



RESOLUTION A- 92109

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

2 WHEREAS, Amendment No. 1 to the Conditional Annexation Agreement for East A
3 Street Coalition was approved on October 28, 2019 as City Council Resolution No. A-91860 and
4 the Conditional Annexation Agreement for East A Street Coalition was approved on November 5,
5 2018 as City Council Ordinance No. A-91354 to develop property located at South 98th and A
6 Streets.

7 WHEREAS, Amendment No. 2, attached hereto as Attachment "A", to the Conditional
8 Annexation Agreement for East A Street Coalition between the City of Lincoln, Heritage Lakes,
9 LLC, BCLINC, LLC, B & J Partnership, Ltd., David, David, John, LLC, Christopher A. Kidwell,
10 Homestead Acres, Inc., and East O Realty Company ("Property Owners") to reflect changes in
11 the scope and financial obligations of the parties related to the road improvements to be constructed
12 on A Street between approximately 89th Street and 94th Street, is hereby approved and the Mayor
13 is authorized to execute Amendment No. 2 on behalf of the City.

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

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

18 BE IT FURTHER RESOLVED that the City Clerk is directed to record Amendment No.
19 2 to the Conditional Annexation Agreement for East A Street Coalition with the Register of Deeds
20 for Lancaster County, Nebraska to be indexed against the properties listed in Amendment No. 2,
21 filing fees to be paid by the Property Owners.

5/11 to
Sony

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

See further Council
Proceedings on next page.

Introduced by:

Burr Shobe

Approved as to Form & Legality:

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

Jaffrey R. Witzgall
City Attorney

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

ADOPTED

MAY 04 2020

BY CITY COUNCIL

20R-148

04/20/2020 Council Proceedings:

WASHINGTON Moved to Delay Action on Bill No. 20R-148 for 2 weeks to 05/04/2020.

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

AMENDMENT NO. 2 TO THE CONDITIONAL ANNEXATION AGREEMENT FOR EAST "A" STREET COALITION

THIS AMENDMENT NO. 2 TO THE CONDITIONAL ANNEXATION AGREEMENT FOR EAST "A" STREET COALITION ("Amendment No. 2") 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");
- **BIC Development, LLC**, a Nebraska limited liability company, successor in interest to **BCLINC, L.L.C.**, a Nebraska limited liability company ("BIC");
- **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, BIC, B&J, Rallis, Kidwell, Homestead, and East O Realty are referred to as the "Parcel Owners" or "Coalition").

RECITALS

A. The Parties previously entered into the Conditional Annexation Agreement for East "A" Street Coalition approved by the City Council for the City of Lincoln, Nebraska on November 5, 2018 as Resolution A-91354 ("**Original Agreement**"). Subsequently, the Parties entered into Amendment No. 1. To the Conditional Annexation Agreement for East "A" Street Coalition approved by the City Council on October 28, 2019 as Resolution No. A-91860 ("**Amendment No. 1**") (collectively the Original Agreement and Amendment No. 1 shall be referred to as the "**Agreement**").

B. As part of the Agreement, the Parcel Owners agreed to design and construct intersection improvements in A Street at approximately 93rd Street subject to, in

part, reimbursement by the City from arterial street impact fees generated by development of the East "A" Street Annexation Area.

C. The City has agreed to accept the responsibility to construct intersection improvements in A Street at the intersection of 89th and A Streets, as well as that section of A Street between 89th and 93rd Streets.

D. The City and Parcel Owners acknowledge that it is in the best interest of both the City and the Parcel Owners that the Intersection Improvements described in the Agreement as well as the improvements to be constructed at the intersection of 89th and A Streets be designed and constructed as one project in order to achieve economies of scale; avoid multiple closures of A Street thereby reducing inconvenience to drivers and shortening the time necessary to complete the improvements.

E. The City and Parcel Owners desire to enter into this Amendment No. 2 to amend and restate Section 4 of the Agreement to describe the arrangements agreed to between the City and Parcel Owners with respect to design and construction of improvements in A Street from 89th Street to 93rd Street as described herein.

