



A92327

20R-331

Introduce: 8-24-20

RESOLUTION NO. A- 92327

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

2 That the Conditional Zoning and Annexation Agreement for 40th and Rokeby Road which
3 is attached hereto, marked as Attachment "A", and made a part hereof by reference, between the
4 City of Lincoln, Bryan Medical Center, and Sundance, LLC, for the development of the property
5 generally located at South 40th Street and Rokeby Road and re-zoning the property from AG
6 Agricultural District to R-5 Residential District PUD and from AG Agricultural District to O-3
7 Office Park District PUD, as set forth in the Agreement, is hereby approved and the Mayor is
8 authorized to execute the Conditional Zoning and Annexation Agreement on behalf of the City.

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

11 BE IT FURTHER RESOLVED that the City Clerk is directed to file the Conditional
12 Zoning and Annexation Agreement for 40th and Rokeby Road with the Lancaster County Register
13 of Deeds with the recording fees to be paid in advance by the Property Owners.

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

Introduced by:

AYES: Bowers, Christensen, Raybould, Ward,
Washington; NAYS: Nonc; ABSENT:
Meginnis, Shobe.

Approved as to Form & Legality:

City Attorney

Approved this 18 day of Sept., 2020:

Mayor

ADOPTED

SEP 14 2020

BY CITY COUNCIL

**CONDITIONAL ZONING AND ANNEXATION AGREEMENT
FOR 40TH AND ROKEBY ROAD**

This Conditional Zoning and Annexation Agreement for 40th and Rokeby Road (“**Agreement**”) is made and entered into as of the date of execution by the last signatory hereto as indicated below by and among the **City of Lincoln, Nebraska**, a municipal corporation (“**City**”) **Bryan Medical Center**, a Nebraska nonprofit corporation (“**Bryan**”) and **Sundance, LLC**, a Nebraska limited liability company (“**Sundance**”). Bryan and Sundance are sometimes referred to individually as “**Parcel Owner**” and collectively as “**Parcel Owners**”.

RECITALS

1. Sundance is currently the owner of the real estate identified as Parcel Nos. 1 and 2 on Exhibit “A”. In the near future, Bryan will be acquiring title to Parcel No. 2 from Sundance through a gifting agreement. Parcel Nos. 1 and 2 are individually referred hereafter as “**Parcel 1**” and “**Parcel 2**” respectively and collectively hereinafter referred to as the “**Property**”. The City, Bryan and Sundance desire to cause the urban development of the Property.

2. The Property is shown as Tier 1, Priority B (2025) on the 2040 Priority Growth Areas (Map 1.3 Growth Tiers with Priority Areas) in the Lincoln City-Lancaster County Comprehensive Plan.

3. The City, Bryan and Sundance desire that the Property be annexed pursuant to the terms and conditions stated in this Agreement.

4. In addition to annexing the Property, Bryan and Sundance have applied to the City to have the zoning designation for Parcel 1 changed from AG to R-5 PUD and Parcel 2 from AG to O-3 PUD.

5. The annexation and change of the zoning designation for the Property are collectively referred to herein as “**Governmental Actions**”.

6. The City is willing to approve the Governmental Actions requested provided that, the infrastructure improvements are constructed in a timely manner to serve and properly accommodate development of the Property.

7. This Agreement identifies Bryan’s, Sundance’s and City’s responsibilities regarding the construction of impact fee facility infrastructure improvements necessitated upon annexation and development of the Property as well as other infrastructure improvements necessary to facilitate development of the Property.

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants established herein, the parties do hereby agree as follows:

I.

**CONCURRENT APPROVAL OF FIRST PHASE GOVERNMENTAL ACTION;
CONDITIONAL APPROVAL**

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

1. Annexation #20001; and
2. Change of Zone #20002.

B. Conditional Approval of First Phase and Subsequent Governmental Actions.

The City’s Approvals of the Governmental Actions are conditioned upon the terms, conditions and understandings as set forth in this Agreement being fulfilled. The Parcel Owners understand and agree that, notwithstanding the conditional nature of such governmental approvals hereto, the City Council for the City of Lincoln, on its own motion or at the request of the Parcel Owners or any subsequent owner of all or a portion of the Property, 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 any Parcel thereof; or (iv) approve or amend plats, dedications, use permits, special permits, community unit plans, building permits or other land use controls, as future development and circumstances may warrant.

II.

ARTERIAL STREET IMPROVEMENTS

A. South 40th Street.

1. Existing Conditions. Presently, S. 40th Street south of Rokeby Road is an existing two-lane paved county road and is designated as a minor arterial street in the 2040 Lincoln City – Lancaster County Comprehensive Plan. No improvements to this segment of S. 40th Street are shown in the Lincoln City – Lancaster County Comprehensive Plan during the 25-year planning period. This segment of S. 40th Street is also described in the City’s Access Management Policy as a Minor Arterial Street.

2. Access Points. The City and Parcel Owners agree that ingress and egress to and from the Property along S. 40th Street will be limited to the 1/8 mile access point (right-in, right-out turn movements) abutting the Property as shown on Exhibit “B”, which is attached hereto, the 1/4 mile access point (full turn movements) abutting the Property as shown on Exhibit “B”, and a future ½ mile access point (full turn movements) with the exact location of each of the access points to be determined by the City through the City’s Executive Order construction process described below or through the real estate subdivision process.

3. S. 40th Arterial Improvements. In order to accommodate increasing traffic demands as well as development of the Property and the surrounding area, the following Arterial

Street Impact Fee Facility Improvements are needed (collectively “S. 40th Arterial Improvements”):

(a) “**Roundabout at S. 40th & Rokeby Road**”: a permanent urban roundabout at the intersection of S. 40th Street and Rokeby Road as shown on Exhibit “B”;

(b) “**1/4 mile Roundabout**”: a permanent roundabout one-quarter (1/4) mile south of the S. 40th & Rokeby Road Roundabout as shown on Exhibit “B”;

(c) “**South 40th Street Connection**”: a permanent urban two-lane S. 40th Street connecting S. 40th & Rokeby Road Roundabout and 1/4 mile Roundabout; and

(d) “**1/8 mile Access Point**”: a permanent right-in, right-out turn intersection access point may be needed by Sundance and shall be constructed approximately one-eighth (1/8) miles south of the S. 40th & Rokeby Road Roundabout.

4. S. 40th Arterial Improvements Timeline, Design Process and Construction Process. The S. 40th Arterial Improvements will be completed on or before December 31, 2022. On behalf of the City, Bryan and Sundance shall design the ¼ mile Roundabout and South 40th Street Connection and competitively bid, and construct the S. 40th Arterial Improvements through the City’s Executive Order construction process. The final design for the S. 40th Arterial Improvements will be submitted to the City for review and approval prior to commencement of construction. The parties acknowledge that construction costs for the S. 40th Arterial Improvements shall include testing and inspection fees. If required, the S. 40th Arterial Improvements shall be publicly bid and awarded as provided by law.

