RESOLUTION APPROVING AND AUTHORIZING CHAIR TO SIGN THE DEVELOPMENT AGREEMENT BETWEEN SARPY COUNTY AND EDWARD ROSE DEVELOPMENT COMPANY, LLC FOR 132ND STREET TURNING LANE IMPROVEMENTS

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104, the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103, the powers of the County as a body are exercised by the County Board; and,

WHEREAS, general supervision and control of the public roads of each county is vested in the County Board by virtue of Neb. Rev. Stat. §39-1402; and,

WHEREAS, Edward Rose Development Company, LLC owns a parcel of land consisting of approximately 39.7 acres generally located near 132nd Street and Chandler Road, parcel # 011597014, and is presently undertaking the development of a portion of the property as an apartment community; and,

WHEREAS, the apartment community will bring added traffic to the area and turn lane improvements to 132nd Street are necessary for public safety. Sarpy County has the authority and control over 132nd Street near Chandler Road. Therefore, Sarpy County and Edward Rose Development Company, LLC desire to set forth provisions in the Development Agreement with their respective understandings and agreements with regard to the road improvements.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT the Development Agreement between the Sarpy County and Edward Rose Development Company, LLC is hereby approved and the Chairperson and the Clerk are hereby authorized to execute the same, and they, in addition to the County Public Works Director (or his designee) are authorized to take such other actions as may be necessary under the terms of said Agreement. A copy of said Development Agreement is attached hereto.

The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 22nd day of March, 2016.

Attest

SEAL

Sarpy County Board Chairman

County Clerk
DEVELOPMENT AGREEMENT

This Development Agreement (hereinafter “Agreement”) is made and entered into as of the dates indicated at the signatures below by and between Edward Rose Development Company, LLC (hereinafter “Developer”), and the County of Sarpy, State of Nebraska (hereinafter “County”). Collectively, Developer and County are hereinafter sometimes referred to as the “Parties.”

WITNESSETH:

WHEREAS, Developer, either directly or through an affiliated entity, owns a parcel of land consisting of approximately 39.7 acres in Sarpy County, Nebraska, generally located in the vicinity of 132nd Street and Chandler Road, parcel number 011597014, (hereinafter “Property”), and is presently undertaking the development of a portion of the Property as an apartment community (the “Project”).

WHEREAS, the Project will bring added traffic to the area and widening of 132nd Street is necessary. The County, has authority and control over that portion of 132nd Street which needs improvement and, in the interest of maintaining the public health, safety, and welfare, desires to assure that the installation of the road improvements shall be in accordance with the County’s requirements. The Parties desire to set forth provisions in this Agreement with their respective understandings and agreements with regard to the road improvements.

WHEREAS, it is in the best interests and would be mutually advantageous to the County and Developer to improve at this time, pursuant to this Agreement a portion of 132nd Street as shown on the map attached hereto as Exhibit "A" and incorporated herein by this reference. Such improvements shall include, without limitation, relocation of utilities, storm sewers and other drainage facilities, paving and related improvements, hereinafter referred to as the “Improvements”. Further, said Improvements are generally described within the Notice to Contractors, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference. Said attachments are intended to show only a basic description of the work and may be revised from time to time. In exchange for the County’s approval to use or occupy the County’s right of way for the Improvements, Developer hereby makes the promises contained herein.

NOW, THEREFORE, in consideration of the premises, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are expressly acknowledged, the Parties hereto, each intending to be legally bound, do hereby mutually agree as follows:

2. **County Approval.** County hereby approves the final Plans and Specifications dated January 20, 2016 on file at the Sarpy County Public Works Department and grants the Developer permission to utilize County right of way in accordance with said plans and design as well as the terms and conditions of this Agreement.

3. **Construction.** All construction shall comply with the current edition of the State of Nebraska Department of Roads Standard Specifications for Highway Construction, the current edition of City of Omaha’s Standard Specifications for Public Works Construction and the provisions set out below.
   a. **Road Closing.** The closing of a road shall not be permitted without approval of the Sarpy County Engineer or his designee.
   
   b. **Notification.** Forty-eight (48) hours notification is required prior to any work within Sarpy County right-of-way, telephone 402-537-6917.
   
   c. **Open Cuts of Road.** No open cuts of hard-surfaced roads will be allowed, except by express written permission from the Sarpy County Engineer. If an open cut is allowed, on concrete roadways, the Developer shall replace panel(s) according to the requirements of the Sarpy County Public Works. If an open cut is allowed on asphalt roadways, the Developer shall make an opening 1'-0" larger on all sides. Depth of replacement surfacing shall be 2" greater than the existing surface thickness. It is the responsibility of the Developer to whom the permit was issued to replace the surfacing material. Surfacing material will be as follows: Concrete shall be 47B-3500 Standard Mix, Asphalt Concrete Type LC or Asphalt Concrete Type SPR. Material exceptions must be approved by the Sarpy County Engineer.
   
