

COUNCIL ACTION FORM

SUBJECT: AMENDMENT TO MEMORANDUM OF AGREEMENT FOR SOUTH FORK SUBDIVISION

BACKGROUND:

The South Fork Subdivision, which includes two lots (Outlot R and Outlot U), is located approximately south of the west Hy-Vee grocery store and north of the Ames Middle School. **The 2001 Memorandum of Agreement (or “Developer’s Agreement”) for South Fork Subdivision requires the developer to pay 50% of the costs of construction only for installation of left turn lane improvements at the intersection of Lincoln Way and Franklin Avenue. The City will pay for the remaining 50%, as well as any engineering design and right-of-way costs as needed to complete the project.**

The agreement further stipulates that these improvements will not be constructed until such time as the intersection has fallen below the Institute of Traffic Engineers Level of Service “C” or a final plat is sought for a part of the site east of Dotson Drive and not abutting Dotson Drive, whichever occurs first. Neither of these triggers has been met.

The developer is required to guarantee this financial obligation by providing security in an amount equal to 50% of the estimated costs of construction, as specified by the City. The most recent estimate from June 2012, estimates construction costs at \$900,000, thus requiring the developer to post security equivalent to \$450,000. This obligation is typically secured through a letter of credit.

On October 25, 2010, City Council approved the developer’s request to use security interest in the developer’s real property as an alternative to the letter of credit. The developer provided the City with security interest in two lots; Outlot R in South Fork Subdivision, 1st Addition (3908 Marigold Drive), and Outlot U in South Fork Subdivision, 2nd Addition (500 Dotson Drive). Outlot R is a nine acre parcel containing a 4,000 square foot residence. Outlot U is an unimproved four acre parcel.

Back in October 2010, the City Attorney reviewed abstracts, appraisals, and titles to both properties. It was determined that Outlot R (3908 Marigold Drive) had an appraised value of \$700,000 and was encumbered by a mortgage in the amount of \$420,000, thus having an unencumbered value of \$280,000. Outlot U (500 Dotson Drive) has an assessed value of \$175,100, and was encumbered only by the mortgage securing the current letter of credit. **Based on the abstracts, appraisal report, and Assessor’s information, the Council concluded that there was unencumbered value in the**

two lots (approximately \$455,100) to exchange the form of security from a letter of credit to a mortgage on Outlots R and U.

City staff has recently been approached by Pinnacle Properties, expressing a desire to purchase and further develop Outlot U (500 Dotson Drive). In order to facilitate the development of this property, a number of issues will be need to be addressed by City Council:

- Because this property is being held as security for the Lincoln Way and Franklin Avenue improvements, a replacement form of security would need to be provided to the City. Pinnacle Properties has offered to provide a \$175,100 letter of credit at the time when a new final plat is sought for a portion of 500 Dotson Avenue.
- Due to this parcel connecting to Dotson Drive rather than leading east to Franklin Avenue, the Developer's Agreement needs to be modified so that developing this area doesn't initiate the requirement for the Lincoln Way and Franklin Avenue improvements. However, further development of 3908 Marigold Drive or this intersection falling below a Level of Service "C" would still initiate the requirement for these improvements.
- Using recent estimates from the City Assessor, the combined value of these two parcels is approximately \$560,014. Outlot U (500 Dotson Drive), which is estimated at \$175,100, represents 31% of that overall value while Outlot R (908 Marigold), which is estimated at \$384,914, represents 69% of the overall value.

As noted, these parcels are being held as security for the Lincoln Way and Franklin Avenue improvements. The developer is obligated for 50% of the construction costs for these improvements. The developer's agreement will need to be modified to reflect that Pinnacle Properties is responsible for 31% of that cost share and that Terra Firma, L.P. remain responsible for 69% of that cost share.

- Pinnacle Properties will be responsible for all other requirements and provisions of the Developer's Agreement that are related to or necessitated by development of Outlot U (500 Dotson Drive).