5. Professional Consulting Services.

(a) For purposes of this Agreement, the City hereby recognizes and agrees that Bryan’s consultant, Olsson, has completed a significant amount of preliminary design work with respect to the ¼ mile Roundabout and South 40th Street Connection. The City has confirmed that

Olsson has been deemed to be qualified to perform the design services for the ¼ mile Roundabout and South 40th Street Connection, including related grading study, by the City's Purchasing Division. Finally, the City acknowledges that to select a different design consultant to reproduce such work product related to the ¼ mile Roundabout and South 40th Street Connection would be inefficient and likely to result in unnecessary delay in the design, grading and construction of the ¼ mile Roundabout and South 40th Street Connection. Therefore, based upon the recommendation of the Director of Lincoln Transportation and Utilities, the City agrees to, and hereby does, waive those procurement procedures related to selection of consultants for professional consulting services as outlined in Executive Order No. 80199 dated October 9, 2007 and selects Olsson to perform the design services for the ¼ mile Roundabout and South 40th Street Connection, including the related grading study.

(b) The City has completed a public procurement process and selected an engineer for the Roundabout at S. 40th Street & Rokeby Road, including the related grade study, proposed roadway lanes and stormwater improvements located to the north and east of the Roundabout at S. 40th Street & Rokeby Road. City agrees, at its expense, to cause its selected engineer to coordinate and work with Olsson on the preliminary and final design of the S. 40th Arterial Improvements so that the final construction plans and permits for the S. 40th Arterial Improvements can be coordinated, reviewed and approved by the City of Lincoln by September 1, , 2021 so that the City can provide Bryan and Sundance the approved final construction plans and permits for the S. 40th Arterial Improvements by said date. In turn, said date will allow Bryan and Sundance to publicly bid and awarded as provided by law bid the S. 40th Arterial Improvements by October 1, , 2021 and complete the S. 40th Arterial Improvements by December 31, 2022.

6. Estimated Cost for the S. 40th Arterial Improvements. The estimated design and construction costs for (i) the Roundabout at S. 40th & Rokeby Road is \$2,500,000.00 and (ii)

¼ mile Roundabout and South 40th Street Connection is \$2,979,000. The final design and construction costs for the S. 40th Arterial Improvements shall be funded as described in Paragraphs 7, 8 and 9 below.

7. Parcel Owner's Initial Contributions. The City does not currently have funding to pay for the S. 40th Arterial Improvements. Bryan shall initially fund eighty-eight and 7/10th percent (88.7%) (estimated cost of \$2,641,993) and Sundance shall initially fund eleven and 3/10th percent (11.3%) (estimated cost of \$337,007 of the actual costs for the ¼ mile Roundabout and South 40th Street Connection, which shall be subject to reimbursement by the City to Bryan and Sundance as set forth below. If the 1/8 mile Access Point is needed by Sundance, then Sundance, at its expense shall pay for the design and cost of the 1/8 mile Access Point.

8. City S. 40th Street Contributions. 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 S. 40th Arterial 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.

(a) The City, at its expense, shall timely fund the design and construction of the Roundabout at S. 40th & Rokeby Road.

(b) 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 Four Hundred Thousand and No/100 Dollars (\$400,000.00) from the revenue generated by the additional ¼ cent sales tax for the design and construction of the ¼ mile Roundabout and South 40th Street Connection and further agrees that said funds shall be applied, subject to appropriation by the City Council, toward reimbursing Sundance and Bryan, in part, for

their respective contributions toward designing and constructing the S. 40th Arterial Improvements. Said sales tax revenue shall be paid to Sundance and Bryan, according to the following schedule:

FY2024-2025

Bryan: \$354,749.00

Sundance: \$45,251.00

Like the arterial street impact fee payments described above, the sales tax revenue shall be paid on a quarterly basis starting November 1, 2024 as sales taxes are received by the City throughout the specified fiscal year.

(c) Sundance and Bryan 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 Parcel 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. 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 Parcel Owner the full the amounts stated above when actual sales tax receipts become available.

9. Segregated Arterial Street Impact Fees. The City agrees to segregate arterial street impact fees collected by the City (i) from development of Parcel 1 after the date of this Agreement (“**Sundance Segregated Arterial Street Impact Fees**”) and utilize said Sundance Segregated Arterial Street Impact Fees to fund and contribute to the cost of the ¼ mile Roundabout and South 40th Street Connection and (ii) from development of Parcel 2 after the date of this Agreement (“**Bryan Segregated Arterial Street Impact Fees**”) and utilize said Bryan Segregated

Arterial Street Impact Fees to fund and contribute to the cost of ¼ mile Roundabout and South 40th Street Connection. The Sundance Segregated Arterial Street Impact Fees and Bryan Segregated Arterial Street Impact Fees are sometimes referred to herein as “**Segregated Arterial Street Impact Fees**”. In the event there are not enough Segregated Arterial Street Impact Fees available to fund the ¼ mile Roundabout and South 40th Street Connection at the time they are constructed by the applicable Parcel Owners, the Parcel Owners shall fund said ¼ mile Roundabout and South 40th Street Connection based upon the above stated percentages and said costs shall be reimbursed to the applicable Parcel Owner by the City when said Parcel’s Segregated Arterial Impact Fees become available. Sundance shall be entitled to receive the Sundance Segregated Arterial Street Impact Fees generated from Parcel 1 to reimburse Sundance for its initial contributions and Bryan shall be entitled to receive the Bryan Segregated Arterial Street Impact Fees generated from Parcel 2 to reimburse Bryan for its initial contributions.

10. Dedication of S. 40th Street Right-of-Way. At the time of final platting, or upon the earlier request by the City, the Parcel Owners, their successors and assigns, and any subsequent owner of the Property whose interest includes land needed for the S. 40th Arterial Improvements and any future roundabout or intersection to be constructed at the one-half (1/2) mile south of the S. 40th & Rokeby Road Roundabout shall dedicate or convey to the City the necessary right-of-way for the improvements and any temporary construction easements without additional cost to the City. Said S. 40th Street Right-of-Way shall also include a future four-lane section of S. 40th Street, the additional right-of-way needed to provide 60 feet of right-of-way from the center line of S. 40th Street, with an additional ten (10) feet of right-of-way at intersections that are not roundabouts, which additional ten (10) feet of right-of-way length shall be pursuant to the City of Lincoln’s Design Standards for turn lanes for the intersections that are not roundabouts.

11. Rokeby Road from S. 34th Street to S. 40th Street. In order to assist in the opening of the first phase of the development on Parcel 2 by December 31, 2022, the City will use its best efforts to cause the design and construction of Rokeby Road from S. 34 Street to S. 40th Street on or before December 31, 2022 pursuant to the Annexation Agreement for Iron Ridge Expansion (Development Agreement), by and between the City of Lincoln, Nebraska, a municipal corporation, Iron Ridge Development, LLC, Butch Cassidy, LLC, and Lincoln Federal Bancorp, Inc.

