Society shall be subject to approval by the Society's Board of Directors.

4. **Off Site Traffic Improvements.** The Society and the City agree that commercial development of the NW Corner described above will require the following identified intersection improvements to the City's existing street system:

Lancaster Event Center commercial driveway at Havelock Avenue –  
Construction of an eastbound to southbound right turn lane.

70th and Havelock Avenue –  
Construction of a northbound to eastbound right turn lane;  
Construction of a westbound to southbound left turn lane.

84th and Havelock Avenue –  
Construction of additional storage for northbound to westbound left turns;  
Construction of additional storage for eastbound to southbound right turns;  
Construction of a westbound to northbound right turn lane.

84th and Adams Street –  
Construction of a southbound to westbound right turn lane;  
Construction of additional storage for northbound to westbound left turns;  
Construction of additional storage for eastbound to southbound right turns.

In addition, the Department of Public Works and Utilities may recommend right and left turn lanes at all Havelock driveways where right and/or left turns are permitted if and when warranted.

The specific design requirements for the above street improvements and the

determination as to whether they constitute Arterial Street Impact Fee Facility Improvements or Site-Related Improvements as defined in Section 27.82.040 of the Lincoln Municipal Code will be addressed in conjunction with the future change of zone and “generic” planned service commercial development special permit that will be applied for by the Society subsequent to approval of the Comprehensive Plan Amendment. The “generic” special permit to be applied for by the Society will not authorize immediate development, it being understood and agreed that specific separate amendments to the special permit will be applied for by lessees of the Society at such time as leases are entered into between the Society and commercial lessees. The Society agrees to pay or require its lessees, as part of the lease requirements, to pay the cost of Site-Related Improvements attributable to the uses proposed by the Society or each such lessee, and to pay impact fees or contributions in lieu of impact fees as provided in paragraph 10 below. It is acknowledged that other developments in proximity to 84th and Havelock Avenue have also identified improvements to the adjacent public street to mitigate traffic impacts to the street system resultant from those developments and that some or all of these street improvements may overlap improvements identified by the Society. The Society agrees to negotiate with the developer or developers of those developments to identify percentage of cost sharing of overlapping Site-Related Improvements.

5. **Right-of-Way Dedication.** The Society agrees to dedicate to the City additional right-of-way along Havelock Avenue needed to provide 60 feet of right-of-way south from the centerline of Havelock Avenue for a future four-lane street and to dedicate to the City additional right-of-way along North 84th Street to provide a total right-of-way width of 140 feet for a future six-lane road. It is recognized that this may require the dedication or conveyance of additional easements to the Lincoln Electric System for its existing 35kv and 115kv high voltage transmission lines. The parties agree that several options may exist regarding relocation of the LES transmission lines and that resolution of this matter should be deferred and addressed in the conditions of approval of the special permit for the Planned Service Commercial Development under H-4 zoning. The City recognizes and agrees that reductions in the setback requirements applicable to the Society’s property may be required in order to compensate for this right-of-way dedication and easement adjustments.
  
6. **Commercial Area; Subject to Zoning; Off-Premise Signage; Status of Existing Sign.** The City recognizes that under Nebraska law the power of eminent domain is superior to the zoning power and that the City, under its zoning authority, is not permitted to prevent or place limitations upon a public use of property in the furtherance of which a governmental entity has been granted condemnation power by the State Legislature. As an inducement for the City to approve the Comprehensive Plan Amendment and the future change of zone and special permit for the NW Corner, the Society agrees that, notwithstanding the fact that it is deemed to be a body corporate and politic and has the power of

eminent domain as provided in Neb. Rev. Stat. § 2-262 (Reissue 1997), the NW Corner commercial area shall be subject to the zoning restrictions of the City of Lincoln otherwise applicable to the zoning district in which the property is placed. As a further inducement, the Society specifically agrees that the presently existing Lancaster Event Center sign on the property, a portion of which is used for off-premise advertising, will be the only off-premise sign permitted on the property. The City agrees that existing off-premise signage was lawfully installed and will be legally permissible within the H-4 zoning district. The City agrees to provide appropriate documentation of this determination to the Society, Nebraska Department of Roads or any approving agency having final approval of the validity of this nonconforming off-premise sign.

