

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into effective as of _____, 2018 ("**Effective Date**") by and between **HOLMAN AUTOMOTIVE, INC.**, a Florida corporation ("**Holman**"), and the **CITY OF FORT LAUDERDALE**, a municipal corporation of the State of Florida ("**City**").

WITNESSETH:

WHEREAS, Holman is the owner of that certain real property located within the City of Fort Lauderdale, Florida legally described on **Exhibit A** attached hereto and made a part hereof ("**Holman Property**"); and

WHEREAS, City is the owner of that certain real property located immediately south of and contiguous to the Holman Property legally described on **Exhibit B** attached hereto and made a part hereof which is utilized by the City's Police equestrian unit ("**City Property**"); and

WHEREAS, Holman will be performing certain demolition and construction improvements on the Holman Property, all pursuant to permits obtained from the City (the "**Project**"); and

WHEREAS, in connection with the performance of the work in connection with the Project, Holman will require access to portions of the City Property; and

WHEREAS, in consideration of City's permitting such access upon the terms and conditions set forth herein, Holman shall be performing certain work requested by the City on the City Property, all as hereinafter provided.

NOW, THEREFORE, in consideration of mutual covenants herein contained, but subject to the limitations set forth herein, the parties agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **Improvements.** Holman hereby agrees that it shall perform the following improvements upon the Holman Property and/or the City Property at Holman's sole cost and expense, all of such work to be performed pursuant to duly issued governmental permits and in accordance with all applicable law, to-wit:

(a) Removal of the existing CBS wall ("**Existing Wall**") located approximately one foot (1') south of the boundary between the Holman Property and the City Property. The approximate location of said Existing Wall is depicted on **Exhibit C** attached hereto and made a part hereof ("**Site Plan**").

(b) Installation of a temporary fence upon the City Property in the approximate location depicted on **Exhibit C**. Said temporary fence will serve to protect the City Property from the construction being performed by Holman on the Holman Property.

(c) A new concrete block or pre-cast permanent wall with a maximum height of eight feet (8') as depicted on **Exhibit D** attached hereto and made a part hereof ("**New Wall**"). The New Wall shall be constructed on the boundary between the Holman Property and the City Property as depicted on **Exhibit D** attached hereto and made a part hereof. The New Wall will be constructed in accordance with applicable law and Holman will obtain all necessary permits for same.

(d) Upon completion of the improvements described above, Holman will cause all construction debris to be removed from the City Property and will, except to the extent set forth in subparagraphs (a), (b) and (c) above, cause the City Property to be restored to the condition which existed prior to commencement of the work on the City Property by Holman. In connection with such clean-up work, Holman will cause the brazilian pepper trees and all other vegetation to be removed from the City Property within the area depicted for such removal on **Exhibit E** ("**Tree/Vegetation Removal Area**"). However, Holman shall photograph all vegetation prior to its removal and submit same to the City during the permitting process. Additionally, any vegetation removed by Holman shall be replaced in accordance with all applicable Unified Land Development Regulations. All of the foregoing shall be done at Holman's sole cost and expense and Holman shall obtain all necessary permits for same. It is agreed and acknowledged that none of the existing Florida Power and Light poles located upon the City Property will be damaged or removed. Except for modifications to the City Property contemplated under this Agreement, Holman shall cause any damage to any of the lateral fences, building systems or other improvements located upon the City Property to be repaired by Holman to its previous condition, subject to the City's final approval, at Holman's sole cost and expense promptly following Holman's receipt of notice of such damage.

The foregoing work described in Sections 2(a) through 2(d) is hereby collectively referred to as the "**Work**".

3. **Intentionally Omitted.**

4. **Indemnification: Insurance.** Holman agrees to indemnify, defend and hold City harmless from and against any claim, proceeding, suit, damage, loss, cost, charge, expense or any other liability of any and every nature, kind and description whatsoever (including, without limitation, reasonable attorneys' fees and expenses, whether or not legal proceedings are commenced and, if legal proceedings are commenced, including fees and expenses incurred at trial and all levels of appeal), incurred or suffered by the City by reason of, resulting from or arising out of the performance of the Work by Holman upon the City Property. In the event that an attorney's services are required, the City reserves the right to select or approve the attorney retained to represent the City's interests. Additionally, any settlement of any claim shall not be made without the express written consent of the City Manager.