NOW THEREFORE, in consideration of the mutual promises described below, the Parcel Owners and the City agree to amend the Agreement, as previously amended by Amendment No. 1, as follows:

1. **Section 4.** Of the Agreement shall be stricken, restated, and replaced as follows:

Section 4. **Intersection Improvements.**

A. **A Street Improvements.** The City and Parcel Owners agree and acknowledge that the street improvements to be constructed in A Street shall consist of two (2) roundabouts located at the intersections of: (i) 89th and A Streets; and (ii) 93rd and A Streets. In addition, the street improvements shall include a two-lane section of A Street between said roundabouts (collectively, "**A Street Improvements**"). The roundabouts shall include necessary medians

and realignment of existing A Street according to applicable engineering standards and specifications. The A Street Improvements are shown, in schematic form, on Exhibit "A", which is attached hereto and incorporated herein by this reference. To the extent that the design and/or construction of the A Street Improvements require the dedication of additional right-of-way to the City, the Parcel Owners agree to dedicate such right-of-way on the final plats for the applicable parcels at no cost to the City. If the A Street Improvements require right-of-way from property owners other than the Parcel Owners, the City shall acquire such right-of-way at its own cost and expense.

B. Design and Construction. The City agrees to design and construct the A Street Improvements at its cost and expense subject to an initial contribution of funds by the Parcel Owners as described below. Construction of the A Street Improvements shall commence upon substantial completion of the construction of roundabouts and related street improvements in Van Dorn Street between S. 84th and S. 98th Streets, but in no event shall said commencement date be later than August 15, 2020. The City shall design the Project to provide interim temporary access to the Parcel Owners during construction.

C. Contribution by Parcel Owners. The Parcel Owners shall contribute the sum of One Million Two Hundred Twenty Four Thousand and No/100 Dollars (\$1,224,000.00) subject to reimbursement by the City from the Impact Fees generated by the development in the East "A" Street Annexation Area and Sales Tax revenue as described below.

1. IMPACT FEE REIMBURSEMENT. Parcel Owners recognize that the City does not have adequate funds on hand to pay for construction of the A Street Improvements on a timeline that is consistent with private development of the Property. In part, the shortfall in funding for the A Street Improvements is a result of the fact that the Arterial Street Impact Fees that will be generated by development of the Property will come in gradually as building permits are approved and private improvements are

completed. The amount attributable to Arterial Street Impact Fees to be generated by development of the Property is calculated to be Four Hundred Twenty Four Thousand and No/100 Dollars (\$424,000.00) ("Impact Fee Reimbursement Amount"). The Impact Fee Reimbursement Amount under this Amendment No. 2 shall be reimbursed to the Parcel Owners in addition to the reimbursement for the culvert installation and 98th Street grading under paragraph 6 of the Original Agreement. Parcel Owners further acknowledge and agree that it is in the best interest of the Parcel Owners that the A Street Improvements be constructed prior to when the City is projected to accumulate adequate funds to pay for said improvements. Therefore, it is in the best interest of the Parcel Owners to contribute financially toward design and construction of the A Street Improvements.

The City agrees and acknowledges that the A Street Improvements qualify as arterial street impact fee facility improvements as that term is defined by Lincoln Municipal Code §27.82.040. In addition, the City recognizes that constructing the A Street Improvements commencing in Fall 2020 as a single construction project will result in more efficient and effective traffic movements as the private improvements are constructed on the Property.

The City agrees that arterial street impact fees generated by development of the Property shall be directed by the City toward reimbursement of the Parcel Owners for the Impact Fee Reimbursement Amount contributed for the purpose of expediting constructing the A Street Improvements. The area being developed by the Parcel Owners which serves as the Directed Impact Fee Reimbursement Area is depicted on the map attached as Exhibit "B" and incorporated by this reference. Said reimbursement payments shall be made on a quarterly basis by the City to the Parcel Owners from arterial street impact fees

generated from private development of the Property as they become available. The agreement by the City to reimburse the Parcel Owners from arterial street impact fees generated by the Property is limited to the impact fees actually paid by development in the East "A" Street Annexation Area and shall not constitute a general obligation of the City.

