



A94365

23R-597

Introduce: 11-20-23

RESOLUTION NO. A- 94365

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

That the Conditional Zoning and Annexation Agreement for Southwest Village Heights 2nd Addition which is attached hereto, marked as Attachment "A", and made a part hereof by reference, between the City of Lincoln, Southwest Folsom Development, LLC., White Holdings, LLC., and 1640, LLC., ("Owner") for annexing the property generally located at the northeast corner of W. Old Cheney Road and SW 12th Street and re-zoning the property from AG Agricultural District to R-3 Residential District as set forth in the Agreement, is hereby approved and the Mayor is authorized to execute the Conditional Zoning and Annexation Agreement on behalf of the City.

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

BE IT FURTHER RESOLVED that the City Clerk is directed to file the Conditional Zoning and Annexation Agreement for Southwest Village Heights 2nd Addition with the Lancaster County Register of Deeds with the recording fees to be paid in advance by the Developer.

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

Introduced by:

Brian Shults

Approved as to Form & Legality:

James Brink
City Attorney

AYES: Beckius, Bowers, Carlson, Duden, Shobe, Washington, Weber; NAYS: None.

ADOPTED

DEC 11 2023

BY CITY COUNCIL

Approved this 18th day of DEC, 2023:

Jason Taylor Baird
Mayor

**CONDITIONAL ZONING AND ANNEXATION AGREEMENT
FOR
SOUTHWEST VILLAGE HEIGHTS 2ND ADDITION**

This Conditional Zoning and Annexation Agreement for Southwest Village Heights 2nd Addition (“Agreement”) 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”), **Southwest Folsom Development, LLC**, a Nebraska limited liability company, **White Holdings, LLC**, a Nebraska limited liability company, and **1640, LLC**, a Nebraska limited liability company (collectively the “**Property Owners**”).

RECITALS

A. Southwest Folsom Development, LLC owns the property legally described as:

Lots 57 and 68, Irregular Tracts located in the Southwest Quarter, of Section 10, Township 9, Range 6 East of the 6th P.M. and Lot 2, Kalnins Addition, all in Lancaster County, Nebraska (“**Southwest Folsom Property**”).

B. White Holdings, LLC and 1640 LLC jointly own the property legally described as:

Lots 55, 61 and 62, Irregular Tracts located in the Northwest Quarter, of Section 10, Township 9, Range 6 East of the 6th P.M. Lancaster County, Nebraska (“**White/1640 Property**”).

C. The Southwest Folsom Property and White/1640 Property are collectively known as the “**Property.**”

D. Lincoln Public Schools owns the property legally described as:

Lot 67, Irregular Tract located in the Southwest Quarter, of Section 10, Township 9, Range 6 East of the 6th P.M., Lancaster County, Nebraska (“**LPS Property**”).

E. The Property and LPS Property are shown and legally described on Exhibit A.

- F. Property Owners request City approve a Preliminary Plat for the Property and LPS Property (PP22004).
- G. The Property and LPS Property are shown as Tier 1, Priority A on the 2050 Priority Growth Areas (Figure GF.c: Priority Growth Areas) in the Lincoln City-Lancaster County Comprehensive Plan.
- H. The City and Property Owners desire that the Property and LPS Property be annexed, in phases with subphases, pursuant to the conditions stated in this Agreement and subsequent amendments. The proposed annexation phases are shown on Exhibit B.
- I. Phase I(a) Annexation is shown and legally described on Exhibit C and is called AN22014.
- J. Property Owners request that the City rezone a portion of the Property from AG Agricultural District to R-3 Residential (CZ22037). The area for initial rezoning is legally described and shown on Exhibit D.
- K. This Agreement contemplates City reimbursement, to Property Owners, of certain impact fees. The Impact Fee Area from which impact fees will be generated and made available for reimbursement is attached as Exhibit E.
- L. PP22004, AN22014, and CZ22037 are collectively the “Governmental Actions”.
- M. The City, as a condition of approving the Governmental Actions, desires an agreement with the Property Owners to be assured that the developed site will have adequate access points at certain locations, with appropriate turn lanes, as well as sanitary sewer improvements. Property Owners represented to the City that, in consideration of the City approving the Governmental Actions, the Property Owners would enter into an agreement with the City to develop the Property subject to the terms and conditions listed below.

**I.
DEFINITIONS**

Section 101. Defined Terms. The following are defined terms to this Agreement. Other paragraphs of this Agreement contain numerous refinements and exceptions which qualify the provisions of this Section 101; all other defined terms are as shown in other provisions of this Agreement.

- A. “**Construct**” or “**construction**” shall include proper drainage, utility relocation (electric, cable, phone, communication, fiber optic, gas, water, rural water, and sediment) and erosion controls and measures.
- B. “**Cost**”, “**cost and expense**”, “**expense**” or “**entire cost**” of a type of improvement shall be deemed to include all design and engineering fees, testing expenses, acquisition of right-of-way or easements from a party other than a Property Owner, construction costs, publication costs, financing costs, and related miscellaneous costs.
- C. “**Intersection Improvements**” shall mean design, grading, and construction of right and left turn lane improvements as described in Article IV below.

**II.
CONCURRENT APPROVAL OF GOVERNMENTAL ACTIONS;
CONDITIONAL APPROVAL**

Section 201. Concurrent Approval. The City, concurrently with the approval of this Agreement, is approving the following Governmental Actions:

- A. Annexing that portion of the Property legally described and shown on Exhibit C (AN22014).
- B. Amending the Lincoln zoning district maps to rezone that portion of the Property legally described on Exhibit D from AG Agricultural to R-3 Residential (CZ22037)
- C. Approving the Preliminary Plat (PP22004).

Section 202. Conditional Approval. Approvals of the Governmental Actions are conditioned upon the terms, conditions and understandings as set forth in this Agreement being fulfilled. The parties understand and agree that, notwithstanding the conditional nature of such zoning approvals hereto, the City Council, on its own motion or at the request of any party hereto, may, in the exercise of its lawful legislative authority: (i) amend the Comprehensive Plan; (ii) extend the municipal corporate boundaries to include any contiguous or adjacent lands; (iii) rezone or revise the zoning designations applicable to the Property; or (iv) approve or amend plats, dedications, use permits, special permits, developments, community unit plans, building permits or other land use controls, as future circumstances may warrant.

III PHASED DEVELOPMENT

Section 301. Phased Development. Property Owners intend to develop the Property and LPS Property in phases as generally depicted on Exhibit B; provided, the order of the phases and portion of the Property included within each phase may be altered by amending the Preliminary Plat without further amendment of this Agreement. Property Owners intend to request annexation of subphases within each phase. This Agreement contemplates annexation of only the Phase I(a) area shown and described on Exhibit C, but also describes the rights and responsibilities of the parties with respect to public improvements outside the Phase I(a) annexation area as discussed in detail below. The parties anticipate future amendments to this Agreement contemplating additional public improvements corresponding with future phases of development.

**IV.
INTERSECTION IMPROVEMENTS & ARTERIAL STREET IMPACT FEE
REIMBURSEMENT**

Section 401. Phased Intersection Improvements: Full development of the Property and LPS Property will require design and construction of five (5) arterial street intersections as shown on Exhibit B. Intersections will be designed and constructed, over time, at the following locations:

- A. West Sinatra Drive and South Folsom Street (“**West Sinatra Intersection**”)
- B. West Sanctuary Road and South Folsom Street (“**West Sanctuary Intersection**”)
- C. Southwest 9th Street and West Old Cheney Road (“**Southwest 9th Intersection**”)
- D. West El Canto Drive and Southwest 12th Street (“**West El Canto Intersection**”)
- E. West Claire Avenue and Southwest 12th Street (“**West Claire Intersection**”)

Section 402. West Sinatra Intersection.

- A. **Phase 1 Intersection Improvements.** The parties agree that development of the Phase 1 area will require the design and construction of a southbound right turn lane and northbound left turn lane at the West Sinatra Intersection to City of Lincoln Standard Specifications (“West Sinatra Intersection Improvements”). The West Sinatra Intersection Improvements will conform to the future urban grade elevation as determined by LTU, and are considered Impact Fee Facility Improvements as that term is defined in LMC §27.82.040. The City does not currently have funding to pay for the West Sinatra Intersection Improvements. The Property Owners may, on the City’s behalf, design, competitively bid, construct and fund the West Sinatra Intersection Improvements through the City’s Executive Order process as part of the final plat process. No final plats shall be approved for the Phase 1 Area until the contract for construction of the Phase 1 Intersection Improvements has been awarded. When final platting the Property, Property Owners will

dedicate, to the satisfaction of Lincoln Transportation and Utilities Department, right of way sufficient for a future roundabout at the West Sinatra Intersection.

