



19R-109

Introduce: 4-29-19

RESOLUTION NO. A- **91597**

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

That Amendment No. 1 to the Conditional Annexation and Zoning Agreement for White Horse approved March 27, 2017 as City Council Resolution No. A-90343, which is attached hereto, marked as Attachment "A", and made a part hereof by reference, between the City of Lincoln, Nebraska, Jack A. Herbert, Trustee of the Marie A. Herbert Trust, Marie A. Herbert, Trustee of the Jack A. Herbert Trust, and Blue Rock Investments, LLC, to construct a roundabout on property generally located at South 90th Street and A Street, is hereby approved and the Mayor is authorized to execute the Amendment No. 1 on behalf of the City.

BE IT FURTHER RESOLVED that the City Clerk is directed to return one fully executed copy of this Agreement to Tim Sieh, Assistant City Attorney, for distribution to the parties. See further Council Proceedings on next page.

AMENDED 05/06/19

Introduced by:

Jane Korbals
AYES: Camp, Christensen, Eskridge, Gaylor Baird, Lamm, Raybould, Shobe; NAYS: None.

Approved as to Form & Legality:

Jeffery R. Rodriguez
City Attorney

ADOPTED
MAY 06 2019
BY CITY COUNCIL

Approved this 10th day of May, 2019:
[Signature]
Mayor

19R-109

05/06/19 Council Proceedings:

RAYBOULD Moved Motion to Amend No. 1 to amend Bill No. 19R-109 to adopt a substitute agreement attached hereto.

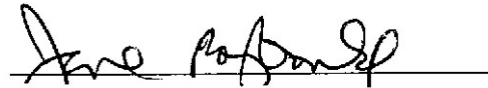
Seconded by Christensen & carried by the following vote: AYES: Camp, Christensen, Eskridge, Gaylor Baird, Lamm, Raybould, Shobe; NAYS: None.

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MOTION TO AMEND NO. 1

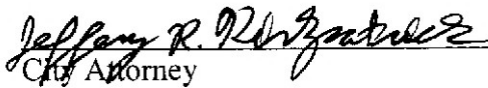
I hereby move to amend Bill No. 19R-109 to adopt a substitute Agreement attached hereto.

Introduced by:



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

Approved as to Form and Legality:


City Attorney

Requested by: Law Department

Reason for Request: To further define reimbursement provisions in Section 4 of the Agreement and identify the parcel against which the Amendment should be recorded.

ADOPTED

MAY 06 2019

BY CITY COUNCIL

**AMENDMENT NO. 1 TO CONDITIONAL ANNEXATION
AND ZONING AGREEMENT
(WHITE HORSE)**

This Amendment No. 1 to the Conditional Annexation and Zoning Agreement (White Horse) (hereinafter “**Amendment**”) is made and entered into this 16th day of May, 2019, 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 were the owners of Lot 30, I.T. located in the South and West Halves of Section 26, Township 10 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska (“Lot 30”). Lot 30 was generally located at A Street and South 89th Street.

II.

The interests previously held by Jack A. Herbert, as Trustee of the Marie A. Herbert Trust, and Marie A. Herbert, as Trustee of the Jack A. Herbert Trust, have since been acquired by Herbert Development, Inc., a Nebraska corporation, and Herbert Development, Inc. agrees and acknowledges the rights and obligations described in the Conditional Annexation and Zoning Agreement described above that it assumed through acquiring such interests.

III.

Developers requested the City to annex Lot 30, change the zoning designation for Lot 30 from AG to R-3, and approve a preliminary plat of Lot 30 to include approximately 154 single family residential lots (collectively "Governmental Actions"). As a condition of approving these Governmental Actions, the City required assurance that Developers would (i) construct the necessary roundabout in A Street; (ii) pay one-half of the cost to extend Appaloosa Lane and associated sidewalks, water mains, and storm water mains from the northeasterly boundary of Lot 30 across the Lower Platte South Natural Resource District property ("NRD Property") to the south boundary of the LPS Property when the LPS Property is developed; (iii) guarantee payment required for (ii) above by establishing an escrow account in the estimated amount of 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.

