



A92208

20R-227

Introduce: 6-29-20

RESOLUTION NO. A- 92208

BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the Annexation Agreement for Eveleo Expansion Development Agreement which is attached hereto, marked as Attachment "A", and made a part hereof by reference, between the City of Lincoln, Eveleo Acres, LLC, Butch Cassidy LLC, and Lincoln Federal Bancorp, Inc., for the annexation of property generally located at South 34<sup>th</sup> Street and Rokeby Road and construction of improvements to Rokeby Road from 31<sup>st</sup> to 40<sup>th</sup> Streets, as set forth in the Agreement, is hereby approved and the Mayor is authorized to execute the Annexation Agreement on behalf of the City.

BE IT RESOLVED that the City Clerk is directed to return one fully-executed copy of this Agreement to Tim Sieh, Assistant City Attorney, for distribution to the Property Owners.

BE IT FURTHER RESOLVED that the City Clerk is directed to file the Annexation Agreement for Eveleo Expansion Development Agreement with the Lancaster County Register of Deeds with the recording fees to be paid in advance by the Property Owners.

BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this Agreement to Michaela Dugan, Impact Fee Administrator.

See further Council Proceedings on next page.

Introduced by:

AYES: Bowers, Christensen, Meginnis, Raybould, Shobe, Ward, Washington;  
NAYS: None.

Approved as to Form & Legality:

City Attorney

Approved this 29 day of July, 2020:  
  
Mayor

ADOPTED

JUL 20 2020

BY CITY COUNCIL

AMENDED 7/20/20

**ANNEXATION AGREEMENT  
FOR EVELEO EXPANSION  
Development Agreement**

This Annexation Agreement ("Agreement") is made and entered into as of this 29 day of July, 2020 by and between the **City of Lincoln, Nebraska**, a municipal corporation ("City"), **Eveleo Acres, LLC**, a Nebraska limited liability company ("Eveleo"), **Butch Cassidy LLC**, a Nebraska limited liability company ("Butch Cassidy"), and **Lincoln Federal Bancorp, Inc.**, a Federal Corporation ("LFB").

**RECITALS**

1. Eveleo controls and intends to acquire fee simple title to and to develop a tract of the real property legally described as Lot 12 located in the NE Quarter of Section 31, Township 9, Range 7 east of the 6<sup>th</sup> Prime Meridian, Lancaster County, Nebraska and shown on Attachment "A" (the "Eveleo Property") generally located in the area of the intersection of South 34th Street and Rokeby Road in Lancaster County, Nebraska. Eveleo desires to cause the urban development of the Property.

2. Eveleo has requested that the City annex the Eveleo Property into the corporate limits of the City.

3. Eveleo has requested that the City rezone that portion of the Eveleo Property from AG to R-3 Planned Unit Development which are shown on Attachment "B" ("Planned Unit Development").

4. The Eveleo Property is currently shown as Residential on the 2040 Lincoln Area Future Land Use Map in Lincoln City-Lancaster County Comprehensive Plan and is designated Tier I, Priority B on the 2040 Priority Growth Areas Map.

5. The City's approval of the Annexation and Planned Unit Development are collectively referred to herein as "Governmental Actions".

6. The City is willing to approve the Governmental Actions and subsequently consider approving the use permits, special permits, preliminary plats, and final plats for the balance of the Eveleo 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. All preliminary plats, final plats, and other land use applications concerning the Eveleo Property shall be considered pursuant to the City's Comprehensive Plan, land development ordinances, applicable design standards, and the terms and conditions of this Agreement.

7. Butch Cassidy and LFB are the owners of parcels of real property immediately adjacent to the south and north sides of Rokeby Road between 34<sup>th</sup> and 40<sup>th</sup> Street respectively. The Butch Cassidy parcel is legally described as Lots 37 and 46, Irregular Tracts located in the Northeast Quarter of Section 31, Township 9, Range 7 East of the 6<sup>th</sup> P.M., Lancaster County, Nebraska (collectively "Butch Cassidy Property"). The LFB parcel is legally described as Lots 69 and 70, Irregular Tracts located in the South Half of Section 30, Township 9, Range 7 East of the 6<sup>th</sup> P.M as well as Outlot B, Wilderness Hills Ninth Addition, all located in Lancaster County, Nebraska (collectively "LFB Property"). The Butch Cassidy Property and LFB Property are shown on Attachment "A", attached hereto and incorporated herein.