- B. Impact Fee Reimbursement.** In the event the Property Owners design and construct the West Sinatra Intersection Improvements, then the City agrees that it shall reimburse Property Owners for actual costs incurred constructing the West Sinatra Intersection Improvements from the arterial street impact fees generated in the Impact Fee Area shown on Exhibit E. Reimbursement from arterial street impact fees generated by development of the Property shown on Exhibit E shall be paid quarterly as arterial street impact fees are received. The foregoing notwithstanding, any reimbursement to be paid from the arterial street impact fees shall not constitute a general obligation of the City. The parties acknowledge that costs incurred for Intersection Improvements constructed during future phases of development may also qualify as reimbursable from impact fees generated in the area.

Section 403. West Sanctuary Intersection.

- A. Phase 2 Intersection Improvements.** The parties agree that development of the Phase 2 area will require the design and construction of a southbound right turn lane and northbound left turn lane at the West Sanctuary Drive Intersection to City of Lincoln Standard Specifications (“West Sanctuary Intersection Improvements”). The West Sanctuary Intersection Improvements will conform to the future urban grade elevation as determined by LTU and are considered Impact Fee Facility Improvements as that term is defined in LMC §27.82.040. The City does not currently have funding to pay for the West Sanctuary Intersection Improvements. The Property Owners may, on the City’s behalf, design, in conjunction with The Housing Authority of the City of Lincoln, Nebraska

("LHA"), competitively bid, construct and fund the West Sanctuary Intersection Improvements through the City's Executive Order process as part of the final plat process. No final plats shall be approved for the Phase 2 Area until the contract for construction of the Phase 2 Intersection Improvements has been awarded. When final platting the Property, Property Owners will dedicate, to the satisfaction of Lincoln Transportation and Utilities Department, right of way sufficient for a future roundabout at the West Sanctuary Intersection.

B. Impact Fee Reimbursement. In the event the Property Owners design and construct the West Sanctuary Intersection Improvements, then the City agrees that it shall reimburse Property Owners for actual costs Property Owners' incurred constructing the West Sanctuary Intersection Improvements from the arterial street impact fees generated in the Impact Fee Area shown on Exhibit E. Reimbursement from arterial street impact fees generated by development of the Property shown on Exhibit E shall be paid quarterly as arterial street impact fees are received. LHA, per its separate annexation agreement with the City, is not entitled to impact fee reimbursement for any West Sanctuary Intersection Improvements costs paid by LHA. The foregoing notwithstanding, any reimbursement to be paid from the arterial street impact fees shall not constitute a general obligation of the City. The parties acknowledge that costs incurred for Intersection Improvements constructed during future phases of development may also qualify as reimbursable from impact fees generated in the area.

Section 404. Southwest 9th Intersection.

A. **Phase 3 Intersection Improvements.** Property Owners shall have no obligation to make improvements to the Southwest 9th Street Intersection. However, Property Owners acknowledge no access shall be permitted at the Southwest 9th Intersection until full intersection improvements are constructed at that location. No final plats shall be approved for the Phase 3 Area until the contract for construction of the Phase 3 Intersection Improvements has been awarded. When final platting the Property, Property Owners will dedicate, to the satisfaction of Lincoln Transportation and Utilities Department, right of way sufficient for a future roundabout at the Southwest 9th Intersection.

Section 405. West El Canto Intersection and West Claire Intersection.

A. **Phase 4 and 5 Intersection Improvements** The parties acknowledge that a northbound right turn lane and southbound left turn lane will be required at the West El Canto Intersection (“West El Canto Intersection Improvements”) for development of the Phase 5 area, and a northbound right turn lane and southbound left turn lane will be required at the West Claire Intersection (“West Claire Intersection Improvements”) for development of the Phase 4 area. The City does not currently have funding to pay for the West El Canto Intersection Improvements and the West Claire Intersection Improvements. The design, construction and funding of the West El Canto Intersection Improvements and the West Claire Intersection Improvements will be addressed in a future amendment to this Agreement prior to the development of Phases 4 and 5.

V.

SANITARY SEWER IMPROVEMENTS AND WATER/SEWER IMPACT FEES

Section 501. Sanitary Sewer Improvements. The parties acknowledge that City has constructed an 18-inch public sanitary sewer trunk main to the east boundary of the Property. City agrees to design and construct the continuation of that sanitary sewer trunk main west approximately 1,350 lineal feet to serve the Property and the LPS Property as shown on Exhibit F (“Sanitary Sewer Extension”). City agrees to complete construction of the Sanitary Sewer Extension to Southwest 8th Street by 2025/2026. City agrees to complete the remainder of the Sanitary Sewer Extension through the Property within one (1) year from the date Property Owners give the City notice that the Sanitary Sewer Extension is needed for development of the Property and/or LPS Property. The Sanitary Sewer Extension will be funded from the Capital Improvement Program as a Wastewater – New Growth project.

Property Owners agree to dedicate all easements required for City to construct and maintain the Sanitary Sewer Improvements.

Section 502. Water/Sewer Connection Fee Collection. Property Owners will, at their own cost, design and, pursuant to the Executive Order Process, construct sanitary sewer and water public mains to serve the Property and the LPS Property. Per Lincoln Municipal Code §24.52.010 and §17.10.110, Property Owners shall be entitled to reimbursement of those costs, to the extent reimbursement is or becomes available, from connection fees collected by the City from abutting property owners in the future.

VI.
CONTRIBUTION TO RURAL FIRE PROTECTION DISTRICT

Section 601. Rural Fire Protection District Payment. Property Owners understand and acknowledge that the City's annexation of the Property and LPS Property or any portion thereof lying within the boundaries of the Southeast Rural Fire Protection district shall not be complete except upon the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of the Property or any portion thereof being annexed. The Property Owners desire to be annexed by the City and therefore agree to pay the amount which must be paid to the Southeast Rural Fire Protection District in order for the annexation to be complete.

VII.
MISCELLANEOUS PROVISIONS

Section 701. Binding Effect. This Agreement shall run with the land and be binding upon and inure to the benefit and burden of successors and assigns of the respective parties.

Section 702. Amendments. This Agreement may only be amended or modified in writing signed by the parties hereto.

Section 703. Further Assurances. Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this agreement.

Section 704. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

Section 705. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

Section 706. Construction. Whenever used herein, including recitals and acknowledgements, the singular shall be construed to include the plural, the plural singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

Section 707. Relationship of the Parties. Neither the method of computation of funding or any other provisions contained in this Agreement, or any acts of any party shall be deemed or construed by the City, Property Owners, or by any third person to create the relationship of partnership, joint venture, or of any association between the parties other than the contractual relationship stated in this Agreement.

Section 708. Default. Property Owners and City agree that the Government Actions promote the public health, safety, and welfare so long as Property Owners fulfill all of the conditions and responsibilities set forth in this Agreement. In the event Property Owners default in fulfilling any of their covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rezone the Property Owners' Property to its previous designations or such other designations as the City may deem appropriate under the ten-existing circumstances, or take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach.

Section 709. Authority. This Agreement has been duly executed and delivered by the parties and constitutes a legal, valid and binding obligation of each party, enforceable against the same in accordance with its terms.

Section 710. Recording. This Agreement shall be recorded by the City with the Register of Deeds of Lancaster County, filing fees therefor to be paid in advance by the Property Owners.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date and year first above written.

EXHIBITS

Exhibit A: The Property and LPS Property

Exhibit B: Phased Development

Exhibit C: Phase I(a) Annexation Area

Exhibit D: Change of Zone Map

Exhibit E: Impact Fee Area

Exhibit F: Trunk Sewer Extension Map

(SIGNATURE PAGES TO FOLLOW)

PROPERTY OWNER

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 15 day of November, 2023, 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 15 day of November, 2023, 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

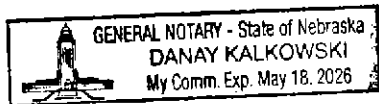
By: WHITE HOLDINGS, LLC, a Nebraska limited liability company, Member

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 17 day of November, 2023, 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.

