



A91860

19R-248

Introduce: 10-21-19

RESOLUTION NO. A- 91860

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

2 That the Amendment No. 1 to the Conditional Annexation and Zoning Agreement for East

3 "A" Street Coalition approved as City Council Resolution No. A-91354 on November 5, 2018,

4 which is attached hereto, marked as Attachment "A", and made a part hereof by reference, between

5 the City of Lincoln, Heritage Lakes, LLC, BCLINC, LLC, B & J Partnership, Ltd., David, David,

6 John, LLC, Christopher A. Kidwell, Homestead Acres, LLC, and East O Realty Company, to

7 reflect changes in the development plans for property generally located on the north and south

8 sides of A Street between 94th and 98th Street, is hereby approved and the Mayor is authorized to

9 execute the Amendment No. 1 on behalf of the City.

10 BE IT FURTHER RESOLVED that the City Clerk is directed to return the original and

11 one fully-executed copy of the Amendment No. 1 to the Conditional Annexation and Zoning

12 Agreement to George Wesselhoft, Planning Department, for recording with the Register of Deeds
(Clerk will file)

13 and distribution to the owners. Recording fees are to be paid in advance by the owners.

14 BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this

15 Amendment to Tim Sieh, Assistant City Attorney.

Introduced by:

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

Approved as to Form & Legality:

City Attorney

ADOPTED

OCT 28 2019

BY CITY COUNCIL

Approved this 6th day of Nov., 2019:

Mayor

SCOTT D. KELLY
MARK A. CHRISTENSEN
RICHARD P. GARDEN, JR.
SHAWN D. RENNEN
JOHN C. MILES
THOMAS C. HUSTON
DON R. JANSSEN
SUSAN K. SAPP
KEVIN J. SCHNEIDER
GARY R. BATENHORST
JILL GOSSIN JENSEN
ROCHELLE A. MULLEN
TRENTEN P. BAUSCH
MICHAEL C. PALLESEN
RICHARD P. JEFFRIES
TRACY A. OLDEMEYER
PAMELA EPF OLSEN
TRENT R. SIDDER
ANDRE R. BARRY
DAVID J. ROUTH
JASON R. YUNGTUM
MEGAN S. WRIGHT
THERESA D. KOLLER
AUSTIN L. MCKILLIP
KEITH T. PETERS
ANDREW R. WILLIS
TARA A. STINGLEY
SEAN D. WHITE
MICHELLE L. SITORIUS
MICHAEL J. WHALEY
RUSSELL J. SPRAGUE †
RENEE A. EVELAND
HENRY L. WIEDRICH
DANIEL W. OLDENBURG

CLINE WILLIAMS
WRIGHT JOHNSON & OLDFATHER, L.L.P.

ATTORNEYS AT LAW

ESTABLISHED 1857

233 SOUTH 13TH STREET
1900 U.S. BANK BUILDING
LINCOLN, NEBRASKA 68508-2095

(402) 474-6900 • FAX (402) 474-5393

www.cllnewlliams.com

October 24, 2019

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GREGORY S. FRAYSER
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LILY AMARE
JOHN F. ZIMMER, V.
MICHAEL L. SHOLES
NATHAN D. CLARK
ALISON K. JANECEK
TAMARA L. KELLEY †
JACLYN L. KLINTOE
SYDNEY M. HUSS
BRITTNEY M. HOLLEY
AMANDA C. CARTER
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MARY K. MAKGUM

STEPHEN E. GEHRING
L. BRUCE WRIGHT
ROBERT J. ROUTH
DAVID R. BUNTAIN
TERRY R. WITTNER
RICHARD A. SPELLMAN
DAVID O. COLVER †
KIMBRA L. KILLIN †
DONALD F. BURT (INACTIVE)
STEPHEN H. NELSEN (INACTIVE)

ATTORNEYS ADMITTED IN COLORADO ONLY

VIA HAND DELIVERY

Timothy S. Sieh
Assistant City Attorney
Lincoln City Attorney's Office
555 South 10th Street, Suite 300
Lincoln, NE 68508

Re: Amendment No. 1 to the Conditional Annexation Agreement for East
"A" Street Coalition
Our File No: 22072.001

Dear Tim:

I attach the original Amendment No. 1 to the Conditional Annexation Agreement for East "A" Street Coalition executed by all the members of the Coalition for introduction to the City Council at the October 28, 2019 public hearing. If you need any additional information, please do not hesitate to contact me.

