

ATTACHMENT "A"

FIRST AMENDMENT AND RESTATEMENT OF CONDITIONAL ANNEXATION AND ZONING AGREEMENT

This First Amendment and Restatement of Conditional Annexation and Zoning Agreement ("**Amended and Restated Agreement**") is made and entered into as of this ____ day of September, 2014 by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation ("**City**"), SOUTHWOOD LUTHERAN CHURCH, a Nebraska corporation ("**Southwood**"), MERIDIAN CORPORATION, a Nebraska corporation ("**Meridian**") and SUNDANCE L.L.C., a Nebraska limited liability company ("**Sundance**"). The parties may hereinafter jointly be referred to as the "**Parties**" or individually as "**Party**." Southwood, Meridian and Sundance are hereinafter individually referred to as "**Landowner**" and jointly be referred to as "**Landowners**".

RECITALS

A. The City, Southwood, Sundance and Buckshot Farms, a Nebraska general partnership ("**Buckshot**") entered into the Southwood Lutheran Church, Buckshot Farms and Sundance Conditional Annexation and Zoning Agreement, dated _____, 2006 ("**Original Annexation Agreement**"). The Original Annexation Agreement was executed by the City on April 20, 2006 and executed by Southwood, Buckshot and Sundance on April 14, 2006. This Amended and Restated Agreement amends and restates the Original Annexation Agreement and states the Parties new and modified agreements.

B. Landowners and City desire to cause the urban development of the land ("**Property**") located in the S-2 basin in Lancaster County, Nebraska as shown on the exhibit, which is attached hereto as Attachment "A" and incorporated herein by this reference.

C. After the execution of the Original Annexation Agreement, portions of the Property were conveyed between the Landowners and Buckshot. Southwood is now the property owner of land located within the Property marked as the “**Southwood Tract**” on Attachment “A”. Meridian is now the property owner of land located within the Property marked as the “**Meridian Tract**” on Attachment “A”. Sundance is now the property owner of land located within the Property marked as the “**Sundance Tract**” on Attachment “A”.

D. At the time of the Original Annexation Agreement, Lincoln Federal Bancorp, Inc. (“**LFB**”) was the owner of land located immediately west of the Property in Lancaster County, Nebraska. Under a separate Conditional Annexation and Zoning Agreement with LFB, (“**LFB Annexation Agreement**”), the City annexed that portion of the LFB property legally described in the LFB Annexation Agreement (“**LFB Annexed Property**”) in order for the Property to be contiguous to the City municipal boundaries.

E. As part of the Original Annexation Agreement, Southwood, Buckshot and Sundance (the “Original Landowners”) requested the City to annex: (i) that portion of the Property shown as the Annexed Property on Attachment “B”, which is attached hereto and incorporated herein by this reference, hereinafter referred to as the “**Annexed Property**”. The legal description of the Annexed Property is more particularly described on Attachment “C”, which is attached hereto and incorporated herein by this reference.

F. In 2006, the City rezoned the Annexed Property pursuant to the Original Annexation Agreement as shown on Attachment “A” from AG Agricultural District to R-3 Residential District and R-4 Residential District. To date, Southwood has built a Church and related improvements on the Southwood Tract. Landowners anticipate developing the Annexed Property for church, residential and other permitted uses under R-3 and R-4 Residential District zoning.

G. As part of the Original Annexation Agreement, the Original Landowners requested the City to issue a private placement bond with said Original Landowners (“**Bond Ordinance**”). Said Bond Ordinance further describes the City’s agreement to reimburse the Original Landowners

for Impact Fee Facility Improvements described in in Paragraph 10 of the Original Annexation Agreement. As part of this Amended and Restated Agreement, the Parties have agreed to delete Paragraph 10 of the Original Annexation Agreement. The Parties have further agreed that said Bond Ordinance is no longer needed and the City may repeal said Bond Ordinance.

H. In 2006, the City adopted Resolution No. PC-01012, which approved the preliminary plat of Grandale Addition, as the same may be amended from time to time (“**Preliminary Plat**”), and as illustratively shown on the map attached hereto as Attachment “D” and incorporated herein by this reference. As part of the approval of the Preliminary Plat, the City requested and preliminarily approved the Road Plan for Rokeby Road from S. 48th Street to S. 56th Street as illustratively shown on Attachment “D”. The residential portion of the Annexed Property will be final platted in phases.

I. The following infrastructure exhibits (“**Infrastructure Exhibits**”) are attached hereto and incorporated herein by this reference:

- Attachment “E” **“Road Exhibit”**
- Attachment “F” **“Water Exhibit”**
- Attachment “G” **“Sewer Exhibit”**
- Attachment “H” **“Trail Exhibit”**

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties do agree as follows:

- 1. Annexation by the City.** The City annexed the Annexed Property in 2006 as provided above in Recital F.

- 2. Change of Zone.** The City rezoned the Annexed Property in 2006 from AG Agricultural District to R-3 Residential District and R-4 Residential District as provided above in Recital F.

- 3. Bond Ordinance.** The Landowners agree that the City may repeal the Bond Ordinance as provided above in Recital G.

4. Payment of Impact Fees. Landowners understand that future development of the Annexed Property will be subject to the payment of Impact Fees. The City acknowledges that Southwood was issued a building permit for its church building and related improvements (“**Church Building Permit**”) prior to the site being annexed in 2006. Therefore, Southwood was not liable for the payment of any Impact Fees for Arterial Street Impact Fee Facility Improvements associated with the Church Building Permit issued prior to the site being annexed in 2006.

5. South 40th Street Arterial Street Improvements. South 40th Street from Yankee Hill Road to Rokeby Road is presently a two-lane rural section roadway. Said section of South 40th Street is shown in the Lincoln City – Lancaster County 2040 Comprehensive Plan to be constructed as an arterial street during the 25-year planning period with four lanes plus center turn lanes (“**Four-Lane South 40th Street**”). The City, at its expense, will design, grade and construct the Four-Lane South 40th Street. Landowners and City acknowledge that the approved Preliminary Plat shows future street access points to Four-Lane South 40th Street. Notwithstanding the above, Landowners agree that if any final plat development commences greater than one year prior to the City Public Works Director’s best judgment of the City’s anticipated date for constructing the above-described Four-Lane South 40th Street, then the Landowners shall, at their own cost and expense, design and construct as Site-Related Street Improvements any temporary right and left turn lanes at each final platted street connection to South 40th Street as required by the City.

