



A93789

22R-618

Introduce: 12-19-22

RESOLUTION A- 93789

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

2 WHEREAS, the Conditional Annexation Agreement for Foxtail Meadows Housing
3 Subdivision was approved on March 7, 2022 as City Council Resolution No. A-93230 for the
4 annexation of approximately 47 acres of land located generally south of Pioneers Boulevard on
5 the east side of South Folsom Streets.

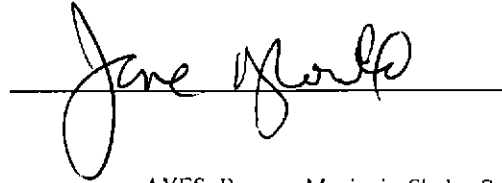
6 WHEREAS, Amendment No. 1, attached hereto as Attachment "A", to the Conditional
7 Annexation Agreement for Foxtail Meadows Housing Subdivision between the City of Lincoln
8 and Sofo Housing, LLC., to reflect changes involving intersection improvements including right
9 and left turn lanes to be installed generally within the right-of-way for South Folsom Street, is
10 hereby approved and the Mayor is authorized to execute Amendment No. 1 on behalf of the City.

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

13 BE IT FURTHER RESOLVED that the City Clerk is directed to record Amendment No.
14 1 to the Conditional Annexation Agreement for Foxtail Meadows Housing Subdivision with the
15 Register of Deeds for Lancaster County, Nebraska to be indexed against the properties listed in
16 Amendment No. 1 the Conditional Annexation Agreement for the Foxtail Meadows Housing
17 Subdivision Agreement, filing fees to be paid by Sofo Housing, LLC.

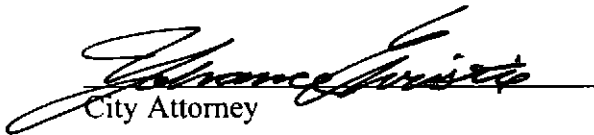
1 BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this
2 Agreement to Michaela Sweeney, Impact Fee Administrator.

Introduced by:




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

Approved as to Form & Legality:



City Attorney

Approved this 30th day of Jan, 202~~2~~^{3rd}:

Mayor

ADOPTED

JAN 23 2023

BY CITY COUNCIL

After recording, please return to:
Thomas C. Huston
Cline Williams Wright Johnson
& Oldfather, LLP
233 South 13th Street, Suite 1900
Lincoln, NE 68508

**FIRST AMENDMENT TO THE CONDITIONAL ANNEXATION
AGREEMENT FOR FOXTAIL MEADOWS HOUSING SUBDIVISION**

THIS FIRST AMENDMENT TO THE CONDITIONAL ANNEXATION AGREEMENT FOR FOXTAIL MEADOWS HOUSING SUBDIVISION (“First Amendment”) is made and entered into as of the date of execution by the last signatory hereto as indicated below by and among the City of Lincoln, Nebraska, a municipal corporation (“City”) and Sofo Housing, LLC, a Nebraska limited liability company (“Sofo Housing”).

RECITALS

A. The City of Lincoln and Sofo Housing previously entered into a Conditional Annexation Agreement for Foxtail Meadows Housing Subdivision (the “Agreement”) adopted by the City Council for the City of Lincoln, Nebraska on March 7, 2022 as Resolution No. A-93230 related to the annexation of approximately 47 acres of land located generally south of Pioneers Boulevard on the east side of South Folsom Streets. The Agreement was recorded on April 7, 2022 with the Register of Deeds of Lancaster County, Nebraska as Inst. #2022015286.

B. In the Agreement, among other things, Sofo Housing and the City agreed that the Foxtail Meadows subdivision shall require certain improvements in South Folsom Street to make intersections to serve the future residents of Foxtail Meadows (the “Intersection Improvements”);

C. The City and Sofo Housing desire to amend the Agreement as described in this First Amendment to provide for the construction and funding of the Intersection Improvements designed to serve the Foxtail Meadows subdivision.

NOWHEREFORE, in consideration of the mutual promises described below, the SoFo Housing and the City agree to Amend the Agreement as specifically described herein:

1. **Intersection Improvements**. Paragraph 3 of the Agreement is deleted and replaced with the following provision:

A. **Design and Construction**. The City and Sofo Housing agree that the Foxtail Meadows development shall require certain intersection improvements, including right and left turn lanes to be installed generally within the right of way for South Folsom Street. (collectively, the “Intersection Improvements”). The Intersection Improvements generally are shown, in schematic form, on **Exhibit “A”**, attached and incorporated by this reference which reflects the following improvements:

1. At the 1/8th mile intersection located south of Pioneers Boulevard in the South Folsom Street right of way (“North Entrance”), the improvements shall include a right-turn lane for northbound traffic and a left-turn lane for southbound traffic;

2. At the 1/4th mile intersection located south of Pioneers Boulevard in the South Folsom Street right of way (the “Middle

Entrance”), the improvements shall include a right-turn lane for northbound traffic and a left-turn lane for southbound traffic; and

3. At the 1/2 mile intersection located south of Pioneers Boulevard in the South Folsom Street right of way (the “South Entrance”), the improvements shall include a right-turn lane for northbound traffic for a full access intersection and a left-turn lane for southbound traffic.

For the purposes of this First Amendment, the Middle Entrance and the South Entrance shall be referred to as the “Phase 1 Intersection Improvements”. The North Intersection shall be referred to as the “Phase 2 Intersection Improvement”. Sofo Housing agrees to dedicate, without compensation, sufficient right-of-way to construct 130 foot roundabouts on the final plats for the parcels impacted by the Intersection Improvements. To the extent that the design of the Phase 1 or Phase 2 Intersection Improvements requires the temporary use of additional right-of-way Sofo Housing agrees to convey adequate temporary easements to the City to facilitate the construction of such Intersection Improvements without compensation.

B. Cost Estimates. Sofo Housing and the City have jointly assembled cost estimates for both the Phase 1 and Phase 2 Intersection Improvements. The cost estimates are not a result of actual construction bids received through the public bidding process but constitute an engineer’s opinion of probable cost for the Phase 1 and Phase 2 Intersection Improvements and are attached as Exhibit “B” and incorporated by this reference.