Sincerely,



Thomas C. Huston
For the Firm

Enclosure

cc: Brad Marshall (via email)
Steve Henrichsen (via email)
Roger Severin (via email)

4825-1336-6698, v. 1

12910 PIERCE STREET
SUITE 200
OMAHA, NE 68144-1105
(402) 397-1700

1207 M STREET
P.O. BOX 510
AURORA, NE 68818
(402) 694-6314

416 VALLEY VIEW DRIVE
SUITE 304
SCOTTSBLUFF, NE 69361
(308) 635-1020

215 MATHEWS STREET
SUITE 300
FORT COLLINS, CO 80524
(970) 221-2637

216 SOUTH INTEROCEAN AVENUE
HOLYOKE, CO 80734
(970) 854-2264

After recording, please return to:

Thomas C. Huston
Cline Williams Wright Johnson
& Oldfather, LLP
233 South 13th Street, Suite 1900
Lincoln, NE 68508

**AMENDMENT NO. 1 TO THE CONDITIONAL ANNEXATION
AGREEMENT FOR EAST “A” STREET COALITION**

THIS AMENDMENT NO. 1 TO THE CONDITIONAL ANNEXATION AGREEMENT FOR EAST “A” STREET COALITION (“Amendment No. 1”) is made and entered into as of the date of execution by the last signatory hereto as indicated below by and among:

- **City of Lincoln, Nebraska**, a municipal corporation (“City”);
- **Heritage Lakes, LLC**, a Nebraska limited liability company (“Heritage”);
- **BCLINC, L.L.C.**, a Nebraska limited liability company (“BCLINC”);
- **B & J Partnership, Ltd.**, a Nebraska limited partnership (“B&J”);
- **David, David, John, LLC**, a Nebraska limited liability company (“Rallis”);
- **Christopher A. Kidwell** (“Kidwell”);
- **Homestead Acres, Inc.**, a Nebraska corporation (“Homestead”); and
- **East O Realty Company**, a Nebraska limited corporation (“East O Realty”),

(collectively, Heritage, BCLINC, B&J, Rallis, Kidwell, Homestead, and East O Realty are referred to as the “Parcel Owners” or “Coalition”).

RECITALS

- A. The City of Lincoln and the Parcel Owners previously entered into a Conditional Annexation Agreement for East “A” Street Coalition (“Agreement”) adopted by the City Council for the City of Lincoln, Nebraska on November 5, 2018 as Resolution No. A-91354 related to the annexation of approximately 200 acres of land located generally on the north and south sides of East “A” Street between 94th and 98th Streets.
- B. In the Agreement, the City agreed to design a sanitary sewer line to connect the East “A” Street Annexation Area described in the Agreement to the Stevens Creek Trunk Sewer Line.
- C. The Parcel Owners agreed to design and construct, at their cost and expense, a temporary pump station and force main waste water improvements and to use such system to provide sanitary sewer service to a portion of the Annexation Area described in the Agreement.
- D. In the course of designing and preparing to construct the temporary pump station and force main waste water improvements, the Parcel Owners have determined it is not in their best interest to construct the pump station and force main and propose to construct the sanitary sewer line necessary to connect to the Stevens Creek Trunk Sewer Line at its cost and expense subject to reimbursement.
- E. The City is willing to amend the Agreement as described in this Amendment No. 1 to allow the Parcel Owners to construct the sanitary sewer main that the City previously agreed to design at Parcel Owners’ cost and expense subject to reimbursement as described herein.