6. Two-Lane Rokeby Road Arterial Street Improvements. Rokeby Road from South 40th Street to South 56th Street does not currently exist. Said section of Rokeby Road is shown in the Lincoln City - Lancaster County 2040 Comprehensive Plan to be constructed as an arterial street during the 25-year planning period with two lanes plus center turn lanes. However, based upon the Road Exhibit (Attachment “E”), Rokeby Road from South 40th Street to South 48th Street will be graded for an ultimate four through lanes with right and left turn lanes and initially constructed as a two-lane arterial with right and left turn lanes and related stormwater improvements, offset to the north of the center line, with curb and gutter and including the intersection of S. 40th & Rokeby Road and other City approved intersections (collectively “**Two-Lane Rokeby Road**”).

a. Rokeby Road Design. Landowners and City acknowledge that the Preliminary Plat shows the location of future street access points to Two-Lane Rokeby

Road abutting the Preliminary Plat from S. 40th Street to South 48th Street. Two-Lane Rokeby Road is an Arterial Street Impact Fee Facility Improvement and does not include any Site-Related Street Improvements. As part of the Preliminary Plat, Meridian and Sundance designed, and the City approved, thirty percent (30%) design of Rokeby Road from S. 40th Street to S. 48th Street and a four lane grade study of Rokeby Road from S. 48th Street to S. 56th Street as generally illustrated on Attachment “D” and Attachment “E”.

b. Rokeby Road Costs. As an Arterial Street Impact Fee Facility Improvement, the City is responsible for, but does not currently have funding available, at its own cost and expense, to complete the design, grade and construction of the Two-Lane Rokeby Road from South 40th Street to South 48th Street. In order to carry out said responsibility over time, the City agrees as follows:

I. The City shall include a minimum of Two Hundred Thousand and No/100 Dollars (\$200,000) in the City fiscal year 2014/15 CIP budget to fund:

A. Design 100% of the Two-Lane Rokeby Road and related improvements (including the intersection of South 40th & Rokeby Road) from S. 40th Street to the first entrance of the Preliminary Plat (approximately 900 feet measured from the centerlines) (“**First Entrance**”); and

B. Grade Rokeby Road right of way, including stormwater improvements, from S. 40th Street to the First Entrance, or if not enough funds are available, then grade the northern portion of said right-of way abutting the lots shown along the north edge of Rokeby Road on the Preliminary Plat to establish a final grade between the northern right-of-way of Rokeby Road and said abutting lots between S. 40th Street and the First Entrance.

II. The City will collect Arterial Street Impact Fees from the Annexed Property, place said Impact Fees into a separate account and direct and use the collected and available Arterial Street Impact Fees from the Annexed Property, plus interest, to fund the remaining costs to grade, pave and implement the Two-Lane Rokeby Road from S. 40th Street to the First Entrance.

III. When there are any available Arterial Street Impact Fees collected from the Annexed Property or other available street funding sources, then the City, at its expense, will design, grade, pave and implement the remaining portion(s) of the Two-Lane Rokeby Road from the First Entrance to S. 48th Street to the extent funds are available.

IV. The City represents and warrants that the collected Arterial Street Impact Fees may lawfully be expended to fund the design, grading, pavement and implementation of the Two-Lane Rokeby Road from S. 40th Street to S.48th Street. Notwithstanding the foregoing regarding the Arterial Street Impact Fees, the City shall have the option to fund all or portions of Rokeby Road from funding sources other than Arterial Street Impact Fees collected from the Annexed Property should other funding become available.

c. Rokeby Road Grading Coordination. As part of any Landowner grading portions of its land abutting Rokeby Road right-of-way, the City may timely request that the Landowner also grade applicable abutting portion(s) of the Rokeby Road right-of-way pursuant to the City's executive order process and be reimbursed by the City for said reasonable executive order administrative and grading costs within thirty (30) days of completion of such grading.

d. Landowner's Option to Accelerate Construction. A Landowner ("**Triggering Owner**") shall have the right to accelerate the City's construction of all or any phase of the Two-Lane Rokeby Road prior to the collection of sufficient Arterial Street Impact Fees from the Annexed Property by loaning the City the funds necessary to complete said phase of Two-Lane Rokeby Road. The right to trigger the City's construction of a phase of Two-Lane Rokeby Road shall be exercised in the following manner:

I. The Triggering Owner shall provide written notice to the Director of Public Works and Utilities of the Triggering Owner's request to trigger construction of a specified phase of the Two-Lane Rokeby Road ("**Trigger Notice**");

II. Within thirty (30) days of receipt of the Trigger Notice, the City shall cause the preparation of an estimated cost for the phase of the Two-Lane Rokeby Road identified in the Trigger Notice, and provide notice of said estimated

cost and the amount of Arterial Street Impact Fees then collected and available for the specific phase of the Two-Lane Rokeby Road identified in the Trigger Notice to the Triggering Owner (“**Available Arterial Street Impact Fees**”); and

III. Triggering Owner shall provide the City a bond, escrow, letter of credit, or other security agreement, approved by the City Attorney (“**Road Escrow**”), for one hundred ten percent (110%) of the difference between the City’s estimated cost of the phase of Two-Lane Rokeby Road identified in the Trigger Notice and the amount of the Available Arterial Street Impact Fees (“**Road Escrow Amount**”).

IV. Upon receipt of the Road Escrow Amount the City shall design and bid the phase of the Two-Lane Rokeby Road identified in the Trigger Notice as soon as reasonably possible. The City shall notify Triggering Owner of the actual bids and, in the event:

- A. the actual lowest responsible bid exceeds the Road Escrow Amount, then the Triggering Owner will increase the amount of the Road Escrow Amount held in the Road Escrow to cause the adjusted Road Escrow Amount to be equal to one hundred ten percent (110%) of the actual lowest responsible bid minus the Available Arterial Street Impact Fees; or
- B. the actual lowest responsible bid is less than the Road Escrow Amount, then the Triggering Owner may decrease the amount of the Road Escrow Amount held in the Road Escrow to be equal to one hundred ten percent (110%) of the lowest responsible bid minus the Available Arterial Street Impact Fees.

V. The City shall first utilize the Available Arterial Street Impact Fees, if any, to fund such design, grading and construction, and then utilize funds of the Triggering Owner. The City will provide the Triggering Owner an invoice for said actual additional amount. If actual amount costs exceed the Road Escrow Amount in the Road Escrow, then the Triggering Owner shall be responsible to advance the excess costs to the City.