In addition to the City approving the Governmental Actions, the City and Developers entered into the Conditional Annexation and Zoning Agreement (White Horse) dated March 27, 2017 as approved by City Council Resolution No. A-90343 on March 27, 2017 (hereinafter the "Agreement"). As part of the Agreement, Developers committed to design and construct the A Street roundabout described above in Recital II at their own cost and expense provided that they be reimbursed from arterial street impact fees generated by the residential lots within Lot 30.

V.

The City recognizes the importance of constructing the roundabout in A Street at approximately 89th Street and the benefit it will achieve for residents on what was Lot 30 as well as future development along A Street east of 89th Street. In addition, to create a consistent and unified project with the proposed 93rd Street roundabout and adjacent connecting paving segments to be constructed in the same time frame, the City agrees to assume responsibility for the design and construction of the A Street roundabout described in the Agreement. In consideration of the City assuming responsibility to construct said improvements, Developers agree to place into an escrow account for the benefit of the City the sum of \$376,000.00 that the City may use for the purposes of the A Street roundabout improvement described in the Agreement for which the City is assuming responsibility in this Amendment.

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

1. All defined terms described in the Agreement shall, except as specifically amended herein, retain the same definition for purposes of this Amendment.
2. Developers are relieved of any further obligation to design or construct the roundabout improvements in A Street upon execution of this Amendment.
3. Developers shall, at no cost to the City, turn over or cause to be turned over to the City any and all engineering design products completed by or on behalf of Developers related to the A Street roundabout described in the Agreement.
4. Developers, in lieu of constructing the A Street roundabout shall place into escrow for the benefit of the City the amount of Three Hundred Seventy-six Thousand and NO/100 Dollars (\$376,000.00) to be applied by the City toward the cost of the A Street

roundabout improvement as described in the Agreement. The escrowed funds shall be the first source of funding from which the City will draw upon to pay for the A Street roundabout. The City agrees that arterial street impact fees generated by residential lots within the White Horse Preliminary Plat shall be used to reimburse Developers those funds placed into escrow according to this section to be used by the City to assist in paying for the A Street roundabout. Such reimbursement shall commence once Developers have placed the funds into escrow and occur on a quarterly basis thereafter as otherwise described in the Agreement.

5. City agrees and does hereby assume the obligation to design and construct the A Street roundabout described in the Agreement at the City's discretion and cost.
6. Developers agree that no further lots shall be final platted in the White Horse preliminary plat area described in the Agreement until the earlier of August 1, 2019 or when the City has contracted the construction of the A Street roundabout described in the Agreement.
7. Except as specifically amended herein, all other terms and conditions of the Agreement shall remain in full force and effect.
8. This Amendment shall be recorded by the City with the Register of Deeds of Lancaster County, Nebraska, filing fees therefor to be paid in advance by the Developers. The parties acknowledge Lot 30 has been further subdivided, so this Amendment shall be recorded against Outlot D, White Horse Addition, Lincoln, Lancaster County, Nebraska.

IN WITNESS WHEREOF, the parties have executed and delivered this Amendment No. 1 to the Conditional Annexation and Zoning Agreement (White Horse) as of the date and year first written above.

Executed this 1 day of May, 2019.

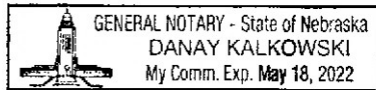
HERBERT DEVELOPMENT, INC.,
a Nebraska Corporation,

By: Vicki Herbert Cox, President
Vicki Herbert Cox, President

STATE OF NEBRASKA)
) SS.
COUNTY OF LANCASTER)

The foregoing instruments was executed and acknowledged before me this 1 day of May, 2019 by Vicki Herbert Cox, President of Herbert Development, Inc.

(SEAL)



Danay Kalkowski
Notary Public