

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 14-159 by accepting the substitute Attachment "A" attached hereto to replace Attachment "A" previously provided with Bill No. 14-159 (Annexation Agreement for Rokeby Road Coalition).

Introduced by:

Approved as to Form and Legality:

City Attorney

Requested by: Property Owners

Reason for Request:

1) All references to Charles J. Marquardt and June N. Marquardt have been changed to "First Nebraska Trust Company of Lincoln, Nebraska as Trustee of the Charles J. Marquardt Revocable Trust dated April 5, 1999 and as Trustee of the June N. Marquardt Revocable Trust dated April 5, 1999" since the property held by Mr. and Mrs. Marquardt was transferred to the respective Trusts in October 2014.

2) Southview, Inc., has been added to the list of Property Owners in the Agreement as a result of its acquisition of Property covered by the terms of this Agreement and identified therein as Parcel 13 from The Catholic Bishop of Lincoln on December 19, 2014 and has been allocated a portion of the outstanding obligations on Attachment N.

3) The reference in Recital 2 to Lancaster County Register of Deeds Instrument No. 2006058252 should be changed to Lancaster County Register of Deeds Instrument No. 2006058152.

**ANNEXATION AGREEMENT
FOR ROKEBY ROAD COALITION**

Amendment and Restatement of the Development Agreement (Coalition Version)

This Annexation Agreement ("Agreement") is made and entered into as of this ____ day of _____, 2015 by and between the **City of Lincoln, Nebraska**, a municipal corporation ("City"), **Union Bank & Trust Company**, a Nebraska corporation ("Escrow Agent"), **Rokeby Holdings, Ltd.**, a Nebraska limited partnership ("Rokeby Holdings"), **The Catholic Bishop of Lincoln**, a Nebraska non-profit corporation ("Catholic Bishop"), **Carlton W. Talcott**, a single person ("CWT"), **Milton L. Talcott** and **Carol A. Talcott**, husband and wife (collectively "M&CT"), **SSAR, LLC**, a Nebraska limited liability company ("SSAR"), **Calruby, LLC**, a Nebraska limited liability company ("Calruby"), **Fred H. Smith** and **Janet L. Smith**, husband and wife (collectively "Smith"), **First Nebraska Trust Company of Lincoln, Nebraska, as Trustee of the Charles J. Marquardt Revocable Trust dated April 5, 1999** and **as Trustee of the June N. Marquardt Revocable Trust dated April 5, 1999** ("C&JM"), **Lincoln Federal Bancorp, Inc.** ("Lincoln Federal"), **Milton L. Talcott, Trustee and Carol A. Talcott, Trustee** ("M&CT Trustees"), **Talcott Land & Cattle, Inc.**, a Nebraska corporation ("Talcott Land"), **Southview, Inc.**, a Nebraska corporation ("Southview") and **Milton L. Talcott, Trustee** ("M. Talcott Trustee"). Rokeby Holdings, Catholic Bishop, CWT, M&CT, SSAR, Calruby, Smith, C&JM, Lincoln Federal, M&CT Trustees, Talcott Land, Southview and M. Talcott Trustee, may hereinafter jointly be referred to as the "Property Owners" or individually as a "Property Owner."

RECITALS

1. The Property Owners are the owners and developers of their respective tracts of the real property (“Parcel(s)”) legally described and shown on Attachment “A” (collectively the “Property”). The City and Property Owners desire to cause the urban development of the Property.

2. The Property Owners or their predecessors and the City entered into a Development Agreement (Coalition Version), dated October 14, 2006 and recorded as Instrument Number 2006058152 in the Lancaster County Register of Deeds Office (“Development Agreement”). This Agreement amends, restates, and replaces in its entirety the applicable definitions and paragraphs of the Development Agreement that are still in effect.

3. Rokeby Holdings has requested that the City annex that portion of the Property legally described and shown on Attachment “B” for the first phase of development (“First Phase Annexed Property”). The City and Property Owners desire that the balance of the Property will be annexed, rezoned, platted and developed in subsequent phases, pursuant to this Agreement and the City’s Comprehensive Plan, land development ordinances and design standards.

4. Rokeby Holdings has requested that the City rezone the First Phase Annexed Property from AG to R-3 as shown on Attachment “B” (“First Phase Rezoning”).

5. The Property is currently shown as Residential and Commercial on the 2040 Lincoln Area Future Land Use Map in Lincoln City-Lancaster County Comprehensive Plan. Property Owners have requested that the City approve a Comprehensive Plan Amendment to change the designation of the Property as shown on Attachment “C” (“Comprehensive Plan Amendment”).

6. The City’s approval of the First Phase Annexed Property, First Phase Rezoning and Comp Plan Amendment are collectively referred to herein as “Governmental Actions”.

7. The City is willing to approve the Governmental Actions and subsequently consider approving the annexation, rezoning, use permits, special permits, preliminary plats, and final plats for the balance of the Property pursuant to the Comprehensive Plan (collectively “Subsequent Governmental Actions”); provided that, the infrastructure improvements are constructed in a timely manner to serve and properly accommodate the area.

8. This Agreement identifies the Property Owners' and City's responsibilities regarding the construction of infrastructure improvements necessitated by the development of the Property.

9. The Property Owners jointly and severally appoint Union Bank and Trust Company, of Lincoln, Nebraska Escrow Agent to serve as Escrow Agent on behalf of the Property Owners under the terms and conditions of this Agreement. Escrow Agent is willing to accept such appointment to facilitate certain escrows and other portions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants established herein, the parties to this Agreement do hereby agree as follows:

I.
DEFINITIONS

1. Defined Terms. The following are defined terms to this Agreement. Other paragraphs of this Agreement contain numerous refinements and exceptions which qualify the provisions of this Paragraph 1; all other defined terms are as shown in other provisions of this Agreement.

- a. "City Sewer Project" shall mean City Trunk Sewer 1 Overage, City Trunk Sewer 2 Overage and Segment A & B Overage as generally shown on Attachments "D-1", "D-2", and "D-3".
- b. "City Trunk Sewer 1 Overage" shall mean the second parallel Beal Slough trunk sewer line from South 27th Street to South 56th Street which has been up-sized to provide sewer capacity to the Property and Third Party Properties as generally shown on Attachment "D-1".
- c. "City Trunk Sewer 2 Overage" shall mean the constructed and operating up-sized Upper Beal Slough trunk sewer line from Pine Line Road to generally Yankee Hill Road which provides sewer capacity to the Property and Third Party Properties as generally shown on Attachment "D-2".

- d. “Construct” or “construction” shall include proper drainage, utility relocation (electric, cable, phone, communication, fiber optic, gas, water, rural water, and sediment) and erosion controls and measures.
- e. “Cost”, “cost and expense”, “expense” 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 or easements from a party other than a Property Owner, construction costs, publication costs, financing costs, and related miscellaneous costs.
- f. Rokeby Road Sewer Grading” shall mean (i) re-grading certain sections of the Property and (ii) re-grading and re-rocking certain sections of Rokeby Road from its Rokeby Road Urban Grading as defined in the Development Agreement to its finish ground profile to permit the construction of Sewer C and Sewer D as generally shown on Attachment “E”.
- g. “Segment A & B Overage” shall mean the constructed and operating up-sized extension of the Upper Beal Slough trunk sewer line, from generally Yankee Hill Road to the southern line of Lot 3, I.T., located in the NW 1/4 of Section 27, Township 9 North, Range 7 East of the 6th P.M., Lincoln, Lancaster County, Nebraska, which provides sewer capacity to the Property and Third Party Properties as generally shown on Attachment “D-3”.
- h. “Site-Related Street Improvements” shall mean street lights, street signs, street trees, street stormwater improvements, and sidewalks.
- i. “Third Party Property” and “Third Party Properties” shall mean the properties located within SE-1 and S-3 basins in Lancaster County, Nebraska that are not included in the Property subject to this Agreement and generally shown on Attachment “F”.

