

A

FOURTH AMENDMENT TO SUBDIVISION AGREEMENT
(Val Vista Subdivision – Phase II)
(Replat of Lots 241 and 248 Val Vista and Lot 3 of Val Vista Replat Three
into Lots 1 through 12, Val Vista Replat Four)

THIS FOURTH AMENDMENT, made this 21st day of February, 2006, to that certain Subdivision Agreement between GILES ROAD NO. 2, LLC (hereinafter referred to as "Developer"), and the CITY OF LA VISTA, a Municipal Corporation in the State of Nebraska (hereinafter referred to as "City") as same pertains to Lots 241 and 248 Val Vista and Lot 3 of Val Vista Replat Three of said Subdivision, which is to be replatted as Lots 1 through 12, Val Vista Replat Four of said Subdivision;

WITNESSETH:

WHEREAS, Developer is the owner of Lots 241 and 248 Val Vista and Lot 3 of Replat Three of Val Vista Subdivision and wishes to replat said lots to become Lots 1 through 12, inclusive of "Val Vista Replat Four" (herein the "Replat" or the "Replatted Area") being a part of Val Vista Subdivision as shown on composite drawing attached as Exhibit "A" hereto and consisting of approximately 25.868 acres, more or less, per Surveyor's Certificate attached as Exhibit "B" hereto and being more specifically shown on the "Final Plat" attached as Exhibit "C" hereto; and

WHEREAS, the parties wish to amend the Subdivision Agreement entered into between them to include the understandings and agreements pertaining to the replatting.

NOW, THEREFORE, IT IS AGREED by Developer and City as follows:

1. Replattings. Subject to the terms of this Amendment, Lots 241 and 248 Val Vista and Lot 3 of Val Vista Replat Three shall be replatted as Lots 1 through 12, inclusive, Val Vista Replat Four, as more fully shown on Exhibit "C" (herein the "Replat" or "Replatted Area").
2. Drainage Calculations and Map. Developer shall provide drainage calculations and a drainage map for the Replatted Area for review and approval by the City's Engineer prior to execution of the final Replat demonstrating what easements may be needed to convey major storm sewer events (hundred year flood) over the surface of the property, in a form satisfactory to the City's Engineer. (Exhibit "D")
3. Drainage. Developer shall prepare and provide to the City Engineer for its approval a means of gravity flow storm water to the public storm sewer that exists on the south side of Lot 1. A majority of Lots 1 through 4 within the Replat will drain to the south and must connect to the existing storm sewer that flows south under the railroad embankment. The means of access shall not be in the form of a public storm sewer but must be addressed through appropriate easements giving the owners of Lots 1 through 4 the right to install and maintain a private storm sewer to reach the aforementioned public storm sewer.
4. Sanitary Sewer. As concerns sanitary sewer stub outs:
 - a. Stub outs shall be constructed in Chandler Circle in conjunction with the construction of the sanitary sewer therein.

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- b. A sanitary sewer stub in Chandler Road to serve Lot 1, Val Vista Replat Three as shown on Exhibit "F" shall be installed by the Subdivider at its private expense as part of the improvements.
5. Sidewalks. Developer, or its assigns, shall, at their cost, install and maintain sidewalks along Chandler Road abutting the Replatted Area and along both sides of Chandler Circle. Said sidewalks shall be installed prior to the opening of business on each such lot. All sidewalks shall not be less than six inches (6") thick P.C. concrete.
6. Grading. Grading of the Replatted Area shall be as shown on the Grading Plan attached hereto as Exhibit "E".
7. Site Approval Precondition to Building Permit. Nothing herein shall be deemed a waiver or lessening of City's requirement of City approved site plan for any building prior to the issuance of a building permit therefor.
8. Public Access Roads or Driveways. All publicly used roads and driveways shall be constructed to City approved specifications and shall not be less than nine inches (9") thick P.C. concrete paving. The City shall have access over such roadways and driveways for any purpose it deems appropriate in the exercise of its general governmental powers, including but not limited to, inspection, police, fire and rescue and other public safety purposes, and the exercise of all rights granted to City by the terms of the Subdivision Agreement as heretofore amended and/or this Amendment.
9. Staking Bond. Developer shall provide to City a staking bond satisfactory to City Engineer prior to City's release of the final plat of the Replatted Area or a letter from a registered surveyor certifying that pins have been set.
10. Tract Sewer Connection Fees. Developer agrees that the terms and conditions for the benefit of the City that are contained in the Subdivision Agreement and the separate Sewer Connection Agreement pertaining to the sanitary sewer system shall be equally applicable to any private sanitary sewer provided for herein and enforceable by City in respect thereto to the same extent as though the private sewer had originally been incorporated and made a part of said agreements. Tract sewer connection fees shall be due and payable to the City in the following amounts prior to the issuance of a building permit for a particular lot:

