

**CITY OF LA VISTA**  
**MAYOR AND CITY COUNCIL REPORT**  
**JULY 3, 2012 AGENDA**

| <b>Subject:</b>  | <b>Type:</b>                                  | <b>Submitted By:</b>                           |
|--|---|--|
| APPLICATION FOR REPLAT AND<br>SUBDIVISION AGREEMENT APPROVAL —<br>LOTS 1 - 3, MAYFAIR 2 <sup>ND</sup> ADD. REPLAT FIVE<br>(NW OF 96 <sup>TH</sup> & GILES) | ◆ RESOLUTION (2)<br>ORDINANCE<br>RECEIVE/FILE | ANN BIRCH<br>COMMUNITY DEVELOPMENT<br>DIRECTOR |

**SYNOPSIS**

A public hearing has been scheduled and resolutions have been prepared to approve a replat application and subdivision agreement for Lots 1 thru 3, 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 thru 3, 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 2 is anticipated to be developed as a child care center.

The replat approval is conditioned on the owners providing evidence of a recorded easement granting the replatted property a 25' utility easement on the west side of the lot immediately to the south of the replatted property, in a form satisfactory to the City Engineer.

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 April 19, 2012, the Planning Commission unanimously recommended approval of the proposed replat to Council subject to the conditions as noted in the staff report.



CITY OF LA VISTA  
PLANNING DIVISION

RECOMMENDATION REPORT

CASE NUMBER: 01-SUB-12

FOR HEARING OF:

July 3, 2012

Report Prepared on: June 27, 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 Overlay District; Vacant

**G. PURPOSE OF REQUEST:** Replat of Lot 1, Mayfair 2<sup>nd</sup> Addition Replat Three to split the property into three 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 western lot line increase northward. Slopes along the northern lot line increase westward.

**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; Mayfair 2<sup>nd</sup> Addition / Mix of Commercial and Vacant uses
- 3. South:** C-1 Shopping Center Commercial; Mayfair 2<sup>nd</sup> Addition Replat Three / Vacant
- 4. West:** C-1 Shopping Center Commercial; 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 Commercial
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 ingress/egress easement granted with the platting of Mayfair 2<sup>nd</sup> Addition Replat One. There is also 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. The subsequent replattings did not eliminate those original easements. The proposed plat identifies a 25 foot wide ingress/egress easement along the north side of Lot 2 over part of Lot 1. The ingress/egress easement has been illustrated on the plat, however a separate easement document has been prepared and will be recorded to identify who benefits from the easement and what parties are responsible to maintain the easement. Maintenance of private roadways has been an issue in similar situations elsewhere in the City and providing for long term operation and maintenance is required.
2. Recent traffic studies have indicated that a traffic signal is likely to be warranted in the near future at the intersection of 96<sup>th</sup> Street and the private roadway just east of the southwesterly corner of Lot 3. This is an intersection serving private commercial roadways on both sides of 96<sup>th</sup> Street. The signal will be assessed to the benefitted commercial properties in both the Mayfair and Southwind subdivisions at such time as the signal is installed. This has been acknowledged in the subdivision agreement for this replat.

**D. UTILITIES:**

1. Sanitary sewer exists along the east side of the property under the existing private roadway. The preliminary plat depicts where

service to Lot 1 will be provided and also indicates where sanitary sewer stubouts to Lots 2 and 3 will be provided.

2. The original subdivision agreement provided for SID 195 making the payment of a tract sewer connection fee in the amount of \$3,600 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 \$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 (PCSWMP). A permit will be required through the Permix web site that is utilized by all Papillion Creek Watershed Partnership communities. A conceptual PCSWMP has been provided and has been deemed satisfactory by the City Engineer. A draft Maintenance Agreement has been provided in the subdivision agreement. The PCSWMP will be reviewed in detail as part of the review process through the Permix web site, but the concept of using an extended detention basin to serve both lots is acceptable.
4. A draft storm water drainage study has been provided as part of the preliminary plat submittal. This study has been deemed satisfactory by the City Engineer.
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.

#### **IV. REVIEW COMMENTS:**

1. A subdivision agreement has been provided 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 draft Post Construction Storm Water Maintenance Agreement identifies how the maintenance of any shared water quality Best Management Practices (BMPs) will be performed and allocated between lot owners. The agreement is included in the subdivision agreement as an exhibit.
3. The subdivision agreement requires the developer to construct and maintain to City public street standards the private shared drives. 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 April 19, 2012 the Planning Commission moved to recommend approval, through an 8-0 vote, 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.

**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. The City's release of Mayfair 2<sup>nd</sup> Addition Replat Five to the owners shall be conditioned on the owners providing evidence of a recorded easement granting the replatted property a 25' utility easement on the west side of the lot that is immediately adjacent to the south of the replatted property, in form and content satisfactory to the City Engineer.

