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 REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
 SHORT \_\_\_\_\_ NCR \_\_\_\_\_

FILED SARPY COUNTY NEBRASKA  
 INSTRUMENT NUMBER

2018-14787

06/29/2018 11:23:09 AM

*Clay J. Dowling*

REGISTER OF DEEDS



-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

**PARTY WALL AND EASEMENT AGREEMENT**

STATE OF NEBRASKA    )  
                                   )  
 COUNTY OF SARPY     )

WHEREAS, City Centre I, LLC, a Nebraska limited liability company, and La Vista City Centre, LLC, a Nebraska limited liability company, (together referred to as "Redeveloper") are the owners of Lot 15, La Vista City Centre ("Lot 15") and Lot 1, La Vista City Centre Replat 2 ("Lot 1"), La Vista, NE 68128, respectively, and multifamily, commercial or other improvements to be situated on such real estate (which real estate and improvements are referred to as the "Redeveloper Property"); and

WHEREAS, the City of La Vista, a Nebraska municipal corporation, ("City") is the owner of Lot 2, La Vista City Centre Replat 2 ("Lot 2"), La Vista, NE 68128, and public offstreet parking improvements to be situated on such real estate (the "City Property") which public offstreet parking improvements would be separated from improvements on the Redeveloper Property by a Party Wall (as defined herein); and

WHEREAS, in order to maintain the quality of each structure while ensuring the preservation of their suitability to independently operate, the parties desire to place certain restraints on the Redeveloper Property and the City Property; and

WHEREAS, the parties also desire to specify and provide pursuant to this Agreement certain easements in connection with the Redeveloper Property and City Property ("Easements").

NOW, THEREFORE, the parties hereto agree as follows:

1. Party Wall. As used herein, the term Party Wall shall mean and refer to each common, dividing or shared footing or other structure between any Redeveloper Property and the City Property, as described or depicted in Exhibit "A", subject to any additions, subtractions, or changes approved by the appropriate Manager of the Redeveloper and the City Engineer. Any matters concerning the Party Wall which are not covered by the terms of this Agreement shall be governed by the general rules of law regarding party walls.

2. Construction, Use, and Maintenance. The cost of constructing and maintaining each Party Wall shall be borne by the owners of the lots on either side of the Party Wall as specified in Exhibit "B". Each party shall have the nonexclusive right to use the Party Wall.

3. Damage or Destruction. In the event of damage or destruction to all or any part of a Party Wall from any cause, the owners of the lots on either side of the Party Wall shall cooperate in the repair or reconstruction of the Party Wall. Except as provided below, the cost of such repair or reconstruction shall be borne by the owners of lots on either side of the Party Wall as specified in Exhibit "B". Each owner shall have the nonexclusive right to full use of the Party Wall as repaired and reconstructed. If either owner's negligence shall proximately cause damage or destruction to the Party Wall ("Negligent Party"), the Negligent Party shall bear the entire cost of repair or reconstruction. If a party shall neglect or refuse to cooperate or pay for any costs in accordance with this Section 3, the other party may have the work performed and shall be entitled to have a mechanic's lien on the other party's lot and improvements thereon to pay for such work, together with interest thereon at the maximum rate allowed by law. The party having the work performed shall, in addition to the mechanic's lien, be entitled to recover attorney fees and shall be entitled to all other remedies provided herein or by law or equity.

4. Modifications. No owner shall alter or change any Party Wall or part thereof in any manner, non-structural interior decoration excepted, and each Party Wall shall remain in the same locations as when originally erected. Each owner of any lot on either side of a Party Wall shall have a perpetual easement in that part of the premises of the other on which the Party Wall is located for the purpose of the Party Wall and any other additional area necessary to access, repair, replace or maintain the structure.

a. Responsibilities. Each owner shall keep all exterior walls of its unit in good condition and repair at their sole cost and expense. No owner shall permit to be done any act that would depreciate the value of its building.

b. Each Redeveloper agrees that it shall not construct any improvement on its Redeveloper Property within 20 feet of City Property that is greater than the height of the building specified in the building permit for such Redeveloper Property, unless approved by the City; and City shall not construct any improvement on City Property within 20 feet of either Redeveloper Property that is greater than the height of the offstreet parking facility as shown on Plan Sheets A5.1 and A5.2 of the construction plans dated October 3, 2017 for Offstreet Parking District No. 2-Structure No. 1, unless approved by the Redeveloper; in each case excluding from the meaning of "improvement" any lighting or other equipment connected with the primary purpose of such building or facility.