II.
**CONCURRENT APPROVAL OF GOVERNMENTAL ACTIONS;
CONDITIONAL APPROVAL**

A. Concurrent Approval. The City, concurrently with the approval of this Agreement, is approving the following Governmental Actions:

1. Annexing the First Phase Annexed Property legally described and shown on Attachment “B”; and
2. Amending the Lincoln zoning district maps to adopt the First Phase Rezoning as legally described and shown on Attachment “B”.
3. Approving the Comp Plan Amendment as shown on Attachment “C”.

B. Conditional Approval. Approvals of the Governmental Actions and Subsequent Governmental Approvals, are conditioned upon the terms, conditions and understandings as set forth in this Agreement being fulfilled. The parties understand and agree that, notwithstanding the conditional nature of such zoning approvals hereto, the City Council, on its own motion or at the request of any party hereto, may, in the exercise of its lawful legislative authority: (i) amend the Comprehensive Plan; (ii) extend the municipal corporate boundaries to include any contiguous or adjacent lands; (iii) rezone or revise the zoning designations applicable to the Property; or (iv) approve or amend plats, dedications, use permits, special permits, developments, community unit plans, building permits or other land use controls, as future circumstances may warrant.

C. Future Governmental Action. As a follow-up to the approval of this Agreement, the City acknowledges that during the next Comprehensive Plan and the next Long Range Transportation Plan review update, the City intends to classify Rokeby Road between S. 84th Street and S. 98th Street as a minor arterial road in the Lincoln City-Lancaster County Comprehensive Plan and the Lincoln City-Lancaster County Long Range Transportation Plan.

III.
PHASED DEVELOPMENT OF THE PROPERTY

A. **Phases.** The City and Property Owners agree that the area designated as “Phase I” on Attachment “G” will be the first phase of development of the Property. The Property Owners believe that the remainder of the Property will be annexed, rezoned, platted and developed in various phases. The City and the Property Owners agree that the proposed Phases II and III described in Attachment “G” are not binding and those two phases may be developed out of the sequence shown on Attachment “G”. Similarly, the City and the Property Owners agree that Phases II and III as designated on Attachment “G” may develop in smaller geographic areas or in subphases. The Property Owners and the City recognize and understand that as part of this Agreement, the Property Owners and City are identifying the public infrastructure improvements necessary to serve all of the Property.

IV.

SANITARY SEWER INFRASTRUCTURE IMPROVEMENTS

A. **Sanitary Sewer Improvements.** The City and Property Owners agree that the following sanitary sewer improvements, which are shown on Attachment “H”, are necessary to serve all phases of the Property and to promote the general health and welfare of the City.

1. **Sewers C, D, E and F.** The City shall design and construct, at its cost, the 18-inch, 15-inch and 12-inch sanitary sewer mains designated as Sewers C, D, E and F on Attachment “H” during the City’s fiscal year 2014/15. Sewers C, D, E and F extend sanitary sewer southeast from its current terminus in the Woodlands at Yankee Hill Road subdivision to Rokeby Road and east to S. 84th Street with branches extending north and south of Rokeby Road. The City has already designated funding for Sewers C, D, E and F from prior appropriations in the Capital Improvement Program. Subject to the final City approval of a Rokeby Road design, the City is willing to grant the necessary waivers to the City’s Sanitary Sewer Design Standard 3.6 to permit Sewer D to have a sewer line depth of greater than fifteen (15) feet but not exceeding twenty-five (25) feet.

2. Internal Sewer Lines. Additional 8-inch, 10-inch and 12-inch sanitary sewer lines located upon the Property (“Internal Sewer Lines”) will be required to serve the Property. The 10-inch and 12-inch sanitary sewer lines located on the Property will also serve the Third Party Properties and are shown conceptually as Sewers G and H on Attachment “H”. The Internal Sewer Lines shall be constructed by the Property Owner whose Parcel(s) of the Property is located within an approved preliminary plat, special permit, use permit or planned unit development which shows an Internal Sewer Line. Construction of the Internal Sewer Line shall be at such Property Owner’s own cost and expense, under the authority of an executive order issued by the Mayor of the City in phases as part of the platting process. The size and location of the Internal Sewer Lines will be determined as part of the platting process. Each Property Owner whose Parcel(s) of the Property contains an Internal Sewer Line shall be responsible for the cost of constructing a typical 8-inch sanitary sewer line, and the City shall be responsible for all costs attributable to oversizing the sanitary sewer with pipe, valves, fittings and all other accessories that are larger than 8-inch. If required, the 10-inch and 12-inch Internal Sewer Lines shall be publicly bid and awarded as provided by law.

3. Sanitary Sewer Easements. At the time of the applicable final platting or prior to construction of said sewer line, the Property Owners shall dedicate and convey all temporary and permanent nonexclusive sanitary sewer easements to the City necessary for the construction and operation of Sewers C, D, E, F, G and H and the Internal Sewer Lines that are located within each Property Owner’s Parcel(s) of the Property, without additional cost or consideration, in conjunction with the construction of such sewer lines as set forth above.

B. City Sewer Project.

1. City Trunk Sewer 1 Overage. Under the terms of the Development Agreement, the City is responsible, at its cost and in its own time frame, to design and construct the City Trunk Sewer 1 Overage to provide adequate capacity for the Property. The City agrees that the timing of the City Trunk Sewer 1 Overage will not impede or

slow down the City's approval of an annexation, preliminary plat, final plat, use permit or special permit for the Property.

Each Property Owner, at its expense, agrees to fund its pro rata share of the estimated construction of the City Trunk Sewer 1 Overage in order to enable gravity sewer service to the Property. The City has divided the City Trunk Sewer 1 Overage into four phases as shown on Attachment "D-1". Phase 1 from South 27 Street to South 33rd Street has been completed and all funding obligations of the Property Owners have been satisfied. Phase 2 from South 33rd Street to South 40th Street has been designed and is anticipated to be constructed by the City in 2015. Phases 3 and 4 from South 40th Street to South 70th Street have not yet been designed or constructed by the City. The City has used its base material chart which is updated on an annual basis to calculate the estimated cost differences between the City Trunk Sewer 1 Base (24") and the City Trunk Sewer 1 Overage (27") pipe sizes for Phases 2, 3 and 4 as identified on Attachment "D-1" in order to determine the "Remaining City Trunk Sewer 1 Difference".

Each Property Owner, at its expense, has provided the Escrow Agent adequate funds to hold in escrow to guarantee its pro rata share of the estimated construction costs for the Remaining City Trunk Sewer 1 Difference as set forth on Attachment "N". In arriving at the Property Owners' pro rata share of said improvements, consideration has been given for other properties benefitted by the Phase 2, 3, and 4 of the City Trunk Sewer 1 Overage. The Escrow Agent will pay said escrowed funds for the Remaining City Trunk Sewer 1 Difference to the City within thirty (30) days from the date this Agreement is approved by the City as full satisfaction of the Property Owners' funding obligations for the City Trunk Sewer 1 Overage.