2. SALES TAX FUNDING. Further, the City acknowledges and agrees that the arterial street impact fees generated from development of the Property alone are insufficient to cover the financial contribution made by Property Owner to expedite the design and construction the A 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 voters of the City approved the imposition of an additional ¼ cent sales tax to be used for restoring, rehabilitating, and expanding the City's road infrastructure in order to improve the road infrastructure of the City while also spurring additional private investment. Having imposed such a tax, the City Council subsequently identified the A 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.

The estimated cost of designing and constructing the A Street Improvements with construction commencing in Fall 2020 totals Three Million and No/100 Dollars (\$3,000,000.00). The City has \$376,000.00 in funds available as a result of an advance of funds received for the purpose of constructing the roundabout at the intersection of 89th and A Streets, which is included in the A Street Improvements described herein. In addition, the City shall receive the Impact Fee Reimbursement Amount of Four Hundred Twenty Four Thousand and No/100 Dollars (\$424,000.00) from the Parcel Owners to be used for design and

construction of the A Street Improvements. The City hereby agrees, subject to appropriation by the City Council, to allocate Two Million Two Hundred Thousand and No/100 Dollars (\$2,200,000.00) from the revenue generated from the additional ¼ cent sales tax toward design and construction of the A Street Improvements. Of the \$2,200,000 allocated by the City, One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00) shall be available to the City from sales tax revenue collected in Fiscal Year 2019-2020.

After combining the ¼ cent sales tax allocation for FY2019-2020 with the funds available for construction of the roundabout at 89th and A Streets, the available City resources to be used to pay for design and construction of the A Street Improvements are approximately \$1,224,000.00 less than the estimated total cost. In recognition of the benefits to be realized in the development of the Property by having the A Street Improvements constructed commencing in Fall 2020 in lieu of waiting for the City to accumulate sufficient resources to construct said improvements, the Parcel Owners agree to make a contribution, in addition to the Impact Fee Reimbursement Amount, in the amount of Eight Hundred Thousand and No/100 Dollars (\$800,000.00) ("**Parcel Owners' Gap Contribution**") toward designing and constructing the A Street Improvements contingent upon the City commencing construction of said improvements in Fall 2020. Said contribution shall be made prior to the City requesting bids for construction of the A Street Improvements. The Impact Fee Reimbursement Amount (\$424,000.00) and the Parcel Owner's Gap Contribution (\$800,000.00) comprise the total contribution of \$1,224,000.00 to be made by the Parcel Owners to the City toward construction of the A Street Improvements and shall be paid to the City within ten (10) days of notice from the City.

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 Eight Hundred Thousand and No/100 Dollars (\$800,000.00) from the revenue generated by the additional ¼ cent sales tax dedicated toward reimbursing Parcel Owners for the Parcel Owners' Contribution toward the A Street Improvements. Said sales tax revenue shall, subject to appropriation by the City Council, be paid to Parcel Owners according to the following schedule:

FY2020-2021	\$600,000.00
FY2021-2022	\$200,000.00

D. The sales tax revenue reimbursement payments shall be paid on a quarterly basis as sales tax is received by the City throughout the specified fiscal years. Parcel Owners expressly acknowledge and agree that nothing in this Agreement represents a general obligation on the part of the City to repay the Parcel Owners' Contribution toward the design and construction of the A Street Improvements. Parcel Owners also agree that in the event the actual cost to design and construct the A 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 City may, in its sole discretion, make adjustments to the design of the A Street Improvements in order to complete the construction of said improvements within the estimate project cost described above in Section 4. C.

E. Rallis, as a member of the Parcel Owners which is benefitted, shall install, at its cost and expense, turn lanes in A Street at its intersection with 91st Street to permit right-in/right-out traffic movement along the south side of A Street at this intersection. The costs of construction of the turn lane shall not be reimbursable from arterial street impact fees generated by development of the Property. Said intersection improvements at 91st and A Street shall be

constructed simultaneously with construction of necessary subdivision improvements for the Rallis development south of A Street taking access to A Street at 91st Street.