ALTERNATIVES:

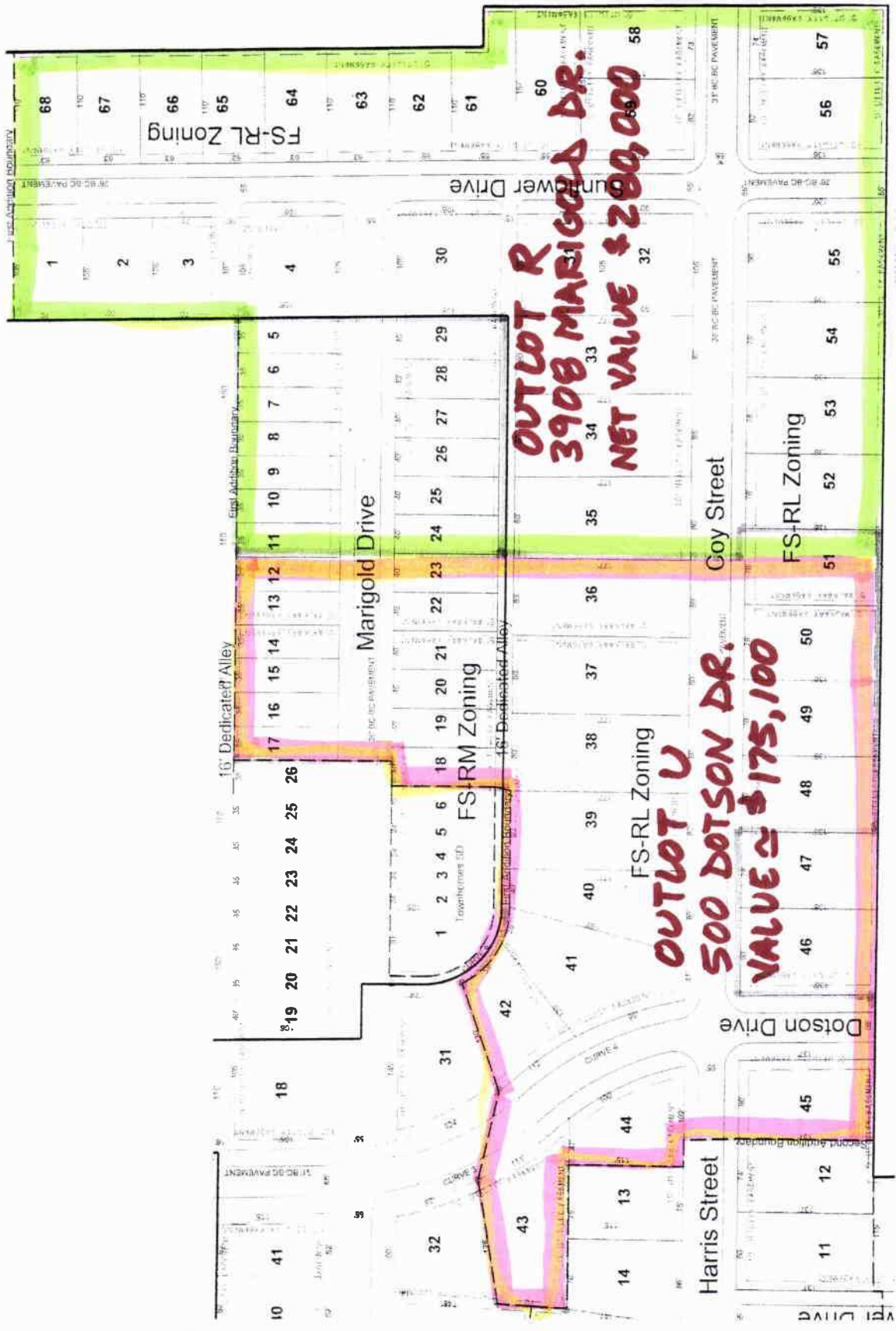
1. Direct the City Attorney to make appropriate modifications to the Memorandum of Agreement so that:
 - a. Construction of the improvements at Lincoln Way and Franklin Avenue shall be done and completed at such time as it is determined the overall intersection has fallen below the Institute of Traffic Engineers Level of Service "C" or a final plat is sought for any portion of 3908 Marigold Drive.

- b. Pinnacle Properties is responsible for 31% and Terra Firma, L.P. is responsible for 69% of the developer's share (50%) of the actual cost of construction improvements at Lincoln Way and Franklin Avenue.
 - c. Pinnacle Properties will be responsible for providing a letter of credit to the City in the amount of \$175,100, which should be adjusted periodically, to secure 31% of half the estimated cost of the intersection improvements at Lincoln Way and Franklin Avenue.
 - c. Pinnacle Properties is responsible for the provisions of said agreement that are necessitated by or pertain to the further development of 500 Dotson Drive.
 - d. Terra Firma L.P. will be responsible to pay 69% of half the cost of the intersection improvements at Lincoln Way and Franklin Avenue. The security for this responsibility will continue to be in the current form of mortgage on the land in Outlot R, which previously had a net value of \$280,000.
2. Maintain the current Memorandum of Agreement and security interest in 500 Dotson Drive and 3908 Marigold Drive.

