

**CITY OF LA VISTA**  
**MAYOR AND CITY COUNCIL REPORT**  
**FEBRUARY 15, 2011 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
APPLICATION FOR REPLAT AND SUBDIVISION AGREEMENT APPROVAL — LOTS 1 & 2, PARSLEY PLACE (SE CORNER 84 <sup>TH</sup> & HARRISON)	◆ RESOLUTION (2) ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

**SYNOPSIS**

Resolutions have been prepared to approve a replat application and subdivision agreement for Lots 1 and 2, Parsley Place (a replat of Lots 1282-A, 1282-B1, 1282-I1A, 1282-I1B, 1282-J1A and 1282-J1B), generally located southeast of 84<sup>th</sup> and Harrison Streets.

**FISCAL IMPACT**

None.

**RECOMMENDATION**

Approve.

**BACKGROUND**

Resolutions have been prepared to approve a replat application and subdivision agreement for Lots 1 and 2, Parsley Place, generally located southeast of 84<sup>th</sup> and Harrison Streets. The application was submitted by Susan Sandelman as Trustee of the Esan Trust c/o Kin Properties, Inc. The property is currently zoned C-2, General Commercial, and are developed as Big Lots and Divine Truth Christian Store.

The purpose of the replat is to allow for the construction of a new CVS Pharmacy on proposed Lot 1 and a new building for Divine Truth Christian Store on proposed Lot 2.

City engineer, John Kottmann, and staff have reviewed the application for the proposed replat and a detailed report is attached. Staff is recommending approval subject to satisfactory resolution of the following items:

1. The proposed access easement that runs east-west along the common lot line between Lots 1 and 2 needs to be extended to the east line of Lots 1 and 2. This is needed to provide for circulation to the existing commercial property to the east since it will most likely be needed to reduce congestion problems that are expected with the entrance at the northeast corner of Lot 1. While not an issue for the plat, the applicant needs to be aware that the City will be requesting a driveway to be constructed in this easement extension to the east line of Lots 1 and 2. This item is currently under review and will be addressed prior to the City Council meeting.
2. The granting of the new access easement needs to be done by a separate instrument from the plat that fully addresses who will be responsible to operate and maintain the shared access roadway in

this easement area. This item is currently under review and will be addressed prior to the City Council meeting.

A subdivision agreement has been prepared that details the responsibilities of the parties including construction of access to the development, construction of storm sewers and sanitary sewers, sidewalks and other improvements. This document is currently under review and will be addressed prior to the City Council meeting.

On December 9, 2010, the Planning Commission unanimously recommended approval of the proposed replat to Council subject to the conditions as outlined.

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

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, DETERMINING CONDITIONS FOR APPROVAL OF THE REPLAT FOR LOTS 1282-A, 1282-B1, 1282-I1A, 1282-I1B, 1282-J1A and 1282-J1B, LA VISTA, TO BE REPLATTED AS LOTS 1 AND 2, PARSLEY PLACE, A SUBDIVISION LOCATED IN THE NORTHWEST  $\frac{1}{4}$  OF SECTION 14, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6<sup>TH</sup> P.M., SARPY COUNTY, NEBRASKA.

WHEREAS, the owners of the above described piece of property have made application for approval of a Replat for Lots 1282-A, 1282-B1, 1282-I1A, 1282-I1B, 1282-J1A and 1282-J1B, La Vista, to be replatted as Lots 1 and 2, Parsley Place; and

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

WHEREAS, on December 9, 2010, 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.

NOW THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of La Vista, Nebraska, that the plat for Lots 1282-A, 1282-B1, 1282-I1A, 1282-I1B, 1282-J1A and 1282-J1B, La Vista, to be replatted as Lots 1 and 2, Parsley Place, a subdivision located in the Northwest  $\frac{1}{4}$  of Section 14, Township 14 North, Range 12 East of the 6<sup>TH</sup> P.M., Sarpy County, Nebraska, generally located southeast of 84<sup>th</sup> and Harrison Streets, be, and hereby is, approved subject to the resolution of the following items identified by the City Engineer and staff:

1. The proposed access easement that runs east-west along the common lot line between Lots 1 and 2 needs to be extended to the east line of Lots 1 and 2. This is needed to provide for circulation to the existing commercial property to the east since it will most likely be needed to reduce congestion problems that are expected with the entrance at the northeast corner of Lot 1. While not an issue for the plat, the applicant needs to be aware that the City will be requesting a driveway to be constructed in this easement extension to the east line of Lots 1 and 2.
2. The granting of the new access easement needs to be done by a separate instrument from the plat that fully addresses who will be responsible to operate and maintain the shared access roadway in this easement area.
3. The Subdivision Agreement is under review by the City Attorney.

