

**CITY OF LA VISTA**  
**MAYOR AND CITY COUNCIL REPORT**  
**NOVEMBER 20, 2012 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
APPLICATION FOR REPLAT AND SUBDIVISION AGREEMENT APPROVAL — LOTS 1 & 2, MAYFAIR 2 <sup>ND</sup> ADD. REPLAT FIVE (NW OF 96 <sup>TH</sup> & GILES)	◆ RESOLUTION (2) ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

**SYNOPSIS**

A public hearing has been scheduled and resolutions have been prepared to approve a replat application and subdivision agreement for Lots 1 and 2, Mayfair 2<sup>nd</sup> Addition Replat Five (a replat of Lot 1, Mayfair 2<sup>nd</sup> Addition Replat Three), generally located northwest of 96<sup>th</sup> Street and Giles Road.

**FISCAL IMPACT**

None.

**RECOMMENDATION**

Approve.

**BACKGROUND**

A public hearing has been scheduled and resolutions have been prepared to approve a replat application and subdivision agreement for Lots 1 and 2, Mayfair 2<sup>nd</sup> Addition Replat Five, generally located northwest of 96<sup>th</sup> Street and Giles Road. The application was submitted by Buland Group Construction on behalf of the property owner, L&B Properties, LLC. The property is zoned C-1, Shopping Center Commercial, with the Gateway Corridor Overlay District. The property is currently vacant; proposed Lot 1 is anticipated to be developed as a child care center.

A subdivision agreement has been prepared and details the responsibilities of the parties including access to the development, construction of sanitary sewers, shared roadway construction, payment of tract sewer connection fees, payment of storm water management fees, sidewalks and other improvements.

A detailed staff report is attached.

On October 18, 2012, the Planning Commission unanimously recommended approval of the proposed replat to Council subject to the conditions as noted in the staff report.

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

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, FOR APPROVAL OF THE REPLAT FOR LOT 1, MAYFAIR 2<sup>ND</sup> ADDITION, REPLAT 3, TO BE REPLATTED AS LOTS 1 AND 2, MAYFAIR 2<sup>ND</sup> ADDITION, REPLAT FIVE, A SUBDIVISION LOCATED IN THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6<sup>TH</sup> P.M., IN SARPY COUNTY, NEBRASKA.

WHEREAS, the owners of the above described piece of property have made application for approval of a Replat for Lot 1, Mayfair 2<sup>nd</sup> Addition, Replat 3, to be replatted as Lots 1 and 2, Mayfair 2<sup>nd</sup> Addition, Replat Five; and

WHEREAS, the City Administrator and the City Engineer have reviewed the replat; and

WHEREAS, on October 18, 2012, the La Vista Planning Commission held a public hearing and reviewed the replat and recommended approval subject to resolution of items identified by the city engineer and staff; and

WHEREAS, the items identified by the city engineer and staff have been resolved.

NOW THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of La Vista, Nebraska, that the plat for Lot 1, Mayfair 2<sup>nd</sup> Addition, Replat 3, to be replatted as Lots 1 and 2, Mayfair 2<sup>nd</sup> Addition, Replat Five, a subdivision located in the Southeast 1/4 of Section 16, Township 14 North, Range 12 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska, generally located northwest of 96<sup>th</sup> Street and Giles Road, be, and hereby is, approved.

PASSED AND APPROVED THIS 20<sup>TH</sup> DAY OF NOVEMBER 2012.

CITY OF LA VISTA

ATTEST:

---

Douglas Kindig, Mayor

---

Pamela A. Buethe, CMC  
City Clerk

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

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING A SUBDIVISION AGREEMENT FOR LOTS 1 AND 2, MAYFAIR 2<sup>ND</sup> ADDITION, REPLAT FIVE SUBDIVISION.

WHEREAS, the City Council did on November 20, 2012, approve the replat for Lots 1 and 2, Mayfair 2<sup>nd</sup> Addition, Replat Five Subdivision subject to certain conditions; and

WHEREAS, the Subdivider, L & B Properties, LLC, has agreed to execute a Subdivision Agreement satisfactory in form and content to the City; and

NOW THEREFORE, BE IT RESOLVED, that the Subdivision Agreement presented at the November 20, 2012, City Council meeting for the Mayfair 2<sup>nd</sup> Addition, Replat Five Subdivision be and hereby is approved and the Mayor and City Clerk be and hereby are authorized to execute same on behalf of the City, subject to the conditions of Council Replat approval and with such revisions that the City Administrator or City Engineer may determine necessary or advisable.

PASSED AND APPROVED THIS 20<sup>TH</sup> DAY OF NOVEMBER 2012.

CITY OF LA VISTA

---

Douglas Kindig, Mayor

ATTEST:

---

Pamela A. Buethe, CMC  
City Clerk



CITY OF LA VISTA  
PLANNING DIVISION

RECOMMENDATION REPORT

CASE NUMBER: 2012-SUB-01

FOR HEARING OF: November 20, 2012  
Report Prepared on: November 14, 2012

**I. GENERAL INFORMATION**

**A. APPLICANT:**

Buland Group Construction  
6173 Center Street  
Omaha, NE 68106

**B. PROPERTY OWNER:**

L&B Properties, LLC  
6173 Center Street  
Omaha, NE 68106

**C. LOCATION:** Northwest of 96<sup>th</sup> Street and Giles Road

**D. LEGAL DESCRIPTION:** Lot 1, Mayfair 2<sup>nd</sup> Addition Replat Three

**E. REQUESTED ACTION(S):** Replat of Lot 1, Mayfair 2<sup>nd</sup> Addition Replat Three

**F. EXISTING ZONING AND LAND USE:** C-1 – Shopping Center Commercial, Gateway Corridor District (Overlay District), Vacant

**G. PURPOSE OF REQUEST:** Replat of Lot 1, Mayfair 2<sup>nd</sup> Addition Replat Three to split the property into two separate lots for development.

**H. SIZE OF SITE:** 8.17 Acres

**II. BACKGROUND INFORMATION**

**A. EXISTING CONDITION OF SITE:** Existing Lot 1, Mayfair 2<sup>nd</sup>

Addition Replat Three is relatively flat. Slopes along the eastern lot line increase northward. Slopes along the northern lot line increase eastward.

**B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**

**1. North:** R-1 Single-Family Residential; Mayfair Replat One / Single Family Residential

**2. East:** C-1 Shopping Center Commercial, Gateway Corridor District (Overlay District); Mayfair 2<sup>nd</sup> Addition / Mix of Commercial and Vacant uses

**3. South:** C-1 Shopping Center Commercial, Gateway Corridor District (Overlay District); Mayfair 2<sup>nd</sup> Addition Replat Three / Vacant

4. **West:** C-1 Shopping Center Commercial, Gateway Corridor District (Overlay District); Mayfair 2<sup>nd</sup> Addition Replat One/ Vacant

**C. RELEVANT CASE HISTORY:**

1. Mayfair 2<sup>nd</sup> Addition Replat Three was approved September 19, 2006.

**D. APPLICABLE REGULATIONS:**

1. Section 5.10 of the Zoning Regulations – C-1 Shopping Center
2. Section 5.17 of the Gateway Corridor District (Overlay District)
3. Section 3.08 of the Subdivision Regulations – Replats

**III. ANALYSIS**

**A. COMPREHENSIVE PLAN:** The Future Land Use Map of the Comprehensive Plan designates the area for commercial land uses.

**B. OTHER PLANS:** Not applicable.

**C. TRAFFIC AND ACCESS:**

1. Vehicular access is provided to the property over a private roadway that was established in an ingree/egress easement granted with the platting of Mayfair 2nd Addition Replat One. It was learned during the review of the initial replat application that the Mayfair Replat One property owners repealed a blanket easement for vehicular ingress and egress along with a pedestrian easement over Lots 1 through 11 of the platting of Mayfair 2nd Addition Replat One. During the review of the initial replat application a great deal of effort was spent in discussing provisions for future access between this property and the property to the west, Lot 11A. The result of that effort was to include language in the subdivision agreement. Similar language has been included in the subdivision agreement.

2. The proposed use of the property is consistent with the existing zoning and commercial use of the property was considered when the infrastructure was installed and no traffic impact study is needed for this replatting. However, the applicant needs to be aware that a recent traffic study has indicated that a traffic signal at the intersection of 96th Street and Robin Plaza (private access road at the southeast corner of proposed Lot 1 leading to 96th Street) is likely to meet signal warrants in the next few years. Since this intersection with 96th Street involves private commercial roadway accesses on both the east

and west sides of 96th Street, this signal will be installed by the City, when warranted, and costs will be assessed to the benefitted commercial properties on each side of 96th Street. There is acknowledgement of this in the subdivision agreement.

#### **D. UTILITIES:**

1. Sanitary sewer exists along the east side of the property under the existing private roadway. The sanitary sewer was not stubbed out to this property due to the original development showing a larger lot to be served from the south. The preliminary plat drawings that have been submitted indicate that each lot is able to gain access to the existing sanitary sewer in the private roadway with an individual service to each lot and that a shared sanitary sewer (common area improvement) will not be required to provide this service. If Lot 2 is subdivided in the future this may not be the case and is one of the reasons that the City is requesting elsewhere in this review that the subdivision agreement contain provisions disallowing administrative subdivision of Lot 2 in the future.
2. The original subdivision agreement provided for SID 195 making the payment of a tract sewer connection fee in the amount of \$3,600 per acre to the City at the time of the original platting. The fee has since increased to \$5,973 per acre. When these lots are built upon, the applicants will need to pay the current fee rate to the City and the City will reimburse the \$3,600 per acre fee back to SID 195.
3. Chapter 154 of the City Municipal Code requires a Post Construction Storm Water Management Plan and a permit will be required through the Permix web site that is utilized by all Papillion Creek Watershed Partnership communities. A conceptual Post Construction Storm Water Management Plan was submitted as part of the replat submittal as Exhibit "D". Subsequent to the Planning Commission meeting, a subdivision agreement was finalized and Article 7 of the agreement addresses the issue of shared, private storm sewer installation. A detailed Post Construction Storm Water Management Plan and Maintenance Agreement will be required as each lot is built upon.
4. A storm water drainage study needs to be provided as part of the preliminary plat submittal. This will be a limited study to illustrate the drainage areas and assumptions made for the proposed 36-inch storm sewer noted on Exhibit "B".