Lot 1, Val Vista Replat Four	2.767 acres @ \$5,484/Ac. =	\$15,174
Lot 2, Val Vista Replat Four	2.367 acres @ \$5,484/Ac. =	12,981
Lot 3, Val Vista Replat Four	2.481 acres @ \$5,484/Ac. =	13,606
Lot 4, Val Vista Replat Four	1.657 acres @ \$5,484/Ac. =	9,087
Lot 5, Val Vista Replat Four	1.382 acres @ \$5,484/Ac. =	7,579
Lot 6, Val Vista Replat Four	1.998 acres @ \$5,484/Ac. =	10,957
Lot 7, Val Vista Replat Four	3.118 acres @ \$5,484/Ac. =	17,099
Lot 8, Val Vista Replat Four	3.676 acres @ \$5,484/Ac. =	20,159
Lot 9, Val Vista Replat Four	1.409 acres @ \$5,484/Ac. =	7,727
Lot 10, Val Vista Replat Four	1.100 acres @ \$5,484/Ac. =	6,032
Lot 11, Val Vista Replat Four	1.275 acres @ \$5,484/Ac. =	6,992
Lot 12, Val Vista Replat Four	<u>1.446 acres @ \$5,484/Ac. =</u>	<u>7,930</u>

Total Lot Acres 24.676 acres
 Total Replat Fee

\$135,323

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The aforesated fee of \$5,484 per acre is the rate now in effect and is subject to increase. The rate in effect at time of connection to the sanitary sewer system will be the rate paid.

11. Requirements of City Engineer for Replat Approval. Attached hereto and incorporated herein as Exhibit "D" is a copy of the City Engineer's comments concerning Developer's Application for Replat. Developer, its successors and assigns in title, agree to fully and timely comply with all such requirements in conjunction with the construction/installation of common area improvements or within such different time or times as designated in Exhibit "D" hereto.
12. Infrastructure to be at Private Expense. The cost of all infrastructure, improvements and easements within and serving the Replatted Area, including but not limited to parking improvements, ingress and egress, sanitary sewer, storm sewer, power, CATV, gas, water and cost of connection to external infrastructure shall be constructed and maintained at private expense and no part thereof shall be the responsibility of or at the expense of the City or of any Sanitary and Improvement District, except as herein below provided:
 - a. The City, subject to the conditions and limitations therein stated, does reaffirm its obligations under Paragraph 5 of the Val Vista Phase II Subdivision Agreement dated May 28, 2002 pertaining to sanitary and storm sewers within Chandler Road right-of-way and the dedicated permanent easements, paving surface within Chandler Road right-of-way and OPPD monthly charges for maintenance and energizing of street lighting within Chandler Road right-of-way.
 - b. Following City Engineer's acceptance of Chandler Circle improvements, City shall assume responsibility for maintenance and repair of the street improvements therein and the sanitary sewer and storm sewer and drainageway serving it via the permanent twenty foot (20') easement along the common boundary of Lots 7 and 8, Val Vista Replat Four serving Chandler Circle.
 - c. The existing permanent twenty foot (20') wide easement to the City of La Vista described as Instrument No. 2002-20539.
13. Common Area Improvements/Maintenance. For purposes hereof, as concerns common area maintenance, if any, within the Replatted Area, the following provisions shall be applicable:
 - a. Common Area Improvement Defined. The term "Common Area Improvement" shall mean all infrastructure and improvements constructed on, or to be constructed within or benefiting any two or more lots, or combination of lots, within the Replatted Area. Said Common Area Improvements shall include, but not be limited to, ingress and egress, storm drainage, sanitary sewer, public utility infrastructure facility and services and other infrastructure needs for or serving more than a single lot.
 - b. Common Area Expense Defined. Common Area Expense shall include all costs of site acquisition, engineering, construction, reconstruction, modification, replacement, repair, maintenance (including clean up and clean out) of any such

items and all services in respect thereto, together with the City Engineer's cost of inspection, review and design.

- c. Sharing of Common Area Expense. Common Area Expense shall be shared as follows:
- c-1. Initial Cost Sharing Ratio. The owners, their successors and assigns, of the replatted lots shall be responsible for and defray the Common Area Expense in the same ratio that each of their replatted lots bears to the total land area of lots served by the improvement. The foregoing methodology of property owners sharing Common Area Expense shall prevail unless adjusted pursuant to subparagraph 13.c-2 hereof.
 - c-2. Adjustment of Common Area Cost Sharing Ratios. The method of sharing Common Area Expense as set forth in subparagraph 13.c-1 above may be modified by the owners of all lots within the Replat agreeing to a different cost sharing as among themselves and filing with the City an application executed by all property owners within the Replatted Area to allow sharing in the designated different ratio. If the City Administrator, in consultation with the City Engineer, determines the original cost allocation is to be unfair and such requested change, if approved, will not be adverse to the City's or to the public interest, then the City Administrator may approve such application. Approval shall be discretionary. If approved, the property owners, at their expense, shall file the modification with the appropriate written approval of the City Administrator and City Engineer endorsed thereon and shall file it of record as provided in subparagraph 13.d. hereof.
- d. Filing of Record. The Developer, at its expense, shall record this Fourth Amendment in the land records of the Office of the Register of Deeds of Sarpy County and shall cause a recorded and certified copy thereof to be transmitted to the City Administrator. Any adjustment under subparagraph 13.c-2 above shall be prepared in form satisfactory to the City. All recordings shall be indexed by specific lot and recorded at Developer's expense.
- e. City Engineer to be Determiner. The City Engineer shall be the determiner of which improvements are required and which are Common Area Expense and which are not Common Area Expense, and which, if any, are not being properly constructed, repaired or maintained or in are in need of replacement.
- f. City Access/Repair, Etc. The City, its employees and agents, shall have right of entry and full access to any and all areas and improvements within the Replatted Area for purposes of inspection. In the event City determines construction, repair or maintenance is not progressing or not being performed satisfactorily or in a timely manner, City may, at its sole option and without obligation to do so, decide to undertake construction, repair and/or maintenance of any such Common Area Improvements and to assess the cost, including engineering costs and legal costs, together with interest at the rate of twelve percent (12%) per annum until paid, and City shall have a lien for the cost therefor, which lien City may file of record against the lots it determines to be benefited. If said lien amount is not timely paid in full, the City may foreclose the lien for said amount with interest

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thereon and all costs, including reasonable attorneys fees incurred by City in such foreclosure.

