



A92072

20R-105

Introduce: 3-16-02

RESOLUTION NO. A- 92072

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

2 That the Amendment No. 1 to the Annexation Agreement for Southwest Village Heights
3 1st Addition approved as City Council Resolution No. A-91199 on August 15, 2018, which is
4 attached hereto, marked as Attachment "A", and made a part hereof by reference, between the City
5 of Lincoln and Southwest Folsom Development, LLC to provide for construction improvements
6 for South Folsom Street and Old Cheney Road, is hereby approved and the Mayor is authorized to
7 execute the Amendment No. 1 on behalf of the City.

8 BE IT FURTHER RESOLVED that the City Clerk is directed to return the original and
9 one fully-executed copy of the Amendment No. 1 to the Annexation Agreement to Steve
10 Henrichsen, Planning Department, for recording with the Register of Deeds and distribution to the
11 owners. Recording fees are to be paid in advance by the owners.

12 BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this
13 Amendment to Tim Sieh, Assistant City Attorney.

14 BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this
15 Agreement to Michaela Dugan, Impact Fee Administrator.

ADOPTED

MAR 30 2020

BY CITY COUNCIL

Approved as to Form & Legality:

Jeffery R. Kirpatrick
City Attorney

Introduced by:

Steve D. Bowers

AYES: Bowers, Christensen, Meginnis,
Raybould, Shobe, Ward, Washington; NAYS:
None.

Approved this 2 day of April, 2020:
Gregory Gaylor Baird
Mayor

**AMENDMENT NO. 1
TO THE
ANNEXATION AGREEMENT
FOR
SOUTHWEST VILLAGE HEIGHTS 1ST ADDITION**

This Amendment No. 1 to the Annexation Agreement for Southwest Village Heights 1st Addition ("Amendment") is made and entered into as of the date of execution by the last signatory hereto as indicated below by and between the **City of Lincoln, Nebraska**, a municipal corporation ("City"), and **Southwest Folsom Development, LLC**, a Nebraska limited liability company ("Property Owner").

RECITALS

A. The City and Property Owner previously entered into the Annexation Agreement for Southwest Village Heights 1st Addition dated August 15, 2018 approved by Resolution No. A-91199 ("Annexation Agreement"). Capitalized terms not defined herein shall have the meaning set forth in the Annexation Agreement.

B. The Annexation Agreement identified all of the Property Owner's and City's responsibilities regarding the construction of infrastructure improvements necessitated by development of the "Property" legally described and shown on Exhibit "A-1" attached hereto, with the exception of arterial street impact fee facility improvements.

C. The City has completed the Subarea Study identified in the Annexation Agreement and the Property Owner has submitted a preliminary plat for the Property as shown on Exhibit "C-1" attached hereto

D. The City and Property Owner desire to amend the Annexation Agreement to identify the City's and Property Owner's responsibilities regarding the construction of additional

arterial street impact fee facility improvements necessitated upon annexation and future development of the Property.

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants established herein, the City and Property Owner do hereby agree as follows:

1. The City, concurrently with the approval of this Amendment is approving Preliminary Plat No. 18002.
2. Article III of the Annexation Agreement is hereby amended and restated as follows:

III.

ARTERIAL STREET IMPROVEMENTS

A. S. Folsom Street Adjacent to the Property.

1. Existing Conditions. Presently, S. Folsom Street adjacent to the Property (“S. Folsom Street”) is designated as a “Major Collector” in the 2040 Lincoln City – Lancaster County Comprehensive Plan. No improvements to this segment of S. Folsom Street are shown in the Lincoln City – Lancaster County Comprehensive Plan during the 25-year planning period. This segment of S. Folsom Street is described in the City’s Access Management Policy as a Minor Arterial Street. S. Folsom Street exists as a graveled two-lane rural cross section county road except for the southern portion that contains pavement providing a taper section from the paved urban roadway section of S. Folsom Street to the south. S. Folsom Street is included in the Subarea Study.

2. Access Point. The City and Property Owner agree that full turn movement intersection ingress and egress to and from the Property along S. Folsom Street will be limited to one access point at the quarter mile in the approximate location shown as Palm Canyon Road on Exhibit “C” attached to the Annexation Agreement.