MANAGER'S RECOMMENDED ACTION:

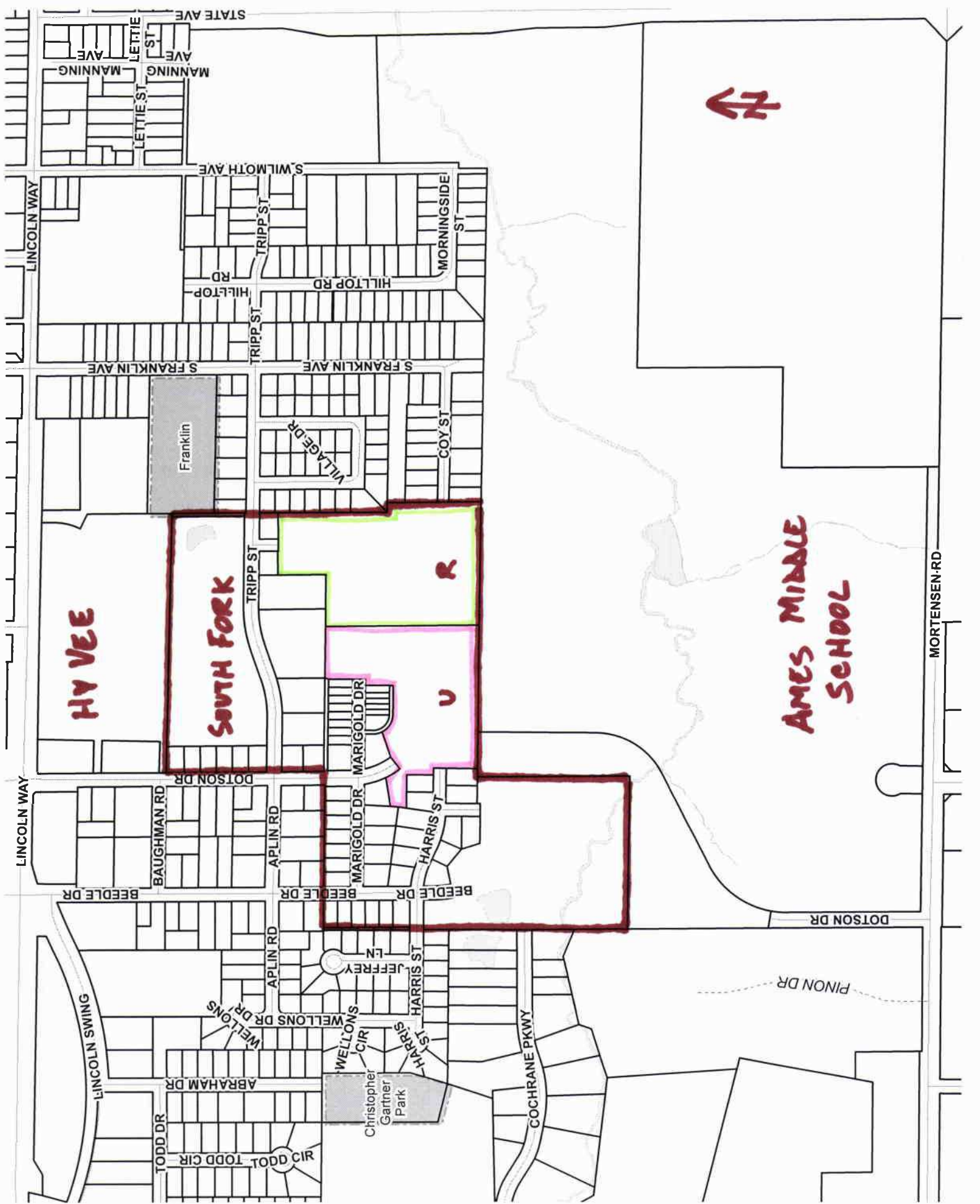
Currently, the security being held by the City for the developer's share of future improvements at Lincoln Way and Franklin Avenue is security interest in two lots: \$175,100 on 500 Dotson Avenue (Outlot U) and \$280,000 on 3908 Marigold Avenue (Outlot R). **Accepting a letter of credit for \$175,100 to replace the land interest in 500 Dotson Drive provides a much more stable and potentially liquid form of security. This letter of credit along with modifying the timing requirements for construction of said improvements will facilitate the renewed development of the area at 500 Dotson Drive.**

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby directing the City Attorney to make appropriate modifications to the Memorandum of Agreement and accept a letter of credit from Pinnacle Properties in the amount of \$175,100 as replacement for the current security land interest on 500 Dotson Drive at the time of further platting this parcel. The agreement will be brought back to the City Council at a future meeting for approval.