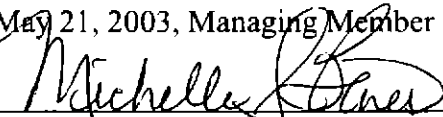


Danay Kalkowski
Notary Public

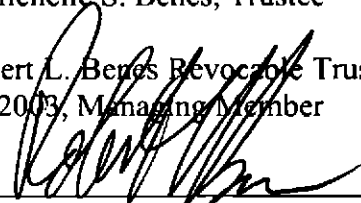
PROPERTY OWNER

1640 LLC, a Nebraska limited liability company

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

By: 
Michelle S. Benes, Trustee

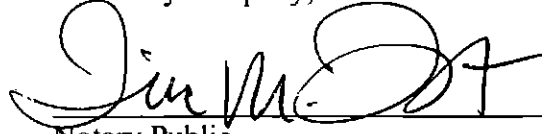
By: Robert L. Benes Revocable Trust dated May 21, 2003, Managing Member

By: 
Robert L. Benes, Trustee

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)



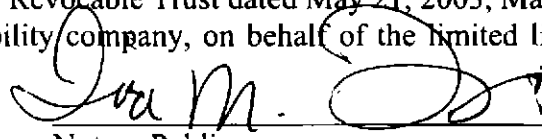
The foregoing was acknowledged before me this 15 day of November, 2023, by Michelle S. Benes, Trustee of the Michelle S. Benes Revocable Trust dated May 21, 2003, Managing Member of 1640 LLC, a Nebraska limited liability company, on behalf of the limited liability company.


Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)



The foregoing was acknowledged before me this 15 day of November, 2023, 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, on behalf of the limited liability company.


Notary Public

PROPERTY OWNER

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 17 day of November, 2023, 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, on behalf of the limited liability company.

