



A91228

18R-175

Introduce: 7-30-18

RESOLUTION NO. **A-91226**

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

2 That Amendment No. 1 to the Wilderness Commons Conditional Annexation and Zoning  
3 Agreement approved December 15, 2008 as City Council Resolution No. A-85188, which is attached  
4 hereto, marked as Attachment "A", and made a part hereof by reference, between the City of Lincoln,  
5 Nebraska and Lincoln Federal Bancorp, Inc., Assurity Life Insurance Company, B&J Partnership, Ltd., and  
6 Zentree II, LLC, to develop the property within the Wilderness Commons Community Unit Plan on  
7 property generally located south of Yankee Hill Road along the west side of South 40<sup>th</sup> Street, is hereby  
8 approved and the Mayor is authorized to execute the Amendment No. 1 on behalf of the City.

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

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

See further Council Proceedings on next page.

Introduced by:

Approved as to Form & Legality:

AYES: Camp, Christensen, Eskridge, Gaylor  
Baird, Lamm, Raybould, Shobe; NAYS: None.

City Attorney

**ADOPTED**  
AUG 20 2018  
**BY CITY COUNCIL**

Approved this 21<sup>st</sup> day of Aug., 2018:  
  
Mayor

**18R-175**

08/13/18 Council Proceedings:

CHRISTENSEN Moved to delay action on Bill No. 18R-175 one week to 8/20/18.

Seconded by Eskridge & carried by the following vote: AYES: Christensen, Eskridge, Gaylor Baird, Lamm, Raybould, Shobe; NAYS: None; ABSENT: Camp.

8/20/18 Council Proceedings:

CHRISTENSEN Moved to amend Bill No. 18R-175 to adopt a substitute agreement attached hereto as Attachment "A".

Seconded by Gaylor Baird & carried by the following vote: AYES: Camp, Christensen, Eskridge, Gaylor Baird, Lamm, Raybould, Shobe; NAYS: None.

City Council Introduction: 7/30/2018

BILL NUMBER: 18R-175

Public Hearing: 8/6/2018

Date Factsheet Prepared: 7/24/2018

## FACTSHEET

**Instructions:** If a question does not apply, just put "NA". Please try to keep it to **ONE** page only. Submit **one original**, with your Request Form, to City Clerk.

**TITLE:** Approving an Amendment to the Wilderness Commons Conditional Annexation and Zoning Agreement.

**BOARD/COMMITTEE:**

**APPLICANT:**

**RECOMMENDATION:**

**STAFF**

**RECOMMENDATION:**

**OTHER DEPARTMENTS**

**AFFECTED:**

**SPONSOR:**

**OPPONENTS:**

### REASON FOR LEGISLATION

Approving an amendment to the Wilderness Commons Conditional Annexation and Zoning Agreement, approved as Resolution No. A-85188 on December 15, 2008, between the City and Lincoln Federal Bancorp, Assurity Life Insurance Company, B&J Partnership, Ltd., and Zentree II, LLC, relating to property generally located south of Yankee Hill Road along the west side of South 40th Street.

### DISCUSSION / FINDINGS OF FACT:

See Planning Department Staff Report for related items Comprehensive Plan Amendment 15005, Change of Zone 15016A, Change of Zone 06075A, Change of Zone 07060B, Amendment to the Wilderness Heights Conditional Annexation and Zoning Agreement.

**POLICY OR PROGRAM CHANGE:** \_\_\_ Yes \_\_\_ No

**OPERATIONAL IMPACT ASSESSMENT:**

**COST OF TOTAL PROJECT:**

**RELATED ANNUAL OPERATING COSTS:**

**SOURCE OF FUNDS:**

**CITY:**

**NON CITY:**

**FACTSHEET PREPARED BY:** Tim Sieh

**DATE:** 7/24/2018

**REVIEWED BY:**

**DATE:**

18R-175

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 18R-175 to adopt a substitute agreement attached hereto as Attachment "A".

Introduced by:

AYES: Camp, Christensen, Eskridge, Gaylor  
Baird, Lamm, Raybould, Shobe; NAYS: None.

Approved as to Form and Legality:

City Attorney

Requested by: Law Department

Reason for Request: The substitute agreement is for the purpose of correcting the exhibits and the references to those exhibits in the document.

