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FILED SARPY COUNTY NEBRASKA
INSTRUMENT NUMBER

2018-15002

07/02/2018 1:37:35 PM

Lloyd J. Dowding

REGISTER OF DEEDS



**THIS PAGE ADDED
FOR RECORDING
INFORMATION.**

**DOCUMENT STARTS ON
NEXT PAGE.**

LLOYD J. DOWDING

SARPY COUNTY REGISTER OF DEEDS
1210 GOLDEN GATE DRIVE
PAPILLION, NE 68046-2842
402-593-5773

R+R (E)
City of LaVista
Attn: Chris Solberg
8116 Park View Blvd.
LaVista, NE 68128

A

**LA VISTA CITY CENTRE
SEWER CONNECTION AGREEMENT
(Sanitary Sewer System)**

THIS SEWER CONNECTION AGREEMENT ("Agreement"), made and entered into in La Vista, Nebraska, on this 28th day of June, 2018, by and between the City of La Vista, a Municipal corporation in the State of Nebraska ("City"), and La Vista City Centre, LLC, a Nebraska Limited Liability Company ("LVCC") and City Centre I, LLC, a Nebraska Limited Liability Company ("City Centre I", and together with LVCC, the "Owner").

WHEREAS, LVCC is the fee simple owner of that certain real property legally described as Lots 1, 2, 5, 6, 8, 9, 11, 12, 13, and 16, La Vista City Centre, and Lot 1, La Vista City Centre Replat 1 (which Replat 1 was a replat of Lots 3 and 4, La Vista City Centre), inclusive, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska (the "LVCC Property");

WHEREAS, City Centre I is the fee simple owner of that certain real property legally described as Lots 10, 14 and 15, La Vista City Centre, an addition to the City of La Vista, as surveyed, platted and recorded in Sarpy County, Nebraska and Lot 2, La Vista City Centre Replat 1, an addition to the City of La Vista, as surveyed, platted and recorded in Sarpy County, Nebraska (the "City Centre I Property", and together with the LVCC Property, the "Property");

WHEREAS, The City owns remaining lots and parcels within the original La Vista City Centre plat for public improvements -- specifically Lots 7 and 17, and Outlots A & B, and right of way areas. In addition, LVCC and City intend to replat Lots 16 and 17, La Vista City Centre, as Lots 1 and 2, La Vista City Centre Replat 2, respectively, as provided in the replat approved by La Vista City Council Resolution No. 18-031. Lot 1, La Vista City Centre Replat 2, will be owned by LVCC and Lot 2, La Vista City Centre Replat 2, will be owned by the City;

WHEREAS, the City, LVCC, and City Centre I (as successor in interest from LVCC) are parties to that certain Subdivision Agreement La Vista City Centre, recorded December 2, 2016 as Instrument Number 2016-31244 in the Records of Sarpy County, Nebraska (the "Subdivision Agreement");

WHEREAS, the Owner wishes to connect the sanitary sewers within the Property to the City Sewer System (as hereinafter defined); and

WHEREAS, Owner and the City desire to provide for the flow, transportation and handling of sewage collected in or flowing into the Owner Sewer System (defined below) and has requested the City to permit flowage thereof into the City Sewer System, and to provide for the processing of such sewage.

NOW, THEREFORE, in consideration of the mutual agreements and covenants of the parties hereto, it is agreed by and between the parties as follows:

1

For the purposes of this Agreement, the term "Owner Sewer System" shall include, whether now in existence or hereafter constructed, all sanitary sewers, sanitary sewer services and appurtenances thereto which originate on the Property, up to and including the connection with the City Sewer System, as shown on Exhibit A.

B

For the purposes of this Agreement, the term "City Sewer System" shall include, whether now in existence or hereafter constructed, (i) any sanitary sewer or system of sanitary sewers owned by the City shown in Exhibit B, and (ii) any sanitary sewer or system of sanitary sewers not a part of the Owner Sewer System and not owned by City, but through which City has an easement, license or other right or other license to transport sanitary sewage.

II

Subject to the conditions and provisions hereinafter specified, the City hereby grants permission to the Owner to connect the Owner Sewer System to the City Sewer System in such manner and at such place or places as designated on plans submitted by the Owner and approved by the City.