- g. City's Exercise of Rights Discretionary. City's and/or City Engineer's exercise of any or all of the authority herein given shall be at City's sole and absolute discretion, and City, City Engineer and City's officers and agents shall have no responsibility or liability by reason of either the nonexercise or the exercise of any such authority.
14. Special Assessments. There will be none. By the terms of the Subdivision Agreement covering Lots 241-248 and Outlot E, Val Vista, only private financing is to be utilized in the construction/installation of improvements.
15. Ownership Representation. The undersigned signatories on the proposed Final Plat of Val Vista Replat Four and on this Fourth Amendment to the Subdivision Agreement, do warrant and represent that the ownership of Developer is as follows:
- 100% in Giles Road No. 2, LLC
- and that George W. Venteicher, Managing Member, has the authority to execute this Amendment on behalf of said Giles Road No. 2, LLC and that at time of recordation of this Fourth Amendment and the Final Plat of Val Vista Replat Four, said Giles Road No. 2, LLC will be the sole owner of the Replatted Area.
16. Covenants Running With the Land. The obligations and agreements of Developer herein are perpetual covenants running with the land and shall be binding on the Developer and all of Developer's successors and assigns in title. The covenants herein, hereto, shall be cumulative to, and not in lieu of, prior covenants running with the land in favor of the City. City shall have the right, but not the obligation, to enforce any and all covenants.
17. Exhibit Summary. The Exhibits proposed by E & A Consulting Group, Inc. engineers for the Developer, attached hereto and made a part hereof, are as follows:
- | | |
|--------------|---|
| Exhibit "A": | Composite Drawing of Replat Four. |
| Exhibit "B": | Surveyor's Certificate. |
| Exhibit "C": | Final Plat of Val Vista Replat Four. |
| Exhibit "D": | City Engineers requirements for approval of replatting. |
| Exhibit "E": | Grading Plan. |
| Exhibit "F": | Sanitary and Storm Sewer Plan. |
| Exhibit "G": | Paving Plan. |
18. Right to Enforce. Provisions of this Amendment may be enforced at law or in equity by the owners of land within the Replatted Area and may be enforced by the City at law, in equity or such other remedy as City determines appropriate.

- F
19. Ratification. The terms of the Val Vista Phase II Subdivision Agreement and amendments thereto shall continue in full force and effect as to the Replatted Area, except to the extent modified by the express terms of this Fourth Amendment. In all other respects, the Subdivision Agreement shall not be affected hereby, and is hereby ratified and confirmed.

IN WITNESS WHEREOF, we, the parties hereto, by our respective duly authorized agents, hereto affix our signatures the day and year first above written.

ATTEST:

GILES ROAD NO. 2, LLC

[Signature]

By

George W. Venteicher
George W. Venteicher, Managing Member

ATTEST:

CITY OF LA VISTA

Rita M. Ramirez
Rita M. Ramirez, City Clerk

By

Douglas D. Kindig
Douglas D. Kindig, Mayor

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA

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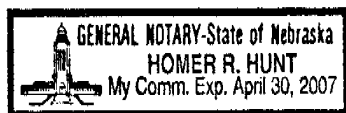
) ss.

COUNTY OF DOUGLAS

)

On this 6TH day of OCTOBER, 2006, before me a Notary Public, duly commissioned and qualified in and for said County, appeared George W. Venteicher, personally known by me to be the Managing Member of Giles Road No. 2, LLC and the identical person whose name is affixed to the foregoing Second Amendment to Subdivision Agreement, and acknowledged the execution thereof to be his voluntary act and deed, and the voluntary act and deed of said corporation.

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



Homer R. Hunt
Notary Public

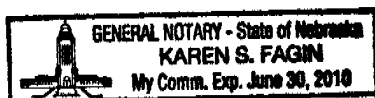
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ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA)
COUNTY OF Lincoln) ss.

On this 20th day of October, 2006, before me a Notary Public, duly commissioned and qualified in and for said County, appeared Douglas D. Kindig, personally known by me to be the Mayor of the City of La Vista and Rita M. Ramirez, to me personally known to be the City Clerk of the City of La Vista, and the identical persons whose names are affixed to the foregoing Second Amendment to Subdivision Agreement, and acknowledged the execution thereof to be their voluntary act and deed, and the voluntary act and deed of said City.