8. Butch Cassidy and LFB acknowledge and agree that it would be beneficial to each of them to complete the permanent grading and paving of Rokeby Road adjacent to their

respective parcels simultaneously with construction of Rokeby Road from approximately S. 31<sup>st</sup> Street to the westerly roundabout terminus at the 40<sup>th</sup> Street intersection.

9. All parties hereto intend to jointly and cooperatively provide for the construction of Rokeby Road, as it is described below, beginning in 2020 with completion to occur in 2021.

10. This Agreement identifies the City's, Eveleo's, Butch Cassidy's, and LFB's respective responsibilities and contributions regarding the construction of infrastructure improvements necessary to facilitate the development of the property owned and/or controlled by the private parties hereto.

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. "Construct" or "construction" means installation of the infrastructure components according to the City's standard specifications and shall also include proper drainage, utility relocation (electric, cable, phone, communication, fiber optic, gas, water, rural water, and sediment) and erosion controls and measures.
- b. "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.

- c. "Grading" shall mean grading and erosion control for the Rokeby Road right-of-way from S. 31<sup>st</sup> Street on the west to approximately S. 40<sup>th</sup> Street on the east, installation of temporary culverts for drainage crossings, removal of human remains in the right-of-way, construction of a retaining wall along the north side of the existing cemetery on the south side of Rokeby Road, and necessary utility relocations.
- d. "Party" shall mean the City, Eveleo, Butch Cassidy and LFB individually and "Parties" shall mean the City, Eveleo, Butch Cassidy and LFB collectively.
- e. "Property Owner" shall mean Eveleo, Butch Cassidy and LFB individually and "Property Owners" shall mean Eveleo, Butch Cassidy and LFB collectively.
- f. "Rokeby Road Improvements" shall mean design and construction of a three lane section of paved roadway, including two through lanes and a center turn lane from S. 31<sup>st</sup> Street on the west to S. 40<sup>th</sup> Street with the two through lanes each measuring twelve (12) feet in width and an eleven (11) feet center turn lane all centered on the existing Rokeby Road. In addition, "Rokeby Road Improvements" includes the right turn lane improvements, both northbound and southbound, at the intersections of Rokeby Road and 34<sup>th</sup> and 37<sup>th</sup> Streets as shown on Attachment "C". Said turn lanes are to be graded, constructed by the City and paid for as a part of the Rokeby Road Improvements. The Rokeby Road Improvements are also shown schematically on Attachment "C", attached hereto and incorporated herein by this reference.

## 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 Eveleo Property legally described and shown on Attachment “A”; and
2. Amending the Lincoln zoning district maps to adopt the Planned Unit Development, attached hereto as Attachment “B”, on the Eveleo Property.

B. **Conditional Approval.** Approvals of the Governmental Actions 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.

## III.

### ROADWAY IMPROVEMENTS

A. **Rokeby Road.** Rokeby Road from S. 27<sup>th</sup> Street to S. 40<sup>th</sup> Street has been identified by the City as a minor arterial road during the 25-year planning period to be constructed as described in Subsection I. 1. f. above. Presently, Rokeby Road from S. 31st to S. 40th Street is a gravel two-lane rural cross section. The City, at its own cost and expense subject

to contributions from Eveleo, Butch Cassidy, and LFB described herein, shall design and construct, with the exception of the Grading that will be completed by Eveleo as described herein, the Rokeby Road Improvements plus from S. 31<sup>th</sup> Street east to the intersection of S. 40<sup>th</sup> and Rokeby Road as shown on Attachment "C". The Rokeby Road Grading shall be completed by Eveleo prior to approval of any final plat submitted for the Eveleo Property that includes a street taking access from Rokeby Road.