Danay Kalkowski
Notary Public

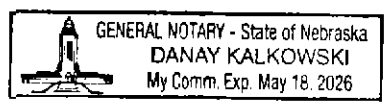


EXHIBIT A
THE PROPERTY AND LPS PROPERTY

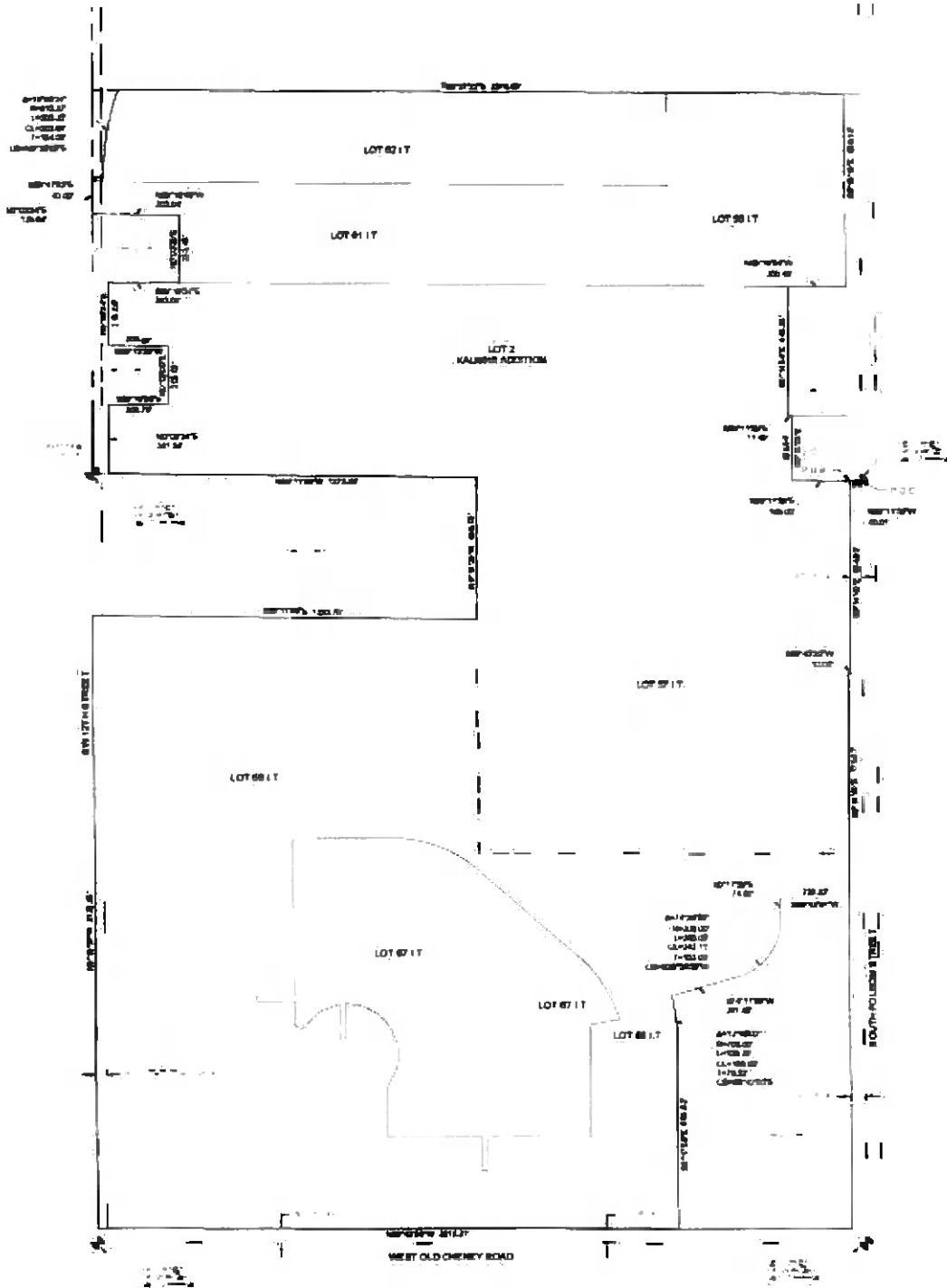


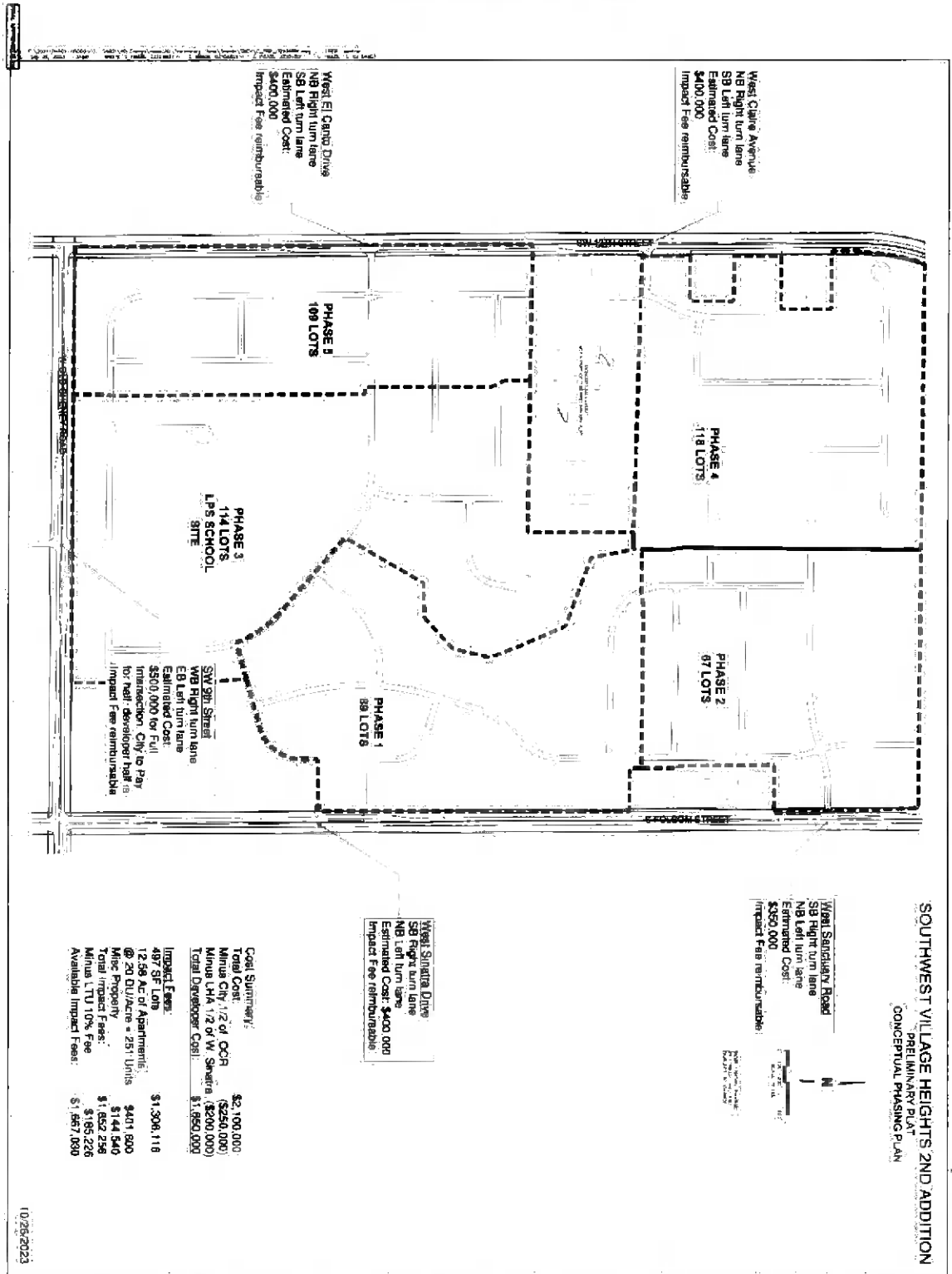
EXHIBIT A
THE PROPERTY AND LPS PROPERTY

A TRACT OF LAND COMPOSED OF LOTS 57 I.T., 67 I.T., AND 68 I.T., LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 9 NORTH, RANGE 6 EAST AND COMPOSED OF LOTS 55 I.T., 61 I.T., 62 I.T., AND LOT 2, KALNINS ADDITION, LOCATED IN THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 9 NORTH, RANGE 6 EAST; THENCE, WESTERLY, ON THE NORTH LINE OF SAID SOUTHWEST QUARTER, ON AN ASSUMED BEARING OF N89°11'59"W, A DISTANCE OF 40.01' TO THE TRUE POINT OF BEGINNING; THENCE S00°14'40"E, ON AN EAST LINE OF SAID LOT 57 I.T., SAID LINE BEING A WEST RIGHT OF WAY LINE OF SOUTH FOLSOM STREET, A DISTANCE OF 664.93' TO A POINT; THENCE S89°45'20"W, ON A SOUTH LINE OF SAID LOT 57 I.T., SAID LINE BEING A NORTH RIGHT OF WAY LINE OF SAID SOUTH FOLSOM STREET, A DISTANCE OF 10.00' TO A POINT; THENCE S00°14'40"E, ON AN EAST LINE OF SAID LOT 57 I.T. AND AN EAST LINE OF SAID LOT 68 I.T., SAID LINE BEING A WEST RIGHT OF WAY LINE OF SAID SOUTH FOLSOM STREET, A DISTANCE OF 775.87' TO A POINT; THENCE S89°42'01"W, ON A SOUTH LINE OF SAID LOT 68 I.T., A DISTANCE OF 238.33' TO A POINT; THENCE S00°17'59"E, ON AN EAST LINE OF SAID LOT 68 I.T., A DISTANCE OF 74.62' TO A POINT OF CURVATURE FOR A CURVE IN A CLOCKWISE DIRECTION, HAVING A CENTRAL ANGLE OF 74°29'55", A RADIUS OF 200.00', AN ARC LENGTH OF 260.05', ON A SOUTHEAST LINE OF SAID LOT 68 I.T., A CHORD LENGTH OF 242.11', A TANGENT LENGTH OF 152.08', AND A CHORD BEARING OF S36°56'58"W TO A POINT; THENCE S74°11'56"W, ON A SOUTH LINE OF SAID LOT 68 I.T., A DISTANCE OF 241.92' TO A POINT OF CURVATURE FOR A NON-TANGENT CURVE IN A CLOCKWISE DIRECTION, HAVING A CENTRAL ANGLE OF 12°48'02", A RADIUS OF 700.00', AN ARC LENGTH OF 156.39', ON AN EAST LINE OF SAID LOT 68 I.T., A CHORD LENGTH OF 156.06', A TANGENT LENGTH OF 78.52', AND A CHORD BEARING OF S06°42'00"E TO A POINT; THENCE S00°17'59"E, ON AN EAST LINE OF SAID LOT 68 I.T., A DISTANCE OF 654.82' TO A POINT; THENCE N89°42'56"W, ON A SOUTH LINE OF SAID LOT 68 I.T., SAID LINE BEING A NORTH RIGHT OF WAY LINE OF WEST OLD CHENEY ROAD, A DISTANCE OF 2,013.21' TO A POINT; THENCE N00°18'37"W, ON A WEST LINE OF SAID LOT 68 I.T., SAID LINE BEING THE WEST LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 2,122.50' TO A POINT; THENCE S89°11'59"E, ON A NORTH LINE OF SAID LOT 68 I.T., A DISTANCE OF 1,332.75' TO A POINT; THENCE N00°16'39"W, ON A WEST LINE OF SAID LOT 57 I.T., A DISTANCE OF 490.09' TO A POINT; THENCE N89°11'59"W, ON A SOUTH LINE OF SAID LOT 2, A DISTANCE OF 1,273.03' TO A POINT; THENCE N00°03'34"E, ON A WEST LINE OF SAID LOT 2, SAID LINE BEING AN EAST RIGHT OF WAY LINE OF SOUTHWEST 12TH STREET, A DISTANCE OF 241.54' TO A POINT; THENCE S89°10'26"E, ON A NORTH LINE OF SAID LOT 2, A DISTANCE OF 205.79' TO A

POINT; THENCE N00°05'00"E, ON A WEST LINE OF SAID LOT 2, A DISTANCE OF 203.06' TO A POINT; THENCE N89°13'20"W, ON A NORTH LINE OF SAID LOT 2, A DISTANCE OF 205.87' TO A POINT; THENCE N00°03'34"E, ON A WEST LINE OF SAID LOT 2, SAID LINE BEING AN EAST RIGHT OF WAY LINE OF SAID SOUTHWEST 12TH STREET, A DISTANCE OF 218.69' TO A POINT; THENCE S89°19'54"E, ON A NORTH LINE OF SAID LOT 2, A DISTANCE OF 243.04' TO A POINT; THENCE N00°03'30"E, ON A WEST LINE OF SAID LOT 61 I.T., A DISTANCE OF 233.45' TO A POINT; THENCE N89°18'40"W, ON A SOUTH LINE OF SAID LOT 61 I.T., A DISTANCE OF 303.04' TO A POINT; THENCE N00°03'34"E, ON THE WEST LINE OF SAID NORTHWEST QUARTER, SAID LINE BEING THE WEST LINE OF LOT 61 I.T., AND A WEST LINE OF SAID LOT 62 I.T., A DISTANCE OF 129.64' TO A POINT; THENCE S89°47'53"E, ON A NORTH LINE OF SAID LOT 62 I.T., A DISTANCE OF 40.00' TO A POINT OF CURVATURE FOR A NON-TANGENT CURVE IN A CLOCKWISE DIRECTION, HAVING A CENTRAL ANGLE OF 19°06'24", A RADIUS OF 915.37', AN ARC LENGTH OF 305.25', ON A WEST LINE OF SAID LOT 62 I.T. SAID LINE BEING AN EAST LINE OF WEST PIONEERS BOULEVARD, A CHORD LENGTH OF 303.84', A TANGENT LENGTH OF 154.06', AND A CHORD BEARING OF N09°38'03"E TO A POINT; THENCE S89°27'22"E, ON A NORTH LINE OF SAID LOT 62 I.T. AND THE NORTH LINE OF SAID LOT 55 I.T., A DISTANCE OF 2,518.09' TO A POINT; THENCE S00°15'10"E, ON AN EAST LINE OF SAID LOT 55 I.T., SAID LINT BEING A WEST RIGHT OF WAY LINE OF SOUTH FOLSOM STREET, A DISTANCE OF 669.18' TO A POINT; THENCE N89°19'54"W, ON A SOUTH LINE OF SAID LOT 55 I.T., A DISTANCE OF 200.49' TO A POINT; THENCE S00°14'54"E, ON AN EAST LINE OF SAID LOT 2, A DISTANCE OF 445.56' TO A POINT; THENCE S89°11'59"E, ON A NORTH LINE OF SAID LOT 2, A DISTANCE OF 11.49' TO A POINT; THENCE S00°15'05"E, ON AN EAST LINE OF SAID LOT 2, A DISTANCE OF 223.04' TO A POINT; THENCE S89°11'59"E, ON A NORTH LINE OF SAID LOT 57 I.T., A DISTANCE OF 199.05' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 8,739,581.97 SQUARE FEET OR 200.63 ACRES, MORE OR LESS.