2. **Confirm other Terms.** Except as specifically amended by this Amendment No. 2, all other terms and conditions of the Agreement, as previously amended by Amendment No. 1, shall remain in full force and effect.

3. **Exclusions.** East "O" Realty, Homestead, and Kidwell shall not be liable or responsible for any payment or contribution of the Parcel Owners toward the A Street Improvements as outline in paragraph 1 above.

[SIGNATURE PAGES TO FOLLOW]

Dated as of May 11, 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 11th day of May, 2020, by Leirion Gaylor Baird, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the municipal corporation.

(Seal)

Carmen J. Flynn
Notary Public



Dated as of April 29, 2020 by Heritage Lakes, LLC.

"HERITAGE"

HERITAGE LAKES, LLC, a Nebraska limited liability company

By: Gary Kort
Name: Gary Kort
Title: Managing Partner

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 29th day of April, 2020, by Gary Kort, Managing Partner of Heritage Lakes, LLC, a Nebraska limited liability company, on behalf of the limited liability company.



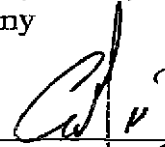
(Seal)

[Signature]
Notary Public

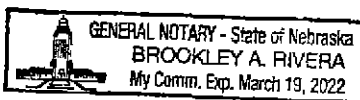
Dated as of March 13th, 2020, 2020 by BIC Development, LLC.

"BIC"

BIC Development, LLC, a Nebraska limited liability company, successor in interest to ECLINC, L.L.C., a Nebraska limited liability company

By: 
Name: Craig Bies
Title: Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)



The foregoing instrument was acknowledged before me this 13th day of March, 2020, by Craig Bies, Manager of BIC Development, LLC, a Nebraska limited liability company, on behalf of the limited liability company.


Notary Public

(Seal)

Dated as of May 1st, 2020 by B & J Partnership, Ltd.

"B&J"

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

By: *Clay Smith*
Name: Clay F. SMITH
Title: GENERAL PARTNER

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 1st day of May, 2020, by Clay F. Smith, General Partner of B & J Partnership, Ltd., a Nebraska limited partnership, on behalf of the limited partnership.

Victoria L Jones
Notary Public

(Seal)



Dated as of May 1, 2020 by David, David, John, LLC, a Nebraska limited liability company.

"RALLIS"

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

John Rallis
John Rallis, Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 1st day of May, 2020, by John Rallis, Manager for David, David, John, LLC, a Nebraska limited liability company, on behalf of the company.

(Seal)

Karl R
Notary Public

Dated as of 4-22-20, 2020 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 22 day of April, 2020, by Christopher A. Kidwell., on his own behalf.

(Seal)

State of Nebraska - General Notary LISA A. WILLIAMS My Commission Expires September 24, 2023

Lisa A. Williams
Notary Public

Dated as of APRIL 20, 2020 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 20th day of April, 2020, by James D. Watts, President of Homestead Acres, Inc., a Nebraska corporation, on behalf of the corporation.

(Seal) 


Notary Public

Dated as of 4/28/20, 2020 by East O Realty Company.

"EAST O REALTY"

EAST O REALTY, a Nebraska corporation

By: *Kim B. Brown*
Name: Kim B. Brown
Title: President
EAST O Realty Co.