3. S. Folsom Street Improvements. The City and Property Owner agree that urban development of the Property will require the improvement of S. Folsom Street as set forth on the roadway cross section attached as Exhibit "D-1" to the Annexation Agreement and the roadway configuration attached as Exhibit "D-2" to the Annexation Agreement. The S. Folsom Street grading and paving improvements identified on Exhibit "D-1" are arterial street impact fee facility improvements ("S. Folsom Street Improvements"). The City does not currently have funding to pay for the S. Folsom Street Improvements. On behalf of the City, the Property Owner shall design, competitively bid, construct and fund the S. Folsom Street Improvements through the City's Executive Order process. The Property Owner agrees to complete design and bid the S. Folsom Street Improvements by no later than January 31, 2021, unless extended by mutual agreement of the parties. In the event Property Owner does not bid the S Folsom Street Improvements by January 31, 2021 or the mutually agreed upon extension date, the City may, in its sole discretion, elect to reallocate all or a portion of the sales tax revenue funds described in Subsection D.2. below from the S Folsom Street Improvements to a different street project thereby making them unavailable to reimburse Property Owner for designing and constructing the S. Folsom Street Improvements.

The parties acknowledge that the estimated cost of construction (not including design, ROW, etc.) for the S. Folsom Street Improvements is \$1,100,000. In the event the lowest responsible construction bid exceeds \$1,100,000, then the City and Property Owner will meet to determine if (i) the bids should be rejected, (ii) an alternative design can be identified that could meet the public's interest while reducing costs, or (iii) Property Owner should proceed with the higher costs. The City agrees to reimburse the Property Owner for the actual design and construction costs for the S. Folsom Street Improvements as set forth in Subsection D. below.

4. Dedication of S. Folsom Street ROW. At the time of final platting or upon the earlier request by the City, the Property Owner agrees to dedicate or convey, at no cost to the City, the additional right-of-way needed to provide 66 feet of right-of-way from the center line of S. Folsom Street, as well as additional right-of-way at the planned quarter mile intersection and the future intersection with Old Cheney Road for roundabout improvements along with any temporary construction easements.

5. Final Platting Adjacent to S. Folsom Street. The parties acknowledge that S. Folsom Street is paved adjacent to a majority of the First Phase Property. The Property Owner may final plat all of the First Phase Property prior to construction of the S. Folsom Street Improvements. The parties agree construction of the S. Folsom Street Improvements shall be completed in conjunction with the first final plat of the Property outside the First Phase Property, unless it is completed sooner by the Property Owner.

B. W. Old Cheney Road from SW 12th Street to S. Folsom Street.

1. Existing Conditions. W. Old Cheney Road from SW 12th Street to S. Folsom Street is an existing two lane paved county road. It is designated as a “Major Collector” in the 2040 Lincoln City – Lancaster County Comprehensive Plan. This segment of W. Old Cheney Road is described in the City’s Access Management Policy as a Minor Arterial Street.

2. Access Point. The City and Property Owner agree that full turn movement intersection ingress and egress to and from the Property along W. Old Cheney Road will be limited to one access point at the quarter mile in the location shown as SW 9th Street on Exhibit “G-1” attached hereto.

3. W. Old Cheney Road Roundabout. The City and Property Owner agree that urban development of the Property will require the construction of a roundabout in W. Old Cheney

Road at SW 9th Street in the configuration shown on Exhibit “G-1” (“W. Old Cheney Road Roundabout”). The W. Old Cheney Roundabout grading and paving improvements shown on Exhibit “G-1” are arterial street impact fee facility improvements. The City does not currently have funding to pay for the W. Old Cheney Road Roundabout. The Property Owner may, on the City’s behalf, design, competitively bid, construct and fund the W. Old Cheney Road Roundabout through the City’s Executive Order process as part of the final plat process. In the event Property Owner designs and constructs the W. Old Cheney Road Roundabout described herein, then the City agrees to reimburse Property Owner for said costs, as set forth in Subsection D. below. The Property Owner agrees to complete design and bid the W. Old Cheney Road Roundabout by no later than September 1, 2025, unless extended by mutual agreement of the parties. In the event Property Owner does not bid the W. Old Cheney Road Roundabout by September 1, 2025 or the mutually agreed upon extension date, the City may, in its sole discretion, elect to reallocate all or a portion of the sales tax revenue funds described in Subsection D.2. below from the W. Old Cheney Road Roundabout to a different street project thereby making them unavailable to reimburse Property Owner for designing and constructing the W. Old Cheney Road Roundabout.