In the event that any lien, claim or action indemnified against herein is hereinafter is filed, recorded, made or commenced against the City Property, Holman shall, immediately upon the earlier of its independent discovery of the lien, claim or action, or City's written demand to do so, provide for the defense at Holman's own expense on behalf of and for the protection of City (but without prejudice or the right of City to defend, if it so elects) in all litigation or other claims based on any items which are the subject to this indemnity; or cause such lien, claim or action to be removed, terminated, satisfied, released or otherwise disposed of in form and manner satisfactory to City. Upon failure of Holman to so act, Holman agrees that City may undertake any action, cost or expense, including attorneys' fees, which City deems necessary to cause such lien, claim or action to be removed, terminated, satisfied, released or otherwise disposed of in form and manner satisfactory to City, and Holman agrees to reimburse City promptly the full and total amounts of any costs and expenses (including, without limitation, attorneys' fees, paralegal fees and court costs) incurred by it in connection therewith upon demand therefor.

However, nothing contained in this agreement shall be construed as a waiver of the City's rights, privileges, immunities, and limitations as defined in Section 768.28, Florida Statutes, as may be amended from time to time.

5. **Insurance.** Holman shall, during the performance of the Work procure and maintain, at Holman's sole cost and expense, a policy or policies of liability insurance as follows: (a) Commercial General Liability insurance with limits of liability in amounts not less than \$1,000,000 per occurrence and \$3,000,000 general aggregate, covering liability arising from the Work being performed hereunder, including, its operations, independent contractors, and personal injury; and (b) Excess Liability insurance with limits of liability of not less than \$5,000,000 per occurrence. Such Excess Liability insurance shall apply on a "following form" basis in excess of the underlying Commercial General Liability limits, and the Excess Liability policy shall list the Commercial General Liability policy on its schedule of underlying insurance. Holman shall provide City with certificates of insurance confirming the coverage set forth above, and such certificates shall indicate that City is named as an "additional insured" under the Commercial General Liability and Excess Liability coverage. Additional Insured status shall be primary and non-contributory rather than excess, and shall include a provision whereby the insurance carrier is required to provide thirty (30) days' advance written notice to City before cancellation or material change of coverage takes effect, regardless of whether canceled by Holman or the insurance carrier. All insurance policies required by this section (i) must be issued by insurance companies having an "A" rating or better by Standard and Poor's, and if not rated by Standard & Poor's, then a rating of "A" by A.M. Best Company, and (ii) may be satisfied by a primary policy or combination of primary and excess liability policies. If Holman fails to maintain the required insurance in full force and effect continuously during the term, Holman shall cease and desist any construction activities on the property until the City is provided sufficient proof of the required insurance coverage.

6. **Binding Effect.** All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective assigns, successors, legal representatives, heirs and beneficiaries, as applicable.

7. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute on and the same instrument. Facsimile and pdf signatures shall be considered to be originals.

8. **Power and Authority.** Each party to the Agreement represents and warrants to the other that it has all necessary power and authority to enter into this Agreement and that all acts, approvals, procedures and similar matters required in order to authorize this Agreement have been taken, obtained, or followed, as the case may be.

9. **Severability.** If any word, sentence, phrase, paragraph, provision, or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion hereof so long as the purpose and intent of this Agreement can still be achieved.

10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any legal proceedings arising out of this Agreement shall be in a court of competent jurisdiction in Broward County, Florida or in the event of federal jurisdiction the United States District Court, Southern District of Florida.

11. **Attorney's Fees.** In the event that any party finds it necessary to commence an action against another party to enforce any provision of this Agreement or because of a breach by the other party of any terms hereof, the prevailing party shall be entitled to recover from the other party its reasonable attorney's fees, paralegal fees and costs incurred in connection therewith, at both trial and appellate levels, including bankruptcy proceedings, without regards to whether any legal proceedings are commenced or whether or not such action is prosecuted to judgment.