B. Internal Streets.

1. Internal Streets within the Property. Additional City local streets will be required within the Property to serve development of the Property (collectively “**Internal Streets**” and individually an “**Internal Street**”). The Internal Streets shall be constructed (or security provided in a form acceptable to the City Attorney) by the Parcel Owners or their successors and assigns whose parcel of the Property is included within a preliminary plat, special permit, use permit or planned unit development (collectively “**Governmental Entitlement**”) which shows an Internal Street. Construction of the Internal Street shall be at the respective Parcel 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 Governmental Entitlement.

2. Dedication of Internal Street Right-of-Way. As provided in Title 26 of the Lincoln Municipal Code (“**Land Subdivision Ordinance**”), each Parcel Owner and/or its successors and assigns whose parcel is being final platted or related parcel site improvements approved by administrative amendment to the PUD shall dedicate and convey the necessary right of way for the construction and operation of the Internal Streets that are located on said Parcel Owner’s parcel.

III.

SANITARY SEWER INFRASTRUCTURE IMPROVEMENTS

A. **Sanitary Sewer Improvements.** The City and Parcel Owners agree that the following sanitary sewer improvements, which are shown on Exhibit "C", are necessary to serve the annexation of all of the Property and to promote the general health and welfare of the City.

1. **Sewer Lines.**

(a) **Sewer Line from Point A to Point B.** Sundance agrees to design and construct, at its expense, a 12-inch Sewer Line from Point A to Point B as generally shown on Exhibit "C" as part of its development of the Property. Sundance and/or its successors and assigns who own any parcel of real estate within the Property that includes land needed for the Sewer Lines will convey the necessary nonexclusive permanent and temporary easements for the Sewer Lines as shown on Exhibit "C" from Point A to Point B at no cost to the City. Sundance and/or its successors and assigns shall be responsible for the cost of constructing a typical 8-inch sanitary sewer line between Point A and Point B, and the City shall be responsible for all costs attributable to oversizing said sewer line with pipe, valves, fittings and all other accessories that are larger than 8 inches. If the anticipated cost to the City to increase the sewer line from 8-inch to 12-inch exceeds \$100,000, then the Sewer Line shall be publicly bid and awarded as provided by law.

(b) **Internal Sewer Line from Point B to Point D.** Sundance agrees to design and construct, at its expense, an 8-inch Sewer Line from Point B to Point D as generally shown on Exhibit "C" as part of its development of the Property. Sundance and/or its successors and assigns who own any parcel of real estate within the Property that includes land needed for the Sewer Lines will convey the necessary nonexclusive permanent and temporary easements for the Sewer Lines as shown on Exhibit "C" from Point B to Point D at no cost to the City.

(c) **Internal Sewer Line from Point D to Point E to Sewer Parcel 2 or Other Tracts.** Subject to any other agreements between the Parcel Owners, Bryan shall pay the

cost to design and construct the internal 8” sewer line from Point D to Point E as shown on Exhibit “C” if said sewer line is required by the City in order to provide sewer service to Parcel 2 or other abutting or adjacent tracts.

(d) The Internal Sewer Lines shall be constructed 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.

(e) The Transportation and Utility Department shall approve the final design and route of the 12-inch Sewer Line from Point A to Point B and 8-inch Sewer Line from Point B to Point C, from Point C to Point D and from Point D to Point E.

2. Sanitary Sewer Easements. At the time of the applicable final platting or prior to construction of the 12” and 8” Sewer Line from Point A to Point C and Sewer Line from Point C to Point E, the Parcel Owners and/or their successors and assigns whose parcel will contain or is necessary for the construction or operation of such Internal Sewer Lines, shall dedicate and convey all necessary temporary and permanent sanitary sewer easements to the City located within such Parcel Owner’s Parcel of the Property, without additional cost or consideration. Said easements shall be nonexclusive easements; provided that, no permanent building improvements will be permitted to be constructed over the top of said easements.

IV.

WATER INFRASTRUCTURE IMPROVEMENTS

A. S. 40th Street. The City has approved a Capital Improvement Program which includes the construction of a 16-inch water main along S. 40th Street from Rokeby Road and S. 40th Street (Point A) to a point approximately ½ mile south of Rokeby Road (Point A1) (“**S. 40th Street Water Main**”) in FY2021-2022 as shown generally in Exhibit “D”, which is attached hereto. The City will propose the S. 40th Street Water Main within the City’s Biennial Budget and

corresponding Capital Improvement Program for Fiscal Years 2020-2021 and 2021-2022. Subject to appropriation by the City Council, the City agrees to design and substantially complete the construction of the S. 40th Street Water Main (i) from Rokeby Road to the ¼ Mile road (Point A to Point B) by September 1, 2021 and (ii) from the ¼ Mile road to the ½ Mile road (Point B to A1) by December 31, 2021.

1. Acceleration of S. 40th Street Water Main. Parcel Owners and the City acknowledge and agree that development of the Property may require the S. 40th Street Water Main to be constructed on an expedited schedule so that it can be completed prior to September 1, 2021 and December 31, 2021, respectively. In order to facilitate this construction, the City agrees that a Parcel Owner may assume the obligation to construct the S. 40th Street Water Main and may accelerate said construction by providing written notice to the Lincoln Transportation and Utilities Director of Bryan's intent to cause the design and construction of the S. 40th Street Water Main to be accelerated at its expense subject to the terms and conditions of this Agreement.

(a) Estimated Costs. Within thirty (30) days of receipt of the notice from Bryan that it intends to accelerate the design and construction of the S. 40th Street Water Main, the City shall prepare or cause to be prepared an estimated cost, including City engineering costs, for the S. 40th Street Water Main.

(b) Escrow. Should Parcel Owner decide to proceed with the accelerated design and construction of the S. 40th Street Water Main, the Parcel Owner shall provide the City a bond, escrow, letter of credit, or other form of security approved by the City Attorney ("Escrow") for one hundred ten percent (110%) of the City's estimated cost of the S. 40th Street Water Main.

(c) Design and Bid. Upon receipt of the Escrow in the amount of 110% of the City's estimated cost, the City shall design, or cause to be designed, and bid construction of

the S. 40th Street Water Main as soon as reasonably possible. The City shall notify the Parcel Owner upon receipt of the actual bids, and, the amount of the Escrow shall be either increased or decreased to match 100% of the actual lowest responsible bid.

(d) Construction and Payment. Upon acceptance of the lowest responsible bid and approval of the revised amount of the Escrow, if such a revision is necessary, the City shall commence construction of the S. 40th Street Water Main as soon as reasonably possible. Upon receipt of any invoice for the cost of designing and/or constructing the S. 40th Street Water Main, the City will provide a copy of said invoice to the Parcel Owner who shall immediately advance funds to the City for the purpose of paying for actual cost of the work described in the invoice.