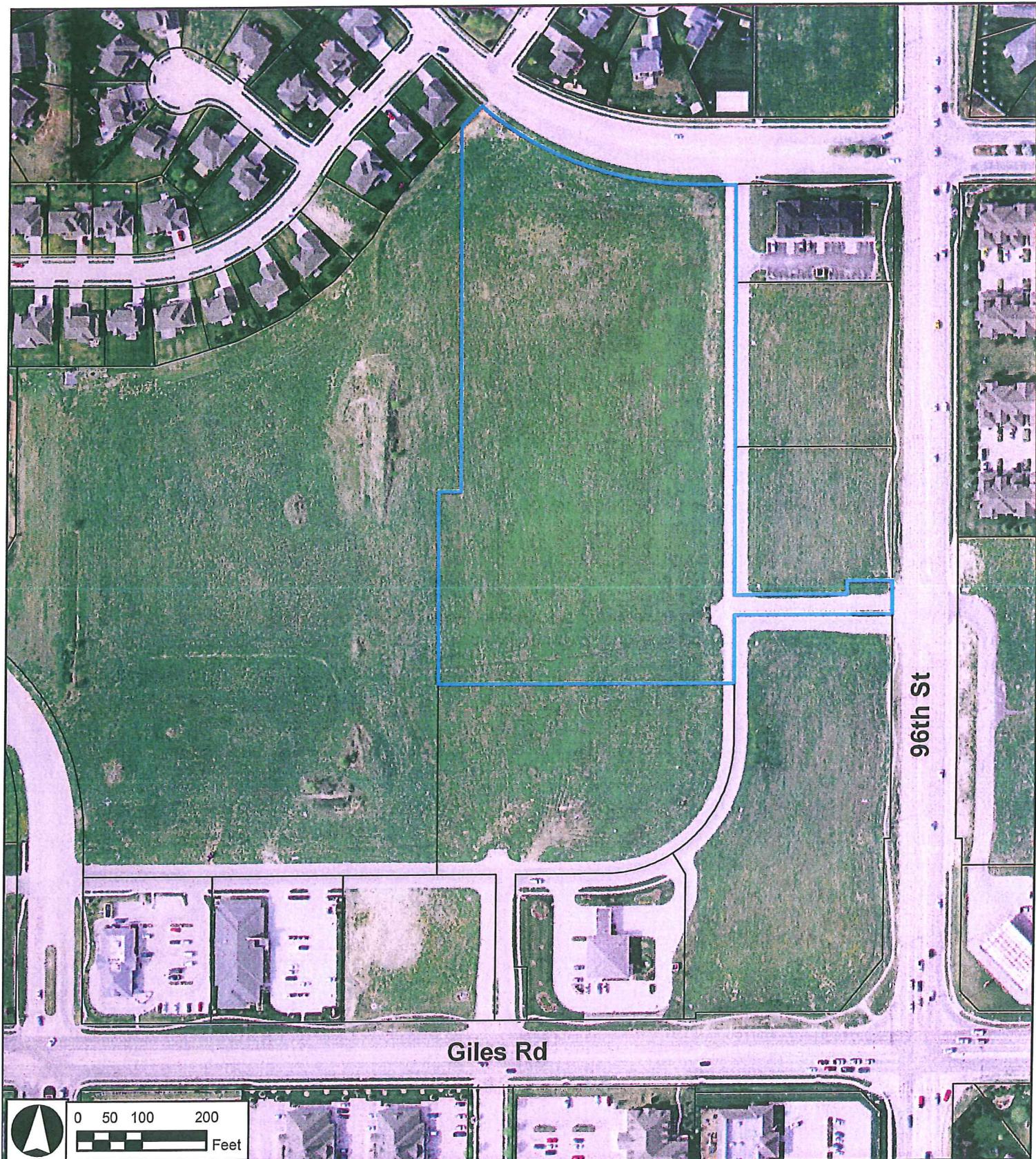
**VII. ATTACHMENTS TO REPORT:**

1. Vicinity Map
2. Subdivision Agreement

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

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

*CHRIS SOLBERG*  
\_\_\_\_\_  
Prepared by: \_\_\_\_\_  
*Am Bnd* \_\_\_\_\_ *6-27-12*  
\_\_\_\_\_  
Community Development Director Date



## Mayfair 2nd Addition - Replat Five

Replat of Lot 1 Mayfair 2nd Addition Replat Three

April 11, 2012  
CAS



**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, 2 AND 3, 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 6TH 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, 2 and 3, Mayfair 2<sup>nd</sup> Addition, Replat Five; and

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

WHEREAS, on April 19, 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, Items remaining to be resolved include the following:

The City's release of Mayfair 2<sup>nd</sup> Addition, Replat Five to the owners shall be conditioned on the owners providing evidence of a recorded easement granting the replatted property a 25' utility easement on the West side of the lot that is immediately adjacent to the South of the replatted property, in form and content satisfactory to the City Engineer.

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, 2 and 3, 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 subject to the conditions contained in the last two recitals above and review and approval by the City Engineer and the City Attorney.

PASSED AND APPROVED THIS 3RD DAY OF JULY, 2012.