EXHIBIT B DEVELOPMENT PHASES



SOUTHWEST VILLAGE HEIGHTS 2ND ADDITION
PRELIMINARY PLAT
CONCEPTUAL PHASING PLAN

West Sanctuary Road
SB Right turn lane
NB Left turn lane
Estimated Cost: \$250,000
Impact Fee reimbursable

West Sanctuary Drive
SB Right turn lane
NB Left turn lane
Estimated Cost: \$400,000
Impact Fee reimbursable

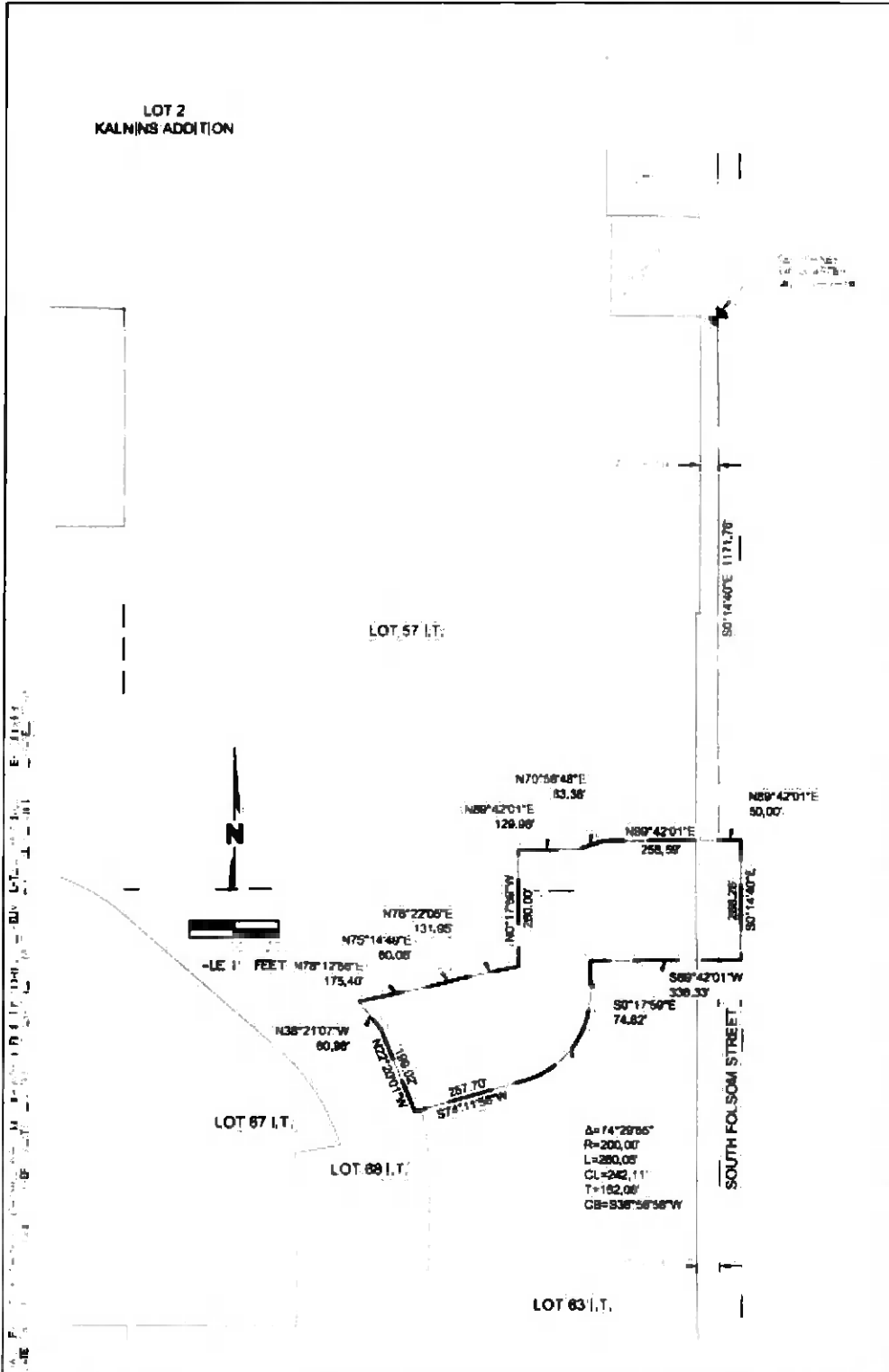
Cost Summary:
Total Cost: \$2,100,000
Minus City (1/2 of OCR): (\$250,000)
Minus LHA (1/2 of W. Sanitra): (\$200,000)
Total Developer Cost: \$1,650,000

Impact Fees:
487 SF Lots: \$1,306,116
12.56 Ac of Apartment @ 20 DU/Acre = 251 Units: \$441,800
Misc Property: \$144,540
Total Impact Fees: \$1,892,456
Minus LTU 10% Fee: \$165,226
Available Impact Fees: \$1,667,000

10/25/2023

<p>CONCEPTUAL PHASING PLAN</p> <p>SOUTHWEST VILLAGE HEIGHTS 2ND ADDITION, PRELIMINARY PLAT</p>		<p>100 LINCOLN, NE 68502</p>
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EXHIBIT C
PHASE I(a) ANNEXATION AREA



PROJECT NO: 02404801	ANNEXATION	olsson	DATE: 10/4/2022	1
DRAWN BY: ALS				

EXHIBIT C
PHASE I(a) ANNEXATION AREA

LEGAL DESCRIPTION
ANNEXATION

A TRACT OF LAND COMPOSED OF A PORTION OF LOT 57 I.T., A PORTION OF LOT 68 I.T. AND A PORTION OF SOUTH FOLSOM STREET RIGHT OF WAY, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 9 NORTH, RANGE 6 EAST AND A PORTION OF SOUTH FOLSOM STREET RIGHT OF WAY LOCATED IN THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER SECTION 10, TOWNSHIP 9 NORTH, RANGE 6 EAST; THENCE, SOUTHERLY, ON THE EAST LINE OF SAID SOUTHWEST QUARTER, ON AN ASSUMED BEARING OF S00°14'40"E, A DISTANCE OF 1,171.76' TO THE TRUE POINT OF BEGINNING; THENCE N89°42'01"E, A DISTANCE OF 50.00' TO A POINT; THENCE S00°14'40"E, ON AN EAST RIGHT OF WAY LINE OF SOUTH FOLSOM STREET, A DISTANCE OF 268.26' TO A POINT; THENCE S89°42'01"W, ON THE EXTENSION OF A SOUTH LINE OF LOT 68 I.T. AND ON A SOUTH LINE OF LOT 68 I.T., A DISTANCE OF 338.33' TO A POINT; THENCE S00°17'59"E, ON AN EAST LINE OF SAID LOT 68 I.T., A DISTANCE OF 74.62' TO A POINT OF CURVATURE FOR A CURVE IN A CLOCKWISE DIRECTION, HAVING A CENTRAL ANGLE OF 74°29'55", A RADIUS OF 200.00', AN ARC LENGTH OF 260.05', ON A SOUTHEAST LINE OF SAID LOT 68 I.T., A CHORD LENGTH OF 242.11', A TANGENT LENGTH OF 152.08', AND A CHORD BEARING OF S36°56'58"W TO A POINT; THENCE S74°11'56"W, ON A SOUTH LINE OF SAID LOT 68 I.T. AND ITS EXTENSION, A DISTANCE OF 257.70' TO A POINT; THENCE N22°20'01"W, A DISTANCE OF 199.02' TO A POINT; THENCE N38°21'07"W, A DISTANCE OF 80.98' TO A POINT; THENCE N78°12'56"E, A DISTANCE OF 175.40' TO A POINT; THENCE N75°14'49"E, A DISTANCE OF 60.08' TO A POINT; THENCE N78°22'05"E, A DISTANCE OF 131.95' TO A POINT; THENCE N00°17'59"W, A DISTANCE OF 260.00' TO A POINT; THENCE N89°42'01"E, A DISTANCE OF 129.98' TO A POINT; THENCE N70°56'48"E, A DISTANCE OF 63.38' TO A POINT; THENCE N89°42'01"E, A DISTANCE OF 258.59' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 243,370.20 SQUARE FEET OR 5.59 ACRES, MORE OR LESS.

