



A92892

21R-344

Introduce: 8-2-21

RESOLUTION A- 92892

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

2 WHEREAS, the Southwest Village Heights 1st Addition Annexation Agreement was
3 approved on August 15, 2018 as City Council Resolution No. A-9119 and Amendment No. 1 to
4 the Southwest Village Heights 1st Addition Annexation Agreement was approved on March 30,
5 2020 as City Council Resolution No. A-92072 to develop property located at the southwest corner
6 of Old Cheney and South Folsom Street.

7 WHEREAS, Amendment No. 2, attached hereto as Attachment "A", to the Southwest
8 Village Heights 1st Addition Annexation Agreement between the City of Lincoln and Southwest
9 Folsom Development, LLC, to reflect changes in the responsibilities regarding the construction of
10 arterial street impact fee facility improvements is hereby approved and the Mayor is authorized to
11 execute Amendment No. 2 on behalf of the City.

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

14 BE IT FURTHER RESOLVED that the City Clerk is directed to record Amendment No.
15 2 to the Southwest Village Heights 1st Addition Annexation Agreement with the Register of Deeds
16 for Lancaster County, Nebraska to be indexed against the properties listed in the Southwest Village
17 Heights 1st Addition Annexation Agreement, filing fees to be paid by the Southwest Folsom
18 Development, LLC.

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

21

Introduced by:

Paul Mey

Approved as to Form & Legality:

Johnance...
City Attorney

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

Approved this 18th day of Aug., 2021:
Reb...
Mayor

ADOPTED
AUG 09 2021
BY CITY COUNCIL

**AMENDMENT NO. 2
TO THE
ANNEXATION AGREEMENT
FOR
SOUTHWEST VILLAGE HEIGHTS 1ST ADDITION**

This Amendment No. 2 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, which was amended by Amendment No. 1 dated March 30, 2020 approved by Resolution No. A-92072 (collectively the “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-2” attached hereto.

C. The City and Property Owner desire to amend the Annexation Agreement to modify the City’s and Property Owner’s responsibilities regarding the construction of 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. Subparagraphs 1, 2 and 3, of Paragraph A. under **Article III ARTERIAL STREET IMPROVEMENTS** of the Annexation Agreement are hereby amended and restated as follows:

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 has completed the design and bid the S. Folsom Street Improvements.

The parties acknowledge that the estimated cost of design and construction (not including ROW) for the S. Folsom Street Improvements is \$2,152,610. 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.

2. Paragraph B. under **Article III ARTERIAL STREET IMPROVEMENTS** of the Annexation Agreement is hereby amended and restated as follows:

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 Preliminary Plat.

3. SW 9th Street and W. Old Cheney Road Intersection. Construction of the intersection of W. Old Cheney Road and SW 9th will be triggered with the development of the Phase III property identified on the Preliminary Plat. The City acknowledges that Property Owner

shall not be required to add turnlanes or a roundabout in Old Cheney Road at such time as Property Owner creates access for the Property to Old Cheney Road via the SW 9th Street intersection.

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 measured from the center line of W. Old Cheney Road, as well as additional right-of-way for a future roundabout at the intersection of SW 9th Street and Old Cheney Road as shown on Exhibit "G-1" attached to the Annexation Agreement, and any temporary construction easements necessary to grade and construct the roundabout.

3. Paragraph D. under **Article III ARTERIAL STREET IMPROVEMENTS** of the Annexation Agreement is hereby amended and restated as follows:

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, 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 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 S. Folsom Street 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 S. Folsom Street 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 S. Folsom Street 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 S Folsom Street Improvements

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 and that reimbursement for said costs from revenue generated by the additional ¼ cent sales tax revenue referenced above is contingent upon appropriation of said funds by the City Council.

4. All of the remaining terms and conditions of the Annexation Agreement shall remain in full force and effect except to the extent they are amended hereby.

Dated as of August 18, 2021 by the City.

“CITY”

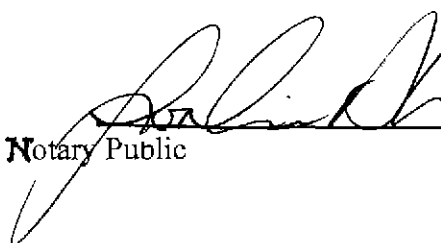
CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: 
Leirion Gaylor Baird, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

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




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

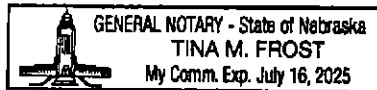
By: *Michelle S. Benes*
Michelle S. Benes, Trustee

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)

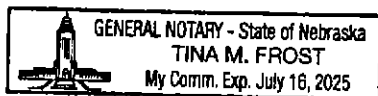
The foregoing was acknowledged before me this 30 day of July, 2021, by
Michelle S. Benes, Trustee of the Michelle S. Benes Revocable Trust dated May 21, 2003,
Managing Member of 1640 LLC, a Nebraska limited liability company, Member of **Southwest
Folsom Development, LLC**, a Nebraska limited liability 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 30 day of July, 2021, 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

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 30 day of July, 2021, 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

EXHIBIT "A-2"

THE PROPERTY

LOTS 40 AND 41, IRREGULAR TRACTS LOCATED IN THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA

UPDATED LEGAL DESCRIPTION – USE FOR INDEXING

LOTS 1 THROUGH 24, BLOCK 1, LOTS 1 THROUGH 11, BLOCK 2, LOTS 1 THROUGH 6, BLOCK 3, LOTS 1 THROUGH 6, BLOCK 4, AND OUTLOTS A THROUGH C AND E SOUTHWEST VILLAGE HEIGHTS 5TH ADDITION, AND LOTS 1 AND 2, BLOCK 1, LOTS 1 THROUGH 15, BLOCK 2, LOTS 1 THROUGH 4, BLOCK 3, LOTS 1 THROUGH 11, BLOCK 4, LOTS 1 THROUGH 14, BLOCK 5, LOT 1, BLOCK 6, LOTS 1 AND 2, BLOCK 7, AND OUTLOTS A THROUGH H SOUTHWEST VILLAGE HEIGHTS 6TH ADDITION, AND LOT 41, IRREGULAR TRACT LOCATED IN THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA

*SW 1/4-3
SOUTH
I*

C E R T I F I C A T E


STATE OF NEBRASKA)

COUNTY OF LANCASTER) ss:

CITY OF LINCOLN)

I, Soulinnee Phan, City Clerk of the City of Lincoln, Nebraska, do hereby certify that the foregoing is a true and correct copy of Resolution A-92892 – Approval of Amendment No. 2 to the Annexation Agreement for Southwest Village Heights between the City and Southwest Folsom Development, LLC to reflect changes in the responsibilities regarding the construction of arterial street impact fee facility improvements adopted by the City Council of the City of Lincoln, Nebraska on August 9, 2021, as the original appears of record in my office.

In Witness Whereof, I have hereunto set my hand officially and affixed the seal of the City of Lincoln, Nebraska on the 22nd day of November, 2021.


City Clerk