   d. **Backfill Requirements.** Backfill of open trenches shall be placed in lifts not exceeding eight (8) inches uncompacted thickness and each layer shall be mechanically compacted at optimum moisture content of 18%. In order to prevent excessive settlement or shrinkage, density of backfill shall be at least 95% of, or equal to, the existing undisturbed ground. Compaction tests shall be required with tests results given to Public Works for their records. The Test results shall be submitted to the Public Works department along with notification of project completion. Photos shall also be submitted to Public Works showing before, during, and after construction. No backfilling shall take place in freezing weather except with the permission of the Sarpy County Engineer; and, no backfill shall be made with frozen materials.
   
   e. **Final Grading.** All disturbed areas shall be left in a condition as near to original as possible (grading, rock replacement, seeding or sod). Developer shall maintain all disturbed areas for a 6 month period following the completion of work and notification from Developer that the work has been complete. At any time within the 6 month time period the Developer will be notified by Public Works if any re-compaction in the construction area or road material (i.e. rock, gravel, etc.) is to be repaired or replaced.
f. **Barricades.** Developer shall be responsible for all barricading. All barricades shall conform to the barricading standards, specifications, methods and materials of the Manual on Uniform Traffic Control Devices.

g. **Horizontal Clearance for Ground – Mounted facilities.** Rural Areas - Poles, Guy anchors, Pedestal Boxes, Fire Hydrants and other above ground facilities shall be located as close to the right-of-way line as possible.

Rural Areas - Any facilities that are to be placed closer than fifteen (15) feet from the edge of the traveled way will need to be approved by the Sarpy County Engineer prior to their installation.

Urban Areas - Cities, towns and urban areas where curb sections exist, hydrants and rigid poles may be located back of sidewalk or a minimum of six (6) feet.

Manholes - All manholes shall be placed outside of the traveled way where possible. Manholes placed outside of the traveled way and located within the shoulder of any rural roadway shall be placed a minimum of 6 inches below the surface. To avoid any maintenance machinery.

h. **Certificate of Completion.** Developer shall file a Certificate of Completion with the Sarpy County Public Works department at the completion of the construction of the Improvements.

4. **Payment of Costs of Improvements.** Developer shall be 100% responsible for the cost of the Improvements.

5. **Timing of Work.** Developer shall finalize the construction of the Improvements no later than December 1, 2016.

6. **Duration.** This Agreement shall continue until the expiration of the two year period of guarantee for the Improvements and an inspection has been conducted and a final certificate as to the good and proper condition of all of the aforesaid work shall have been duly issued or approved by the County.

7. **Guarantee and Maintenance.** Developer hereby expressly guarantees the work and materials described herein for the full period of two (2) years from the date of approval and acceptance by the County, and said Developer binds itself and successors and assigns for the entire expense of maintaining said work in good condition (except normal wear and tear not occasioned by improper methods/materials); and for all repairs or reconstruction which may, from any imperfection in the said work or materials become necessary within the terms of this guarantee. The Developer further agrees to correct and repair promptly
during that time all failures of any description and all settlements and shall deliver the work or materials in all respects in good condition and repair.

a. **Failure to Make Repairs:** If at any time within the period of guarantee after the completion and acceptance of the work herein contracted for, the work shall, in the judgment of the County, require such repairs or reconstruction as above set out, County shall notify the Developer. Should the Developer refuse or neglect to begin to make such repairs within ten (10) business days from the date of serving such notice, the County shall have the right to cause such repairs or reconstruction to be made in such a manner as County shall deem best, and the cost thereof shall be paid by the Developer and Developer’s sureties.

b. **Compliance with Laws:** The Developer shall comply with all Federal and State Laws and County regulations and ordinances applicable to work.

8. **Bond.** County and Developer acknowledge that Developer’s contractor, Swain Construction, Inc. has signed a Performance, Payment and Guarantee Bond (Bond No. NNE1173) for the benefit of the Developer for the Improvements. Developer agrees to use and apply bond for the use and benefit of the County for the faithful performance of this Agreement, and for the payment of all laborers employed in the performance of the Improvements, and for the payment of all damages which the County may sustain by reason of any failure to perform the Improvements in the manner stipulated by the final Plans and Specifications.

