



CITY OF LINCOLN  
EXECUTIVE ORDER

NO. 086439

**BY VIRTUE OF THE AUTHORITY VESTED IN ME by the Charter of the City of**

**Lincoln, Nebraska:**

The attached Amendment No. 3 to the Waterford Estates Conditional Annexation and Zoning Agreement between the City of Lincoln and Waterford Estates, LLC, to clarify the timing for the construction and funding of North 98th Street, is hereby approved, and I have executed the same on behalf of the City.

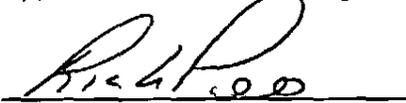
I hereby further accept and approve the attached Agreement for Escrow of Security Fund dated August 14, 2013 in the amount of \$800,000.00 to guarantee Waterford Estates, LLC's share of costs for the two-lane North 98th Street section required in the Waterford Estates Conditional Annexation and Zoning Agreement.

The City Clerk is hereby directed to send a copy of this Executive Order and one fully executed copy of Amendment No. 3 to the Waterford Estates Conditional Annexation and Zoning Agreement and a fully executed copy of the Agreement for Escrow of Security Fund to DaNay Kalkowski, Secrest & Kalkowski, 1111 Lincoln Mall, Suite 350, Lincoln, NE 68508; and to deliver the original Escrow of Security Fund to the City Treasurer.

Dated this 5<sup>th</sup> day of Sept., 2013

  
Chris Beutler, Mayor of Lincoln

Approved as to Form & Legality:

  
Chief Assistant City Attorney

9/6

# SEACREST & KALKOWSKI, PC, LLO

1111 LINCOLN MALL, SUITE 350  
LINCOLN, NEBRASKA 68508-3910

TELEPHONE (402) 435-6000  
FACSIMILE (402) 435-6100

RECEIVED

AUG 14 2013

M13-68557  
LAW DEPT  
E-MAIL: kent@sk-law.com

DANAY KALKOWSKI  
E-MAIL: danay@sk-law.com

August 14, 2013

Rick Peo  
Chief Assistant City Attorney  
555 South 10<sup>th</sup> Street  
Lincoln, NE 68508

RE: Amendment No. 3 to the Waterford Estates Conditional Annexation and Zoning Agreement

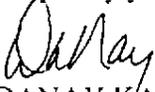
Dear Rick:

Enclosed please find three copies of Amendment No. 3 to the Waterford Estates Conditional Annexation and Zoning Agreement by and between the City of Lincoln, Nebraska and Waterford Estates, LLC which have been executed on behalf of Waterford Estates, LLC.

Also enclosed please find the Agreement for Escrow of Security Fund which has been executed on behalf of Waterford Estates, LLC. The Acceptance of Escrow Agreement attached thereto has been executed on behalf of Pinnacle Bank. Please forward to me fully executed copies of both the Amendment and Agreement for Escrow of Security Fund once the Mayor has signed.

If you have any questions regarding the enclosed, please give me a call.

Very truly yours,

  
DANAY KALKOWSKI  
For the Firm

Enclosures

**AMENDMENT NO. 3  
TO THE WATERFORD ESTATES  
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Amendment No. 3 to the Waterford Estates Conditional Annexation and Zoning Agreement is made and entered into this 5<sup>th</sup> day of Sept., 2013 by and between the City of Lincoln, Nebraska, a municipal corporation ("City"), and Waterford Estates, LLC, a Nebraska limited liability company ("Developer"), successor in interest to Ridge Development Company, a Nebraska corporation, Southview, Inc., a Nebraska corporation, Developments Unlimited, LLP, a Nebraska limited liability partnership, and Northern Lights, LLC, a Nebraska limited liability company.