**ADOPTED**  
AUG 20 2018  
BY CITY COUNCIL

**AMENDED AND RESTATED CONDITIONAL ANNEXATION AND ZONING  
AGREEMENT  
WILDERNESS COMMONS**

This Amended and Restated Conditional Annexation and Zoning Agreement is made and entered into this 20<sup>th</sup> day of Aug., 2018 by and between **LINCOLN FEDERAL BANCORP**, a federal corporation, **ASSURITY LIFE INSURANCE COMPANY**, a Nebraska insurance company, **B & J PARTNERSHIP, LTD.**, a Nebraska limited partnership, and **ZENTREE II, LLC**, a Nebraska limited liability company, hereinafter referred to as “Wilderness Commons Owners,”; and the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation, hereinafter referred as “City”.

**RECITALS**

A. The City and the Wilderness Commons Owners entered into the Wilderness Commons Conditional Annexation and Zoning Agreement through Resolution No. A-85188 approved by the City Council December 15, 2008. The City and the Wilderness Heights Owner also entered into the Wilderness Heights Conditional Annexation and Zoning Agreement through Resolution No. A-85189 approved by the City Council December 15, 2008. Then, in 2013, the City Council approved the Amendment No. 1 to the Wilderness Heights Conditional Annexation and Zoning Agreement by Resolution No. A-87461 on July 29, 2013. Finally, the City Council approved the Wilderness Hills Commercial Center PUD, South 40<sup>th</sup> Street Directed Arterial Street Impact Fee Agreement through Resolution No. A-90224 on February 6, 2017.

B. The area described as “Wilderness Commons” in this Agreement is the same area described as Wilderness Commons in the Wilderness Commons Conditional Annexation and Zoning Agreement and shall be referred to throughout this Agreement as “Wilderness

Commons”. Wilderness Commons is more specifically described and shown on Exhibit A, which is attached hereto and incorporated herein by this reference.

C. Under the Wilderness Commons Agreement and the Wilderness Heights Agreement, as amended, the owners of the property included therein agreed with the City to design, grade and construct that portion of South 40<sup>th</sup> Street from Yankee Hill Road to Willow Road as a four-lane arterial street subject to reimbursement from directed arterial street impact fees collected from the properties identified as unplatted Wilderness Hills, Wilderness Heights, and Wilderness Commons as previously shown in Exhibit D of the Wilderness Heights and Wilderness Commons Agreements. The City further agreed in the Wilderness Heights and Wilderness Commons Agreements to make “best efforts” to reimburse the owners of property included in those agreements from arterial street impact fees collected within the same benefit district as the S. 40<sup>th</sup> Street improvements being constructed.

D. To date, the S. 40<sup>th</sup> Street arterial street impact fee facilities have not been constructed south of Hohensee Drive.

E. The Wilderness Commons Owners are the same owners of the property previously included in the Wilderness Commons Agreement. The Wilderness Commons Owners shall be referred to collectively herein as the “Owners”.

F. The Owners are considering several development possibilities within the Wilderness Commons areas that would be located south of the current terminus the four-lane improvements in S. 40<sup>th</sup> Street. The Owners have requested that the City allow the Owners, whether individually or collectively, to proceed with construction of these developments without completing the S. 40<sup>th</sup> Street arterial street improvements as otherwise required by the Wilderness Commons Agreement.

G. The City has agreed, to assume the obligation to construct the S 40<sup>th</sup> Street impact fee facility improvements south of Yankee Hill Road using the arterial street impact fees realized from improvements constructed within the boundaries of the Wilderness Commons area as well as other funds available to the City for such a purpose. The City and the Owners have agreed that the Arterial Street Impact Fees anticipated to be collected from the Wilderness Heights area that were previously agreed to be directed toward the cost of constructing the Arterial Street Impact Fee Facility Improvements in South 40<sup>th</sup> Street improvements shall be instead directed toward the cost of constructing Arterial Street Impact Fee Facility Improvements in Yankee Hill Road between South 40<sup>th</sup> Street and South 48<sup>th</sup> Street.