VI. The City shall reimburse the Triggering Owner for all funds expended on the Two-Lane Rokeby Road from the Arterial Street Impact Fees collected or to be collected in the future and such reimbursement shall have first priority to the Arterial Street Impact Fees after the City funds or reserves funds for any earlier completed phased Two-Lane Rokeby Road segment(s).

e. Final Platted Lots abutting Rokeby Road. The Parties agree that the Annexed Property abutting the north and south sides of the Two-Lane Rokeby Road may be final platted pursuant to the City's final plat subdivision requirements without the immediate need for the pavement of Two-Lane Rokeby Road; provided that, the Rokeby Road right-of-way abutting said final platted lots is rough graded pursuant to the City's design for Two-Lane Rokeby Road between the centerline of Rokeby Road and the common property boundary of said final platted lots and the Rokeby Road right-of-way. If such rough grade is not implemented at the time of final platting such lots, then the Landowner of such lots, at its expense, may implement such rough grading pursuant to the City's design for Two-Lane Rokeby Road and such final rough grading costs shall be reimbursed by the City to the Landowner as soon as there are available Arterial Road Impact Fees collected by the City from the Annexed Property and from any other funds the City allocates for said use, and such reimbursement shall have second priority to the Arterial Street Impact Fees after the City funds or reserves funds for any earlier completed phased Two-Lane Rokeby Road segment(s).

f. Not a permanent dead end road. The Parties acknowledge that if a proposed preliminary plat or final plat of all or a portion of the Annexed Property shows an internal street that will (i) directly connect (or indirectly connect through other internal street(s) shown on an approved preliminary plat and/or final plat) with S. 40th Street or (ii) will directly connect (or indirectly connect through other internal street(s) shown on an approved preliminary plat and/or final plat) with Rokeby Road at one of the approved access points shown on Attachment "D", then such internal street(s) will not be deemed a permanent dead end road and thus, will not be subject to the subdivision ordinance's limitation of forty (40) or less units on a dead end street; provided that, the maximum number of lots in "**Area 2**" as shown on Attachment "D" shall not exceed more than forty (40) final platted lots until a minimum of two of the three potential "**Future Internal Street Crossings**" are constructed over the drainage ways as shown on Attachment "D";

and further provided that, the third of the three potential Future Internal Crossings is constructed (or is escrowed pursuant to a written escrow agreement with security acceptable to the City Attorney's Office) over the drainage ways as shown on Attachment "D" prior to the final platting of all the lots in Area 2.

g. Dedication of Street Right-of-Way. At the time of the applicable final platting of lots abutting South 40th Street, the applicable Landowners agree to dedicate, at no cost to the City, the additional right-of-way needed to provide 120/130 feet of right-of-way for Four Lane South 40th Street. At the time of the applicable final platting of lots abutting Two-Lane Rokeby Road or prior to construction of the Two-Lane Rokeby Road, the applicable Landowner agrees to dedicate, at no cost to the City, the additional right-of-way needed to provide 120/130 feet of right-of-way for Two-Lane Rokeby Road. Notwithstanding the above, the City agrees that Landowners may as part of the preliminary plat process propose a modified design and associated required right-of-way for Two-Lane Rokeby Road and if approved by the City the same may be built without further amendment to this Amended and Restated Agreement. Until the applicable section of Two-Lane Rokeby Road is paved, the Landowners are entitled to farm the dedicated right-of-ways and easement areas. The Landowners waive and hold the City harmless for damages to crops and/or the Annexed Property that is subject to said dedicated right-of-ways and easement areas, when the City grades, paves and implements the improvements in question.

7. Water Improvements.

a. Water Line in Rokeby Road. In order to provide water service to the Annexed Property, a 16-inch water main needs to be constructed in Rokeby Road from South 40th Street to approximately S. 48th Street generally as shown on the Infrastructure Exhibit (Attachment "F") (collectively "**Rokeby Road Water Line**"). The City shall design, at its cost, the Rokeby Road Water Line during the City's fiscal year 2014/15. The City, at its expense, will construct the Rokeby Road Water Line in two phases:

I. Phase 1 Rokeby Road Water Line: S. 40th Street to the First Entrance. The City shall grade and construct, at its cost, a 16-inch water main in Rokeby Road from S. 40th Street to the First Entrance as shown on Attachment "F" during the City's fiscal year 2014/15.

II. Phase 2 Rokeby Road Water Line: First Entrance to S. 48th Street.

The City shall designate monies to grade and construct, at its cost, a 16-inch water main in Rokeby Road from the First Entrance to S. 48th Street as shown on Attachment “F” starting in the City’s fiscal year 2015/16 until constructed. The City agrees to construct all or a portion of said 16-inch water main within six months from the date a certified engineer notifies the City and provides documentation, verifiable by the City, that a portion of the Annexation Property being developed through a building permit, special permit, use permit, planned unit development, executive order or final plat will not have adequate flow and pressure with a 6-inch main adequate redundancy or fire protection without the construction of said 16-inch water main. The Landowner will make a good faith effort to notify the Public Works and Utilities Department in November prior to the submittal and approval of a new City of Lincoln biennial budget of anticipated water needs for the Annexed Property during the new biennial budget period that involve City funding.

b. Internal Water Lines. Additional 12-inch and 6-inch water lines will be required to serve the Annexed Property (“**Internal Water Lines**”). A 12-inch water line is shown conceptually on Attachment “F”. A Landowner or the City shall have the right to perform a water line model to determine whether a water line larger than 12-inch would be needed to serve the general vicinity. The Landowner, at its expense, may provide the City a water line model to the City for review and approval. The Internal Water Lines shall be constructed by the Landowner whose individual building permit, preliminary plat, special permit, use permit, planned unit development, executive order or final plat for the Landowner’s portion of the Annexed Property shows an Internal Water Line, at said Landowner’s cost, under the authority of an executive order issued by the Mayor of the City in phases as part of the platting process. The phasing, size and location of the Internal Water Lines will be determined as part of the platting process. The Landowners shall be responsible for the cost of constructing a typical 6-inch water line abutting a residential area, and the City shall be responsible to reimburse the Landowners for all costs attributable to oversizing the water sewer with pipe, valves, fittings and all other accessories that are larger than 6-inch within thirty (30) days of being billed. If required, the Internal Water Lines shall be publicly bid and awarded as provided by law.

c. Water Easements. At the time of the applicable final platting or prior to construction of said water lines, the Landowners shall dedicate and convey all temporary and permanent nonexclusive water easements to the City necessary for the construction and operation of water lines set forth herein that are located within each Landowner's portion of the Annexed Property, without additional cost or consideration, in conjunction with the construction of such water lines as set forth above.

8. Sanitary Sewer Improvements

a. Existing Sub Basin Sewer Line Phase 1. The City, at its expense, has designed and constructed the Existing Sub Basin Sewer Line Phase I crossing S. 40th Street to the "Y" intersection as shown on the Infrastructure Exhibit (Attachment "G").

b. Existing Sub Basin Sewer Line Phase 2. On behalf of the City, the Original Landowners designed and constructed the necessary sanitary sewer lines from the terminus of Existing Sub Basin Line Phase I to the terminus points as generally shown on Attachment "G" ("**Existing Sub Basin Sewer Line Phase 2**"). The Existing Sub Basin Sewer Line Phase II was built through the City's Executive Order process. In the Original Annexation Agreement City agreed to reimburse the Original Landowners the eligible cost of the Existing Sub Basin Sewer Line Phase 2 greater than eight (8) inches. The City agrees to pay such reimbursement to the Original Landowners on or before thirty (30) days of the date such Landowner submits a written request for reimbursement.