III

Owner expressly promises, warrants, covenants and agrees:

- A. Pursuant to the Subdivision Agreement, the Owner Sewer System will be designed and constructed (and, as required, reconstructed) by the Owner at Owner's cost and expense, and at no cost or expense to the City, in strict accordance with the plans and specifications and location approved in writing by the City and in strict accordance with the minimum standards and requirements of construction adopted by City.
- B. With reference to design, construction (and, as required, reconstruction), use, operation and maintenance of the Owner Sewer System, Owner shall comply with all applicable Federal and State laws, regulations in general and with all applicable laws and regulations of the City.
- C. The Owner Sewer System shall at all times be properly maintained and kept in good operating order and repair at no cost to City. The Owner's obligation in this connection shall survive the term of this Agreement to the extent provided in Section IV.
- D. In the event that City's engineers find that there is anything in the construction, maintenance or operation of the Owner Sewer System which will, in the opinion of City's engineers, be detrimental to the proper operation of the City Sewer System, or any part thereof, the Owner will, on notice thereof, promptly correct said defect.
- E. In the event the Owner for any reason fails in any respect as to its covenants contained in this Paragraph III, then City may, at its option, perform such maintenance and repair or correct such defects and the Owner, upon written demand by City, shall promptly reimburse City for all work, services, materials and other expenses incurred or expended by City in connection therewith.
- F. At all times all sewage flowing into, passing through or from the Owner Sewer System shall be in conformity with the ordinances, regulations and conditions applicable to sewage and sewers within the City, as they may change from time to time. In no event shall Owner, without prior written consent of City, permit or suffer any type of sewage to flow into, pass through or from the sewerage system of the Owner, in violation of such ordinances, regulations and conditions.
- G. The Owner shall allow any duly authorized representative of City to enter upon such property at reasonable times for the purpose of inspection, observation, measurements, sampling and testing of sewage.

C

- H. Unless approved by the City, the Owner shall not cause, suffer or permit to be connected to the Owner Sewer System any sewer lines or sewers serving, directly or indirectly, any area outside its boundaries.
- I. The Owner will indemnify and save harmless the City, its officers, employees and agents, from all construction costs, loss, damage, claims and liability of whatsoever kind or character due to or arising out of any acts, conduct, omissions or negligence of the Owner, its officers, agents, employees, contractors, subcontractors and anyone acting under the direction of the Owner, in doing any work on or in connection with the Owner Sewer System, or by or in consequence of any performance, or failure of performance, of any obligations in this Agreement.
- J. In connection with the design, construction, use, operation and maintenance of the Owner Sewer System, the Owner shall file all reports and perform all other obligations of the Owner provided for in this Agreement or otherwise required by state statutes or the City's ordinances as amended and supplemented from time to time.
- K. That, subject to the provisions of Paragraph V below, the Owner is and shall be bound to and by any provisions of any ordinance, rule or regulation relating to sewer use fees provided for under said Paragraph V as hereinafter made and adopted by City or Sarpy County.
- L. Any water distribution system serving the Owner shall be constructed and operated by the Metropolitan Utilities District.

IV

The easements and licenses granted to the City in this Agreement and the covenants of perpetual maintenance and repair by the Owner in this Agreement shall be perpetual, notwithstanding the fact that this Agreement is for a term of years.

The Property is subject to certain mortgages, deeds of trust, liens, or other encumbrances ("Mortgages") that require each Owner to obtain approval of this Agreement by the owner(s) or holder(s) of such Mortgages ("Mortgagees") before such Owner enters or subjects the 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 Owner represents and warrants to City that consent of any other Mortgagees is not required under any Mortgage before such Owner enters this Agreement. City represents and warrants that the City-owned property described in the recitals above is not subject to any mortgages or deeds of trust.

V

Owner further expressly promises, warrants, covenants and agrees that no connection shall be made to the sewer system of the City until a permit therefore shall have been obtained from City and the appropriate sewer tap and inspection fees pursuant to Section 4 of the City's Master Fee Ordinance shall have been paid to City. Tract sewer connection fees pursuant to Section 3 of the City's Master Fee Ordinance shall not apply or be payable because the Property as previously platted was connected to the City Sewer System. Owner shall:

1. pay to City the applicable sewer tap and inspection fees as prescribed by the ordinances of the City of La Vista In effect at the time of the connection,

D

2. obtain from the City a permit to so connect, as may be required by the ordinances of the City of La Vista in effect at the time of the connection, and
3. make all connections to the sewer system of the City in accordance with applicable ordinances, regulations and specifications.