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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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, 2 AND 3, MAYFAIR 2<sup>ND</sup> ADDITION, REPLAT FIVE SUBDIVISION.

WHEREAS, the City Council did on July 3, 2012, approve the replat for Lots 1, 2 and 3, 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 July 3, 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 3RD DAY OF JULY, 2012.

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk

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[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, LLC, 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 three 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 three lots, being Lots 1, 2 and 3, 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, 2 and 3, with Lot 2 to be sold to Primrose School Franchising Company, a Georgia Corporation, for operation of a Primrose School, and Lots 1 and 3 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, 2 and 3, 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" ("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 at its sole cost shall construct and maintain to City public street standards the private shared drives and other improvements providing access and ingress and egress to and from Lots 1-3 and the Property, as shown on Exhibit "B," including all entrances and exits to the Property. All such shared drives and other improvements shall be completed before any certificate of occupancy is issued for any building on the Property. The City shall have access to and over such drives for any purpose it deems appropriate in the exercise of its general governmental powers or powers reserved to it by the terms of the Subdivision Agreement or this Amendment. Not in limitation of the foregoing, L & B shall enter and record with the Sarpy County Register of Deed prior to any transfer of any interests in the Property an easement and maintenance agreement with respect to the private drives, common utilities and other areas depicted on Exhibits "A" and "B", in form and content attached hereto as Exhibit C, subject to any modifications satisfactory to the City Engineer ("Easement and Maintenance Agreement"). In addition, L&B agrees that City retains the right to require an access easement to be located on Lot 3 of Mayfair 2<sup>nd</sup> Addition, Replat 5,

benefiting Lot 11, 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 3. Such access easement, if needed, would be located so as to cause the least detriment to Lot 3.

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, L & B 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, L & B 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.

5. Right to Connect to City Sewer System: L & B, at its sole cost before any certificate of occupancy is issued for any building on the Property, shall construct a private sanitary sewer line providing sanitary sewer service to Lots 1-3 of the Property and connecting to the existing sanitary sewer as shown on Exhibit "D". 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 | 1.94± AC @ \$5,973/AC | \$11,587.62        |
| Lot 2, Commercial | 1.78± AC @ \$5,973/AC | \$10,631.94        |
| Lot 3, Commercial | 4.45±AC @ \$5,973/AC  | <u>\$26,579.85</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, 2 and 3, Owners will submit appropriate amendments to Exhibit "D" for approval by the Public Works Department of City.

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 | 1.94 ± AC @ \$4,000/AC | \$ 7,760        |
| Lot 2, Commercial | 1.78± AC @ \$4,000/AC  | \$ 7,120        |
| Lot 3, Commercial | 4.45± AC @ \$4,000/AC  | <u>\$17,800</u> |
| Total \$32,680    |                        |                 |

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 southwesterly corner of Lot 3. 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 Lot 1, 2 or 3 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.

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 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:

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Clerk of Said District

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

## ACKNOWLEDGMENT

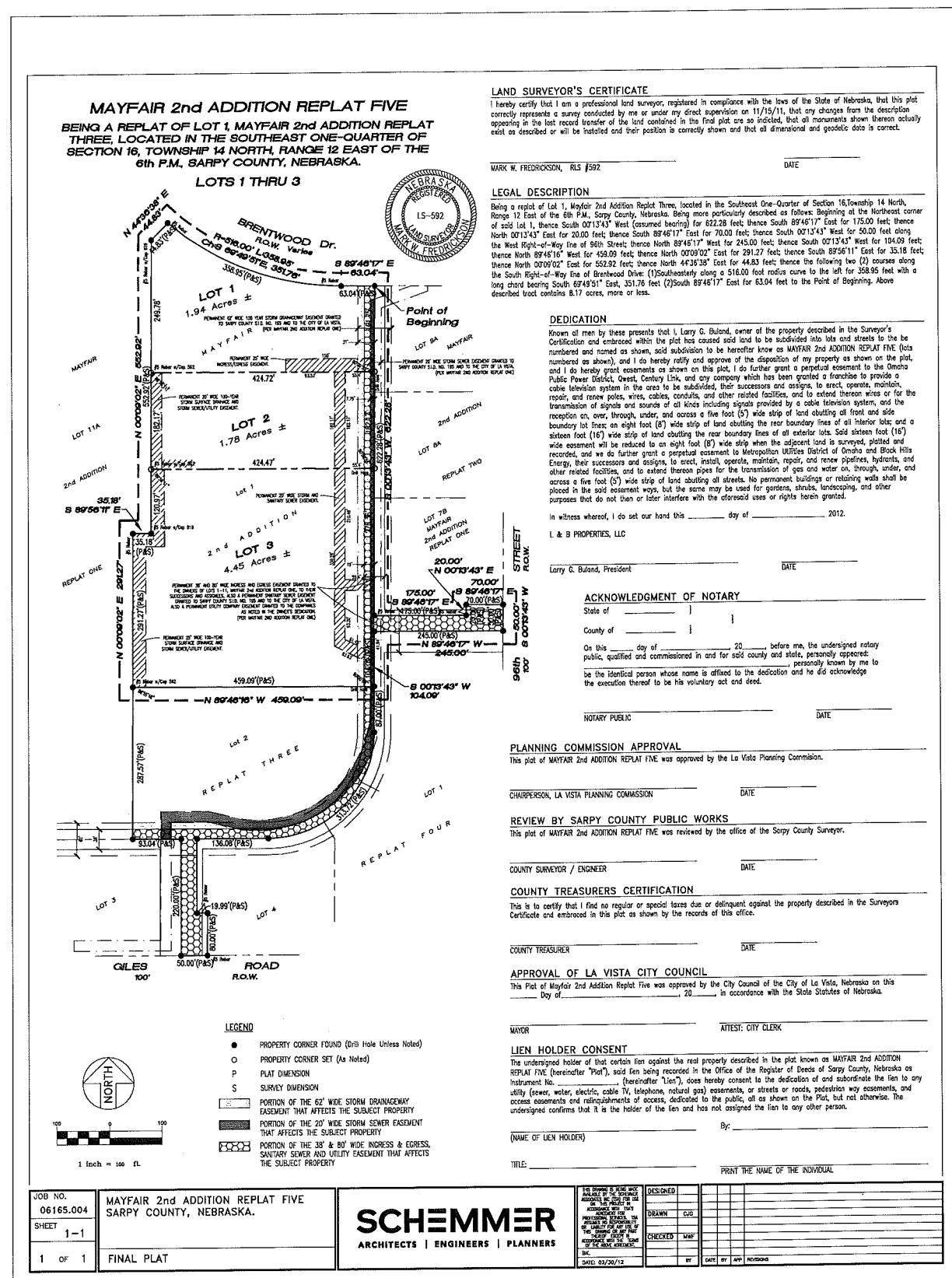
STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