4. Dedication of W. Old Cheney Road ROW. At the time of final platting or upon the earlier request by the City, the Property Owner agrees to dedicate or convey, at no cost to the City, the additional right-of-way needed to provide up to 60 feet of right-of-way from the center line of W. Old Cheney Road, as well as additional right-of-way for the W. Old Cheney Road Roundabout along with any temporary construction easements.

C. SW 12th Street Adjacent to the Property.

1. Existing Conditions. SW 12th Street adjacent to the Property (“SW 12th Street”) is shown in the 2040 Lincoln City – Lancaster County Comprehensive Plan as a “minor

arterial” street improvement during the 25-year planning period. This segment of SW 12th Street is also described in the City’s Access Management Policy as a Minor Arterial Street. Presently, SW 12th Street is an existing two lane paved county road.

2. Access Points. The City and Property Owner agree that the full turn movement intersection ingress and egress to and from the Property along SW 12th Street will be limited to two access points in the locations shown at approximately the quarter mile and the half mile (W. Pleasant Hill Road) on Exhibit “H-1” attached hereto. Neither access point is located fully upon the Property.

3. SW 12th Street Improvements.

a. Quarter Mile Access. The Property Owner’s responsibility for the quarter mile access point is limited to dedication of right-of-way as set forth below. Property Owner shall have no responsibility to construct any improvements to SW 12th Street for the quarter mile access.

b. Half Mile Access/W. Pleasant Hill Road. Construction of the intersection of W. Pleasant Hill Road and SW 12th will be triggered with the development of the adjacent property to the south (“South Property”). The Property Owner agrees that it shall be responsible for one-half of the costs to design and construct right and left turn lanes as determined by the City at the W. Pleasant Hill Road access point along SW 12th Street as generally shown on Exhibit “H-1” attached hereto (“SW 12th Turn Lanes”), at such time as the additional right-of-way is granted to the City from the South Property for W. Pleasant Hill Road and the construction of W. Pleasant Hill Road is triggered by development of the South Property. The SW 12th Turn Lanes will provide required turning motor vehicular storage along with the required deceleration lane length. The final design for the SW 12th Turn Lanes will be submitted to the City for review and

approval. If the SW 12th Turn Lanes are constructed as permanent improvements and are determined by the City to be arterial street impact fee facility improvements, then the City agrees to reimburse Property Owner for said costs as set forth in Subsection D. below. If the SW 12th Turn Lanes are not determined to be arterial street impact fee facility improvements, Property Owner will not be reimbursed by the City for the costs of the SW 12th Turn Lanes.

4. Dedication of SW 12th Street Right-of-Way. At the time of final platting or upon the earlier request by the City, the Property Owner agrees to dedicate or convey, at no cost to the City, the additional right-of-way needed to provide up to 60 feet of right-of-way from the center line of SW 12th Street, as well as additional of right-of-way at the planned quarter mile and half-mile intersections for future roundabout improvements along with any temporary construction easements.

D. City Reimbursement.

1. Segregated Arterial Street Impact Fees. The City agrees to segregate arterial street impact fees collected by the City from development of the Property, as well as the property included within Southwest Village Heights Preliminary Plat, which area is identified on Exhibit "E-1" attached hereto ("Segregated Arterial Street Impact Fees"), and utilize said Segregated Arterial Street Impact Fees to fund the S. Folsom Street Improvements, W. Old Cheney Road Roundabout, and, if they are determined by the City to be impact fee facility improvements, the SW 12th Turn Lanes (collectively the "Road Improvements"). In the event Segregated Arterial Street Impact Fees are not available to fund the Road Improvements at the time they are constructed by the Property Owner, the Property Owner shall fund said Road Improvements and said costs shall be reimbursed to the Property Owner quarterly by the City from Segregated Arterial Impact Fees actually collected. If required, the Road Improvements shall be publicly bid and

