



A90343

17R-82

Introduce: 3-13-17

90343

RESOLUTION NO. A-_____

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

2 That the Conditional Annexation and Zoning Agreement which is attached hereto,

3 marked as Attachment "A" and made a part hereof by reference, among Jack A. Herbert,

4 Trustee of the Marie A. Herbert Trust, Marie A. Herbert, Trustee of the Jack A. Herbert Trust,

5 Blue Rock Investments, LLC, and the City of Lincoln, relating to the construction of various

6 public improvements necessitated by the annexation of property generally located at A Street

7 and South 90th Street and legally described as Lot 30 Irregular Tract, located in the West Half of

8 Section 26, Township 10 North, Range 7 East of the 6th P.M., Lincoln, Lancaster County,

9 Nebraska; re-zoning the property from AG Agricultural District to R-3 Residential District; and

10 approval of a preliminary plat for White Horse which includes approximately 154 single-family

11 dwelling lots, as set out in the Agreement is hereby approved and the Mayor is authorized to

12 execute the Conditional Annexation and Zoning Agreement on behalf of the City.

13 BE IT FURTHER RESOLVED that the City Clerk is directed to return the original and

14 one fully executed copy of the Conditional Annexation and Zoning Agreement to George

15 Wesselhoft, Planning Department, for recording with the Register of Deeds and distribution to

16 the owners. Recording fees are to be paid in advance by the owners

17 BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this

18 Agreement to Michaela Dugan, Impact Fee Administrator.

Introduced by:

AYES: Camp, Christensen, Eskridge, Fellers, Gaylor Baird, Lamm, Raybould; NAYS: None.

Approved as to Form & Legality:

Jeffery R. Aldredge
City Attorney

Approved this 30th day of March, 2017:

[Signature]
Mayor

ADOPTED

MAR 27 2017

BY CITY COUNCIL

**CONDITIONAL ANNEXATION AND ZONING AGREEMENT
(WHITE HORSE)**

This Conditional Annexation and Zoning Agreement (White Horse) is made and entered into this ____ day of _____, 2017, by and among Jack A. Herbert, Trustee of the Marie A. Herbert Trust, Marie A. Herbert, Trustee of the Jack A. Herbert Trust, Blue Rock Investments, LLC, a Nebraska limited liability company (“Blue Rock”), and the City of Lincoln, Nebraska, a municipal corporation (“City”). Jack A. Herbert, Trustee, Marie A. Herbert, Trustee, and Blue Rock are collectively referred to as (“Developers”).

RECITALS

I.

Developers are the owners of Lot 30 I.T., located in the West Half of Section 26, Township 10 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska (“Lot 30”). Lot 30 is generally located at A Street and South 90th Street.

II.

Developers have requested the City to (a) annex Lot 30, as shown on Exhibit A (Annexation 17002), (b) rezone Lot 30 from AG to R-3, as shown and described on Exhibit B (COZ 17002), and (c) approve a preliminary plat of Lot 30 (“PP 17001 – for the White Horse Preliminary Plat”), as shown on Exhibit C, for approximately 154 single family dwelling lots. Annexation 17002, COZ 17002, and PP 17001 are collectively the “Governmental Actions”.

III.

The City as a condition of approving the Governmental Actions desires an agreement with Developers to be assured that the Developers’ will (i) construct the necessary roundabout in A Street, (ii) pay Developers one-half share of the cost to extend Appaloosa Lane and associated sidewalks, water mains, and storm water mains from the eastern boundary of Lot 30 across the Lower Platte South Natural Resource District property (“NRD Property”) to the south boundary

of the School District No. 1 property ("LPS Property") when the LPS Property is developed, (iii) guarantee payment required in (ii) above by establishing an escrow account in the estimated amount for such improvements, (iv) construct the paved extensions of Navajo Trail and Chaparral Road and the abutting sidewalks from the west boundary of Lot 30 to the paved street improvements in Smokey Hill Road, and (v) construct the sidewalk abutting Lot 1, Block 4, Herbert Brothers Indian Hills First Addition with the construction of Sandalwood Drive.

IV.

Developers have represented to the City that, in consideration of the City approving the Governmental Actions, the Developers would enter into an agreement with the City to develop Lot 30 subject to the conditions listed below.

NOW, THEREFORE, in consideration of the above recitals and the following terms and conditions, the parties agree as follows:

- I. Developers agree:
 - a. To design and construct the roundabout in A Street at South 90th Street in coordination with the Developers' executive order construction of South 90th Street. The roundabout will be graded for its full two lane buildout, but designed and constructed as a paved single lane roundabout. The required right for full two lane buildout on the north side of A Street shall be dedicated or conveyed by Developers to the City at no cost to the City.
 - b. To construct, at their own cost and expense, the paved street extensions of Navajo Trail and Chaparral Road including the abutting sidewalks from the west boundary of Lot 30 to their connection to the paved street improvements in Smokey Hill Road, generally as shown on Site Plan attached hereto as Exhibit A.