(e) City Reimbursement. Subject to appropriation by the City Council, the City shall reimburse the Parcel Owner for all funds expended by said Parcel Owner to pay for construction of the S. 40th Street Water Main from the City's Capital Improvement Program funds otherwise identified for the S. 40th Street Water Main pursuant to Article IV., Paragraph A.

B. Rokeby Road. The City has approved a Capital Improvement Program in FY2021-2022 which includes the construction of a 16-inch water main ("**Rokeby Road Water Main**") along Rokeby Road from a point (Point A) at the intersection of Rokeby Road and S. 40th Street to the intersection of Rokeby Road and Snapdragon Lane (Point D) as shown on Exhibit "D". The City will propose the Rokeby Road Water Main within the City's Biennial Budget and corresponding Capital Improvement Program for Fiscal Years 2020-2021 and 2021-2022. Subject to appropriation by the City Council, the City agrees to design and construct the Rokeby Road Water Main to be completed by December 31, 2021.

C. Acceleration of Rokeby Road Water Main. Sundance and the City acknowledge and agree that development of the Property may require the Rokeby Road Water Main to be

constructed on an expedited schedule so that such main could be completed prior to December 31, 2021. In order to facilitate this construction, the City agrees that Sundance may accelerate the construction of the Rokeby Road Water Main by providing written notice to the Lincoln Transportation and Utilities Director of the Parcel Owner's intent to cause the design and construction of the Rokeby Road Water Main to be accelerated at its expense subject to the terms and conditions of this Agreement.

(a) Estimated Costs. Within thirty (30) days of receipt of the notice from Sundance that it intends to accelerate the design and construction of the Rokeby Road Water Main, the City shall prepare or cause to be prepared an estimated cost, including City engineering costs, for such water main(s).

(b) Escrow. Should Sundance decide to proceed with the accelerated design and construction of the applicable water main(s), then it shall provide the City a bond, escrow, letter of credit, or other form of security approved by the City Attorney ("Escrow") for one hundred ten percent (110%) of the City's estimated cost of such water main(s).

(c) Design and Bid. Upon receipt of the Escrow in the amount of 110% of the City's estimated cost, the City shall design, or cause to be designed, and bid construction of the applicable water main(s) as soon as reasonably possible. The City shall notify Sundance upon receipt of the actual bids, and the amount of the Escrow shall be either increased or decreased to match 100% of the actual lowest responsible bid.

(d) Construction and Payment. Upon acceptance of the lowest responsible bid and approval of the revised amount of the Escrow, if such a revision is necessary, the City shall commence construction of the applicable water main(s) as soon as reasonably possible. Upon receipt of any invoice for the cost of designing and/or constructing the applicable

water main, the City will provide a copy of said invoice to Sundance who shall within thirty (30) days of receipt, pay the cost for actual cost of the work described in the invoice.

(e) City Reimbursement. Subject to appropriation by the City Council, the City shall reimburse Sundance for all funds expended by Sundance to pay for the accelerated construction of the Rokeby Road Water Main from the City's Capital Improvement Program funds otherwise identified for said water main pursuant to Article IV., Paragraph B.

C. Internal Water Line Improvements.

1. Construction by Parcel Owners. The City and Parcel Owners agree that adequate water service and fire protection for the Property can be provided by internal water lines (collectively "**Internal Water Lines**" and individually "**Internal Water Line**") to be constructed on the Property in phases during the platting process or related parcel site improvements approved by administrative amendment to the PUD. The Internal Water Lines specifically include, but are not limited to, (i) an 8-inch water main connecting the Rokeby Road Water Main (Point E) , (ii) the 8-inch water main at the intersection of Snapdragon Lane and the ¼ mile road (Point D) to Point C along the ¼ mile road, and (iii) and the 8-inch water main from Point C to the intersection of the ¼ mile road and the S. 40th Street Water Main (Point B) as shown on Exhibit "D". The Internal Water Lines required to serve the Property shall be constructed by the applicable Property Owner and/or its successors and assigns whose parcel of the Property is included within an approved preliminary plat, special permit, use permit or planned unit development which shows an Internal Water Line. Design and construction of the Internal Water Line from Point B to Point C shall be at Bryan's expense, under the authority of an executive order issued by the Mayor of the City. Design and construction of the Internal Water Line from Point C to Point E shall be at Sundance's expense, under the authority of an executive order issued by the Mayor of the City. The size and location of the Internal Water Lines will be determined as part of the platting process

or related parcel site improvements approved by administrative amendment to the PUD. Each Parcel Owner shall be responsible, based upon the proposed use of their respective parcel, for the cost of constructing a typical 6-inch or 8-inch water line located on the Parcel Owner's portion of the Property. If required, the Internal Water Lines shall be publicly bid and awarded as provided by law.

2. Water Easements. At the time of the applicable final platting or prior to construction of said Internal Water Lines, each respective Parcel Owner of all or any portion of the Property shall dedicate or convey to the City all temporary and permanent water easements necessary for the construction and operation of the Internal Water Lines set forth herein that are located on the Parcel Owner's parcel, without additional cost or consideration, in conjunction with the construction of such Internal Water Lines as set forth above. Said easements shall be nonexclusive easements; provided that, no permanent building improvements will be permitted to be constructed over the top of said easements.

V.

CONTRIBUTION TO RURAL FIRE PROTECTION DISTRICT

Parcel Owners understand and acknowledge that the City's annexation of the Property or any portion thereof lying within the boundaries of the Southeast Rural Fire Protection District shall not be complete except upon the City assuming and paying that portion of all outstanding obligations of the District which would otherwise constitute an obligation of Property or portion thereof being annexed. Sundance agrees to pay the City whatever amount which must be paid by the City to Southeast Rural Fire Protection District in order for the Property being annexed to be complete.

VI.

PARCEL OWNERS – FUTURE RESPONSIBILITIES

Parcel Owners understand and acknowledge that the Internal Streets, Internal Sewer Lines and Internal Water Lines to be constructed by the Parcel Owners under this Agreement may not reflect all of the minimum improvements required under Title 26 (Land Subdivision Ordinance) and Title 27 (Zoning Ordinance) of the Lincoln Municipal Code in a subdivision or development of the Property under a planned unit development, use permit, special permit, or community unit plan. Parcel Owners agree that by making the dedications or conveyances and internal improvements outlined in this Agreement, Parcel Owners are not relieved of any future obligation which is required as part of the platting process or development of the Property pursuant to Title 26 and Title 27 of the Lincoln Municipal Code. Parcel Owners further agree that failure to include a provision for the construction of any other improvements required by Title 26 and Title 27 in this Agreement in no way releases or waives the Parcel Owners' obligations to construct such improvements and to dedicate or convey easements therefore.

VII.

