



21R-221

Introduce: 6-7-21

RESOLUTION NO. A- 92766

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

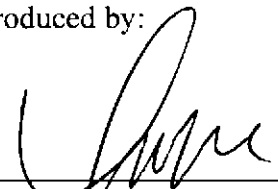
2 That the attached Amendment No. 5 to the Waterford Estates Conditional Annexation and
3 Zoning Agreement between the City of Lincoln, Waterford Estates, LLC, Ridge Development
4 Company, Southview Inc., Developments Unlimited, LLP, and Northern Lights, LLC relating to the
5 construction and funding of a roundabout at the intersection of North 104th and Holdrege Streets,
6 upon the terms and conditions set forth in said Amendment No. 5 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 5 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. 5, filing
15 fees to be paid by the Property Owners.

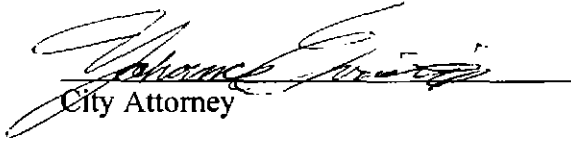
16 BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this
17 Agreement to Michaela Dugan, Impact Fee Administrator.


ADOPTED
JUN 14 2021
BY CITY COUNCIL

Introduced by:


AYES: Beckius, Bowers, , Raybould,
Shobe, Ward, Washington; NAYS: None

Approved as to Form & Legality:


City Attorney

Approved this 8th day of June, 2021:

Mayor

**AMENDMENT NO. 5
TO THE WATERFORD ESTATES
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Amendment No. 5 to the Waterford Estates Conditional Annexation and Zoning Agreement (“Amendment No. 5”) is made and entered into this 14th day of June, 2021 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 further address the construction and funding of a roundabout at the intersection of N. 104th Street and Holdrege Street as specifically provided for in Amendment No. 4 to the Waterford Estates Conditional Annexation and Zoning Agreement approved by the Lincoln City Council April 27, 2020 as Resolution No. A-92097 (“Amendment No. 4”). 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 as previously amended by Amendment No. 4 is hereby amended to read as follows:

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 construction of the N. 104th Street Roundabout by no later than December 31, 2021, unless extended by mutual agreement of the parties. In the event Developer does not complete construction of the N. 104th Street Roundabout by December 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 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 total project cost of the N. 104th Street Roundabout is \$1,573,000.00 including design, construction, ROW acquisition, and other associated administrative costs. The City and Developer agree that the proposed design of the N. 104th Street Roundabout as bid out is the most desirable alternative as it achieves a permanent solution for the intersection that adequately addresses safety concerns at the intersection for the foreseeable future.

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 language added to the Annexation Agreement through Amendment No. 4 is hereby amended to read as follows:

The City and Developer acknowledge that all arterial street impact fee facility improvements identified in the Annexation Agreement, not including the N. 104th Street Roundabout as described in 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 \$515,000 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
- (c) FY 2023/24 \$115,000

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.

C. Other City Funding. The City also agrees it will pay \$110,000 for third party right-of-way and administrative costs of the N. 104th Street Roundabout, and said amount shall not be charged to Developer.

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

“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
President of Development

By: _____
Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this ____ day of _____, 2021, 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.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this ____ day of _____, 2021, by _____, _____ 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.

Notary Public

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

By: _____
Thomas G. Schleich, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this ____ day of _____, 2021, 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.

Notary Public

**AMENDMENT NO. 5
TO THE WATERFORD ESTATES
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Amendment No. 5 to the Waterford Estates Conditional Annexation and Zoning Agreement (“Amendment No. 5”) is made and entered into this 14 day of June, 2021 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 further address the construction and funding of a roundabout at the intersection of N. 104th Street and Holdrege Street as specifically provided for in Amendment No. 4 to the Waterford Estates Conditional Annexation and Zoning Agreement approved by the Lincoln City Council April 27, 2020 as Resolution No. A-92097 (“Amendment No. 4”). 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 as previously amended by Amendment No. 4 is hereby amended to read as follows:

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 construction of the N. 104th Street Roundabout by no later than December 31, 2021, unless extended by mutual agreement of the parties. In the event Developer does not complete construction of the N. 104th Street Roundabout by December 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 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 total project cost of the N. 104th Street Roundabout is \$1,573,000.00 including design, construction, ROW acquisition, and other associated administrative costs. The City and Developer agree that the proposed design of the N. 104th Street Roundabout as bid out is the most desirable alternative as it achieves a permanent solution for the intersection that adequately addresses safety concerns at the intersection for the foreseeable future.

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 language added to the Annexation Agreement through Amendment No. 4 is hereby amended to read as follows:

The City and Developer acknowledge that all arterial street impact fee facility improvements identified in the Annexation Agreement, not including the N. 104th Street Roundabout as described in 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 \$515,000 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
- (c) FY 2023/24 \$115,000

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.

C. Other City Funding. The City also agrees it will pay \$110,000 for third party right-of-way and administrative costs of the N. 104th Street Roundabout, and said amount shall not be charged to Developer.

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.

4. All terms and conditions of the Annexation Agreement as amended by Amendment Nos. 1, 2, 3, and 4 remain in full force and effect except as amended by this Amendment No. 5.

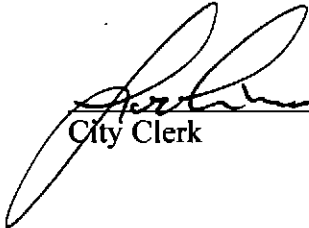
IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 5 on the day and year first written above.

“CITY”

CITY OF LINCOLN, NEBRASKA
a municipal corporation


Leirion Gaylor Baird, Mayor

ATTEST:


City Clerk



STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 18 day of June, 2021, by Leirion Gaylor Baird, Mayor of the City of Lincoln, Nebraska, a municipal corporation.


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: [Signature]
Title: PRESIDENT

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 9th day of June, 2021, 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.



Cynthia K Jurgens
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 10th day of June, 2021, by John C. Brager, President 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.



Michelle A. Lopez
Notary Public

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

By: 
Thomas G. Schleich, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 8 day of June, 2021, 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.




Michelle A. Lopez
Notary Public