



A92108

20R-68

Introduce: 2-24-20

RESOLUTION NO. A- 92108

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

2 That the Conditional Zoning Agreement for 8801 Holdrege which is attached hereto,  
3 marked as Attachment "A", and made a part hereof by reference, between the City of Lincoln and  
4 Hausmann Development, LLC, for the development of property commonly known as 8801  
5 Holdrege St. generally located southwest of the intersection of Linwood Lane and Holdrege Street  
6 and re-zoning the property from AG Agricultural District to R-3 and R-5 Residential District, as  
7 set forth in the Agreement, is hereby approved and the Mayor is authorized to execute the  
8 Conditional Zoning Agreement on behalf of the City.

9 BE IT RESOLVED that the City Clerk is directed to return one fully-executed copy of this 5/11  
10 Agreement to Tim Sieh, Assistant City Attorney, for distribution to the Property Owner.

11 BE IT FURTHER RESOLVED that the City Clerk is directed to file the Conditional 5/11 to  
12 Zoning Agreement for 8801 Holdrege with the Lancaster County Register of Deeds with the Song  
13 recording fees to be paid in advance by the Property Owner.

14 BE IT FURTHER RESOLVED that the City Clerk is directed to forward a copy of this 5/11  
15 Agreement to Michaela Dugan, Impact Fee Administrator.

See further Council Proceedings on next page.

Introduced by:

Approved as to Form & Legality:

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

Jeffrey R. Rodriguez  
City Attorney

Approved this 11 day of May, 2020:  
Stevenson Gaylor Baird  
Mayor

**ADOPTED**  
**MAY 04 2020**  
**BY CITY COUNCIL**

**20R-68**

3/9/20 Council Proceedings:

BOWERS Moved to delay action on Bill No. 20R-68 for 1 week to 3/16/20.

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

3/16/20 Council Proceedings:

BOWERS Moved to place Bill No. 20R-68 on Pending, No Date Certain.

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

**CONDITIONAL ZONING AGREEMENT  
FOR 8801 HOLDREGE**

This Conditional Zoning Agreement ("Agreement") is made and entered into as of this ~~11<sup>th</sup>~~<sup>May</sup> day of ~~March~~, 2020 by and between the **City of Lincoln, Nebraska**, a municipal corporation ("City"), and **Hausmann Development, LLC**, a Nebraska limited liability company, hereinafter referred to as the "Property Owner".

**RECITALS**

1. Property Owner controls and intends to acquire fee simple title to and to develop a tract of the real property legally described as Lot 23 located in the NW Quarter of Section 23, Township 10, Range 7 east of the 6<sup>th</sup> Prime Meridian, Lancaster County, Nebraska and shown on Attachment "A" (the "Property") generally located in the area of the intersection of Linwood Lane and Holdrege Street in Lincoln, Lancaster County, Nebraska. Property Owner desires to cause the urban development of the Property.

2. Property Owner has requested that the City rezone that portion of the Property from AG to a combination of R-3 and R-5 Residential which are shown on Attachment "B" ("Change of Zone Boundaries"). In addition, Property Owner has applied for and requests that the City approve Special Permit No. 19047 for a Community Unit Plan to allow for 596 multi-family dwelling units on the Property.

4. The Property is currently shown as Residential -Urban Density on the 2040 Lincoln Area Future Land Use Map in Lincoln City-Lancaster County Comprehensive Plan and is included within the corporate limits of the City.

5. The City's approval of the Change of Zone and the Special Permit for a Community Unit Plan are collectively referred to herein as "Governmental Actions".

6. The City is willing to approve the Governmental Actions and subsequently consider approving the preliminary plats and final plats for the balance of the Property pursuant to the Comprehensive Plan (collectively "Subsequent Governmental Actions"); provided that, the infrastructure improvements are constructed in a timely manner to serve and properly accommodate the area. All preliminary plats, final plats, and other land use applications concerning the Property shall be considered pursuant to the City's Comprehensive Plan, land development ordinances, applicable design standards, and the terms and conditions of this Agreement.

