



20R-149

Introduce: 4-13-20

RESOLUTION NO. A- 92097

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

2 That the attached Amendment No. 4 to the Waterford Estates Conditional Annexation and
3 Zoning Agreement between the City of Lincoln, Waterford Estates, LLC, Ridge Development
4 Company, Southview Inc., Developments Unlimited, LLP, and Northern Lights, LLC relating to the
5 construction and funding of a roundabout at the intersection of North 104th and Holdrege Streets,
6 upon the terms and conditions set forth in said Amendment No. 4 of said Conditional Annexation
7 and Zoning Agreement, which is attached hereto marked as Attachment "A", is hereby approved
8 and the Mayor is authorized to execute said Agreement and any necessary subsequent amendments
9 thereto necessary to carry out the project described therein on behalf of the City of Lincoln.

10 BE IT RESOLVED that the City Clerk is directed to return one fully-executed copy of this
11 Agreement to Tim Sieh, Assistant City Attorney, for distribution to the Property Owners.

12 BE IT FURTHER RESOLVED that the City Clerk is directed to record Amendment No.
13 4 to the Waterford Estates Conditional Annexation Agreement with the Register of Deeds for
14 Lancaster County, Nebraska to be indexed against the properties listed in Amendment No. 4, filing
15 fees to be paid by the Property Owners.

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

Introduced by:


Brian Shobe

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

Approved as to Form & Legality:



City Attorney

Approved this 27 day of April, 2020:


Mayor

**AMENDMENT NO. 4
TO THE WATERFORD ESTATES
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Amendment No. 4 to the Waterford Estates Conditional Annexation and Zoning Agreement (“Amendment No. 4”) is made and entered into this 27 day of April, 2020 by and between the City of Lincoln, Nebraska, a municipal corporation (“City”), and Waterford Estates, LLC, a Nebraska limited liability company (“Developer”), successor in interest to Ridge Development Company, a Nebraska corporation, Southview, Inc., a Nebraska corporation, Developments Unlimited, LLP, a Nebraska limited liability partnership, and Northern Lights, LLC, a Nebraska limited liability company.

RECITALS

Developer and City desire to amend the Waterford Estates Conditional Annexation and Zoning Agreement, as amended (“Annexation Agreement”) to address the construction and funding of a roundabout at the intersection of N. 104th Street and Holdrege Street. Capitalized terms not otherwise defined herein shall have the meaning identified in the Annexation Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to amend the Annexation Agreement as follows:

1. Paragraph 5.A.II. **Holdrege Street** of the Annexation Agreement is hereby amended to include the following additional language:

The City and Developer agree that it is in the public and Developer’s best interest to construct a permanent roundabout in Holdrege Street at N. 104th Street in the configuration shown on Attachment “4-A”, which is attached hereto and incorporated herein by this reference (“N.

104th Street Roundabout”), instead of adding temporary right and left turn lanes at the intersection. The N. 104th Street Roundabout grading and paving improvements shown on Attachment “4-A” are arterial street impact fee facility improvements. The City does not currently have funding to pay for the N. 104th Street Roundabout. The Developer shall, on the City’s behalf, design, competitively bid, construct and fund the N. 104th Street Roundabout through the City’s Executive Order process. The City agrees to reimburse Developer for said actual costs, as set forth in Paragraph 2. below. Developer agrees to complete design and bid the N. 104th Street Roundabout by no later than September 1, 2021, unless extended by mutual agreement of the parties. In the event Developer does not bid the N. 104th Street Roundabout by September 1, 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 Paragraph 2. below from the N. 104th Street Roundabout to a different street project thereby making them unavailable to reimburse Developer for designing and constructing the N. 104th Street Roundabout.

The parties acknowledge that the estimated cost of construction (not including design, ROW, etc.) for the N. 104th Street Roundabout is \$935,000. In the event the lowest responsible construction bid exceeds \$935,000, then the City and Developer will meet to determine if (i) the bid should be rejected, (ii) an alternative design can be identified that could meet the public’s interest while reducing costs, or (iii) Developer should proceed with the higher costs.

Developer agrees to dedicate the additional right-of-way required from the Property to construct the N. 104th Street Roundabout as part of the final plat process.