Upon notice by City, the Owner shall immediately cause to be disconnected any connection to the sewer system which has been made without the required permit from the City or which is in contravention of the ordinances, regulations or specifications of the City of La Vista pertaining to sewer connections.

The Owner shall facilitate collection of sewer service and sewer use fees as may be prescribed by City ordinance. Except as may be otherwise provided by City, such fees shall be based upon water consumption with chargeable water flow computed in the manner employed by Metropolitan Utilities District, which shall collect sewer service or use fees in conjunction with its collection of charges for water use.

VI

In the event of the Owner's breach of any of the terms and conditions hereof or any warranty or covenant herein made by the Owner, then:

- A. In the case of a breach of any term or condition, warranty or covenant, pertaining to the construction, reconstruction, repair, maintenance or operation of the Owner Sewer System, Owner shall, within five (5) days from receipt of City's written notice of such breach, commence to take corrective measures or such measures as may be reasonably requested by the City, and the Owner shall pursue with due diligence such corrective measures to completion as soon thereafter as possible to the reasonable satisfaction of City.
- B. In the case of any other type of breach by the Owner, the Owner shall cure said breach to the reasonable satisfaction of City within thirty (30) days from receipt of City's written notice of such breach; provided however, that if the nature of Owner's breach is such that more than thirty (30) days are reasonably required for its cure, then the Owner shall not be deemed to be in breach if the Owner commenced such cure within thirty (30) day period and thereafter diligently prosecutes such cure to completion.
- C. In the event the Owner shall fail to cure any breach within the applicable time and manner afore-prescribed, City may require the Owner to disconnect the Owner Sewer System from the City Sewer System, upon giving the Owner sixty (60) days' notice of City's intent to do so. The City may itself cause such disconnection to be made, if at the expiration of said sixty (60) day period the breach is not cured to the reasonable satisfaction of City. Any such disconnection shall be made at the expense of the Owner.
- D. In the event the breach pertains to the construction, reconstruction, repair, maintenance or operation of the Owner Sewer System that is not cured within the timeframes set forth in Subsection A above, City shall have the absolute right, at its option, to itself perform the work necessary for the requested corrective measures, or to complete the corrective measures commenced by the Owner, as the case may be, in either of which events the

E

Owner agrees (i) Owner shall immediately reimburse City for any and all expense incurred by City in connection therewith, and (ii) Owner shall indemnify and hold harmless City, its officers, employees and agents, from any expenses, costs, claim, action, cause of action, or demand arising out of City's taking or completing said corrective measures.

E. In addition to whatever other remedies are granted to City herein, City may avail itself of all other rights and remedies that City may have pursuant to any statute, law, or rule of law or equity, including, but not limited to the right to specifically enforce full compliance by the Owner of the terms and conditions of this Agreement, including all warranties and covenants and agreements herein made by the Owner, by both mandatory and prohibitory injunction.

VII

The term of this Agreement ("Term") shall be thirty five (35) years from and after date hereof. Unless one of the parties shall advise the other party in writing of its desire not to do so, this Agreement shall be automatically renewed on the same terms and conditions as herein set forth for additional successive terms of twenty (20) years each ("Renewal Term"). In the event a party does not desire for the Term to be extended, such party shall provide the other party with written notice at least six (6) months prior to the end of the Term or Renewal Term. At the end of the final Term of this Agreement, Owner shall, at its own expense disconnect, reconstruct, remove or modify such sewer mains and sewer main connections as City shall deem necessary to prohibit the flow of Owner's sewage into the City Sewer System and to assure the City's continued use of the perpetual easements and licenses granted to it in this Agreement.

VIII

The failure of either party to exercise its rights upon any default by the other shall not constitute a waiver of such rights as to any subsequent default.