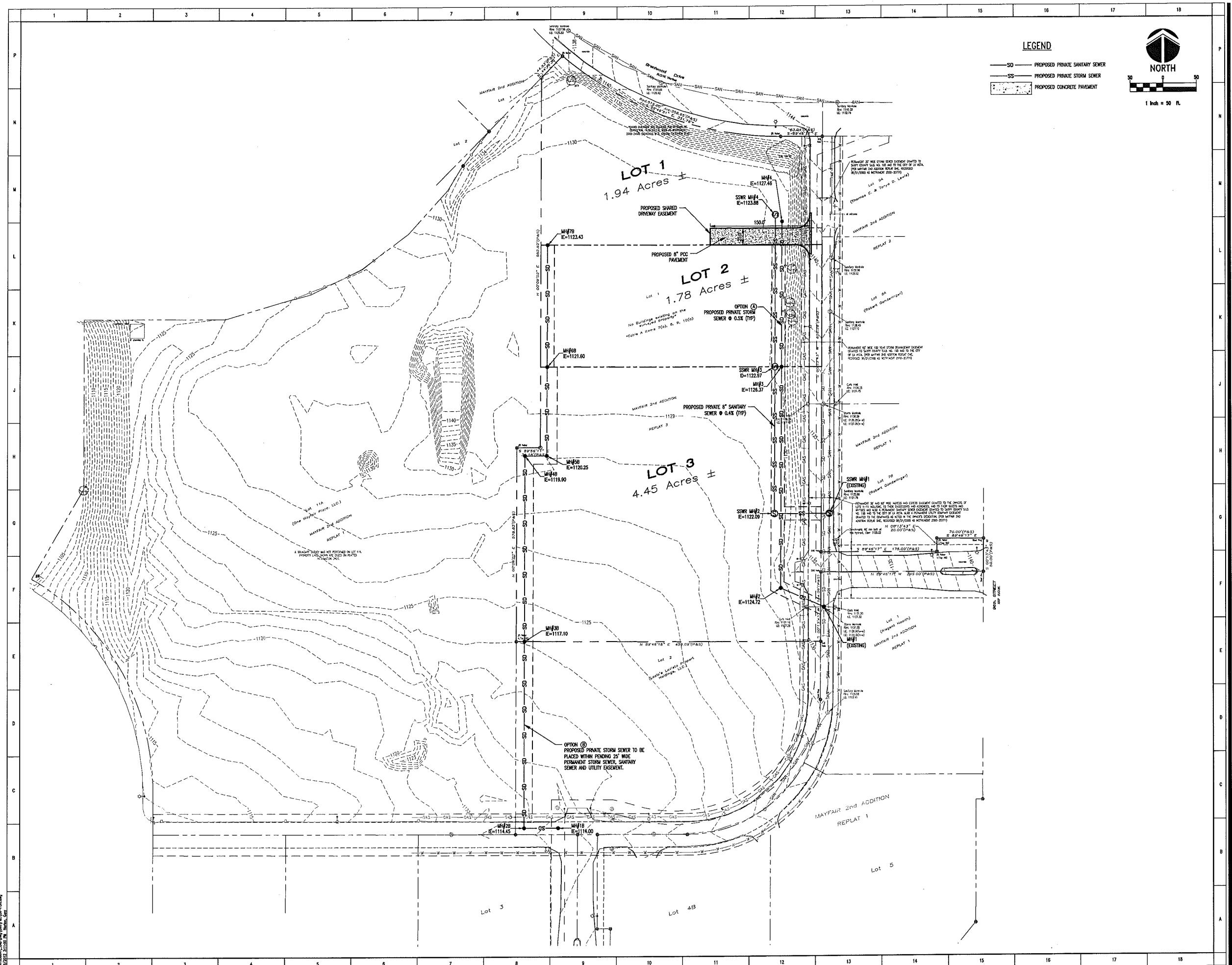
On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, a Notary Public in and for said County and State, personally appeared Larry G. Buland, Manager of L & B Properties, LLC, who executed the above instrument and acknowledged the execution thereof to be his/her voluntary act and deed on behalf of the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