**RECITALS**

*Developer and City desire to amend the Waterford Estates Conditional Annexation and Zoning Agreement, as amended ("Annexation Agreement") to clarify the timing for the construction and funding of North 98<sup>th</sup> Street. Capitalized terms not otherwise defined herein shall have the meaning identified in the Annexation Agreement.*

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree that:

1. Paragraph 5.A.I. **North 98<sup>th</sup> Street** of the Annexation Agreement be amended to read as follows:

**A. Street Improvements.**

1. **North 98th Street.** North 98th Street from "A" Street to Adams Street is shown in the Lincoln City — Lancaster County Comprehensive Plan as an arterial road improvement during the 25-year planning period to be constructed as four lanes plus center turn lanes. Based upon the

Preliminary Plat and the Infrastructure Exhibits (Attachment "E"), North 98th Street from "O" Street to Holdrege Street has been graded for an ultimate four through lanes with turn lanes and initially will be constructed as a concrete paved four-lane arterial from "O" Street to Waterford Estates Drive, and two-lane arterial, offset to the east from center line, with curb and gutter from Waterford Estates Drive to Holdrege Street, including the right and left turn lanes and full turn movement intersections at Boathouse Road (1/4 mile), Waterford Estates Drive (1/2 mile), and Moonlight Drive (1/4 mile), the right-in and right-out intersections at Waterview Drive, Turtle Creek Road, Meginnis Drive and Black Rapids Road, any required traffic signals and related improvements at "O" Street, Waterford Estates Drive (1/2 mile) and Holdrege Street, and any required temporary right and left turns lanes in the "O" Street right-of-way at North 98th Street and in the Holdrege Street right-of-way at North 98th Street (collectively "North 98th Street Section").

North 98th Street Section includes Arterial Street Impact Fee Facility Improvements and Site-Related Street Improvements. The Arterial Street Impact Fee Improvements consist of the concrete paved four-lane arterial from "O" Street to Waterford Estates Drive, and two-lane arterial, offset to the east from the center line, with curb and gutter from Waterford Estates Drive to Holdrege Street, including the right and left turn lanes and full turn movement intersections at Boathouse Road (1/4 mile), Waterford Estates Drive (1/2 mile), and Moonlight Drive (1/4 mile), any required traffic signals and related improvements at "O" Street, Waterford Estates Drive (1/2 mile), and Holdrege Street, and fifty percent (50%) of any required temporary right and left turn lanes in (i) the "O" Street right-of-way at North 98th Street, and (ii) the Holdrege Street right-of-way at North 98th Street. The Site-Related Improvements consist of the right-in and right-out intersections at Waterview Drive, Turtle Creek Road, Meginnis Drive and Black Rapids Road, and fifty percent (50%) of any required

temporary right and left turn lanes in (i) the "O" Street right-of-way at North 98th Street, and (ii) the Holdrege Street right-of-way at North 98th Street.

On behalf of the City, the Developer has designed, competitively bid, constructed and funded the grading of North 98<sup>th</sup> Street Section for four through lanes with turn lanes and construction of the four-lane arterial portion of North 98th Street Section from "O" Street to Waterford Estates Drive through the City's Executive Order process. In order to complete construction of the remaining two-lane portion of North 98th Street Section from Waterford Estates Drive to Holdrege Street, the City and Developer agree that the Developer shall design and provide construction staking on behalf of the City and the City shall construct that portion of North 98<sup>th</sup> Street Section extending north from the current terminus of North 98<sup>th</sup> Street at Waterford Estates Drive to Holdrege Street, which is shown on Attachment 1 attached hereto and incorporated herein by this reference ("Two-Lane North 98<sup>th</sup> Street Section"). Developer shall use its good faith efforts to complete the design and construction staking of Two-Lane North 98<sup>th</sup> Street Section in 2013, and the City agrees to use its good faith efforts to complete construction of Two-Lane North 98<sup>th</sup> Street Section in 2014. The City shall pay the first Eight Hundred Thousand Dollars (\$800,000) of construction costs for Two-Lane North 98<sup>th</sup> Street Section, and the Developer shall pay the actual cost for the design, construction staking, and any other remaining construction costs, estimated collectively at Eight Hundred Thousand Dollars (\$800,000), for Two-Lane North 98<sup>th</sup> Street Section within thirty (30) days of receipt of invoices and supporting documentation from the City for said costs. The City and Developer agree that the City shall waive its uniform procedure for the selection of professional consultants set forth in Executive Order No. 080199 dated October 9, 2007, and shall contract with Developer's engineer to provide construction phase services for Two-Lane North 98<sup>th</sup> Street Section, as Developer's engineer has performed design

work and utilization of Developer's engineer will avoid delay, inefficiencies, lack of coordination, and duplication of effort.