awarded as provided by law. If required, the Property Owner shall prepare and process, and the City agrees to sign, as permittee, an application for any Section 404 permit required for construction of the Road Improvements. In the event the Property Owner's costs for the Road Improvements are in excess of the anticipated Segregated Arterial Street Impact Fees, defined below, and said costs are not reimbursed from other City funds, then the City agrees to use Impact Fees collected from within the same benefit district to reimburse the Property Owner for such costs.

2. Sales Tax Funds. The City acknowledges and agrees that the Segregated Arterial Street Impact Fees generated from development of the Property and the property included within Southwest Village Heights Preliminary Plat alone are insufficient to cover the costs to be incurred by Property Owner in designing and constructing the Road Improvements. Partially in recognition of the insufficiency of arterial street impact fees to keep up with the demand for additions to the City's arterial streets, the City approved the imposition of an additional ¼ cent sales tax to be used for restoring, rehabilitating, and expanding the City's road infrastructure in order to improve the road infrastructure of the City while also spurring additional private investment.. Having imposed such a tax, the City Council subsequently identified the Road Improvements described herein as projects toward which a portion of the sales tax revenue generated by the additional ¼ cent tax should be allocated. Therefore, in addition to the Segregated Arterial Street Impact Fees, the City, subject to future appropriation by the City Council, hereby agrees to allocate \$1,000,000 from the revenue generated by the additional ¼ cent sales tax dedicated toward reimbursing Property Owner for actual costs incurred in designing and constructing the Road Improvements. Said sales tax revenue shall, subject to appropriation by the City Council, be paid to Property Owner, conditioned upon satisfactory completion of the Road

Improvements within the timeframes set forth in this Agreement, according to the following schedule:

- (a) FY 2020/21 \$350,000 for S Folsom Street Improvements
- (b) FY 2021/22 \$350,000 for S Folsom Street Improvements
- (c) FY 2024/25 \$300,000 for W. Old Cheney Road Roundabout

Like the Segregated Arterial Street Impact Fee payments, the sales tax revenue shall be paid on a quarterly basis as sales tax is received by the City throughout the specified fiscal years. Payment of such funds is conditioned upon Property Owner providing sufficient written documentation of the actual costs of design and construction of the Road Improvements.

Property Owner agrees that it shall select the construction company responsible for constructing said improvements through the City’s Purchasing Division according to the City’s requirements for procurement of such services.

Property Owner expressly acknowledges and agrees that nothing in this Agreement represents a general obligation on the part of the City to repay Property Owner for its actual costs incurred in the design and construction of the Road Improvements.

3. Article IV.A.5. of the Annexation Agreement is hereby amended and restated as follows:

5. Temporary Storage and Pumping. Property Owner and City acknowledge the Salt Creek Trunk Extension will not be substantially completed until December, 2020 (after the Trunk Completion Date), which has delayed the commencement of construction on the SW Subbasin Extension. The SW Subbasin Extension will be designed by the City and ready to bid in late summer 2020, with substantial completion by March 31, 2021 (“Subbasin Completion Date”). If the Internal Sewer Line(s) are completed by Property Owner prior to the completion of

the SW Subbasin Extension, but the SW Subbasin Extension has been designed and bid by the City, the City will allow the following:

(a) Property Owner, at its expense, to temporarily collect and store the wastewater generated from a building(s) into the Internal Sewer Line(s) and timely pump, haul and dispose of said wastewater until such time as the SW Subbasin Extension is constructed and operable (collectively "Temporary Pumping"). In the event of Temporary Pumping, Property Owner, at its expense, shall timely pump said stored wastewater from the Internal Sewer Line(s) into a proper collection and transfer truck, and haul and dispose of said wastewater into a nearby operable City sewer manhole and sewer line that has been identified by the City's Public Works and Utilities Lincoln Wastewater System. Property Owner shall not be required to pay the City a City wastewater collection, storage, pumping, hauling, disposal or wastewater treatment charge for said wastewater. Property Owner's collection, storage, pumping, hauling and disposing of said wastewater from the Internal Sewer Line(s) and to the designated City manhole shall be in conformance with the City of Lincoln's Wastewater Department's design standards and procedures for temporary wastewater collection, storage, pumping, hauling and disposal so as to properly protect the public's health and safety. As soon as the SW Subbasin Extension is completed and operable, then Property Owner shall cease the Temporary Pumping.

