

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
JANUARY 19, 2010 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
APPLICATION FOR CUP APPROVAL — LOT 4, HARRISON HEIGHTS	◆ RESOLUTION ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

**SYNOPSIS**

The public hearing was held by the Council at their December 1, 2009, meeting and the resolution was tabled to approve a Conditional Use Permit for Lot 4, Harrison Heights for the purpose of senior housing, generally located north and east of Gertrude Street and south of Harrison Street at 75<sup>th</sup>.

**FISCAL IMPACT**

None.

**RECOMMENDATION**

Approval.

**BACKGROUND**

On December 1, 2009, the Council held a public hearing to consider the following actions for Lots 13 and 14, Crestview Heights:

1. Approval of a Final PUD Plan for 112 units of senior housing with 52 garages and 75 parking stalls; 48 units of affordable senior housing with 60 parking stalls; and three buildings for commercial development totaling 20,500 square feet of commercial flex space with 102 parking stalls.
2. Approval of a Final Plat to subdivide Lots 13 and 14, Crestview Heights, into five lots for residential and commercial purposes, to be known as Lots 1 thru 5, Harrison Heights.
3. Approval of a Conditional Use Permit for 112 multiple family dwellings for seniors on proposed Lot 4, Harrison Heights.
4. Approval of a Subdivision Agreement.

All of these actions were approved by the Council with the exception of the Conditional Use Permit which was tabled pending the applicant's review of additional language proposed by the City Attorney. These revisions have now been completed and the document is attached for Council's consideration.

The property is located north and east of Gertrude Street and south of Harrison Street at approximately 75<sup>th</sup> Street. The application has been submitted by Scott Kennedy of Calamar Enterprises on behalf of the property owner, the Empire Group, LLC.

On August 4, 2009 the City Council approved an amendment to the City's Future Land Use Map to high density residential and commercial uses. A rezoning was also approved to R-3 PUD, High Density Residential Planned Unit Development, and C-2 PUD, General Commercial District Planned Unit Development to allow for senior apartments and an abutting commercial development.

This application is for a Conditional Use Permit for Lot 4, Harrison Heights, which includes 112 units of senior independent market rate housing with surface parking and 52 enclosed garages.

The property is not within the Gateway Corridor Overlay District however the applicant agreed to adopt the design guidelines as part of the PUD approval. Architectural review of the buildings and garages has been completed however minor revisions based on comments from the City's design review architect will be completed at the time of building permit review.

The Planning Commission held public hearings on September 17, 2009, and October 15, 2009, and recommended approval of the Conditional Use Permit for Lot 4, Harrison Heights.

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**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF A CONDITIONAL USE PERMIT FOR MULTIPLE FAMILY DWELLINGS FOR SENIORS ON PROPOSED LOT 4, HARRISON HEIGHTS

WHEREAS, Scott Kennedy, on behalf of Calamar, has applied for a conditional use permit for the purpose of having multiple family dwellings for seniors on proposed Lot 4, Harrison Heights; and

WHEREAS, the La Vista Planning Commission has reviewed the application and recommends approval; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit for such purposes;

NOW THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of La Vista hereby authorize the execution of a Conditional Use Permit in form and content submitted at this meeting, for Calamar, represented by Scott Kennedy for the purpose of having multiple family dwellings for seniors on proposed Lot 4, Harrison Heights.

PASSED AND APPROVED THIS 19TH DAY OF JANUARY 2010.

CITY OF LA VISTA

ATTEST:

\_\_\_\_\_  
Douglas Kindig, Mayor

\_\_\_\_\_  
Pamela A. Buehe, CMC  
City Clerk

**City of La Vista**  
**Conditional Use Permit**

**Conditional Use Permit for Multi-family Housing, Lot 4 Harrison Heights**

This Conditional Use Permit issued this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by the City of La Vista, a municipal corporation in the County of Sarpy County, Nebraska ("City") to \_\_\_\_\_. ("Owner"), pursuant to the La Vista Zoning Ordinance.

WHEREAS, Owner wishes to construct and operate senior apartments upon the following described tract of land within the City of La Vista zoning jurisdiction:

Lot 4 of Harrison Heights Subdivision, within the NE ¼ of Section 14, Township 14 North, Range 12 East of the 6th P.M. Sarpy County, Nebraska.

WHEREAS, Owner has applied for a conditional use permit for the purpose of constructing an apartment complex for seniors **55 years of age or older** meant for independent living; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit to the owner for such purposes, subject to certain conditions and agreements as hereinafter provided.