C. Funding of Phase 1 Intersection Improvements. Sofo Housing shall be responsible for the payment of the costs of the construction of the Phase 1

Intersection Improvements. Sofo Housing shall pay the progress payments submitted by a general contractor engaged by City to construct the Phase 1 Intersection Improvements pursuant to the City’s public bidding requirements. Sofo Housing shall be reimbursed for such costs of construction of the Phase 1 Intersection Improvements through the following funding sources:

1. *Lincoln on the Move Funding.* The City shall allocate the sum of Four Hundred Thousand and No/100 Dollars (\$400,000.00) of funding from the Lincoln on the Move funding source in Fiscal Year 2023/2024. Such funding shall be used to repay Sofo Housing those amounts funded by Sofo Housing for the payment of the costs associated with the Phase I Intersection Improvements.
2. *Affordable Housing Funding.* The City shall allocate the sum of Seven Hundred Thousand and No/100 Dollars (\$700,000.00) of funding from the Lincoln Affordable Housing Fund to be funded: i) the sum of \$360,000 in Fiscal Year 2022/2023; and ii) the sum of \$340,000 in Fiscal Year 2023/2024. The City shall pay such sums to Sofo Housing quarterly in 2023 and 2024. Such funding shall be used to repay Sofo Housing those amounts funded by Sofo Housing for the payment of the costs associated with the Phase 1 Intersection Improvements.
3. *Directed Impact Fees funding.* The City agrees and acknowledges that the Intersection Improvements qualify as “arterial street impact fee facility improvements” as that term is defined by Lincoln Municipal Code §27.82.040. Sofo Housing recognizes that some of the housing projects intended to be developed in Foxtail Meadow constitute projects exempt from the assessment of Impact Fees as provided in Lincoln Municipal Code 27.82060(a)(7) for low-to moderate income rental housing. The amount attributable to Arterial Street Impact Fees to be generated by the non-exempt portions of the development of the Foxtail

Meadows project in the aggregate is estimated to be Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00). The amount of Impact Fees projected to be generated by the Phase 1 Redevelopment Project is Two Hundred Ninety-Four Thousand and No/100 Dollars (\$294,000.00). (“Phase 1 DIF Amount”). The Phase 1 DIF Amount under this Agreement, after deducting the administrative fee retained by the City, shall be reimbursed to the Sofo Housing in conformance with City code and regular process.

4. *Cost Overruns.* If the total cost of the Phase 1 Intersection Improvements exceed the sum of One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00), then the City and Sofo Housing shall each be responsible for ½ of the cost overrun amount which exceeds \$1,400,000. Provided however, if the aggregate cost of the Phase 1 Intersection Improvements exceeds the sum of \$1,636,000, Sofo Housing and The City agree to meet to discuss funding alternatives or design alterations to return the total project cost of the Phase 1 Intersection Improvements to within the boundaries of the project budget. The source of any City contribution to cost overruns shall be those funds appropriated to the Transportation System Growth fund of the City of Lincoln CIP and appropriated for 2023/24.

5. *Cost Savings.* In the event that the aggregate cost of the Phase 1 Intersection Improvements is less than the sum of One Million three Hundred Ninety-four Thousand and No/100 Dollars (\$1,394,000.00), then any cost savings shall reduce the amount of Phase 1 DIF funding directed by City, to SoFo Housing, to reimburse for SoFo Housing for costs incurred during the Phase 1 Intersection Improvements. Any DIF Amounts not used for Phase I shall be deferred and available for reimbursement of Phase 2 Intersection improvements

6. *Phase 2 Intersection Improvements.* The Phase 2 Intersection Improvements, consisting of the turn lanes planned for the North Intersection may be funded by Tax Increment Financing, subject to

successful negotiation and approval of a Redevelopment Agreement, for the Phase 2 improvements including the commercial development depicted on the Planned Unit Development Plan to that effect.

D. Time Schedule. The City shall be responsible for the construction of the Phase 1 Intersection Improvements in the following order: i) the Middle Intersection shall be the first improvement made with the goal for traffic access provided by March 31, 2024; ii) the South Intersection shall be the second improvement made with a goal for traffic access provided by December 31, 2024. City will make best efforts to achieve these timing objectives. If the Intersection Improvements are not completed by the dates stated above the City shall not refuse to issue certificates of occupancy to the Phase 1A and 1B developments based *solely* upon non-completion of the intersection improvements. However, in order for City to issue occupancy permits there must be improved paved surface access, with street signage, at the South intersection to the development. A depiction of the phasing plan is attached hereto as Exhibit "C". The Parties contemplate that the North Intersection will be the last improvement to be made with a completion date goal of June 30, 2026.

2. **Reconfirm Remaining Terms.** All of the other terms of the Agreement, except as expressly modified by the terms of this First Amendment are hereby reconfirmed by Sofu Housing and the City.

[SIGNATURE PAGES TO FOLLOW]

Dated as of Jan 30, 2023 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 30 day of Jan., 2023, by Leirion Gaylor Baird, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation, on behalf of the municipal corporation.

(Seal)