9. **Choice of Law.** This Agreement shall be governed in all respects by the laws of the State of Nebraska and the venue for any litigation with respect hereto shall be in the courts of Sarpy County, Nebraska.

10. ** Entire Agreement.** This instrument contains the entire agreement of the parties and shall be binding upon the successors and assigns of the respective parties. No amendments, deletions or additions shall be made to this Agreement except in writing signed by all parties. Nebraska law shall govern the terms and performances under this Agreement.

11. **Severability.** In the event any portion of this Agreement may be held invalid or unenforceable for any reason, it is agreed that any invalidity or unenforceability shall not affect the remainder of this Agreement and the remaining provisions shall remain in full force and effect, and any court of competent jurisdiction may so modify any objectionable provision of this Agreement so as to render it valid and enforceable.

12. **Notice.** The Parties agree to cooperate in the undertakings contemplated by this Agreement and shall share and exchange necessary reports and other documents as required and when reasonably requested by other Parties to this Agreement. Any notice required under this Agreement shall be in writing and shall be sent by certified mail, return
receipt requested, to the addresses as noted below. Any party to this Agreement may change its address for notice specified hereunder by sending written confirmation of such change by certified mail, return receipt requested, to the other Parties to this Agreement. The addresses for the purpose of notice and other communications are as follows:

For Developer:
Thomas Wheatley
Authorized Agent for Edward Rose Development Company
PO Box 3015
Kalamazoo, MI 49003

With copies to:

Linda Swain, President
Swain Construction
6002 North 89th Circle
Omaha, NE 68134

and

Mark Westergard
E & A Consulting Group
10909 Mill Valley Road, Suite 100
Omaha, NE 68154

For County:
County Clerk, Sarpy County
1210 Golden Gate Dr., #1250
Papillion, NE 68046

and

Mr. Bill Herr, Project Administrator
Public Works Department, Sarpy County
15100 S. 84th Street
Papillion, NE 68046

13. Representations. Each Party hereto represents and warrants to the other that (i) it has all necessary right, power and authority to enter into this Agreement, and (ii) the execution and delivery of this Agreement and the performance and observance of all obligations and conditions to be performed or observed by such party have been duly authorized by all necessary action on behalf of such Party.
14. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one Agreement. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto.

15. **Indemnification.** Developer shall indemnify and hold County, its officers, official, and employees harmless from any and all claims, demands, payments, liabilities, injuries, damages, losses, or suits including attorney fees arising out of or in connection with the activities of Developer, its agents, representatives, and contractors in the performance of this Agreement.

[The next page is the signature page.]
IN WITNESS WHEREOF, we, the contracting Parties, by our respective duly authorized agents, hereby enter into this Agreement, effective on the day and year affixed hereon. Executed on the dates indicated with the signatures below.

Executed by Sarpy County this 22nd day of March, 2016.

SARPY COUNTY, NEBRASKA,  
A Political Subdivision

[Signature]
Chairperson, Board of Commissioners

Attest: [Signature]  
Sarpy County Clerk

Approved as to form: [Signature]  
Sarpy County Attorney
Executed by Developer this 6th day of March, 2016.

Developer:
Edward Rose Development Company, LLC

Authorized Agent  Thomas C. Wheatley
20. The CONTRACTOR shall be responsible for removing existing shoulders and set pins which are not used by his operations.

21. The CONTRACTOR is hereby referred to Subsection 16.0 of the Standard Specifications relative to clearing of the works. The tool rental set will be processed until the Contractor has submitted complete and final Documentation. The CONTRACTOR shall also be responsible for clearing the space between the existing curb and shoulders. Backfill in the roadway areas shall be repaired to level and smooth prior to the acceptance of the work.

22. The CONTRACTOR shall be responsible for clearing the existing pavement and any debris prior to the commencement of construction. The CONTRACTOR shall be referred to Subsection 4.1.0 of the Standard Specifications for placement of construction materials and any other associated equipment, and for the protection of the public works.

23. The CONTRACTOR shall be responsible for the removal of existing utility manholes, cast iron manhole covers, and manhole steps in accordance with Standard Plate 700-40 and 700-21.
NOTICE TO CONTRACTORS

Sealed proposals will be received by Edward Rose Development Co., LLC at the office of E & A Consulting Group, Inc., 10909 Mill Valley Road, Suite 100 Street, Omaha, Nebraska until 2:00 P.M. on the xth day of XXXXXXXXXX, 2015, for furnishing all labor, tools, materials and equipment required to construct 132ND STREET IMPROVEMENTS for ANDOVER POINTE, as per the plans and specifications for said work, at the locations shown on the detailed drawings and in the specifications now on file with the Owner and available at the office of E & A Consulting Group, which proposals as are received will, at that time, be privately opened. The work consists essentially of the following estimated quantities.