c. Sub Basin Trunk Sewer Lines Phase 3a and 3b. In order to provide gravity sewer service to portions of the Annexed Property, Sub Basin Trunk Sewer Line Phase 3a and 3b needs to be designed and constructed generally as shown on the Infrastructure Exhibit (Attachment "G") ("**Sub Basin Trunk Sewer Line Phase 3**"). Sub Basin Trunk Sewer Line Phase 3a and 3b will be gravity lines as generally shown on Attachment "G". The City, at its expense, will design and construct the Sub Basin Trunk Sewer Line Phase 3a during the City's fiscal year 2014/15. The City, at its expense, will design and construct the Sub Basin Trunk Sewer Line Phase 3b during or before the City's fiscal year 2015/16.

d. Sub Basin Trunk Sewer Line Phase 4. In order to provide gravity sewer service to portions of the Annexed Property, Sub Basin Trunk Sewer Line Phase 4 needs to be designed and constructed generally as shown on the Infrastructure Exhibit (Attachment

“G”) (“**Sub Basin Trunk Sewer Line Phase 4**”). Sub Basin Trunk Sewer Line Phase 4 will be a gravity line as generally shown on Attachment “G”. The City, at its expense, will design and construct all or a portion of said Sub Basin Trunk Sewer Line Phase 4 within nine (9) months from the date the City finally approves a building permit, final plat, special permit, use permit, planned unit development, executive order or final plat for a portion of the Annexed Property that will need City sewer.

e. Sub Basin Trunk Sewer Line Phase 5. In order to provide gravity sewer service to portions of the Annexed Property, Sub Basin Trunk Sewer Line Phase 5 needs to be designed and constructed generally as shown on the Infrastructure Exhibit (Attachment “G”) (“**Sub Basin Trunk Sewer Line Phase 5**”). Sub Basin Trunk Sewer Line Phase 5 will be a gravity line as generally shown on Attachment “G”. The City, at its expense, will design and construct the Sub Basin Trunk Sewer Line Phase 5 during the City’s fiscal year 2014/15.

f. Sanitary Sewer Easements. At the time of the applicable final platting or prior to construction of said sewer line, the applicable Landowners shall dedicate and convey all temporary and permanent nonexclusive sanitary sewer easements to the City necessary for the construction and operation of sewers set forth above, without additional cost or consideration, in conjunction with the construction of such sewer lines as set forth above.

9. City Park and Trail. The City, at its expense, has previously acquired a Conservation Easement over a portion of the Property as filed of record as Instrument Number 2005-063615 in the Lancaster County Register of Deeds Office. The City Parks and Recreational Department master plans do not show the need for any additional park land over the Property. At the time of the applicable final platting, the applicable Landowners agree to dedicate, at no cost to the City, the additional easement needed for a hiker/biker trail along the east side of South 40th Street from the proposed South 40th Street bridge crossing the waterway (approximately 1200 feet north of Rokeby Road) to Rokeby Road and then to the south edge of the Annexed Property as generally shown on Attachment “H” (collectively “**Trail**”). The width of the easement for the Trail will vary depending upon the location of the Trail abutting arterial right-of-way, local street right-of-way or crossing an outlot area. The additional maximum width of the trail easement abutting the arterial right of way of S. 40th Street shall be ten (10) feet wide. The additional

maximum width of the trail easement abutting a local street right-of-way shall be six (6) feet wide. The maximum width of the trail easement crossing an outlot area shall be twenty (20) feet wide. The specific easements for the Trail will be finalized at the time of the final plat approval. As part of the Two-Lane Rokeby Road improvement, the City will study the feasibility to have the Trail cross underneath Rokeby Road. The City, at its expense, shall design, grade and construct the Trail, including any culverts, stream crossings, street crossings, signage and signalization. The City further agrees to consult with the applicable Landowners prior to commencing any design, grading or construction of the Trail to make sure the Landowners have no development problems with the design and timing of said grading or construction. The City, at its expense, will have the design, grading, construction, maintenance, repair and replacement responsibilities for the Trail. The City agrees that during grading and construction and upon completion and operation of the Trail, the City shall indemnify, defend, and hold harmless the Landowners and its successors and assigns, from and against any and all losses, damages, claims, costs, expenses, or liabilities, including attorney fees, arising out of the City's negligence or willful misconduct regarding the public's use of the Trail easement granted to the City herein other than as a result of the Landowner's or its successors' or assigns' negligence or willful misconduct. The City does not waive its governmental immunity by entering into this Amended and Restated Agreement and fully retains all immunities and defenses provided by law with regard to the City's grading, construction, and operation of the Trail and any other activities authorized by this Amended and Restated Agreement. Until the applicable trail is constructed, the Landowners are entitled to farm the easement area. The Landowners waive and hold the City harmless for damages to crops and/or the Property that is subject to said easement area, when the City constructs the Trail. The City may elect at a later date to use a portion of the Conservation Easement area for parks and trail purposes.

10. Definitions. For purposes of this Amended and Restated Agreement, the words and phrases “cost” 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 from a third party (but excluding any Landowner) construction costs, publication costs, financing costs, and related miscellaneous costs. For the purposes of this Amended and Restated Agreement, the words and phrases “building permit,” “development,” “Impact Fee Facility,” “Impact Fee Facility Improvement” and “site-related improvements” shall have the same meaning as provided for said words and phrases in the Impact Fee Ordinance.

11. Release of Final Platted Lot. Notwithstanding any contrary provisions herein, any Lot created by a final plat of all or a portion of the Annexed Property shall automatically be deemed released from all of the terms of this Amended and Restated Agreement without further written release.

12. Condemnation. The City, at its expense, including, but not limited to, acquisition costs, condemnation awards, court costs, expert witness fees, testing fees, interest, and City staff time, shall acquire the remaining balance of any and all right of way and temporary and permanent easements necessary for the design, grading, construction and operation of the impact fee facilities and related improvements and infrastructure described in this Amended and Restated Agreement. The City is authorized to utilize condemnation, if necessary, to acquire such right of way and temporary and permanent easements.

13. Amendments. This Amended and Restated Agreement may only be amended or modified in writing signed by the Parties to this Amended and Restated Agreement.

14. 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 Amended and Restated Agreement.

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

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

17. 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.

18. Relationship of Parties. Neither the method of computation of funding or any other provisions contained in this Amended and Restated Agreement or any acts of any party shall be deemed or construed by the City, Landowner, 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 Amended and Restated Agreement.

19. Assignment. In the case of the assignment of this Amended and Restated 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 Amended and Restated Agreement or unless otherwise stated herein.

20. Default. Landowners and City agree that the annexation and changes of zone promote the public health, safety and welfare so long as Landowners fulfill all of the conditions and responsibilities set forth in this Amended and Restated Agreement. In the event Landowners default in fulfilling any of their covenants and responsibilities as set forth in this Amended and Restated Agreement, then the City may in its legislative authority rezone the Annexed 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 Amended and Restated Agreement or to obtain damages for its breach. In the event the City defaults in fulfilling any of its covenants and responsibilities as set forth in this Amended and Restated Agreement, then the Landowners may take such remedies, legal or equitable, to enforce this Amended and Restated Agreement or to obtain damages for its breach.