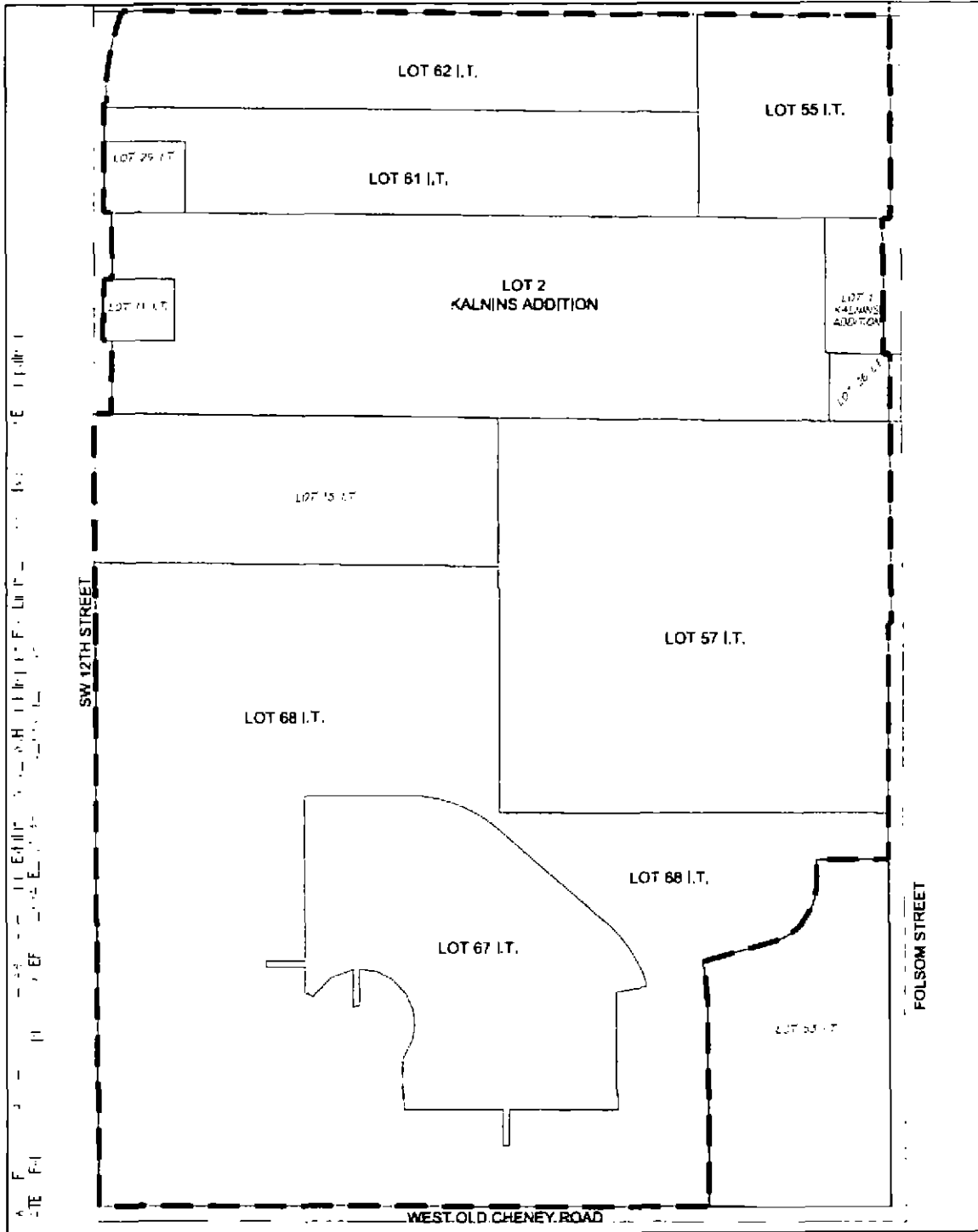
EXHIBIT D
CHANGE OF ZONE AREA

LEGAL DESCRIPTION
CHANGE OF ZONE AG TO R3

A TRACT OF LAND COMPOSED OF A PORTION OF LOT 57 I.T. AND A PORTION OF LOT 68 I.T., LOCATED IN THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 9 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

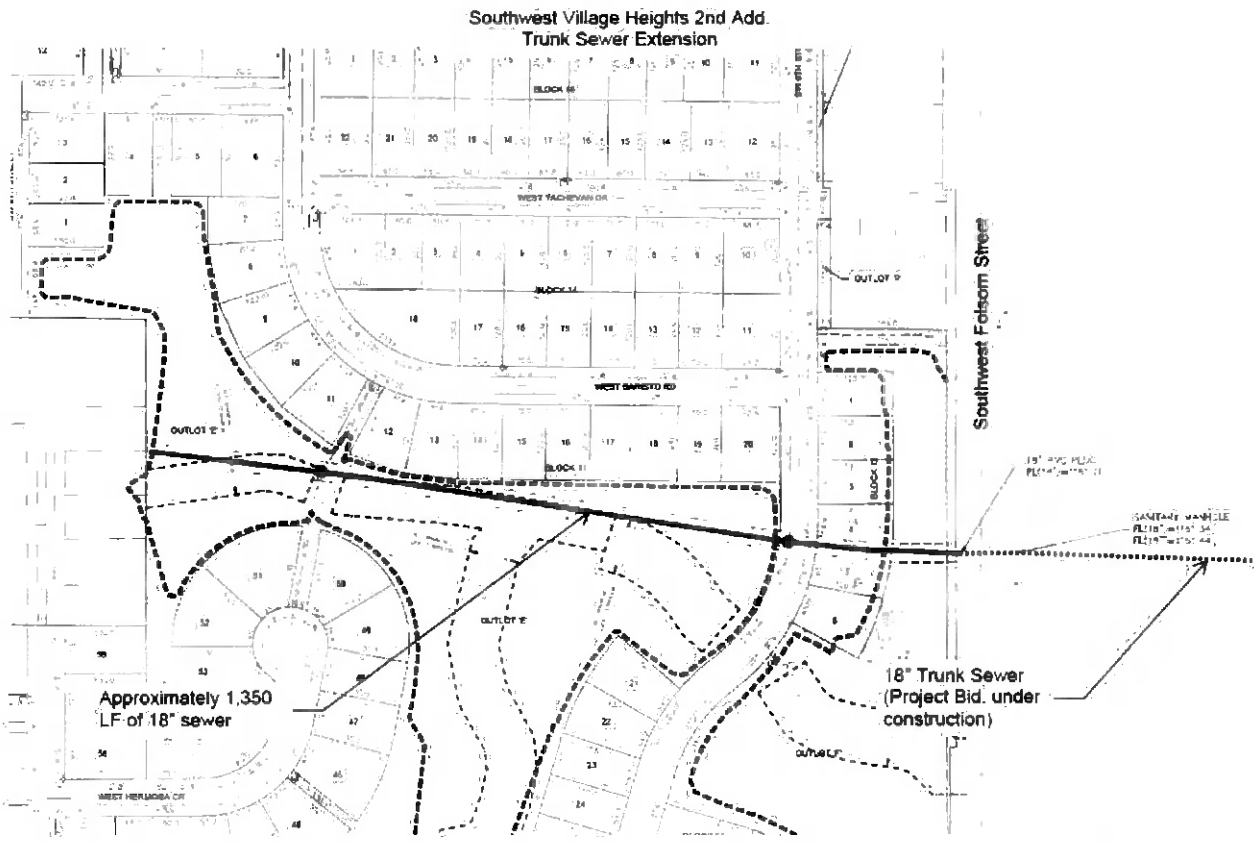
COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER SECTION 10, TOWNSHIP 9 NORTH, RANGE 6 EAST; THENCE, SOUTHERLY, ON THE EAST LINE OF SAID SOUTHWEST QUARTER, ON AN ASSUMED BEARING OF S00°14'40"E, A DISTANCE OF 1,171.76' TO A POINT; THENCE S89°42'01"W, A DISTANCE OF 50.00' TO THE TRUE POINT OF BEGINNING; THENCE S00°14'40"E, ON AN EAST LINE OF SAID LOT 57 I.T. AND AN EAST LINE OF SAID LOT 68 I.T., SAID LINE BEING THE WEST RIGHT OF WAY LINE OF SOUTH FOLSOM STREET, A DISTANCE OF 268.26' TO A POINT; THENCE S89°42'01"W, ON A NORTH LINE OF SAID LOT 68 I.T., A DISTANCE OF 238.33' TO A POINT; THENCE S00°17'59"E, ON AN EAST LINE OF SAID LOT 68 I.T., A DISTANCE OF 74.62' TO A POINT OF CURVATURE FOR A CURVE IN A CLOCKWISE DIRECTION, HAVING A CENTRAL ANGLE OF 74°29'55", A RADIUS OF 200.00', AN ARC LENGTH OF 260.05', ON A SOUTHEAST LINE OF SAID LOT 68 I.T., A CHORD LENGTH OF 242.11', A TANGENT LENGTH OF 152.08', AND A CHORD BEARING OF S36°56'58"W TO A POINT; THENCE S74°11'56"W, ON A SOUTH LINE OF SAID LOT 68 I.T. AND ITS EXTENSION, A DISTANCE OF 257.70' TO A POINT; THENCE N22°20'01"W, A DISTANCE OF 199.02' TO A POINT; THENCE N38°21'07"W, A DISTANCE OF 80.98' TO A POINT; THENCE N78°12'56"E, A DISTANCE OF 175.40' TO A POINT; THENCE N75°14'49"E, A DISTANCE OF 60.08' TO A POINT; THENCE N78°22'05"E, A DISTANCE OF 131.95' TO A POINT; THENCE N00°17'59"W, A DISTANCE OF 260.00' TO A POINT; THENCE N89°42'01"E, A DISTANCE OF 129.98' TO A POINT; THENCE N70°56'48"E, A DISTANCE OF 63.38' TO A POINT; THENCE N89°42'01"E, A DISTANCE OF 208.59' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 216,543.89 SQUARE FEET OR 4.97 ACRES, MORE OR LESS.