7. This Agreement identifies the Property Owner's and City's responsibilities regarding the construction of infrastructure improvements necessitated by the development of the Property.

NOW, THEREFORE, in consideration of the mutual covenants established herein, the parties to this Agreement do hereby agree as follows:

## I.

### CONCURRENT APPROVAL OF GOVERNMENTAL ACTIONS; CONDITIONAL APPROVAL

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

1. Amending Lincoln zoning district maps to change the zoning designation for the Property from AG to R-3 residential and R-5 Residential as shown on Attachment "A"; and
2. Approving the Special Permit No.19047 to approve a Community Unit Plan allowing for construction of not more than 596 multifamily dwelling units on the Property in a manner consistent with the Site Plan attached hereto as Attachment "B".

B. **Conditional Approval.** Approvals of the Governmental Actions are conditioned upon the terms, conditions and understandings as set forth in this Agreement being fulfilled. The parties understand and agree that, notwithstanding the conditional nature of such zoning approvals hereto, the City Council, on its own motion or at the request of any party hereto, may, in the exercise of its lawful legislative authority: (i) amend the Comprehensive Plan; (ii) extend the municipal corporate boundaries to include any contiguous or adjacent lands; (iii) rezone or revise the zoning designations applicable to the Property; or (iv) approve or amend plats, dedications, use permits, special permits, developments, community unit plans, building permits or other land use controls, as future circumstances may warrant.

## II.

### STREET IMPROVEMENTS

A. **Holdrege Street.** Holdrege Street from 84<sup>th</sup> to 98<sup>th</sup> Streets has been identified by the City as an arterial street during the 25-year planning period. Presently, Holdrege Street is a

two-lane asphalt rural roadway east of 87<sup>th</sup> Street. In order to facilitate the ultimate build-out of Holdrege Street and to accommodate the increase in traffic that will be generated by development of the CUP described herein, the City and Property Owner agree that Holdrege Street shall be constructed from 87<sup>th</sup> Street to 93<sup>rd</sup> Street at this time as two lanes separated by a median with a roundabout at the intersection of 93<sup>rd</sup> and Holdrege Streets (hereinafter “Holdrege Street Improvements”). Property Owner, at its own cost and expense, shall design, grade, and construct the Holdrege Street Improvements from 87<sup>th</sup> Street east through the intersection of S. 93<sup>rd</sup> and Holdrege Street as a paved two-lane roadway with the lanes being separated by a median and constructed on the Holdrege Street Centerline. The lanes shall each be twelve feet (12’) in width and shall include a shoulder that is eleven feet (11’) wide. The Holdrege Street Improvements are shown on Attachment “C”, which is attached hereto and incorporated herein by this reference. The Holdrege Street improvements shall be constructed prior to approval of any final plat submitted for the Property that includes a street taking access from Holdrege Street. Said roadway shall be designed, graded, and constructed by the Property Owner at its own cost and expense pursuant to the City’s executive order construction process.

**B. Construction of Holdrege Street Improvements.**

Property Owner recognizes that the City does not have adequate funds on hand to pay for construction of the Holdrege Street Improvements on a timeline that is consistent with private development of the Property. Property Owner further acknowledges and agrees that it is in the best interest of the Property Owner that the Holdrege Street Improvements be constructed prior to when the City is projected to accumulate adequate funds to pay for said improvements.

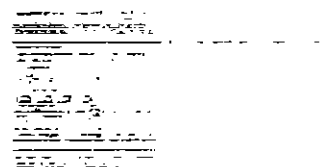
The City agrees and acknowledges that the Holdrege Street Improvements qualify as arterial street impact fee facility improvements as that term is defined by Lincoln Municipal Code §27.82.040. Furthermore, the City recognizes that constructing the Holdrege Street Improvements

by the earlier of opening the apartment complex to residents or January 1, 2023, as the Property Owner herein agrees to do, will result in more efficient and effective traffic movements as the private improvements are constructed on the Property.