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

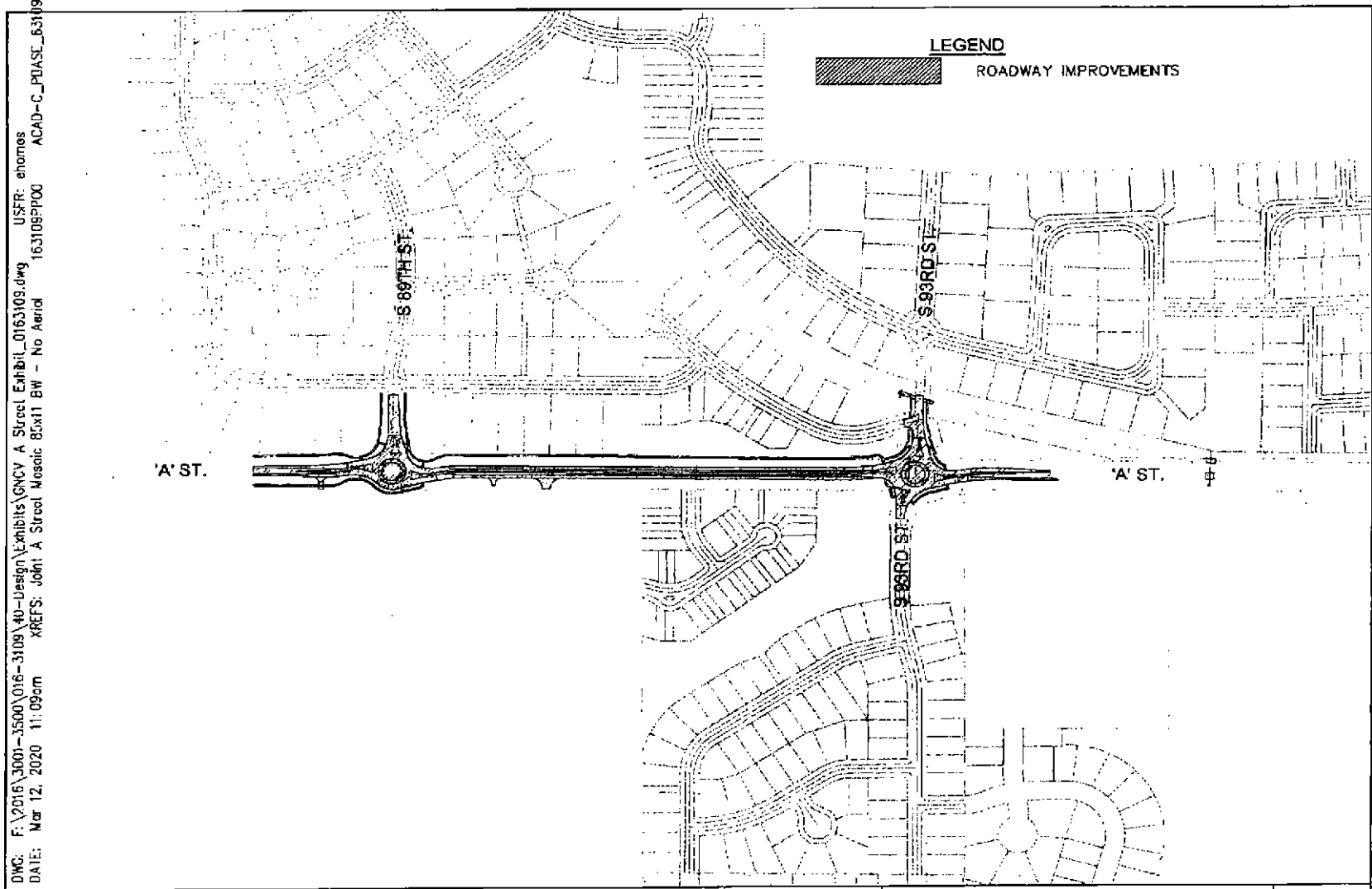
The foregoing instrument was acknowledged before me this 28th day of April, 2020, by Kim Brown, President of East O Realty, a Nebraska corporation, on behalf of the corporation.



(Seal)

Derek A. Aldridge
Notary Public

EXHIBIT "A" A Street Improvements



DMC: F:\2016\3001-3500\016-3109\40-Design\Exhibits\GNCV A Street Exhibit_0163109.dwg USFR: ehomes
 DATE: Mar 12, 2020 11:09am XREFS: John A Street Mosaic 80x11 BW - No Aerial 163109PP00 ACAD-C_PDASE_63109