12. **Captions and Paragraph Headings.** Captions and paragraph headings contained in this this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provision hereof.

13. **Notices.** All notices, requests, or other communications desired or required to be given under this Indemnity Agreement shall be in writing and shall be sent by a party or by a party's attorney via (a) certified or registered mail, return receipt requested, postage prepaid, (b) national prepaid overnight delivery service, (c) by email transmission (following with hard copies to be sent by national prepaid overnight delivery service) or (d) personal delivery with receipt acknowledged in writing, as follows:

If to Holman: Holman Automotive, Inc.
911 N.E. 2nd Avenue
Fort Lauderdale, FL 33304
Attn: Steve Presson
Email: spresson@holmanauto.com

With a copy to: Greenspoon Marder, P.A.
200 East Broward Boulevard
Suite 1800
Fort Lauderdale, FL 33301
Attn: John L. Shiekman
Email: john.shiekman@gmlaw.com

If to City: City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301
Attn: Lee R. Feldman, City Manager
Email: LFeldman@fortlauderdale.gov

With a copy to: City of Fort Lauderdale
City Attorney's Office
100 N. Andrews Avenue
Fort Lauderdale, FL 33301
Attn: Alain Boileau, Interim City Attorney
Email: ABoileau@fortlauderdale.gov

All notices shall be deemed given on the date actually received or refused by the party to whom the same is directed or on the date the national prepaid overnight delivery service or independent third party courier confirms the notice is not deliverable to the address provided by the intended recipient. Each party may designate a change of address or supplemental addressee(s) by notice to the other parties, given at least ten (10) business days before such change of address is to become effective.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have made this Agreement on the date first above written.

CITY OF FORT LAUDERDALE

By _____
Dean J. Trantalis, Mayor
Date: _____

ATTEST:

Jeffrey A. Modarelli, City Clerk
Date: _____

By _____
Lee R. Feldman, City Manager
Date: _____

APPROVED AS TO FORM:

Alain E. Boileau, Interim City Attorney

Bradley Weissman, Asst. City Attorney
Date: _____

[signatures continued on next page]

WITNESSES:

Kimberly J. McCurley
Signature
Kimberly J. McCurley
[Witness print/type name]

Agnes Karalyos
Signature
AGNES KARALYOS
[Witness print/type name]

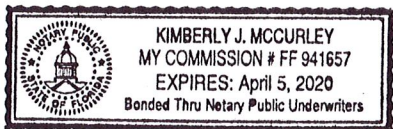
HOLMAN AUTOMOTIVE, INC.

By: [Signature]
Print Name: Glenn A. Gardner
Title: V.P.
Date: 5/8/18

STATE OF FLORIDA:)
)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 8th day of May 2018 by Glenn A. Gardner as V.P. of and on behalf of HOLMAN AUTOMOTIVE, INC., a Florida corporation, who is personally known to me or has produced as identification and did not (did) take an oath.

(SEAL)