5. Easements. Easements granted pursuant to this Agreement are as follows:

- a. City hereby grants to each Redeveloper, its successors and assigns, in connection with each Redeveloper's ownership of the real property and improvements of Lot 1 and Lot 15:
  - i. A permanent, nonexclusive easement for motor vehicle use of driving lanes of the City's public offstreet parking facility on Lot 2, as depicted in Exhibit "C," for ingress and egress of each Redeveloper and each Redeveloper's tenants, guests, and invitees, or for ingress or egress of emergency personnel, to and from Lot 1 or Lot 15, and
  - ii. A permanent, nonexclusive easement for pedestrian use of pedestrian areas, including stairwells, on or in the City's public offstreet parking facility on Lot 2, as depicted in Exhibit "C," for ingress and egress of each Redeveloper and each Redeveloper's tenants, guests, and invitees, or for ingress or egress of emergency personnel, to and from Lot 1 or Lot 15; subject to such access, security or other controls, devices, or systems employed from time to time in the administration or operation of the City's public offstreet parking facilities.
- b. Each Redeveloper hereby grants to City, its successors and assigns, in connection with City's ownership of the real property and improvements of Lot 2:
  - i. A permanent, nonexclusive easement to construct, install, locate, maintain, repair, remove, and replace from time to time at City's cost a retaining wall on or in the areas depicted in Exhibit "C," or as otherwise agreed by such Redeveloper and City, and in and to such other areas as necessary to exercise such right with respect to the designated easement area; and
  - ii. A permanent, nonexclusive easement for pedestrian use of sidewalks and areas on or across Lot 1, and on or across Lot 15, as depicted in Exhibit "C," for ingress and egress of the City and the City's, guests, and invitees and users of the City's public offstreet parking facility on Lot 2, or for ingress or egress of emergency personnel, to and from Lot 2. Each Redeveloper, at its cost, shall construct, install, maintain, replace, and repair the sidewalks and other improvements in the easement area.

6. Deeds of Trust; Mortgages. Each Redeveloper Property is subject to certain mortgages, deeds of trust, liens, or other encumbrances ("Mortgages") that require each Redeveloper to obtain approval of this Agreement by the owner(s) or holder(s) of such Mortgages ("Mortgagees") before such Redeveloper enters or subjects its Redeveloper Property to some or all of this Agreement. This Agreement shall be subject to approval of all such Mortgagees as indicated by execution of this Agreement by such Mortgagees below. Each Redeveloper represents and warrants to City that consent of any other Mortgagees is not required under any Mortgage before such Redeveloper enters this Agreement. City represents and warrants that City Property is not subject to any mortgages or deeds of trust.

7. Duration. This Agreement, upon execution by the parties and Mortgagees, shall be recorded with the Sarpy County Register of Deeds. All terms and conditions of this Agreement shall constitute covenants running with the land that are binding on each of the City, each Redeveloper, and Mortgagees, and all successors and assigns of the City, each Redeveloper, or any Mortgagees, or any person claiming under or through any such party, Mortgagee, successor or assign.

8. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the undersigned and its respective successors and assigns; and shall be subject to each Redeveloper's compliance with the terms and conditions of the Redevelopment Plan for the 84<sup>th</sup> Street Redevelopment Area and the Redevelopment Agreement and Subdivision Agreement applicable to the Redeveloper Property, as such plan or either agreement may be amended from time to time.

9. Amendments. This Agreement shall not be amended unless set forth in a written amendment that is executed by all parties.

10. Governing Law. It is the intention of the parties that the laws of the State of Nebraska shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties hereto.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement.


IN WITNESS WHEREOF, each of the undersigned has executed this Party Wall and Easement Agreement as of the day and year set below its name.

**[Remainder of page intentionally left blank; signature pages follow]**

D

COUNTERPART SIGNATURE PAGE

LA VISTA CITY CENTRE, LLC,  
a Nebraska limited liability company

By:   
Christopher L. Erickson, Manager

Date: JUNE 21<sup>ST</sup>, 2018

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )




The foregoing instrument was acknowledged before me this 21 day of June, 2018, by Christopher L. Erickson, Manager of La Vista City Centre, LLC, a Nebraska limited liability company, as his voluntary act and deed and the voluntary act and deed of said company.