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this conditional use permit is issued to the owner to use the area designated on Exhibit "A" hereto for multi-family residential, specifically senior apartments for independent living, said use hereinafter being referred to as "Permitted Use or Use".

**Conditions of Permit**

The conditions to which the granting of this permit is subject are:

1. The rights granted by this permit are transferable and any variation or breach of any terms hereof shall cause permit to expire and terminate without the prior written consent of the City (amendment to permit) or unless exempted herein.
2. In respect to the Permitted Use:
  - a. A site plan showing the property boundaries of the tract of land and easements, proposed structures, parking, access points, and drives shall be provided to the City and attached to the permit as "Exhibit A".
  - b. These apartments are intended for senior independent living. Apartments shall be exclusively operated for, marketed and leased to, and occupied by persons age 55 and older, except for units occupied by an on-site manager or other employee of the Owner who is under the age of 55 and performs substantial duties related to management or maintenance of the facility (and said manager's or other employee's family members residing in the same unit); or as otherwise required to provide reasonable accommodations to disabled residents under applicable laws, rules or regulations. To carry out this requirement, Owner shall:
    - (i) From time to time during this permit, adopt, publish and adhere to written rules, policies and procedures to implement and carry out said requirement in accordance with 24 CFR Section 100.36, as adopted, amended or superseded from time to time, subject to review and approval of the City

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Administrator, which approval shall not be withheld or refused so long as the rules, policies and procedures satisfy the requirements of "b" above and 24 CFR Section 100.36; and

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Provide significant facilities and services during this permit specifically designed to meet the physical and social needs of older persons; or if such facilities or services will not be provided, Owner hereby represents and can demonstrate, if required, that such senior housing is necessary to provide important housing opportunities for older persons;

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(ii) Take all other actions during this permit as may be required from time to time under the Federal Fair Housing Act, Housing for Older Persons Act of 1995, Nebraska Fair Housing Act, or any other applicable laws, rules or regulations, as adopted, amended or superseded from time to time, to carry out this subparagraph "b" in accordance with all applicable requirements, and specifically to qualify and continue the qualification of the facility as senior housing exempt from any applicable familial status protections.

- c. All parking for residents and visitors is to remain on-site; no on-street parking is allowed on Gertrude Street.
  - d. There shall be no storage, placement or display of goods, supplies or any other material, substance, container or receptacle outside of the ~~indoor~~ facility, except trash receptacles and those approved in writing by the City.
  - e. There shall not be any outside storage of materials. All trash receptacles, benches and planters shall be placed on property and securely fastened to building or concrete. Trash dumpsters shall be placed with a trash enclosure of six feet in height and screened accordingly.
  - f. Landscaping requirements from Section 7.17 of the City of La Vista Zoning Ordinance shall be satisfied and maintained by the property owner.
  - g. Owner shall obtain all required permits from the City of La Vista and shall comply with any additional requirements as determined by the Chief Building Official, including, but not limited to, building, fire, and ADA.
  - h. Owner shall comply (and shall ensure that all employees, invitees, suppliers, structures, appurtenances and improvements, and all activities occurring or conducted, on the premises at any time comply) with any applicable federal, state and/or local regulations, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.
  - i. Owner hereby indemnifies the City against, and holds the City harmless from, any liability, loss, claim or expense whatsoever (including, but not limited to, reasonable attorney fees and court cost) arising out of or resulting from the intentional acts or omissions, or negligence, of the owner, his agents, employees, assigns, suppliers or invitees, including, but not limited to, any liability, loss, claim or expense arising out of or resulting from any violation on the premises of any environmental or safety law, rule or regulation.
3. The applicant's right to maintain the use as approved pursuant to these provisions shall be based on the following:
- a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval.
  - b. Construction for the use authorized by the conditional use permit must commence no later than December 31, 2010, and the premises must be ready for occupancy for the use authorized by the conditional use permit, in full compliance, with the terms of approval no later than January 31, 2012. This permit shall be void if there is a failure to begin construction or have the premises ready for occupancy for the permitted use by the specified applicable date.
  - c. All obsolete or unused structures, accessory facilities or materials with an environmental or safety hazard shall be abated and/or removed at owner's expense within twelve (12) months of cessation of the conditional use.
4. Notwithstanding any other provision herein to the contrary, this permit, and all rights granted hereby, shall expire and terminate as to a permitted use hereunder upon the first of the following to occur:
- a. Owner's abandonment of the permitted use. Non-use thereof for a period of twelve (12) months shall constitute a presumption of abandonment.
  - b. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for

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the Use.