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

( ADD: City and SID acknowledgements)





**SCHEMMER** | ARCHITECTS | ENGINEERS | PLANNERS

SARPY COUNTY, NEBRASKA  
IMPROVEMENT PLAN

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**EXHIBIT "B"**

## **DECLARATION OF EASEMENTS AND RESTRICTIONS**

This DECLARATION OF EASEMENTS AND RESTRICTIONS made this \_\_\_\_ day of June, 2012, by L & B Properties, L.L.C., a Nebraska Limited Liability Company (hereafter "Declarant" or "L&B");

### **RECITALS**

1. Declarant is the owner of certain real estate previously described as Lot 1, Mayfair, 2nd Addition Replat Three, 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 which is to be replatted as Mayfair 2nd Addition Replat Five, all as more particularly described and depicted on Exhibit "A" attached hereto and incorporated by this reference (the "Property").

2. Pursuant to the conditions of approval of the final plat of the Property, the City of LaVista, Nebraska (the "City") and Declarant have agreed to provide for certain easements for access and common utilities as depicted on Exhibit "A" and for the maintenance thereof.

NOW, THEREFORE, in consideration of the mutual rights and obligations set forth herein, L&B hereby declares the following:

1. Grant and Maintenance of Access Easements. Declarant hereby establishes and grants a nonexclusive permanent easement, right and privilege to Lots 1, 2, and 3 of Mayfair 2nd Addition, Replat Five, which shall be appurtenant to and shall run with the title of the Property, for both ingress and egress over and along the private roadway adjacent to the east of the Property. The Owner of any lot subject to the Access Easement granted herein shall be responsible for the maintenance of the easement area located on such lot as determined by the Mayfair Commons Landowners Association of which the Property is a part.

2. Grant and Maintenance of Driveway Easement. Declarant hereby establishes and grants a nonexclusive permanent driveway easement, right and privilege to Lot 2 over and on the East 150 feet of the South 25 feet of Lot 1, which shall run with the title of Lot 1, as more particularly shown on Exhibit "A". The Owner of Lot 2 shall be responsible for the construction, repair and maintenance of any driveway located on such easement.

3. Grant of Utility Easements. Declarant further grants and establishes common utility easements as depicted on Exhibit "A" for the non-exclusive use and benefit of Lots 1, 2 and 3 as shown on Exhibit "A". Said easements shall be used for the purposes described on

Exhibit "A" and no permanent buildings or retaining walls shall be placed in said easements. PROVIDED, HOWEVER, that such easements may be used for landscaping and other purposes that do not interfere with the use of the easement.

4. Maintenance of Private Storm and Sanitary Sewers. The Owner of each lot, their administrators, executors, successors, heirs, or assigns, shall be responsible for one-third (1/3) of the costs to operate, repair and maintain the shared sewers shown on Exhibit "A". Failure of an Owner to pay such costs, after forty-five days written notice given by the other Owners, shall constitute a breach of this Declaration. Any other Owner or Owners, having paid their share of such costs, shall thereafter be entitled to bring an action against the defaulting Owner to pay, or foreclose upon the lien hereby authorized by this Declaration against the property, or both.

5. The easements herein given are given upon the express understanding and condition that such are limited for the purposes herein described and shall be for the benefit of the City and property owners in the Mayfair 2<sup>nd</sup> Addition Replat Five and their respective invitees, licensees, successors and assigns. 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.

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.

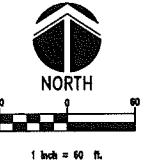
Witness my hand and seal this \_\_\_\_ day of June, 2012.