7. **Zoning Designation.** It is anticipated that the zoning designation on the above-referenced property will be changed to H-4 General Commercial or another mutually satisfactory zoning district that will permit the uses contemplated by the Society. The Society will be responsible for applying for such change of zone and any needed special permit related to its uses as described above. The parties understand and agree that the H-4 General Commercial District does not presently permit hotels or motels but that if an H-4 General Commercial designation is proposed for the NW Corner, the Planning Department will simultaneously sponsor and support an amendment to permit hotels and motels in the H-4 General Commercial District as part of a planned service commercial development.
8. **Society's Responsibilities; Contingent on Zoning Approval.** The Society's responsibilities under this agreement, including dedication of right-of-way, reservation of open space, and insuring the installation of off site traffic improvements, will be contingent upon the approval by the City Council of H-4 General Commercial Zoning or other mutually agreed upon commercial zoning for the 14.4 acres described above and the issuance of a "generic" use permit for the Society's proposed commercial uses.
9. **Restriction on Development.** The Society agrees that no building permits or other development permits shall be applied for prior to May 1, 2006. Society further agrees that if the NW Corner is rezoned to H-4 General Commercial District, Society shall not apply for any building permit or engage in other development permitted in the H-4 district except under a special permit for a Planned Service Commercial Development.
10. **Contributions for Impact Fee Facility Improvements.** Society agrees to contribute \$6,542, \$10,546, \$8,451, and \$197,545 toward the cost of making Water Distribution, Water System, Wastewater, and Arterial Street Impact Fee Facility Improvements to the City's Water Distribution, Water System, Wastewater, and Arterial Street Impact Fee Facilities attributable to the proposed development of the NW Corner, respectively.

The contributions for the above-described Impact Fee Facility Improvement reflect the amounts attributable to 100% development of the NW Corner as proposed in the concept commercial development plan as shown on Attachment A in 2005 based upon 2005 Impact Fee Schedules for said Impact Fee Facilities.

11. **Guaranteed Payment of Impact Fee Facility Contributions.** Society shall, prior to the approval of the Planned Service Commercial Development Special Permit for the NW Corner and any amendment thereto, 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, and Arterial Street Impact Fee Facility Contributions attributable to full development of the specific permitted uses compared to the proposed full development of the NW Corner under this agreement.

The above required payments of the Water Distribution, Water System, Wastewater, 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 has completed or has awarded a bid and entered into a contract for the improvement of an eligible Water Distribution, Water System, Wastewater, 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 Society to guarantee the above-described contributions.

IN WITNESS HEREOF, the parties have executed this Memorandum of Understanding as of the day and year first written above.

LANCASTER COUNTY  
AGRICULTURAL SOCIETY  
a Nebraska nonprofit corporation

CITY OF LINCOLN, NEBRASKA,  
a municipal corporation,

By:   
Ron Snover, President

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

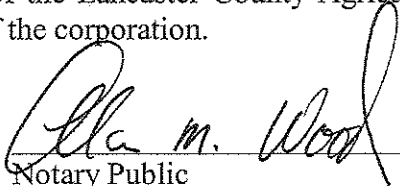
STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF LANCASTER    )

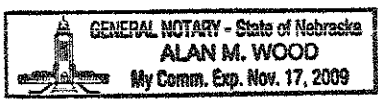
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2005, Coleen J. Seng, Mayor of the City of Lincoln, Nebraska on behalf of the City.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of November, 2000, by Ron Snover, President of the Lancaster County Agricultural Society, Inc., a Nebraska nonprofit corporation, on behalf of the corporation.

  
\_\_\_\_\_  
Notary Public



# HAVELOCK AVENUE

## NORTH 84TH STREET

N 40°19'33" E  
26.27'

N 88°48'5" E 724.18'

N 03°23'38" E  
188.33'

N 02°51'45" W 300.31'

NORTH 765.00'

### 14.4 ACRES

6.5 ACRES

7.9 ACRES

SOUTH 436.95'

WEST 265.13'

SOUTH 577.28'

WEST 196.89'

R=274.00'  
 L=430.40'  
 T=274.00'  
 Δ=90d0'0"  
 CL=387.49'  
 CB=5 45°0'0" W

REST.