2. City Trunk Sewer 2 Overage. City Trunk Sewer 2 Overage has been constructed by the City and all funding obligations of the Property Owners have been satisfied.

3. Segment A & B Overage. Segment A & B Overage have been constructed and all funding obligations of the Property Owners have been satisfied.

V.

WATER INFRASTRUCTURE IMPROVEMENTS

A. Water Line Improvements. The City and Property Owners agree that the following water line improvements, which are shown on Attachment "I", are necessary to serve all phases of the Property and to promote the general health and welfare of the City.

1. Rural Water District No. 1. The Property Owners understand and acknowledge that the City may not furnish water to serve any portion of the Property that lies within the boundaries of Rural Water District No. 1 Lancaster County Nebraska ("District No. 1") without the consent and approval from District No. 1. Property Owners desire that the Property be connected to the City's Public water system. Therefore, Property Owners agree to pay prior to annexation of any portion of the Property that lies within the boundaries of District No. 1, all the cost needed to obtain District No. 1's approval for the City to furnish water to the Property lying within the boundaries of District No. 1 and to provide the City satisfactory proof of necessary payments to such District No. 1 and release by and relinquishment of the Property from Rural Water District No. 1 by District No. 1.

2. 16-inch Water Line in Rokeby Road from S. 81st Street to S. 84th Street. The City shall design and construct, at its cost, a 16-inch water main in Rokeby Road from approximately S. 81st Street to S. 84th as shown on Attachment "I" during the City's fiscal year 2014/15. The City has already designated funding for said water line from prior appropriations in the Capital Improvement Program.

3. 24-inch Water Line in S. 84th Street from Yankee Hill Road to Rokeby Road. The City shall design and construct, at its cost, a 24-inch water main in S. 84th Street from Yankee Hill Road to Rokeby Road as shown on Attachment "I" during the

City's fiscal year 2014/15. The City has already designated funding for said water line from prior appropriations in the Capital Improvement Program.

4. 16-inch Water Line in Rokeby Road East of S. 84th Street. The City shall design and construct, at its cost, a 16-inch water main in Rokeby Road from approximately S. 84th to approximately the east edge of the Property as shown on Attachment "I". The City shall design said water line during the fall of 2014 utilizing prior appropriations in the Capital Improvement Program. The City agrees to construct all or a portion of said 16-inch water main within six (6) months from the date a certified engineer notifies the City and provides documentation, verified by the City, that a portion of the Property being developed through a building permit, special permit, use permit, executive order or final plat will not have adequate flow and pressure with a 6-inch main, adequate redundancy, or adequate fire protection as determined by the City without the construction of said 16-inch water main.

5. 16-inch Water Line in S. 84th Street South of Rokeby Road. The City shall design and construct, at its cost, a 16-inch water main in S. 84th Street from Rokeby Road to approximately the south edge of the Property as shown on Attachment "I". The City shall design said water line during the fall of 2014 utilizing prior appropriations in the Capital Improvement Program. The City agrees to construct all or portions of said 16-inch water main within six (6) months from the date a certified engineer notifies the City and provides documentation, verified by the City, that a portion of the Property being developed through a building permit, special permit, use permit, executive order or final plat will not have adequate flow and pressure with a 6-inch main, adequate redundancy, or adequate fire protection as determined by the City without the construction of said 16-inch water main.

6. Internal Water Lines. Additional 16-inch, 12-inch and 6-inch water lines will be required to serve the Property ("Internal Water Lines"). The 16-inch and 12-inch water lines will also serve the Third Party Properties and are shown conceptually on Attachment "I". The Internal Water Lines shall be constructed by the Property Owner

whose individual Parcel(s) of the Property is included within an approved preliminary plat, special permit, use permit or planned unit development which shows an Internal Water Line. Construction of the Internal Water Line shall be at such Property Owner's own cost and expense, under the authority of an executive order issued by the Mayor of the City in phases as part of the platting process. The size and location of the Internal Water Lines will be determined as part of the platting process. The Property Owners shall be responsible for the cost of constructing a typical 6-inch water line abutting a residential area, and the City shall be responsible for all costs attributable to oversizing the water sewer with pipe, valves, fittings and all other accessories that are larger than 6-inch. If required, the Internal Water Lines shall be publicly bid and awarded as provided by law.

7. Water Easements. At the time of the applicable final platting or prior to construction of said water line, the Property Owners 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 Property Owner's Property, without additional cost or consideration, in conjunction with the construction of such water lines as set forth above.

8. Biennial Update. The Property Owners will make a good faith effort to notify the Public Works and Utilities Department in November of each year prior to the proposal and approval of a new City of Lincoln biennial budget of anticipated water needs for the Property during the new biennial budget period that may involve City funding.

VI.

ARTERIAL STREET IMPROVEMENTS

A. Rokeby Road.

1. Type D, RUTS Phase 1 Road. Rokeby Road from S. 70th Street to S. 84th 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 two lanes plus turn lanes, including Site-Related Street Improvements. The Mayor's Road Design Standards Technical Task Force Report dated May 13, 2008, designated Rokeby Road from S. 70th Street to S. 84th Street as a Type D, RUTS Phase 1 road with asphalt turn lanes added at intersections and sidewalk on one side consistent with the standards agreed to by the City and Lancaster County through an Interlocal agreement adopted March 9, 2006 by Resolution No. A-83763. Presently, Rokeby Road from S. 70th to S. 98th Street is a two-lane rural cross section. Rokeby Road from S. 70th Street to the east edge of the Property will be graded for an ultimate four through lanes with turn lanes and initially constructed as a Type D, RUTS Phase 1 road, with two through lanes offset to the north, including (i) right and left turn lanes and full turn movement intersections at the approximate locations shown on Attachment "J", (ii) right turn lanes and limited movement intersections at the approximate locations shown on Attachment "J", and (iii) improvements at the intersections with S. 70th Street and S. 84th Street, all in accordance with the conceptual road plans attached hereto as Attachment "J" (collectively "Rokeby Road RUTS"). Rokeby Road RUTS includes Arterial Street Impact Fee Facility Improvements and Site-Related Street Improvements. The Arterial Street Impact Fee Facility Improvements consist of the two through lanes, offset to the north from the center line, with curb and gutter (where applicable), including the right and left turn lanes and full turn movement intersections shown on Attachment "J", as well as any improvements at the intersections with S. 70th Street and S. 84th Street. The Site-Related Street Improvements consist of the right turn lanes and limited movement intersections shown on Attachment "J".