The City agrees to use its good faith efforts to reimburse the Developer for the Arterial Street Impact Fee Facility Improvements cost of North 98th Street Section paid for by the Developer, including the design, construction staking and any other construction cost for North 98th Street Section pursuant to Paragraph 10 below. In addition, the parties acknowledge that Two Million Dollars (\$2,000,000) in funding for North 98<sup>th</sup> Street Arterial Street Impact Fee Faculty Improvements to be constructed from "O" Street to Holdrege Street is shown in year six of the City's 2012/2013 Six-Year Capital Improvement Program. The City agrees to use its good faith efforts to cause said Two Million Dollars (\$2,000,000) for funding of North 98<sup>th</sup> Street Arterial Street Impact Fee Improvements constructed from "O" Street to Holdrege Street to be advanced and shown in each succeeding Six Year Capital Improvement Program to be funded and paid to Developer in year one of the 2017/18 Six-Year Capital Improvement Program.

2. *Prior to the City's approval of this Amendment, the Developer will provide a bond, escrow, letter of credit, or other security agreement, approved by the City Attorney in the amount of Eight Hundred Thousand Dollars (\$800,000) to guaranty Developer's payment of the costs set forth above. The bond, escrow, letter of credit or other security agreement will provide for partial releases as payments for the costs are made by Developer, with a full release upon completion of Two Lane North 98<sup>th</sup> Street Section and payment in full for the costs associated therewith.*



"DEVELOPER"

**WATERFORD ESTATES, LLC**, a Nebraska limited liability company

By: RIDGE DEVELOPMENT COMPANY, a Nebraska corporation, Manager

By: Thomas E. White  
Thomas E. White  
President of Development

By: John C. Brager  
John C. Brager  
President of Construction

By: SOUTHVIEW, INC., a Nebraska corporation, Manager

By: Thomas G. Schleich  
Thomas G. Schleich, President

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

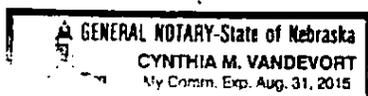
The foregoing was acknowledged before me this 14th day of August, 2013, by Thomas E. White, President of Development of Ridge Development Company, a Nebraska corporation, Manager of **Waterford Estates, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.



Cynthia M. Vandevort  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

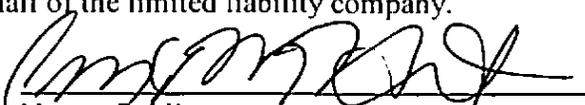
The foregoing was acknowledged before me this 2nd day of August, 2013, by John C. Brager, President of Construction of Ridge Development Company, a Nebraska corporation, Manager of **Waterford Estates, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.

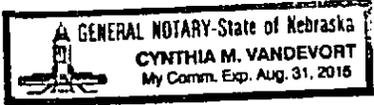


Cynthia M. Vandevort  
Notary Public

STATE OF NEBRASKA            )  
                                          ) ss.  
COUNTY OF LANCASTER        )

The foregoing was acknowledged before me this 16<sup>th</sup> day of August, 2013, by Thomas G. Schleich, President of Southview, Inc., a Nebraska, corporation, Manager of Waterford Estates, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

  
\_\_\_\_\_  
Notary Public



ATTACHMENT I



AGREEMENT FOR ESCROW OF SECURITY FUND

WHEREAS, Waterford Estates, LLC ("Waterford") and the City of Lincoln, Nebraska ("City") entered into the Waterford Estates Conditional Annexation and Zoning Agreement dated April 20, 2006, which has been amended by Amendment No. 3 to the Waterford Estates Conditional Annexation and Zoning Agreement dated 9-5, 2013 (collectively "Annexation Agreement"); and

WHEREAS, capitalized terms not otherwise defined herein shall be as defined in the Annexation Agreement; and

WHEREAS, Waterford has agreed pursuant to the terms of the Annexation Agreement to be responsible for all of the design and construction costs for Two -Lane North 98<sup>th</sup> Street Section that exceed Eight Hundred Thousand Dollars (\$800,000); and

WHEREAS, Waterford also agreed to establish an escrow or security agreement to guarantee its payment of said design and construction.