NOWHEREFORE, in consideration of the mutual promises described below, the Parcel Owners and the City agree to Amend the Agreement as specifically described herein:

1. Sanitary Sewer. Section 3 of the Agreement shall be amended by striking the original Section 3 in its entirety and replacing it with the following:

A. East “A” Sanitary Sewer. The City has included in year 2021/22 of the current approved

Capital Improvement Program the design and construction of a 18-inch sanitary sewer main connecting the East "A" Street Annexation Area to the Stevens Creek Trunk Line to be located along a route generally depicted and shown on Exhibit "G" attached hereto and incorporated herein by this reference ("East "A" Sanitary Sewer"). The City agrees to continue to fund said project when the funds first become available for the 2021/22 fiscal year in the Capital Improvement Program provided that the City Council approves increases in the Sanitary Sewer User Fees as requested by the Lincoln Transportation and Utilities Department in fiscal years 2019-20 and 2020-21. The Property Owner may, on the City's behalf, competitively bid through the City's Purchasing Division and construct the East "A" Sanitary Sewer at its own cost and expense through the City's Executive Order construction process as part of the final plat process. The City shall be responsible for the design, construction observation/testing and all associated administrative costs of the East "A" Sanitary Sewer. In the event the Parcel Owners construct the East "A" Sanitary Sewer through the executive order process, the City agrees, subject to approval of a 5% increase in the Sanitary Sewer User Fees for each of the 2019-20 and 2020-21 fiscal years, to reimburse the Parcel Owners the cost, without interest, of the East A Sanitary Sewer constructed by the Parcel Owners. In the event the bid of the lowest responsible bidder for the East "A" Sanitary Sewer project exceeds a total of \$1,500,000.00, the Parcel Owners may reject all said bids. In such an event, the City and Parcel Owners will work cooperatively to determine cost-saving measures for the project in order to lower the cost of constructing the East "A" Sanitary Sewer. Kidwell and Homestead shall not be responsible for any costs associated with the design and construction of: (a) the East "A" Sanitary Sewer unless they individually proceed to be annexed into the Lincoln corporate limits and utilize the East "A" Sanitary Sewer to

provide sanitary sewer service to their parcels prior to the City funding of the East “A” Sanitary Sewer; or (b) the costs of design and construction of the detention cell described in paragraph 5 below. Further, East O Realty shall not be responsible to pay any costs or expenses related to the East “A” Sanitary Sewer.

B. Sanitary Sewer User Fees. The City’s obligation to reimburse the Parcel Owners the cost of constructing the East “A” Sanitary Sewer in full in 2021 is contingent upon the Lincoln City Council’s approval of rate increases for sanitary sewer user fees for 2020-2021 and 2021-2022 fiscal years. If the Lincoln City Council does not approve such rate increases for the sanitary sewer user fees, then the City shall reimburse the Parcel Owners for the cost of the East “A” Sanitary Sewer as soon as reasonably possible thereafter.

C. Internal Sewer. Where applicable, the Parcel Owners, within the boundaries of their respective properties, shall design and construct, at their individual cost, the internal sewer lines (collectively, “Internal Sewer Lines”) required to service the Phase One Annexation Area in phases. The Internal Sewer Lines shall be constructed pursuant to the City’s Executive Order construction procedure as part of the platting process. Each Parcel Owner whose parcel will contain an Internal Sewer Line shall be responsible for the cost of constructing a typical 8-inch sanitary sewer line, and the City shall be responsible for all costs attributable to oversizing any Internal Sewer Line with pipe, valves, fittings, and all other accessories that are larger than 8 inches. Notwithstanding the previous sentence, the City will reimburse the Parcel Owner who constructs any 12-inch or greater Internal Sewer Lines that cannot be utilized directly for service the entire cost of constructing said section. If required by law, the oversized Internal Sewer Lines shall be publicly bid and awarded to the lowest responsible bidder. If the East “A” Sanitary Sewer is not completed in time to service the Internal Sewer Lines, the Parcel

Owners shall be authorized to pump and remove effluent from the Internal Sewer Lines through a public manhole at the Parcel Owner's cost and expense. In such event, the City shall not withhold the issuance of any certificates of occupancy for the completed homes being served by the Internal Sewer Lines.