**B. Grading of Rokeby Road.** Eveleo shall, at its own cost and expense, subject to reimbursement as described below, cause to be conducted a grade study of Rokeby Road from the east end of the existing waterway crossing at approximately S. 31<sup>st</sup> Street and extending east to S. 40<sup>th</sup> Street. The grade study recommendations of Rokeby Road shall be subject to the approval of the City, Butch Cassidy and LFB. At the completion of the grade study, it shall become the property of the City and shall be used to guide the design and construction of the Rokeby Road Improvements. Further, Eveleo agrees, at its cost and expense subject to reimbursement as described herein, to grade the Rokeby Road right-of-way through the City's Executive Order construction process according to the approved grade study and in a manner that will facilitate the efficient construction of the Rokeby Road Improvements. All parties agree that any excess dirt not needed to complete the Grading of Rokeby Road shall be placed on the LFB Property. The City acknowledges that the grade study and permanent Grading of Rokeby Road is a necessary step in the design and construction of Rokeby Road, which is a designated minor arterial at this location, and therefore the cost of the grade study is reimbursable from arterial street impact fees as well as other sources of funding identified by the City. Accordingly, the City agrees to direct the arterial street impact fees actually generated from development of the Eveleo Property and pay them quarterly to Eveleo toward reimbursement of Eveleo's actual cost to grade the Rokeby Road right-of-way as determined by the RR Grading public bid amount as

defined below. The City acknowledges the advantages that may be realized, specifically with respect to cost savings, if the Rokeby Road Grading can be procured simultaneously and as a component of a larger grading operation to include grading the Eveleo Property necessary to facilitate development of the Eveleo Property. Therefore, the City agrees that the Grading of Rokeby Road between 31<sup>st</sup> and 40<sup>th</sup> streets (“RR Grading”) may be included as part of a larger grading operation that includes the Eveleo Property (“E Grading”). RR Grading and E Grading are collectively referred to as the “Grading Project” Eveleo agrees that as a condition precedent to being reimbursed for the RR Grading, it shall publicly bid both the RR Grading and Grading Project as separate projects through the City’s Purchasing Division and that it shall be bound by the City’s procurement requirements as it relates to selection of a contractor to complete the RR Grading and may elect to be bound if the Grading Project bid is selected by Eveleo

Eveleo shall privately bid the E Grading Project. The public RR Grading bid and the private E Grading bid shall be added together and the total costs shall be the Separate Grading Project costs. The parties expect the publicly bid Grading Project costs to be less than the Separate Grading Project costs and agree to equitably share in the cost savings. Absent any other agreement, the amount of reimbursement paid by the City to Eveleo for the RR Grading under this Agreement shall be equal to the ratio of the RR Grading relative to the Separate Grading Project costs. The City and Eveleo recognize and acknowledge that the estimate of costs for the Rokeby Road Improvements described above includes \$300,000.00 in Grading costs. Further, the City and Eveleo agree that only RR Grading costs may be reimbursed by the City through the use of arterial street impact fees. In the event the RR Grading cost between S. 31<sup>st</sup> and S. 40<sup>th</sup> Streets exceeds \$300,000.00, either the Property Owners and the City may meet to discuss cost saving changes for the Grading, or the City may contribute additional funding toward completion



of the Grading. In the event the parties cannot agree on implementing cost saving measures, the City shall decide the cost saving measures to be implemented.

**C. Design of Rokeby Road Improvements**

The Parties agree that The Clark Enersen Partners Inc. (“**Clark Enersen**”) has completed substantial design work and possesses substantial experience with the requirements of the Rokeby Road Improvements. The City agrees that Clark Enersen is qualified to perform the design services for the Rokeby Road Improvements. Further, the City acknowledges that selecting a different design consultant would result in duplication of work, be an inefficient use of resources, and may cause unnecessary delay and cost in constructing the Rokeby Road Improvements. Olsson shall be engaged as a subconsultant in order to better coordinate the design of the Rokeby Road Improvements with the LFB development. Therefore, the parties agree that Clark Enersen will be engaged as *primary contractor* and recognize that Clark Enersen will engage Olsson as a Subcontractor.

**D. Rokeby Road Improvements Funding**

The parties hereto agree and acknowledge that the estimated cost to design, grade, and construct the Rokeby Road Improvements described herein are Two Million Nine Hundred Thousand and No/100 Dollars (\$2,900,000.00). The City, by agreeing to design and construct said improvements at its cost, reserves the right to reject all bids for the design and construction of the Rokeby Road Improvements if said costs exceed the estimate provided herein. In the alternative, the City may elect, at its sole discretion, to make alterations to the design in order to achieve cost savings necessary to reduce the costs of said project to an amount consistent with the above estimate. Should the City elect to make any alterations to the design, the City shall notify the other parties to this Agreement of such change, but, except with the mutual written

consent of all other parties hereto, the City shall not materially alter the lane configuration or the access points for the Rokeby Road Improvements shown on Attachment "C".