2. Funding. The City, at its cost, shall design, grade and rock Rokeby Road RUTS from S. 70th Street to S. 84th Street, including the intersections with S. 70th Street and S. 84th Street during the City's fiscal year 2014/15. The City has designated funding for said design and grading in Year 1 of the City's Capital Improvement Program FY 2014/15 – 2019/20. Notwithstanding the foregoing, the Property Owners shall contribute Fifty Thousand Dollars (\$50,000) to the City to fund the estimated costs of the Rokeby Road Sewer Grading. The contribution for the Rokeby Road Sewer Grading shall be

paid to the City on or before April 1, 2015. The Property Owners have funded with the Escrow Agent the cost of the Rokeby Road Sewer Grading contribution as shown on Attachment “N”.

a. The parties acknowledge that the City does not currently have funding available to pave Rokeby Road RUTS from S. 70th Street to S. 84th Street, or to design, grade and pave Rokeby Road RUTS from S. 84th Street to the east edge of the Property. The City agrees to segregate arterial street impact fees collected by the City from development of the following real property and utilize said fees, to fund the pavement of Rokeby Road RUTS from S. 70th Street to S. 84th Street and the design, grading and pavement of Rokeby Road RUTS from S. 84th Street to the east edge of the Property:

i. the Property;

ii. lots within Woodlands at Yankee Hill Addition, including impact fees collected after the date of this Agreement; and all additional real property located within the section bounded by S. 70th Street, Yankee Hill Road, S. 84th Street and Rokeby Road, annexed and for which Impact Fees become due after August 31, 2014;

(collectively the “RR Impact Fees”). The City agrees to allocate and direct an additional \$150,180 of unsegregated arterial street impact fees collected in District 6 (representing the arterial street impact fees collected from the 60 lots within Grandview Estates Addition) to be included within the RR Impact Fees. The City represents and warrants that after the Lincoln City-Lancaster County Comprehensive Plan and the Lincoln City-Lancaster County Long Range Transportation Plan are updated to designate Rokeby Road between S. 84th Street and S. 98th Street as an arterial street, the collected RR Impact Fees may lawfully be expended to fund the design, grading and pavement of Rokeby Road RUTS from S. 84th Street to the east edge of the Property.

b. Notwithstanding the foregoing regarding the RR Impact Fees, the City, at its sole discretion, shall have the option to fund all or portions of Rokeby Road

RUTS from funding sources other than RR Impact Fees should other funding become available.

3. Phasing of Construction. Rokeby Road RUTS may be constructed in phases moving west to east from S. 70th Street, subject to the following conditions:

i. First phase shall include, at a minimum, the pavement of Rokeby Road RUTS from S. 70th Street to approximately S. 77th Street;

ii. Pavement of Rokeby Road RUTS from S. 77th Street to S. 84th Street may be completed in approximate quarter mile increments; and

iii. Design and grading of Rokeby RUTS from S. 84th Street to the east edge of the Property (approximately S. 91st Street) may be completed in approximate quarter mile increments from west to east.

4. Trigger for Construction. The City shall pave Rokeby Road RUTS from S. 70th Street to S. 84th Street and design, grade and pave Rokeby Road RUTS from S. 84th Street to the east edge of the Property in phases from west to east as sufficient RR Impact Fee funds are available or the City allocates other available road funds. The Property Owners may accelerate the City's construction of all or any phase of Rokeby Road RUTS prior to the collection of sufficient RR Impact Fees by loaning the City the funds necessary to complete said phase of Rokeby Road RUTS. Any Property Owner shall have the right to trigger the City's construction of a phase of Rokeby Road RUTS by completing the following ("Triggering Owner"):

i. Providing written notice to the Director of Public Works and Utilities of the Triggering Owner's request to trigger construction of a specified phase of Rokeby Road RUTS ("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 Rokeby Road RUTS identified in the Trigger Notice, and provide notice of said estimated cost and the amount of RR Impact Fees then collected and available for the specific phase of Rokeby Road RUTS identified in the Trigger Notice to the Triggering Owner ("Available RR 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 Rokeby Road RUTS identified in the Trigger Notice and the amount of the Available RR Impact Fees (“Road Escrow Amount”).

iv. Upon receipt of the Road Escrow in the amount of the Road Escrow Amount the City shall design and bid the phase of Rokeby Road RUTS 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 RR 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 RR Impact Fees.

v. The City shall first utilize the Available RR 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 Rokeby Road RUTS from RR Impact Fees collected, and such reimbursement shall have first priority to the RR Impact Fees after the City funds or reserves funds for any earlier phased Rokeby Road segment(s).

5. Final Platting.

i. Unpaved Rokeby Road. The parties acknowledge that the Property Owners will be final platting portions of the Property prior to construction of Rokeby Road RUTS. The parties agree that no buildable lots may be final platted between unpaved Rokeby Road and a paved Internal Street (defined below) running parallel to Rokeby Road. In the event an Internal Street does not run parallel to Rokeby Road, no buildable lots may be final platted within 110 feet of unpaved Rokeby Road. While this limitation may cause some hardships and inefficiencies in development, it will permit final platting to proceed forward without the corresponding requirement to pave any abutting section of Rokeby Road.

ii. The parties acknowledge that if a proposed preliminary plat or final plat of the Property or part thereof 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. 70th or S. 84th 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 “J”, then such Internal Street(s) will not be deemed to be a permanent dead end street and thus, will not be subject to the requirements in Section 26.23.080 of the Lincoln Municipal Code applicable to permanent dead end streets, including but not limited to the limitation of forty (40) or less units on a dead end street.

B. S. 84th Street and S. 70th Street. S. 84th Street and S. 70th Street from Yankee Hill Road to the south edge of the Property are shown in the Lincoln City – Lancaster County Comprehensive Plan as arterial road improvements during the 25-year planning period to be constructed as four lanes plus center turn lanes. Presently, S. 84th Street and S. 70th Street from Yankee Hill Road to the south edge of the Property are two-lane rural cross sections. The City intends to design, grade and construct in the foreseeable future these portions of S. 84th Street and S. 70th Street as four lanes, plus turn lanes, along with full turn movement access points in the approximate locations shown on Attachment “K” (collectively “Four-Lane 84th and 70th”).

Streets”). The City, at its expense, will design, grade and construct Four-Lane 84th and 70th Streets. Notwithstanding the above, the Property Owners agree that if any final plat development of the Property 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 84th and 70th Streets, then the Property Owners shall, at their own cost and expense, design and construct temporary right and left turn lanes at each final platted street connection to S. 84th Street and/or S. 70th Street as required by the City.

C. Internal Streets. Additional City local and collector streets will be required within the Property to serve the Property and the Third Party Properties (collectively “Internal Streets” and individually an “Internal Street”). The Internal Streets shall be constructed by the Property Owner whose individual Parcel(s) of the Property is included within a preliminary plat, special permit, use permit or planned unit development which shows an Internal Street. Construction of the Internal Street shall be at such Property Owner’s own cost and expense, under the authority of an executive order issued by the Mayor of the City in phases as part of the platting process.

D. Dedication of Street Right-of-Way. At the time of the applicable final platting or prior to construction of Rokeby Road RUTS, the applicable Property Owners agree to dedicate, at no cost to the City, the additional right-of-way needed to provide 120 feet of right-of-way for Rokeby Road RUTS, with additional right-of-way (i) required at the intersections for right turn lanes, and (ii) for the location of the Trail, if required. At the time of the applicable final platting of S. 84th Street and S. 70th Street, the applicable Property Owners agree to dedicate, at no cost to the City, the additional right-of-way needed to provide 120 feet of right-of-way for S. 84th Street and S. 70th Street, with additional right-of-way (i) required at the intersections for right turn lanes, and (ii) for the location of the Trail, if required. The Property Owners shall dedicate and convey the necessary right of way for the construction and operation of the Internal Streets set forth herein that are located within each Property Owner’s Property, without additional cost or consideration, in conjunction with the construction of such Internal Street as set forth herein.