PASSED AND APPROVED THIS 15<sup>TH</sup> DAY OF FEBRUARY 2011.

CITY OF LA VISTA

ATTEST:

Douglas Kindig, Mayor

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

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING A SUBDIVISION AGREEMENT FOR LOTS 1 AND 2, PARSLEY PLACE SUBDIVISION IN A FORM SATISFACTORY TO THE CITY ADMINISTRATOR AND CITY ATTORNEY.

WHEREAS, the City Council did on February 15, 2011, approve the replat for Lots 1 and 2 Parsley Place Subdivision subject to certain conditions; and

WHEREAS, the Subdivider, Susan Sandelman, Trustee of the Esan Trust, has agreed to execute a Subdivision Agreement satisfactory in form to the City Attorney and City Administrator; and

NOW THEREFORE, BE IT RESOLVED, that the Subdivision Agreement presented at the February 15, 2011, City Council meeting for the Parsley Place 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 with such revisions or amendments thereto that the City Administrator and City Attorney may determine necessary to carry out the intent of the City Council.

PASSED AND APPROVED THIS 15<sup>TH</sup> DAY OF FEBRUARY 2011.

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk

**CITY OF LA VISTA  
PLANNING DIVISION**

**RECOMMENDATION REPORT**

**CASE NUMBER:**

**FOR HEARING OF:** February 15, 2011  
**REPORT #2:** February 7, 2011

**I. GENERAL INFORMATION**

**A. APPLICANT:**

Susan Sandelman as Trustee of the Esan Trust c/o Kin Properties, Inc.

**B. PROPERTY OWNER:**

Same

**C. LOCATION:**

Southeast corner of 84<sup>th</sup> Street and Harrison Street

**D. LEGAL DESCRIPTION:**

Lots 1282-A, 1282-B1, 1282-I1A, 1282-I1B, 1282-J1A and 1282-J1B, NW 1/4, Section 14, T14N, R12E, 6<sup>th</sup> P.M., Sarpy County, Nebraska

**E. REQUESTED ACTIONS(S):**

Replat

**F. EXISTING ZONING AND LAND USE:**

C-2, General Commercial District / Big Lots and Divine Truth Christian Store

**G. PURPOSE OF REQUEST:**

Replat into two lots for new development. The existing building will be demolished and replaced by a 10,000 square foot building on the south lot for Divine Truth, and a 13,225 square foot building on the north lot for a new CVS Pharmacy.

**H. SIZE OF SITE:**

3.3 acres

**II. BACKGROUND INFORMATION**

**A. EXISTING CONDITION OF SITE:**

This corner is currently developed with an approximately 34,995 square foot building which is occupied by Big Lots and Divine Truth Christian Store, and associated parking lot.

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

1. **North:** City of Ralston

2. **East:** Kentucky Fried Chicken restaurant / C-2, General Commercial District
3. **South:** Burger King restaurant / C-2, General Commercial District
4. **West:** Qwest Corporation / C-2, General Commercial District

**C. REVELANT CASE HISTORY:**

None.

**D. APPLICABLE REGULATIONS:**

1. Section 3.08, Subdivision Regulations, regarding replats
2. Articles 4, 5 and 7, Subdivision Regulations, regarding improvements
3. Chapter 154, City Code, regarding storm water management regulations

**III. ANALYSIS**

**A. COMPREHENSIVE PLAN:**

This site is identified as commercial on the Future Land Use Map of the Comprehensive Plan.