Therefore, the City agrees that the Property Owner shall design, bid through the City's Purchasing Division, and construct the Holdrege Street Improvements on behalf of the City through the City's Executive Order construction process, but at the Property Owner's cost and expense subject to payment from the City as described herein.

In consideration of Property Owner designing and constructing the Holdrege Street Improvements, the City agrees that arterial street impact fees generated by development of the Property shall be directed by the City toward reimbursement of the Property Owner for the actual cost of the design and construction of the Holdrege Street Improvements. Said reimbursement payments shall be made on a quarterly basis by the City to the Property Owner from arterial street impact fees generated from private development of the Property as they become available. The agreement by the City to reimburse the Property Owner from arterial street impact fees generated by the Property is limited and shall not constitute a general obligation of the City.

Further, the City acknowledges and agrees that the arterial street impact fees generated from development of the Property alone is insufficient to cover the costs to be incurred by Property Owner in designing and constructing the Holdrege Street Improvements. Partially in recognition of the insufficiency of arterial street impact fees to keep up with the demand for additions to the City's arterial streets, 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 in order to improve the street infrastructure of the City while also spurring additional private investment. Having imposed such a tax, the City Council subsequently identified the Holdrege Street Improvements described



herein as a project toward which a portion of the sales tax revenue generated by the additional ¼ cent tax should be allocated.

Therefore, in addition to the arterial street impact fees generated by development of the Property, the City, subject to future appropriation by the City Council, hereby agrees to allocate One Million and No/100 Dollars (\$1,000,000.00) from the revenue generated by the additional ¼ cent sales tax dedicated toward reimbursing Property Owner for actual costs incurred in designing and constructing the Holdrege Street Improvements. Said sales tax revenue shall, subject to appropriation by the City Council, be paid to Property Owner conditioned upon satisfactory completion of the Holdrege Street Improvements by the earlier of opening the apartment complex to residents or January 1, 2023, according to the following schedule:

|              |              |
|--------------|--------------|
| FY 2021-2022 | \$500,000.00 |
| FY 2022-2023 | \$500,000.00 |

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

As a result of the potential for reimbursement from arterial street impact fees and revenue from the additional ¼ cent sales tax, Property Owner agrees that it shall select the construction company responsible for constructing said improvements through the City's Purchasing Division according to the City's requirements for procurement of such services. The Property Owner reserves the right to submit a bid for the construction of the Holdrege Street Improvements.

The City and Property Owner agree and acknowledge that the construction and the design of the Holdrege Street Improvements are estimated to cost One Million Eight Hundred Sixty-One Thousand One Hundred Fifty-Five and No/100ths Dollars (1,861,155.00). In the event the bid of the lowest responsible bidder for the construction of the Holdrege Street Improvements exceeds a total of One Million Five Hundred Twenty-Five Thousand Five Hundred Thirty-Seven and



No/100<sup>th</sup>s Dollars (\$1,525,537.00), the Property Owner may reject all said bids. In such event, the City and Property Owner will work cooperatively to determine cost-saving measures for the project in order to lower the cost of the constructing the Holdrege Street Improvements.

Property Owner expressly acknowledges and agrees that nothing in this Agreement represents a general obligation on the part of the City to repay Property Owner for its actual costs incurred in the design and construction of the Holdrege Street Improvements. Property Owner also agrees that in the event the actual cost to design and construct the Holdrege Street Improvements exceed the amount of arterial street impact fees generated by the development of the Property and the amount of sales tax revenue shown above, the Property Owner shall be solely responsible for said costs. Further, Property Owner agrees that in the event it does not complete the Holdrege Street Improvements prior to the earlier of the opening of the apartment complex to residents or January 1, 2023, the City may, in its sole discretion, elect to reallocate all or a portion of the sales tax revenue funds described above from the Holdrege Street Improvements to a different street project thereby making them unavailable to reimburse Property Owner for designing and constructing the Holdrege Street Improvements.