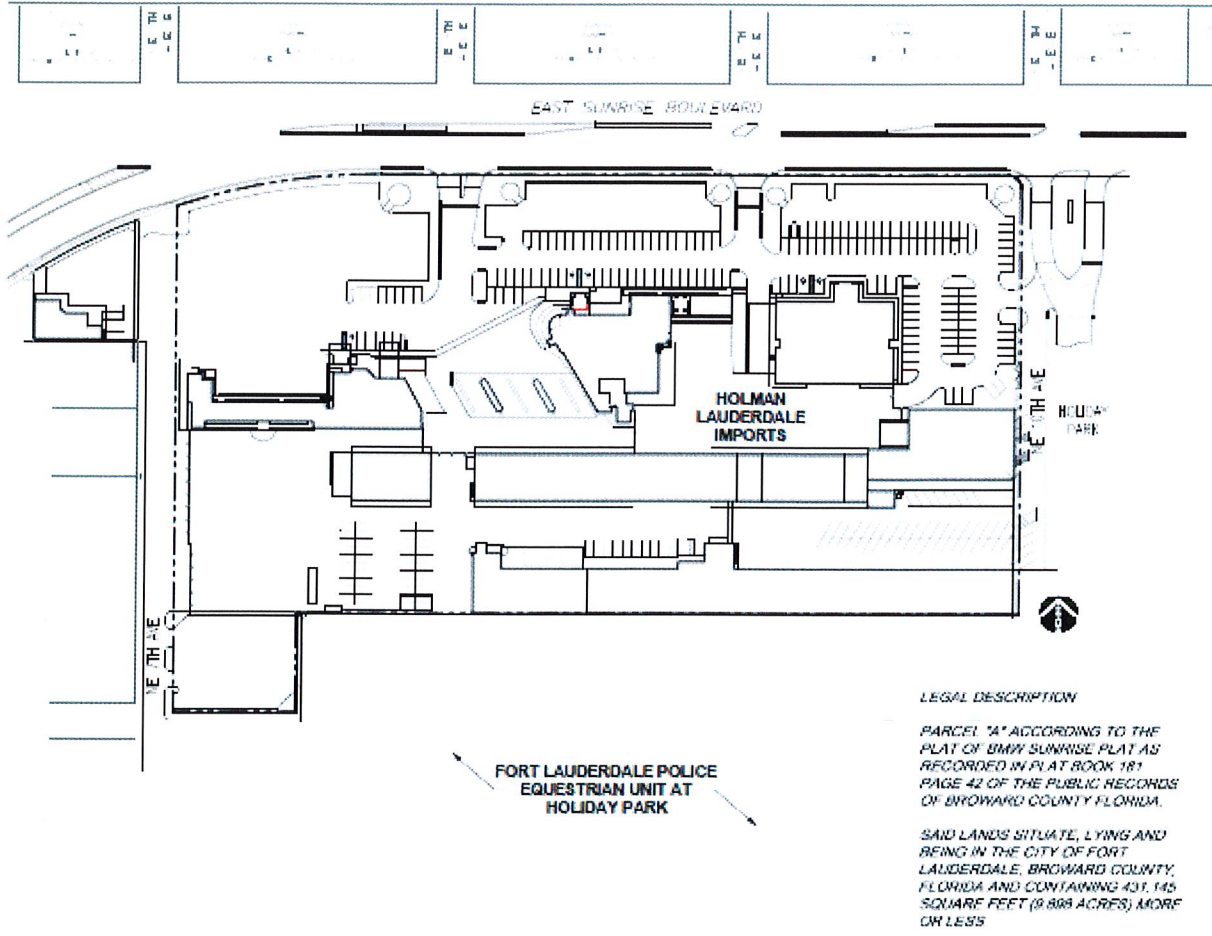


Kimberly J. McCurley
Notary Public, State of Florida
Signature of Notary taking Acknowledgement
Kimberly J. McCurley
Name of Notary Typed,
Printed or Stamped