21. Binding Effect. This Amended and Restated Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, devisees, personal representatives, successors and assigns and shall inure to and run with the Annexed Property.

22. Cooperation. Whenever a Party's approval or consent shall be required under this Amended and Restated Agreement, such approval or consent shall not be arbitrarily or unreasonably conditioned, delayed, or withheld. The approval or consent of a Party shall be deemed to have been given, unless within fourteen (14) days of the request for such approval or consent, the receiving Party, notifies the requesting Party that the receiving Party is denying such approval or consent. The refusal must state the reasonable ground for the refusal to grant such approval or consent. Each undersigned Party will whenever it shall be necessary to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, documents as may be necessary or proper to effectuate the covenants and agreements herein provided.

23. Recordation. This Amended and Restated Agreement or a memorandum thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at Landowners' cost and expense.

24. Engineering Services. The uniform procedure for the selection of professional consultants set forth in Executive Order No. 80199 dated October 9, 2007 need not be utilized to select the Landowners' engineer to design the required improvements to be installed by Landowners. The Landowners' engineer has performed preliminary design work and continuing utilization of the Landowners' engineer will avoid delay, inefficiencies, lack of coordination, and duplication of effort. Notwithstanding the above, the Landowners agree that, in order for Landowners' engineer design costs to be reimbursable Impact Fee Facility Improvements, the compensation to be paid for such services must be approved the City's Department of Public Works & Utilities.

25. Written Certification. In addition to any other information which may reasonably be requested, any Party shall without charge, at any time and from time to time hereafter, within fourteen (14) days after written request from another Party for the same, certify by written instrument duly executed and acknowledged to any person, firm or corporation the following information which was specified in such request:

- a. Whether this Amended and Restated Agreement has been supplemented or amended, and if so, the substance and manner of such supplement or amendment;
- b. Whether this Amended and Restated Agreement is still valid;

- c. The existence of any default under this Amended and Restated Agreement;
- d. The existence of any claims or amounts owed to such Party by any other Party; and
- e. The expiration dates of the term of this Amended and Restated Agreement.

Any such certificate may be relied on by the Party who requested it and by any other person, firm or corporation to whom it may be exhibited or delivered, and the contents of the certificate shall be binding on the Party executing it.

26. Authority. The City has the authority to engage in the reimbursements to Landowners described in this Amended and Restated Agreement, and (i) have taken all steps to legally exercise that authority, and (ii) the reimbursements to Landowners described in this Amended and Restated Agreement will comply with all applicable laws.

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

“CITY”

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

ATTEST:

City Clerk

By: _____
Chris Beutler, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

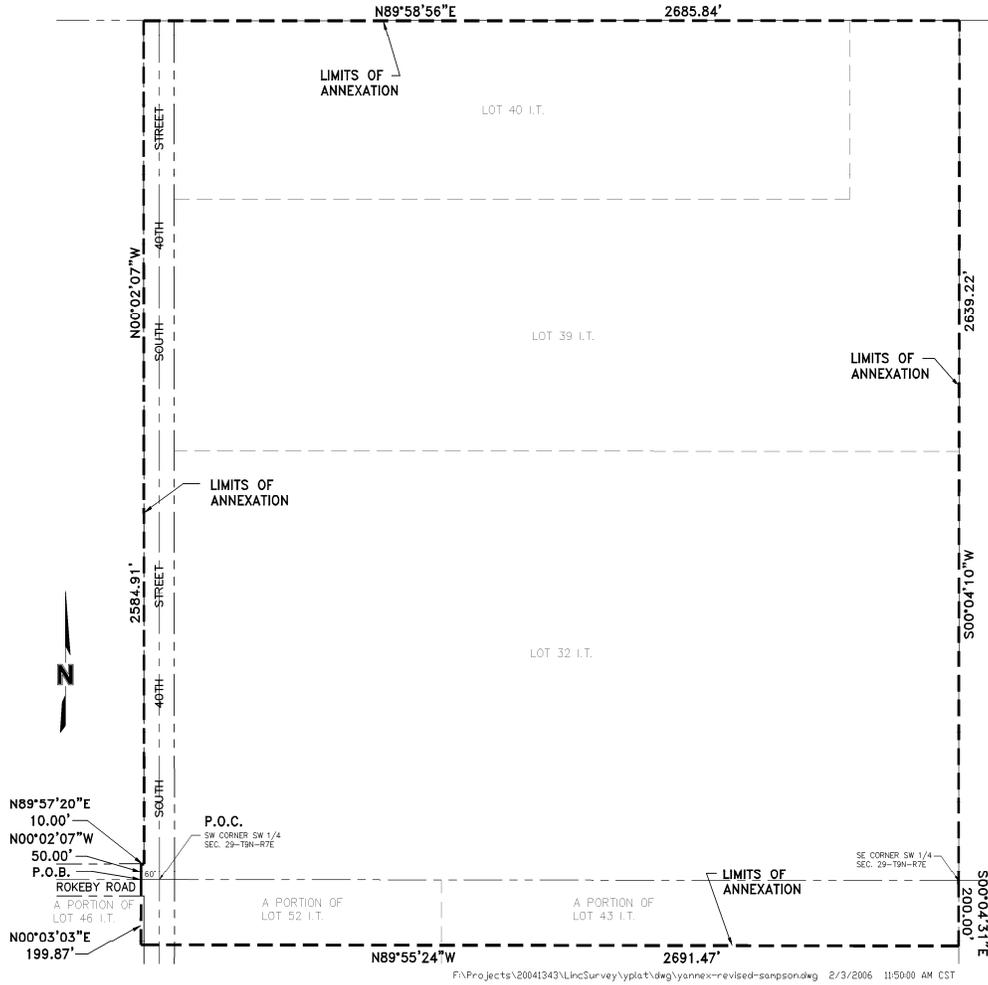
The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Chris Beutler, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation.