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

**D. Dedication of Street Right-of-Way.** At the time of the applicable final platting or prior to construction of the Holdrege Street Improvements, Property Owner agrees to dedicate, at

no cost to the City, the additional right-of-way needed on the south side of the Holdrege Street to ultimately provide the right-of-way necessary for the Holdrege Street design between 87<sup>th</sup> Street and 93<sup>rd</sup> Street along with any additional right-of-way required at the intersections for future roundabouts, turn lanes, and trails if required, to the satisfaction of the Lincoln Transportation and Utilities Department. The City agrees to acquire the required right-of-way on the north and south side of Holdrege Street for the Holdrege Street Improvements from the property owners on the north and south sides of Holdrege Street at the City's own cost and expense. Property Owner shall dedicate and convey the necessary right of way for the construction and operation of the Internal Streets set forth herein that are located within the Property, without additional cost or consideration, in conjunction with the construction of such Internal Street as set forth herein.

### III.

#### SANITARY SEWER

A. **Sanitary Sewer Main Line.** The City and Property Owner agree that an appropriately sized and staged sanitary sewer main line is necessary to serve the development of the Property as shown on the CUP as well as the general welfare of the public. In order to serve the Property through gravity-based sanitary sewer, the necessary main shall be constructed along the route shown on Attachment D, which is attached hereto and incorporated herein by this reference. Hereinafter, the sanitary sewer improvements shall be referred to as "Sewer Main".

B. **Sewer Main Construction.** The Property Owner agrees that it shall, at its cost and expense, design, bid, and construct the Sewer Main necessary to serve the Property through the City's executive order construction process. The Sewer Main project shall be publicly bid through the City's Purchasing Division, and the Property Owner acknowledges and agrees that it shall choose the lowest responsible bidder identified through the City's procurement process according to the applicable City rules and standards. The Property Owner reserves the right to

submit a bid for the construction of the Sewer Main project. The City agrees to reimburse the Property Owner for the actual cost incurred by the Property Owner to design and construct the Sewer Main by no later than January 31, 2021.

**C. Cost Estimate of Sewer Main.** The City and Property Owner agree and acknowledge that the construction and the design of the Sewer Main project are estimated to cost Four Hundred Forty Thousand Seven Hundred Thirty-Eight and No/100ths Dollars (\$440, 738.00). In the event the total of the lowest responsible construction bids for the Sewer Main collectively exceeds Three Hundred Forty-Five Thousand Nine Hundred Forty-Eight and No/100ths Dollars (\$345,948.00), then the City and the Property Owner will meet to determine whether (i) the City should reject the bids and rebid the Sewer Main; (ii) identify an alternative design that can meet the public's interest while simultaneously reducing costs; or (iii) the Property Owner agrees to cover the excess amount of the Sewer Main project without reimbursement from the City.

#### IV.

#### NOTICE

**A. Notice.** Any notices required to be forwarded to a Party hereto shall be deemed appropriately given or delivered if sent by registered or certified United States Mail, postage prepaid, return receipt requested, addressed or delivered personally as follows:

(1) If to the City:

Mayor  
555 South 10th Street  
Lincoln, Nebraska 68508

with a copy to:

City Attorney  
575 South 10<sup>th</sup> Street  
Lincoln, NE 68508

(2) If to Hausmann Development, LLC:

Joseph T. Hausmann  
8885 Executive Woods Drive  
Lincoln, Nebraska 68512

with a copy to:

Stanton N. Beeder  
8885 Executive Woods Drive  
Lincoln, Nebraska 68512

Any Party hereto may change its address for notification purposes by written notice to all Parties hereto in the manner and method set forth within this paragraph.

## VI.

### MISCELLANEOUS

**A. Release of Platted Lot.** Notwithstanding any contrary provisions herein, any Platted Lot shall automatically be deemed released from all of the terms of this Agreement without further written release. A “Platted Lot” shall mean a lot as defined by the City subdivision ordinances that has been lawfully included within a final plat of the Property, or portion thereof.