2. The following language is hereby added to the Annexation Agreement:

The City and Developer acknowledge that all arterial street impact fee facility

improvements identified in the Annexation Agreement, not including this Amendment No. 4, have been completed and fully reimbursed by the City under the terms of the Annexation Agreement. Consequently, the City agrees to reimburse Developer for said actual costs of the N. 104th Street Roundabout as follows:

A. Segregated Arterial Street Impact Fees. The City agrees to segregate arterial street impact fees collected by the City from development of Waterford Estates, which area is identified on Attachment "4-B", which is attached hereto and incorporated herein by this reference ("Segregated Arterial Street Impact Fees"), and utilize said Segregated Arterial Street Impact Fees to fund the N. 104th Street Roundabout. In the event Segregated Arterial Street Impact Fees are not available to fund the N. 104th Street Roundabout at the time it is constructed by the Developer, the Developer shall fund the N. 104th Street Roundabout and said costs shall be reimbursed to the Developer quarterly by the City from Segregated Arterial Impact Fees actually collected. If required, the Developer shall prepare and process, and the City agrees to sign, as permittee, an application for any Section 404 permit required for construction of the N. 104th Street Roundabout.

B. Sales Tax Funds. The City acknowledges and agrees that the Segregated Arterial Street Impact Fees generated from development of the Property alone are insufficient to cover the costs to be incurred by Developer in designing and constructing the N. 104th Street Roundabout. 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 N. 104th Street Roundabout described herein as a project towards 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 \$400,000 from the revenue generated by the additional ¼ cent sales tax dedicated toward reimbursing Developer for actual costs incurred in designing and constructing the N. 104th Street Roundabout. Said sales tax revenue shall, subject to appropriation by the City Council, be paid to Developer, conditioned upon satisfactory completion of the N. 104th Street Roundabout within the timeframes set forth in this Agreement, according to the following schedule:

(a) FY 2021/22 \$200,000

(b) FY 2022/23 \$200,000

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 Developer providing sufficient written documentation of the actual costs of design and construction of the N. 104th Street Roundabout.

Developer 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.

Developer 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 N. 104th Street Roundabout.

3. For purposes of this Amendment No. 4, 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 consultant 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 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.

4. All terms and conditions of the Annexation Agreement as amended by Amendment Nos. 1, 2 and 3 remain in full force and effect except as amended by this Amendment No. 4.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 4 on the day and year first written above.

"CITY"

CITY OF LINCOLN, NEBRASKA
a municipal corporation


Leirion Gaylor Baird, Mayor

ATTEST:


City Clerk, Deputy



STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 27 day of April, 2020, by Leirion Gaylor Baird, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation.



Carmen J. Flynn
Notary Public

“DEVELOPER”

WATERFORD ESTATES, LLC, a Nebraska limited liability company

By: JB/TW PROPERTIES, INC., a Nebraska corporation, f/n/a Ridge Development Company, Manager

By: Thomas E White
Thomas E. White
President of Development

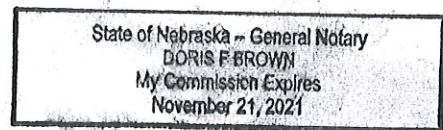
By: Daffay Kalkowski
Title: President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 2nd day of April, 2020, by Thomas E. White, President of Development of JB/TW Properties, Inc., a Nebraska corporation, Manager of **Waterford Estates, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.

Doris J Brown
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)



The foregoing was acknowledged before me this 7th day of April, 2020, by Danay Kalkowski, Vicepresident of JB/TW Properties, Inc., a Nebraska corporation, Manager of **Waterford Estates, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.