- c. Owner's breach of any other terms hereof and his failure to correct such breach within ten (10) days of City's giving notice thereof.

5. If ~~construction for~~ the permitted use is not commenced ~~on or before December 31, 2010, or if occupancy for the permitted use is not ready on or before January 31, 2012,~~ this Permit shall be null and void and all rights hereunder shall lapse, without prejudice to owner's right to file for an extension of time pursuant to the La Vista Zoning Ordinance.

**Deleted:** within one (1) year from \_\_\_\_\_, 2009

6. In the event of the owner's failure to promptly remove any safety or environmental hazard from the premises, or the expiration or termination of this permit and the owner's failure to promptly remove any permitted materials or any remaining environmental or safety hazard, the City may, at its option (but without any obligation to the owner or any third party to exercise said option) cause the same to be removed at owner's cost (including, but not limited to, the cost of any excavation and earthwork that is necessary or advisable) and the owner shall reimburse the City the costs incurred to remove the same. Owner hereby irrevocably grants the City, its agents and employees the right to enter the premises and to take whatever action as is necessary or appropriate to remove the structures or any environmental or safety hazards in accordance with the terms of this permit, and the right of the City to enter the premises as necessary or appropriate to carry out any other provision of this permit.
7. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid, or unenforceable, the remaining provisions hereof, or portions thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

#### Miscellaneous

The conditions and terms of this permit shall be binding upon owner, his successors and assigns.

1. Delay of City to terminate this permit on account of breach of owner of any of the terms hereof shall not constitute a waiver of City's right to terminate, unless it shall have expressly waived said breach and a waiver of the right to terminate upon any breach shall not constitute a waiver of the right to terminate upon a subsequent breach of the terms hereof, whether said breach be of the same or different nature.
2. Nothing herein shall be construed to be a waiver or suspension of, or an agreement on the part of the City to waive or suspend, any zoning law or regulation applicable to the premises except to the extent and for the duration specifically authorized by this permit.
3. Any notice to be given by City hereunder shall be in writing and shall be sufficiently given if sent by regular mail, postage prepaid, addressed to the owner as follows:

**Contact Name and Address:**

**(TO BE FILLED IN)**

**Effective Date:**

This permit shall take effect upon the filing hereof with the City Clerk a signed original hereof.

THE CITY OF LA VISTA

By \_\_\_\_\_  
Douglas Kindig, Mayor

Attest:

\_\_\_\_\_  
Pam Bueth  
City Clerk

CONSENT AND AGREEMENT

The undersigned does hereby consent and agree to the conditions of this permit and that the terms hereof constitute an agreement on the part of the undersigned to fully and timely perform each and every condition and term hereof, and the undersigned does hereby warrant, covenant and agree to fully and timely perform and discharge all obligations and liabilities herein required by owner to be performed or discharged.

Owner:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# **City of La Vista Conditional Use Permit**

## **Conditional Use Permit for Multi-family Housing, Lot 4 Harrison Heights**

This Conditional Use Permit issued this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the City of La Vista, a municipal corporation in the County of Sarpy County, Nebraska ("City") to \_\_\_\_\_. ("Owner"), pursuant to the La Vista Zoning Ordinance.

WHEREAS, Owner wishes to construct and operate senior apartments upon the following described tract of land within the City of La Vista zoning jurisdiction:

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WHEREAS, Owner has applied for a conditional use permit for the purpose of constructing an apartment complex for seniors 55 years of age or older meant for independent living; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit to the owner for such purposes, subject to certain conditions and agreements as hereinafter provided.

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this conditional use permit is issued to the owner to use the area designated on Exhibit "A" hereto for multi-family residential, specifically senior apartments for independent living, said use hereinafter being referred to as "Permitted Use or Use".