IX

The following Exhibits are attached to this Agreement and by this reference are incorporated herein:

- Exhibit A Final Plat of the Property and Replat 1
- Exhibit B Illustration of City Sewer System

X

If any provisions of this Agreement are held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions of this Agreement which can be given effect without the invalid or unconstitutional provision. Each paragraph, sentence and clause of this Agreement shall be deemed severable. If in the sole opinion of City, the removal or inoperative effect of any such provision so declared invalid or unconstitutional shall materially affect City's rights hereunder, then City may terminate this Agreement, effective as of the date of City's written notice; whereupon the Owner shall (i) pay to the City all sums due under the terms of this Agreement to City at the time of termination, including all applicable tap, inspection, and sewer use fees accrued as of said date; and (ii) at Owner's expense, disconnect, reconstruct,

F

remove or modify such sewer mains and sewer main connections as City shall deem necessary to prohibit the flow of the Owner's sewage into the City Sewer System.

XI

Both parties acknowledge and agree that this written Agreement, including all exhibits hereto, constitutes the entire Agreement of the parties and that there are no warranties, representations, terms or conditions other than those set forth herein.

XII

The provisions of this Agreement shall be binding upon the parties hereto and their successors. 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, the parties have executed this Agreement as of the date first above written.

[Remainder of Page Intentionally Left Blank.
Signature Page to Follow.]

6

COUNTERPART SIGNATURE PAGE

CITY:

City of La Vista,
a municipal corporation in the State of Nebraska

ATTEST:



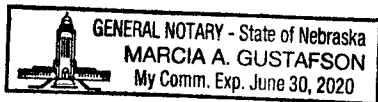
By: [Signature]
Its Mayor

By: Pamela A. Buethe
Pamela A. Buethe, City Clerk

State of Nebraska)
 Sarpy) ss
County of ~~Douglas~~)

On this day of 28th 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, to be personally known to be the City Clerk of the City of La Vista, and the identical persons whose names are affixed to the foregoing Sewer Connection 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.



Marcia A. Gustafson
Notary Public

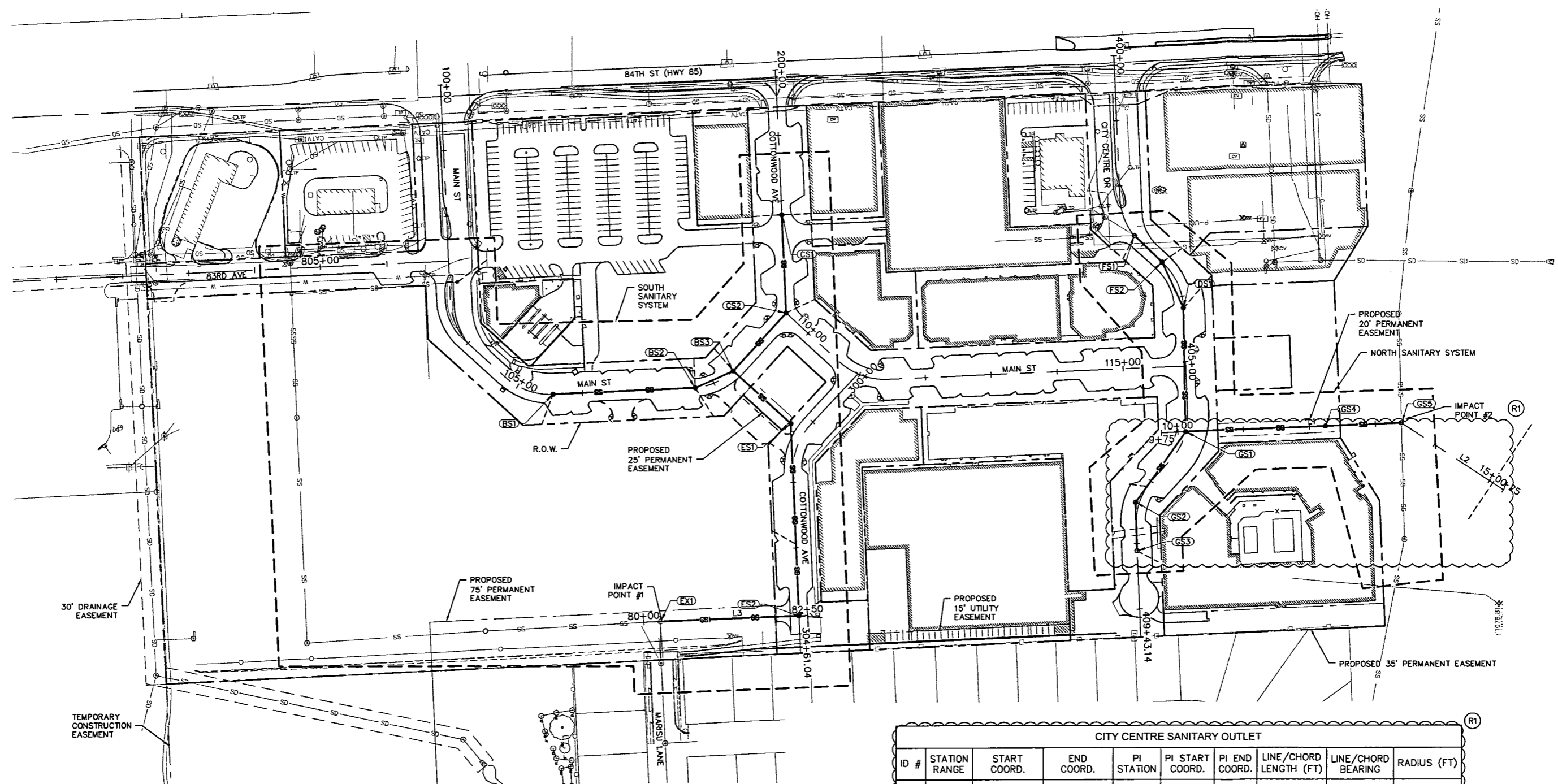
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Exhibit A
Plat and Replat