My Commission Expires: April 5, 2020
Commission Number: FF 941657

EXHIBIT A

HOLMAN PROPERTY

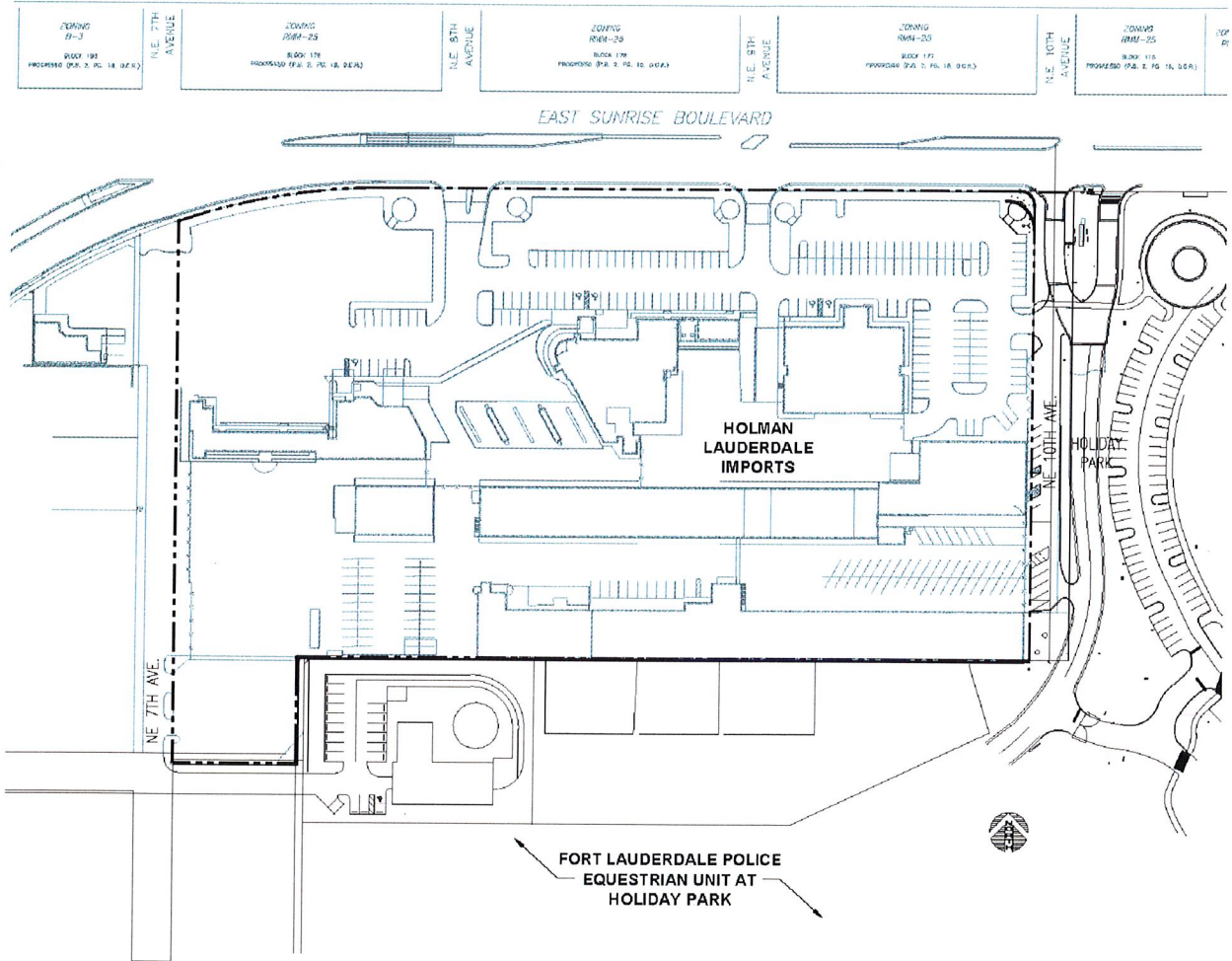


HOLMAN LAUDERDALE IMPORTS SITE PLAN

N.T.S.

EXHIBIT "A"