PROJECT NO:	016-3109
DRAWN BY:	EAH
DATE:	3/12/2020

'A' STREET IMPROVEMENTS

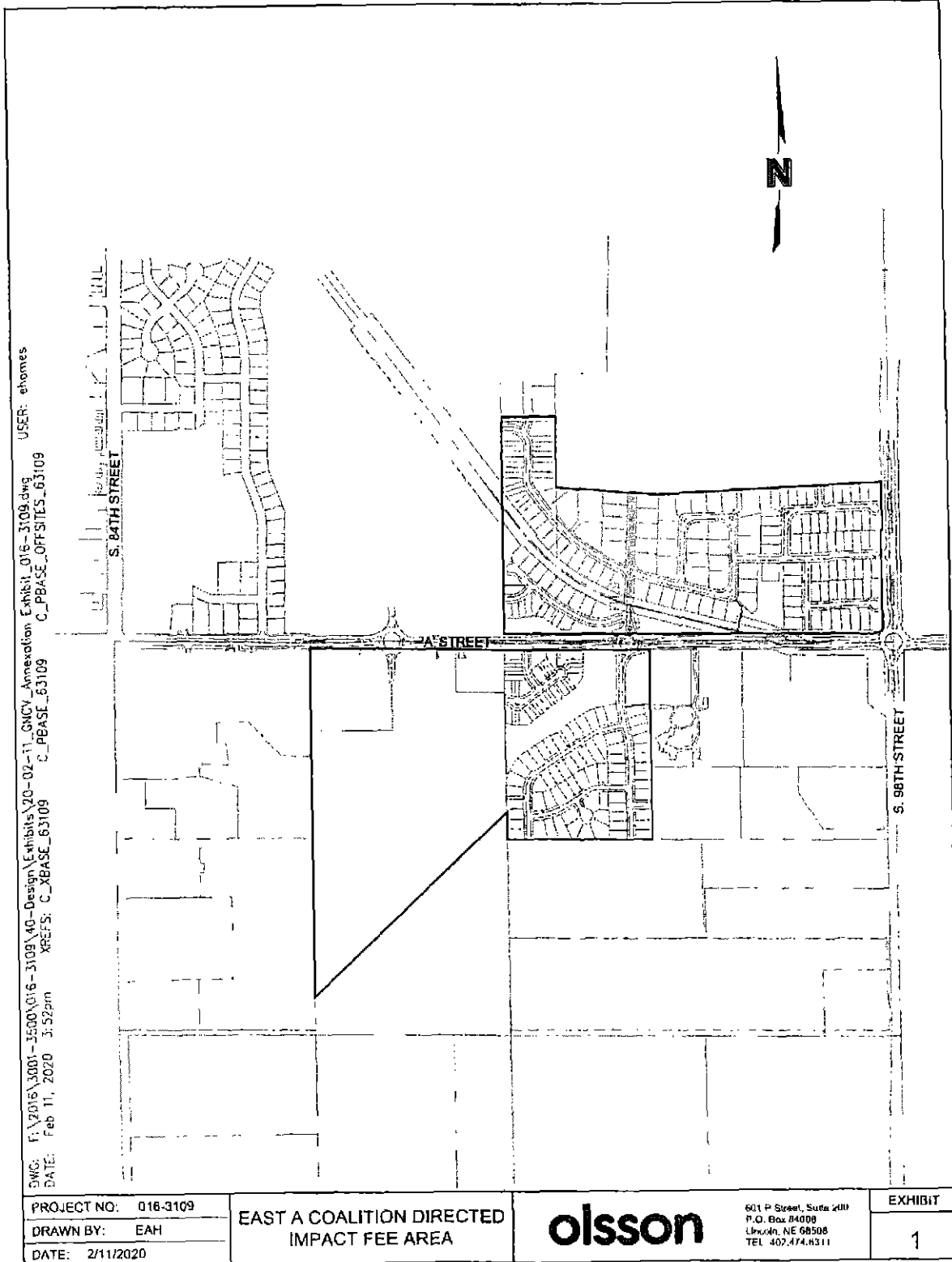
olsson

001 P Street, Suite 200
 P.O. Box 84808
 Lincoln, NE 68508
 TEL: 402.474.6311

EXHIBIT
1

Exhibit "A"

EXHIBIT "B"
Directed Impact Fee Reimbursement Area



4836-3499-9730, v. 4

Exhibit "B"