N

Exhibit B
Sewer System Illustration

2018-15007

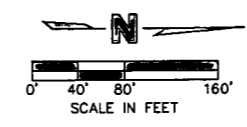


IMPACT POINT	ZONE	AREA (AC.)	UNITS / LOT	POPULATION (PEOPLE)	AVERAGE FLOW		PEAK FLOW		CUMULATIVE AVG. FLOW RATE (CFS)	CUMULATIVE PEAK FLOW RATE (CFS)	DESIGN PIPE DIAM. (IN.)	DESIGN PIPE SLOPE (%)	
					(GPD)	(CFS)	(GPD)	(CFS)					
#1	LOTS 1-6, 9, 16, & OLC	COM	17.13	N/A	476	25,689	0.040	81,211	0.1260	0.040	0.126000	8	MIN. 0.4%
CAPACITY CHECK: 8" PIPE @ 0.40% = 0.903 CFS, OK													
#2	LOT 14 & 15	MF RES	3.08	382	986	98,556	0.152	295,979	0.4580	0.192	0.458000	10	MIN. 0.4%
#2	LOT 8, 10-15	COM	7.54	N/A	209	11,304	0.017	37,751	0.0580	0.0170	0.516000	10	MIN. 0.4%
CAPACITY CHECK: 10" PIPE @ 0.40% = 1.638 CFS, OK													

ID #	STATION RANGE	START COORD.	END COORD.	PI STATION	PI START COORD.	PI END COORD.	LINE/CHORD LENGTH (FT)	LINE/CHORD BEARING	RADIUS (FT)
L1	9+75 13+39.93	N: 516672.08 E: 2730537.34	N: 517036.72 E: 2730522.88				364.93	N2°16'17"W	
L2	13+39.93 15+25	N: 517036.72 E: 2730522.88	N: 517190.95 E: 2730625.18				185.07	N33°33'24"E	

ID #	STATION RANGE	START COORD.	END COORD.	PI STATION	PI START COORD.	PI END COORD.	LINE/CHORD LENGTH (FT)	LINE/CHORD BEARING	RADIUS (FT)
L3	80+00 82+50	N: 515887.11 E: 2730823.63	N: 516136.93 E: 2730814.38				250.00	N2°07'20"W	

EXHIBIT "B"



SANITARY SEWER MAP

CITY OF LA VISTA PUBLIC WORKS DEPARTMENT		2111 South 67th Street, Suite 200 Omaha, NE 68106 TEL 402.341.1116 FAX 402.341.5295	CD-17-008	SHEET 60
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DWG: F:\2016\0501-1000\016-0546-40-Design\AutoCAD\Final Plans\Sheets\RD\BR\Phase 1 Package\T_SANMAP_50546.dwg USER: zturek
 DATE: January 22, 2018