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



Karen S. Fagin
Notary Public

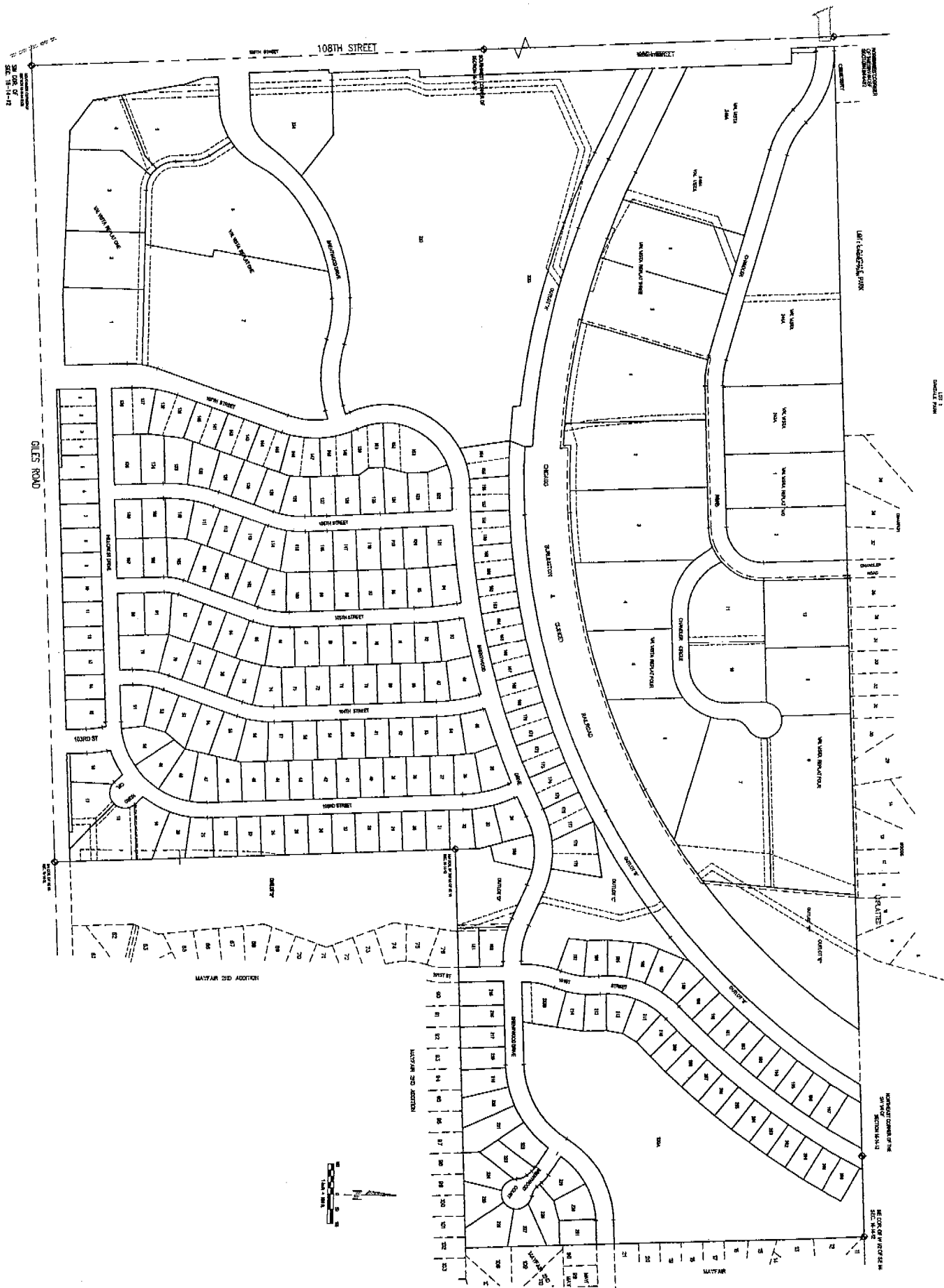
VAL VISTA REPLAT FOUR
EXHIBIT

EXHIBIT "B"

SURVEYOR'S CERTIFICATE

I hereby certify that I have made a ground survey of the subdivision described herein and that permanent monuments have been placed on the boundary of the within plat and at all corners of all lots, streets, angle points and ends of all curves in Val Vista Replat Four (the lots numbered as shown), being a replatting of Lots 241 and 248, Val Vista, and also being a replatting of Lot 3, Val Vista Replat Three; all subdivision located in the SW 1/4 of Section 16, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, more particularly described as follows:

Beginning at the Northwest corner of said Lot 3, Val Vista Replat Three, said point also being on the Southerly right-of-way line of Chandler Road; thence along the Northerly line of said Lot 3, Val Vista Replat Three, and the Northerly line of said Lot 248, Val Vista, and the Northerly line of said Lot 241, Val Vista, said line also being said Southerly right-of-way line of Chandler Road and the Easterly right-of-way line of said Chandler Road, on the following described courses; thence Easterly on a curve to the left with a radius of 330.00 feet, a distance of 87.65 feet, said curve having a long chord which bears S84°51'28"E (assumed bearing), a distance of 87.39 feet; thence N87°31'59"E, a distance of 471.65 feet; thence Northeasterly on a curve to the left with a radius of 180.00 feet, a distance of 282.74 feet, said curve having a long chord which bears N42°31'59"E, a distance of 254.56 feet; thence N02°28'01"W, a distance of 278.94 feet to the Northwest corner of said Lot 241, Val Vista, said point also being on the North line of said SW 1/4 of Section 16; thence N87°31'16"E along the North line of said Lot 241, Val Vista, said line also being said North line of the SW 1/4 of Section 16, a distance of 1048.82 feet to the Northeast corner of said Lot 241, Val Vista; thence S04°20'54"W along the Easterly line of said Lot 241, Val Vista, a distance of 510.53 feet to the Southeasterly corner of said Lot 241, Val Vista, said point also being on the Northerly right-of-way line of the Chicago Burlington & Quincy Railroad; thence along the Southerly line of said Lots 241 and 248, Val Vista, and the Southerly line of said Lot 3, Val Vista, said line also being said Northerly right-of-way line of the Chicago Burlington & Quincy Railroad, on the following described courses; thence Southwesterly on a curve to the right with a radius of 2224.50 feet, a distance of 355.79 feet, said curve having along chord which bears S56°42'13"W, a distance of 355.41 feet; thence Southwesterly on a curve to the right with a radius of 2186.70 feet, a distance of 959.10 feet, said curve having a long chord which bears S73°51'02"W, a distance of 951.43 feet; thence Westerly on a curve to the right with a radius of 2287.70 feet, a distance of 225.18 feet, said curve having a long chord which bears S89°14'08"W, a distance of 225.09 feet; thence S02°53'06"E, a distance of 25.09 feet; thence Westerly on a curve to the right with a radius of 2312.70 feet, a distance of 413.17 feet, said curve having a long chord which bears N82°52'49"W, a distance of 412.62 feet to the Southwesterly corner of said Lot 3, Val Vista Replat Three; thence N15°28'30"E along the Westerly line of said Lot 3, Val Vista Replat Three, a distance of 437.49 feet to the point of beginning.