EXHIBIT E
IMPACT FEE AREA



PROJECT NO: 021-04801	SOUTHWEST VILLAGE HEIGHTS 2ND - IMPACT FEE LIMITS	olsson	301 F Street, Suite 200 P.O. Box 84608 Lincoln, NE 68508 TEL 402.474.8311	EXHIBIT
DRAWN BY: EAP				1
DATE: 11/01/2022				

EXHIBIT F
TRUNK SEWER EXTENSION MAP



No Scale

**CONDITIONAL ZONING AND ANNEXATION AGREEMENT
FOR
SOUTHWEST VILLAGE HEIGHTS 2ND ADDITION**

This Conditional Zoning and Annexation Agreement for Southwest Village Heights 2nd Addition (“Agreement”) 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”), **Southwest Folsom Development, LLC**, a Nebraska limited liability company, **White Holdings, LLC**, a Nebraska limited liability company, and **1640, LLC**, a Nebraska limited liability company (collectively the “**Property Owners**”).

RECITALS

A. Southwest Folsom Development, LLC owns the property legally described as:

Lots 57 and 68, Irregular Tracts located in the Southwest Quarter, of Section 10, Township 9, Range 6 East of the 6th P.M. and Lot 2, Kalnins Addition, all in Lancaster County, Nebraska (“**Southwest Folsom Property**”).

B. White Holdings, LLC and 1640 LLC jointly own the property legally described as:

Lots 55, 61 and 62, Irregular Tracts located in the Northwest Quarter, of Section 10, Township 9, Range 6 East of the 6th P.M. Lancaster County, Nebraska (“**White/1640 Property**”).

C. The Southwest Folsom Property and White/1640 Property are collectively known as the “**Property.**”

D. Lincoln Public Schools owns the property legally described as:

Lot 67, Irregular Tract located in the Southwest Quarter, of Section 10, Township 9, Range 6 East of the 6th P.M., Lancaster County, Nebraska (“**LPS Property**”).

E. The Property and LPS Property are shown and legally described on Exhibit A.

- F. Property Owners request City approve a Preliminary Plat for the Property and LPS Property (PP22004).
- G. The Property and LPS Property are shown as Tier 1, Priority A on the 2050 Priority Growth Areas (Figure GF.c: Priority Growth Areas) in the Lincoln City-Lancaster County Comprehensive Plan.
- H. The City and Property Owners desire that the Property and LPS Property be annexed, in phases with subphases, pursuant to the conditions stated in this Agreement and subsequent amendments. The proposed annexation phases are shown on Exhibit B.
- I. Phase I(a) Annexation is shown and legally described on Exhibit C and is called AN22014.
- J. Property Owners request that the City rezone a portion of the Property from AG Agricultural District to R-3 Residential (CZ22037). The area for initial rezoning is legally described and shown on Exhibit D.
- K. This Agreement contemplates City reimbursement, to Property Owners, of certain impact fees. The Impact Fee Area from which impact fees will be generated and made available for reimbursement is attached as Exhibit E.
- L. PP22004, AN22014, and CZ22037 are collectively the “Governmental Actions”.
- M. The City, as a condition of approving the Governmental Actions, desires an agreement with the Property Owners to be assured that the developed site will have adequate access points at certain locations, with appropriate turn lanes, as well as sanitary sewer improvements. Property Owners represented to the City that, in consideration of the City approving the Governmental Actions, the Property Owners would enter into an agreement with the City to develop the Property subject to the terms and conditions listed below.

**I.
DEFINITIONS**

Section 101. Defined Terms. The following are defined terms to this Agreement. Other paragraphs of this Agreement contain numerous refinements and exceptions which qualify the provisions of this Section 101; all other defined terms are as shown in other provisions of this Agreement.

- A. “**Construct**” or “**construction**” shall include proper drainage, utility relocation (electric, cable, phone, communication, fiber optic, gas, water, rural water, and sediment) and erosion controls and measures.
- B. “**Cost**”, “**cost and expense**”, “**expense**” or “**entire cost**” of a type of improvement shall be deemed to include all design and engineering fees, testing expenses, acquisition of right-of-way or easements from a party other than a Property Owner, construction costs, publication costs, financing costs, and related miscellaneous costs.
- C. “**Intersection Improvements**” shall mean design, grading, and construction of right and left turn lane improvements as described in Article IV below.

**II.
CONCURRENT APPROVAL OF GOVERNMENTAL ACTIONS;
CONDITIONAL APPROVAL**

Section 201. Concurrent Approval. The City, concurrently with the approval of this Agreement, is approving the following Governmental Actions:

- A. Annexing that portion of the Property legally described and shown on Exhibit C (AN22014).
- B. Amending the Lincoln zoning district maps to rezone that portion of the Property legally described on Exhibit D from AG Agricultural to R-3 Residential (CZ22037)
- C. Approving the Preliminary Plat (PP22004).

Section 202. Conditional Approval. Approvals of the Governmental Actions are conditioned upon the terms, conditions and understandings as set forth in this Agreement being fulfilled. The parties understand and agree that, notwithstanding the conditional nature of such zoning approvals hereto, the City Council, on its own motion or at the request of any party hereto, may, in the exercise of its lawful legislative authority: (i) amend the Comprehensive Plan; (ii) extend the municipal corporate boundaries to include any contiguous or adjacent lands; (iii) rezone or revise the zoning designations applicable to the Property; or (iv) approve or amend plats, dedications, use permits, special permits, developments, community unit plans, building permits or other land use controls, as future circumstances may warrant.

III PHASED DEVELOPMENT

Section 301. Phased Development. Property Owners intend to develop the Property and LPS Property in phases as generally depicted on Exhibit B; provided, the order of the phases and portion of the Property included within each phase may be altered by amending the Preliminary Plat without further amendment of this Agreement. Property Owners intend to request annexation of subphases within each phase. This Agreement contemplates annexation of only the Phase I(a) area shown and described on Exhibit C, but also describes the rights and responsibilities of the parties with respect to public improvements outside the Phase I(a) annexation area as discussed in detail below. The parties anticipate future amendments to this Agreement contemplating additional public improvements corresponding with future phases of development.

**IV.
INTERSECTION IMPROVEMENTS & ARTERIAL STREET IMPACT FEE
REIMBURSEMENT**

Section 401. Phased Intersection Improvements: Full development of the Property and LPS Property will require design and construction of five (5) arterial street intersections as shown on Exhibit B. Intersections will be designed and constructed, over time, at the following locations:

- A. West Sinatra Drive and South Folsom Street (“**West Sinatra Intersection**”)
- B. West Sanctuary Road and South Folsom Street (“**West Sanctuary Intersection**”)
- C. Southwest 9th Street and West Old Cheney Road (“**Southwest 9th Intersection**”)
- D. West El Canto Drive and Southwest 12th Street (“**West El Canto Intersection**”)
- E. West Claire Avenue and Southwest 12th Street (“**West Claire Intersection**”)

Section 402. West Sinatra Intersection.

- A. **Phase 1 Intersection Improvements.** The parties agree that development of the Phase 1 area will require the design and construction of a southbound right turn lane and northbound left turn lane at the West Sinatra Intersection to City of Lincoln Standard Specifications (“**West Sinatra Intersection Improvements**”). The West Sinatra Intersection Improvements will conform to the future urban grade elevation as determined by LTU, and are considered Impact Fee Facility Improvements as that term is defined in LMC §27.82.040. The City does not currently have funding to pay for the West Sinatra Intersection Improvements. The Property Owners may, on the City’s behalf, design, competitively bid, construct and fund the West Sinatra Intersection Improvements through the City’s Executive Order process as part of the final plat process. No final plats shall be approved for the Phase 1 Area until the contract for construction of the Phase 1 Intersection Improvements has been awarded. When final platting the Property, Property Owners will

dedicate, to the satisfaction of Lincoln Transportation and Utilities Department, right of way sufficient for a future roundabout at the West Sinatra Intersection.

B. Impact Fee Reimbursement. In the event the Property Owners design and construct the West Sinatra Intersection Improvements, then the City agrees that it shall reimburse Property Owners for actual costs incurred constructing the West Sinatra Intersection Improvements from the arterial street impact fees generated in the Impact Fee Area shown on Exhibit E. Reimbursement from arterial street impact fees generated by development of the Property shown on Exhibit E shall be paid quarterly as arterial street impact fees are received. The foregoing notwithstanding, any reimbursement to be paid from the arterial street impact fees shall not constitute a general obligation of the City. The parties acknowledge that costs incurred for Intersection Improvements constructed during future phases of development may also qualify as reimbursable from impact fees generated in the area.

Section 403. West Sanctuary Intersection.