VII. TRAILS

A. **Trails.** At the time of the applicable final platting or prior to construction of the hiker/biker trail as generally shown on Attachment “L” (collectively “Trail”), the applicable Property Owner shall dedicate or grant to City, at no cost to the City, the necessary easements for said Trail. The width of the right-of-way or easement for the Trail will vary depending upon whether the location of the Trail is located within an arterial right-of-way, local street right-of-way or crossing an outlot area. In order to accommodate the Trail, the additional maximum width of arterial street right-of-way of Rokeby Road or S. 84th Street shall be ten (10) feet wide. The additional maximum width of right-of-way for an abutting a local street shall be six (6) feet wide. The maximum width of a trail easement crossing an outlot area shall be twenty (20) feet wide. The location of the Trail crossing an outlot will generally follow the route of the underground sanitary sewer. The Trail crossings of Rokeby Road and S. 84th Street shall be at grade, unless (i) as part of the Rokeby Road RUTS improvement, the City determines it is feasible to have the Trail cross underneath Rokeby Road; or (ii) as part of the City’s design plans for Four Lane 84th Street, the City determines it is feasible to have the Trail cross underneath S. 84th Street. 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 Property Owners prior to commencing any design, grading or construction of the Trail to identify and eliminate or reduce, to the extent reasonably feasible, any development problems with the design and timing of said grading or construction. As part of the platting process, the applicable Property Owners agree to grant the City, at no cost to City, any temporary construction easements needed in order for the City to grade, install culverts and stream crossings and construct the Trail. The City, at its expense, will have maintenance, repair and replacement responsibilities for the Trail. The City agrees that during grading and construction of the Trail, the City shall indemnify, defend, and hold harmless the applicable Property Owner 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 in constructing the Trail. The City’s agreement to indemnify, defend, and hold harmless the Property Owners against losses, damages, claims, costs, expenses, or

liabilities, shall not apply where the losses, damages, claims, costs, expenses or liabilities are a result of the Property Owner's or its successors' or assigns' negligence or willful misconduct. Until the Trail is constructed, the Property Owners are entitled to farm the easement areas, but agree to hold the City harmless for any damages to crops and/or the Property within said easement areas when the City constructs the Trail improvements.

B. Parks. The City will provide any parks the City deems necessary within the Property.

VIII.

JENSEN PARK AND ITS ENVIRONS

A. Jensen Park Draft Master Plan. Lancaster County School District 001, a/k/a, Lincoln Public Schools, a Class IV public school district and political subdivision under the laws and statutes of the State of Nebraska (“LPS”) and the City have been cooperating on the preparation of a draft master plan for Jensen Park. In the near future, LPS and the City hope to prepare a final draft of the Jensen Park Master Plan and submit it to their respective governing bodies for approval.

B. Infrastructure through Jensen Park. A portion of Parcel 8 of the Property is located east of Jensen Park. The parties acknowledge that it will be necessary to extend public infrastructure through Jensen Park in order to provide sanitary sewer service to Parcel 8 and to provide Parcel 8 with public access to a full access intersection at Yankee Hill Road. The parties agree that the construction and funding of the infrastructure required across Jensen Park to serve Parcel 8 will be addressed as part of the future governmental approval process for Parcel 8.

IX.

MASTER PLANNING

A. Watershed Master Planning. In cooperation with the Lower Platte South Natural Resource District, the Property Owners and City have developed a scope for a

drainage/watershed master plan that includes those portions of the Property and Third Party Properties (defined below) located within the Wagon Train Watershed (“Watershed Master Plan”) which shall consider the development of potential guidelines/BMPS/ordinance changes to assure that proper urban development of the Property will not cause major stream degradation or adverse impacts to Wagon Train Lake. The Property Owners have funded with the Escrow Agent the cost of the Watershed Master Plan based upon the applicable Property Owners’ pro rata share as shown on Attachment “N”. In addition, the Property Owners have hired the professional services of The Flat Water Group (“Watershed Consultant”) to complete the Watershed Master Plan. The Escrow Agent on behalf of the Property Owners shall timely pay the Watershed Consultant the cost to prepare the Watershed Master Plan. Property Owners and City will use their best efforts to work with the Watershed Consultant to complete the Watershed Master Plan within sixty (60) days of the date of this Agreement. No portion of the Property located within the Wagon Train Watershed may be final platted until the Watershed Master Plan is completed and accepted by the City of Lincoln.

B. Property Master Planning. The Property Owners, at their expense, have funded and completed a master plan of the Property, which is shown on Attachments to this Agreement (collectively “Property Master Plan”). The Property Master Plan incorporates the City’s preliminary comments. The City’s final review and comments will be provided as part of the formal City approval of annexation, rezoning and preliminary platting for the Property. The City hereby consents to the placement of the Property Master Plan’s roadways and utilities within the Minimum Flood Corridors, floodplains and flood prone areas of the Property, subject to the City’s formal review and approval of the more detailed plans and specifications that will be part of the City approval of the annexation, rezoning and preliminary platting for the Property.

X.

OPO INFRASTRUCTURE

A. Developing Property Owner; Other Property Owner; Subsequent Governmental Actions. In the event a Property Owner (“Developing Property Owner”) wishes to seek Subsequent Governmental Actions, then the other Property Owners (individually “Other Property Owner” and collectively “Other Property Owners”) agree to support and cooperate with the Developing Property Owner’s request for Subsequent Governmental Actions; provided said Subsequent Governmental Actions are consistent with the Comprehensive Plan.

B. OPO Infrastructure Defined. “OPO Infrastructure” shall mean the following:

1. The specific Internal Sewer Lines shown conceptually on Attachment “M”, which is attached hereto and incorporated herein by this reference;
2. The specific Internal Water Lines shown conceptually on Attachment “M”, which is attached hereto and incorporated herein by this reference;
3. The specific Internal Streets shown conceptually on Attachment “M”, which is attached hereto and incorporated herein by this reference; and
4. Any other Internal Sewer Lines, Internal Water Lines and/or Internal Streets that the Developing Property Owner and Other Property Owner(s) may agree to implement.

C. Subsequent Governmental Actions Involving OPO Infrastructure. In the event the Subsequent Governmental Actions cause an Other Property Owner’s Parcel(s) of the Property to be benefited or burdened with OPO Infrastructure, then the Other Property Owner agrees to support and cooperate with the implementation of the OPO Infrastructure based upon the following terms and conditions:

1. The Developing Property Owner, at its expense, shall have its professional engineer prepare a preliminary design profile and specifications for the OPO Infrastructure on the Other Property Owner’s Parcel(s) of the Property and provide such preliminary design profile and specifications to the City and Other Property

Owner, including an estimated costs projection and time line for said OPO Infrastructure.

2. The Developing Property Owner, Other Property Owner and City shall meet and discuss (i) whether the Subsequent Governmental Actions of the Developing Property Owner's tract trigger the need for the Other Property Owner's Parcel(s) of the Property to be benefited or burdened with OPO Infrastructure and (ii) the preliminary design profile and specifications of the OPO Infrastructure.