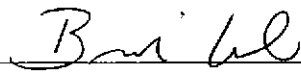
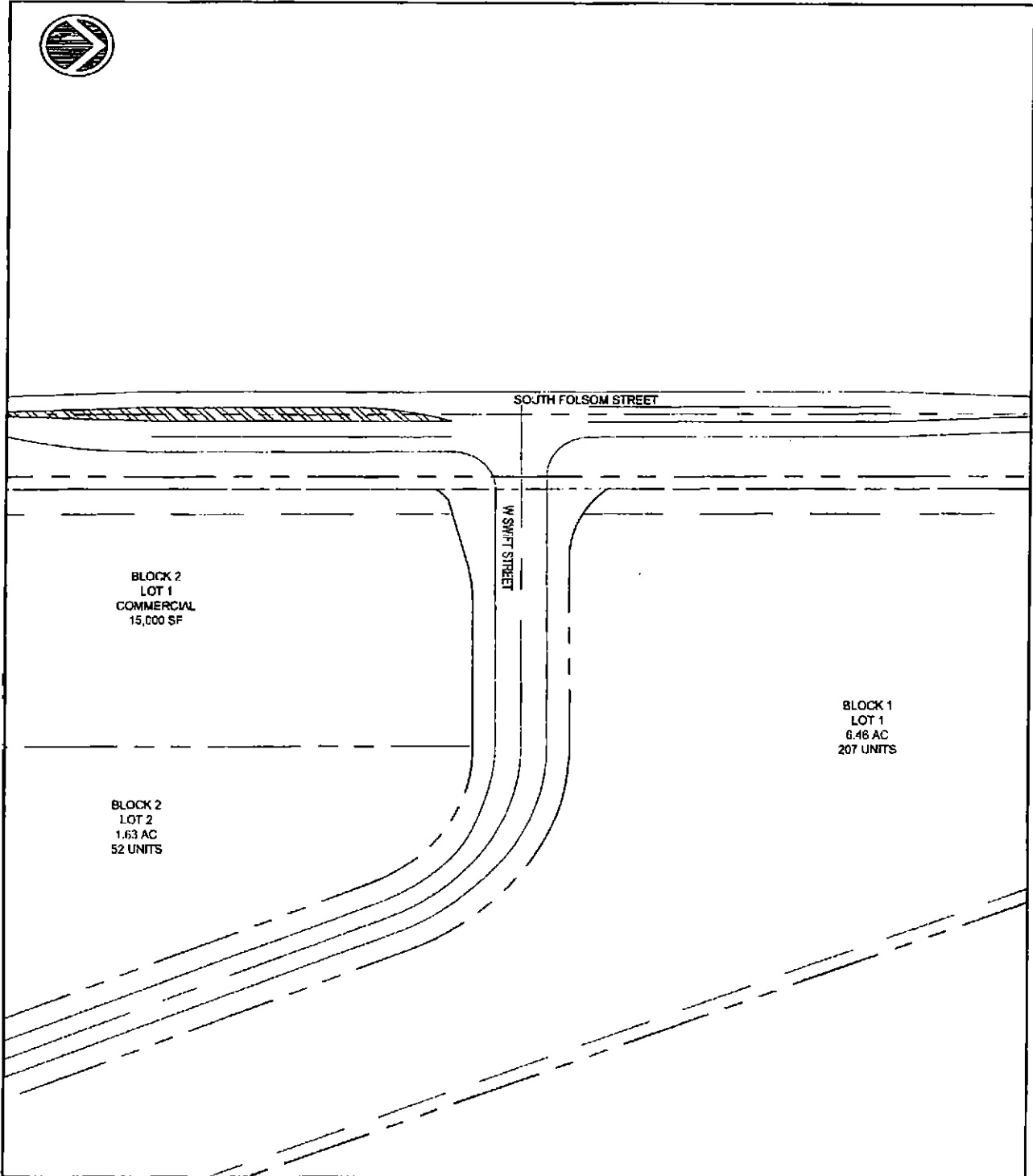

Notary Public

EXHIBIT "A"
Intersection Improvements Schematic Site Plan
North Intersection



EXHIBT "A"
Middle Intersection

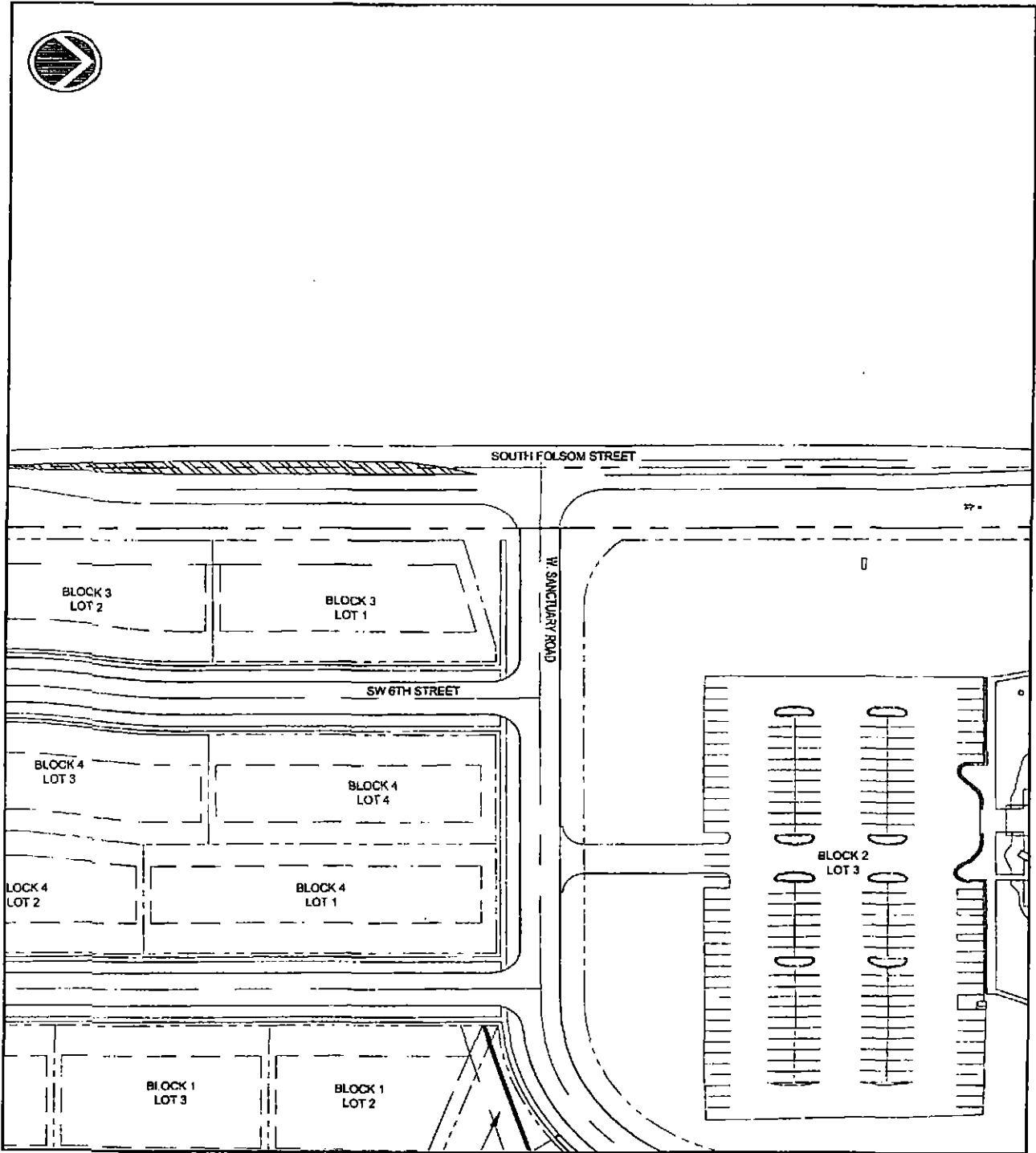


Exhibit "A"