(Seal)

Notary Public

Attachment "B"

Annexation Map



Attachment "C"

LEGAL DESCRIPTION
ANNEXATION

A TRACT OF LAND COMPOSED OF LOTS 32 I.T., 39 I.T., 40 I.T., AND A PORTION OF SOUTH 40TH STREET RIGHT-OF-WAY, ALL LOCATED IN THE SOUTHWEST QUARTER OF SECTION 29, A PORTION OF LOTS 43 I.T., 52 I.T., AND A PORTION OF SOUTH 40TH STREET RIGHT-OF-WAY, ALL LOCATED IN THE NORTHWEST QUARTER OF SECTION 32, A PORTION OF LOT 46 I.T., AND A PORTION OF SOUTH 40TH STREET RIGHT-OF-WAY, AND A PORTION OF ROKEBY ROAD RIGHT-OF-WAY, ALL LOCATED IN THE NORTHEAST QUARTER OF SECTION 31, AND A PORTION OF SOUTH 40TH STREET RIGHT-OF-WAY, AND A PORTION OF ROKEBY ROAD RIGHT-OF-WAY, ALL LOCATED IN THE NORTHEAST QUARTER OF SECTION 30, ALL LOCATED IN TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6TH P.M., LANCASTER COUNTY, STATE OF NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

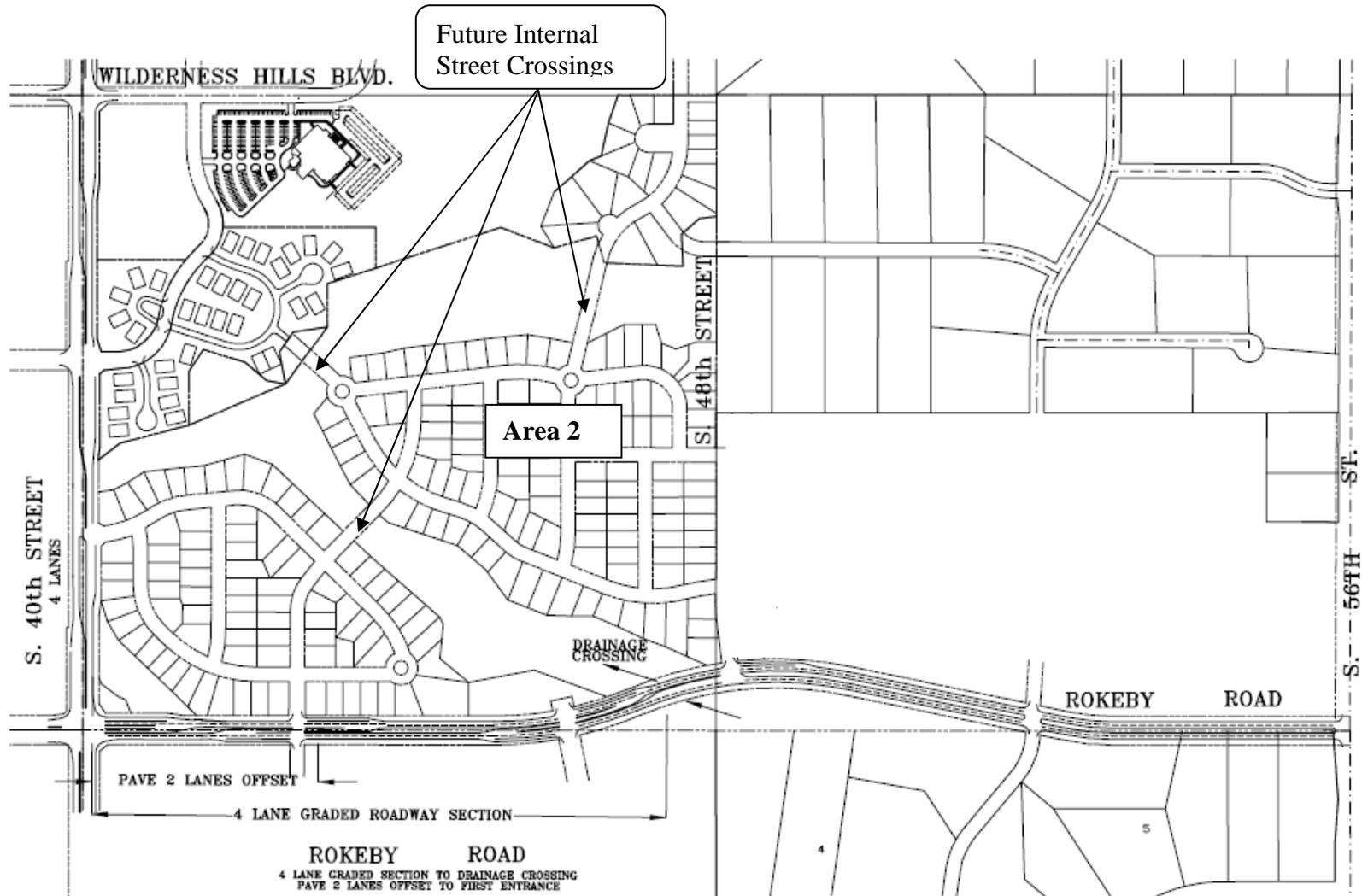
COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 29, THENCE WEST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 30 ON AN ASSUMED BEARING OF SOUTH 89 DEGREES 57 MINUTES 20 SECONDS WEST, A DISTANCE OF 60.00 FEET TO **THE TRUE POINT OF BEGINNING**, THENCE NORTH 00 DEGREES 02 MINUTES 07 SECONDS WEST ALONG A LINE 60.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 30, A DISTANCE OF 50.00 FEET TO A POINT OF INTERSECTION WITH THE NORTH LINE OF ROKEBY ROAD RIGHT-OF-WAY, THENCE NORTH 89 DEGREES 57 MINUTES 20 SECONDS EAST ALONG THE NORTH LINE OF SAID RIGHT-OF-WAY, SAID LINE BEING 50.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 10.00 FEET TO A POINT OF INTERSECTION WITH THE WEST LINE OF SOUTH 40TH STREET RIGHT-OF-WAY, THENCE NORTH 00 DEGREES 02 MINUTES 07 SECONDS WEST ALONG THE WEST LINE OF SAID SOUTH 40TH STREET RIGHT-OF-WAY, SAID LINE BEING 50.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 2,584.91 FEET TO A POINT OF INTERSECTION WITH THE NORTH LINE OF SAID SOUTHEAST QUARTER, THENCE NORTH 89 DEGREES 58 MINUTES 56 SECONDS EAST ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER, AND THE NORTH LINE OF THE SOUTHWEST QUARTER OF SECTION 29, A DISTANCE OF 2,685.84 FEET TO THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER, THENCE SOUTH 00 DEGREES 04 MINUTES 10 SECONDS WEST ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 2,639.22 FEET TO THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER, THENCE SOUTH 00 DEGREES 04 MINUTES 31 SECONDS EAST ALONG THE EAST LINE OF THE NORTHWEST

QUARTER OF SECTION 32, A DISTANCE OF 200.00 FEET TO A POINT, THENCE NORTH 89 DEGREES 55 MINUTES 24 SECONDS WEST ALONG A LINE 200.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER, AND ITS EXTENSION, A DISTANCE OF 2,691.47 FEET TO A POINT LOCATED 60.00 FEET WEST OF THE WEST LINE OF SAID NORTHWEST QUARTER, THENCE NORTH 00 DEGREES 03 MINUTES 03 SECONDS EAST ALONG A LINE 60.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 31, A DISTANCE OF 199.87 FEET TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 7,615,011.47 SQUARE FEET OR 174.82 ACRES, MORE OR LESS.