5. The Papillion Creek Watershed Partnership storm water management fee will be applicable to this property and will be collected at the time of building permits on each lot at the rate of \$4,000 per acre. This fee is applicable when set forth in a subdivision agreement for new development or significant redevelopment as stated in the Master Fee ordinance. In accordance with Article 3.03.15 of the Subdivision Regulations, a draft subdivision agreement is required when the proposed subdivision will include public and/or private, shared (common area) infrastructure improvements. At a minimum there will be shared common area storm sewer improvements in this subdivision.

**IV. REVIEW COMMENTS:**

1. A subdivision agreement has been prepared to address shared drainage facilities, extension of sanitary sewer or sewer stubs, shared private roadway construction, payment of tract sewer connection fees, payment of storm water management fees, and other typical subdivision agreement topics.
2. The Post Construction Storm Water Maintenance Agreement (PCSWMP) identifies how the maintenance of any shared water quality Best Management Practices (BMPs) will be performed and allocated between lot owners. A draft of this document is provided as "Exhibit E" to the subdivision agreement. A finalized version of the agreement will be required prior to building permit approval.
3. The applicant is strongly encouraged to use Portland cement concrete pavement for any shared ingress-egress pathways. This request is made since shared private roadways in commercial developments in the City have historically been a maintenance problem when constructed of asphalt.

**V. PLANNING COMMISSION RECOMMENDATION:**

On October 18, 2012 the Planning Commission moved to recommend approval, through an 7-0 vote, of Mayfair Second Addition Replat 5.

**VI. STAFF RECOMMENDATION:**

Approval of Mayfair 2<sup>nd</sup> Addition Replat Five, subject to the satisfactory resolution of the following issues prior to City Council review:

1. Satisfactory resolution of the aforementioned issues regarding the replat and subdivision agreement, with review and approval by the City Engineer and the City Attorney.

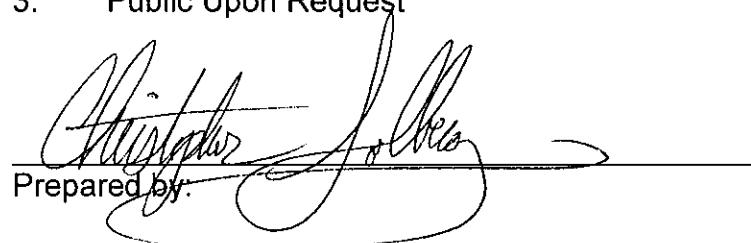
**VII. ATTACHMENTS TO REPORT:**

1. Vicinity Map
2. Initial review report from City Engineer
3. Subdivision Agreement
4. Final Plat Map
5. Subdivision Agreement Exhibit Maps
6. Draft PCSWMP Agreement
7. Pedestrian Easement Agreement

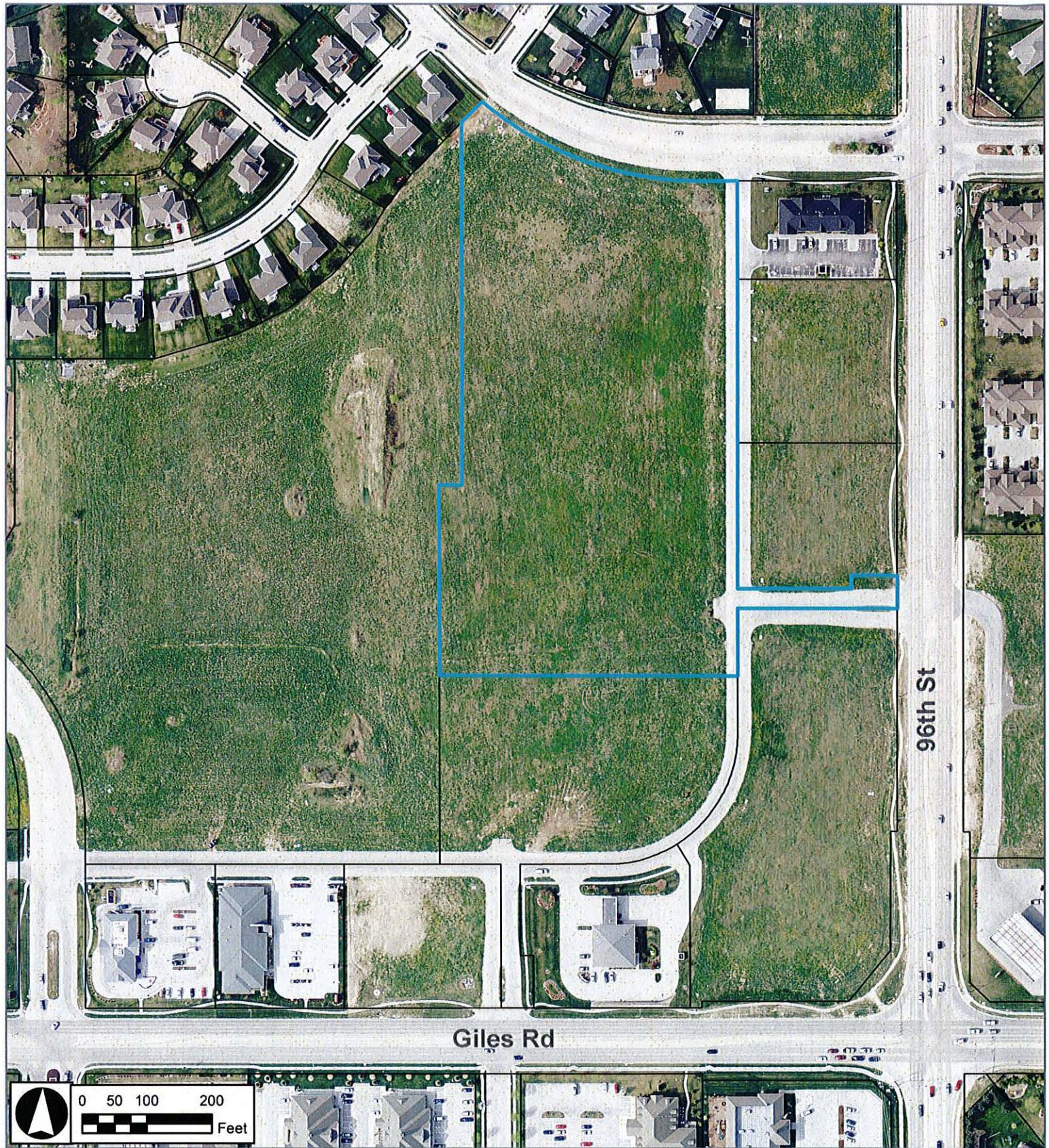
**VIII. COPIES OF REPORT SENT TO:**

1. Larry Buland, Buland Group
2. Matt Sutton, The Schemmer Associates
3. Public Upon Request

Prepared by:

  
Jennifer Borchert  
Community Development Director

11-15-12  
Date



## Mayfair 2nd Addition - Replat Five

### Replat of Lot 1 Mayfair 2nd Addition Replat Three

April 11, 2012  
CAS





September 18, 2012

Mr. Christopher Solberg  
City Planner  
City of La Vista  
8116 Park View Blvd.  
La Vista, NE 68128

RE: Revised Application for Replat-Initial Review  
Mayfair 2<sup>nd</sup> Addition Replat Five

Chris:

I have reviewed the revised replat application and materials that you sent to me in your transmittal dated September 11, 2012. The proposed replat plat would replat Lot 1, Mayfair 2<sup>nd</sup> Addition Replat Three into two lots to be known as Lots 1 and 2, Mayfair 2<sup>nd</sup> Addition Replat Five. I offer the following comments:

**TRAFFIC & ACCESS:**

1. Vehicular access is provided to the property over a private roadway that was established in an ingress/egress easement granted with the platting of Mayfair 2<sup>nd</sup> Addition Replat One. It was learned during the review of the initial replat application that the Mayfair Replat One property owners repealed a blanket easement for vehicular ingress and egress along with a pedestrian easement over Lots 1 through 11 of the platting of Mayfair 2<sup>nd</sup> Addition Replat One. During the review of the initial replat application a great deal of effort was spent in discussing provisions for future access between this property and the property to the west, Lot 11A. The result of that effort was to include language in the subdivision agreement. I recommend that similar language be included in the subdivision agreement as follows:

"L&B agrees that the City retains the right to require an access easement to be located on Lot 2 of Mayfair 2<sup>nd</sup> Addition, Replat Five benefitting Lot 11, Mayfair 2<sup>nd</sup> Addition Replat One. The right to require such access easement will expire or be limited (as the case may be) upon approval by the City of the site for Lot 2. Such access easement, if needed, would be located so as to cause the least detriment to Lot 2. The centerline of the access easement will not be located closer than 150 feet to the centerline of Robin Plaza."

The proposed use of the property is consistent with the existing zoning and commercial use of the property was considered when the infrastructure was installed and no traffic impact study is needed for this replatting. However, the applicant needs to be aware that a recent traffic impact study has

**City Hall**  
8116 Park View Blvd.  
La Vista, NE 68128-2198  
p: 402-331-4343  
f: 402-331-4375

**Community Development**  
8116 Park View Blvd.  
p: 402-331-4343  
f: 402-331-4375

**Fire**  
8110 Park View Blvd.  
p: 402-331-4748  
f: 402-331-0410

**Golf Course**  
8305 Park View Blvd.  
p: 402-339-9147

**Library**  
9110 Giles Rd.  
p: 402-537-3900  
f: 402-537-3902

**Police**  
7701 South 96th St.  
p: 402-331-1582  
f: 402-331-7210

**Public Works**  
9900 Portal Rd.  
p: 402-331-8927  
f: 402-331-1051

**Recreation**  
8116 Park View Blvd.  
p: 402-331-3455  
f: 402-331-0299

indicated that a traffic signal at the intersection of 96<sup>th</sup> Street and Robin Plaza (private access road at the southeast corner of proposed Lot 1 leading to 96<sup>th</sup> Street) is likely to meet signal warrants in the next few years. Since this intersection with 96<sup>th</sup> Street involves private commercial roadway accesses on both the east and west sides of 96<sup>th</sup> Street, this signal will be installed by the City, when warranted, and costs will be assessed to the benefitted commercial properties on each side of 96<sup>th</sup> Street. There is acknowledgment of this in the draft subdivision agreement.

2. The development on these lots will need to include sidewalks along the existing private roadway. Such sidewalks should be 5 feet wide. Since the blanket easement for pedestrian access was eliminated there will need to be a grant of a pedestrian easement to the public along the private roadway to allow for usage of the sidewalk.