EXHIBIT "A"
South Intersection

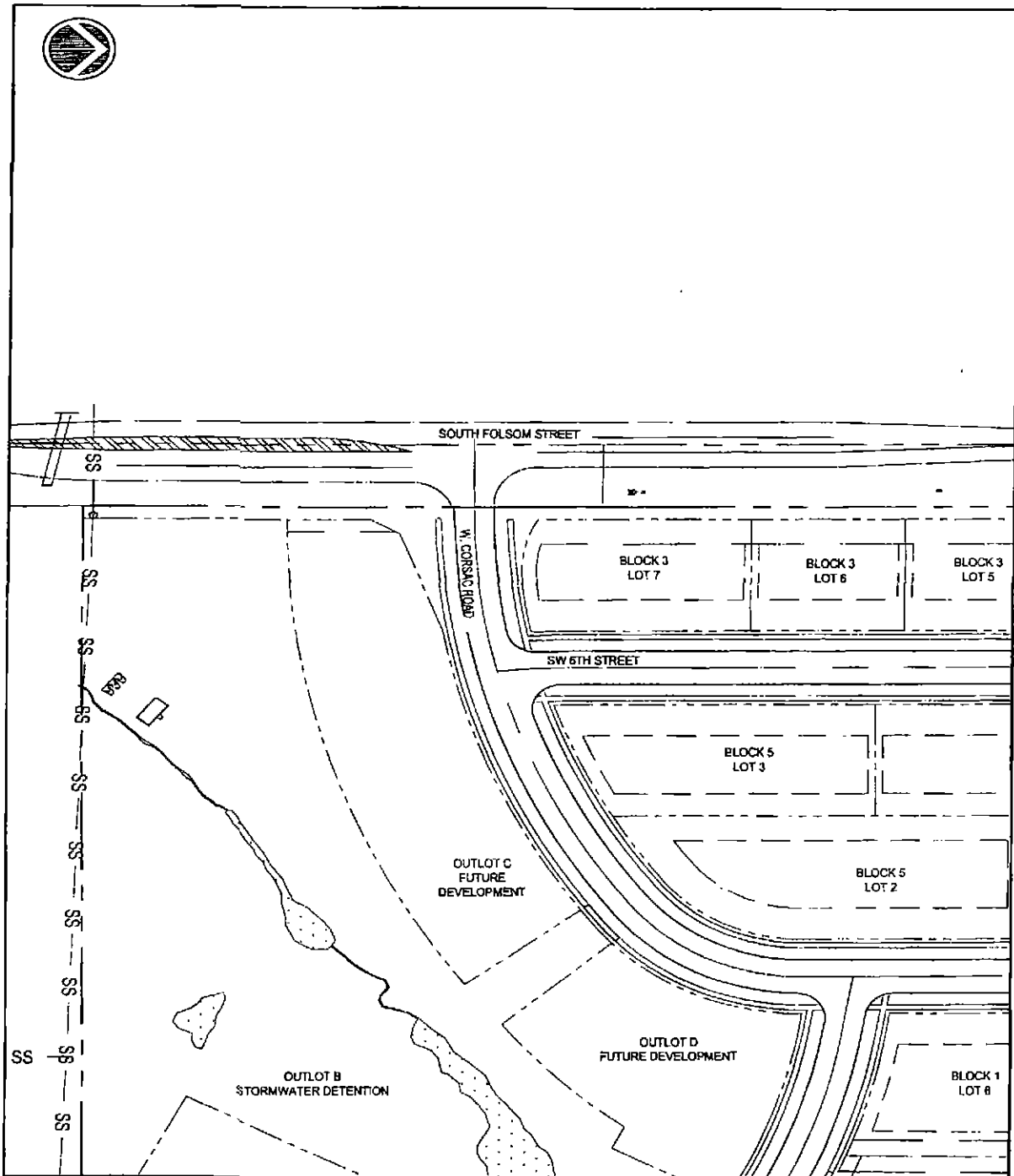


EXHIBIT "B"

