

RESOLUTION NO. A-_____

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

2 That the agreement titled Cardinal Heights 2nd Addition Conditional Annexation
3 Agreement, which is attached hereto, marked as Attachment "A" and made a part hereof by
4 reference, between the City of Lincoln and Hartland Homes, Inc. outlining certain conditions and
5 understandings relating to the annexation of approximately 20.92 acres of property generally
6 located on the west side of N.W. 56th Street between West Adams Street and West Holdrege
7 Street, is approved.

8 BE IT FURTHER RESOLVED that the Mayor is authorized to execute the Annexation
9 Agreement on behalf of the City.

10 BE IT FURTHER RESOLVED that the City Clerk is directed to return two fully executed
11 copies of this Agreement to Rick Peo, Chief Assistant City Attorney, for distribution to the Owners.

12 BE IT FURTHER RESOLVED that the City Clerk is directed to record the Annexation
13 Agreement or a summary memorandum thereof with the Register of Deeds, filing fees to be paid
14 by the City.

Introduced by:

Approved as to Form and Legality:

City Attorney

Approved this ____ day of _____, 2004:

Mayor

INTER-DEPARTMENT COMMUNICATION

TO City Council
DEPARTMENT
ATTENTION
COPIES TO

DATE June 15, 2004
FROM Rick Peo *Rick Peo*
DEPARTMENT City Law
SUBJECT 04R-143 – Cardinal Heights
2nd Addition Conditional
Annexation Agreement

The Cardinal Heights 2nd Addition Conditional Annexation Agreement attached to Bill No. 04R-143 is the City's version of said agreement. This agreement has not been executed by Hartland Homes, Inc. ("Hartland") as Hartland and the City of Lincoln have agreed to disagree as to whether or not Hartland is entitled to apply one-half the cost of paving NW 56th Street adjacent to the subject property toward satisfaction of Hartland's obligation to make an Arterial Street Impact Fee Facility Contribution of \$88,576.00.

Resolution No. A-81393, adopted by the City Council on March 17, 2002, approved Hartland's preliminary plat of Cardinal Heights 1st Addition. The 1st Addition preliminary plat was generally located on the east side of NW 56th Street south of West Leighton Avenue. The preliminary plat was for 209 lots and 2 outlots. Approval of final plats from the 1st Addition preliminary plat were conditioned upon Hartland agreeing to relinquish access from the subdivision to NW 56th Street until such time as NW 56th Street is paved. In addition, General Note No. 22 on the preliminary plat provided that before Phase 4 of the development could be built, NW 56th Street was required to be paved. Phase 4 primarily consisted of lots abutting NW 56th Street. Subsequently, the final plat of Hartland's Cardinal Heights 3rd Addition, a final plat based upon the 1st Addition preliminary plat, was approved by the Planning Commission upon condition that Hartland construct or provide security to guarantee the construction of NW 56th Street adjacent to the final plat. Development within Hartland's Cardinal Heights 3rd Addition was granted a category exemption pursuant to Lincoln Municipal Code Section 27.82.060(b)(1) based upon the requirement in the preliminary plat that NW 56th Street be paved prior to approval of Phase 4 of the development.

Section 27.82.060(b) provides that:

The following types of projects shall be exempted from the following types of impact fees:

- (1) Development, pursuant to a written agreement or other approval between the City and a developer which was entered into prior to June 1, 2002, and which specifically included or required the participation by the developer in the financing or construction of the Impact Fee Facilities for the approved development.

Notwithstanding this category exemption, Hartland is now requesting that one-half the cost of paving NW 56th Street be attributable to Cardinal Heights 2nd Addition and not the prior development within the 1st Addition preliminary plat. Hartland is therefore asking to use one-half the cost of paving NW 56th Street to satisfy a portion of the above-mentioned \$88,576 Arterial Street Impact Fee Facility Contribution.

The only basis to grant such a request is found in Lincoln Municipal Code Section 27.82.090(a) which provides that:

On and after June 2, 2003, where a proposed development includes or requires the construction of Impact Fee Facilities in connection with such development, the City and developer may agree in writing to have the developer participate in the financing or construction of part or all of such Impact Fee Facilities.

The question raised then is whether the original obligation to pave NW 56th Street, which benefits Hartland's developments on both the east and west sides of NW 56th Street for category exemption purposes was limited to one-half of the cost of such pavement. It is submitted that it does not. General Note 22 on the preliminary plat requiring pavement of NW 56th Street qualified Hartland's development on the east side of NW 56th Street for a category exemption from Impact Fees pursuant to Section 27.82.060. Therefore, Hartland received the benefit of its bargain and Hartland is not now entitled to more compensation (i.e., reimbursement for one-half the cost which benefits the property on the west side of NW 56th Street). Furthermore, the conditions of approval for Hartland's Cardinal Heights 2nd Addition Community Unit Plan (preliminary plat process waived) does not require pavement of NW 56th Street (it is deemed to have been completed pursuant to the conditions of approval for Hartland's Cardinal Heights 3rd Addition). Since there is no written agreement in the present matter between Hartland and the City requiring construction of NW 56th Street. Hartland is not eligible for reimbursement for such costs.

However, if the City Council grants Hartland's request, a substitute Cardinal Heights 2nd Addition Conditional Annexation Agreement providing for this reimbursement has been prepared for signature by the parties. The remaining items in the agreement are the same as in the attached City version of the agreement.

The associated annexation ordinance and special permit resolution approving the community unit plan should not be adopted until the Council decides which Annexation Agreement to approve and Hartland has executed the Agreement.

ERP/ce