A. Phase 2 Intersection Improvements. The parties agree that development of the Phase 2 area will require the design and construction of a southbound right turn lane and northbound left turn lane at the West Sanctuary Drive Intersection to City of Lincoln Standard Specifications (“West Sanctuary Intersection Improvements”). The West Sanctuary Intersection Improvements will conform to the future urban grade elevation as determined by LTU and are considered Impact Fee Facility Improvements as that term is defined in LMC §27.82.040. The City does not currently have funding to pay for the West Sanctuary Intersection Improvements. The Property Owners may, on the City’s behalf, design, in conjunction with The Housing Authority of the City of Lincoln, Nebraska

("LHA"), competitively bid, construct and fund the West Sanctuary Intersection Improvements through the City's Executive Order process as part of the final plat process. No final plats shall be approved for the Phase 2 Area until the contract for construction of the Phase 2 Intersection Improvements has been awarded. When final platting the Property, Property Owners will dedicate, to the satisfaction of Lincoln Transportation and Utilities Department, right of way sufficient for a future roundabout at the West Sanctuary Intersection.

- B. Impact Fee Reimbursement.** In the event the Property Owners design and construct the West Sanctuary Intersection Improvements, then the City agrees that it shall reimburse Property Owners for actual costs Property Owners' incurred constructing the West Sanctuary Intersection Improvements from the arterial street impact fees generated in the Impact Fee Area shown on Exhibit E. Reimbursement from arterial street impact fees generated by development of the Property shown on Exhibit E shall be paid quarterly as arterial street impact fees are received. LHA, per its separate annexation agreement with the City, is not entitled to impact fee reimbursement for any West Sanctuary Intersection Improvements costs paid by LHA. The foregoing notwithstanding, any reimbursement to be paid from the arterial street impact fees shall not constitute a general obligation of the City. The parties acknowledge that costs incurred for Intersection Improvements constructed during future phases of development may also qualify as reimbursable from impact fees generated in the area.

Section 404. Southwest 9th Intersection.

A. **Phase 3 Intersection Improvements.** Property Owners shall have no obligation to make improvements to the Southwest 9th Street Intersection. However, Property Owners acknowledge no access shall be permitted at the Southwest 9th Intersection until full intersection improvements are constructed at that location. No final plats shall be approved for the Phase 3 Area until the contract for construction of the Phase 3 Intersection Improvements has been awarded. When final platting the Property, Property Owners will dedicate, to the satisfaction of Lincoln Transportation and Utilities Department, right of way sufficient for a future roundabout at the Southwest 9th Intersection.

Section 405. West El Canto Intersection and West Claire Intersection.

A. **Phase 4 and 5 Intersection Improvements** The parties acknowledge that a northbound right turn lane and southbound left turn lane will be required at the West El Canto Intersection (“West El Canto Intersection Improvements”) for development of the Phase 5 area, and a northbound right turn lane and southbound left turn lane will be required at the West Claire Intersection (“West Claire Intersection Improvements”) for development of the Phase 4 area. The City does not currently have funding to pay for the West El Canto Intersection Improvements and the West Claire Intersection Improvements. The design, construction and funding of the West El Canto Intersection Improvements and the West Claire Intersection Improvements will be addressed in a future amendment to this Agreement prior to the development of Phases 4 and 5.

V.

SANITARY SEWER IMPROVEMENTS AND WATER/SEWER IMPACT FEES

Section 501. Sanitary Sewer Improvements. The parties acknowledge that City has constructed an 18-inch public sanitary sewer trunk main to the east boundary of the Property. City agrees to design and construct the continuation of that sanitary sewer trunk main west approximately 1,350 lineal feet to serve the Property and the LPS Property as shown on Exhibit F (“Sanitary Sewer Extension”). City agrees to complete construction of the Sanitary Sewer Extension to Southwest 8th Street by 2025/2026. City agrees to complete the remainder of the Sanitary Sewer Extension through the Property within one (1) year from the date Property Owners give the City notice that the Sanitary Sewer Extension is needed for development of the Property and/or LPS Property. The Sanitary Sewer Extension will be funded from the Capital Improvement Program as a Wastewater – New Growth project.

Property Owners agree to dedicate all easements required for City to construct and maintain the Sanitary Sewer Improvements.

Section 502. Water/Sewer Connection Fee Collection. Property Owners will, at their own cost, design and, pursuant to the Executive Order Process, construct sanitary sewer and water public mains to serve the Property and the LPS Property. Per Lincoln Municipal Code §24.52.010 and §17.10.110, Property Owners shall be entitled to reimbursement of those costs, to the extent reimbursement is or becomes available, from connection fees collected by the City from abutting property owners in the future.

VI.
CONTRIBUTION TO RURAL FIRE PROTECTION DISTRICT

Section 601. Rural Fire Protection District Payment. Property Owners understand and acknowledge that the City's annexation of the Property and LPS Property or any portion thereof lying within the boundaries of the Southeast Rural Fire Protection district shall not be complete except upon the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of the Property or any portion thereof being annexed. The Property Owners desire to be annexed by the City and therefore agree to pay the amount which must be paid to the Southeast Rural Fire Protection District in order for the annexation to be complete.

VII.
MISCELLANEOUS PROVISIONS

Section 701. Binding Effect. This Agreement shall run with the land and be binding upon and inure to the benefit and burden of successors and assigns of the respective parties.

Section 702. Amendments. This Agreement may only be amended or modified in writing signed by the parties hereto.

Section 703. Further Assurances. Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this agreement.

Section 704. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

Section 705. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

Section 706. Construction. Whenever used herein, including recitals and acknowledgements, the singular shall be construed to include the plural, the plural singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

Section 707. Relationship of the Parties. Neither the method of computation of funding or any other provisions contained in this Agreement, or any acts of any party shall be deemed or construed by the City, Property Owners, or by any third person to create the relationship of partnership, joint venture, or of any association between the parties other than the contractual relationship stated in this Agreement.

Section 708. Default. Property Owners and City agree that the Government Actions promote the public health, safety, and welfare so long as Property Owners fulfill all of the conditions and responsibilities set forth in this Agreement. In the event Property Owners default in fulfilling any of their covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rezone the Property Owners' Property to its previous designations or such other designations as the City may deem appropriate under the ten-existing circumstances, or take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach.

Section 709. Authority. This Agreement has been duly executed and delivered by the parties and constitutes a legal, valid and binding obligation of each party, enforceable against the same in accordance with its terms.

Section 710. Recording. This Agreement shall be recorded by the City with the Register of Deeds of Lancaster County, filing fees therefor to be paid in advance by the Property Owners.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date and year first above written.

EXHIBITS

Exhibit A: The Property and LPS Property

Exhibit B: Phased Development

Exhibit C: Phase I(a) Annexation Area

Exhibit D: Change of Zone Map

Exhibit E: Impact Fee Area

Exhibit F: Trunk Sewer Extension Map

(SIGNATURE PAGES TO FOLLOW)

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

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

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 18 day of December, 2022, by Leirion Gaylor Baird, Mayor of the City of Lincoln, Nebraska, a municipal corporation.



Kim Behrens
Notary Public

PROPERTY OWNER

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 15 day of November, 2023, 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 15 day of November, 2023, 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

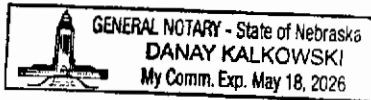
By: White Family, L.L.C., a Nebraska limited liability company, Member

By: Thomas E White
Thomas E. White, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this 17 day of November, 2023, 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.

Danay Kalkowski
Notary Public



PROPERTY OWNER

1640 LLC, a Nebraska limited liability company

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 15 day of November, 2023, 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, 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 15 day of November, 2023, 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, on behalf of the limited liability company.

Tina M. Frost
Notary Public

PROPERTY OWNER

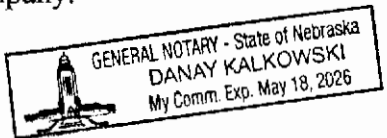
WHITE HOLDINGS, LLC, a Nebraska limited liability company, Member

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 17 day of November, 2023, 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, on behalf of the limited liability company.



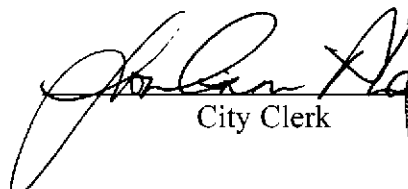
Danay Kalkowski
Notary Public

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 Approving the Conditional Zoning and Annexation Agreement between the City, Southwest Folsom Development, LLC., White Holdings, LLC., and 1640 LLC, for the property generally located at the northeast corner of W. Old Cheney Road and SW 12th Street, as approved by Resolution A-94365 by the Lincoln City Council on December 11, 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 3 day of January, 2024


City Clerk