1. Eveleo acknowledges and agrees that the City does not have sufficient funds on hand to design, grade and construct the Rokeby Road Improvements commencing in 2020 and that funding for the total estimated cost for the Rokeby Road Improvements described above in Section III. C. includes an estimated \$300,000 in anticipated arterial street impact fees to be generated by private development of the Eveleo Property. Eveleo has agreed to complete the Grading necessary for the Rokeby Road Improvements at its cost subject to reimbursement according to the terms described above in Section III. B. In the event that the costs and expenses realized by Eveleo for the Grading of the Rokeby Road right-of-way do not exceed the estimated arterial street impact fees to be generated from the Eveleo Property, Eveleo agrees to contribute the remainder of the anticipated funds to the City to facilitate design and construction of the Rokeby Road Improvements subject to being reimbursed for said contribution from the arterial street impact fees generated by development of the Eveleo Property and the Reunion Ridge Property in the same manner described in Section III. B. for Grading of the Rokeby Road right-of-way by Eveleo.

2. Butch Cassidy and LFB acknowledge and agree that the City does not have sufficient funds on hand to design and construct the Rokeby Road Improvements commencing in 2020. In order to facilitate the construction of said improvements, said parties hereby agree to contribute prior to the City advertising for bids for construction of the Rokeby Road Improvements the arterial street

impact fees anticipated to be generated through private development of the Butch Cassidy Property and LFB Property as shown on Attachment "A" as follows:

Butch Cassidy: \$175,000.00

LFB: \$325,000.00

Said contribution shall be made in advance of the City advertising for bids for construction of the Rokeby Road Improvements. Said funds shall be used solely for the purpose of designing and constructing the Rokeby Road Improvements. In recognition of this contribution of anticipated arterial street impact fees, the City agrees to direct the arterial street impact fees (i) actually generated by development of the Butch Cassidy Property to Butch Cassidy and actually generated by development of the LFB Property to LFB as reimbursement for said party's contribution as described in this subsection.

3. The City, Eveleo, Butch Cassidy, and LFB acknowledge and agree that the arterial street impact fees generated from development of the Eveleo Property, the Butch Cassidy Property, and the LFB Property are projected to be insufficient to cover the costs to be incurred by the City in designing and constructing the Rokeby Road Improvements. In order to provide the financial resources necessary for City's design and construction of the Rokeby Road Improvements commencing in 2020, Eveleo, Butch Cassidy, and LFB agree to make cash contributions or submit to the City an irrevocable letter of credit or other security acceptable to the City Attorney prior to the City advertising for bids for the construction of the Rokeby Road Improvements, but in no event later than March 1, 2021, in the following amounts prior to City advertising for bids for said project:

Eveleo:	\$200,000.00
Butch Cassidy:	\$315,000.00
LFB:	\$585,000.00

If a Party submits a Letter of credit or other security acceptable to the City Attorney for its contribution share of the project, the payments by the parties shall be made prorata based upon the above amounts as invoices are received by the City and the City's portion of the funds allocated to the project have been exhausted. The parties shall submit payment to the City within ten (10) business days of receipt of the City's request for payment.

4. The City approved the imposition of an additional ¼ cent sales tax to be used for restoring, rehabilitating, and expanding the City's street infrastructure. Having imposed such a tax, the City Council has subsequently identified the Rokeby Road Improvements described herein as a project toward which a portion of the additional sales tax revenue generated by the additional ¼ cent sales tax should be allocated.

Therefore, in addition to the arterial street impact fees generated by the development of the Property, the City, subject to future appropriation by the City Council, hereby agrees to allocate Two Million One Hundred Thousand and No/100 Dollars (\$2,100,000.00) from the revenue generated by the additional ¼ cent sales tax for the design and construction of the Rokeby Road Improvements and further agrees that (i) that One Million and No/100 Dollars (\$1,000,000.00) of said funds shall be funded by the City prior to the City advertising for bids for the construction of the Rokeby Road Improvements and (ii) One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00) of said funds shall be applied, subject to appropriation by the City Council, toward reimbursing Eveleo,

Butch Cassidy, and LFB for their respective contributions toward designing and constructing the Rokeby Road Improvements. Said One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00) of sales tax revenue shall be paid to Eveleo, Butch Cassidy, and LFB, according to the following schedule:

FY2020-2021

Eveleo: \$200,000.00

FY2021-2022

Butch Cassidy: \$87,500.00

LFB: \$162,500.00

FY2022-2023

Butch Cassidy: \$227,500.00

LFB: \$422,500.00

Like the arterial street impact fee payments described above, the sales tax revenue shall be paid on a quarterly basis as sales tax is received by the City throughout the specified fiscal years.