  
Notary Public

COUNTERPART SIGNATURE PAGE

CITY CENTRE I, LLC,  
a Nebraska limited liability company

By:   
Christopher L. Erickson, Manager


Date: June 21<sup>st</sup>, 2018

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )



The foregoing instrument was acknowledged before me this 21 day of June, 2018, by Christopher L. Erickson, Manager of City Centre, LLC I, a Nebraska limited liability company, as his voluntary act and deed and the voluntary act and deed of said company.

  
Notary Public

F

COUNTERPART SIGNATURE PAGE

CITY OF LA VISTA,  
a Nebraska municipal corporation

By: *Douglas Kindig*  
Mayor

Date: June 27, 2018



ATTEST:

*Pamela A. Buethe*  
City Clerk

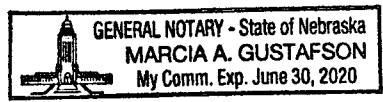
Date: June 27, 2018

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA )  
COUNTY OF Sarpy ) ss.

On this day of 27<sup>th</sup> day of June, 2018, before me, a Notary Public duly commissioned and qualified in and for said County, appeared Douglas Kindig, personally known by me to be the Mayor of the City of La Vista, and Pamela A. Buethe, personally known by me to be the City Clerk of the City of La Vista, and the identical persons whose names are affixed to the foregoing instrument, 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.



*Marcia A. Gustafson*  
Notary Public





H

**EXHIBIT "A"**  
**PARTY WALL**

I

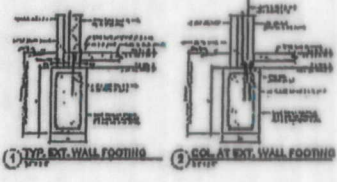
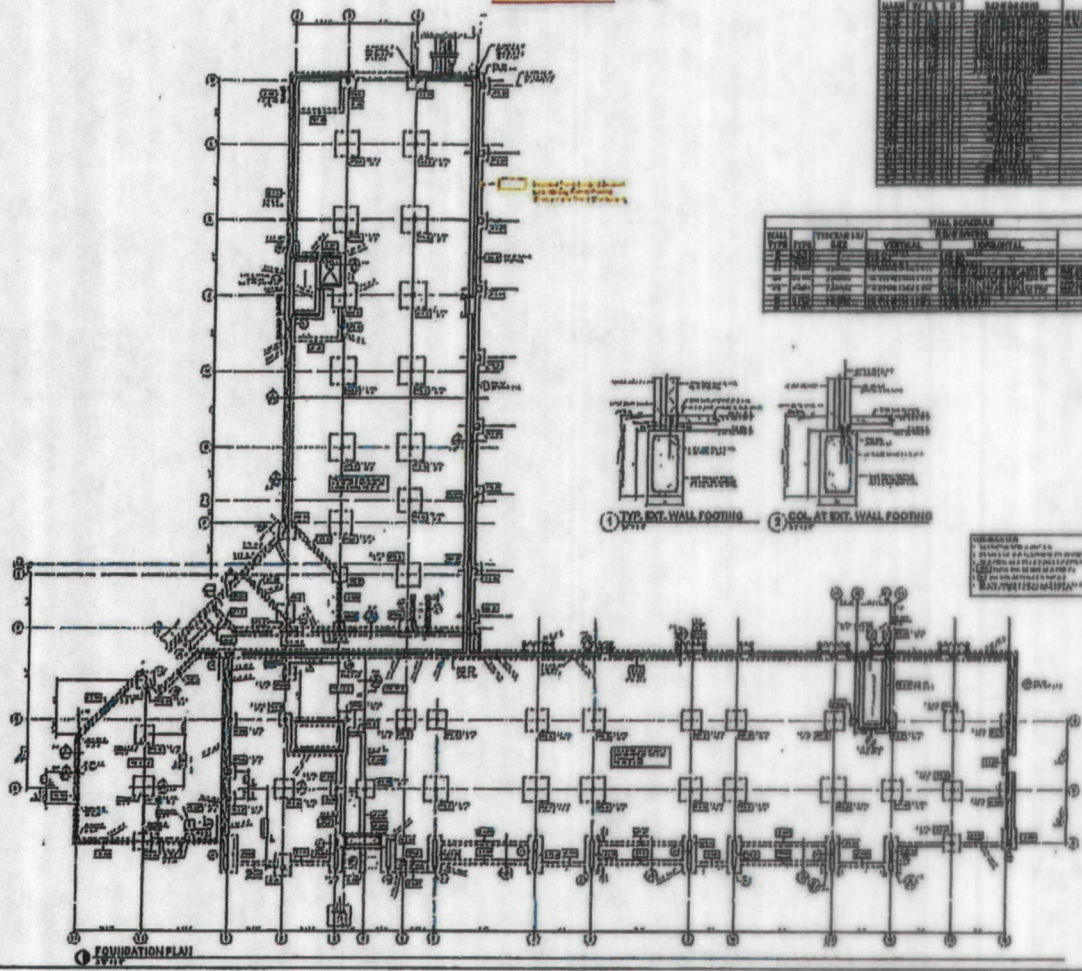
EXHIBIT A-1