### **Conditions of Permit**

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1. The rights granted by this permit are transferable and any variation or breach of any terms hereof shall cause permit to expire and terminate without the prior written consent of the City (amendment to permit) or unless exempted herein.
2. In respect to the Permitted Use:
  - a. A site plan showing the property boundaries of the tract of land and easements, proposed structures, parking, access points, and drives shall be provided to the City and attached to the permit as "Exhibit A".
  - b. These apartments are intended for senior independent living. Apartments shall be exclusively operated for, marketed and leased to, and occupied by persons age 55 and older, except for units occupied by an on-site manager or other employee of the Owner who is under the age of 55 and performs substantial duties related to management or maintenance of the facility (and said manager's or other employee's family members residing in the same unit); or as otherwise required to provide reasonable accommodations to disabled residents under applicable laws, rules or regulations. To carry out this requirement, Owner shall:
    - (i) From time to time during this permit, adopt, publish and adhere to written rules, policies and procedures to implement and carry out said requirement in accordance with 24 CFR Section 100.36, as adopted, amended or superseded from time to time, subject to review and



approval of the City Administrator, which approval shall not be withheld or refused so long as the rules, policies and procedures satisfy the requirements of "b" above and 24 CFR Section 100.36; and

- (ii) Take all other actions during this permit as may be required from time to time under the Federal Fair Housing Act, Housing for Older Persons Act of 1995, Nebraska Fair Housing Act, or any other applicable laws, rules or regulations, as adopted, amended or superseded from time to time, to carry out this subparagraph "b" in accordance with all applicable requirements, and specifically to qualify and continue the qualification of the facility as senior housing exempt from any applicable familial status protections.
- c. All parking for residents and visitors is to remain on-site; no on-street parking is allowed on Gertrude Street.
  - d. There shall be no storage, placement or display of goods, supplies or any other material, substance, container or receptacle outside of the facility, except trash receptacles and those approved in writing by the City.
  - e. There shall not be any outside storage of materials. All trash receptacles, benches and planters shall be placed on property and securely fastened to building or concrete. Trash dumpsters shall be placed with a trash enclosure of six feet in height and screened accordingly.
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  - g. Owner shall obtain all required permits from the City of La Vista and shall comply with any additional requirements as determined by the Chief Building Official, including, but not limited to, building, fire, and ADA.
  - h. Owner shall comply (and shall ensure that all employees, invitees, suppliers, structures, appurtenances and improvements, and all activities occurring or conducted, on the premises at any time comply) with any applicable federal, state and/or local regulations, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.
  - i. Owner hereby indemnifies the City against, and holds the City harmless from, any liability, loss, claim or expense whatsoever (including, but not limited to, reasonable attorney fees and court cost) arising out of or resulting from the intentional acts or omissions, or negligence, of the owner, his agents, employees, assigns, suppliers or invitees, including, but not limited to, any liability, loss, claim or expense arising out of or resulting from any violation on the premises of any environmental or safety law, rule or regulation.
3. The applicant's right to maintain the use as approved pursuant to these provisions shall be based on the following:
- a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval.
  - b. Construction for the use authorized by the conditional use permit must commence no later than December 31, 2010, and the premises must be ready for occupancy for the use authorized by the conditional use permit in full compliance with the terms of approval no later than January 31, 2012. This permit shall be void if there is a failure to begin construction or have the premises ready for occupancy for the permitted use by the specified applicable date.
  - c. All obsolete or unused structures, accessory facilities or materials with an environmental or safety hazard shall be abated and/or removed at owner's expense within twelve (12) months of cessation of the conditional use.
4. Notwithstanding any other provision herein to the contrary, this permit, and all rights granted hereby, shall expire and terminate as to a permitted use hereunder upon the first of the following to occur:
- a. Owner's abandonment of the permitted use. Non-use thereof for a period of twelve (12) months shall constitute a presumption of abandonment.

- b. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use.
  - c. Owner's breach of any other terms hereof and his failure to correct such breach within ten (10) days of City's giving notice thereof.
5. If construction for the permitted use is not commenced on or before December 31, 2010, or if occupancy for the permitted use is not ready on or before January 31, 2012, this Permit shall be null and void and all rights hereunder shall lapse, without prejudice to owner's right to file for an extension of time pursuant to the La Vista Zoning Ordinance.
  6. In the event of the owner's failure to promptly remove any safety or environmental hazard from the premises, or the expiration or termination of this permit and the owner's failure to promptly remove any permitted materials or any remaining environmental or safety hazard, the City may, at its option (but without any obligation to the owner or any third party to exercise said option) cause the same to be removed at owner's cost (including, but not limited to, the cost of any excavation and earthwork that is necessary or advisable) and the owner shall reimburse the City the costs incurred to remove the same. Owner hereby irrevocably grants the City, its agents and employees the right to enter the premises and to take whatever action as is necessary or appropriate to remove the structures or any environmental or safety hazards in accordance with the terms of this permit, and the right of the City to enter the premises as necessary or appropriate to carry out any other provision of this permit.
  7. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid, or unenforceable, the remaining provisions hereof, or portions thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

#### **Miscellaneous**

The conditions and terms of this permit shall be binding upon owner, his successors and assigns.