**B. OTHER PLANS:**

84<sup>th</sup> Street Redevelopment Vision Plan

**C. TRAFFIC AND ACCESS:**

1. There is controlled access abutting the property along Harrison Street and 84<sup>th</sup> Street. Two breaks in controlled access exist onto Harrison Street. The applicant is proposing to close one of these breaks closest to 84<sup>th</sup> Street, which is supported by staff due to its proximity to 84<sup>th</sup> Street and high operating speeds. At the City's request, the applicant is proposing to construct a right-turn deceleration lane to serve the other existing access point at the northeast corner of proposed Lot 1.
2. There is an existing cross easement on the property for ingress and egress to serve this property as well as commercial property to the south. The existing cross easement will need to be released with a new easement that includes adequate operation and maintenance provisions. The proposed ingress-egress path needs to be able to accommodate truck traffic for deliveries to the businesses served by this cross easement.
3. The access to Harrison Street at the northeast corner of proposed Lot 1 has difficult traffic flow characteristics due to the configuration and proximity of the frontage road that exists to the east serving the KFC business. Alternative access may be necessary to resolve potential "grid lock" conditions at this intersection. See further comments later in this report.
4. Sidewalk connections to the 84<sup>th</sup> Street and Harrison Street sidewalks will be required with the development plans for the lots.

**D. UTILITIES & DRAINAGE:**

1. There is sanitary sewer available along 84<sup>th</sup> Street to serve the proposed lots. The sewer abuts Lot 2 but is approximately 95 feet south of Lot 1 and does not abut Lot 1. It is possible for the proposed redevelopment on Lot 1 to reach the

existing sewer with a private service. Since there is no other adjacent property that would benefit from extending the sanitary sewer in 84<sup>th</sup> Street further to the north, staff does see adequate reason to require extending the public sewer.

2. The property presently has access to water, gas, power and communication utilities.
3. The redevelopment on these lots will meet the definition of “significant redevelopment” as set forth in Chapter 154 of the City Code and will be required to provide post construction storm water management facilities. A Post Construction Storm Water Management Plan is part of the subdivision agreement.
4. The storm water from this site will primarily be served by the existing open drainageway along the east side of 84<sup>th</sup> Street which has adequate capacity. The applicant has submitted a drainage study that complies with the various criteria for no increase in 2-year storm peak flows, treatment of the first ½-inch of runoff from storm events, and limiting 10-year peak flows to no greater than 1.25 times existing conditions.

**IV. REVIEW COMMENTS:**

**FINAL PLAT**

1. The proposed access easement that runs east-west along the common lot line between Lots 1 and 2 needs to be extended to the east line of Lots 1 and 2. This is needed to provide for circulation to the existing commercial property to the east since it will most likely be needed to reduce congestion problems that are expected with the entrance at the northeast corner of Lot 1. While not an issue for the plat, the applicant needs to be aware that the City will be requesting a driveway to be constructed in this easement extension to the east line of Lots 1 and 2. This item is currently under review (2/10/11) and will be addressed prior to the City Council meeting.
2. The granting of the new access easement needs to be done by a separate instrument from the plat that fully addresses who will be responsible to operate and maintain the shared access roadway in this easement area. This item is currently under review (2/10/11) and will be addressed prior to the City Council meeting.

**V. STAFF RECOMMENDATION:**

Approve, subject to satisfactory resolution of items noted.

**VI. RECOMMENDATION OF PLANNING COMMISSION:**

At their meeting on December 9, 2010, the Planning Commission recommended with a 9-0 vote (Nielson absent) to approve the replat of Lots 1282-A, 1282-B1, 1282-I1A, 1282-I1B, 1282-J1A and 1282-J1B, NW 1/4, Section 14, T14N, R12E, 6<sup>th</sup> P.M., Sarpy County, Nebraska.

**VII. ATTACHMENTS TO REPORTS:**

1. Vicinity Map
2. Zoning Map
3. Replat (Final Plat)

**VIII. COPIES OF REPORT TO:**

1. Applicant
2. David Barnett, Carlson Consulting Engineers
3. Larry Jobeun, Fullenkamp, Doyle, & Jobeun
4. Public Upon Request