OUTLOT R
3908 MARIGOLD DR.
NET VALUE \$200,000

OUTLOT U
500 DOTSON DR.
VALUE ≈ \$175,100



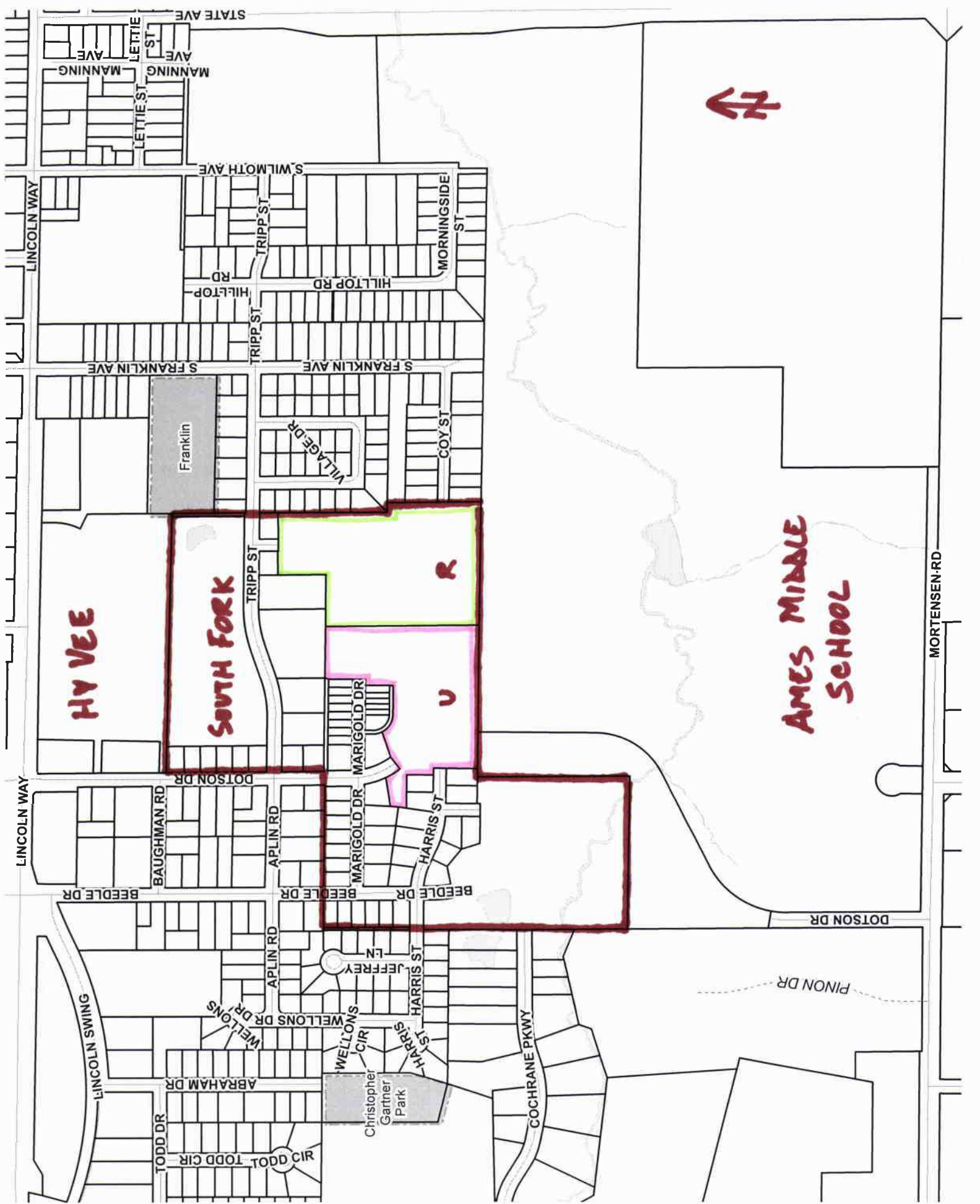
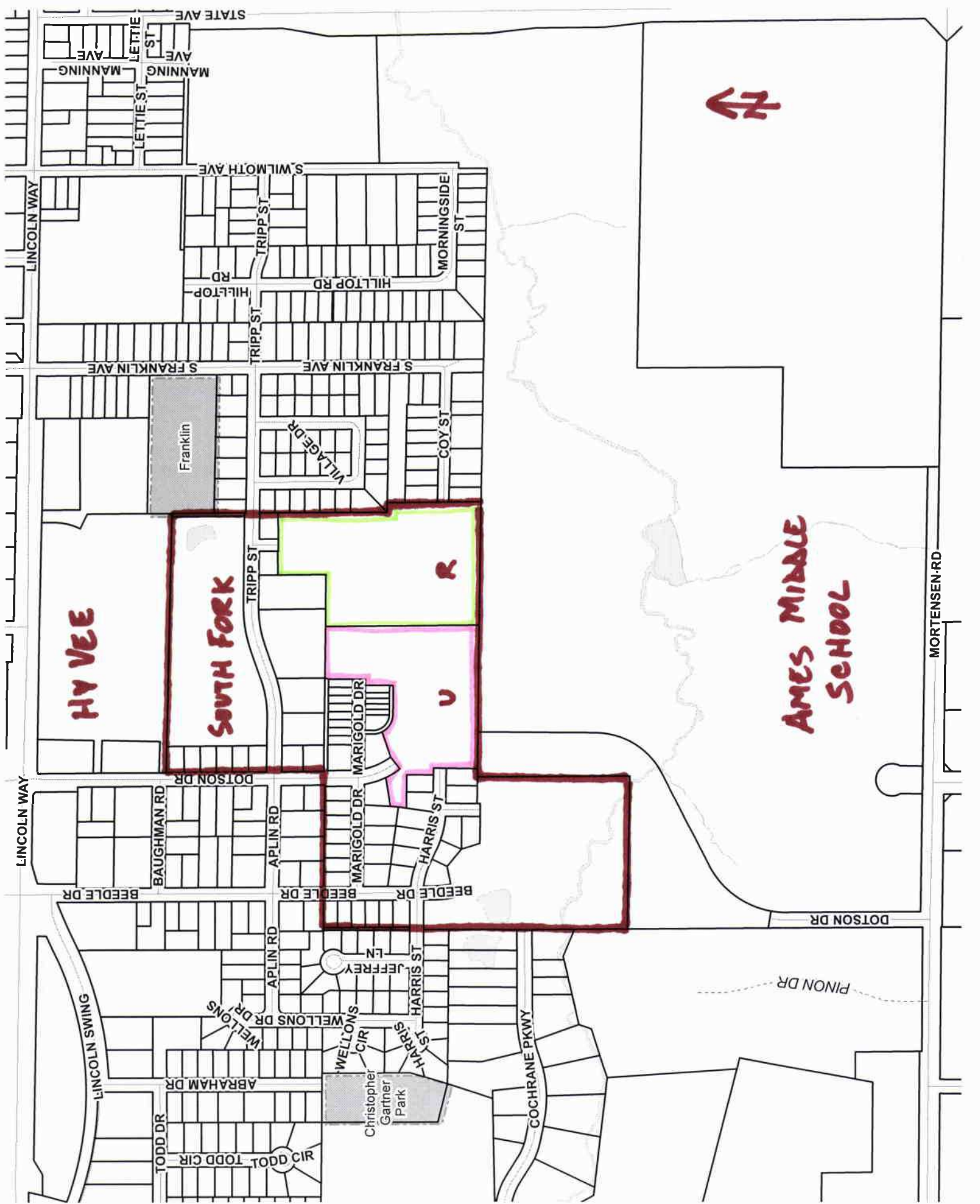
HY VEE

SOUTH FORK

R

U

**AMES MIDDLE
SCHOOL**



November 28, 2012

Mayor Campbell
Ames City Council

This letter is given in assurance that we, the owners of South Fork Subdivision, have authorized Keith Arneson to serve as our representative in negotiating an amendment to the existing South Fork development agreement that guarantees equitable participation in costs for off-site intersection improvements at Lincoln Way and Franklin Avenue.

Respectfully,

A handwritten signature in dark ink, appearing to read "Ev Cochrane III". The signature is written in a cursive style with a large initial "E".

Ev Cochrane III
4611 Mortensen, #107
Ames, IA 50010

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