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
555 South 10th Street
Lincoln, NE 68508

- (2) If to the Parcel Owners:

- (a) Sundance, LLC
Attention: Managing Member
5825 South 14th Street
Lincoln, NE 68512

with a copy to:

Kent Seacrest
Seacrest & Kalkowski, PC, LLO
1128 Lincoln Mall, Suite 105
Lincoln, NE 68508

- (b) Bryan Medical Center
Attention: President
1600 South 48th Street
Lincoln, NE 68506

with a copy to:

Kent Seacrest
Seacrest & Kalkowski, PC, LLO
1128 Lincoln Mall, Suite 105
Lincoln, NE 68508

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.

IX.

MISCELLANEOUS

A. **Exhibits.** The following Exhibits are attached to this Agreement and are incorporated herein by this reference:

<u>Exhibit "A"</u>	The Property
<u>Exhibit "B"</u>	S. 40 th Street Access Points
<u>Exhibit "C"</u>	Sanitary Sewer Mains
<u>Exhibit "D"</u>	Water Main Improvements

B. **Amendments.** This Agreement may only be amended or modified in writing signed

by the parties to this Agreement.

C. **Further Assurances.** The Parcel Owners and the City will use their 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 parties 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.

D. **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.

E. **Interpretations.** Any uncertainty or ambiguity existing herein shall not be interpreted against any 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.

F. **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.

G. **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, the Parcel Owners, 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.

H. **Assignment.** In the case of the assignment of this Agreement by a Parcel Owner, prompt written notice shall be given to the other Parcel Owner and the City 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 Parcel Owner and the City unless otherwise stated herein.

I. Default. Time is agreed to be of the essence. In the event a Parcel Owner defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the other Parcel Owner and the City may take such other remedies, legal or equitable, which the other Parcel Owner and 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 Parcel Owner(s) may take such remedies, legal or equitable, to enforce this Agreement or to obtain damages for its breach. No delay or omission of any party in exercising any remedies or power accruing upon any event of default shall impair any remedies or power or shall be construed to be a waiver of any event of default or any acquiescence therein.

J. Copy of Notice of Default to Mortgagee. Whenever a party shall deliver any notice or demand to a defaulting party with respect to any breach or default by defaulting party of its obligations or covenants in this Agreement, the party delivering such notice or demand shall at the same time forward a copy of such notice or demand to each holder of any mortgage, deed of trust or similar method of encumbrance (collectively "**Mortgage**") at the last address of such Mortgage holder as shown in the records of the Register of Deeds of Lancaster County as provided in such Mortgage of the defaulting party.

K. Mortgage Holder's Option to Cure Defaults. If fourteen (14) days after any notice or demand with respect to any breach or default as referred to in Article XII, Paragraph J such breach or default remains uncured, each such Mortgage holder shall have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage debt and the lien of its Mortgage.

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. Each undersigned party will whenever it shall be necessary to do so by any other party, 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 and each Parcel Owner represent and warrant that said party has the authority to enter into this Agreement and perform the party's obligations hereunder and has taken all steps to legally exercise that authority.

P. Release of Buildable Lot. Notwithstanding any contrary provisions herein, any Buildable Lot shall automatically be deemed released from all of the terms of this Agreement without further written release. For the purposes of this Agreement, "**Buildable Lot**" shall mean a buildable lot of record (excluding outlots) as defined by the City subdivision ordinance being (a) less than ten acres in size, (b) within a lawful final plat of the Property or a portion of the Property and (c) conveyed in fee title (or leased in writing for a term of three years or more) to an Unrelated Third Party. Notwithstanding any contrary provision herein, any Buildable Lot Owner shall automatically be deemed released from this Agreement without further written release. For the purposes of this Agreement, "**Buildable Lot Owner**" shall mean the grantee under a deed conveying fee title (or a lessee under a written lease having a term of three years or more) to a Buildable Lot who is an Unrelated Third Party. Any such conveyance (or lease) of a Buildable Lot shall not terminate the liability of the grantor (lessor) Parcel Owner and its successors and assigns to perform its obligations under this Agreement, unless a specific release in writing is given

and signed by the other Parcel Owners to this Agreement. An “**Unrelated Third Party**” means a person, corporation, partnership, trust or other entity who is not a Parcel Owner or its successors or assigns and is not an Affiliate under this Agreement. “**Affiliate**” means: (i) any officer, director, employee or blood related family member of a Party; and (ii) any corporation, partnership, trust or other entity controlling, controlled by or under common control with a Party or any person described in (i) above; and (iii) any officer, director, trustee, general partner or employee of any person described in (ii) above. For purposes of this definition, the term “control” shall also mean the control or ownership of ten percent (10%) or more of the beneficial ownership or fifty percent (50%) of the memberships in the entity referred to.

Q. 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, 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 the related Internal Streets, Internal Sewer Lines, and Internal Water Lines described in this Agreement. The City is authorized to utilize condemnation, if necessary, to acquire such right of way and temporary and permanent easements described in this Paragraph.

R. Representation. Sundance is the fee owner of the Property as described in Exhibit “A” and said legal interests are free and clear of liens. All necessary actions to duly approve the execution, delivery, and performance of this Agreement has been undertaken by each party and this Agreement constitutes a valid and binding agreement of the parties, enforceable in accordance with its terms

S. Contingency. This Agreement is contingent upon the City and Parcel Owners executing and delivering the Annexation Agreement and the City approving the Annexation Agreement and the Governmental Actions.

V. **Amendments**. This Agreement may only be amended or modified in writing signed by the City, Bryan and Sundance.

W. **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank]

Dated as of Sept. 18, 2020 by the City.

“CITY”

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

By: *Leirion Gaylor Baird*
Leirion Gaylor Baird, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 18 day of Sept., 2020, by Leirion Gaylor Baird, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation, on behalf of the municipal corporation.

(Seal)



Brandi Lehl
Notary Public

Dated as of _____, 2020 by Bryan.

“BRYAN”

Bryan Medical Center, a Nebraska nonprofit corporation

By: _____

Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____ as _____ of **Bryan Medical Center**, a Nebraska nonprofit corporation, on behalf of the nonprofit corporation.

(Seal)

Notary Public

Dated as of _____, 2020 by Sundance.