**EXHIBIT B
CITY PROPERTY**



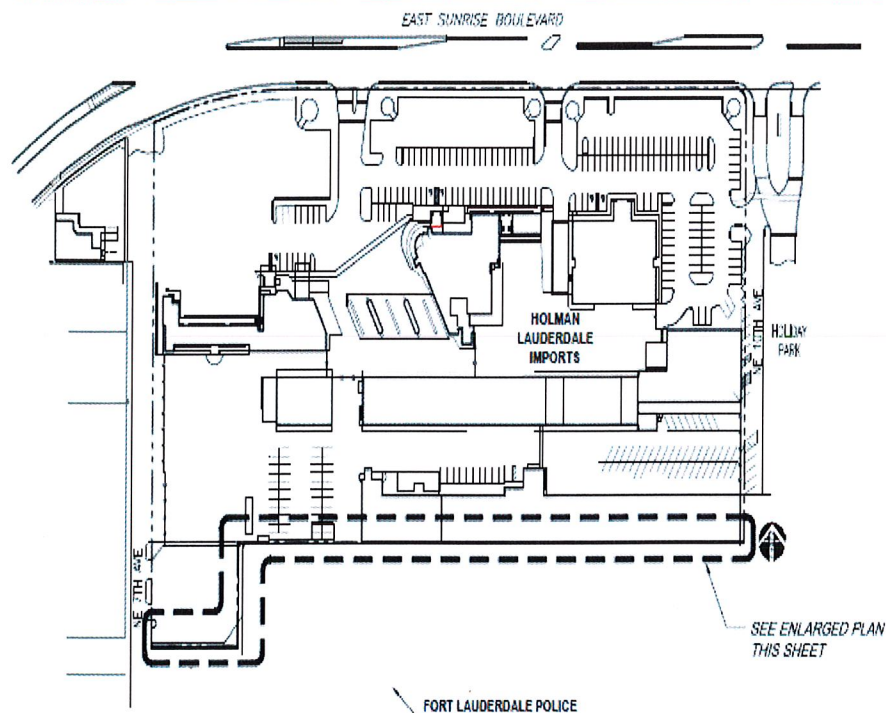
EQUESTRIAN UNIT PARTIAL SITE PLAN
N.T.S.

EXHIBIT "B"

**EXHIBIT C
SITE PLAN**

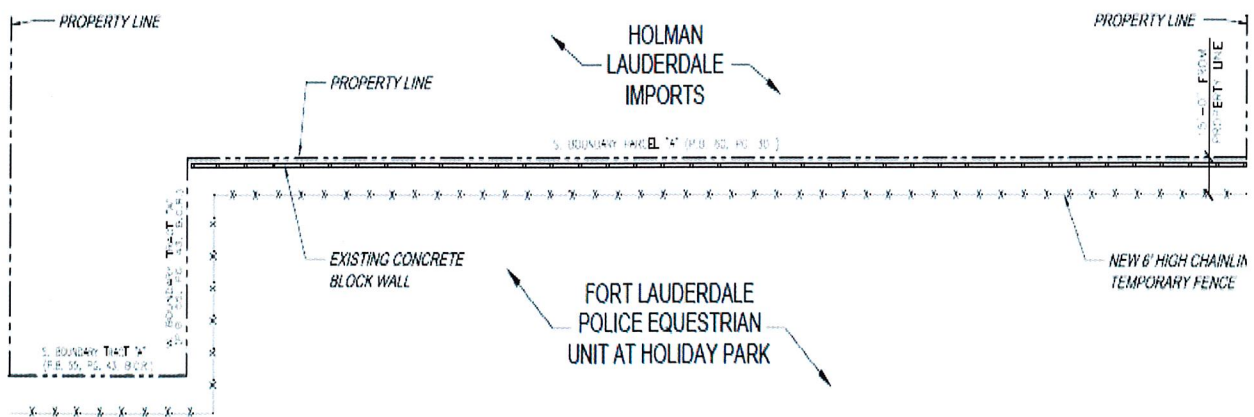
EXHIBIT "C"

NO. 1	NO. 2	NO. 3	NO. 4	NO. 5	NO. 6	NO. 7
AREA	AREA	AREA	AREA	AREA	AREA	AREA
1.1	1.1	1.1	1.1	1.1	1.1	1.1
1.1	1.1	1.1	1.1	1.1	1.1	1.1



SITE PLAN (FOR REFERENCE ONLY)

N.T.S.