2. Section 7 of the Agreement shall be amended by striking that language shown stricken below and replacing it with the underlined language:

7. **Water Main.** The City shall extend, at its cost and expense, the water main in the "A" Street right-of-way to 94th Street to serve the East "A" Annexation Area to be placed into service by ~~June 30, 2019~~ October 15, 2019.

3. Exhibit A shall be amended specifically to exclude a portion of the real property shown as belonging to Christopher A. Kidwell. The legal description in Exhibit A for the Kidwell Property shall be amended to read as follows:

PART OF LOT 30 I.T.

A LEGAL DESCRIPTION FOR A TRACT OF LAND COMPOSED OF LOT 30 I.T., LOCATED IN THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 10 NORTH, RANGE 7 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, EXCEPT FOR THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 30 I.T., SAID POINT BEING THE SOUTHEAST QUARTER OF THE EAST HALF OF SAID NORTHWEST QUARTER, THENCE, WEST, ALONG THE SOUTH LINE OF SAID LOT 30 I.T., SAID LINE BEING THE SOUTH LINE OF THE EAST HALF OF SAID NORTHWEST QUARTER, ON AN ASSUMED BEARING OF NORTH 89 DEGREES 27 MINUTES 50 SECONDS WEST, A DISTANCE OF 1327.12 FEET TO THE SOUTHWEST CORNER OF SAID LOT 30 I.T., SAID POINT BEING THE SOUTHWEST CORNER OF THE EAST HALF OF SAID NORTHWEST QUARTER; THENCE NORTH 00 DEGREES 01 MINUTES 45 SECONDS WEST, ALONG THE WEST LINE OF SAID LOT 30 I.T., SAID LINE BEING THE WEST LINE OF THE EAST HALF OF THE NORTHWEST QUARTER, A DISTANCE OF 256.52 FEET TO A POINT; THENCE NORTH 46 DEGREES 51 MINUTES 48 SECONDS EAST A DISTANCE OF 1812.23 FEET TO A POINT ON THE EAST LINE OF SAID LOT 30 I.T., SAID POINT BEING ON THE EAST LINE OF THE EAST HALF OF SAID NORTHWEST QUARTER; THENCE SOUTH 00 DEGREES 10 MINUTES 51 SECONDS EAST, ALONG SAID LINE, A DISTANCE OF 1508.04 FEET TO THE POINT OF BEGINNING. EGINNING.

SAID EXCLUDED PORTION CONTAINS A CALCULATED AREA OF 1,170,291.04 SQUARE FEET OR 26.87 ACRES, MORE OR LESS.

4. Exhibit A-2 and Map A-2 shall be amended to exclude that portion of the real property shown as belonging to Christopher Kidwell described below shall be excluded from the Phase Two Annexation Area.

PART OF LOT 30 I.T.

A LEGAL DESCRIPTION FOR A TRACT OF LAND COMPOSED OF A PORTION OF LOT 30 I.T., LOCATED IN THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 10 NORTH, RANGE 7 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 30 I.T., SAID POINT BEING THE SOUTHEAST QUARTER OF THE EAST HALF OF SAID NORTHWEST QUARTER, THENCE, WEST, ALONG THE SOUTH LINE OF SAID LOT 30 I.T., SAID LINE BEING THE SOUTH LINE OF THE EAST HALF OF SAID NORTHWEST QUARTER, ON AN ASSUMED BEARING OF NORTH 89 DEGREES 27 MINUTES 50 SECONDS WEST, A DISTANCE OF 1327.12 FEET TO THE SOUTHWEST CORNER OF SAID LOT 30 I.T., SAID POINT BEING THE SOUTHWEST CORNER OF THE EAST HALF OF SAID NORTHWEST QUARTER; THENCE NORTH 00 DEGREES 01 MINUTES 45 SECONDS WEST, ALONG THE WEST LINE OF SAID LOT 30 I.T., SAID LINE BEING THE WEST LINE OF THE EAST HALF OF THE NORTHWEST QUARTER, A DISTANCE OF 256.52 FEET TO A POINT; THENCE NORTH 46 DEGREES 51 MINUTES 48 SECONDS EAST A DISTANCE OF 1812.23 FEET TO A POINT ON THE EAST LINE OF SAID LOT 30 I.T., SAID POINT BEING ON THE EAST LINE OF THE EAST HALF OF SAID NORTHWEST QUARTER; THENCE SOUTH 00 DEGREES 10 MINUTES 51 SECONDS EAST, ALONG SAID LINE, A DISTANCE OF 1508.04 FEET TO THE POINT OF BEGINNING. EGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 1,170,291.04 SQUARE FEET OR 26.87 ACRES, MORE OR LESS.