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

1. **40<sup>th</sup> Street.** South 40<sup>th</sup> Street from Yankee Hill Road to Rokeby Road is presently a two-lane rural section roadway south of Hohensee Drive. Such section is shown in the Lincoln City-Lancaster County Comprehensive Plan to be constructed as an arterial street during the 25-year planning period with four through lanes plus turn lanes. City agrees to assume to the obligation to construct South 40<sup>th</sup> Street previously accepted by the Owner subject to the following conditions:

- a. **City Construction of S. 40<sup>th</sup> Street.** City shall, at its sole discretion, determine when the arterial street improvements for South 40<sup>th</sup> Street from Yankee Hill Road to Rokeby Road shall be constructed as well as the ultimate design of said improvements.
- b. **Wilderness Hills Boulevard Intersection.** Wilderness Commons Owners, whether individually or collectively, shall at their own expense, prior to

extending Wilderness Hills Boulevard west from South 40<sup>th</sup> Street, construct a southbound to westbound right turn lane and a northbound to westbound left turn lane in South 40<sup>th</sup> Street. Said improvements shall be considered temporary in nature, and Wilderness Commons Owners agree and acknowledge that said turn lane improvements are not eligible for reimbursement from arterial street impact fees.

- c. Wilderness Hills Boulevard Roundabout. Owners, whether individually or collectively, may at their own expense, subject to reimbursement as described below, design, grade, and construct a roundabout, subject to review and approval by the City, at the intersection of South 40<sup>th</sup> Street and Wilderness Hills Boulevard. The City agrees to reimburse any Owner or group of Owners who pays to construct said roundabout improvements the cost to construct said roundabout without interest from Directed Arterial Street Impact Fees collected against properties identified as unplatted Wilderness Commons, Wilderness Hills Commercial PUD, and Wilderness Creek on Exhibit B attached hereto and incorporated herein by this reference. The properties described as unplatted Wilderness Commons, Wilderness Hills Commercial PUD, and Wilderness Creek are more particularly described in Exhibit B which is attached hereto and incorporated herein by this reference. Said reimbursement is subject to the following conditions:

- i. Said reimbursement shall be paid quarterly from Arterial Street Impact Fees actually received from the unplatted Wilderness Commons,



Wilderness Hills Commercial PUD, and Wilderness Creek Properties as shown on Exhibit B; and

ii. Any reimbursement to be paid from the Arterial Street Impact Fees shall not constitute a general obligation or debt of the City.

d. Phasing. The improvements listed in subparagraph b. or c. above shall be constructed by any combination of the Wilderness Commons Owners as necessary to comply with the conditions of the Wilderness Commons PUD.

2. **Binding Effect.** This Agreement shall run with Wilderness Commons and be binding and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors, and assigns.
3. **Amendment.** This Agreement may only be amended or modified in writing signed by the parties to this Agreement.
4. **Further Assurances.** Each party will use 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 described herein and shall execute, acknowledge, and deliver any and all documents requested in order to satisfy the conditions set forth herein and carry out the intent and purpose of this Agreement.
5. **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.
6. **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.

7. **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.
8. **Relationship of the Parties.** Neither the method of computation of funding or any other provision contained in this Agreement or any acts of any party shall be deemed or construed by the City, Owners, or by any third person to create the relationship of partnership or joint venture or of any association between the parties other than the contractual relationship stated in this Agreement.
9. **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.
10. **Default.** Owners and City agree that the annexation and change of zone previously approved by the City for Wilderness Commons promote the public health, safety, and welfare of the City and its citizens so long as Owners fulfill all of the conditions and responsibilities set forth in this Agreement. In the event Owners default in fulfilling any of their covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rezone the rezoned areas to their previous designations

or such other designations as the City may deem appropriate under the existing circumstances, or take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach.

11. **Definitions.** For purposes of this Agreement, the words and phrases “cost” or “entire cost” of a type of improvement shall be deemed to include all design and engineering, fees, testing expenses, construction costs, publication costs, financing costs, and related miscellaneous costs. For the purposes of this Agreement the words and phrases “building permit”, “development”, “Impact Fee Facility”, “Impact Fee Facility Improvement”, and “site-related improvements” shall have the same meaning as provided for said words in the Impact Fee Ordinance.

12. **Recordation.** This Agreement or a memorandum thereof shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at Owner’s cost and expense.