3. In the event the City determines that the Developing Property Owner's Parcel(s) of the Property triggers the need for the Other Property Owner's Parcel(s) of the Property to be benefited or burdened with OPO Infrastructure, then the Other Property Owner may (i) accept said Developing Property Owner's preliminary design profile and specifications, or (ii) the Other Property Owner, at its expense, may have its own professional engineer review said preliminary design profile and specifications and offer reasonable revisions or alternative preliminary design profiles and specifications for the OPO Infrastructure that meet the existing grade of the common property line(s) between the Developing Property Owner's and Other Property Owner's Parcel(s) (or other common grade elevations acceptable to the Developing Property Owner and Other Property Owner). Said Other Property Owner's revisions or alternative(s) shall be sent to the Developing Property Owner and the City within sixty (60) days after the Developing Property Owner, Other Property Owner and City meeting described in subparagraph 2 above, and the Developing Property Owner, Other Property Owner and City shall again meet within fourteen (14) days of the date that the Other Property Owner delivers the Developing Property Owner and City said revisions or alternative(s).

4. The Developing Property Owner and Other Property Owner shall reach consensus on the preliminary design profile and specifications of the OPO Infrastructure; provided, however, in the event consensus is not reached, then the City shall determine the preliminary design profile and specifications of the OPO

Infrastructure.

5. The Developing Property Owner, at its expense, may then proceed with completing the necessary engineering design and applications to seek final approval of the Subsequent Governmental Actions.

6. In the event the City approves the necessary Subsequent Governmental Actions, then the Developing Property Owner, at its expense, may complete the final design for said OPO Infrastructure, including necessary right-of-ways, and temporary and permanent easements, based upon the Subsequent Governmental Actions. The Developing Property Owner shall provide the final design, right-of-way/easement descriptions on the City's forms, and executive order documents to the Other Property Owner and the City. Within fourteen (14) days of receipt of the right-of-way/easement instruments on the City's form, the Other Property Owner agrees to execute, without additional consideration, the necessary right-of-way/easements on the City's form and deliver said executed instruments to the Developing Property Owner. The Developing Property Owner, at its expense, shall deliver to the City (i) the executed right-of-way/easements and (ii) the executive order documents, including the necessary bond, escrow, letter of credit, or other security agreement, approved by the City Attorney.

7. In the event the City approves the final design, security and executive order for the OPO Infrastructure, then the Developing Property Owner may proceed to competitively bid said approved OPO Infrastructure obtaining a minimum of three bids (or bid in another manner acceptable to the Other Property Owner.) The Developing Property Owner shall provide a copy of the lowest responsible bid (or other bid acceptable to the Other Property Owner) to the Other Property Owner. Seven (7) days thereafter, the Developing Property Owner may award the OPO Infrastructure to the lowest responsible bid (or other bidder acceptable to the Other Property Owner).

8. Within thirty (30) days from completion of the OPO Infrastructure and receipt of invoices for all actual design and construction costs associated therewith, the Developing Property Owner's professional engineer shall provide the Developing Property Owner and Other Property Owner with written notice ("Date of Notice") of the total actual cost of the OPO Infrastructure ("OPO Infrastructure Costs").

9. Developing Property Owner agrees to loan and finance the Other Property Owner's OPO Infrastructure Costs. The Other Property Owner hereby agrees to pay and reimburse the Developing Property Owner, without demand, notice or presentation, the OPO Infrastructure Costs on or before the Balloon Payment Date, defined below. The "Balloon Payment Date" shall be the date that the Other Property Owner or a party with an interest in the Other Property Owner's tract taps, connects to or uses the OPO Infrastructure associated with a commercial development or a residential development that includes two or more residential dwellings (collectively "Tapping").

10. The repayment promise of the OPO Infrastructure Costs may be prepaid at any time, in whole or in part. No periodic principal payments are required prior to the Balloon Payment Date.

11. Failure to pay the entire OPO Infrastructure Cost on or before the Balloon Payment Date shall be a default (without demand or notice) herein ("Default") and the OPO Infrastructure Costs shall then start to bear interest after Default ("Default Interest") equal to an interest rate of twelve percent (12%) per annum ("Default Interest Rate"). The OPO Infrastructure Costs and the Default Interest shall be secured by the mortgage lien described below.

12. In the event the Other Property Owner fails to pay the OPO Infrastructure Costs as set forth herein and the Default Interest, if any, then Developing Property Owner may prosecute any proceeding at law or in equity against the Other Property Owner, and seek to prevent the Other Property Owner or any other party from

Tapping the OPO Infrastructure, or to recover damages, or both. Furthermore, the Other Property Owner hereby grants to Developing Property Owner a mortgage lien upon the Other Property Owner's tract to secure the payment of the OPO Infrastructure Costs and any Default Interest.

XI.
BOND ORDINANCE

A. **Bond Ordinance.** As a condition of the Development Agreement, the City approved Ordinance No. 18796 on September 11, 2006 ("Bond Ordinance") authorizing a sanitary sewer revenue obligation not to exceed \$1,083,000 and a highway allocation obligation not to exceed \$470,000. The Property Owners acknowledge that the Bond Ordinance is no longer necessary and concurs that the City may rescind said Bond Ordinance.

XII.
NOTICE

A. **Notice.** Any notices required to be forwarded to a Party hereto shall be deemed appropriately given or delivered if sent by registered or certified United States Mail, postage prepaid, return receipt requested, addressed or delivered personally as follows:

(1) If to the City:

Mayor
555 South 10th Street
Lincoln, Nebraska 68508

with a copy to:

City Attorney
575 South 10th Street
Lincoln, NE 68508

(2) If to Escrow Agent:

Union Bank and Trust Company
6811 South 27th Street P.O. Box 82535
Lincoln, NE 68501
Attention: Ralene Klostermeyer

with a copy to:

R. J. Shortridge
Perry, Guthery, Haase & Gessford, P.C., L.L.O.
233 South 13 Street, Suite 1400
Lincoln, NE 68508

(3) If to Rokeby Holdings:

Attention: Tom Schleich
8644 Executive Woods Drive
Lincoln, NE 68512

(4) If to Catholic Bishop:

The Catholic Bishop of Lincoln
P.O. Box 80328
Lincoln, NE 68510

(5) If to CWT:

Carlton W. Talcott
10400 South 84th Street
Lincoln, NE 68516

with a copy to:

Rick Krueger
Krueger Development Company, Inc. 8200 Cody Drive, Suite F
Lincoln, NE 68512

(6) If to M&CT:

Milton and Carol Talcott
8100 Rokeby Road
Lincoln, NE 68516

(7) If to SSAR:

Sean Smetter
9700 Thornwood Circle
Lincoln, NE 68512

(8) If to Smith:

Fred and Janet Smith
9301 South 84th Street
Lincoln, NE 68516

with a copy to:

Rick Krueger
Krueger Development Company, Inc.
8200 Cody Drive, Suite Lincoln, NE 68512

(9) If to C&JM:

Charles Marquardt
1818 Brent Blvd.
Lincoln, NE 68510

with a copy to:

c/o First Nebraska Trust
P.O. Box 81667
Lincoln, NE 68501

(11) If to Lincoln Federal:

Lincoln Federal Bancorp., Inc.
c/o Leo Schumacher
1101 N Street
Lincoln, NE 68508

(12) If to M&CT Trustees:

Milton and Carol Talcott
8100 Rokeby Road
Lincoln, NE 68516

with a copy to:

Rick Krueger
Krueger Development Company, Inc.
8200 Cody Drive, Suite F
Lincoln, NE 68512

(13) If to Talcott Land:

Talcott Land & Cattle, Inc.
10400 South 84th Street
Lincoln, NE 6516

with a copy to:

Rick Krueger
Krueger Development Company, Inc.
8200 Cody Drive, Suite F
Lincoln, NE 68512

(14) If to Southview:

Attention: Tom Schleich
8644 Executive Woods Drive
Lincoln, NE 68512

(15) If to Property Owners Attorney:

Seacrest & Kalkowski, PC, LLO
1111 Lincoln Mall, Suite 350
Lincoln, NE 68508

(16) If to Property Owners Engineer:

Civil Design Group
8535 Executive Woods Drive, Suite 200
Lincoln, NE 68512

Any Party hereto may change its address for notification purposes by written notice to all Parties hereto in the manner and method set forth within this paragraph.