The area to be excluded is shown on Attachment 1 hereto.

5. A new Section shall be added to the Agreement as follows:

Detention Cell Easement. The Coalition is responsible for the construction of the detention cell on the north side of the Mo-Pac trail as shown on Exhibit "A", attached and incorporated by this reference (the "Detention Cell"). To assist in the preservation of the existing tree stand, the City grants to the Parcel Owners, a non-exclusive easement to construct, maintain and operate the Detention Cell in the Mo-Pac trail area as shown on Exhibit "A". The Parcel Owners, or a

homeowner's association created for that purpose, shall be responsible for the care, maintenance and repair of the Detention Cell structure and necessary inlets in the easement area. The Coalition agrees to replace on a one-to-one ratio the thirty (30) trees removed from the trail corridor as part of improvement projects benefitting the Property. The replacement trees shall have a caliper of at least 1.5 inches at breast height and be staked, mulched, and include a water bag, which will be maintained by the City. The trees will generally be located within the 100 feet wide trail corridor between the east edge of 94th Street and the point at which the trail crosses A Street. The Coalition shall present the City with a landscaping plan, including the replacement trees described above, reflecting the location of the plantings and the species to be planted for the City's review and approval prior to commencing construction of the Detention Cell. The City assumes responsibility for maintaining any vegetation planted by the Coalition on the slopes of the Detention Cell located within the trail area. Kidwell, Homestead and East O Realty shall not be responsible to pay any costs or expenses related to the design, construction or maintenance of the Detention Cell, or any landscaping associated with the Detention Cell.

6. Except as specifically amended by this Amendment No. 1, all other terms and conditions of the Agreement shall remain in full force and effect.

[SIGNATURE PAGES TO FOLLOW]

Dated as of Nov. 6, 2019 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 6th day of Nov.,
2019, by Leirion Gaylor Baird, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation,
on behalf of the municipal corporation.

(Seal)



Teresa J. Meier
Notary Public

Dated as of September 30th, 2019 by Heritage Lakes, LLC.

"HERITAGE"

HERITAGE LAKES, LLC, a Nebraska limited liability company

By: Gary Kort
Name: Gary Kort
Title: Managing member

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 30th day of September 2019, by Gary Kort, Managing member of Heritage Lakes, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)




Shani Barros
Notary Public

Dated as of July 19, 2019 by BCLINC, L.L.C.

“BCLINC”

BCLINC, L.L.C., a Nebraska limited liability company

By: 
Name: Boyd Batteman
Title: manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 19th day of July, 2019, by Boyd Batteman, Manager of BCLINC, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

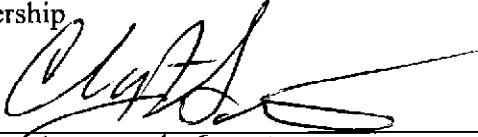



Notary Public

Dated as of October 7, 2019 by B & J Partnership, Ltd.

"B&J"

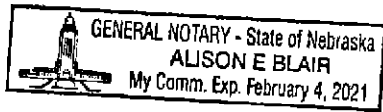
B & J PARTNERSHIP, LTD., a Nebraska limited partnership

By: 
Name: Clay F. Smith
Title: Partner

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 7 day of October, 2019, by Clay F. Smith, Partner of B & J Partnership, Ltd., a Nebraska limited partnership, on behalf of the limited partnership.

(Seal)





Notary Public

Dated as of 10-23-2019, 2019 by David, David, John, LLC, a Nebraska limited liability company.