- c. To pay one-half of the actual cost to construct Appaloosa Lane and associated sidewalks, water mains and storm water mains from the northeasterly boundary of Lot 30 across the NRD Property (former MoPac Railroad ROW) to the southerly boundary of the LPS Property when Appaloosa Lane needs to be extended northeasterly to accommodate development of the LPS Property located northeast of the NRD Property, generally as shown on the attached Site Plan (Exhibit A). The cost to construct the above improvements is estimated to be \$62,000.00.
 - d. Developers agree to provide the City with a bond, escrow, or security agreement approved by the City Law Department in the amount of \$31,000.00 to guarantee the payment required in (c) above.
2. City agrees:
- a. To approve the Governmental Actions.
 - b. To acquire the required right-of-way on the south side of A Street for the full two lane buildout of the roundabout from the property owners on the south side of A Street at City's own cost and expense.
 - c. To reimburse Developers for the cost to grade A Street for the full two lane buildout of the roundabout and to construct the paved single lane roundabout, without interest, solely from Arterial Street Impact Fees collected from development of the residential lots within the White Horse Preliminary Plat ("Directed Arterial Street Impact Fees"), subject to the following conditions:

- (i) Reimbursement shall be paid quarterly from all Directed Arterial Street Impact Fees actually received from development of the residential lots within the White Horse Preliminary Plat;
- (ii) Any reimbursement to be paid from Directed Arterial Street Impact Fees shall not constitute a general obligation of the City.

3. **Contribution for Rural Fire District.** Developers understand and acknowledge that Lot 30 lies within the boundaries of the Southeast Rural Fire District and that pursuant to Neb. Rev. Stat. §35-514 (Reissue 2016) the City's annexation of Lot 30 shall not be complete except upon the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of Lot 30 being annexed. The City believes the District has no outstanding obligations and therefore there is no debt for the City to assume and pay. However, in the event there is such an obligation, Developers agree to pay the City whatever amount which must be paid by the City to the Southeast Rural Fire District in order for the annexation to be complete.

4. **Binding Effect.** This Agreement shall run with Lot 30 and be binding upon and inure to the benefit and burden of successors and assigns of the respective parties.

5. **Amendments.** This Agreement may only be amended or modified in writing signed by the parties hereto.

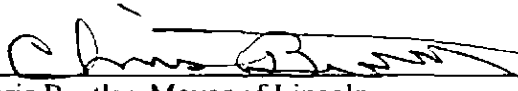
6. **Governing Law.** All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

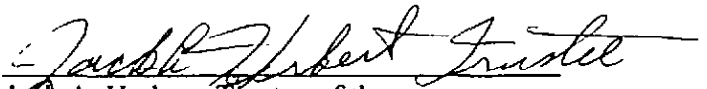
7. **Authority.** This Agreement has been duly executed and delivered by the parties and constitutes a legal, valid and binding obligation of each party, enforceable against the same in accordance with its terms.

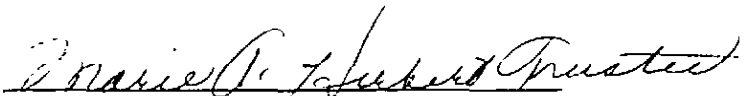
8. **Recording.** This Agreement shall be recorded by the City with the Register of Deeds of Lancaster County, filing fees therefor to be paid in advance by the Developers.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date and year first above written.

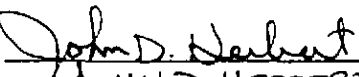
CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: 
Chris Beutler, Mayor of Lincoln

* By: 
Jack A. Herbert, Trustee of the
Marie A. Herbert Trust


* By: 
Marie A. Herbert, Trustee of the
Jack A. Herbert Trust

BLUE ROCK INVESTMENTS, LLC,
a Nebraska limited liability company

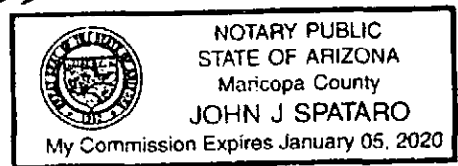
x x By: 
Name: JOHN D. HERBERT
Title: MANAGER

Arizona
STATE OF ~~NEBRASKA~~)
Maricopa) ss.
COUNTY OF ~~LANCASTER~~)

The foregoing instrument was acknowledged before me this 7 day of March, 2017, by Jack A. Herbert, Trustee of the Marie A. Herbert Trust.




Notary Public

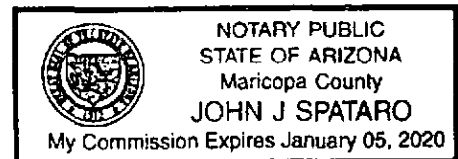


Arizona
STATE OF ~~NEBRASKA~~)
Maricopa) ss.
COUNTY OF ~~LANCASTER~~)

The foregoing instrument was acknowledged before me this 7 day of March, 2017, by Marie A. Herbert, Trustee of the Jack A. Herbert Trust.

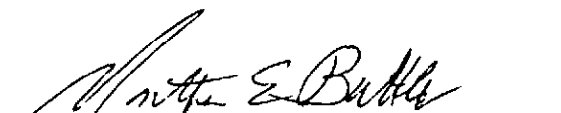


Notary Public

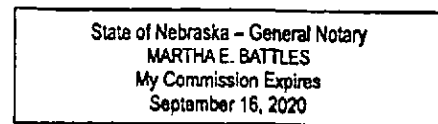


STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 14 day of March, 2017, by John Herbert, MANAGER of Blue Rock Investments, LLC, a Nebraska limited liability company.



Notary Public



STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 30th day of March, 2017, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.



Notary Public