XIII.
Miscellaneous

A. Release of Platted Lot. Notwithstanding any contrary provisions herein, any Platted Lot shall automatically be deemed released from all of the terms of this Agreement without further written release. A “Platted Lot” shall mean a lot as defined by the City subdivision ordinances that has been lawfully included within a final plat of the Property, or portion thereof.

B. 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 Agreement. The City is authorized to utilize condemnation, if necessary, to acquire such right of way and temporary and permanent easements.

C. Attachments. The following Attachments are attached to this Agreement and are incorporated herein by this reference:

<u>Attachment “A”</u>	Property Legal Descriptions and Map
<u>Attachment “B”</u>	Rokeby Holdings Annexation legal description
<u>Attachment “C”</u>	Comprehensive Plan Amendment (Future Land Use Map)
<u>Attachment “D”</u>	City Sewer Project including City Trunk Sewer 1 Overage, City Trunk Sewer 2 Overage and Segment A & B Overage
<u>Attachment “E”</u>	Rokeby Road Sewer Project--(i) re-grading certain sections of the Property and (ii) re-grading and re-rocking of Rokeby Road to its finish ground profile to permit the construction of Sewer C and Sewer D
<u>Attachment “F”</u>	Third Party Properties
<u>Attachment “G”</u>	Phasing Map for the Property
<u>Attachment “H”</u>	Sanitary Sewer Improvements

<u>Attachment “I”</u>	Water Line Improvements
<u>Attachment “J”</u>	Conceptual Plans for Rokeby Road RUTS
<u>Attachment “K”</u>	Rokeby Road, S. 70 th Street and S. 84 th Street Full and Limited Movement Intersections
<u>Attachment “L”</u>	Trails
<u>Attachment “M”</u>	OPO Infrastructure Map (Internal Sewer Lines, Internal Water Lines, and Internal Streets)
<u>Attachment “N”</u>	Escrowed Costs

The costs and expenses shown on the Attachments to this Agreement are the Property Owners’ Engineer’s best estimates and are not based upon actual incurred expenses and costs. Any pro rata share, expenses or costs that the City or Property Owners agree to pay for, fund, loan or reimburse in this Agreement shall be based upon the actual incurred planning, design and construction expenses and costs for the specific task or improvements described herein and not based the Property Owners’ Engineer’s best estimates.

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

E. 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 Agreement.

F. 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.

G. 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.

H. 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.

I. 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, Property Owner, 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.

J. 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 or unless otherwise stated herein.

K. Default. In the event any Property Owner defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the City may take such other remedies, legal or equitable, which the City may have to enforce this 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 Agreement, then a Property Owner may take such remedies, legal or equitable, to enforce this Agreement or to obtain damages for its breach.

L. Binding Effect. This 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 Property.

M. Recordation. This Agreement or a memorandum thereof shall be filed in the

Office of the Register of Deeds of Lancaster County, Nebraska at the City's cost and expense.

N. Cooperation. Whenever a Party's approval or consent shall be required under this 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.

O. 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 Agreement has been supplemented or amended, and if so, the substance and manner of such supplement or amendment;
- b. Whether this Agreement is still valid;
- c. The existence of any default under this 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 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.

P. Authority. The City has the authority to engage in the reimbursements to Property Owners described in this Agreement, and (i) has taken all steps to legally exercise that

authority, and (ii) the reimbursements to Property Owners described in this Agreement will comply with all applicable laws.

Q. **Escrow Agent.**

1. **Appointment of Escrow Agent.** The Property Owners hereby jointly and severally appoint Union Bank and Trust Company, of Lincoln, Nebraska Escrow Agent to serve as Escrow Agent on behalf of the Property Owners, and Escrow Agent hereby accepts said appointment. In order to facilitate the implementation of this Agreement, each Property Owner and the City agree that the City and said Property Owner may use the Escrow Agent to facilitate or transact any covenant, activity or obligation described herein between the City and said Property Owner, including, but not limited to payments, loans, repayments, reimbursements, notices, communications, approvals or provide such security of said Property Owner as described herein. The Escrow Agent on behalf of the Property Owners agrees to deliver and receive such payments, loans, repayments, reimbursements, notices, communications, and approvals or provide such other security of the Property Owners as described herein between the City and Property Owners to the extent funds have cleared and are available. Notwithstanding the prior sentence, the Parties acknowledge that the Escrow Agent is acting only in an agency capacity for the Property Owners and not in its own right or on its own behalf.

2. **Escrow Agent Fee.** The Property Owners, at their expense, agree to pay the Escrow Agent for its services under this Agreement, including all reasonable out of pocket costs and expenses, including postage, supplies, long distance telephone charges, wires, attorney's fees, engineers, or any other consultation that may be reasonably required.

3. **Right to Discontinue.** Should the Escrow Agent before or after close of any escrow described herein become aware of any conflicts in demands or claims with respect to this escrow or the rights of any of the Parties hereto, or any money or property deposited herein or effected hereby, the Escrow Agent shall have the right to discontinue any or all further acts on its part until such conflict is resolved to its satisfaction, and the Escrow Agent shall have the further right to commence or defend any action or proceedings for the determination of such conflict. The Property Owners

hereto agree to pay all costs, demands, judgments, and expenses, including reasonable attorneys' fees to the extent permitted by law, suffered or incurred by the Escrow Agent in connection with, or arising out of this Agreement, including, but without limiting the generality of the foregoing, a suit in interpleader brought by the Escrow Agent. In the event the Escrow Agent files a suit in interpleader, it shall ipso facto be fully released and discharged from all obligations further to perform any and all duties or obligations imposed hereunder. Property Owners acknowledge that the Escrow Agent is not undertaking any obligations or promises of the City, and to the extent the City is unable to fund or repay its obligations hereunder, the Property Owners shall have no claim or cause of action against the Escrow Agent. Likewise, the City acknowledges that the Escrow Agent shall not be required to fund any project costs or expenses contemplated by this Agreement from its own funds.

“CITY”

CITY OF LINCOLN, NEBRASKA, a municipal corporation

By: _____
Chris Beutler, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Chris Beutler, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation, on behalf of the municipal corporation.

(Seal)

Notary Public

“ESCROW AGENT”

Union Bank & Trust Company, a
Nebraska corporation

By: _____
Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____
2014, by _____, as _____ of
Union Bank & Trust Company, a Nebraska corporation, on behalf of the corporation, as
Escrow Agent.

(Seal)

Notary Public

“ROKEBY HOLDINGS”

ROKEBY HOLDINGS, LTD.,
a Nebraska limited partnership

By: Rokeby GP, LLC, a Nebraska limited liability company

By: Southview, Inc., a Nebraska corporation, Member

By: _____
Thomas G. Schleich, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this ____ day of _____, 2014, by Thomas G. Schleich, President of Southview, Inc., a Nebraska corporation, Member of Rokeby GP, LLC, a Nebraska limited liability company, General Partner of **Rokeby Holdings, Ltd.**, a Nebraska limited partnership, on behalf of the limited partnership.