“SUNDANCE”

SUNDANCE, LLC, a Nebraska limited liability company

By: _____
A. John Sampson, Managing Member

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

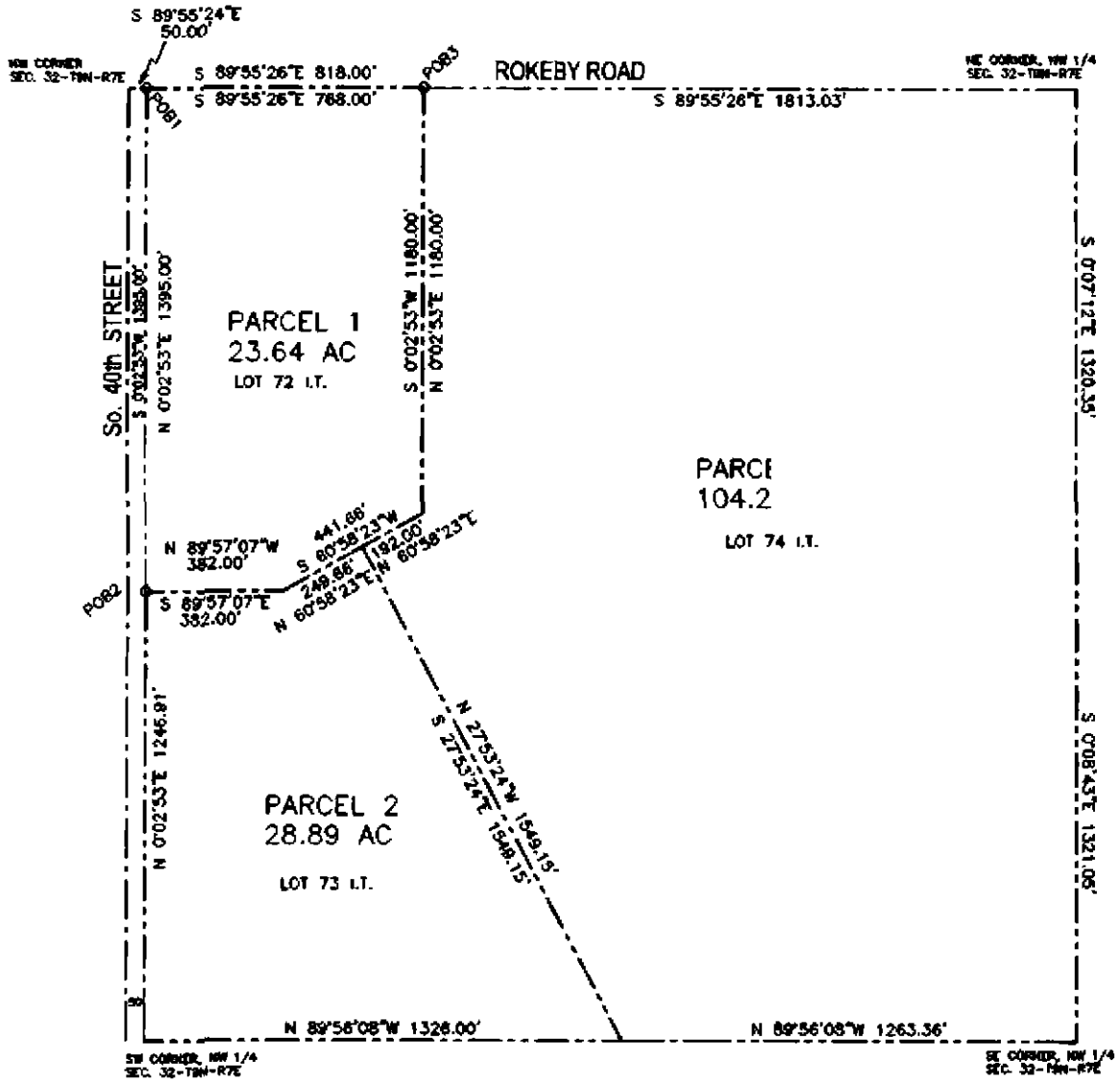
The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by A. John Sampson, Managing Member of **Sundance, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

Notary Public

Exhibit "A"

The Property



32-9-7

CHANGE OF ZONE FROM AG TO R-5 PUD

PARCEL 1

ALL OF LOT 72 IRREGULAR TRACT, LOCATED IN THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 5th P.M., LANCASTER COUNTY, NEBRASKA, BEING DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 32; THENCE EASTERLY ON THE NORTH LINE OF SAID SECTION 32, ON AN ASSIGNED BEARING OF S 89°55'26"E A DISTANCE OF 50.00' TO THE POINT OF BEGINNING; THENCE CONTINUING ON SAID NORTH LINE, S 89°55'26"E 768.00'; THENCE SOUTHERLY AND PARALLEL TO THE WEST LINE OF SAID SECTION 32, S 0°02'53"W 1180.00'; THENCE SOUTHWESTERLY, S 60°58'23"W 441.66'; THENCE WESTERLY AND NORMAL TO SAID WEST LINE, N 89°57'07"W 382.00', TO A POINT LOCATED 50.00' EAST OF SAID WEST LINE, SAID POINT BEING ON THE EAST 50' RIGHT OF WAY LINE FOR SOUTH 40th STREET; THENCE NORTHERLY ON SAID RIGHT OF WAY LINE AND PARALLEL TO SAID WEST LINE, N 0°02'53"E 1395.00', TO THE POINT OF BEGINNING, SAID TRACT CONTAINING AN AREA OF 1,029,793.3 SQUARE FEET OR 23.84 ACRES, MORE OR LESS.

CHANGE OF ZONE FROM AG TO O-3 PUD

PARCEL 2

ALL OF LOT 73 IRREGULAR TRACT, LOCATED IN THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6th P.M., LANCASTER COUNTY, NEBRASKA, BEING DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 32; THENCE EASTERLY ON THE NORTH LINE OF SAID SECTION 32, ON AN ASSIGNED BEARING OF S 89°55'26"E A DISTANCE OF 50.00', TO A POINT ON THE EAST 50' RIGHT OF WAY LINE FOR SOUTH 40th STREET; THENCE SOUTHERLY ON SAID RIGHT OF WAY LINE AND PARALLEL TO SAID WEST LINE, S 0°02'53"W 1395.00', TO THE POINT OF BEGINNING; THENCE EASTERLY AND NORMAL TO SAID WEST LINE, S 89°57'07"E 382.00'; THENCE NORTHEASTERLY, N 60°58'23"E 249.66'; THENCE SOUTHEASTERLY, S 27°53'24"E 1549.15', TO A POINT ON THE SOUTH LINE OF SAID NORTHWEST QUARTER; THENCE WESTERLY ON SAID SOUTH LINE, N 89°56'08"W 1326.00', TO A POINT LOCATED 50.00' EAST OF SAID WEST LINE, SAID POINT BEING ON THE EAST 50' RIGHT OF WAY LINE FOR SOUTH 40th STREET; THENCE NORTHERLY ON SAID RIGHT OF WAY LINE AND PARALLEL TO SAID WEST LINE, N 0°02'53"E 1246.91', TO THE POINT OF BEGINNING, SAID TRACT CONTAINING AN AREA OF 1,258,270.0 SQUARE FEET OR 28.89 ACRES, MORE OR LESS.

