

**DIRECTED ARTERIAL STREET IMPACT FEE
TRANSPORTATION IMPROVEMENT AGREEMENT**

This Directed Arterial Street Impact Fee Transportation Improvement Agreement (“Agreement”) is made and entered into this 11th day of January, 2013, by and between **ASCENTIA REAL ESTATE INVESTMENT COMPANY**, hereinafter referred to as “Developer,” and the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation, hereinafter referred to as “City.”

RECITALS

A. Developer has requested the City to approve a change of zone from H-3 Highway Commercial District and R-2 Residential District to R-3 Residential District designated as an Planned Unit Development District (R-3 PUD) to allow a mixed-use development on Lots 82, 92, and 94, all Irregular Tracts and Lots 88, 104 through 110, and the West 52 feet of Lot 103, Woods Bros North Acres Addition, all located in the NW 1/4 of Section 14, Township 10 North, Range 6 East of the 6th P.M., Lancaster County, Nebraska, hereinafter “the Property.”

B. The Developer has proposed mixed-use redevelopment over the Property under the Planned Unit Development (PUD) to allow a 450-unit apartment complex, a 100-room hotel, 190,000 square feet of office space, and 202,000 square feet of retail space.

C. The City is willing to approve the change of zone to R-3 PUD provided Developer agrees to make certain Arterial Street Impact Fee Facility improvements to Cornhusker Highway and North 1st Street.

D. This Agreement identifies Developer’s cost responsibilities regarding the construction of the Arterial Street Impact Fee Facility Improvements necessitated by the mixed development of the Property under the PUD.

E. The execution of this Agreement by Developer does not preclude the use of tax increment financing to fund all or a portion of the costs of the Arterial Street Impact Fee Facility Improvements to Cornhusker Highway and North 1st Street not reimbursed from Arterial Street Facility Impact Fees under this Agreement.

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants contained herein, the parties do agree as follows:

1. **Change of Zone.** The City agrees to approve a change of zone rezoning the Property from H-3 Highway Commercial District and R-2 Residential District to R-3 PUD.

2. **Street Improvements.** Developer agrees to design and construct and pay all the costs of construction for the following Arterial Street Impact Fee Facility Improvements needed to serve the mixed use of the Property and to promote the general health and welfare of the City:

A. **Cornhusker Highway.** Construct a 475 foot westbound to northbound right-turn lane and extend to 250 feet the eastbound to northbound left-turn lane in Cornhusker Highway at North 1st Street.

B. **North 1st Street.** Widen North 1st Street from Dawes Street to Belmont Street to four lanes with curb and gutter and center turn lane.

3. **Reimbursement from Directed Arterial Street Impact Fees.** The City agrees to reimburse Developer for the cost of construction of the right-hand turn lane in Cornhusker Highway and the widening of North 1st Street to four lanes as provided above without interest from Arterial Street Impact Fees collected solely from the development of the Property (“Directed Impact Fees”). The Developer understands and agrees that Arterial Street Impact Fees collected from other development within the same benefit district will not be used toward

payment of such reimbursement. Reimbursement from Directed Impact Fees is subject to the following conditions:

A. Any reimbursement to be paid from Directed Impact Fees shall not constitute a general obligation or debt of the City.

B. The maximum amount of the reimbursement shall be limited to One Hundred Sixty-Five Thousand and 00/100ths Dollars (\$165,000.00) for the right-turn lane in Cornhusker Highway; Fifty Thousand and 00/100ths Dollars (\$50,000.00) for the left-turn lane extension in Cornhusker Highway; and Seven Hundred Sixty-Five Thousand and 00/100ths Dollars (\$765,000.00) for the widening of North 1st Street.

C. Said reimbursement shall be paid quarterly from Directed Impact Fees actually received from development of the Property.

D. The duty to reimburse Developer for said improvements from Directed Impact Fees shall expire ten (10) years after substantial completion of the respective improvement as determined by the City. In the event the maximum amount of reimbursement has not been paid to the Developer at the end of the ten-year reimbursement period, Developer agrees that the City shall not be liable for payment of said maximum amount deficiency.

4. Developer's Costs in Excess of Directed Arterial Street Impact Fees. In the event Developer's costs for the construction of the right-hand turn lane in Cornhusker Highway, the left-turn lane extension in Cornhusker Highway, and the widening of North 1st Street described in paragraph 2 above are in excess of \$165,000.00, \$50,000.00, and \$765,000.00, respectively, and/or the respective amount collected during the maximum reimbursement period of ten years, such excess cost shall be borne by the Developer without recourse of any kind against the City. Notwithstanding the foregoing, tax increment financing funds, if available

under a Redevelopment Agreement involving redevelopment of the Property, may be authorized to be used to reimburse Developer for any of the costs of construction of the right-turn lane and the left-turn lane extension in Cornhusker Highway or the widening of North 1st Street to four lanes which are not reimbursed from Directed Impact Fees.

5. Binding Effect. This Agreement shall run with the Property and be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6. Amendments. This Agreement may only be amended or modified in writing signed by the parties to this Agreement.

7. Further Assurances. Each party will use 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.

8. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

9. 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.

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

11. Relationship of 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, Developer, or by any third person to create the relationship of partnership or of joint venture or of any association between the parties other than the contractual relationship stated in this Agreement.

12. Assignment. In the case of the assignment of this Agreement by any of the parties, prompt written notice shall be given to the other parties who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release in writing is given and signed by the other parties to this Agreement.

13. Default. Developer and City agree that the change of zone to R-3 PUD promotes the public health, safety, and welfare so long as Developer fulfills all of the conditions and responsibilities set forth in this Agreement. In the event Developer defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rezone the Property to its previous designation or such other designations as the City may deem appropriate under the then 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.

14. Definitions. For purposes of this Agreement, the words and phrases “cost of construction,” “development,” “Impact Fee,” and “Arterial Street Impact Fee Facility Improvement,” shall have the same meaning as provided for said words and phrases in the Impact Fee Ordinance.

15. Recordation. This Agreement or a memorandum thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at Developer's cost and expense.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

ATTEST:

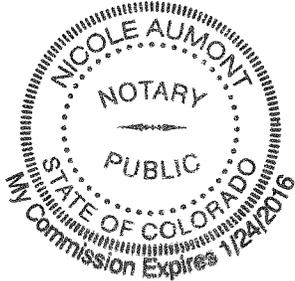
CITY OF LINCOLN, NEBRASKA,
a municipal corporation

City Clerk

By: _____
Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 11th day of JANUARY, 2013, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.



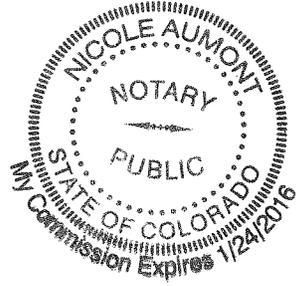
Nicole Aumont
Notary Public

**ASCENTIA REAL ESTATE
INVESTMENT COMPANY**

By: John J. Shank
Title: President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 17th day of JANUARY, 2013, by JOHN ESSELLE, PRESIDENT of **Ascentia Real Estate Investment Company**.



Nicole Aumont
Notary Public