#### UTILITIES & DRAINAGE:

3. Sanitary sewer exists along the east side of the property under the existing private roadway. The sanitary sewer was not stubbed out to this property due to the original development showing a larger lot to be served from the south. The preliminary plat drawings that have been submitted indicate that each lot is able to gain access to the existing sanitary sewer in the private roadway with an individual service to each lot and that a shared sanitary sewer (common area improvement) will not be required to provide this service. If Lot 2 is subdivided in the future this may not be the case and is one of the reasons that I am requesting elsewhere in this review that the subdivision agreement contain provisions disallowing administrative subdivision of Lot 2 in the future.
4. The original subdivision agreement provided for SID 195 making payment of a tract sewer connection fee in the amount of \$3600 to the City at the time of the original platting. The fee has since increased to \$5,973. When these lots are built upon, the applicants will need to pay the current fee rate to the City and the City will reimburse the \$3600 per acre fee back to SID 195.
5. Chapter 154 of the City Municipal Code requires a Post Construction Storm Water Management Plan and a permit will be required through the Permix web site that is utilized by all Papillion Creek Watershed Partnership communities. A conceptual Post Construction Storm Water Management Plan was submitted as part of the replat submittal as Exhibit "D". Note No. 4 on Exhibit "D" appears to be in conflict with the notations on Exhibit "B" that the Developer will install the backbone 36-inch storm sewer up to the south line of Lot 2. The backbone storm sewer needs to be installed by the Developer as noted on Exhibit "B" and Note No. 4 on Exhibit "D" revised. This storm sewer needs to be installed or covered by an acceptable performance guarantee by the Developer prior to recording the plat. A detailed Post Construction Storm Water Management Plan and a Maintenance Agreement will be required as each lot is built upon.
6. A storm water drainage study needs to be provided as part of the preliminary plat submittal. This will be a limited study to illustrate the drainage areas and assumptions made for the proposed 36-inch storm sewer noted on Exhibit "B".
7. The Papillion Creek Watershed Partnership storm water management fee will be applicable to this property and will be collected at the time of building permits on each lot at the rate of \$4,000 per acre. This fee is applicable when set forth in a subdivision agreement for new development or

significant redevelopment as stated in the Master Fee ordinance. In accordance with Article 3.03.15 of the Subdivision Regulations, a draft subdivision agreement is required when the proposed subdivision will include public and/or private, shared (common area) infrastructure improvements. At a minimum there will be shared common area storm sewer improvements in this subdivision.

**PRELIMINARY PLAT REVIEW:**

9. There is a proposed 25 feet wide “permanent storm sewer, sanitary sewer, and utility easement for the benefit of Replat 5” shown on the easterly end of proposed Lot 1 on Exhibit “PP-1”. Since Exhibit “B” notes each lot getting its own sanitary sewer service and a shared storm sewer will be built on the west end of Lot 1, an explanation as to the need for this easement should be provided.

**FINAL PLAT REVIEW:**

10. The final plat needs to address provision of easement rights for utility companies to serve the lots by notation or illustration or addition of language to the dedication.
11. The adjacent subdivision names to the west, north and east of the property need to be added.
12. Include an illustration and grant of a pedestrian easement for a sidewalk along the private roadway on the east end of Lots 1 and 2.
13. A common area maintenance agreement for the shared storm sewer, as well as any other shared infrastructure, needs to be provided. An acceptable draft maintenance agreement needs to be provided prior to City Council consideration and a signed copy must be provided prior to releasing the final plat mylars for recording.
14. A major storm, storm sewer and utility easement is indicated as existing along the west side of Lot 2, Mayfair 2<sup>nd</sup> Addition Replat Three (Lazlo property). A copy of the executed and recorded easement needs to be provided.

**PLAT APPLICATION, ESTIMATE, SUBDIVISION AGREEMENT & MISC:**

15. I did not receive a plat application for review, but assume that one was submitted. That document needs to indicate that any infrastructure improvements will be privately funded. This would apply to any shared drainage facilities, extension of sewer stubs, etc.
16. Provide a copy to the City of any existing or proposed private protective covenants affecting this property.
17. A revised draft Subdivision Agreement was submitted. In the first WHEREAS paragraph, change the reference from three lots to two lots. Revise the second paragraph of Section 2 to include a sentence as noted in Item 1 of this review. Add an article to the agreement noting that Lot 2 will

not be considered for an administrative subdivision in the future. This is due to the potential for creation of a lot that will not have direct access to sanitary sewer service and the need to provide for an extension of the shared storm sewer.

18. Revise the layout of the final plat drawing to provide a 5 inch by 2 1/2 inch blank space in the upper right corner to allow the Sarpy Register of Deeds a space in which to affix their recording stamp.

I recommend that the applicant revise and resubmit documents to address the items listed above.

Please feel free to contact me if you have questions about my recommendations.

  
John M. Kottmann  
City Engineer

---

[Space above the line for recording data]

**Sixth Amendment to**  
**Subdivision Agreement**  
**(Mayfair Subdivision)**

This Sixth Amendment to the Subdivision Agreement identified below (“Amendment” or “Sixth Amendment”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between L & B PROPERTIES, L.L.C, a Nebraska limited liability company (hereinafter referred to as “L & B”), SANITARY AND IMPROVEMENT DISTRICT NO. 195 OF SARPY COUNTY, NEBRASKA (hereinafter referred to as “District”) and the CITY OF LA VISTA, NEBRASKA (hereinafter referred to as “City”).

WHEREAS, This Amendment is made to that Subdivision Agreement between Developer, District and City dated March 18, 1998, as amended by the First, Second, Third, Fourth and Fifth Amendments, said agreement as amended being referred to herein as the “Subdivision Agreement”. This Amendment pertains to Lot 1, Mayfair 2<sup>nd</sup> Addition, Replat 3, which is to be replatted into two lots as described below.

WHEREAS, L & B is the owner of the land in the area to be replatted as shown on the proposed final plat attached hereto as “Exhibit A” (hereinafter referred to as the “Property”) and any private improvements thereon; and

WHEREAS, the attached final plat is a replat of Lot 1, Mayfair 2<sup>nd</sup> Addition, Replat 3 into two lots, being Lots 1 and 2, Mayfair 2<sup>nd</sup> Addition, Replat Five; and

WHEREAS, L & B or its successors in interest (hereafter, collectively, “Owners”), at the Owners’ cost, proposes to construct buildings and other private improvements on or serving Lots 1 and 2, with Lot 1 to be sold to Primrose School Franchising Company, a Georgia Corporation, for operation of a Primrose School, and Lot 2 to be held for possible future development (“Private Improvements”); and

WHEREAS, L&B wishes to construct the improvements described in this Amendment and connect the sanitary sewer system to be constructed within the limits of the Property to the sewer system of City of La Vista.

WHEREAS, the parties to this Amendment desire to amend the Subdivision Agreement to include specified understandings and agreements pertaining to this replatting.

NOW, THEREFORE, the parties agree as follows:

1. Replatting. Subject to the terms of this Amendment, Lot 1, Mayfair 2<sup>nd</sup> Addition, Replat Three shall be replatted as Lots 1 and 2, Mayfair 2<sup>nd</sup> Addition, Replat Five, as more fully shown on Exhibit "A" ("Final Plat") and developed in accordance with the site plan attached hereto as Exhibit "B" ("Site Improvement Plan").

2. A. L & B shall resolve in writing, recorded with the Sarpy County Register of Deeds as covenants running with the land and binding on all successors and assigns – at its own expense and to the prior written satisfaction of the Public Works Department of City (City Engineer) and any other parties having an interest – any conflicts of any improvements or requirements pursuant to this Amendment with any existing improvements or covenants, easements, and restrictions of record, including but not limited to any conflicts with covenants, easements, and restrictions of record created by or arising from a certain Declaration of Cross-Easements and Covenants and Restrictions Affecting Land, recorded in the office of the Register of Deeds of Sarpy County, Nebraska, on August 24, 2000 as instrument no. 2000-21199; First Amendment to Declaration of Cross-Easements and Covenants and Restrictions Affecting Land, recorded in the office of the Register of Deeds of Sarpy County, Nebraska on May 31, 2002, instrument no. 2002-20216; Second Amendment to Declaration of Cross-Easements and Covenants and Restrictions Affecting Land, recorded in the office of the Register of Deeds of Sarpy County, Nebraska on December 30, 2005, instrument no. 2005-48105.

B. L&B agrees that City retains the right to require an access easement to be located on Lot 2 of Mayfair 2<sup>nd</sup> Addition, Replat 5, benefiting Lot 11A, Mayfair 2<sup>nd</sup> Addition Replat 1. The right to require such access easement would expire or be limited (as the case may be) upon approval by the City of the site plan for Lot 2. Such access easement, if needed, would be located so as to cause the least detriment to Lot 2. The centerline of the access easement will not be located closer than 150 feet to the centerline of Robin Plaza.

3. Water, Gas and Electrical Power: Owners shall enter into an agreement with the Metropolitan Utilities District regarding all water service lines to and upon the Property, an agreement with Black Hills Energy for all gas line extensions to and upon the Property, and an agreement with the Omaha Public Power District for electrical power lines to be installed to, on or adjacent to the Property. Owners shall provide to City copies of each of such agreements with the Metropolitan Utilities District, Black Hills Energy and the Omaha Public Power District with respect to each Lot of the Property as said Lot is developed, and said agreements shall be a condition of issuance of a building permit for said Lot. All required work shall be performed solely at Owners' cost. Owners shall be responsible for obtaining permission from the Public

Works Department of City (City Engineer) before performing any work upon or affecting City property.

4. Payment for Improvements: Except as otherwise expressly provided in this Amendment, Owners shall pay, in addition to other costs as provided in this Amendment, the cost of all improvements, easements and connections described in this Amendment, as well as all charges of the Metropolitan Utilities District for water, of Black Hills Energy for gas line installation, and of the Omaha Public Power District for underground electrical service or overhead power installations. Except as may be otherwise expressly provided in this Amendment, Owners shall pay the cost of all work and requirements described in this Amendment. All on-going maintenance, repair and replacement of improvements within or benefiting the Property shall be paid by the Owners in accordance with the Easement and Maintenance Agreement, in accordance with Exhibit "C".