1. Delay of City to terminate this permit on account of breach of owner of any of the terms hereof shall not constitute a waiver of City's right to terminate, unless it shall have expressly waived said breach and a waiver of the right to terminate upon any breach shall not constitute a waiver of the right to terminate upon a subsequent breach of the terms hereof, whether said breach be of the same or different nature.
2. Nothing herein shall be construed to be a waiver or suspension of, or an agreement on the part of the City to waive or suspend, any zoning law or regulation applicable to the premises except to the extent and for the duration specifically authorized by this permit.
3. Any notice to be given by City hereunder shall be in writing and shall be sufficiently given if sent by regular mail, postage prepaid, addressed to the owner as follows:

**Contact Name and Address:**

**(TO BE FILLED IN)**

**Effective Date:**

This permit shall take effect upon the filing hereof with the City Clerk a signed original hereof.

THE CITY OF LA VISTA

By \_\_\_\_\_  
Douglas Kindig, Mayor

Attest:

\_\_\_\_\_  
Pam Buethe  
City Clerk

CONSENT AND AGREEMENT

The undersigned does hereby consent and agree to the conditions of this permit and that the terms hereof constitute an agreement on the part of the undersigned to fully and timely perform each and every condition and term hereof, and the undersigned does hereby warrant, covenant and agree to fully and timely perform and discharge all obligations and liabilities herein required by owner to be performed or discharged.

Owner:  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

A REPLATTING OF LOTS 13 AND 14, CRESTVIEW HEIGHTS (SECOND PLATTING), A SUBDIVISION LOCATED IN THE NE 1/4 OF SECTION 14, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SAPPY COUNTY, NEBRASKA.

**OWNER**  
EMPIRE GROUP, LLC  
941 S. 42ND STREET SUITE 550  
OMAHA, NE 68105

**DEVELOPER**  
EMPIRE GROUP, LLC  
1941 S. 42ND STREET SUITE 550  
OMAHA, NE 68105

1. ZONING:

- EXISTING ZONING: TA
- PROPOSED ZONING: R3-PUD, LOTS 4

2. PHASE I PROPOSED SCHEDULE OF CONSTRUCTION:
- |                                |                |
|--------------------------------|----------------|
| • CITY COUNCIL APPROVAL        | JULY 2009      |
| • CLOSING AND BUILDING PERMITS | SEPTEMBER 2009 |
| • COMPLETION OF 1ST BUILDING   | SEPTEMBER 2010 |
| • ALL BUILDINGS COMPLETE       | SEPTEMBER 2011 |
3. DURING CONSTRUCTION, CONSTRUCTION TRAFFIC WILL BE ALLOWED TO ENTER THE SITE THROUGH A BREAK IN CONTROLLED ACCESS TO HARRISON STREET. AFTER CONSTRUCTION, DIRECT VEHICULAR ACCESS WILL NOT BE ALLOWED TO HARRISON STREET FROM ANY LOTS ABUTTING SAID STREET.