"RALLIS"

DAVID, DAVID, JOHN, LLC, a Nebraska limited liability company




John Rallis, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 23rd day of October, 2019, by John Rallis, Manager for David, David, John, LLC, a Nebraska limited liability company, on behalf of the company.

(Seal)



Notary Public



Dated as of 10-7-19, 2019 by Christopher A. Kidwell

"KIDWELL"

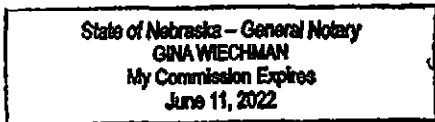
CHRISTOPHER A. KIDWELL, Individually

Chris Kidwell

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 7th day of October, 2019, by Christopher A. Kidwell., on his own behalf.

(Seal)




Gina Wiechman
Notary Public

Dated as of SEPTEMBER 11, 2019 by Homestead Acres, Inc.

"HOMESTEAD"

HOMESTEAD ACRES, INC., a Nebraska corporation

By: 
James D. Watts, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 11th day of September 2019, by James D. Watts, President of Homestead Acres, Inc., a Nebraska corporation, on behalf of the corporation.



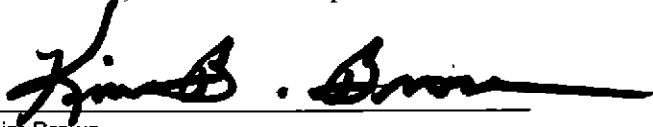
(Seal)


Notary Public

Dated as of Sept. 30th, 2019 by East O Realty Company.

“EAST O REALTY”

EAST O REALTY, a Nebraska corporation

By: 
Name: Kim Brown
Title: President, Board of Directors

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 30th day of September 2019, by Kim Brown, President of Board of Directors of East O Realty, a Nebraska corporation, on behalf of the corporation.

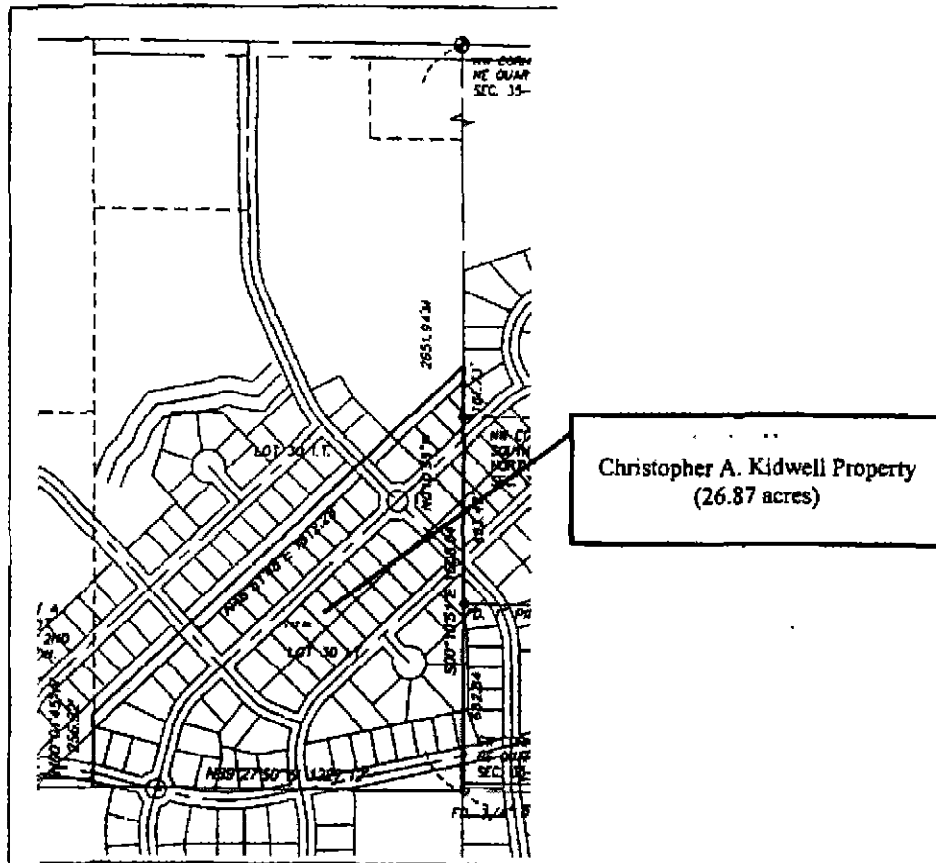
(Seal)