5. Right to Connect to City Sewer System: City hereby grants permission to Owners to connect, at such party's cost, the sanitary sewer system within the limits of the Property to the sanitary sewer system of City, subject to obtaining proper permits and paying the standard tract sewer connection fee to City for the Property shown on "Exhibit A." Payment shall be based on the City's adopted fee rate that is in effect at the time the payment is made. At the rate in effect on the date of execution of this Amendment, the fee would be:

Lot 1, Commercial	1.88± AC @ \$5,973/AC	\$11,229.24
Lot 2, Commercial	6.29± AC @ \$5,973/AC	<u>\$37,570.17</u>
Total Fee		\$48,799.41

Any terms or conditions for the benefit of the City that are contained in the Subdivision Agreement or other applicable documents, instruments, laws or regulations pertaining to construction, operation, maintenance, replacement or repair of sanitary sewers or direct or indirect connections to or use of the City's sanitary sewer system shall be equally applicable to the Owners and sanitary sewers and connections within or benefiting the Property or any part thereof.

6. Sidewalks: Owners, at their cost, shall install, to City standards, sidewalks along and adjacent to the southerly right-of-way of Brentwood Drive and along and adjacent to the west right-of-way of 97<sup>th</sup> Plaza before any certificate of occupancy is issued for any building on the Property.

7. Storm Water Management Plan: As each lot is developed, Owners, at the time of development, shall provide a storm water drainage study as part of its submittals to the City. The study will indicate how drainage from the site will be handled as well as demonstrating no increase in peak flows for 2 year, 10 year, & 100 year storm events above existing conditions. The development of a lot shall include storm sewers downstream of that lot, if not already existing, in accordance with Exhibit "D". Post-construction storm water management features and related appurtenances shall be constructed on the individually developed lots, as outlined on the Conceptual Post Construction Storm Water Management Plan attached hereto as "Exhibit

D," subject to such modifications as approved from time to time in writing by the City Engineer. Plans and specifications for such storm water management improvements shall be prepared by Owners' engineer and must be approved by the Public Works Department of City (City Engineer) prior to starting construction of such improvements. Prior to development and construction of Lots 1 and 2, Owners will submit appropriate amendments to Exhibit "D" for approval by the Public Works Department of City. Developer agrees to disclose to any prospective Owner the Storm Water Management requirements of this paragraph 7 and Exhibit "D" to this Agreement prior to transfer of title to Property that is subject to the provisions of this Amendment.

8. Storm Water Management Plan Maintenance Agreement: A Post-Construction Storm Water Management Plan Maintenance Agreement, in the form and content attached hereto as "Exhibit E" and subject to any modifications satisfactory to the City Engineer, ("Maintenance Agreement") shall be entered into between Owners and City prior to starting construction of such improvements, after City has approved the Exhibits to be attached thereto, including but not limited to the exhibit setting forth the BMP maintenance requirements.

9. Watershed Management Fees: The Owners shall make payment to City for Watershed Management Fees. This fee is computed as follows for the Property shown on "Exhibit A". Payment must be made to City's Permits & Inspections Division before a building permit will be issued to construct improvements on any lot and before the commencement of construction of any such improvements. Payment shall be based on the City's adopted fee rate that is in effect at the time the payment is made. At the rate in effect on the date of execution of this Amendment, the fees would be:

Lot 1, Commercial	1.88 ± AC @ \$4,000/AC	\$ 7,520.00
Lot 2, Commercial	6.29 ± AC @ \$4,000/AC	<u>\$25,160.00</u>

Total \$32,680.00

The aforesated fees are stated at the rates currently in effect and are subject to increase. The rates in effect at the time of issuance of the building permit, if greater than the aforesated rates, will be the rates to be paid.

10. Private Improvement Compliance. All Private Improvements shall be designed, constructed, maintained, repaired and replaced at the Owners' sole cost in accordance with all applicable laws, rules, regulations, policies and procedures in effect at the time the construction, maintenance, repair or replacement is performed. Credit, funds or other assets of the District or City shall not be used for any improvement within or benefiting the Property.

11. Traffic Signal. L&B acknowledges the traffic signals are likely to be installed in the near future at the intersection of 96<sup>th</sup> Street and the private roadway just east of the southeasterly corner of Lot 1. Costs associated with this signal will be assessed to benefiting commercial properties in both the Mayfair (including the Property) and Southwind subdivisions when the signal is installed, with 50% of said costs allocated to the Mayfair subdivision to be assessed among benefiting commercial properties therein, and the remaining 50% of costs

allocated and assessed against benefiting commercial lot(s) in the Southwind subdivision; provided, however, that L & B shall not be required to pay more than its proportionate share of said costs allocated to the Mayfair subdivision, with proportionate shares determined based on relative benefit among the commercial lots of the Mayfair subdivision as determined in accordance with applicable law.

12. Binding Effect; Recording: This Amendment shall be binding upon the parties, and their respective successors and assigns. This Amendment shall be recorded with the Register of Deeds of Sarpy County, Nebraska and shall constitute a covenant running with the land and shall be binding on L&B, the Owners, and all successors and assigns of L&B or Owners. City shall have the right, but not the obligation, to enforce any and all such covenants. It is further agreed that after City releases the Final Plat to L&B for recording, L & B promptly will record such Final Plat with the Register of Deeds of Sarpy County, Nebraska.

13. Any development of Lots 1 or 2 shall be subject to all applicable laws, rules, regulations, approvals and other requirements of the City in effect at the time of said development, including, but not limited to, approvals required by this Amendment or the Subdivision Agreement or of the site plan for any building or other improvements prior to issuance of a building permit, or compliance with any other applicable requirements, including requirements of the La Vista Municipal Code, zoning or subdivision regulations. Due to the potential for creation of a lot without direct access to sanitary sewer service and the need to provide for an extension of the shared storm sewer, Lot 2 will not be considered for an administrative subdivision in the future.

14. The recitals on pages 1 and 2 of this Amendment are incorporated herein and shall be a part of this Amendment. This Amendment shall constitute the complete agreement and understanding of the parties regarding the subject matter contained herein and shall not be amended except by written amendment signed by both parties. If any provision of this Amendment is determined unenforceable, the unenforceable provision shall be deemed stricken and the remainder of the Amendment shall be enforced. This Amendment shall be governed and construed in accordance with Nebraska law and the parties submit to the jurisdiction and venue of the District Court of Sarpy County to resolve any dispute hereunder, and agree not to challenge said jurisdiction or venue.

15. Except as specifically modified in this Sixth Amendment, the Subdivision Agreement shall remain in full force and effect, and said Subdivision Agreement is hereby ratified and affirmed.

16. In the event L&B records the Final Plat and, before commencing any improvements within or for the benefit of the Property, L&B decides not to develop the Property as described in this Amendment, the City and L&B shall take all actions necessary to vacate the Final Plat, and the Site Improvement Plan, this Amendment, and all requirements set forth in the Site Plan or Amendment, or actions to that point taken to carry out any such requirement (including, but not limited to, any document or instrument recorded with the Sarpy County Register of Deeds as required by this Amendment), shall be null and void.

17. Exhibit Summary

The following Exhibits are attached hereto and incorporated herein and made a part hereof:

<b>Exhibit "A"</b>	<b>Final Plat</b>
<b>Exhibit "B"</b>	<b>Site Improvement Plan</b>
<b>Exhibit "C"</b>	<b>Easement and Maintenance Agreement</b>
<b>Exhibit "D"</b>	<b>Conceptual Post Construction Storm Water Management Plan</b>
<b>Exhibit "E"</b>	<b>Post Construction Storm Water Management Plan, Maintenance Agreement And Easement</b>

**CITY OF LA VISTA, NEBRASKA,**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

L & B Properties, LLC

By: \_\_\_\_\_  
Larry G. Buland, Manager

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

Sanitary and Improvement District No. 195 of  
Sarpy County, Nebraska

By: \_\_\_\_\_  
Chairman of the Board of Trustees

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

ATTEST:

---

Clerk of Said District

Date:

## ACKNOWLEDGMENT

On this \_\_\_\_ day of \_\_\_\_\_, 2012, before me, a Notary Public in and for said County and State, personally appeared Larry G. Buland, Manager of L & B Properties, LLC, who executed the above instrument and acknowledged the execution thereof to be his/her voluntary act and deed on behalf of the company.

---

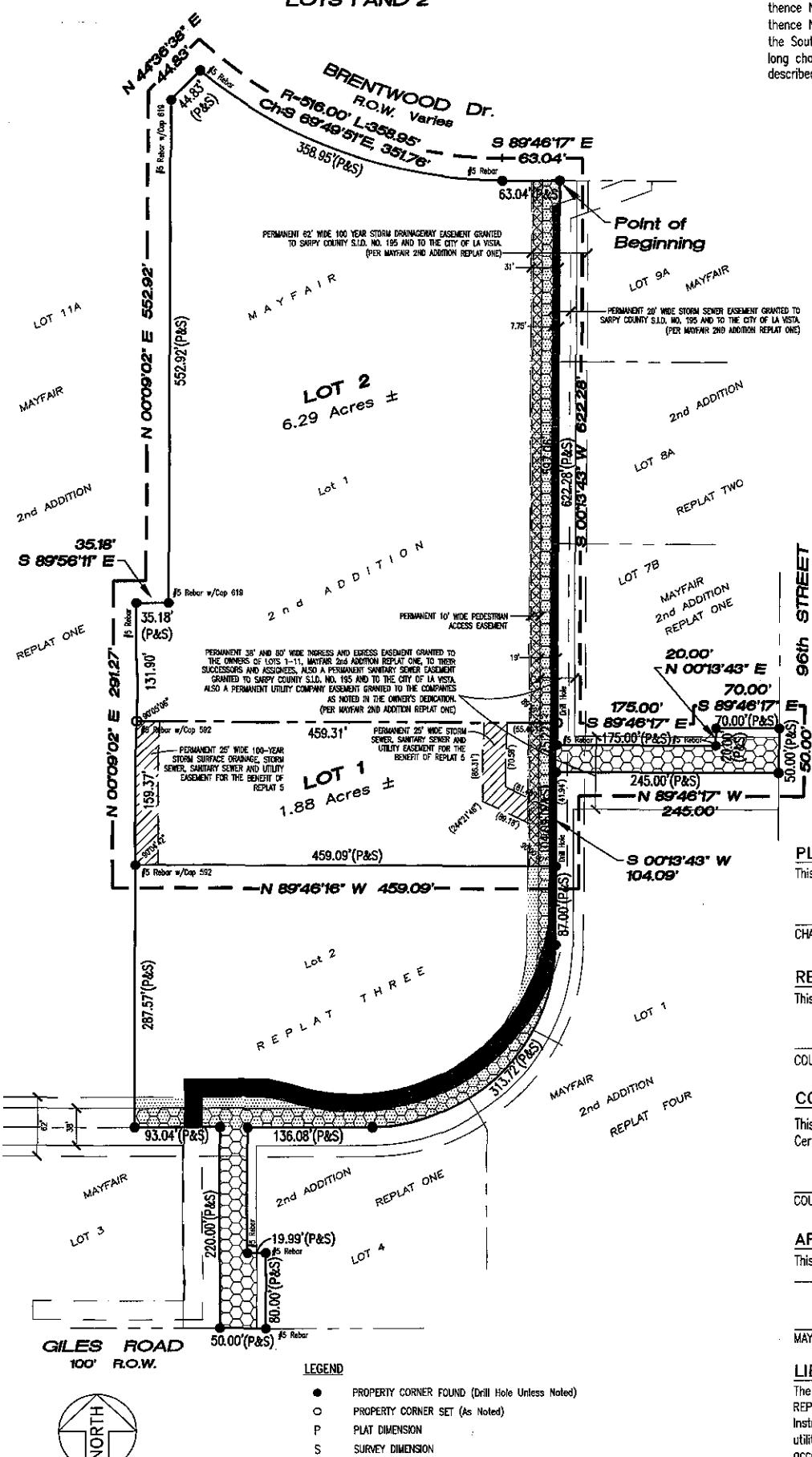
NOTARY PUBLIC  
My Commission expires \_\_\_\_\_

( ADD: City and SID acknowledgements)

## MAYFAIR 2nd ADDITION REPLAT FIVE

BEING A REPLAT OF LOT 1, MAYFAIR 2nd ADDITION REPLAT THREE, LOCATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 16, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6th P.M., SARPY COUNTY, NEBRASKA.