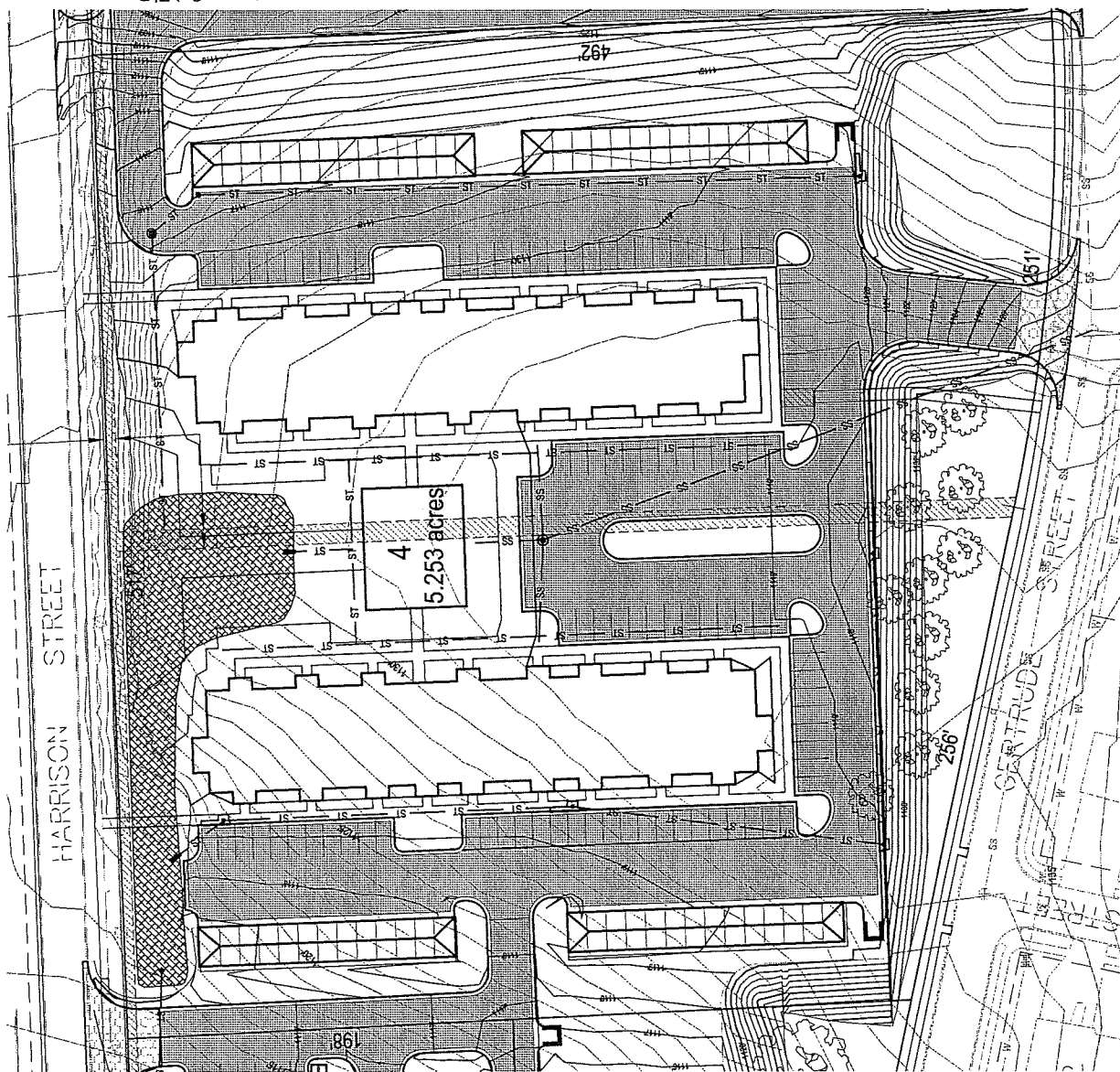
\_\_\_\_\_ SF \_\_\_\_\_ INSTALL SILT FENCE  
 \_\_\_\_\_ R \_\_\_\_\_ RIDGE LINE  
 \_\_\_\_\_ X \_\_\_\_\_ PROPOSED FENCE  
 \_\_\_\_\_ X \_\_\_\_\_ EXISTING FENCE  
 \_\_\_\_\_ PROPERTY LINE  
 \_\_\_\_\_ EXISTING CONTOURS  
 \_\_\_\_\_ PROPOSED CONTOUR



R3:

- FRONT YARD SETBACK.....30'
- SIDE YARD SETBACK.....10'
- REAR YARD SETBACK.....30'

PROJECT DENSITIES								
	BUILDING AREA (SF)	LOT AREA (AC)	IMPERVIOUS AREA (AC)	PERVIOUS AREA (AC)	PARKING PER CODE	REGULAR PARKING STALLS	GARAGE PARKING STALLS	TOTAL PARKING PROVIDED
LOT 4	35,419	5.253	3.136	2.795	118	102	55	157



LOT 4, HARRISON HEIGHTS  
LA VISTA, SARPY COUNTY, NEBRASKA

# CONDITIONAL USE SITE PLAN

**E&A CONSULTING GROUP, INC.**  
ENGINEERING • PLANNING • FIELD SERVICES

3330 NORTH 117TH STREET OMAHA, NE 68154  
PHONE: (402) 895-4700 FAX: (402) 895-3599  
[www.eaco.com](http://www.eaco.com)

EXHIBIT "A"