DRIVE-THRU

TWO STORY MOTEL

RETAIL

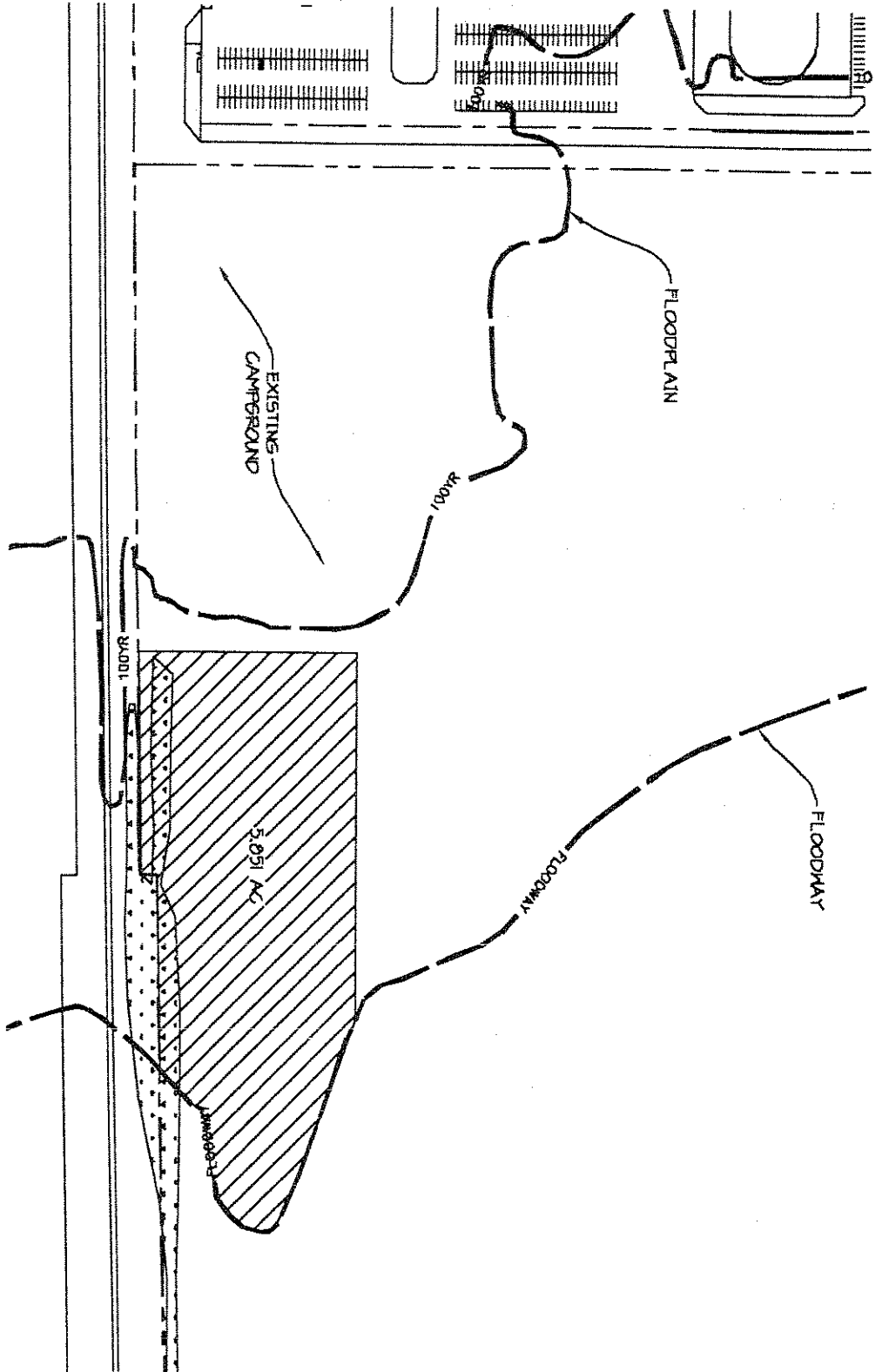
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 **SITE PLAN**  
SCALE: 1" = 200'