The City agrees that it shall select the construction company responsible for constructing said Rokeby Road Improvements through the City's Purchasing Division according to the City's requirements for procurement of such services.

Eveleo, Butch Cassidy, and LFB expressly acknowledge and agree that nothing in this Agreement represents a general obligation on the part of the City to repay said parties for their contribution toward the cost of designing and constructing of the Rokeby Road Improvements. Likewise, the Property Owners recognize that the schedule of repayment shown above is based on projected sales tax receipts and acknowledge that said projections may prove to be incorrect

thereby resulting in less revenue being realized by the City from this source by said fiscal year(s). The City, in its sole discretion, will determine how the funds actually received in the Fiscal Years described above are distributed. Notwithstanding any contrary provision herein, the City shall remain liable to reimburse each Property Owner the full the amounts stated above when actual sales tax receipts become available.

**E. Reunion Ridge.** The City is aware that the owner of property immediately adjacent to the Eveleo Property to the south intends to cause said property to be partially or wholly subdivided and developed for residential use. This property is legally described and shown on Attachment "A" which is attached hereto. For purposes of this Agreement, said property shall be referred to as "**Reunion Ridge Property**". The City acknowledges and agrees that the Reunion Ridge Property shall take its access to the City's system of arterial streets from that section of Rokeby Road included in the Rokeby Road Improvements. Therefore, the City agrees that the arterial street impact fees generated by development of the Reunion Ridge Property shall first be allocated to and used, to the extent necessary to reimburse Eveleo the actual cost of Grading the Rokeby Road right-of-way for any unreimbursed directed arterial impact fee amount of \$300,000 and thereafter shall be allocated to and used, to the extent necessary to reimburse Butch Cassidy and LFB for any unreimbursed directed arterial impact fee amount of \$315,000.00 and \$585,000.00, respectively, based upon the following percentages:

35% paid to Butch Cassidy

65% paid to LFB.

**F. Construction Timeline for Rokeby Road Improvements.** The parties hereto agree to cooperate with one another in order to facilitate the construction of the Rokeby Road Improvements according to the following timeline:

Design of Rokeby Road Improvements	Completed by September 30, 2020
Grading	Completed by March 30, 2021
Utility Relocations	Completed by
Paving Construction	Completed by December 31, 2021

For purposes of this Agreement, completion of the Paving Construction shall mean open to the traveling public even though there may be additional tasks to be completed that are otherwise appropriate to delay until the 2022 construction season. The Parties hereto recognize and acknowledge that the timeline set forth above is aspirational in nature and agree that it may be delayed by unforeseen circumstances such as, but not limited to, weather events, other acts of nature, pandemics, or any other unforeseen event that may cause one or all of the Parties to pull resources away from the Rokeby Road Improvements.

**G. Internal Streets.** Additional City local and collector streets will be required within the Eveleo Property to serve the Eveleo Property (collectively “Internal Streets” and individually an “Internal Street”). The Internal Streets shall be constructed by Eveleo to the extent that such Internal Streets are shown within a preliminary plat, special permit, use permit or planned unit development. Construction of the Internal Streets shall be at such Eveleo’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.

**H. Dedication of Street Right-of-Way.** At the time of the applicable final platting or upon the earlier request by the City prior to construction of the Rokeby Road Improvements, Eveleo, Butch Cassidy, and LFB agree to dedicate, at no cost to the City, the additional right-of-

way needed along Rokeby Road to ultimately provide 120 feet of right-of-way necessary for Rokeby Road between S. 31<sup>st</sup> Street and S. 40<sup>th</sup> Street with additional right-of-way required at the intersections for future roundabouts and trails if required, to the satisfaction of the Lincoln Transportation and Utilities Department. Eveleo 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 the Property, without additional cost or consideration, in conjunction with the construction of such Internal Street as set forth herein.

#### IV.

#### 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 10<sup>th</sup> Street  
Lincoln, NE 68508

(2) If to Eveleo Development LLC:

Peter W. Katt  
6333 Apples Way  
Lincoln, NE 68516

(3) If to Butch Cassidy, LLC:

A. John Sampson  
Sampson Construction Co.



5825 South 14th Street  
Lincoln, NE 68512

With a copy to:

Kent Seacrest  
1128 Lincoln Mall, Suite 105  
Lincoln, NE 68508

If to Lincoln Federal Bancorp, Inc:

Leo Schumacher  
1101 N Street  
Lincoln, NE 68508

With a copy to:

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.