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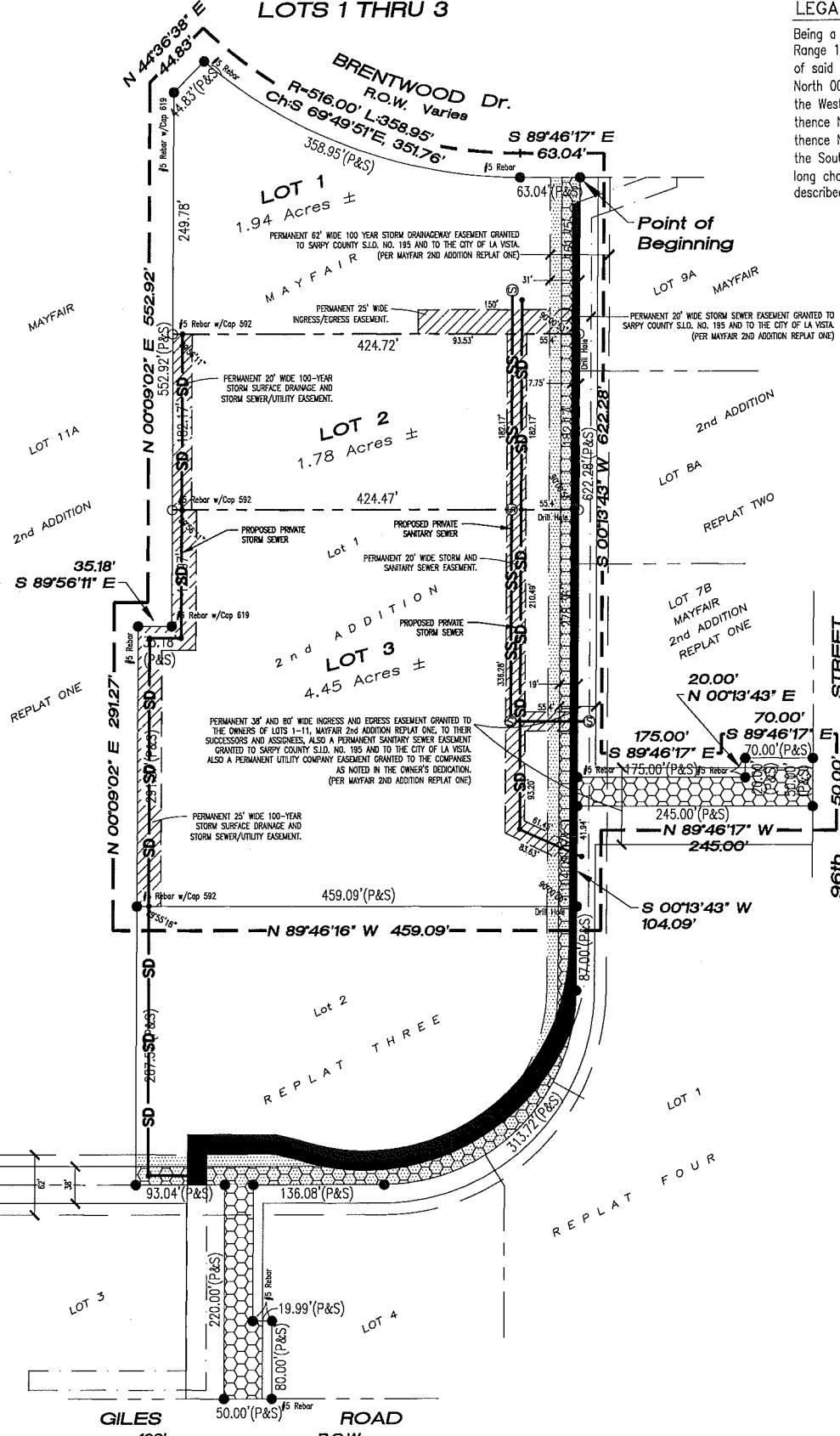
Notary Public

## 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 THRU 3**



**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.

LEGEND

- PROPERTY CORNER FOUND (Drill Hole Unless Noted)
- PROPERTY CORNER SET (As Noted)
- P PLAT DIMENSION
- S SURVEY DIMENSION