**B. Condemnation.** The City, at its expense, including, but not limited to, acquisition costs, condemnation awards, court costs, expert witness fees, testing fees, interest, and City staff time, shall acquire the remaining balance of any and all right of way and temporary and permanent easements necessary for the design, grading, construction and operation of the Holdrege Street Improvements and related improvements described in this Agreement. The City is authorized to utilize condemnation, if necessary, to acquire such right of way and temporary and permanent easements.

**C. Attachments.** The following Attachments are attached to this Agreement and are incorporated herein by this reference:

Attachment “A”          Zoning

|                       |                              |
|-----------------------|------------------------------|
| <u>Attachment "B"</u> | Site Plan                    |
| <u>Attachment "C"</u> | Holdrege Street Improvements |
| <u>Attachment "D"</u> | Sanitary Sewer Main          |

**D. Amendments.** This Agreement may only be amended or modified in writing signed by the Parties to this Agreement.

**E. Further Assurances.** Each Party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the Parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

**F. Governing Law.** All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

**G. Interpretations.** Any uncertainty or ambiguity existing herein shall not be interpreted against either Party because such Party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

**H. Construction.** Whenever used herein, including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

**I. Relationship of Parties.** Neither the method of computation of funding or any other provisions contained in this Agreement or any acts of any Party shall be deemed or construed by the City, Property Owner, or by any third person to create the relationship of partnership or of joint venture or of any association between the Parties other than the contractual relationship stated

in this Agreement.

**J. Assignment.** In the case of the assignment of this Agreement by any of the Parties, prompt written notice shall be given to the other Parties who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release in writing is given and signed by the other Parties to this Agreement or unless otherwise stated herein.

**K. Default.** In the event the Property Owner defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the City may take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach. In the event the City defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, then the Property Owner may take such remedies, legal or equitable, to enforce this Agreement or to obtain damages for its breach.

**L. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, devisees, personal representatives, successors and assigns and shall inure to and run with the Property.

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

**N. Cooperation.** Whenever a Party's approval or consent shall be required under this Agreement, such approval or consent shall not be arbitrarily or unreasonably conditioned, delayed, or withheld. A Party whose approval or consent is requested under the terms of this Agreement shall either provide the approval requested to the requesting party within fourteen (14) days of receiving the request for such approval or consent or notify the requesting Party that the receiving Party is