Opinion of Probable Cost of Intersection Improvements

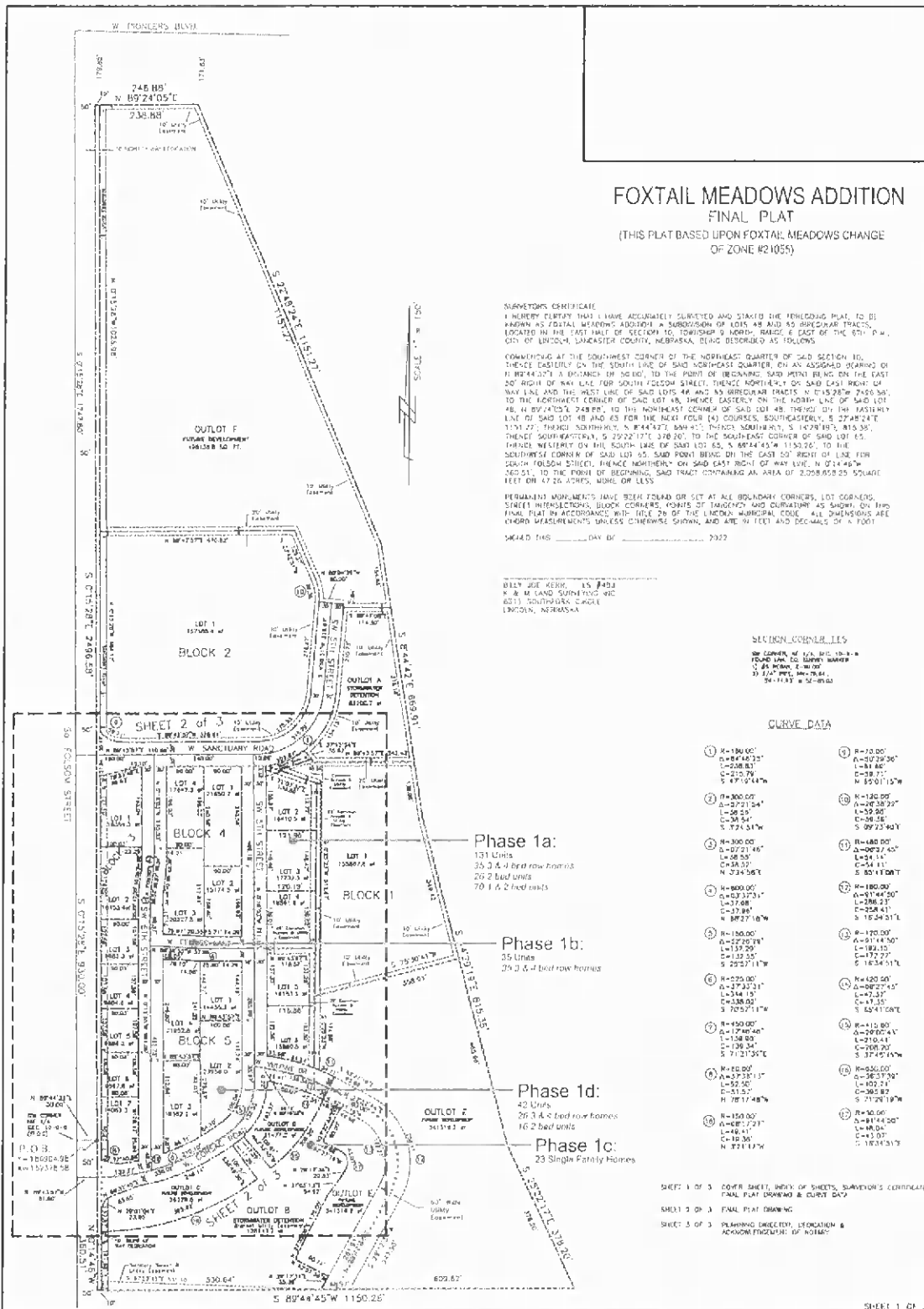
A. South Intersection: \$841,100

B. Middle Intersection: \$795,200

C. North Intersection: \$475,000

EXHIBIT "C"

Phase 1 Phasing Plan



Inst # 2023003771 Fri Feb 10 10:33:51 CST 2023
Filing Fee: \$94.00
Lancaster County, NE Assessor/Register of Deeds Office AMAGR
cpowlg
Pages 15



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*Brandi Lehl
cityoflk*

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2. **Reconfirm Remaining Terms.** All of the other terms of the Agreement, except as expressly modified by the terms of this First Amendment are hereby reconfirmed by Sofo Housing and the City.

[SIGNATURE PAGES TO FOLLOW]

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Intersection Improvements Schematic Site Plan
North Intersection

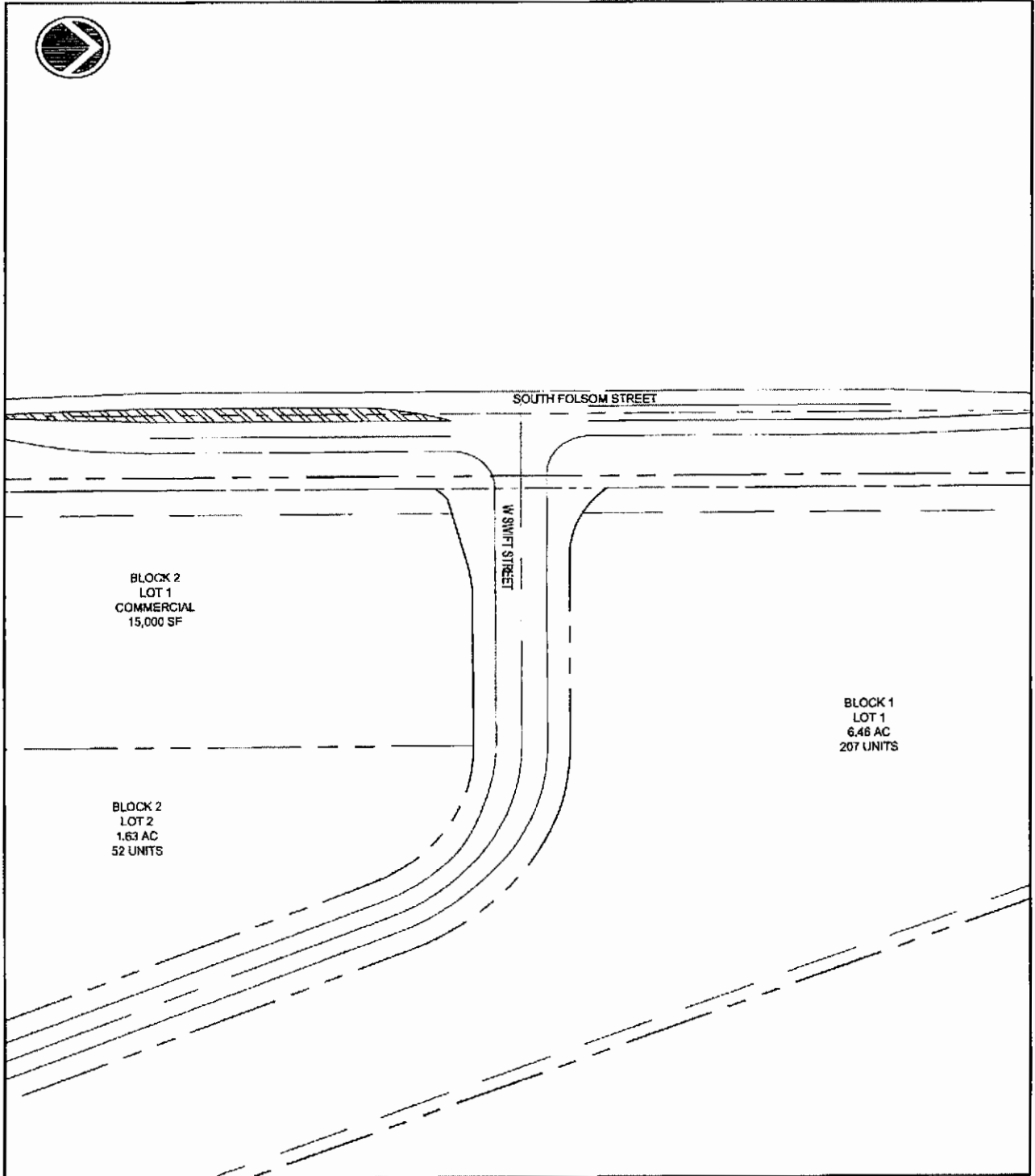


Exhibit "A"