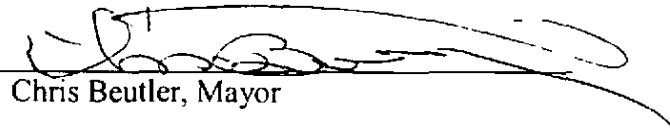
13. **Restatement of Previous Agreements.** This Agreement shall serve as a complete restatement and replacement of the terms and conditions of the Wilderness Commons Conditional Annexation and Zoning Agreement approved as City of Lincoln Resolution No. A-85188 on December 15, 2008 as well as any amendments thereto. All previous agreements and amendments thereto with respect to Wilderness Commons areas are hereby superseded and replaced in their entirety by this Agreement.

SIGNATURE PAGES TO FOLLOW

"CITY"

**CITY OF LINCOLN, NEBRASKA**  
a municipal corporation

BY:

  
Chris Beutler, Mayor

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing was acknowledged before me this 27<sup>th</sup> day of August, 2018, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf the municipal corporation.

(Seal)

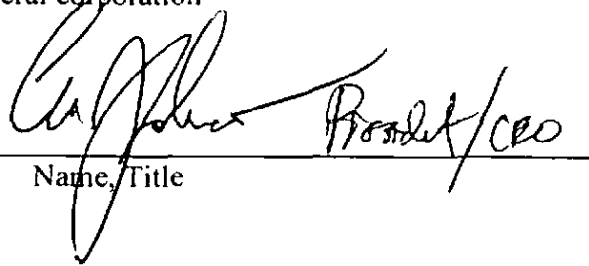


  
Notary Public

"WILDERNESS COMMONS OWNERS"

**LINCOLN FEDERAL BANCORP,**  
a federal corporation


BY:

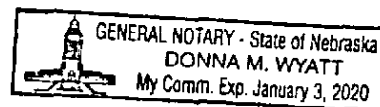
  
Name, Title

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing was acknowledged before me this 17<sup>th</sup> day of August, 2018, by Donna M Wyatt, (Title) of the Lincoln Federal Bancorp, a federal corporation, on behalf of the corporation.

(Seal)

  
Notary Public



ASSURITY LIFE INSURANCE COMPANY,  
A Nebraska insurance company,

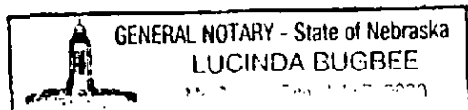
BY: Brett West  
Name, Title

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing was acknowledged before me this 20<sup>th</sup> day of August, 2018, by Brett West, (Title) of Assurity Life Insurance Company, a Nebraska insurance company, on behalf of the company.

(Seal)

[Signature]  
Notary Public

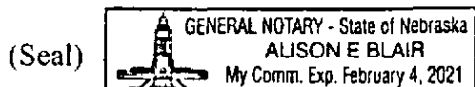


B & J PARTNERSHIP, LTD.,  
a Nebraska limited partnership.

BY: [Signature]  
Name, Title

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing was acknowledged before me this 20 day of August, 2018, by Clay F Smith, (Title) of the B & J Partnership, Ltd., a Nebraska limited Partnership, on behalf of the partnership.