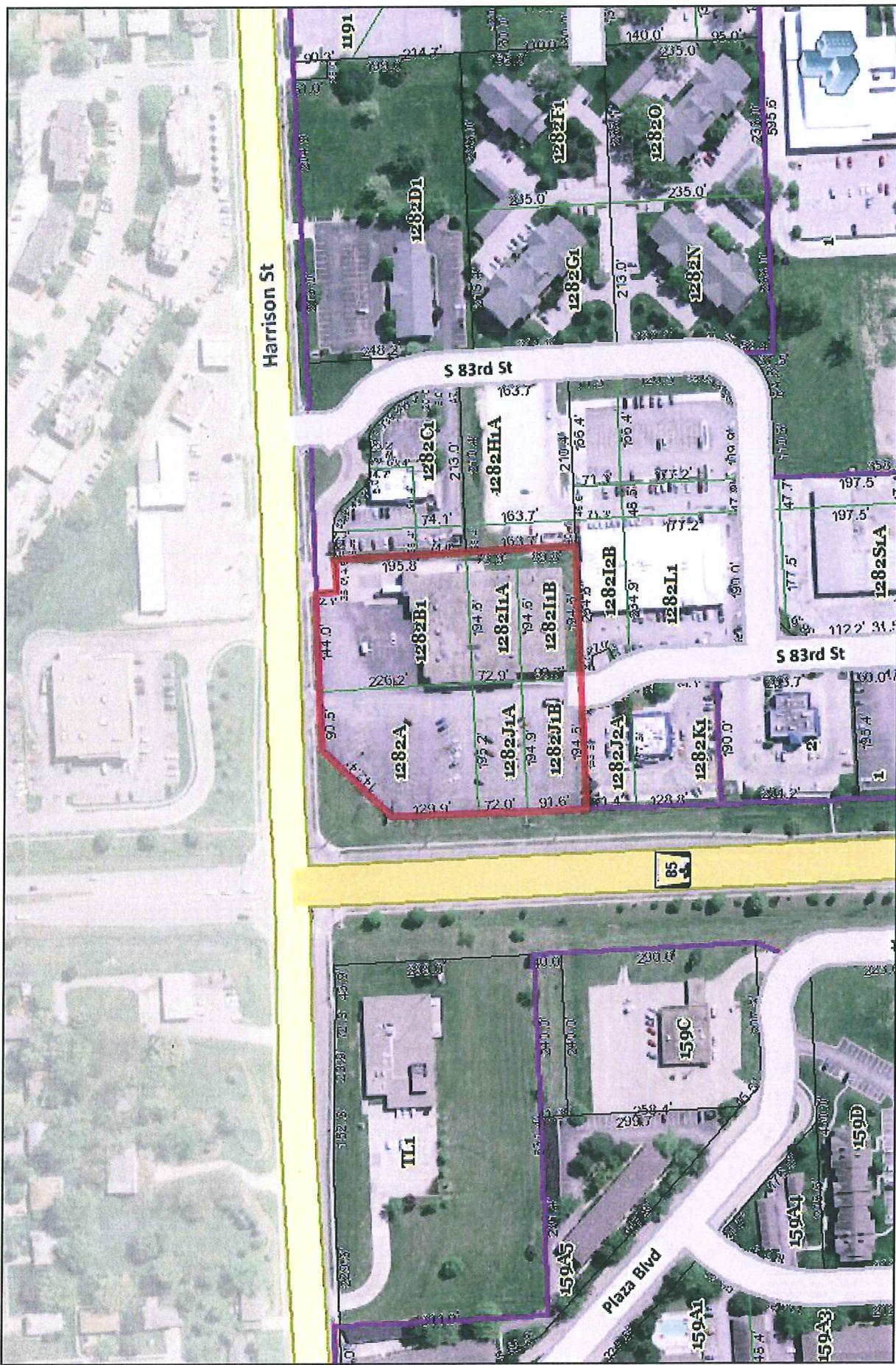
Prepared by:

## Community Development Director

2-10-11

Date

Sarpy County, Nebraska

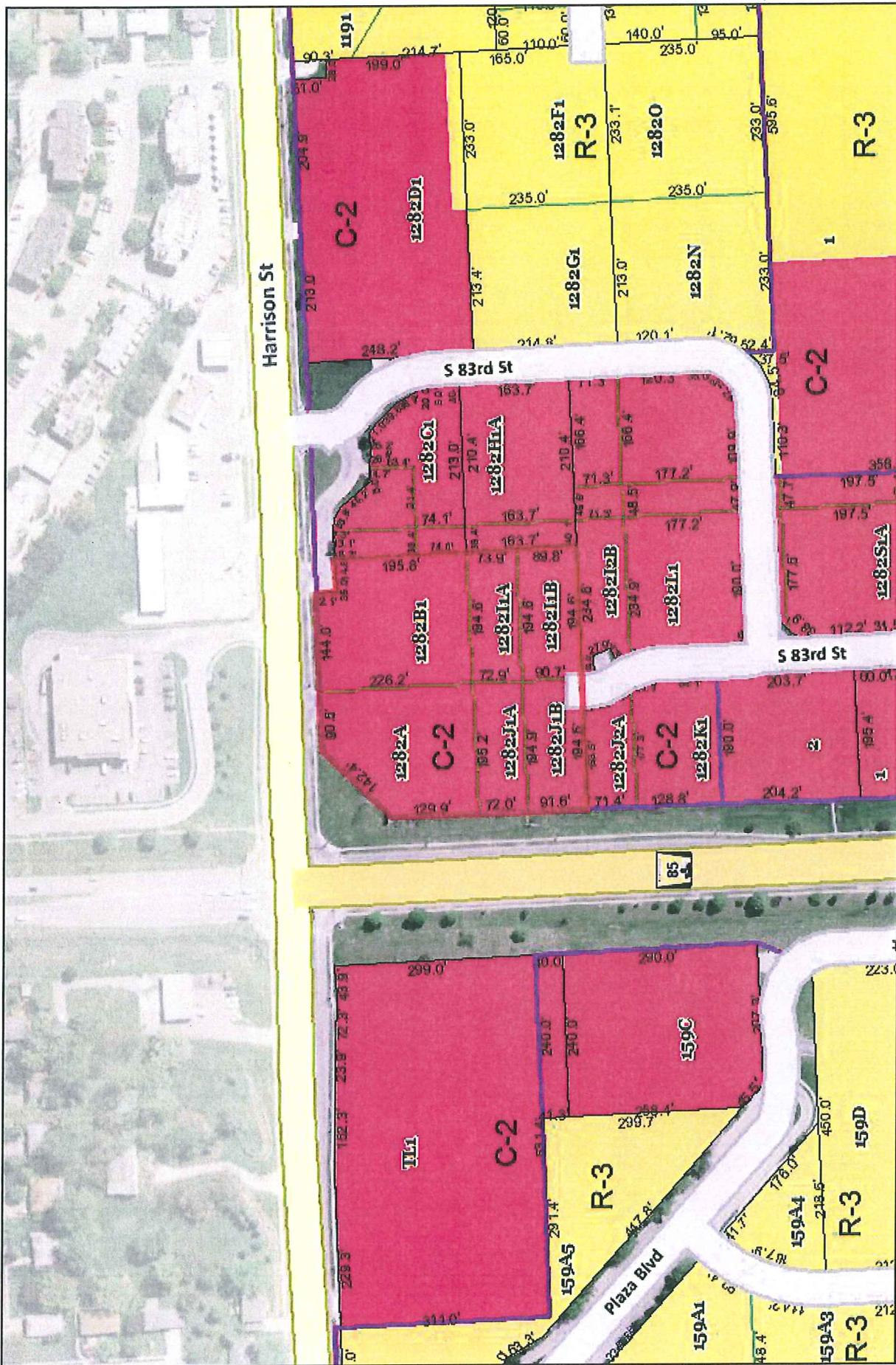


*Disclaimer:* This data is for informational purposes only, and should not be substituted for a true titles search, property appraisal, survey, or for zoning district verification. Sarpy County and the Sarpy County GIS Coalition assume no legal responsibility for the information contained in this data.

Map Scale  
1 inch = 200 feet

10/29/2010

Sarpy County, Nebraska



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Map Scale  
1 inch = 200 feet

10/29/2010

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**Subdivision Agreement**  
**Parsley Place, Lots 1 & 2**

This Subdivision Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between Susan Sandelman, Trustee of the Esan Trust (hereinafter referred to as "Subdivider"), and the CITY OF LA VISTA, NEBRASKA (hereinafter referred to as "City").