 PORTION OF THE 62' WIDE STORM DRAINAGEWAY EASEMENT THAT AFFECTS THE SUBJECT PROPERTY

 PORTION OF THE 20' WIDE STORM SEWER EASEMENT THAT AFFECTS THE SUBJECT PROPERTY

 PORTION OF THE 38' & 80' WIDE INGRESS & EGRESS, SANITARY SEWER AND UTILITY EASEMENT THAT AFFECTS THE SUBJECT PROPERTY

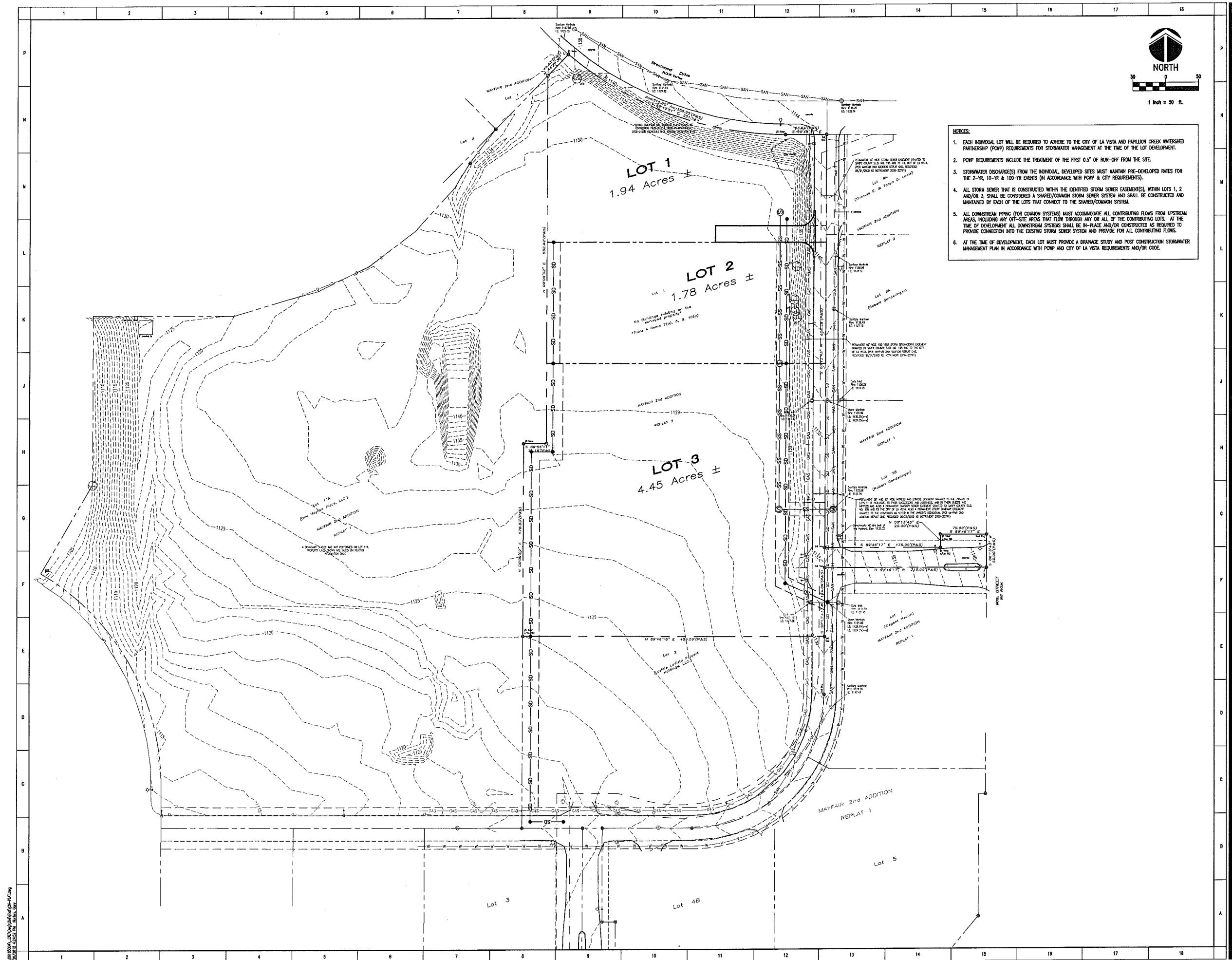
**SCHEMMER** ARCHITECTS | ENGINEERS | PLANNERS

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EASEMENT & RESTRICTIONS EXHIBIT

PROJECT NO.: 06165.004

## **EXHIBIT "A"**



**SCHEMMER**  
ARCHITECTS | ENGINEERS | PLANNERS

MAYFAIR 2ND ADDITION REPLAT FIVE  
SARPY COUNTY, NEBRASKA  
CONCEPTUAL POST CONSTRUCTION  
STORM WATER MANAGEMENT PLAN

PROJECT NO.: 06165.004

EXHIBIT "D"

**EXHIBIT "E"**

**POST CONSTRUCTION STORMWATER MANAGEMENT PLAN  
MAINTENANCE AGREEMENT AND EASEMENT**

(Blank for PCWP Web Site Tracking Number)  
(Blank for Local Jurisdiction Tracking Number)

**WHEREAS**,                    (hereinafter referred to as Property Owner) recognizes that stormwater management facilities (hereinafter referred to as "the facility" or "facilities") must be maintained for the development located at Mayfair 2<sup>nd</sup> Addition Replat Five in the zoning jurisdiction of the City of La Vista, Sarpy County, Nebraska; and,

**WHEREAS**, the Property Owner (whether one or more) is the owner of the property described on Exhibit "A" attached hereto (hereinafter referred to as "the Property"), and,

**WHEREAS**, the City of La Vista(hereinafter referred to as "the City") requires and the Property Owner, and its administrators, executors, successors, heirs, tenants or assigns, agree that the health, safety and welfare of the citizens of the City require that the facilities be constructed and maintained on the property, and,

**WHEREAS**, the Post Construction Stormwater Management Plan, designated as City of La Vista project number       -PCMSP, (hereinafter referred to as "PCSMP"), shall be constructed and maintained by the Property Owner, its administrators, executors, successors, heirs, or assigns.