NOW, THEREFORE, IT IS AGREED by and between Waterford and the City of Lincoln, Nebraska, a municipal corporation, hereinafter called the "City," as follows:

1. That Waterford has obtained a loan of immediately payable funds from Pinnacle Bank in the amount of Eight Hundred Thousand and no/100 Dollars (\$800,000.00), and irrevocably pledges and assigns said funds to Pinnacle Bank as escrow agent for the City, the same to be held in escrow as security to guarantee Waterford's payment of its share of costs for Two -Lane North 98<sup>th</sup> Street Section as required by Paragraph 5.A.I. of the Annexation Agreement.
2. The funds may be reduced by partial releases upon receipt by escrow agent of documentation of Developer's payment for Two -Lane North 98<sup>th</sup> Street Section design and construction costs. Any and all remaining funds shall be released by the escrow agent upon receipt of documentation from the City that Two -Lane North 98<sup>th</sup> Street Section has been completed and all costs associated therewith have been paid.
3. This Agreement shall be contingent upon its execution by the parties hereto, the pledge and assignment of the required security funds with Pinnacle Bank as escrow agent for the City of Lincoln, and the acceptance of this Agreement by said escrow agent.
4. Waterford agrees to pay any and all fees charged by Pinnacle Bank as escrow agent for the City of Lincoln under the terms of this Agreement.
5. Pinnacle Bank shall be liable as a depository only.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this \_\_\_ day of \_\_\_\_\_, 2013.

**WATERFORD ESTATES, LLC, a  
Nebraska limited liability company**

By: **RIDGE DEVELOPMENT  
COMPANY, a Nebraska corporation,  
Manager**

By: *Thomas E White*  
Thomas E. White  
President of Development

By: *John C. Brager*  
John C. Brager  
President of Construction

By: **SOUTHVIEW, INC., a Nebraska  
corporation, Manager**

By: *Thomas G. Schleich*  
Thomas G. Schleich, President

ATTEST:

*Teresa J. Mein*  
City Clerk



Approved:

**CITY OF LINCOLN, NEBRASKA, a  
municipal corporation,**

*[Signature]*  
Mayor

\_\_\_\_\_  
City Attorney

ACCEPTANCE OF ESCROW AGREEMENT

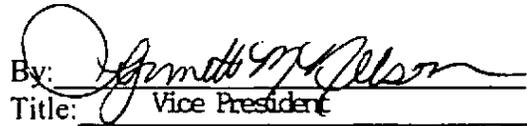
Pinnacle Bank hereby agrees to the terms and instruction listed above and acknowledges that it has accepted an irrevocable pledge and assignment of immediately payable funds in said amount of Eight Hundred Thousand and no/100 Dollars (\$800,000) from Waterford Estates, LLC to be held in escrow (Note No.   \*  ) by Pinnacle Bank as escrow agent for the City of Lincoln, Nebraska, a municipal corporation, to ensure payment by the Developer as required by Paragraph 5.A.I. of the Annexation Agreement, and further agrees not to release any of said monies pledged and assigned to secure said payment until it has received written authorization from the City of Lincoln in accordance with the foregoing Agreement.

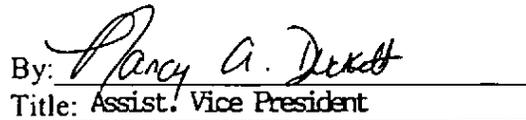
\* Note #2300132470, #2300142613 and #2300142614

DATED this 14th day of August, 2013.

Attest: Parcy A. Duckett, AVP

PINNACLE BANK

By:   
Title: Vice President

By:   
Title: Assist. Vice President