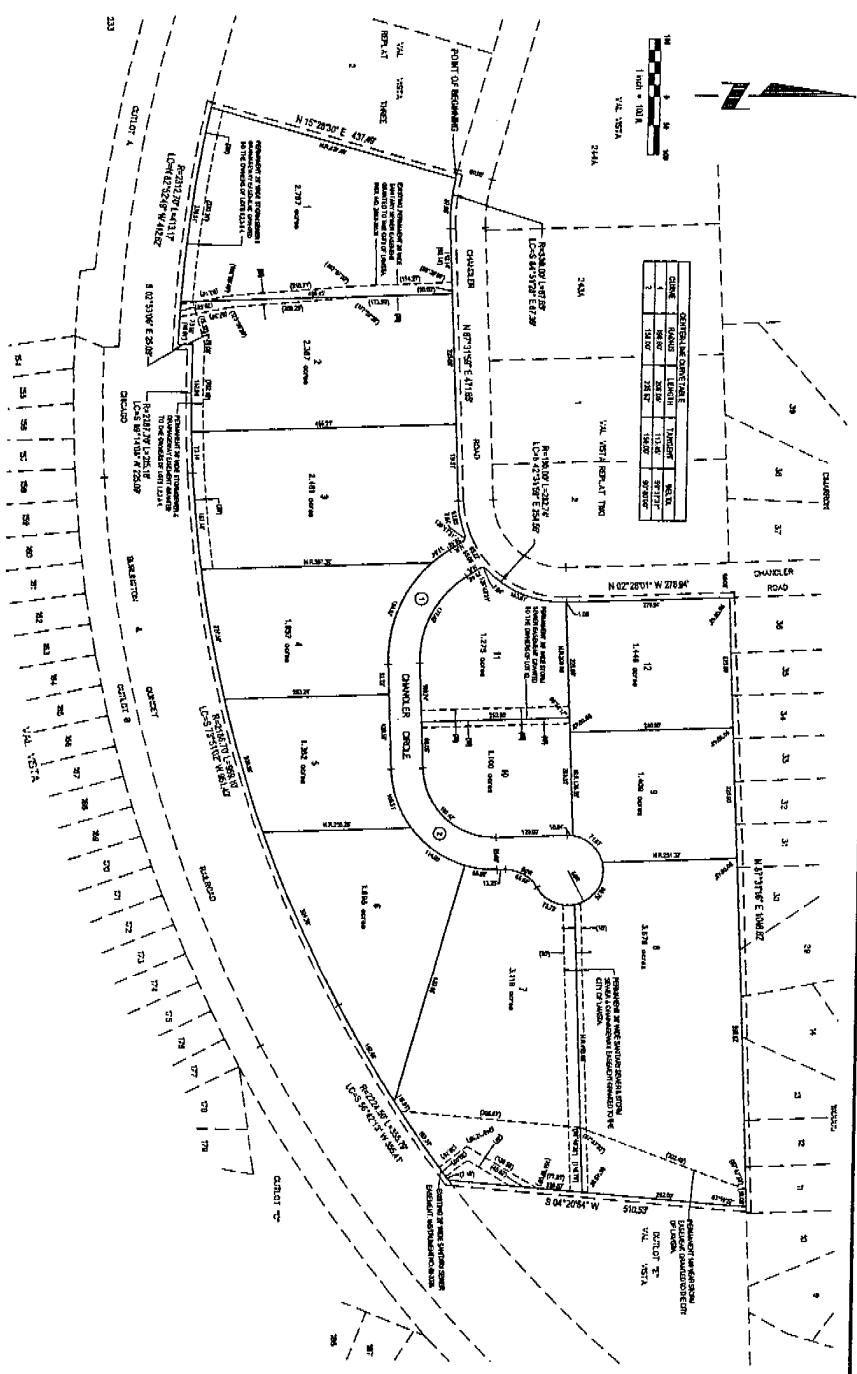
Said tract of land contains an area of 25.868 acres, more or less.