### LOTS 1 AND 2



JOB NO.	06165.004
SHEET	1-1
1 OF 1	FINAL PLAT

MAYFAIR 2nd ADDITION REPLAT FIVE  
SARPY COUNTY, NEBRASKA.

**SCHEMMER**  
ARCHITECTS | ENGINEERS | PLANNERS

### LAND SURVEYOR'S CERTIFICATE

I hereby certify that I am a professional land surveyor, registered in compliance with the laws of the State of Nebraska, that this plat correctly represents a survey conducted by me or under my direct supervision on 11/15/11, that any changes from the description appearing in the last record transfer of the land contained in the final plat are so indicated, that all monuments shown thereon actually exist as described or will be installed and their position is correctly shown and that all dimensional and geodetic data is correct.

MARK W. FREDRICKSON, RLS #592

DATE

### LEGAL DESCRIPTION

Being a replat of Lot 1, Mayfair 2nd Addition Replat Three, located in the Southeast One-Quarter of Section 16, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska. Being more particularly described as follows: Beginning at the Northeast corner of said Lot 1, thence South 00°13'43" West (assumed bearing) for 622.28 feet; thence South 89°46'17" East for 175.00 feet; thence North 00°13'43" East for 20.00 feet; thence South 89°46'17" East for 70.00 feet; thence South 00°13'43" West for 50.00 feet along the West Right-of-Way line of 96th Street; thence North 89°46'17" West for 245.00 feet; thence South 00°13'43" West for 104.09 feet; thence North 89°46'16" West for 459.09 feet; thence North 00°09'02" East for 291.27 feet; thence South 89°56'11" East for 35.18 feet; thence North 00°09'02" East for 552.92 feet; thence North 44°36'38" East for 44.83 feet; thence the following two (2) courses along the South Right-of-Way line of Brentwood Drive: (1) Southeasterly along a 516.00 foot radius curve to the left for 358.95 feet with a long chord bearing South 69°49'51" East, 351.76 feet (2) South 89°46'17" East for 63.04 feet to the Point of Beginning. Above described tract contains 8.17 acres, more or less.

### DEDICATION

Known all men by these presents that I, Larry G. Buland, owner of the property described in the Surveyor's Certification and embraced within the plat has caused said land to be subdivided into lots and streets to be numbered and named as shown, said subdivision to be hereafter known as MAYFAIR 2nd ADDITION REPLAT FIVE (lots numbered as shown), and I do hereby ratify and approve of the disposition of my property as shown on the plat, and I do hereby grant easements as shown on this plat, I do further grant a perpetual easement to the Omaha Public Power District, Qwest, Century Link, and any company which has been granted a franchise to provide a cable television system in the area to be subdivided, their successors and assigns, to erect, operate, maintain, repair, and renew poles, wires, cables, conduits, and other related facilities, and to extend thereon wires or for the transmission of signals and sounds of all kinds including signals provided by a cable television system, and the reception on, over, through, under, and across a five foot (5') wide strip of land abutting all front and side boundary lot lines; on eight foot (8') wide strip of land abutting the rear boundary lines of all interior lots; and a sixteen foot (16') wide strip of land abutting the rear boundary lines of all exterior lots. Said sixteen foot (16') wide easement will be reduced to an eight foot (8') wide strip when the adjacent land is surveyed, platted and recorded, and we do further grant a perpetual easement to Metropolitan Utilities District of Omaha and Black Hills Energy, their successors and assigns, to erect, install, operate, maintain, repair, and renew pipelines, hydrants, and other related facilities, and to extend thereon pipes for the transmission of gas and water on, through, under, and across a five foot (5') wide strip of land abutting all streets. No permanent buildings or retaining walls shall be placed in the said easement ways, but the same may be used for gardens, shrubs, landscaping, and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

In witness whereof, I do set our hand this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

L & B PROPERTIES, LLC

Larry G. Buland, President

DATE

### ACKNOWLEDGMENT OF NOTARY

State of \_\_\_\_\_ } } County of \_\_\_\_\_ }

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, the undersigned notary public, qualified and commissioned in and for said county and state, personally appeared: \_\_\_\_\_, personally known by me to be the identical person whose name is affixed to the dedication and he did acknowledge the execution thereof to be his voluntary act and deed.

NOTARY PUBLIC

DATE

### PLANNING COMMISSION APPROVAL

This plat of MAYFAIR 2nd ADDITION REPLAT FIVE was approved by the La Vista Planning Commission.

CHAIRPERSON, LA VISTA PLANNING COMMISSION

DATE

### REVIEW BY SARPY COUNTY PUBLIC WORKS

This plat of MAYFAIR 2nd ADDITION REPLAT FIVE was reviewed by the office of the Sarpy County Surveyor.

COUNTY SURVEYOR / ENGINEER

DATE

### COUNTY TREASURERS CERTIFICATION

This is to certify that I find no regular or special taxes due or delinquent against the property described in the Surveyor's Certificate and embraced in this plat as shown by the records of this office.

COUNTY TREASURER

DATE

### APPROVAL OF LA VISTA CITY COUNCIL

This Plat of Mayfair 2nd Addition Replat Five was approved by the City Council of the City of La Vista, Nebraska on this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_, in accordance with the State Statutes of Nebraska.

MAYOR

ATTEST: CITY CLERK

### LIEN HOLDER CONSENT

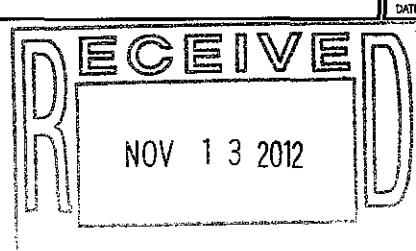
The undersigned holder of that certain lien against the real property described in the plat known as MAYFAIR 2nd ADDITION REPLAT FIVE (hereinafter "Plat"), said lien being recorded in the Office of the Register of Deeds of Sarpy County, Nebraska as Instrument No. \_\_\_\_\_ (hereinafter "Lien"), does hereby consent to the dedication of and subordinate the lien to any utility (sewer, water, electric, cable TV, telephone, natural gas) easements, or streets or roads, pedestrian way easements, and access easements and relinquishments of access, dedicated to the public, all as shown on the Plat, but not otherwise. The undersigned confirms that it is the holder of the lien and has not assigned the lien to any other person.

By: \_\_\_\_\_  
(NAME OF LIEN HOLDER)

TITLE: \_\_\_\_\_

PRINT THE NAME OF THE INDIVIDUAL

DESIGNED			
DRAWN	CJG		
CHECKED	MWF		
BY	DATE	BY	APP
BY	DATE	BY	REVISIONS



# MAYFAIR 2ND ADDITION REPLAT FIVE PRELIMINARY PLAT

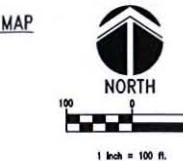


## DRAWING INDEX

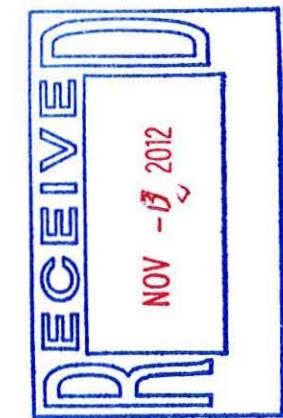
- 0 COVER SHEET
- EXHIBIT "EP-1" EXISTING SITE PLAN
- EXHIBIT "PP-1" PRELIMINARY PLAT
- EXHIBIT "B" IMPROVEMENT PLAN
- EXHIBIT "D" CONCEPTUAL POST CONSTRUCTION STORM WATER MANAGEMENT PLAN
- EXHIBIT "D-MAP" PRELIMINARY DRAINAGE MAP

OWNER/SUBDIVER: L & B PROPERTIES, LLC  
8173 CENTER STREET  
OMAHA, NE 68106  
ENGINEER/SURVEYOR: SCHEMMEER ASSOCIATES  
1044 NORTH 111TH STREET, SUITE 300  
OMAHA, NE 68154

LOCATION MAP  
SCALE: 1"=100'



LEGAL DESCRIPTION  
Lot 1, Mayfair 2nd Addition Replat, located in the Southeast One-Quarter of Section 16, Township 14, North, Range 12, East of the 6th P.M., Sarpy County, Nebraska. Being more particularly described as follows: Beginning at the Northeast corner of said Lot 1, thence South 001°34'43" West (assumed bearing) for 622.28 feet; thence South 89°45'17" East for 175.00 feet; thence North 001°34'43" East for 20.00 feet; thence South 89°46'17" East for 70.00 feet; thence South 001°34'43" West for 50.00 feet along the West Right-of-Way line of 96th Street; thence North 89°45'17" West for 245.00 feet; thence South 001°34'43" West for 104.09 feet; thence North 89°45'17" West for 450.09 feet; thence North 070°07'02" East for 291.27 feet; thence South 89°56'11" East for 35.18 feet; thence North 003°00'00" East for 552.92 feet; thence North 43°36'38" East for 44.83 feet; thence the following two (2) courses along the South Right-of-Way line of Giles Road: (1) southerly along a 518.00 foot radius curve to the left for 358.95 feet with a long chord bearing South 69°49'51" East; 351.76 feet (2) South 89°45'17" East for 63.04 feet to the Point of Beginning. Above described tract contains 8.17 acres, more or less.