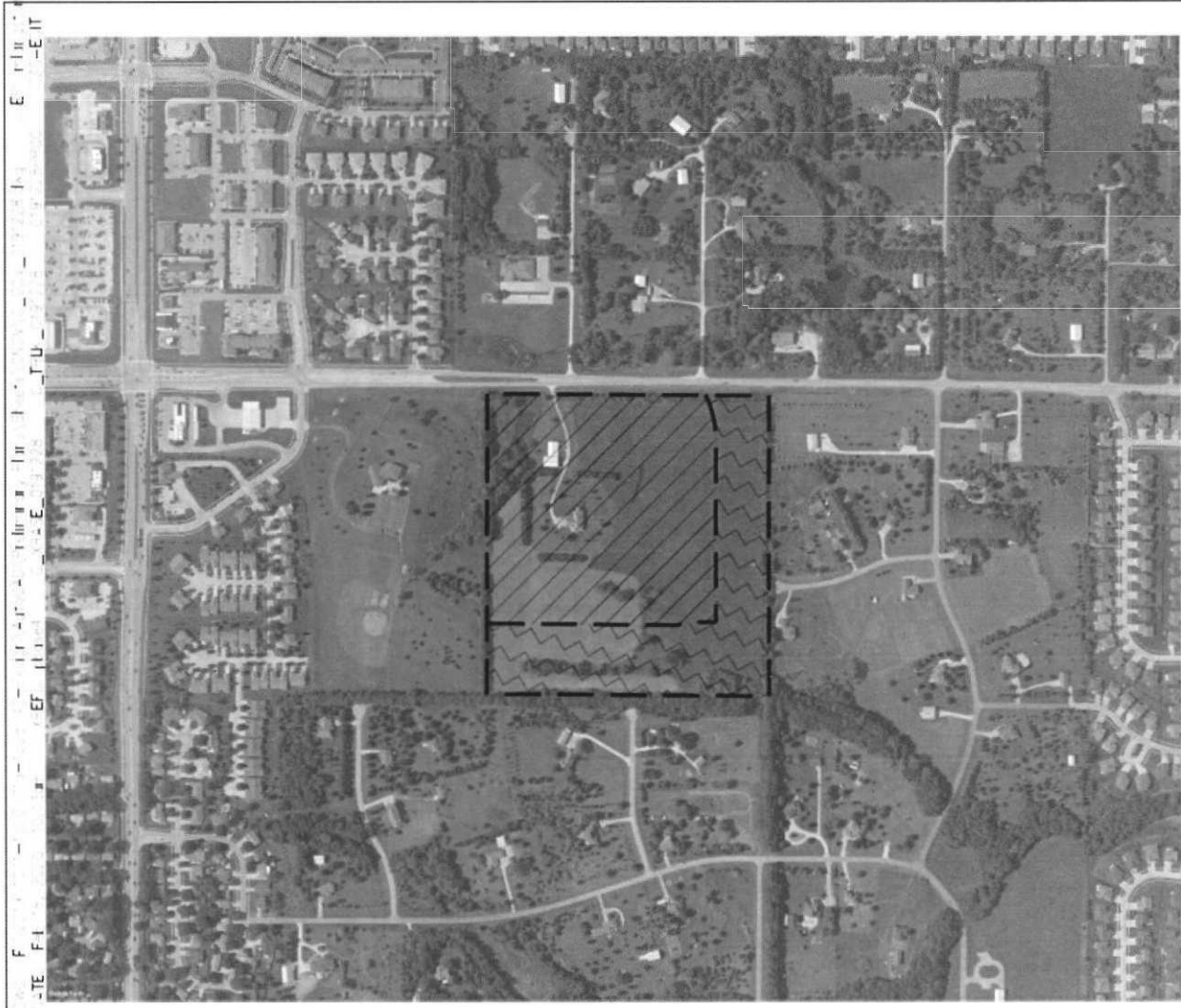




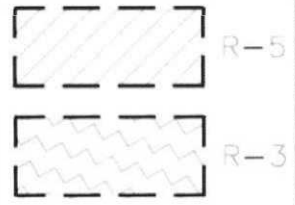


ATTACHMENT "A"

ZONING



ZONING DESIGNATION  
AREA LEGEND



|             |            |
|-------------|------------|
| PROJECT NO: | 019-1228   |
| DRAWN BY:   | MCL        |
| DATE        | 02.13.2020 |