Alison E Blair  
Notary Public

ZENTREE II, LLC,  
a Nebraska limited liability company

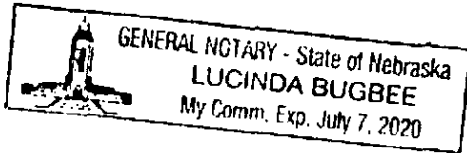
BY: Susan Holmsee Manager  
Name, Title

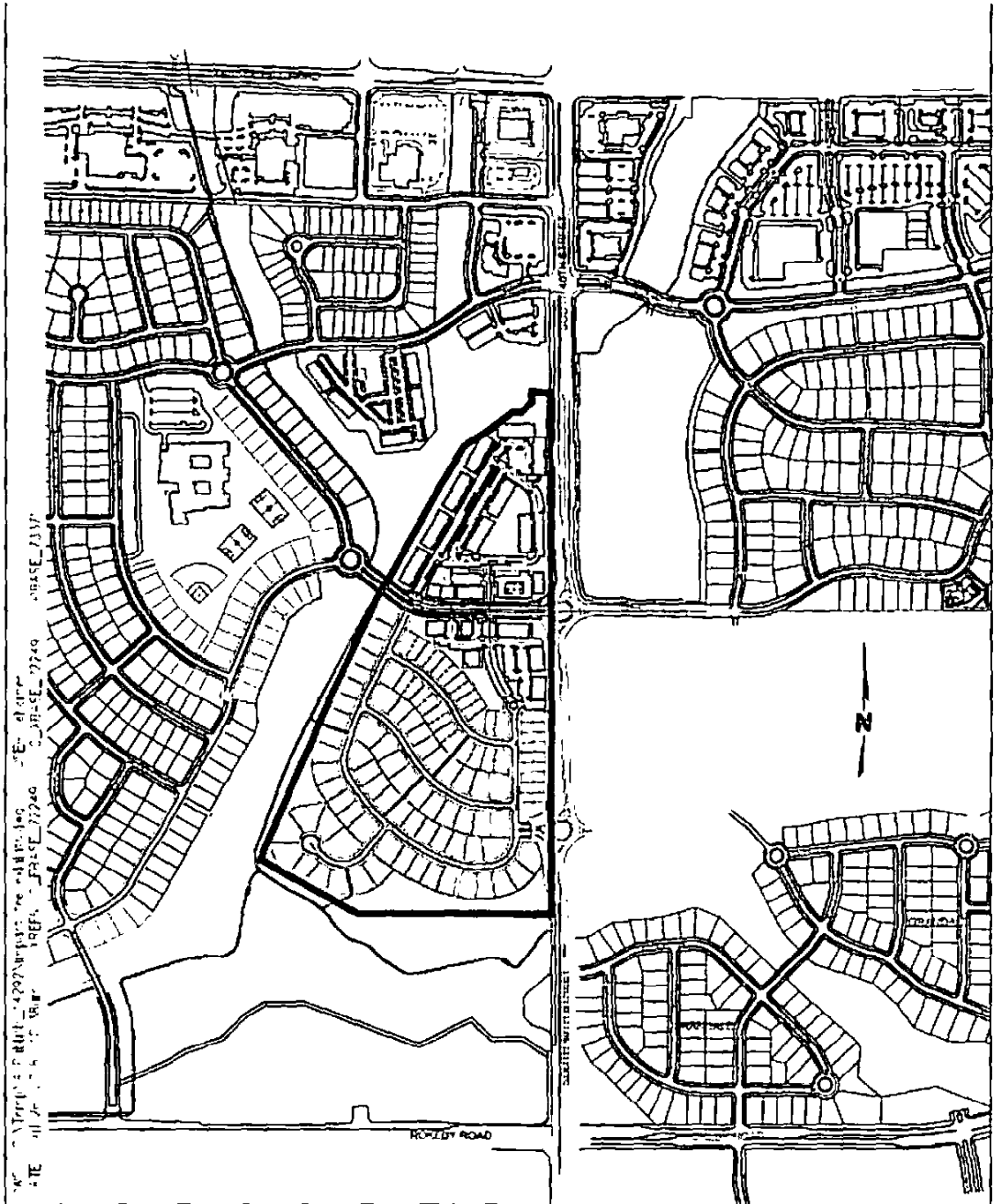
STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing was acknowledged before me this 20<sup>th</sup> day of August, 2018, by Susan Holmsee, (Title) of the Zentree II, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