Brittany N. Wagner
Notary Public

By: SOUTHVIEW, INC., a Nebraska corporation, Manager

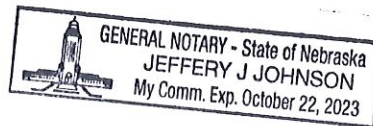
By: [Signature]

Thomas G. Schleich, President

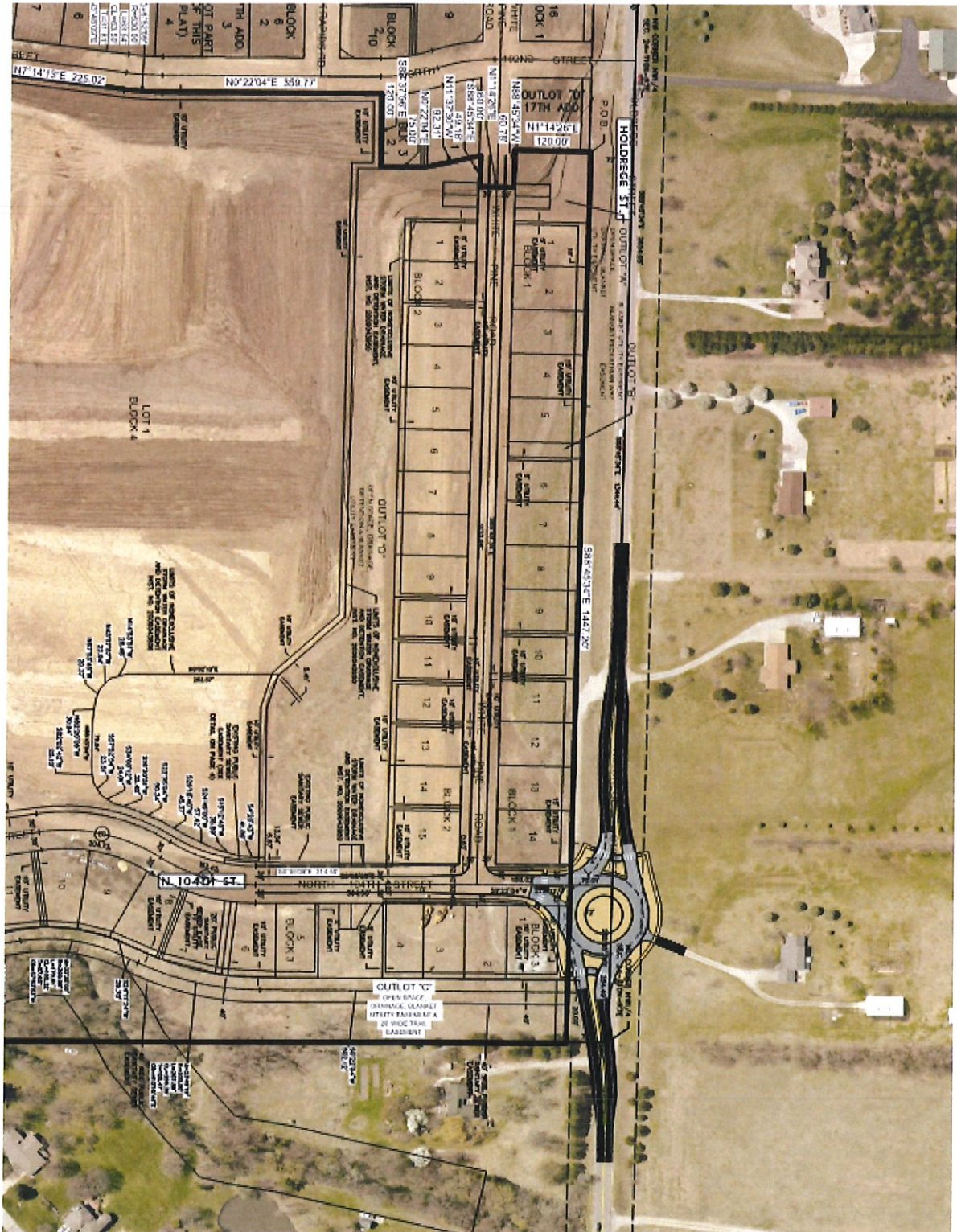
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 3 day of April, 2020, by Thomas G. Schleich, President of Southview, Inc., a Nebraska, corporation, Manager of **Waterford Estates, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.

[Signature]
Notary Public



ATTACHMENT "4-A"
N. 104TH STREET ROUNDABOUT



ATTACHMENT "4-B"
SEGREGATED ARTERIAL STREET IMPACT FEE
COLLECTION AREA