APPRAOXIMATE QUANTITIES

<table>
<thead>
<tr>
<th>Item #</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>SAW CUT - FULL DEPTH</td>
<td>1804</td>
<td>LF</td>
</tr>
<tr>
<td>2</td>
<td>REMOVE PAVEMENT</td>
<td>230</td>
<td>SY</td>
</tr>
<tr>
<td>3</td>
<td>REMOVE DRIVEWAY</td>
<td>32</td>
<td>SY</td>
</tr>
<tr>
<td>4</td>
<td>REMOVE CURB INLET</td>
<td>6</td>
<td>EA</td>
</tr>
<tr>
<td>5</td>
<td>REMOVE 15&quot; TO 18&quot; SEWER PIPE</td>
<td>30</td>
<td>LF</td>
</tr>
<tr>
<td>6</td>
<td>REMOVE MARKING LINES</td>
<td>1571</td>
<td>LF</td>
</tr>
<tr>
<td>7</td>
<td>REMOVE AND RESET SIGN</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>REMOVE AND REINSTALL MAILBOX POST</td>
<td>1</td>
<td>EA</td>
</tr>
<tr>
<td>9</td>
<td>CONSTRUCT 9-INCH CONCRETE PAVEMENT (TYPE L65)</td>
<td>1333</td>
<td>SY</td>
</tr>
<tr>
<td>10</td>
<td>CONSTRUCT 9-INCH CONCRETE DRIVEWAY (TYPE L85)</td>
<td>10</td>
<td>SY</td>
</tr>
<tr>
<td>11</td>
<td>CONSTRUCT 6-INCH CONCRETE DRIVEWAY (TYPE L85)</td>
<td>31</td>
<td>SY</td>
</tr>
<tr>
<td>12</td>
<td>CONSTRUCT 15&quot; RCP, CLASS III</td>
<td>16</td>
<td>LF</td>
</tr>
<tr>
<td>13</td>
<td>CONSTRUCT 18&quot; RCP, CLASS III</td>
<td>35</td>
<td>LF</td>
</tr>
<tr>
<td>14</td>
<td>CONSTRUCT CURB INLET - TYPE I</td>
<td>5</td>
<td>EA</td>
</tr>
<tr>
<td>15</td>
<td>CONSTRUCT CURB INLET - TYPE III</td>
<td>1</td>
<td>EA</td>
</tr>
<tr>
<td>16</td>
<td>CONSTRUCT 54&quot; I.D. STORM MANHOLE</td>
<td>8</td>
<td>VF</td>
</tr>
<tr>
<td>17</td>
<td>CONSTRUCT 15&quot; CONCRETE COLLAR</td>
<td>2</td>
<td>EA</td>
</tr>
<tr>
<td>18</td>
<td>CONSTRUCT 18&quot; CONCRETE COLLAR</td>
<td>4</td>
<td>EA</td>
</tr>
<tr>
<td>19</td>
<td>INSTALL STOP SIGN</td>
<td>1</td>
<td>EA</td>
</tr>
<tr>
<td>20</td>
<td>INSTALL PERMANENT PAINT MARKING - 5&quot; YELLOW</td>
<td>2612</td>
<td>LF</td>
</tr>
<tr>
<td>21</td>
<td>INSTALL PERMANENT PAINT MARKING - 5&quot; WHITE</td>
<td>358</td>
<td>LF</td>
</tr>
<tr>
<td>22</td>
<td>INSTALL PERMANENT PREFORMED MARKING TAPE SYMBOL - TYPE DIRECTIONAL ARROW, WHITE</td>
<td>6</td>
<td>EA</td>
</tr>
<tr>
<td>23</td>
<td>INSTALL SILT FENCE</td>
<td>1719</td>
<td>LF</td>
</tr>
<tr>
<td>24</td>
<td>INSTALL SEEDING - TYPE B</td>
<td>0.6</td>
<td>AC</td>
</tr>
<tr>
<td>25</td>
<td>INSTALL SINGLE NET STRAW BLANKET</td>
<td>521</td>
<td>SY</td>
</tr>
<tr>
<td>26</td>
<td>INSTALL DOUBLE NET STRAW BLANKET</td>
<td>2182</td>
<td>SY</td>
</tr>
</tbody>
</table>

All proposals must be submitted on bid forms furnished by E & A Consulting Group, and must be accompanied by a bid bond or a certified check in the amount of 5% of the

NC-1

Exhibit B