EXHIBT "A"
Middle Intersection

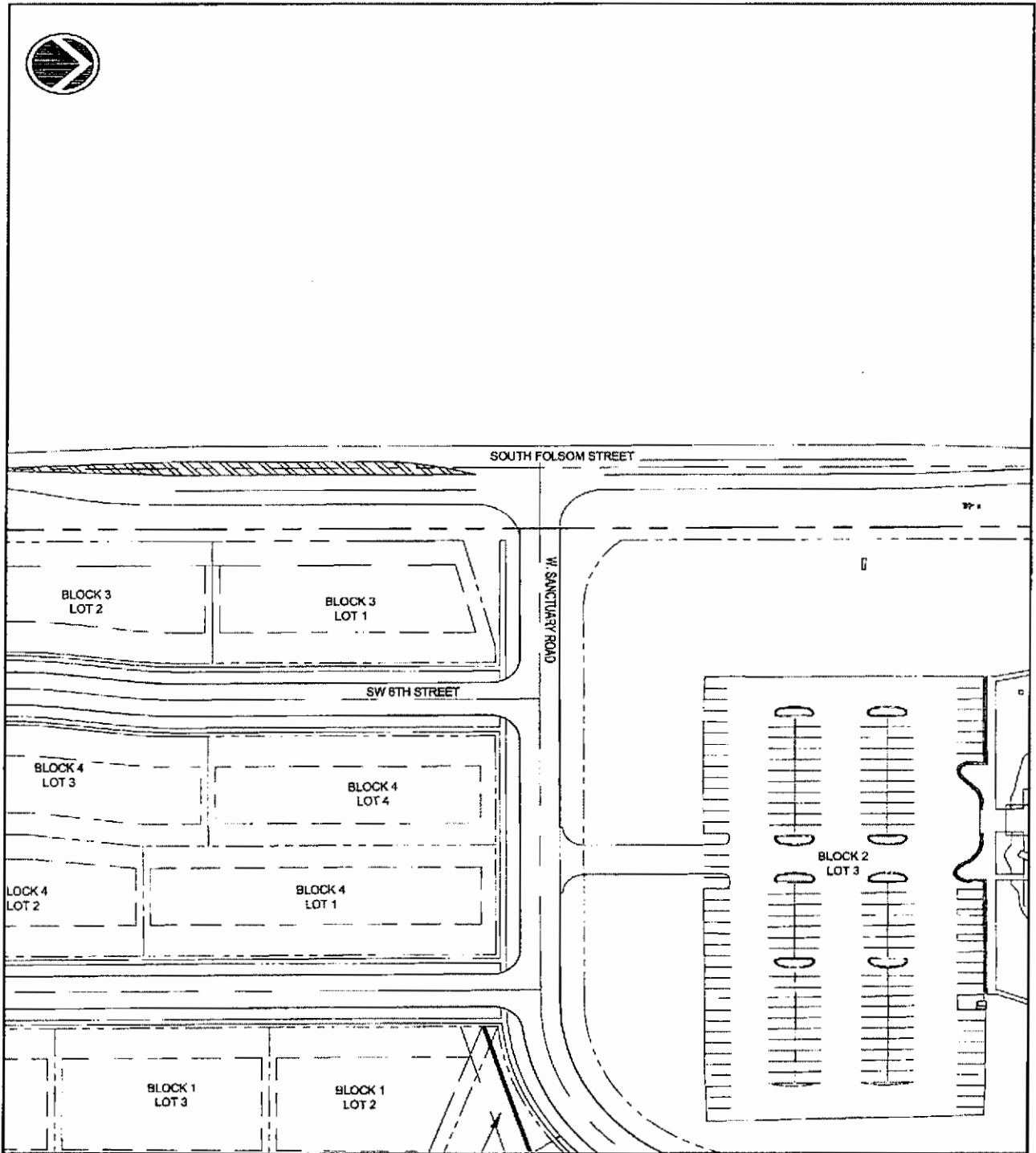


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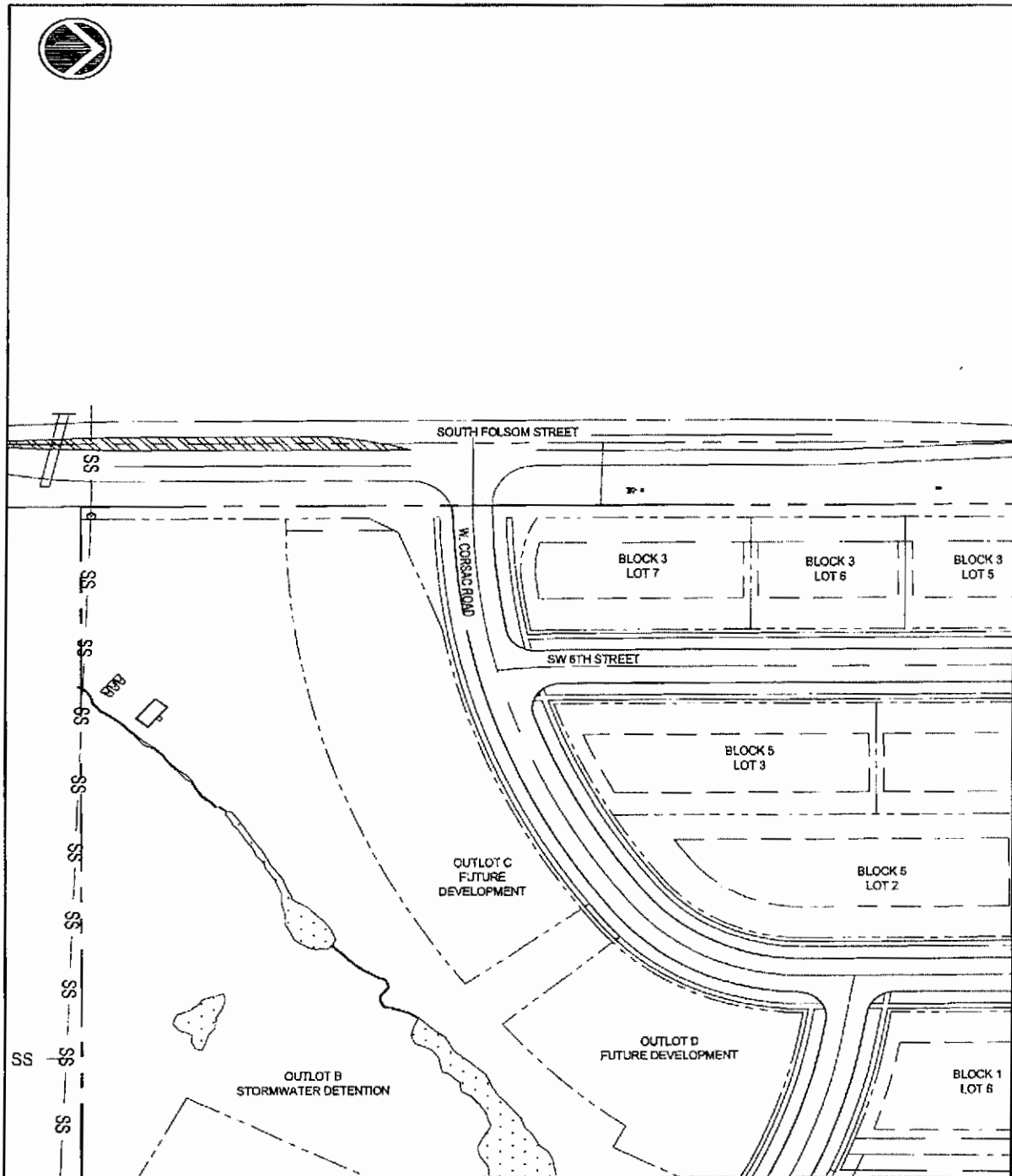