ANNEXATION LEGAL DESCRIPTION

PART OF LOT 72 AND ALL OF LOT 73 IRREGULAR TRACT AND ADJACENT SOUTH 40TH STREET RIGHT OF WAY, LOCATED IN THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 9 NORTH, RANGE 7 EAST OF THE 6th P.M., LANCASTER COUNTY, NEBRASKA. BEING DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 32; THENCE EASTERLY ON THE NORTH LINE OF SAID SECTION 32, ON AN ASSIGNED BEARING OF S 89°55'26"E A DISTANCE OF 50.00'; THENCE SOUTHERLY ON THE EAST RIGHT OF WAY LINE FOR SOUTH 40TH STREET ON AN ASSIGNED BEARING OF N 0°02'53"E A DISTANCE OF 200.00' TO THE POINT OF BEGINNING; THENCE EASTERLY AND PARALLEL TO THE NORTH LINE OF SAID SECTION 32, ON AN ASSIGNED BEARING OF S 89°55'26"E 768.00'; THENCE SOUTHERLY AND PARALLEL TO THE WEST LINE OF SAID SECTION 32, S 0°02'53"W 980.00'; THENCE SOUTHWESTERLY, S 60°58'23"W 192.00'; THENCE SOUTHEASTERLY, S 27°53'24"E 1549.15', TO A POINT ON THE SOUTH LINE OF SAID NORTHWEST QUARTER; THENCE WESTERLY ON SAID SOUTH LINE, N 89°56'08"W 1326.00', TO A POINT LOCATED 50.00' EAST OF SAID WEST LINE, SAID POINT BEING ON THE EAST 50' RIGHT OF WAY LINE FOR SOUTH 40th STREET; THENCE NORTHERLY ON SAID RIGHT OF WAY LINE AND PARALLEL TO SAID WEST LINE, N 0°02'53"E 2441.91', TO THE POINT OF BEGINNING, SAID TRACT CONTAINING AN AREA OF 2,134,463.3 SQUARE FEET OR 49.00 ACRES, MORE OR LESS.

Exhibit "B"

S. 40th Street Arterial Improvements

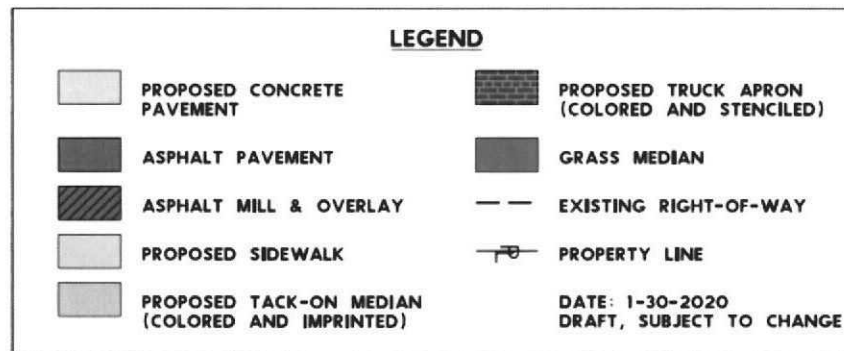
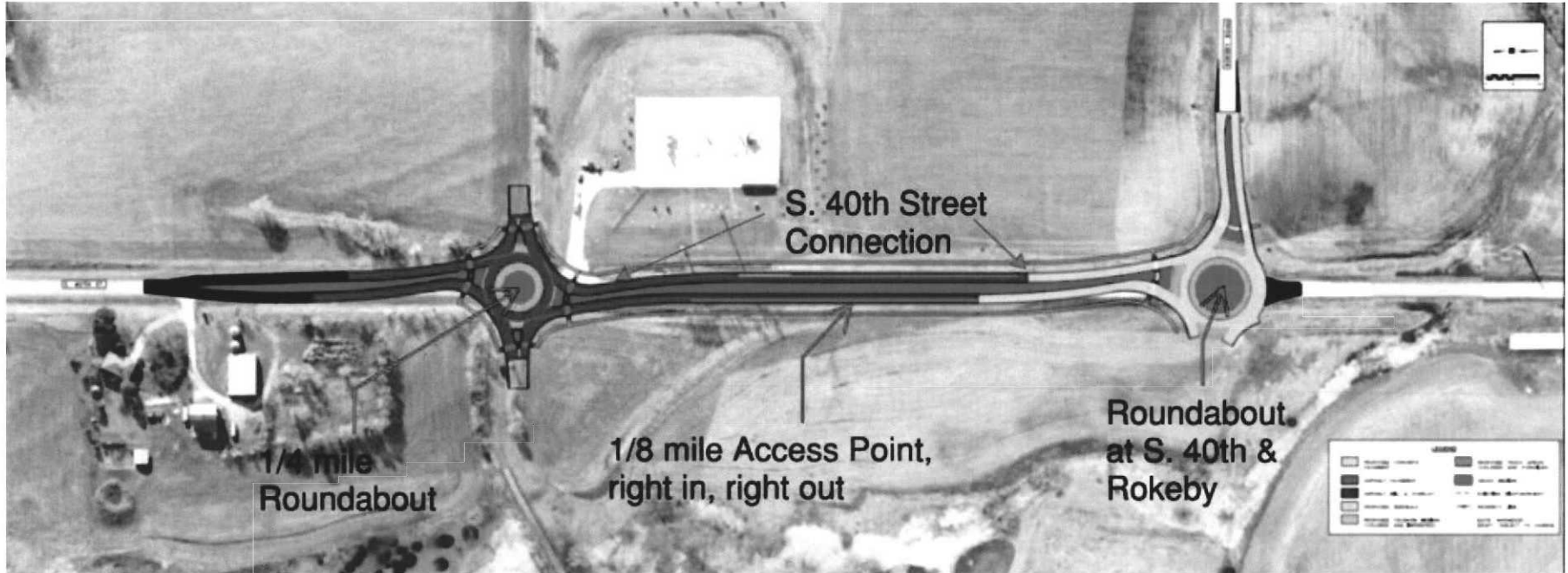


Exhibit "C"