## VI.

### MISCELLANEOUS

A. **Release of Platted Lot.** Notwithstanding any contrary provisions herein, any Platted Lot on the Eveleo Property, Butch Cassidy Property and LFB Property that is conveyed to an unrelated third party shall automatically be deemed released from Property Owner's obligations and liabilities described in 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 Eveleo Property, Butch Cassidy Property and LFB 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 Rokeby Road Improvements and related improvements 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 Map             |
| <u>Attachment "B"</u> | Planned Unit Development |
| <u>Attachment "C"</u> | Rokeby Road Improvements |

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 the 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 the 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. A Party whose approval or consent is requested under the terms of this Agreement shall either provide the approval requested to the requesting party within fourteen (14) days of receiving the request for such approval or consent or notify the requesting Party that the receiving Party is denying such approval or consent within fourteen (14) days of receiving the request. Any 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. Authority.** The City has the authority to engage in the reimbursements to Property Owner described in this Agreement, and (i) has taken all steps to legally exercise that authority, and (ii) the reimbursements to Property Owner described in this Agreement will comply with all applicable laws.

**P. Other Funding.** Notwithstanding the foregoing, regarding the segregation and use of the segregated arterial street impact fees and the sales tax revenue generated by the additional ¼ cent sales tax that will be repaid to the Property Owners, the City at its sole discretion, shall have the option to fund all or portions of said costs from other funding sources, should other funding become available.





“BUTCH CASSIDY”

**BUTCH CASSIDY, LLC**, a Nebraska limited liability company

By: John Sampson

Name: John Sampson

Title: Manager

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER    )

The foregoing was acknowledged before me this 10 day of JULY, 2020, by John Sampson, as Manager of Butch Cassidy, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

Seal



Steffany J. Kobes  
Notary Public

"LFB"

**LINCOLN FEDERAL BANCORP, INC.,**  
a Federal Corporation

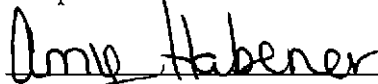
By: 

\_\_\_\_\_  
Name: Leo J. Schumacher  
Title: President/CEO

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF Lancaster)

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of July, 2020, by Leo J. Schumacher, President/CEO of Lincoln Federal Bancorp, Inc., a Federal Corporation, on behalf of the Federal Corporation.