LOT 1 THRU 12 INCLUSIVE

VISTA REPLAT THREE, ALL SUBDIVISIONS LOCATED IN THE SW/4 OF SECTION 16, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M. SURVEY COUNTY, NEBRASKA

CONVENTION & CERTIFICATE

CENTRAL LINE SURVEY TABLE				
CLIQUE	RADIUS	LENGTH	TRANSFORM	DEL. EX.
1	196.00'	208.00'	113.40'	97°17.1"
2	154.00'	228.67'	154.00'	97°03.0"

[illegible]

DEDICATION

[illegible]

GILES ROAD MO. 2 LLC

George W. Verbeke, Managing Director

ACKNOWLEDGEMENT OF MOTAF

STATE OF NEBRASKA)
COUNTY OF DOUGLAS)

On the _____ day of _____, 2005, before me, the undersigned, a Notary Public in and for said County, personally came George W. Wierzbinski, Attorney at Law, CALLES ROAD NO. 2, LLC, who is personally known to the undersigned, and whose name is reflected in the Declaration on the plat and acknowledged the same to be his voluntary act and deed as such officer of said LLC.

History: Public

EXHIBIT "C"

FINAL PLAT

VAL VISTA REPLAT FOUR
LA VISTA, NEBRASKA



E&A CONSULTING GROUP, INC.
ENGINEERS • PLANNERS • SURVEYORS

7130 SOUTH 29TH STREET, SUITE D
LINCOLN, NE 68518-8841
PHONE: (402) 426-7257
FAX: (402) 426-7258

Plot No:	0917023	Remarks:	
Date:	11-10-06	(No)	Date
Designed By:	MAN		
Drawn By:	TRH		
Scale:	1" = 100'		
Sheet:	1 of 1		

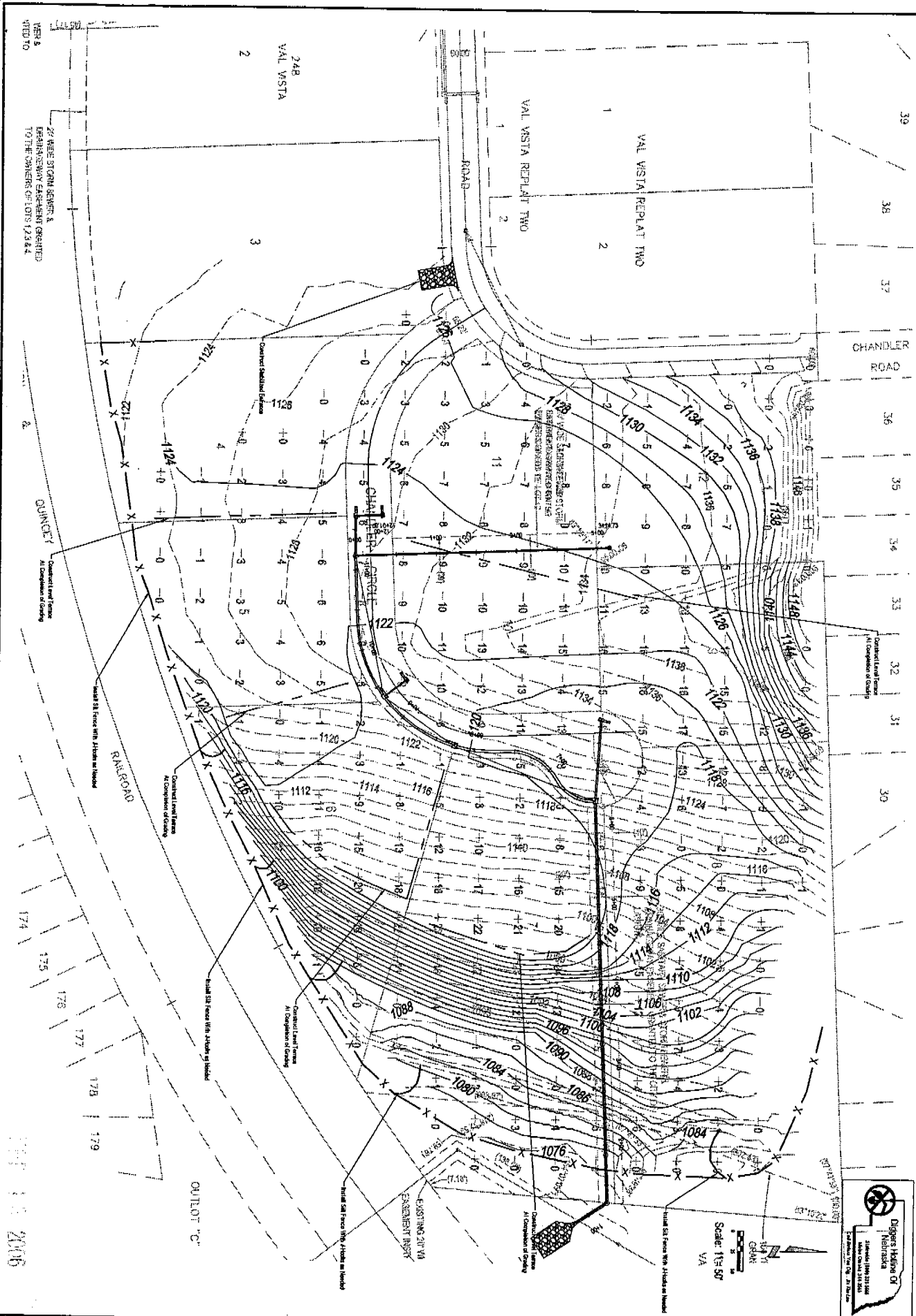
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EXHIBIT "D"

City Engineer's Requirements for Approval of Val Vista Replat Four

1. Provide copies of covenants, if any, that the Developer proposes to apply to this subdivision as required by Article 3.05.23 of the Subdivision Regulations
2. The Developer shall provide a drainage map for the Replatted Area.
3. The Developer shall provide a separate easement document for the proposed 20 feet wide storm sewer easement along the south side of Lots 1, 2, and 3 that includes provisions for the allocation of installation and maintenance costs amongst the benefited properties. The benefited properties are Lots 1 through 4, Inclusive of the Replatted Area.