b. Property Owner and its successors, assigns, buyers and tenants may be issued building permits for said building(s) within the Property prior to the completion of the SW Subbasin Extension; provided that (i) there is compliance with the City's building codes; (ii) the applicable streets, street signs, and water mains are completed; and (iii) the Subbasin Completion Date is no more than 6 months after expected occupancy of said building(s).

c. Property Owner and its successors, assigns, buyers and tenants to be issued a certificate of occupation for said building(s) within the Property; provided that, there is compliance with the City's building codes and further provided that, Property Owner is providing Temporary Pumping as described above.

4. The following Article X is hereby added to the Annexation Agreement:

X.

DESIGN SERVICES

By entering into this Amendment, the City hereby recognizes and agrees that the Property Owner's consultant, Olsson, has completed a significant amount of preliminary design work with respect to the Road Improvements. The City has confirmed that Olsson has been deemed to be qualified to perform the design services for the Road Improvements by the City's Purchasing Division. Finally, the City acknowledges that to select a different design consult to reproduce such work product related to the Road Improvements would be inefficient and likely to result in unnecessary delay in construction of the Road Improvements. Therefore, based upon the recommendation of the Interim Director of Lincoln Transportation and Utilities, the City agrees to, and hereby does, waive those procurement procedures related to selection of consultants for professional consulting services as outlined in Executive Order No. 80199 dated October 9, 2007.

Dated as of March 30, 2020 by the City.

“CITY”

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: *Leirion Gaylor Baird*
Leirion Gaylor Baird, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 30th day of March, 2020, by Leirion Gaylor Baird, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation, on behalf of the municipal corporation.

Teresa J. Meier
Notary Public



**SOUTHWEST FOLSOM
DEVELOPMENT, LLC, a Nebraska
limited liability company**

By: 1640 LLC, a Nebraska limited liability
company, Member

By: Michelle S. Benes Revocable Trust
dated May 21, 2003, Managing Member

By: *Michelle S. Benes*
Michelle S. Benes, Trustee

By: Robert L. Benes Revocable Trust dated
May 21, 2003, Managing Member

By: *Robert L. Benes*
Robert L. Benes, Trustee

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

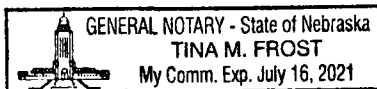
The foregoing was acknowledged before me this 10 day of March, 2020, by Michelle S. Benes, Trustee of the Michelle S. Benes Revocable Trust dated May 21, 2003, Managing Member of 1640 LLC, a Nebraska limited liability company, Member of **Southwest Folsom Development, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.



Tina M. Frost
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 10 day of March, 2020, by Robert L. Benes, Trustee of the Robert L. Benes Revocable Trust dated May 21, 2003, Managing Member of 1640 LLC, a Nebraska limited liability company, Member of **Southwest Folsom Development, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.



Tina M. Frost
Notary Public

By: WHITE HOLDINGS, LLC, a Nebraska limited liability company, Member

By: White Family, L.L.C., a Nebraska limited liability company, Member

By: Thomas E. White
Thomas E. White, Manager

By: Zachary R. White
Zachary R. White, Member

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 10 day of March, 2020, by Thomas E. White, Manager of White Family, L.L.C., a Nebraska limited liability company, Member of White Holdings, LLC, a Nebraska limited liability company, Member of **Southwest Folsom Development, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.



Tina M. Frost
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 10 day of March, 2020, by Zachary R. White, Member of White Holdings, LLC, a Nebraska limited liability company, Member of **Southwest Folsom Development, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.