WHEREAS, Subdivider is the owner of the land shown on the proposed final plat attached hereto as "Exhibit A" (hereinafter referred to as the "Property") and improvements thereon; and,

WHEREAS, Subdivider proposes to demolish and remove existing buildings and other private improvements upon the Property and to construct new buildings and other private improvements on Lots 1 and 2 of the Property as replatted, with Lot 1 to be leased to Nebraska CVS Pharmacy, L.L.C., a Nebraska limited liability company, or one of its affiliates, as the lease may be sublet, assigned or transferred, for operation thereon of a retail drug store and related uses, and/or for any other lawful purposes and Lot 2 to be leased to Divine Truth, Inc., a Nebraska corporation, as the lease may be sublet, assigned or transferred, for operation thereon of a retail Christian bookstore ("Private Improvements"), and,

WHEREAS, Subdivider at its cost proposes to construct certain public improvements within or abutting the limits of the Property; and,

WHEREAS, Subdivider wishes to connect the sanitary sewer system to be constructed within the limits of the Property to the sewer system of City of La Vista; and,

WHEREAS, Subdivider and City desire to agree on the method for the installation and allocation of expenses for any public improvements to be constructed within or abutting the limits of the Property or within any adjacent public right-of-way.

NOW, THEREFORE, the parties agree as follows:

1. **Public Improvements:** Attached hereto as "Exhibit B-1" through "Exhibit B-\_\_\_\_" and incorporated herein by reference are plats and other documents showing the public improvements to be installed on or abutting the Property, i.e., storm sewers, sanitary sewers, paving of public streets, sidewalks, and landscaping (hereinafter referred to as "Improvements"). All Improvements must receive the approval of the Public Works Department of City (City Engineer) prior to construction, including approval of design and form and content of construction contracts. All of such Improvements shall be constructed by Subdivider at its own expense, and Subdivider shall substantially complete all of such Improvements by not later than \_\_\_\_\_, 20 \_\_\_\_\_. Completion of Improvements shall be subject to the approval of the Public Works

Department of City (City Engineer). All work shall be guaranteed against all defects for not less than two (2) years following completions of such Improvements as approved by the Public Works Department of City (City Engineer).

- A. Subdivider shall resolve – at its own expense and to the satisfaction of Subdivider, the Public Works Department of City (City Engineer), and any other parties having an interest – any conflicts with 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 Sublease, Cross-Easement and Common Facilities Agreement recorded in the office of the Register of Deeds of Sarpy County, Nebraska, on July 2, 1974, in Book 47 of the Miscellaneous Records, at pages 381 – 381P (the "Sublease Agreement"). Subdivider acknowledges that the easements located on the Property pursuant to the Sublease Agreement were terminated by that Lease Termination Agreement dated February 29, 1996.
2. Water, Gas and Electrical Power: Subdivider agrees to 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. Subdivider shall provide to City copies of each of such agreements of Subdivider with the Metropolitan Utilities District, Black Hills Energy and the Omaha Public Power District within four (4) months after the date of this Agreement. All required work shall be performed solely at Subdivider's cost. Subdivider shall be responsible for obtaining permission from the Public Works Department of City (City Engineer) before performing any work upon or affecting City property.
3. Installation of Improvements: Subdivider agrees to commence the timely and orderly installation of the Improvements following execution of this Agreement. Nothing in this Agreement, however, shall be deemed a waiver or lessening of any approvals specifically required by this Agreement or of City's requirements regarding approval by City of the site plan for any building or other improvements prior to the issuance of a building permit therefor or regarding compliance with any other applicable requirements, including requirements of the Municipal Code, zoning, or subdivision regulations.
4. Payment for Improvements: Subdivider shall pay, in addition to other costs as provided in this Agreement, the cost of all Improvements, 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 herein, Subdivider shall pay the cost of all work and requirements described in this Agreement.
5. Right to Connect to City Sewer System: City hereby grants permission to Subdivider to connect, at Subdivider's cost, Subdivider's sanitary sewer system within the limits of the Property to the sanitary sewer system of City, subject to Subdivider obtaining proper permits and paying the standard tract sewer connection fee to City for the proposed Lot 1 as 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 Agreement, the fee would be:

Lot 1, Commercial	1.690 AC @ \$5,973/AC	\$10,094.37
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6. The proposed Lot 2 has an existing sewer connection and no new connection fee will be required or paid to re-connect the proposed Lot 2 to the sanitary sewer system of City. Financial Guarantee; Bonds: Prior to City's release of the final plat for recording, Subdivider shall provide to City a financial guarantee (i.e., a bank letter of credit) in form acceptable to City and in the sum of Sixty Thousand and No/100ths (\$60,000.00) for construction of the right turn deceleration lane on Harrison Street as shown on "Exhibit B-\_\_\_. Subdivider warrants to City, for a period of two years following completion of such construction and its acceptance by the City Engineer of City, that such construction shall have been performed using first quality materials, in a good and workmanlike manner, and in accordance with the plans and specifications approved by the City Engineer of City. Upon completion of such construction, Subdivider's engineer shall submit to City as-built records and a certification that the construction was performed in substantial compliance with the design approved by the Public Works Department of City (City Engineer) prior to construction. A certificate signed by the City Engineer of City that the City accepts the deceleration lane as constructed by Subdivider shall operate as a release of such financial guarantee.

Subdivider shall also require its contractor performing the deceleration lane construction work to provide to Subdivider and City a performance bond, a labor and materials payment bond, and a maintenance bond regarding such construction work, with Subdivider and City to be named as co-obligees on such bonds. Such bonds shall be in forms and amounts satisfactory to City, and shall have one or more sureties thereon who are authorized to write such bonds in the State of Nebraska.

7. Storm Water Management Plan: Post-construction storm water management features and related appurtenances shall be constructed on the Property, as shown on the Post Construction Storm Water Management Plan attached hereto as "Exhibit C." Plans and specifications for such storm water management improvements shall be prepared by Subdivider's engineer and must be approved by the Public Works Department of City (City Engineer) prior to starting construction of such improvements.
8. Storm Water Management Plan Maintenance Agreement: A Post-Construction Storm Water Management Plan Maintenance Agreement ("Maintenance Agreement") in the form attached hereto as "Exhibit D" shall be entered into between Subdivider 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. It is understood and agreed by City and Subdivider that the final version of the Maintenance Agreement shall:
  - (A) identify those maintenance actions that shall be private, and provide that all maintenance actions so identified shall be performed by the owners of the lots within the Subdivision, at the expense of those owners,
  - (B) include provisions to control when post-construction storm water features are to be constructed,
  - (C) differentiate between the requirements of construction site storm water runoff controls and post-construction controls,

- (D) provide that post-construction storm water features shall not be installed until such time as they will not be negatively impacted by construction site runoff, and
- (E) provide that permanent storm water detention ponds, riser structures and discharge pipes may be constructed during subdivision grading operations.

Such provisions shall run with the land and become the responsibility of any successors, assigns or future owners, as applicable.

9. Watershed Management Fees: The owner of each lot shall make payment to City for Watershed Management Fees. This fee is computed as follows for the lots 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 Agreement, the fees would be:

Lot 1, Commercial	1.690 AC @ \$4,000/AC	\$6,760
Lot 2, Commercial	1.616 AC @ \$4,000/AC	\$6,464
	Total	\$13,224

The aforesigned 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 aforesigned rates, will be the rates to be paid.

10. Private Improvement Compliance. Subject to any nonconforming uses, nonconforming lots, and nonconforming structures permitted by ordinance or regulation, all private improvements shall be designed, constructed, maintained, repaired and replaced in accordance with all applicable laws, rules, regulations, policies and procedures in effect at the time the construction, maintenance, repair or replacement is performed.

11. Binding Effect; Recording: This Subdivision Agreement shall be binding upon the parties, and their respective successors and assigns. 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 Subdivider and its respective successors and assigns. 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 Subdivider for recording, Subdivider promptly will record such final plat with the Register of Deeds of Sarpy County, Nebraska. It is expressly agreed, however, that City shall not release the final plat for recording until City is satisfied that Subdivider and its lessees of the Property, or their respective successors and assigns, have concluded (closed), or made arrangements satisfactory to the City to conclude (close), their respective transactions requiring the actual construction of all of the Private Improvements on the Property as contemplated on the date of execution of this Agreement. It is further expressly agreed that if the condition described in the immediately preceding sentence has not occurred within twelve (12) months after the date of this Subdivision Agreement, Subdivider shall neither be required, nor entitled without the written consent of the City, to move forward with the project.