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Project No. 01272-23

Date: 01/22/2007

Designed By: JMM

Drawn By: JMM

Checked By: JMM

Sheet 1 of 1

EXHIBIT "E"

VAL VISTA

REPLAT FOUR

LA VISTA, NEBRASKA

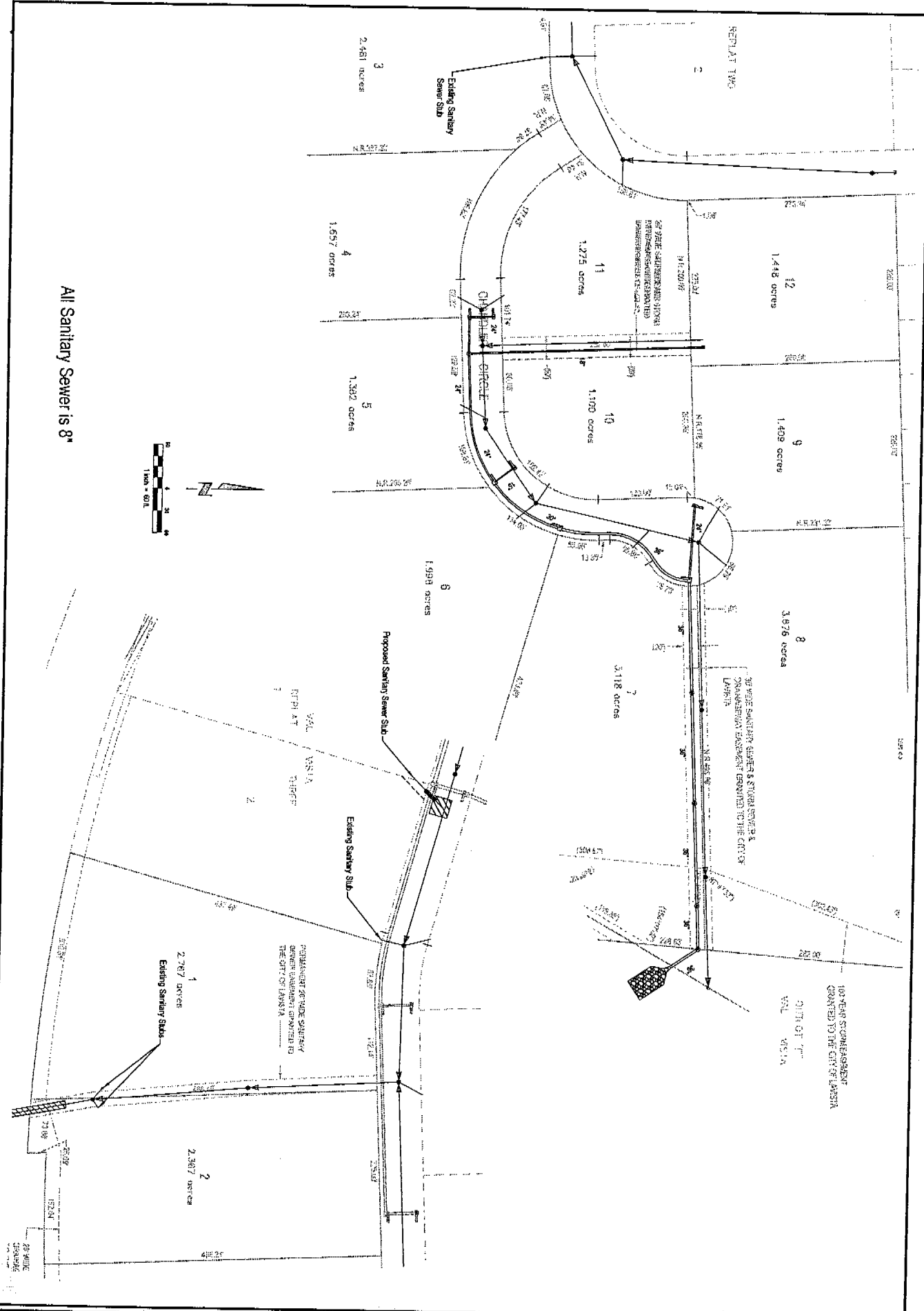
E&A CONSULTING GROUP, INC.