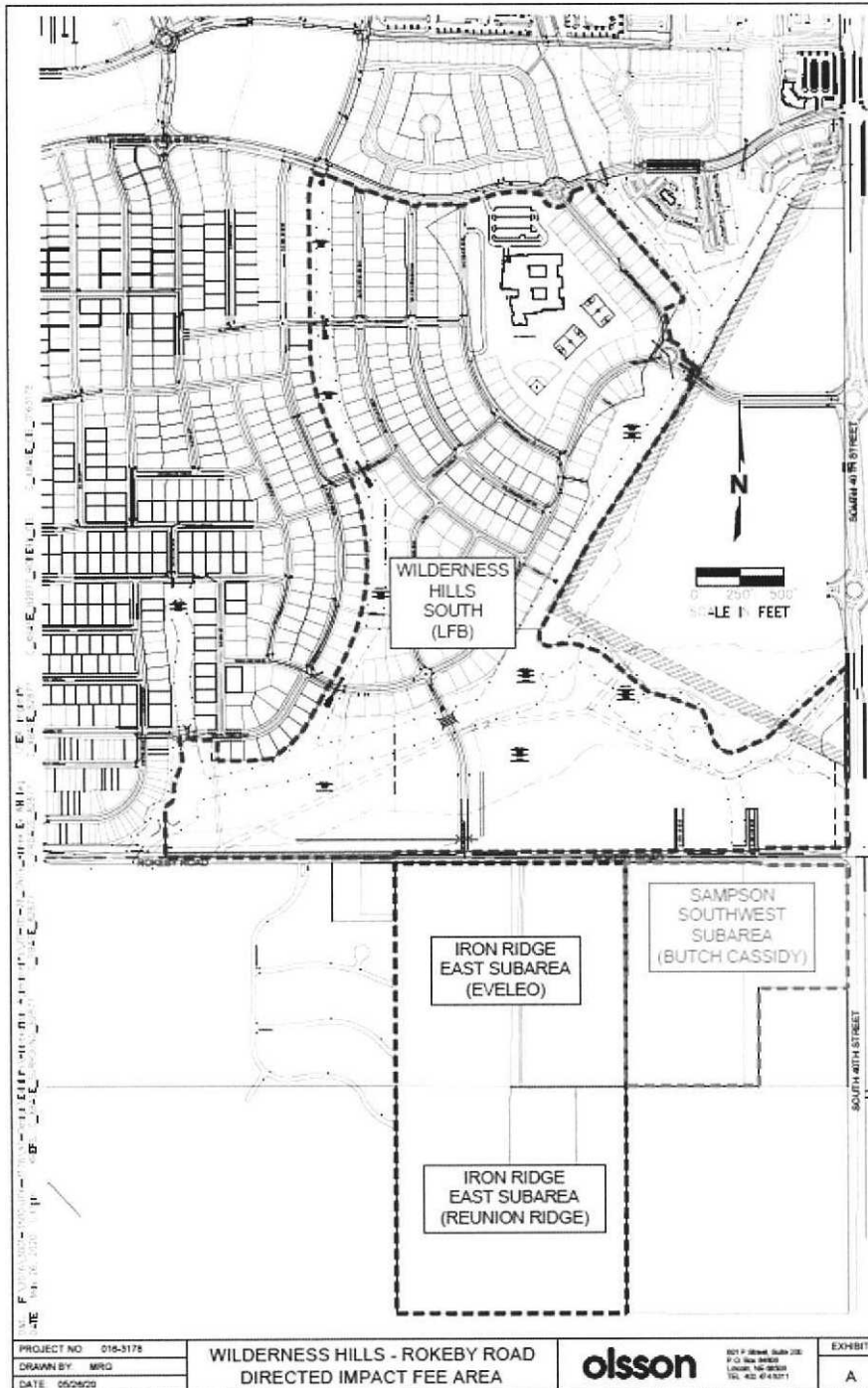


  
\_\_\_\_\_  
Notary Public

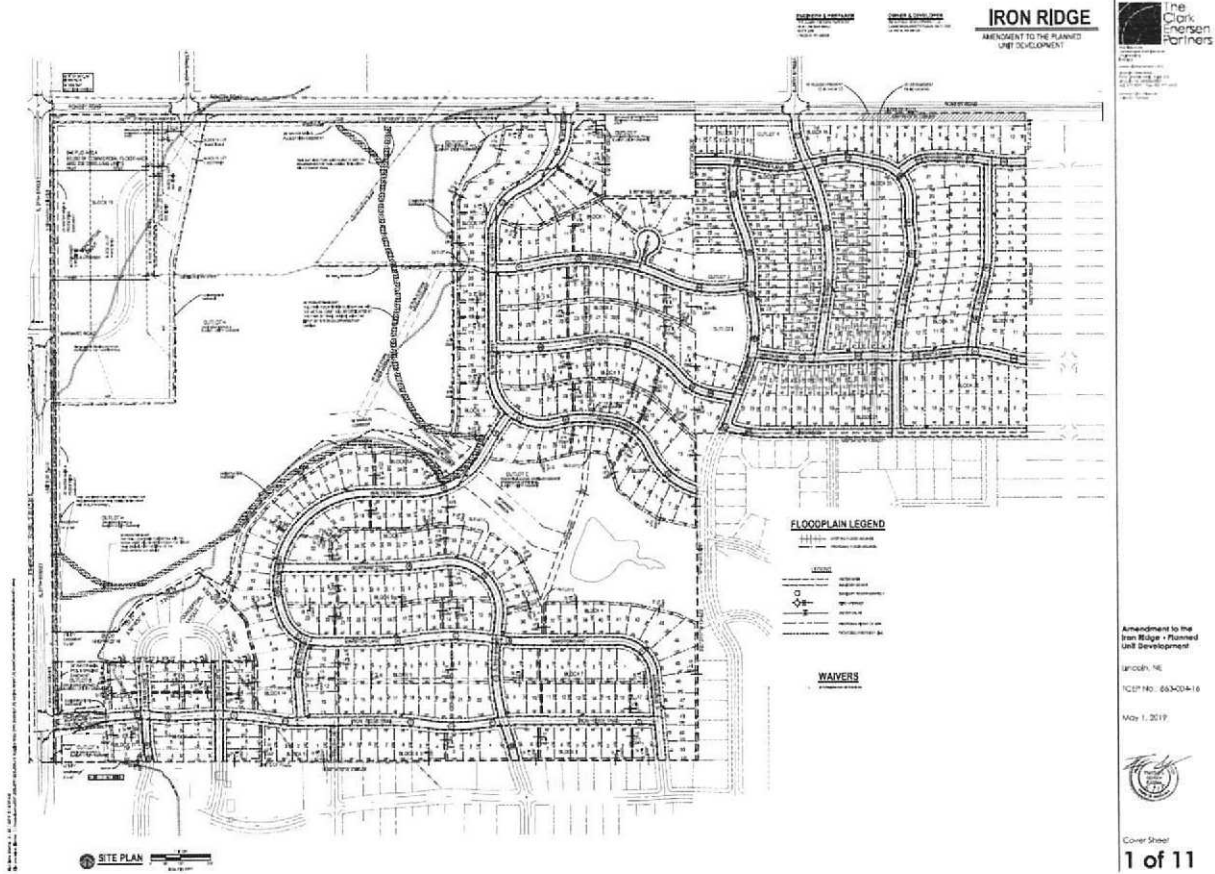


ATTACHMENT "A"

THE PROPERTY

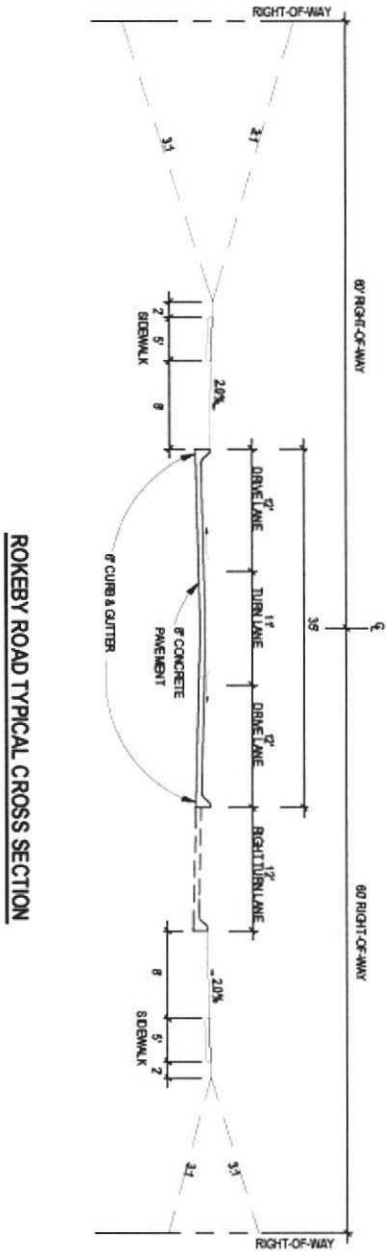


ATTACHMENT "B"  
PLANNED UNIT DEVELOPMENT



# ATTACHMENT "C"

## ROKEBY ROAD IMPROVEMENTS



**20R-227**

7/20/2020 Council Proceedings:

CHRISTENSEN Moved to Amend Bill No. 20R-227 to substitute the attached Resolution.

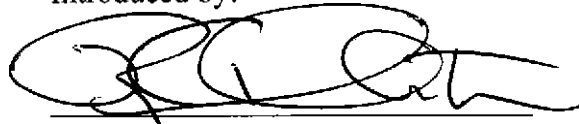
Seconded by Raybould & carried by the following vote: AYES: Bowers, Christensen, Meginnis, Shobe, Raybould, Ward, Washington; NAYS: None.

20R-227

MOTION TO AMEND NO. 1


I hereby move to amend Bill No. 20R-227 to adopt a substitute Agreement attached hereto.

Introduced by:



AYES: Bowers, Christensen, Meginnis,  
Raybould, Shobe, Ward, Washington;  
NAYS: None.

Approved as to Form and Legality:

  
City Attorney

Requested by: Law Department

Reason for Request: This substitute agreement removes the term "Site Related Improvements" throughout the agreement as that term is no longer necessary since the turn lanes are considered part of the Rokeby Road improvements. It also capitalizes "grading" in a number of places in order to indicate where the defined term "Grading" applies.

**ADOPTED**

JUL 20 2020

**BY CITY COUNCIL**