February 3, 2006
F:\Projects\20041343\LincSurvey\yplat\dwg\annex-revised-sampson.doc

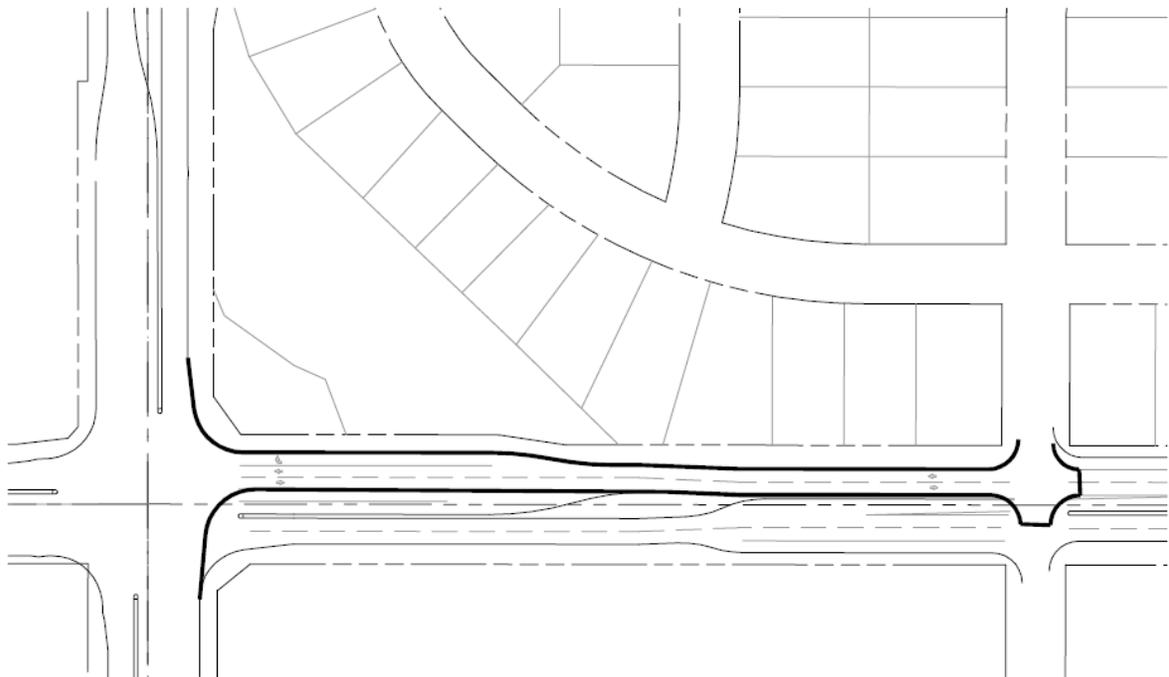
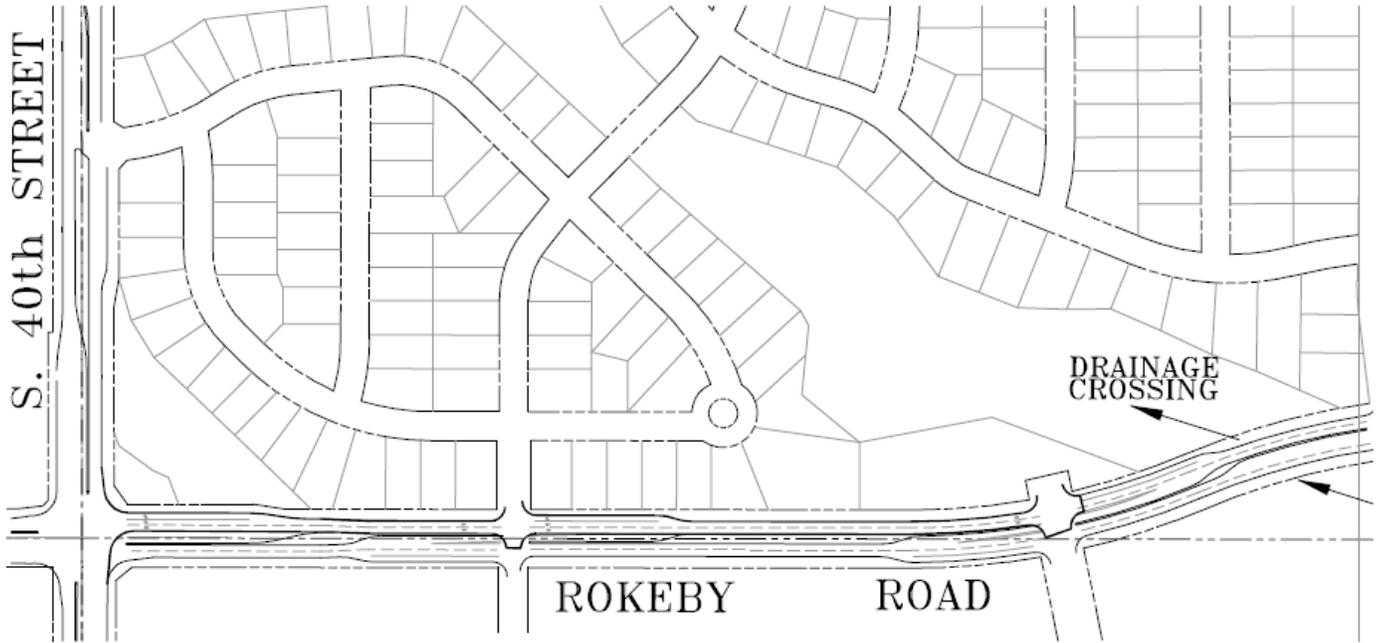
Attachment "D"