ENGINEERS • PLANNERS • SURVEYORS

12910 G STREET
OMAHA, NE 68147
PHONE: (402) 491-1000
FAX: (402) 491-1000

1130 SOUTH 28TH STREET, SUITE D
LINCOLN, NE 68504
PHONE: (402) 491-1000
FAX: (402) 491-1000

M



All Sanitary Sewer is 8"

K:\Projects\1998\175\0001-P-St - 1\Final Design\PAV-RPLT 4-000.dwg, Exhibit C, 2/15/2006 2:22:36 PM, Justinz

Proj No.	85175.22
Date	11/29/2005
Designed By	MAW
Drawn By	BRW
Checked By	JCT
Sheet	1 of 1

Revisions	Change
1	01/11/2006 Showed shales to be in Replat 3
2	02/15/2006 Labeled Slope Locations & Added Right of Way

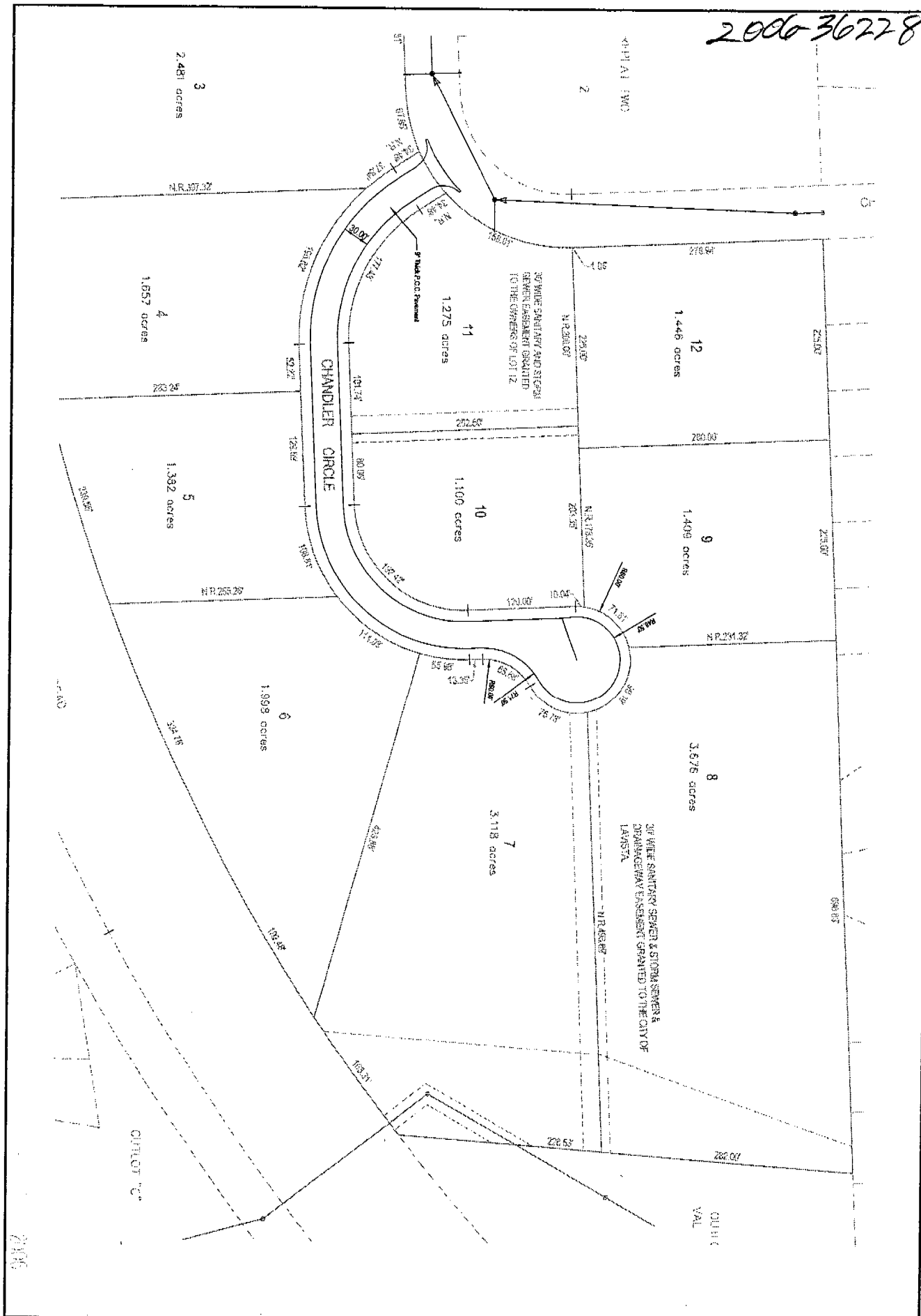
VAL VISTA REPLAT 4
LOTS 1 THRU 12 INCLUSIVE
LA VISTA, NEBRASKA

E&A CONSULTING GROUP, INC.
ENGINEERS • PLANNERS • SURVEYORS

12001 G STREET
OMAHA, NE 68137
PHONE: (402) 895-6700
FAX: (402) 895-3888

7130 SOUTH 28TH STREET, SUITE D
LINCOLN, NE 68516-5441
PHONE: (402) 896-7217
FAX: (402) 490-7218

2006-36278 N



Proj. No.	09173.23	Revisions	
Date	11/29/2005	Change	
Designed By	MAY	Updated Easement Description	
Drawn By	BGV	Removed Shown	
Checked By			
Sheet 1 of 1			

EXHIBIT "G"

VAL VISTA REPLAT 4
LOTS 1 THRU 12 INCLUSIVE

LA VISTA, NEBRASKA

E&A CONSULTING GROUP, INC.
ENGINEERS • PLANNERS • SURVEYORS

12001 Q STREET
OMAHA, NE 68137
PHONE: (402) 865-0700
FAX: (402) 865-5088

7120 SOUTH 26TH STREET, SUITE D
LINCOLN, NE 68518-5411
PHONE: (402) 426-7337
FAX: (402) 426-7218