EXHIBIT 'A'  
THE 8801 ZONING



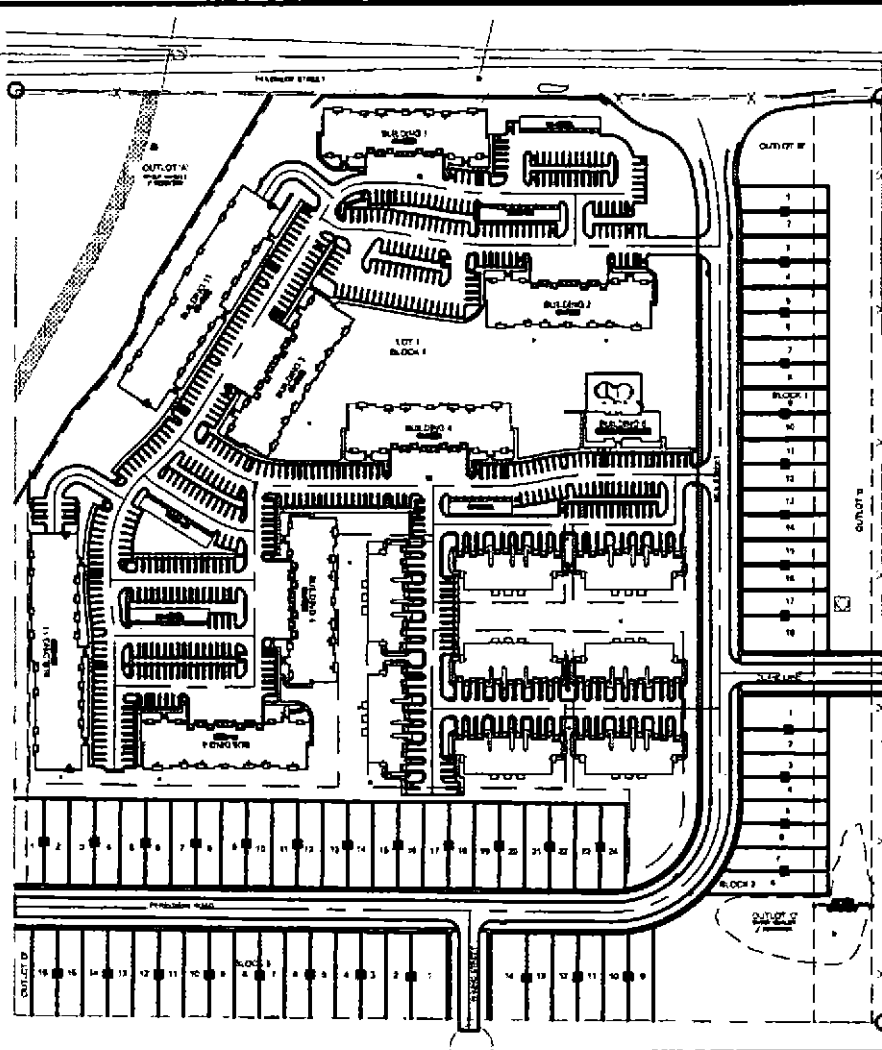
601 P Street, Suite 200  
P.O. Box 64908  
Lincoln, NE 68508  
TEL 402.474.6311

|         |
|---------|
| EXHIBIT |
| A       |

ATTACHMENT "B"

SITE PLAN

DWG: F:\2019\1001-1500\019-1228\40-Design\AutoCAD\Preliminary Plans\Sheets\CMCV\C\_SIT\_0191228.dwg USER: mlange\cm  
 DATE: Feb 18, 2020 10:12am XREFS: C\_XBASE\_0191228 C\_TBLK\_0191228 0191228PP00\_3 pbase10 C2S-ED 1



|             |            |
|-------------|------------|
| PROJECT NO: | 019-1228   |
| DRAWN BY:   | MCL        |
| DATE:       | 02.13.2020 |

EXHIBIT 'B'  
THE 8801 SITE PLAN

**olsson**

601 P Street, Suite 200  
 P.O. Box 84808  
 Lincoln, NE 68508  
 TEL 402.474.8311

|         |   |
|---------|---|
| EXHIBIT | B |
|---------|---|

ATTACHMENT "C"

HOLDREGE STREET IMPROVEMENTS



ATTACHMENT "D"

SANITARY SEWER MAIN

DWG: F:\2020\0001-0500\020-0141\40-Design\Exhibits\Exhibit D.dwg USER: mlangston  
 DATE: Feb 10, 2020 3:26pm XREFS: C:\BASE2\_200141 V\_XTOP0\_0191228 wetlands-1-30-20 phase10 C25-EDIT



|             |            |
|-------------|------------|
| PROJECT NO: | 019-1228   |
| DRAWN BY:   | MCL        |
| DATE:       | 02.10.2020 |

EXHIBIT 'D'  
 PROPOSED TRUNK SANITARY SEWER

**olsson**  
 601 P Street, Suite 200  
 P.O. Box 84608  
 Lincoln, NE 68508  
 TEL 402.474.6311

|         |
|---------|
| EXHIBIT |
| 1       |