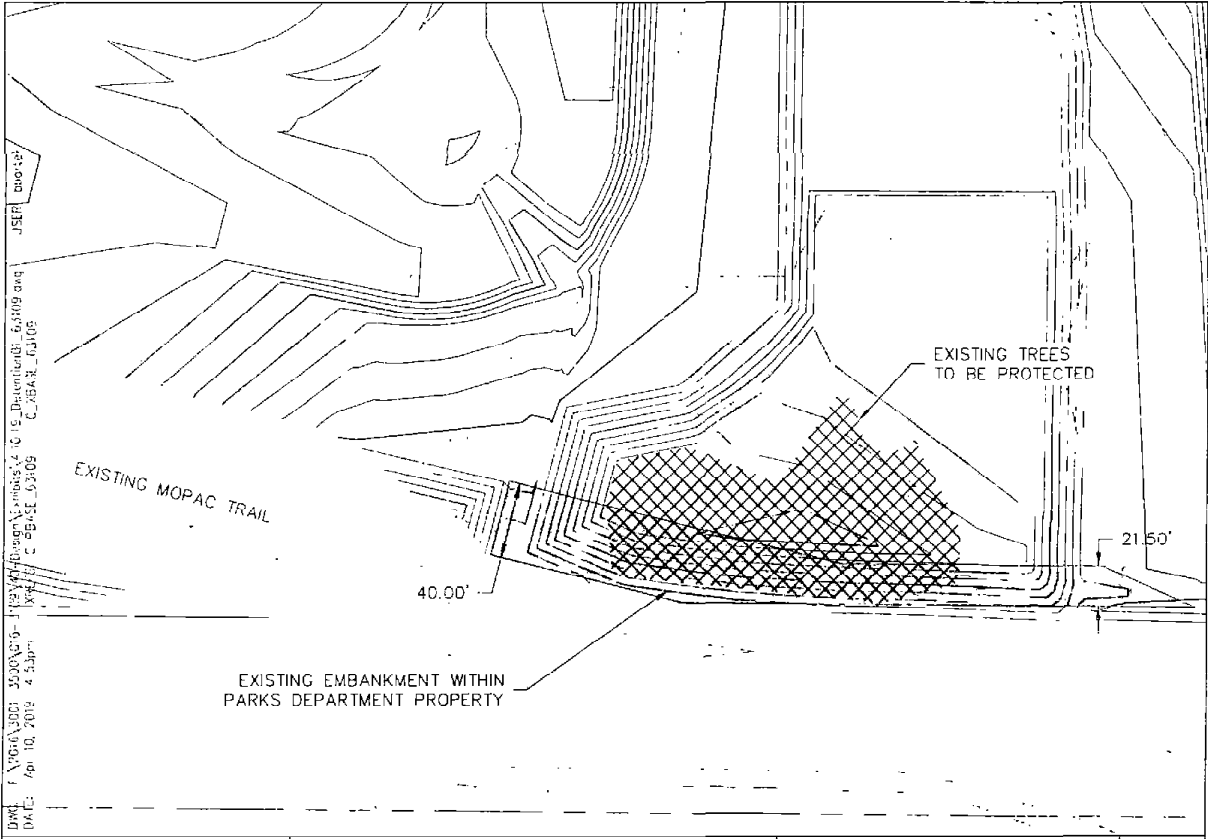



Notary Public

ATTACHMENT 1

Exhibit "A-1"
Christopher A. Kidwell Property (26.87 acres)





PROJECT NO:	016-3109
DRAWN BY:	BPD
DATE:	4.10.19

HILLCREST
MAINTENANCE EXHIBIT



801 P Street, Suite 200
P.O. Box 94666
Lincoln, NE 68503
TEL: 402.474.8311

EXHIBIT
1