**NOW, THEREFORE**, in consideration of the foregoing premises, the covenants contained herein, and the following terms and conditions, the Property Owner agrees as follows:

1. The facility or facilities shall be constructed by the Property Owner in accordance with the PCSMP, which has been reviewed and accepted by the City of La Vista or its designee.
2. The Property Owner must develop and provide the "BMP Maintenance Requirements", attached here to as Exhibit "B", which have been reviewed and accepted by the City of La Vista or its designee. The BMP Maintenance Requirements shall describe the specific maintenance practices to be performed for the facilities and include a schedule for implementation of these

practices. The BMP Maintenance Requirements shall indicate that the facility or facilities shall be inspected by a professional qualified in stormwater BMP function and maintenance at least annually to ensure that it is operating properly. A written record of inspection results and any maintenance work shall be maintained and available for review by the City. Records shall be maintained for a period of three years.

3. The Property Owner, its administrators, executors, successors, heirs, or assigns, shall construct and perpetually operate and maintain, at its sole expense, the facilities in strict accordance with the attached BMP Maintenance Requirements accepted by the City of La Vista or its designee.
4. The Property Owner, its administrators, executors, successors, heirs, tenants or assigns hereby grants permission to the City, its authorized agents and employees, to enter upon the property and to inspect the facilities whenever the City deems necessary. The City shall provide the Owner copies of the inspection findings and a directive to commence with the repairs if necessary. The City will require the Property Owner to provide, within 7 calendar days from the date of City's written directive, a written response addressing what actions will be taken to correct any deficiencies and provide a schedule of repairs within a reasonable time frame. Whenever possible, the City shall provide notice prior to entry. The City shall indemnify and hold the Property Owner harmless from any damage by reason of the City's negligent or intentional acts during such entry upon the property.
5. The Property Owner its administrators, executors, successors, heirs, tenants or assigns, agrees that should it fail to correct any defects in the facility or facilities within reasonable time frame agreed to in the response by the Property Owner for corrective actions, or shall fail to maintain the structure in accordance with the attached BMP Maintenance Requirements and with the law and applicable executive regulation or, 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 or its designee deems necessary. Notwithstanding the foregoing, the City shall indemnify and hold the Property Owner harmless from any damage by reason of the City's negligent or intentional acts during such entry upon the property.

The City or its designee shall have the right to recover from the Property Owner any and all reasonable costs the City expends to maintain or repair the facility or facilities or to correct any operational deficiencies subject to the provisions of the immediately preceding sentence relating to negligence or intentional acts of the City. Failure to pay the City or its designee all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. The City or its designee shall thereafter be entitled to bring an action against the Property Owner to pay, or foreclose upon the lien hereby authorized by this agreement against the property, or both. Interest, collection costs, and reasonable attorney fees shall be added to the recovery to the successful party.

6. The Property Owner shall not obligate the City to maintain or repair the facility or facilities, and the City shall not be liable to any person for the condition or operation of the facility or facilities.

The Property Owner, its administrators, executors, successors, heirs, or assigns, 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 facility or facilities by the Property Owner. In the event 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 defend at its own expense any suit based on such claim unless due solely to the negligence of the City in which event the City shall be required to defend any such suit at its own expense. Notwithstanding the foregoing, if any claims are made against both the City and the Property Owner, each will be required to defend any such suit or claim against it at its own expense. Each shall be responsible for payment of any recovery to the extent determined in such suit. If any judgment or claims against the City, its authorized agents or employees shall be allowed, the Property Owner shall pay for all costs and expenses in connection herewith except to the extent of the negligence or intentional act of the City.

7. 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.
8. This Agreement 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 the Property Owner, its administrators, executors, successors, heirs, or assigns, including any homeowners or business association and any other successors in interest.

IN WITNESS WHEREOF, the Property Owner (s) has/ have executed this agreement this \_\_\_\_ day of June, 2012.

**INDIVIDUAL, PARTNERSHIP and/or CORPORATION**

|  |  |
|--|--|
| <p>Name of Individual, Partnership and/or Corporation</p><br><br><p>Name</p><br><br><p>Title</p><br><br><p>Signature</p> | <p>Name of Individual, Partnership and/or Corporation</p><br><br><p>Name</p><br><br><p>Title</p><br><br><p>Signature</p> |
|--|--|

Name of Individual, Partnership and/or Corporation

Name

Title

Signature

Name of Individual, Partnership and/or Corporation

Name

Title

Signature

## ACKNOWLEDGMENT

\_\_\_\_\_  
State \_\_\_\_\_ )

\_\_\_\_\_  
County \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ before me, a Notary Public, in and for said County, personally came the above named:

who is (are) personally known to me to be the identical person(s) whose name(s) is (are) affixed to the above instrument and acknowledged the instrument to be his, her (their) voluntary act and deed for the purpose therein stated.

WITNESS my hand and Notarial Seal the day and year last above written.

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

\_\_\_\_\_  
Notary Seal

## **Exhibit “A”**

**Insert Real Property Depiction**  
(FOR EXAMPLE, THE SURVEYOR’S CERTIFICATE)

## **Exhibit “B”**

**Insert BMP Maintenance Requirements**  
(See Guidance Document for Information Needed)