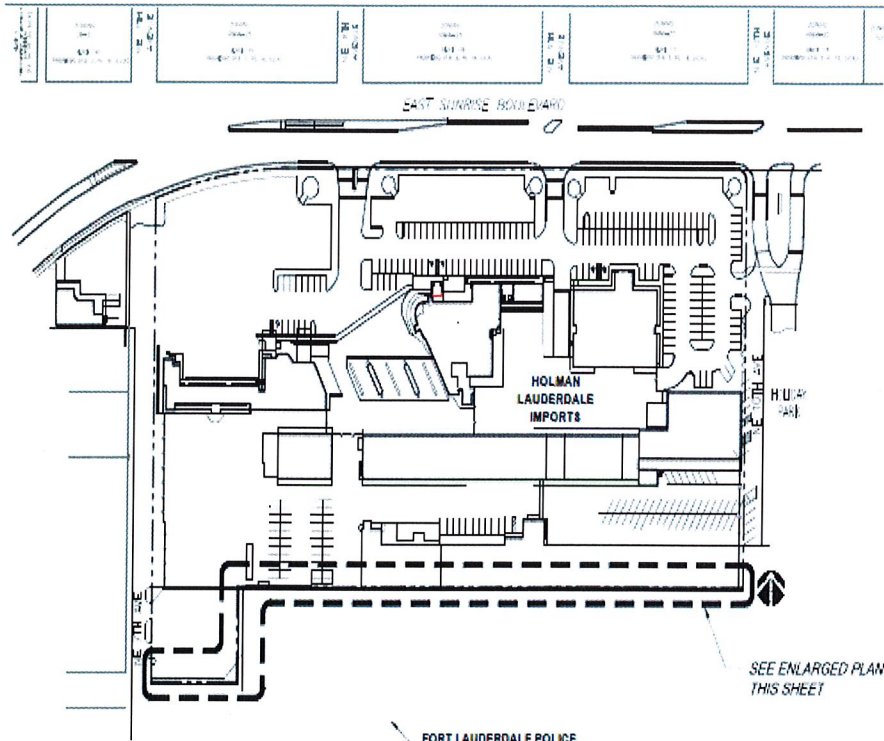


SITE PLAN (AT PROPERTY LINE BETWEEN HOLMAN AND CITY SITES)

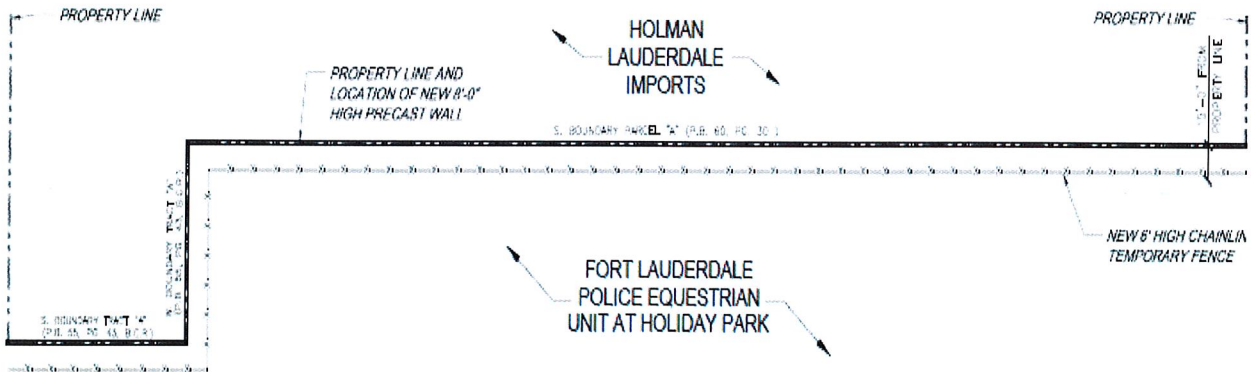
N.T.S.

**EXHIBIT D
NEW WALL**

EXHIBIT "D"



SITE PLAN (FOR REFERENCE ONLY)
N.T.S.