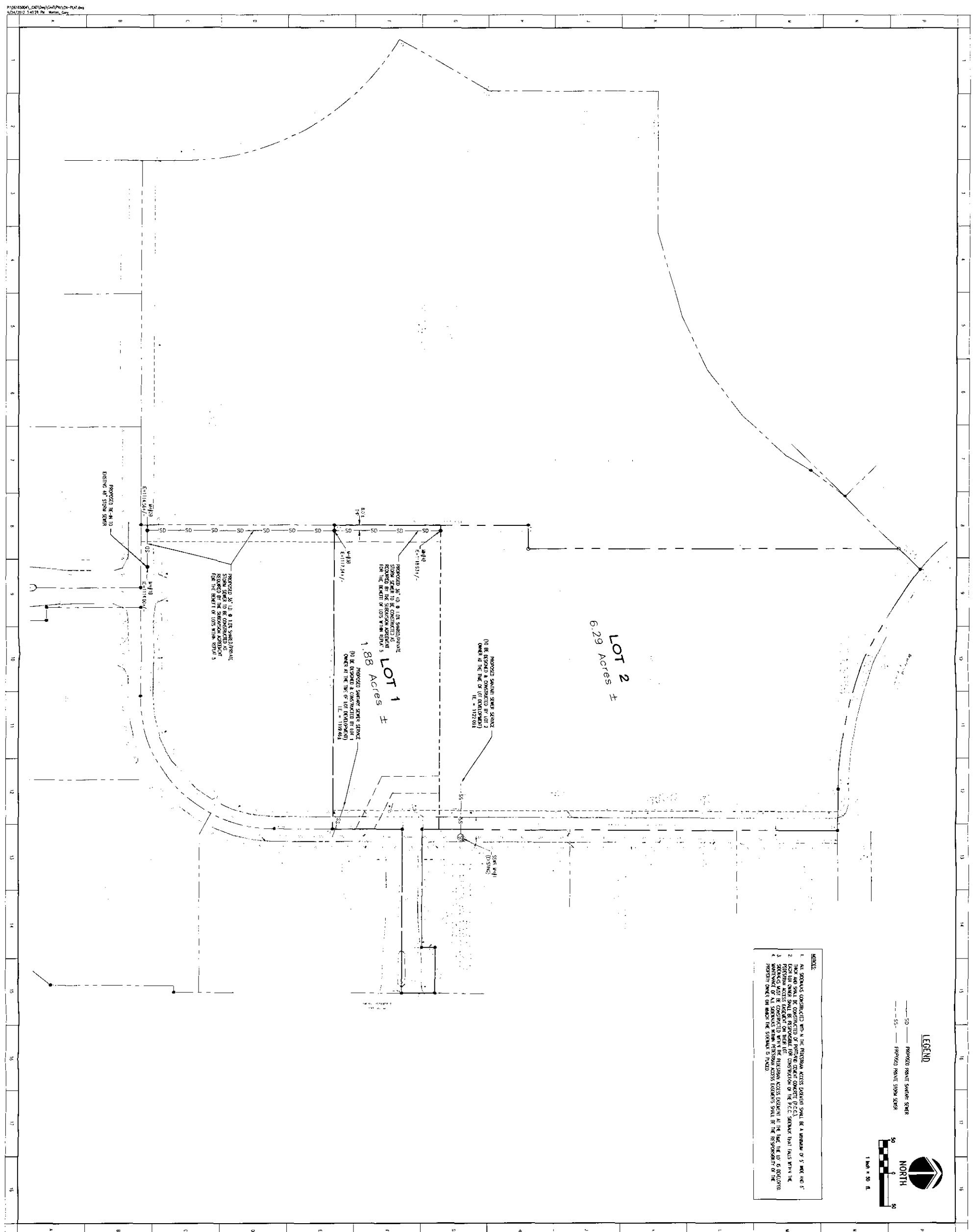


**SCHEMMEER**  
ARCHITECTS | ENGINEERS | PLANNERS

MAYFAIR 2ND ADDITION REPLAT FIVE  
SARPY COUNTY, NEBRASKA  
COVER SHEET

PROJECT NO.: 06165.004





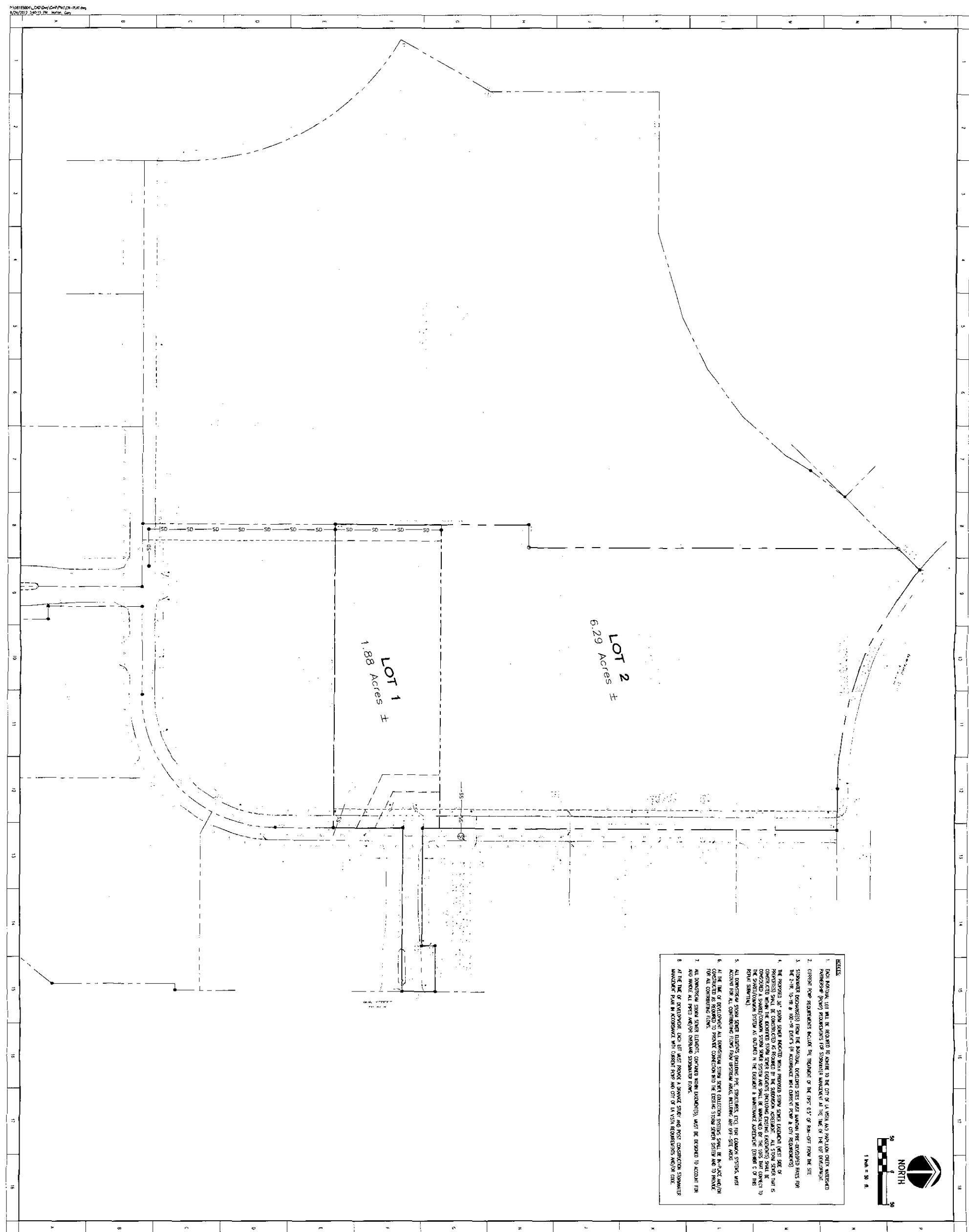
MAYFAIR 2ND ADDITION REPLAT FIVE  
SARPY COUNTY, NEBRASKA

IMPROVEMENT PLAN

**SCHEMMER**  
ARCHITECTS | ENGINEERS | PLANNERS

PROJECT NO.: 06165.004

DESIGNED:	DM	ISSUE DATE:	09/25/2012
DRAWN:	DM	REVISIONS:	
CHECKED:	MS	No.:	
		DATE:	
		BY:	
DESCRIPTION:			
<small>THIS DRAWING IS THE PROPERTY OF SCHEMMER CORPORATION. IT IS TO BE USED ONLY FOR THE PROJECT FOR WHICH IT WAS PREPARED. IT IS THE PROPERTY OF SCHEMMER CORPORATION AND IS TO BE RETURNED UPON REQUEST. IT IS THE PROPERTY OF SCHEMMER CORPORATION AND IS TO BE RETURNED UPON REQUEST. IT IS THE PROPERTY OF SCHEMMER CORPORATION AND IS TO BE RETURNED UPON REQUEST.</small>			