BVH

DOOR SCHEDULE			
NO.	TYPE	NO. OF LEAFS	REMARKS
1	...	...	...
2	...	...	...
3	...	...	...
4	...	...	...
5	...	...	...
6	...	...	...
7	...	...	...
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45	...	...	...
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47	...	...	...
48	...	...	...
49	...	...	...
50	...	...	...

1/2" = 1'-0"  
 ALL DIMENSIONS IN FEET AND INCHES  
 UNLESS OTHERWISE SPECIFIED  
 FINISHES AS SHOWN ON OTHER SHEETS  
 SEE SPECIFICATIONS FOR MATERIALS AND METHODS OF CONSTRUCTION

WALL TYPE	THICKNESS	WALL SCHEDULE		REMARKS
		TYPICAL	NON-TYPICAL	
...	...	...	...	...
...	...	...	...	...
...	...	...	...	...
...	...	...	...	...



1. ALL DIMENSIONS ARE IN FEET AND INCHES UNLESS OTHERWISE SPECIFIED.  
 2. ALL WALLS ARE TO BE CONCRETE UNLESS OTHERWISE SPECIFIED.  
 3. ALL WALLS ARE TO BE FINISHED WITH 1/2" PLASTER ON BOTH SIDES.  
 4. ALL WALLS ARE TO BE FINISHED WITH 1/2" PLASTER ON BOTH SIDES.  
 5. ALL WALLS ARE TO BE FINISHED WITH 1/2" PLASTER ON BOTH SIDES.

BENTON & BOWEN  
 ARCHITECTS  
 1000 ...  
 ...  
 ...