Notary Public

“SOUTHVIEW”

SOUTHVIEW, INC., a Nebraska
corporation, Member

By: _____
Thomas G. Schleich, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing was acknowledged before me this ____ day of _____,
2014, by Thomas G. Schleich, President of **Southview, Inc.**, a Nebraska corporation, on behalf
of the corporation.

Notary Public

“CATHOLIC BISHOP”

The Catholic Bishop of Lincoln, a
Nebraska nonprofit corporation

By: _____
Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by _____, _____ of **The Catholic Bishop of Lincoln**, a Nebraska nonprofit corporation, on behalf of the nonprofit corporation.

(Seal)

Notary Public

“CWT”

Carlton W. Talcott, a single person

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by **Carlton W. Talcott**, a single person.

(Seal)

Notary Public

“M&CT”

Milton L. Talcott, a married person

Carol A. Talcott, a married person

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by **Milton L. Talcott**, a married person.

(Seal)

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by **Carol A. Talcott**, a married person.

(Seal)

Notary Public

“SSAR”

SSAR, LLC, a Nebraska limited liability company

By: _____
Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by _____, _____ of **SSAR, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

Notary Public

“CALRUDY”

Calrudy, LLC, a Nebraska limited liability company

By: _____
Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by _____, _____ of **Calrudy, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

Notary Public

“SMITH”

Fred H. Smith, a married person

Janet L. Smith, a married person

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by **Fred H. Smith**, a married person.

(Seal)

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by **Janet L. Smith**, a married person.

(Seal)

Notary Public

“LINCOLN FEDERAL”

Lincoln Federal Bancorp, Inc., a
corporation

By: _____
Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by
_____, _____ of **Lincoln Federal Bancorp, Inc.**, a corporation,
on behalf of the corporation.

(Seal)

Notary Public

“M&CT TRUSTEES”

Milton L. Talcott, Trustee

Carol A. Talcott, Trustee

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by **Milton L. Talcott, Trustee** a trustee of the _____, on behalf of the trust.

(Seal)

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by **Carol A. Talcott, Trustee** a trustee of the _____, on behalf of the trust.

(Seal)

Notary Public

“TALCOTT LAND”

Talcott Land & Cattle, Inc., a Nebraska corporation

By: _____
Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____ 2014,
by _____, as _____ of **Talcott Land & Cattle, Inc.**, a Nebraska corporation, on behalf of the corporation.

(Seal)

Notary Public

**ATTACHMENT “A”
Property Legal Descriptions**

Parcel 1 – Rokeby Holdings

Lot 68, Irregular Tract located in the Southwest Quarter of Section 27, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska

Lot 38, Irregular Tract located in the Southwest Quarter of Section 27, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska

Lots 13 and 15, Irregular Tracts located in the Northwest Quarter of Section 34, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska

Parcel 2 - Calruby

Lot 40, Irregular Tract located in the Southeast Quarter of Section 27, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska

Parcel 3 - Smith

Lots 10, 21 and 41, Irregular Tracts located in the Southeast Quarter of Section 27, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska.

Parcel 4 - SSAR

Lot 39, Irregular Tract located in the Southeast Quarter of Section 27, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska

Parcel 5 - M&CT

Lot 23, Irregular Tracts located in the Southeast Quarter of Section 27, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska

Parcel 6 - C&JM

Lot 1, Marquardt Addition, Lancaster County, Nebraska

Parcel 7 - Lincoln Federal

Lot 2, Marquardt Addition, Lancaster County, Nebraska

Parcel 8 - M&CT Trustees

Lots 35 and 36, Irregular Tracts located in the Northeast Quarter, Lots 32 & 33, Irregular Tracts located in the Southwest Quarter of Section 26, and Lots 31 & 34 Irregular Tracts located in the Southeast Quarter, all in Section 26, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska

Parcel 9 - Talcott Land

Lot 24, Irregular Tracts located in the Northwest Quarter of Section 35, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska

Parcel 10 - M. Talcott Trustee

North half of Lot 23, Irregular Tracts located in the Northwest Quarter of Section 35, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska

Parcel 11 – CWT

Lot 1, Irregular Tracts located in the Northwest Quarter of Section 35, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska

Lots 7 and 10, Irregular Tracts located in the Northeast Quarter of Section 34, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska

Parcel 12 - Catholic Bishop

Legal description of a part of Lot 6 I.T., located in the Northeast Quarter of Section 34, Township 9 North, Range 7 East of the Sixth P.M., Lincoln, Lancaster County, Nebraska and more particularly described as follows:

Referring to the Northwest Corner of Lot 6, said point also being the Northwest Corner of the East Half of the Northeast Quarter of said Section 34; Thence Easterly on the North Line of Lot 6 and the North Line of the Northeast Quarter on an assumed bearing of N 89°54'12" E for a distance of 547.73' to the Point of Beginning; Thence continuing on the last described course of N 89°54'12" E on the North Line of Lot 6 and the North Line of the Northeast Quarter for a distance of 311.28'; Thence S 00°05'48" E for a distance of 33.00' to a point on the South Right-of-way Line of Rokeby Road; Thence S 80°26'55" E on the South Right-of-way Line of Rokeby Road for a distance of 101.43'; Thence continuing on the South Right-of-way Line of Rokeby Road N 89°54'12" E for a distance of 344.92' to a point on the Westerly Right-of-way Line of South 84th Street; Thence S 00°00'00" E on the Westerly Right-of-way Line of south 84th Street for a distance of 36.78'; Thence continuing on the Westerly Right-of-way Line of south 84th Street S 05°24'14" W for a distance of 371.65'; Thence continuing on the Westerly Right-of-way Line of South 84th Street S 01°59'52" E for a distance of 165.42'; Thence S 89°54'12" W for a distance of 919.34'; Thence N 17°10'11" E for a distance of 651.40' to the Point of Beginning, and having a calculated area of 11.41 acres more or less.

Parcel 13 – Southview

The West Half of the Northeast Quarter of Section 34, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska; and

Legal description of a part of Lot 6 I.T., located in the Northeast Quarter of Section 34, Township 9 North, Range 7 East of the Sixth P.M., Lincoln, Lancaster County, Nebraska and more particularly described as follows:

Beginning at the Northwest Corner of Lot 6, said point also being the Northwest Corner of the East Half of the Northeast Quarter of said Section 34; Thence Easterly on the North Line of Lot 6 and the North Line of the Northeast Quarter on an assumed bearing of N 89°54'12" E for a distance of 547.73'; Thence S 17°10'11" W for a distance of 986.85'; Thence N 88°13'11" W for a distance of 42.79'; Thence S 00°30'00" E for a distance of 1703.13' to a point on the South Line of the Northeast Quarter; Thence S 89°50'13" W on the South Line of the Northeast Quarter for a distance of 213.00' to the Southwest Corner of Lot 6, said point also being the Southwest Corner of the East Half of the Northeast Quarter; Thence N 00°20'09" W on the West Line of Lot 6 and the West line of the East Half of the Northeast Quarter for a distance of 2644.34' to the Point of Beginning, and having a calculated area of 16.86 acres more or less.