Exhibit "A"

EXHIBIT "B"

Opinion of Probable Cost of Intersection Improvements

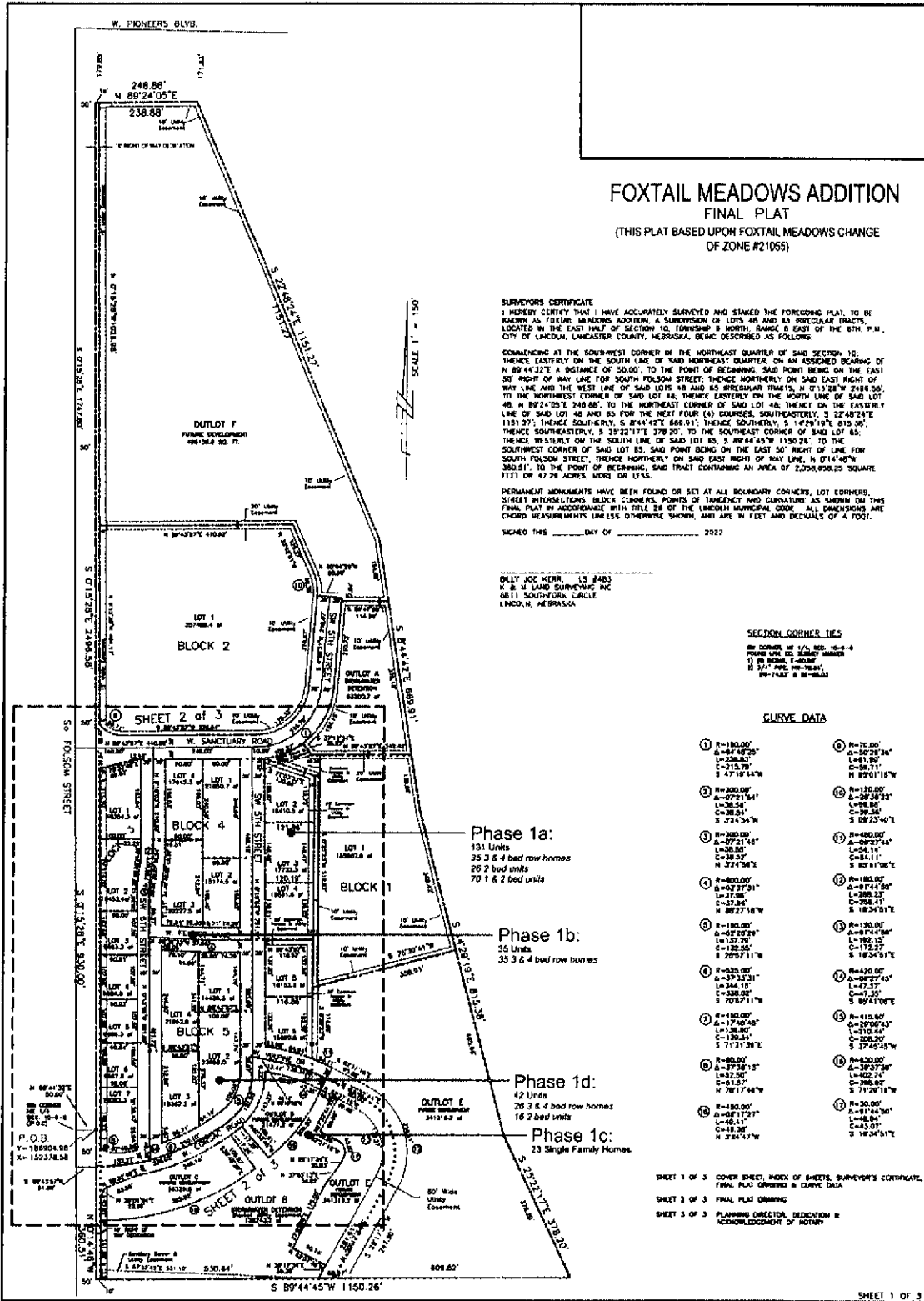
A. South Intersection: \$841,100

B. Middle Intersection: \$795,200

C. North Intersection: \$475,000

EXHIBIT "C"

Phase 1 Phasing Plan



FOXTAIL MEADOWS ADDITION FINAL PLAT (THIS PLAT BASED UPON FOXTAIL MEADOWS CHANGE OF ZONE #21055)

SURVEYORS CERTIFICATE
I HEREBY CERTIFY THAT I HAVE ACCURATELY SURVEYED AND STAKED THE FOREGOING PLAT, TO BE KNOWN AS FOXTAIL MEADOWS ADDITION, A SUBDIVISION OF LOTS 48 AND 85 IRREGULAR TRACTS, LOCATED IN THE EAST HALF OF SECTION 10, TOWNSHIP 8 NORTH, RANGE 6 EAST OF THE 8TH P.M. CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 10; THENCE EASTERLY ON THE SOUTH LINE OF SAID NORTHEAST QUARTER, ON AN ASSIGNED BEARING OF N 89°41'32"E A DISTANCE OF 30.00', TO THE POINT OF BEGINNING; SAID POINT BEING ON THE EAST 50' RIGHT OF WAY LINE FOR SOUTH FOLSOM STREET; THENCE NORTHERLY ON SAID EAST RIGHT OF WAY LINE AND THE WEST LINE OF SAID LOTS 88 AND 85 IRREGULAR TRACTS, N 01°12'28"W 2486.56'; TO THE NORTHWEST CORNER OF SAID LOT 48; THENCE EASTERLY ON THE NORTH LINE OF SAID LOT 48, N 89°24'25"E 240.88'; TO THE NORTHEAST CORNER OF SAID LOT 48; THENCE ON THE EASTERLY LINE OF SAID LOT 48 AND 85 FOR THE NEXT FOUR (4) COURSES, SOUTHEASTERLY, S 22°48'24"E 1131.27'; THENCE SOUTHERLY, S 84°42'12" 688.91'; THENCE SOUTHERLY, S 14°09'18"E 819.90'; THENCE SOUTHEASTERLY, S 25°22'17"E 378.20'; TO THE SOUTHWEST CORNER OF SAID LOT 85; THENCE WESTERLY ON THE SOUTH LINE OF SAID LOT 85, S 89°44'49"W 1150.28'; TO THE SOUTHWEST CORNER OF SAID LOT 85; SAID POINT BEING ON THE EAST 50' RIGHT OF WAY LINE FOR SOUTH FOLSOM STREET; THENCE NORTHERLY ON SAID EAST RIGHT OF WAY LINE, N 01°14'46"W 380.51'; TO THE POINT OF BEGINNING; SAID TRACT CONTAINING AN AREA OF 2,028,838.25 SQUARE FEET OR 47.28 ACRES, MORE OR LESS.