Tina M. Frost
Notary Public

EXHIBIT "A-1"

THE PROPERTY

LOT 35 I.T. AND LOT 26 I.T., ALL LOCATED IN THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA

EXHIBIT "C-1"

PRELIMINARY PLAT SITE PLAN

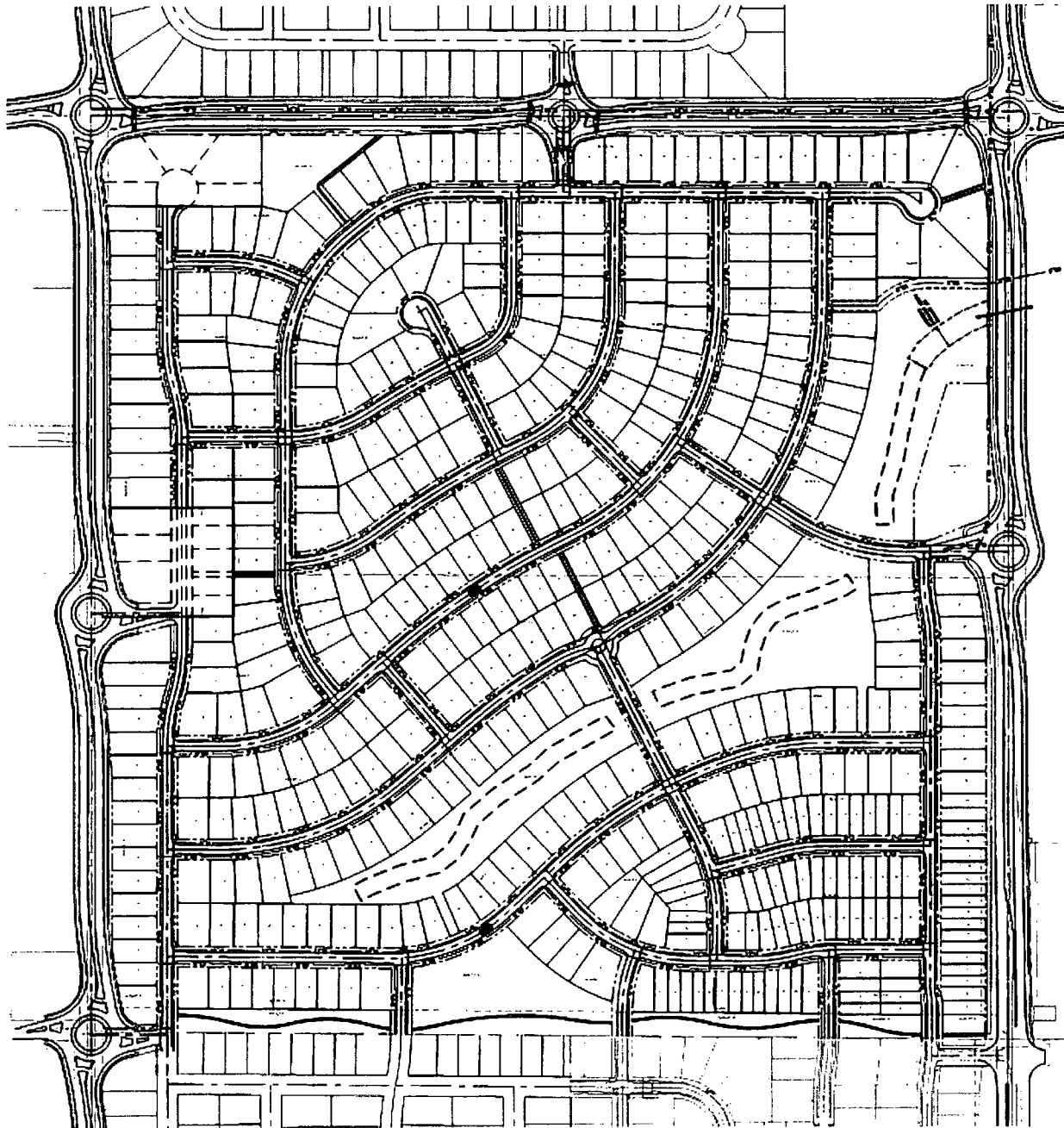


EXHIBIT "E-1"
DIRECTED IMPACT FEE AREA

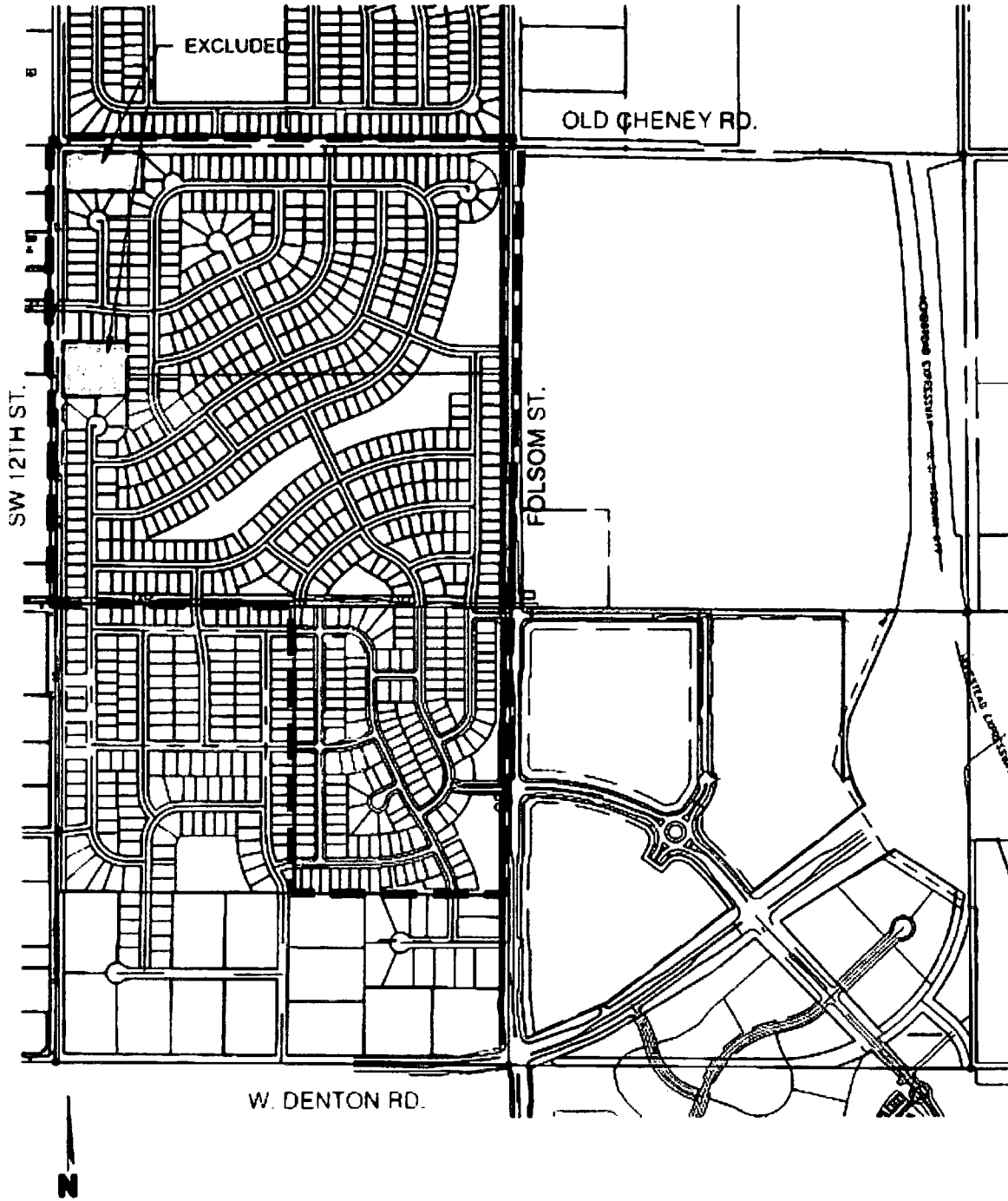


EXHIBIT "G-1"
OLD CHENEY ROAD ROUNDABOUT