MAYFAIR 2ND ADDITION REPLAT FIVE  
SARPY COUNTY, NEBRASKA

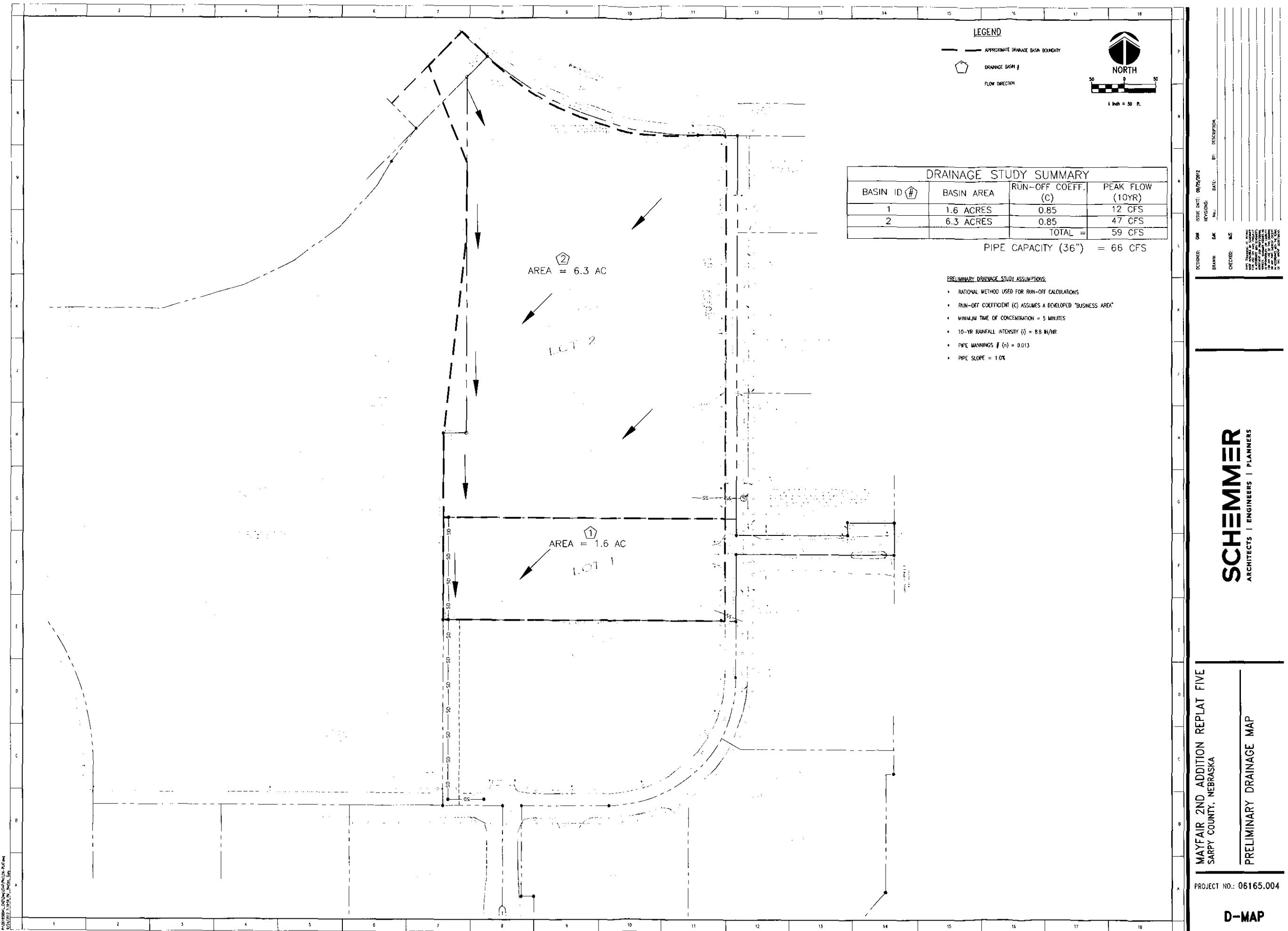
## CONCEPTUAL POST CONSTRUCTION STORM WATER MANAGEMENT PLAN

# SCHEMMER

ARCHITECTS | ENGINEERS | PLANNERS

DESIGNED:	DMY	ISSUE DATE:	09/29/2012	
REVISIONS:				
DRAWN:	DKJ	NO.:	DATE:	BY:
DESCRIPTION:				
CHECKED:	MJS			

THESE DRAWINGS ARE BEING  
MADE AVAILABLE FOR USE IN THIS PROJECT  
BY THE OWNER. THE OWNER IS  
RESPONSIBLE FOR PROFESSIONAL  
COSTS AND THE DRAWINGS ARE  
THE PROPERTY OF LIAISON  
DESIGN. THE OWNER AGREES  
TO PAY THE FEES STATED  
IN THE AGREEMENT.



**SCHEMNER**  
ARCHITECTS | ENGINEERS | PLANNERS

## PEDESTRIAN EASEMENT DECLARATION

This EASEMENT DECLARATION made this \_\_\_\_ day of October, 2012, by L & B PROPERTIES, L.L.C., a Nebraska Limited Liability Company ("Grantor")

### RECITALS

A. Grantor is the owner of certain real estate described as Lots 1 and 2, Mayfair 2<sup>nd</sup> Addition, Replat Five, located in the Southeast Quarter of Section 16, Township 14 North, Range 12 east of the 6<sup>th</sup> P.M., Sarpy County, Nebraska.

B. Grantor has agreed to provide for a public easement for pedestrian traffic as depicted on Exhibit "A" attached hereto.

NOW, THEREFORE, Grantor hereby declares the following:

1. Grant of Easement. Grantor hereby grants and establishes, as described on said Exhibit "A," a 10 foot wide permanent pedestrian easement located in Lots 1 and 2, Mayfair 2nd Addition Replat Five in the Southeast one-quarter of section 16, township 14 north, range 12 east of the 6th p.m., Sarpy county, Nebraska. being more particularly described as follows:

Commencing at the northeast corner of said lot 2, thence north 89°46'17" west (assumed bearing) for 19.00 feet along the north line of said lot 2 to the point of beginning; thence south 00°13'43" west for 756.37 feet along a line 19.00 feet west of and parallel with the east line of said lots 1 and 2; thence north 89°46'17 west for 10.00 feet along the south line of said lot 1; thence north 00°13'43" east for 756.37 feet along a line 29.00 feet west of and parallel with the east line of said lots 1 and 2; thence south 89°46'17" east for 10.00 feet along the north line of said lot 2 to the point of beginning. (Above described easement contains 7,564 square feet, more or less.)

PROVIDED, HOWEVER, that such easements shall be limited to improved platted portions of Exhibit "A" as a condition of development by the owner thereof from time to time.

2. Easements are Perpetual. The easements and rights herein granted shall be perpetual in nature and constitute covenants running with the title to the Property.

IN WITNESS WHEREOF, L & B PROPERTIES, L.L.C.. has executed this Declaration as of the date first above written.

L & B PROPERTIES, L.L.C., Grantor

By: \_\_\_\_\_  
Larry G. Buland, Manager

STATE OF NEBRASKA      )  
                            )ss:  
COUNTY OF DOUGLAS      )

Before me, a Notary Public qualified in and for said County, personally appeared Larry G. Buland, as Manager of L & B PROPERTIES, L.L.C., known to me to be the identical person who executed the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said company.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

**EXHIBIT D**  
**MAINTENANCE AGREEMENT**

---

[Space above the line for recording data]

**POST CONSTRUCTION STORM WATER MANAGEMENT PLAN**  
**MAINTENANCE AGREEMENT**

This Post Construction Storm Water Management Plan Maintenance Agreement (hereinafter referred to as the "Agreement") is entered into as of the date set forth below by and between \_\_\_\_\_, a \_\_\_\_\_ corporation (hereinafter referred to as the "Property Owner") and the City of La Vista, Nebraska (hereinafter referred to as the "City"). The Property Owner and the City are sometimes referred to herein as the "Parties".

WHEREAS, the Property Owner (whether one or more) is the owner of the real property legally described on Exhibit "A" which is attached hereto and incorporated herein by this reference (hereinafter referred to as "the Property");

WHEREAS, the Parties recognize that the health, safety and welfare of the citizens of the City require that storm water management facilities (hereinafter referred to as the "Facilities") must be constructed and maintained in conjunction with the development of the Property, which Property is located in the jurisdiction of the City;

WHEREAS, reference is made to the Post Construction Storm Water Management Plan, designated as Public Works Department project number OPW \_\_\_\_-PCSMP, (hereinafter referred to as the "PCSMP") which has been prepared by the Property Owner and approved by the City, and which is attached hereto as Exhibit "B" and incorporated herein by this reference; and,

WHEREAS, the Property Owner agrees that its obligations hereunder shall be binding on present and future owners of the Property.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt of which is hereby acknowledged by the Parties, the foregoing premises and the terms and provisions contained herein, the Property Owner agrees as follows:

1. The Facilities shall be constructed by the Property Owner in accordance with the PCSMP, which has been prepared by the Property Owner and which has been reviewed and accepted by the City or its designee. The Property Owner hereby reserves the right to continue to use the land on which the PCSMP is constructed for any uses or purposes which do not materially interfere with the use or operation of the Facilities or the BMP Maintenance Requirements (defined below).
2. The Property Owner has prepared, and the City has reviewed and accepted the "BMP Maintenance Requirements" which are attached hereto as Exhibit "C" and which are incorporated herein by this reference.

3. The Property Owner shall, at its sole expense, construct and perpetually operate and maintain the Facilities in strict accordance with the BMP Maintenance Requirements.
4. The Property Owner hereby grants permission to the City, its authorized agents and employees, upon reasonable notice and at reasonable times, to enter upon the Property, for inspections to ensure that the Facilities are maintained in accordance with this Agreement; provided, however, any such access by the City onto the Property shall be limited to paved areas and any pervious areas around the Facilities to the extent reasonably necessary to inspect the Facilities.
5. In the event an inspection reveals that the Facilities have not been maintained in accordance with this Agreement and corrective action is needed, the City shall provide the Property Owner with written notice specifying what corrective action is reasonably required. If the Property owner has not completed the corrective actions within thirty (30) days of receipt of such notice, the City may perform the necessary corrective work. In the event of an emergency as determined by the City or its designee in its sole discretion, the City or its designee is authorized to enter the Property to make all repairs, and to perform all maintenance, construction and reconstruction as the City reasonably deems necessary. The City shall be entitled to recover from the Property Owner the reasonable costs the City reasonably expends to maintain or repair the Facilities or to correct operational deficiencies in accordance with this Agreement or applicable law. Failure to pay the City all of its reasonably expended costs, after forty-five days written notice, shall constitute a breach of this Agreement. The City shall thereafter be entitled to bring an action against the Property Owner to recover such costs.
6. The Property Owner shall not obligate the City to maintain or repair the Facilities, and the City shall not be liable to any person for the condition or operation of the Facilities.
7. The Property Owner hereby indemnifies and holds harmless the City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims that may arise or be asserted against the City from the construction, presence, existence or maintenance of the Facilities by the Property Owner, unless such damages, accidents, casualties, occurrences or claims are caused by the negligence, gross negligence or willful misconduct of the City or its authorized agents or employees. In the event such a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Property Owner and the Property Owner shall have the right to defend and settle, at its own expense, any suit based on such claim. If a final judgment is entered against the City for such a claim, the Property Owner shall pay such judgment unless such judgment is based on the negligence, gross negligence or willful misconduct of the City or its agents or employees.
8. The Property Owner shall not in any way diminish, limit, or restrict the right of the City to enforce any of its ordinances as authorized by law.
9. The Property Owner shall comply with the time periods set forth in this Agreement; provided, however, that said periods shall be extended for a period or periods of time equal to any period or periods of delay caused by strikes, lockouts, fire or other casualty, the elements or acts of God, refusal or failure of governmental authorities to grant necessary permits and approvals for the construction of the Facilities contemplated hereunder (the Parties agreeing to use reasonable diligence to procure the same), or other causes, other than financial, beyond their reasonable control.

10. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Parties.
11. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.
12. This Agreement contains the entire agreement between the Parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement may be modified by only written agreement of the City and the Property Owner.
13. This Agreement may be modified by written agreement of the Parties hereto.
14. Upon conveyance of the Property, the conveying owner shall thereafter be relieved of any obligations under this Agreement arising out of any act, occurrence or omission that occurs after the date of such conveyance.
15. This Agreement shall be recorded with the Register of Deeds of Douglas County, Nebraska and shall constitute a covenant running with the land and shall be binding on, and inure to the benefit of the Property Owner, its successors and assigns.

IN WITNESS WHEREOF, the Property Owner has executed this agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

DECLARANT:

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

STATE OF \_\_\_\_\_ )  
                    ) ss.  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned Notary Public in and for said county and state appeared \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, known to me to be the identical person who executed the above instrument and acknowledged the execution thereof to be his/her voluntary act and deed on behalf of said \_\_\_\_\_.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public



**CONSENT OF BENEFICIARY AND TRUSTEE  
UNDER DEED OF TRUST**

In consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, \_\_\_\_\_, as Beneficiary and Trustee, under that certain \_\_\_\_\_ Deed of Trust recorded \_\_\_\_\_, as Instrument No. \_\_\_\_\_ ("Deed of Trust"), respectively, in the Office of the Register of Deeds of Douglas County, Nebraska, hereby consents to the foregoing Agreement such that the Deed of Trust shall be subject to said Agreement, and that for itself and its successors and assigns, hereby agrees that in the event of foreclosure of the Deed of Trust, it shall not take any action to terminate the foregoing Agreement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**BENEFICIARY AND TRUSTEE:**

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

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )  
ss.

Before me, a Notary Public qualified for said County and State, personally came  
of \_\_\_\_\_, known  
to me to be the identical person who signed the foregoing instrument and acknowledged the  
execution thereof to be his voluntary act and deed on behalf of said \_\_\_\_\_.

## Notary Public

**Exhibit "A"**  
**Legal Description of the Property**

PART OF LOT 1282, LAVISTA, IN THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 14, TOWNSHIP 14 NORTH, RANGE 12 EAST, THENCE N87°13'10"E FOR 173.05 FEET ALONG THE NORTH LINE OF SAID SECTION 14; THENCE S02°46'50"E FOR 50.07 FEET TO THE POINT OF BEGINNING. THENCE EASTERLY ALONG THE SOUTH RIGHT-OF-WAY LINE OF HARRISON STREET FOR THE FOLLOWING FOUR (4) COURSES; (1) N87°12'10"E FOR 232.03 FEET; (2) S02°48'31"E FOR 32.13 FEET; (3) N87°05'20"E FOR 35.02 FEET; (4) N83°57'54"E FOR 14.72 FEET; THENCE S02°47'31"E FOR 359.74 FEET ALONG THE EAST LINE OF LOT 1282-B1, LOT 1282-I1A AND LOT 1282-I1B; THENCE S87°12'49"W FOR 388.17 FEET ALONG THE SOUTH LINE OF LOT 1282-I1B AND 1282-J1B; THENCE N01°54'43"W FOR 291.86 FEET ALONG THE EAST RIGHT-OF-WAY LINE OF 84TH STREET; THENCE N43°01'32"E FOR 142.15 FEET ALONG THE EAST RIGHT-OF-WAY LINE OF 84TH STREET TO THE POINT OF BEGINNING.

- CONTAINS AN AREA OF 144,010.2 SQ. FT. OR 3.306 ACRES MORE OR LESS.

**Exhibit "B"**  
**Post Construction Stormwater Management Plan**

**Exhibit "C"**  
**BMP Maintenance Requirements**

**BMP Maintenance Requirements**

**Name & Location**

Project Name: CVS #2471  
Address: SEC 84<sup>th</sup> St. and Harrison St., La Vista, NE 68128

**Site Data**

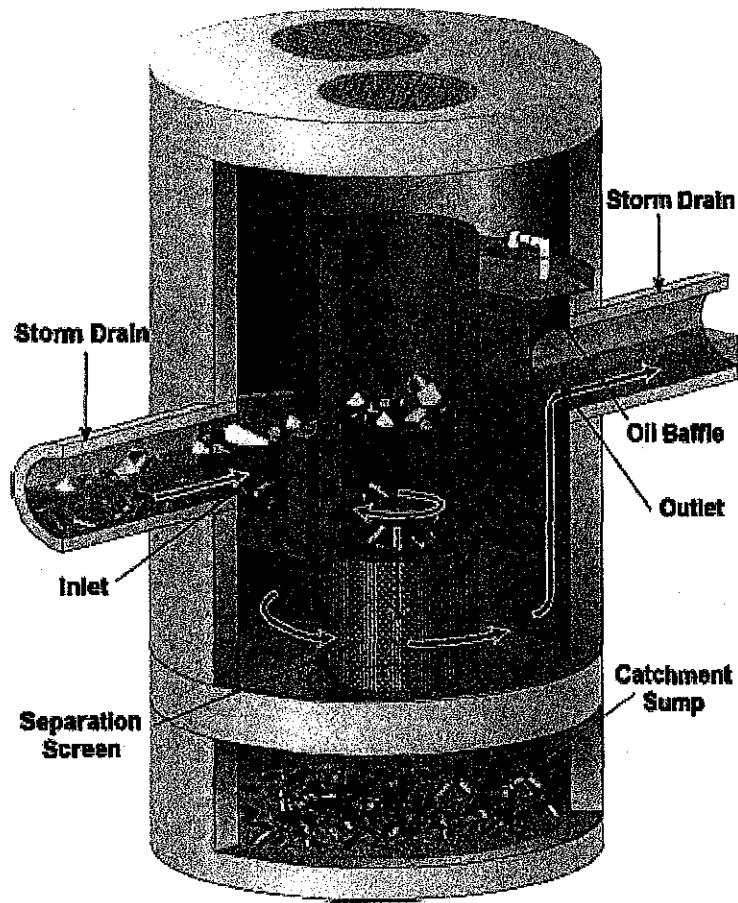
Total Site Area: 3.306 AC  
Total Disturbed Area: 3.70 AC  
Total Undisturbed Area: 0 AC  
Impervious Area Before Construction: 92%  
Impervious Area After Construction: 77%

**BMP Information**

<b>BMP ID</b>	<b>TYPE OF BMP</b>	<b>Longitude/Latitude</b>
CDS #1	Hydrodynamic Separator	96°02'33.5"W/41°11'22.6"N

Inspection Reports should be completed and kept on file with the Inspector and at the store location. Reports should be kept for a minimum of five years.

## Operations and Maintenance Guidelines for CDS Units:



### INSPECTION AND CLEANOUT OVERVIEW

Once pollutants are captured in CDS units, they will be retained until clean out. Floatable and neutrally buoyant contaminants are held within the separation chamber while negatively buoyant debris is stored in the sump.

The visual inspection should ascertain that the unit is functioning properly and that there are no blockages or damage to the inlet, separation chamber or separation screen. The quantities of captured pollutants within the separation chamber and solids storage sump should be assessed. The amount of solids in the sump may be estimated using a calibrated measuring rod or tape. If floatables accumulate more rapidly than the settleable solids, the floatables should be removed with a vacuum or skimming net. CDS cleanout procedures entail opening the access to the screening chamber / sump and removing the trapped pollutants. Visual verification that the cleanout is complete by the equipment operator is easily done due to the open nature of the CDS unit.

## OPERATIONS

The CDS unit is a non-mechanical self-operating system and will function any time there is flow in the storm drainage system. The unit will continue to effectively capture pollutants in flows up to the design capacity even during extreme rainfall events when the design capacity may be exceeded. Pollutants captured in the CDS unit's separation chamber and sump will be retained even when the unit's design capacity is exceeded.

## CDS UNIT INSPECTIONS/CLEANOUT

The CDS unit shall be inspected by the maintenance personnel two times (six to eight months apart) during an annual period. During the inspection, the unit's internal components should not show any signs of damage or any loosening of the bolts used to fasten the various components to the manhole structure and to each other. If any of the internal components are damaged or if any fasteners appear to be damaged or missing, please contact CONTECH Stormwater Solutions, Inc. to make arrangements to have the damaged items repaired or replaced:

CONTECH Stormwater Solutions, Inc.  
Phone, Toll Free: (800) 548-4667 ex 157  
Direct (707) 987-8500  
Fax: (800) 561-1271

The screen assembly is fabricated from Type 316 stainless steel and fastened with Type 316 stainless steel fasteners that are easily removed and/or replaced with conventional hand tools. The damaged screen assembly should be replaced with the new screen assembly placed in the same orientation as the one that was removed.

The floatable materials shall be removed and the separation screen shall be power washed by the maintenance personnel during the inspections (twice a year). The settled solids shall be removed by the maintenance personnel once a year during one of the inspections. The CDS Unit Record of Operations and Maintenance sheet shall be filled out after each inspection and shall be kept on file with the inspector and at the store location.

## CONFINED SPACE

The CDS unit is a confined space environment and only properly trained personnel possessing the necessary safety equipment should enter the unit to perform particular maintenance and/or inspection activities beyond normal procedure. Inspections of the internal components can, in most cases, be accomplished by observations from the ground surface.

## CDS Unit Record of Operations & Maintenance

Owner: \_\_\_\_\_

Address: \_\_\_\_\_

Owner Representative: \_\_\_\_\_ Phone: \_\_\_\_\_

Model Designation:

- CDS3025-6-C

Site Location:

- SEC 84<sup>th</sup> St. and Harrison St., Omaha, NE 68128

Depth from Cover to Bottom Sump (Sump Invert):

- 146 inches

Volume of Sump:

- 163 cubic feet

Volume/Inch of Depth:

- 2.36 cubic feet

Inspections:

Date	Inspector	Screen/Inlet Integrity	Floatables Depth	Depth to Sediment (inches)	Sediment Volume * (cubic feet)

\*Calculate Sediment Volume = (Depth to Sump Invert – Depth Sediment)x(Volume/inch of Depth)

Inspection Observations:

**Cleanout:**

Date	Depth of Floatables (inches)	Volume of Sediment (cubic feet)	Method of disposal of floatables and sediment	Screen Power Washed (Y or N)