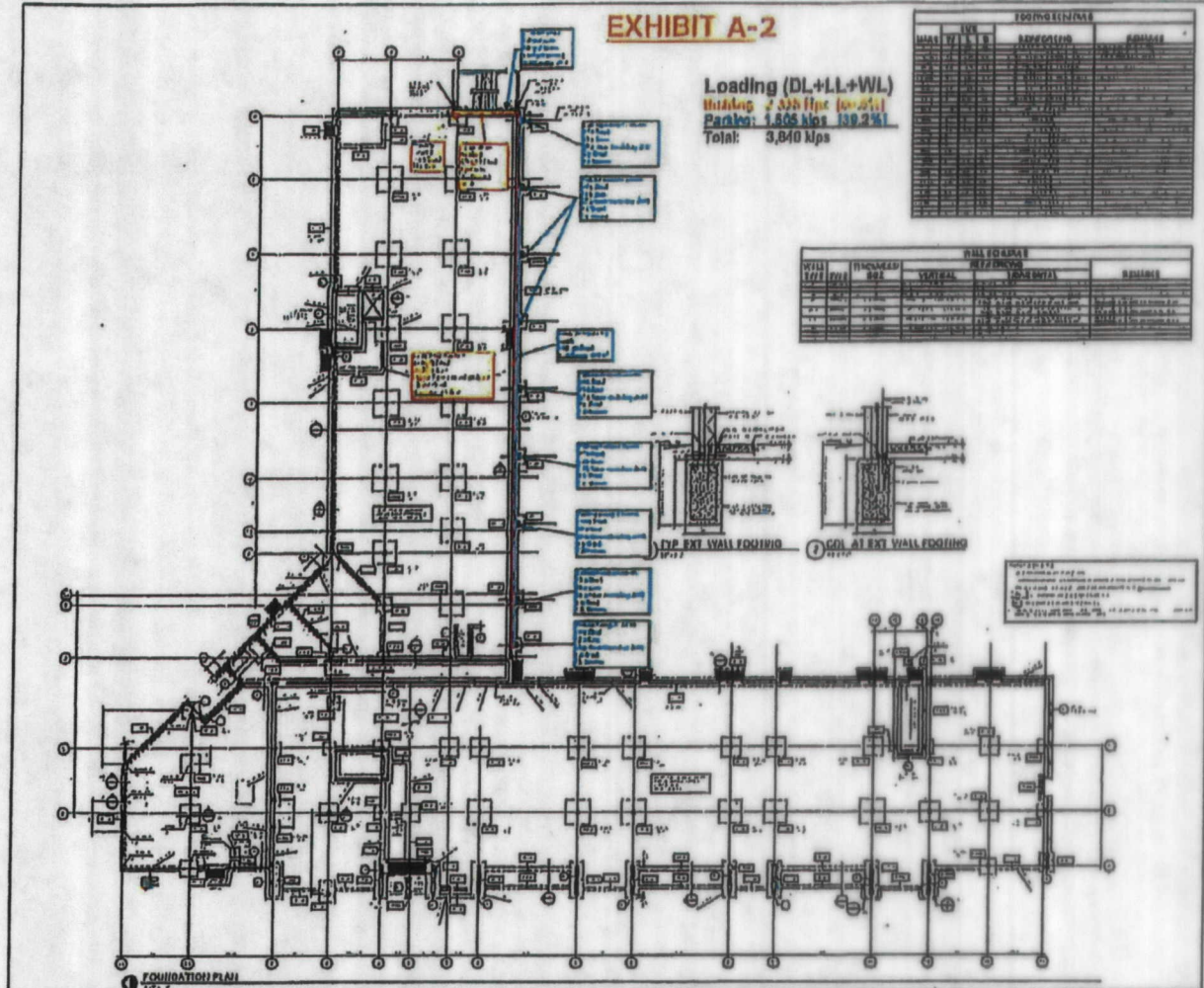
© 82.01

**EXHIBIT A-2**

**Loading (DL+LL+WL)**  
 Building: 2,338 kips (100.5%)  
 Parking: 1,806 kips (139.2%)  
 Total: 3,840 kips

COLUMN		LOADING		REMARKS	
NO.	TYPE	LOADING	REMARKS	NO.	TYPE
1	...	...	...	1	...
2	...	...	...	2	...
3	...	...	...	3	...
4	...	...	...	4	...
5	...	...	...	5	...
6	...	...	...	6	...
7	...	...	...	7	...
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33	...	...	...	33	...
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35	...	...	...	35	...
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45	...	...	...	45	...
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47	...	...	...	47	...
48	...	...	...	48	...
49	...	...	...	49	...
50	...	...	...	50	...

WALL	TYPE	LOADING		REMARKS
		LOADING	REMARKS	
1	...	...	...	...
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50	...	...	...	...



**BVH**

UNIVERSITY  
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 10/10/1982  
 © 82.01

K

**EXHIBIT "B"**  
**ALLOCATION OF PARTY WALL COSTS & EXPENSES**

Except as otherwise provided in the Agreement, all costs and expenses of the Party Wall shall be allocated between Lot 15, La Vista City Centre, and Lot 2, La Vista City Centre Replat 2 as follows:

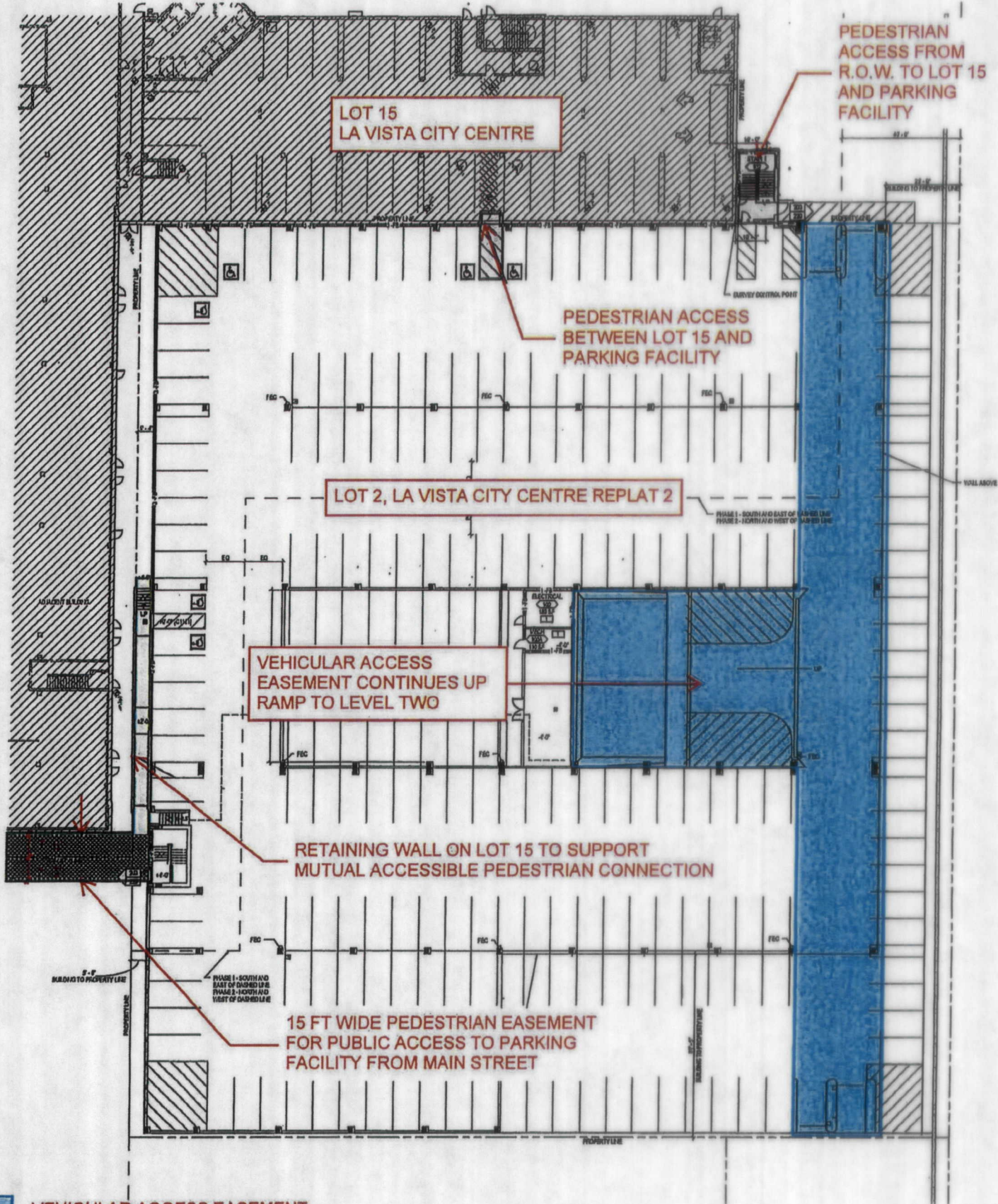
	<u>Lot 2</u>	<u>Lot 15</u>
Initial Construction	As agreed by City Engineer NTE 40% of allocable costs	As agreed by Manager of owner of Lot 15, not less than 60% of allocable costs
Operation and Maintenance	40%	60%
Repair or Reconstruction	40%	60%

The amount allocated to a Lot from time to time shall be paid by the owner of such Lot.