Grandale Preliminary Plat



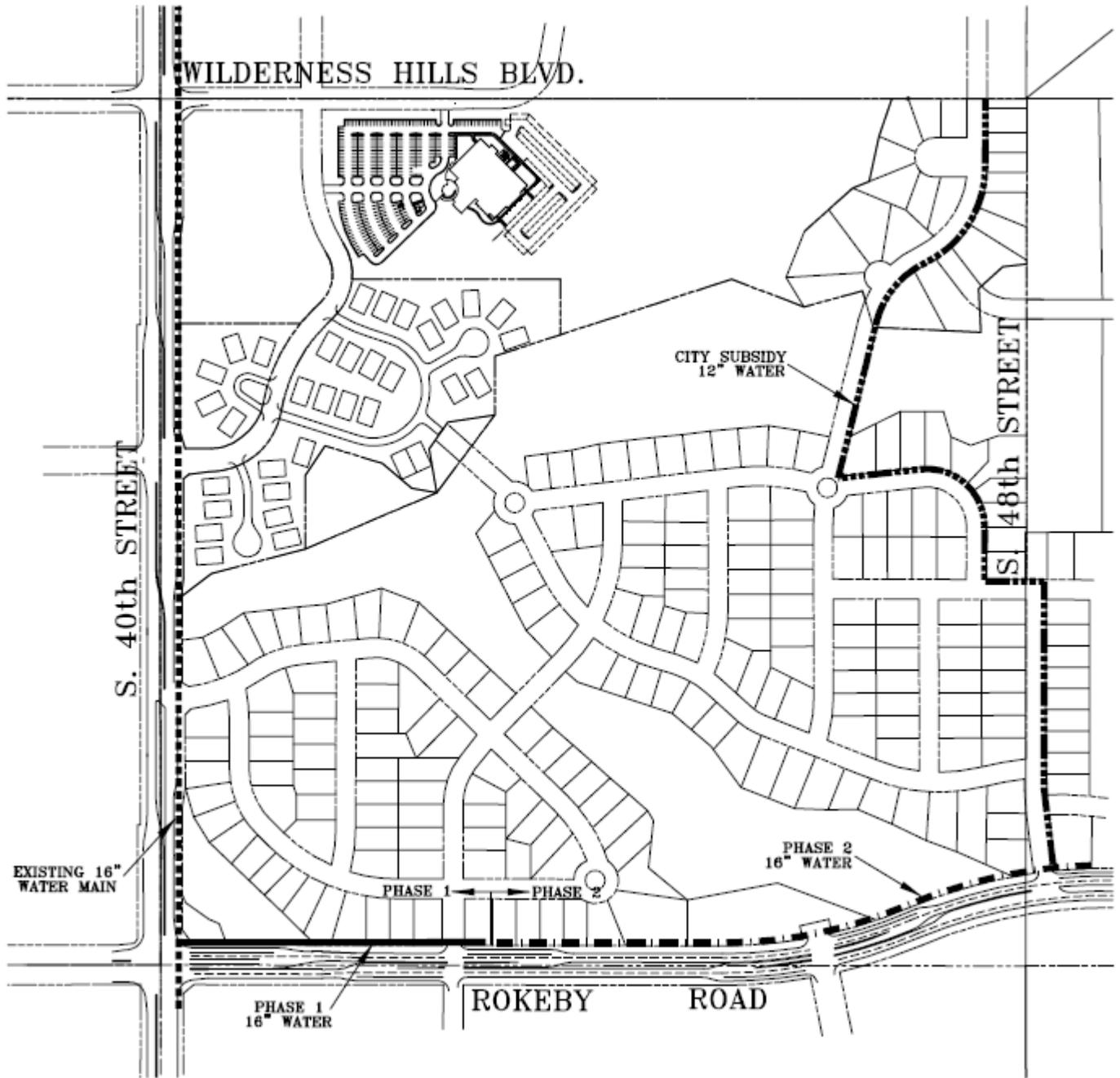
Attachment "E"

Road Exhibit



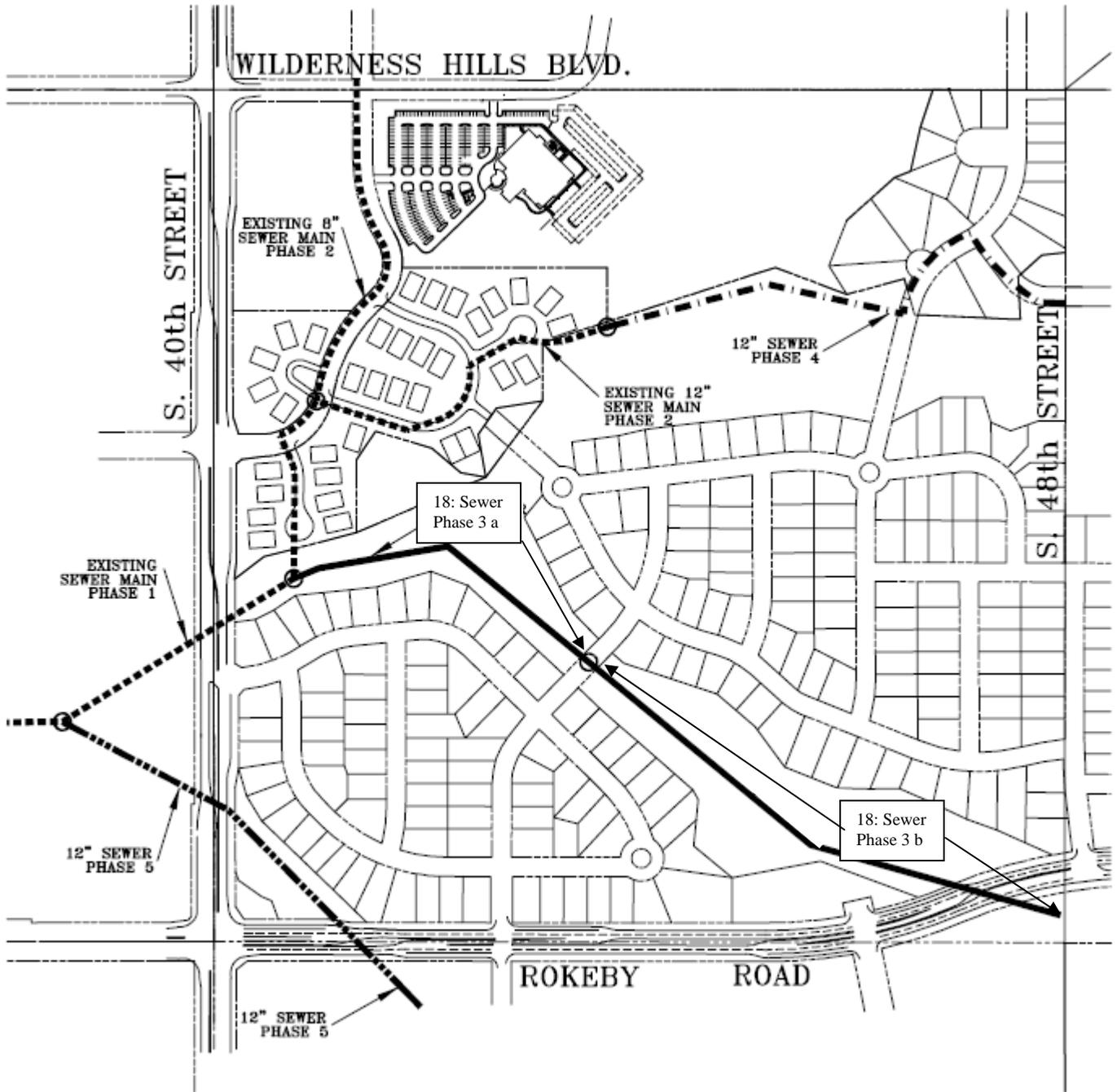
Attachment "F"

Water Exhibit



Attachment "G"

Sewer Exhibit



Attachment "H"

Trail Exhibit