PERMANENT ADJUSTMENTS HAVE BEEN FOUND OR SET AT ALL BOUNDARY CORNERS, LOT CORNERS, STREET INTERSECTIONS, BLOCK CORNERS, POINTS OF TANGENCY AND CURVATURE AS SHOWN ON THIS FINAL PLAT IN ACCORDANCE WITH TITLE 28 OF THE LINCOLN MUNICIPAL CODE. ALL DIMENSIONS ARE CHORD MEASUREMENTS UNLESS OTHERWISE SHOWN, AND ARE IN FEET AND DECIMALS OF A FOOT.

SIGNED THIS _____ DAY OF _____ 2022

DWILEY JOE KERR, LS #483
R. & M. LAND SURVEYING INC.
6811 SOUTHWIND CIRCLE
LINCOLN, NEBRASKA

SECTION CORNER TIES
BE CORNER 1/4 SEC. 10-4-4
FOUNTAIN CO. SURVEY MARKER
11 IN IRON, 1.00' HIGH
N 51/4° E, 100.00'
S 89°14'46" W, 100.00'

CURVE DATA

① R=180.00' Δ=149°25' L=238.87' C=215.70' S 47°19'44"W	② R=300.00' Δ=77°15'41" L=576.34' C=362.24' S 72°54'57"W	③ R=300.00' Δ=67°21'46" L=576.34' C=362.24' S 72°54'57"W	④ R=800.00' Δ=62°37'31" L=1577.96' C=1037.96' S 82°27'18"W	⑤ R=180.00' Δ=67°20'29" L=331.37' C=122.85' S 20°27'11"W	⑥ R=325.00' Δ=37°33'31" L=344.19' C=238.87' S 70°27'11"W	⑦ R=450.00' Δ=17°46'48" L=426.80' C=138.24' S 71°17'38"E	⑧ R=80.00' Δ=37°38'15" L=82.37' C=61.27' S 78°17'48"W	⑨ R=450.00' Δ=68°17'27" L=426.80' C=138.24' S 71°17'38"E	⑩ R=70.00' Δ=30°28'36" L=61.80' C=38.11' S 89°01'18"W	⑪ R=120.00' Δ=28°28'32" L=98.88' C=63.24' S 89°25'40"W	⑫ R=480.00' Δ=48°27'44" L=454.14' C=304.11' S 80°41'08"E	⑬ R=180.00' Δ=87°45'50" L=288.23' C=198.41' S 18°24'51"E	⑭ R=120.00' Δ=81°44'50" L=108.15' C=72.27' S 18°24'51"E	⑮ R=420.00' Δ=48°27'45" L=427.37' C=284.07' S 80°41'08"E	⑯ R=415.80' Δ=29°02'43" L=418.94' C=268.20' S 17°45'48"W	⑰ R=420.00' Δ=38°27'30" L=402.24' C=268.82' S 71°28'18"W	⑱ R=30.00' Δ=81°14'30" L=28.04' C=18.03' S 18°24'51"E
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SHEET 1 OF 3 COVER SHEET, INDEX OF SHEETS, SURVEYORS CERTIFICATE, FINAL PLAT GRAPHIC & CURVE DATA
SHEET 2 OF 3 FINAL PLAT DRAWING
SHEET 3 OF 3 PLANNING DIRECTOR, DECLARATION & ACKNOWLEDGMENT OF NOTARY

**FIRST AMENDMENT TO THE CONDITIONAL ANNEXATION
AGREEMENT FOR FOXTAIL MEADOWS HOUSING SUBDIVISION**

LEGAL DESCRIPTION

FOXTAIL MEADOWS ADDITION,

BLOCK 1, LOT 1
BLOCK 1, LOT 2
BLOCK 1, LOT 3
BLOCK 1, LOT 4
BLOCK 1, LOT 5
BLOCK 1, LOT 6

BLOCK 2, LOT 1

BLOCK 3, LOT 1
BLOCK 3, LOT 2
BLOCK 3, LOT 3
BLOCK 3, LOT 4
BLOCK 3, LOT 5
BLOCK 3, LOT 6
BLOCK 3, LOT 7

BLOCK 4, LOT 1
BLOCK 4, LOT 2
BLOCK 4, LOT 3
BLOCK 4, LOT 4

BLOCK 5, LOT 1
BLOCK 5, LOT 2
BLOCK 5, LOT 3
BLOCK 5, LOT 4

OUTLOT A
OUTLOT B
OUTLOT C
OUTLOT D
OUTLOT E
OUTLOT F
OUTLOT G

LINCOLN, LANCASTER COUNTY, NEBRASKA

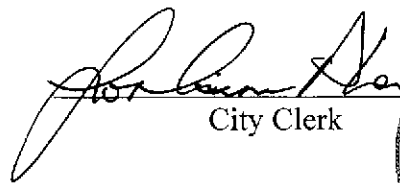
FOME

CERTIFICATE

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 above and foregoing is a true and correct copy of the First Amendment to the Conditional Annexation Agreement for Foxtail Meadows Housing Subdivision. Amendment addresses construction and funding of intersection improvements on South Folsom Street to serve future residents of Foxtail Meadows Addition at Pioneers Boulevard and South Folsom Streets, as approved by Resolution A-93789 by the Lincoln City Council on January 23, 2023, 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 8 day of February, 2023.


City Clerk