L

**EXHIBIT "C"**  
**EASEMENT AREAS**

M



LOT 15  
LA VISTA CITY CENTRE

PEDESTRIAN  
ACCESS FROM  
R.O.W. TO LOT 15  
AND PARKING  
FACILITY

PEDESTRIAN ACCESS  
BETWEEN LOT 15 AND  
PARKING FACILITY

LOT 2, LA VISTA CITY CENTRE REPLAT 2

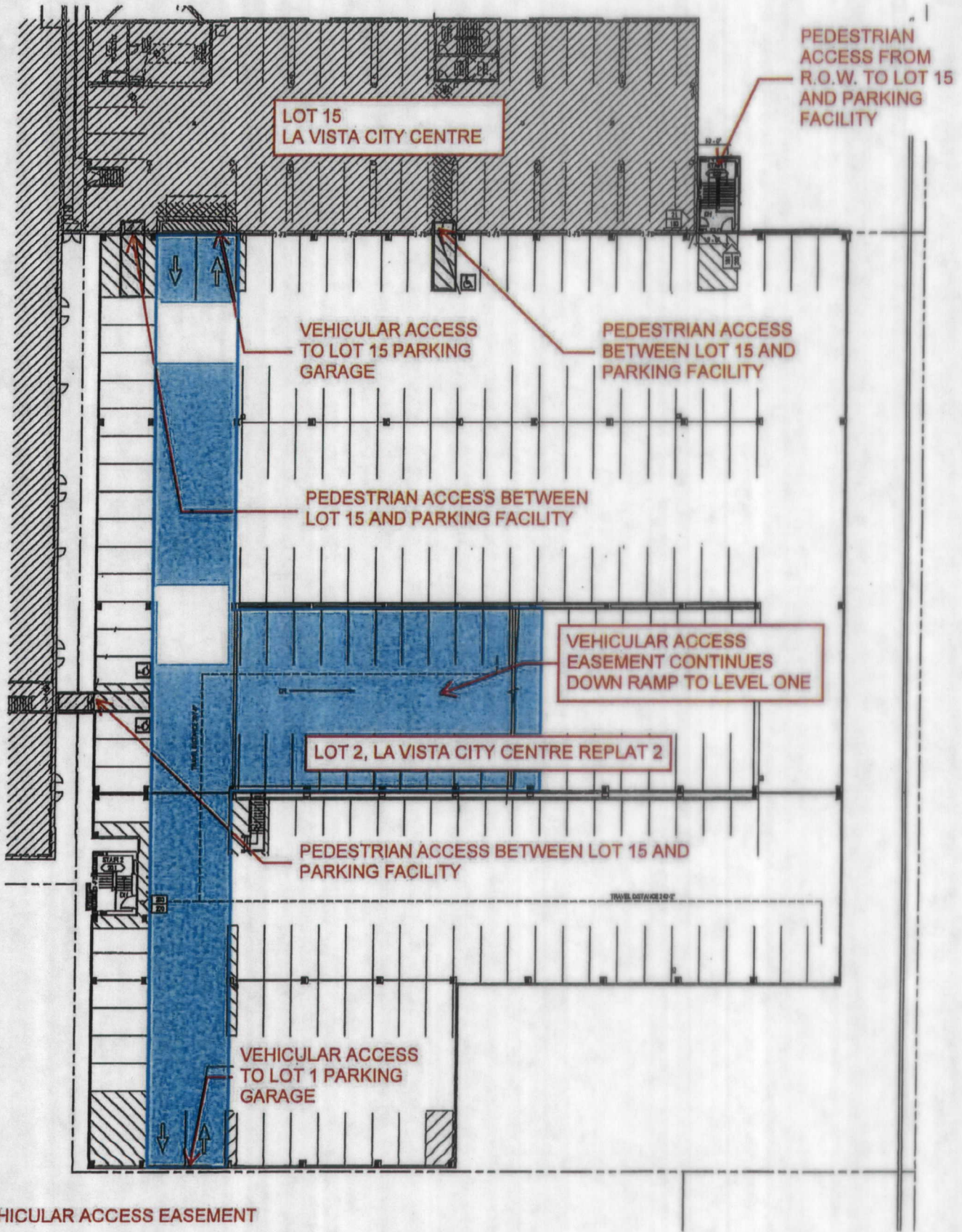
VEHICULAR ACCESS  
EASEMENT CONTINUES UP  
RAMP TO LEVEL TWO

RETAINING WALL ON LOT 15 TO SUPPORT  
MUTUAL ACCESSIBLE PEDESTRIAN CONNECTION

15 FT WIDE PEDESTRIAN EASEMENT  
FOR PUBLIC ACCESS TO PARKING  
FACILITY FROM MAIN STREET

- VEHICULAR ACCESS EASEMENT
- PEDESTRIAN ACCESS EASEMENT

LOT 1, LA VISTA CITY CENTRE REPLAT 2



- VEHICULAR ACCESS EASEMENT
- PEDESTRIAN ACCESS EASEMENT

LOT 1, LA VISTA CITY CENTRE REPLAT 2