Sanitary Sewer Mains

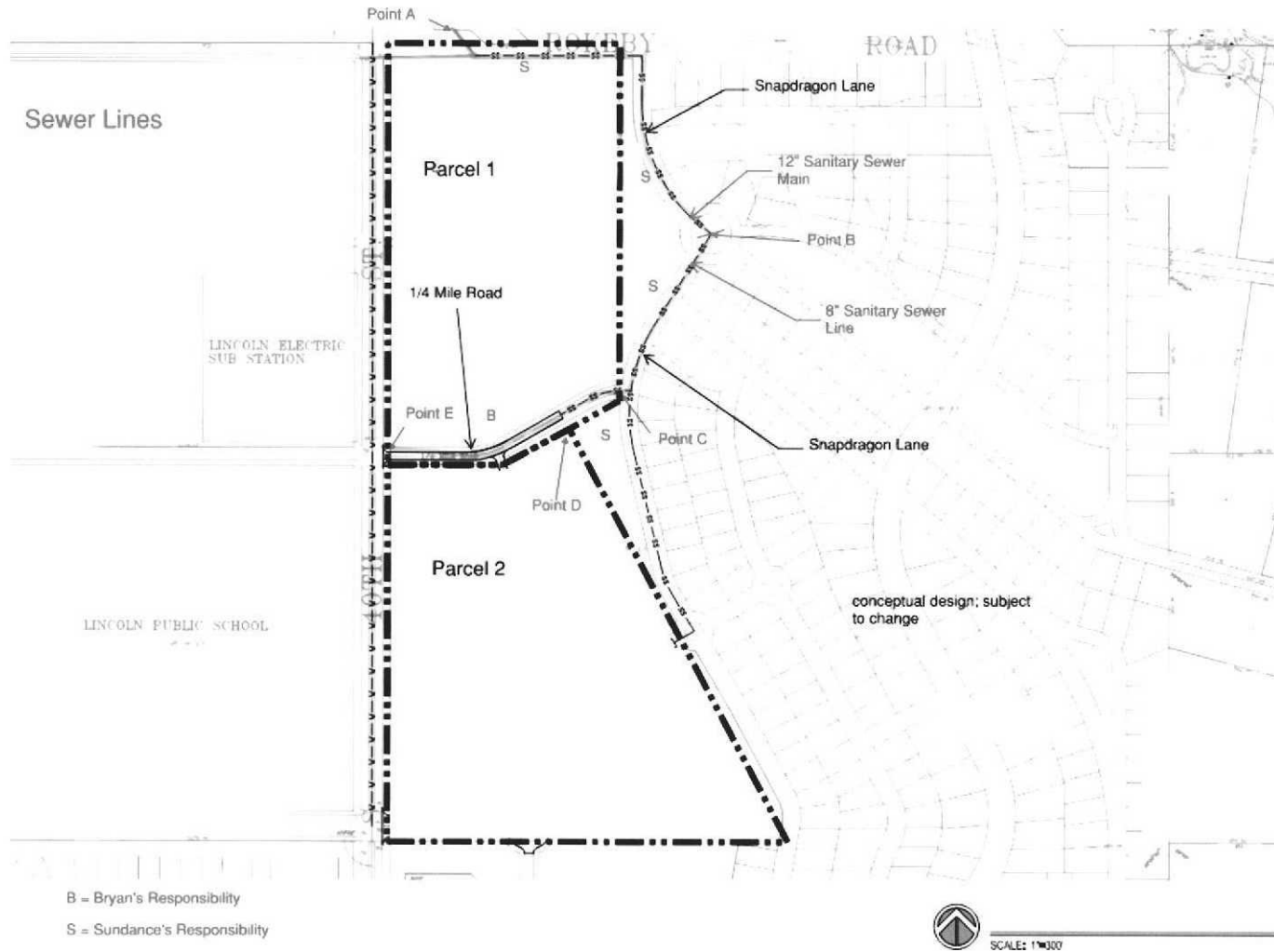
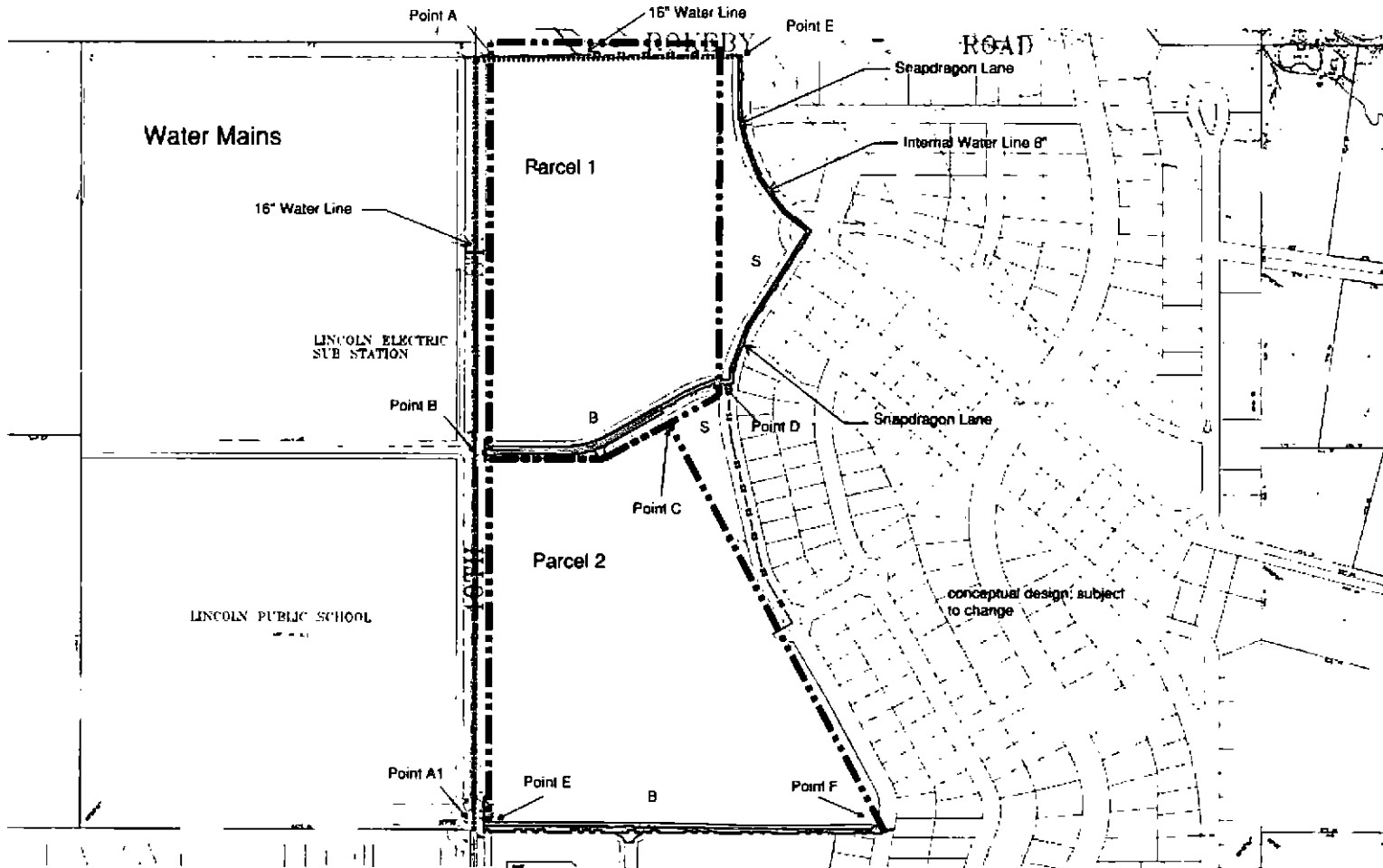


Exhibit "D"

Water Main Improvements



B - Bryan's Responsibility
S - Sundance's Responsibility



SCALE: 1"=100'