[Signature]  
Notary Public





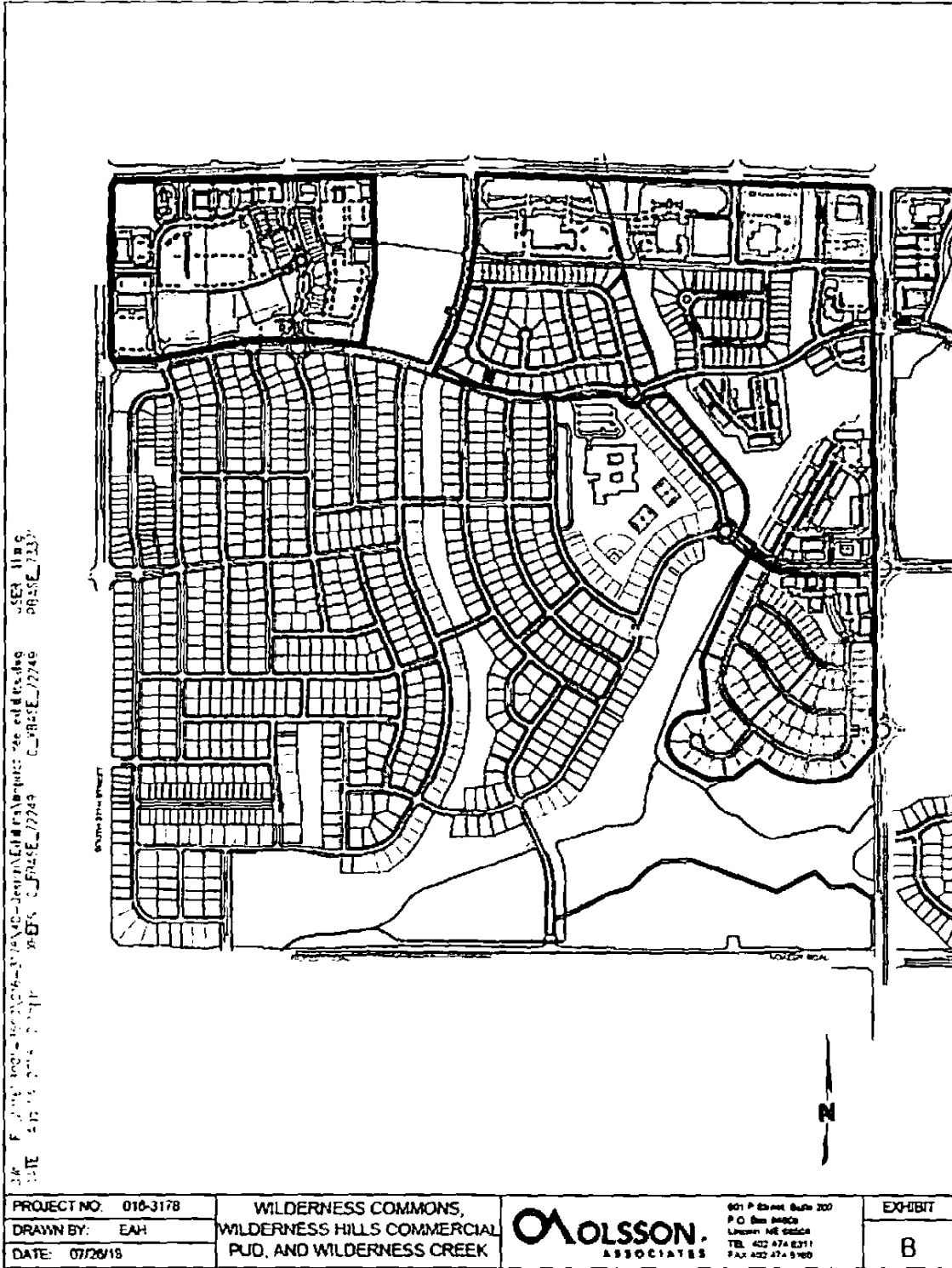
PROJECT NO. 016-3178  
 DRAWN BY: EAH  
 DATE: 07/26/18

**WILDERNESS COMMONS  
 PUD**


**MOLSSON**  
 ASSOCIATES

601 P Street, Suite 220  
 P.O. Box 84628  
 Lincoln, NE 68503  
 TEL: 402-474-8311  
 FAX: 402-474-8160

EXHIBIT  
 A



SEE PLAN FOR 2006-2007 DESIGNATION FOR THIS SITE. SEE ALSO SHEET 09ASE\_7749 FOR THIS SITE. SEE ALSO SHEET 09ASE\_7750 FOR THIS SITE.

PROJECT NO: 010-3178	WILDERNESS COMMONS,		EXHIBIT
DRAWN BY: EAH	WILDERNESS HILLS COMMERCIAL		B
DATE: 07/26/18	PUD, AND WILDERNESS CREEK		

601 P Street, Suite 200  
 P.O. Box 84824  
 Lincoln, NE 68504  
 TEL: 402 474 8211  
 FAX: 402 474 9160