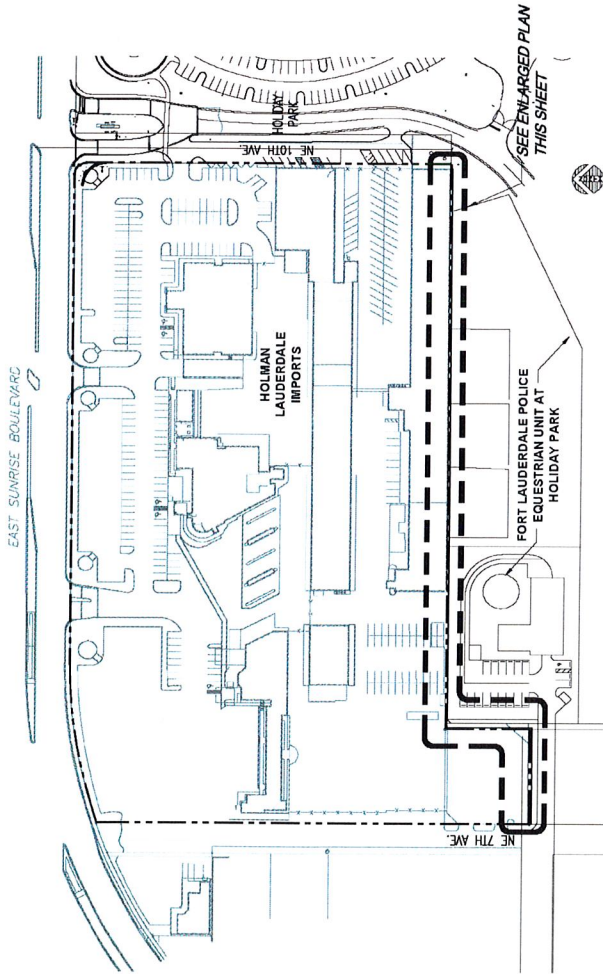


SITE PLAN (AT PROPERTY LINE BETWEEN HOLMAN AND CITY SITES)
N.T.S.

EXHIBIT E

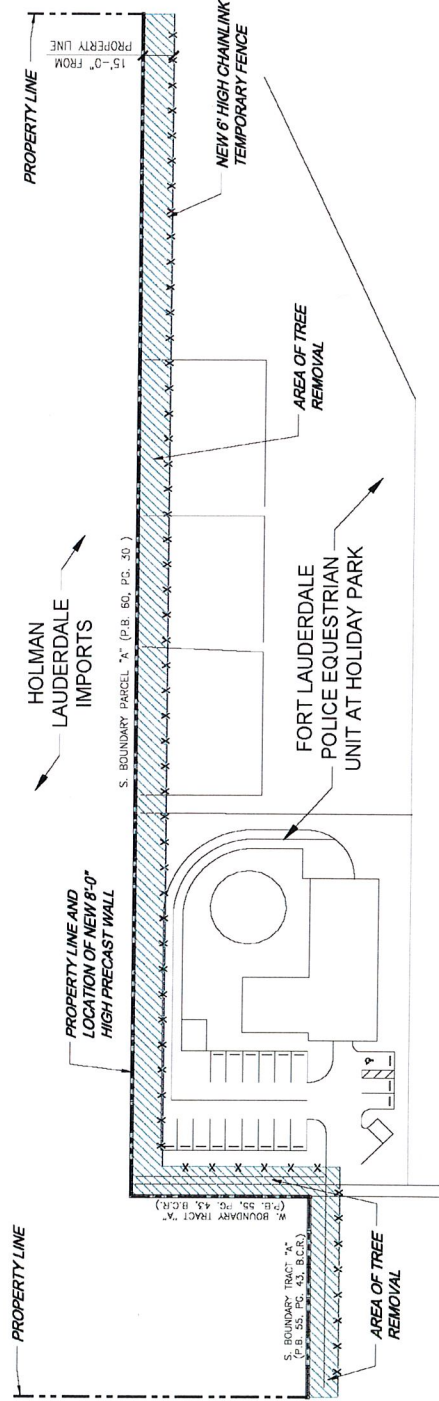
TREE/VEGETATION REMOVAL AREA

EXHIBIT "E"



SITE PLAN (FOR REFERENCE ONLY)

N.T.S.



SITE PLAN (AT PROPERTY LINE BETWEEN HOLMAN AND LAUDERDALE IMPORTS AND CITY SITES)

N.T.S.