**CITY OF LA VISTA, NEBRASKA,**

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Mayor \_\_\_\_\_ Date \_\_\_\_\_

ATTEST:

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City Clerk Date

APPROVED AS TO FORM:

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City Attorney Date

**SUBDIVIDER:**

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Susan Sandelman, Trustee of the Esan Trust

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

## ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ ]  
] SS.  
COUNTY OF \_\_\_\_\_ ]

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me, a Notary Public in and for said County and State, personally appeared Susan Sandelman, Trustee of the Esan Trust, who executed the above instrument and acknowledged the execution thereof to be his/her voluntary act and deed on behalf of the Esan Trust.

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

**EXHIBIT A**  
**FINAL PLAT**

**EXHIBIT B**  
**PUBLIC IMPROVEMENTS**





**EXHIBIT C**  
**POST CONSTRUCTION STORM WATER MANAGEMENT PLAN**

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

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

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

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

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

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

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

NOW, THEREFORE, in consideration of the foregoing premises and the terms and provisions contained herein, the Property Owner agrees as follows:

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

3. The Property Owner shall, at its sole expense, construct and perpetually operate and maintain the Facilities in strict accordance with the BMP Maintenance Requirements.
4. The Property Owner hereby grants permission to the City, its authorized agents and employees, upon reasonable notice and at reasonable times, to enter upon the Property, for inspections to ensure that the Facilities are maintained in accordance with this Agreement; provided, however, any such access by the City onto the Property shall be limited to paved areas and any pervious areas around the Facilities to the extent reasonably necessary to inspect the Facilities.

If an inspection reveals that the Facilities have not been maintained in accordance with this Agreement and that corrective action is needed, the City shall provide the Property Owner with written notice specifying what corrective action is reasonably required. If the Property Owner has not completed the corrective action(s) specified by the City or its designee within thirty (30) days after issuance of such notice, the City may perform the necessary corrective work. If an emergency exists, as determined by the City or its designee, the City or its designee may, without prior notice to the Property Owner, enter the Property to make any and all reasonably necessary repairs, to take any and all reasonably necessary corrective actions, and to perform any and all maintenance, construction and reconstruction as the City reasonably deems necessary to address such emergency. In any of such events, the City shall be entitled to recover from the Property Owner the reasonable costs reasonably expended by the City to maintain or repair the Facilities or to correct operational deficiencies in accordance with this Agreement or applicable law. If the Property Owner fails to pay the City such reasonably expended costs within forty-five days after written billing of same by the City, such failure shall constitute a breach of this Agreement. The City shall thereafter be entitled to bring an action against the Property Owner to recover such costs. Property Owner agrees that it shall be liable to the City for the amount determined by the City to be due, together with interest thereon at the rate of eight per cent (8%) per annum from the date of billing by the City until such amount is paid, for all costs of such collection action and, to the extent allowable by law, for all attorney fees incurred by the City in making such collection.

5. The Property Owner is not authorized to obligate and shall not obligate the City to maintain or repair the Facilities, and the City shall not be liable to any person for the condition or operation of the Facilities.
6. The Property Owner agrees to indemnify and hold the City (and the City's agents, officers, officials, representatives, and employees) harmless from and against any loss or liability arising from or out of any occurrence or claim that may arise or be asserted against any of them as a result of the construction, existence, or condition of the Facilities or the maintenance of the Facilities by the Property Owner (excluding only such occurrences or claims as are caused solely by the negligence, gross negligence, or willful misconduct of the City or its authorized agents or employees). If such a claim is asserted against the City, and/or against any agent, officer, official, representative, or employee of the City, the City or any such individual shall notify the Property Owner of such claim. Any such notice given by the City or any such individual shall inure to the benefit of the City and every other individual against whom the claim is made or asserted. The Property Owner shall have the right and duty to defend, and the right to settle, at its own expense, such claim and any suit based on any such claim. If a final

judgment is entered against the City and/or any agent, officer, official, representative, or employee of the City upon such a claim, the Property Owner shall pay such judgment.

7. The Property Owner shall not in any way diminish, limit, or restrict the right of the City to enforce any of City's ordinances as authorized by law.
8. The Property Owner shall comply with any and all time of performance requirements set forth in this Agreement; provided, however, that the time of performance shall be extended as necessitated (but only to the extent necessitated) by strikes, lockouts, fire or other unavoidable casualty, extraordinary and unanticipated weather conditions, acts of God, unjustified refusal or failure of governmental authorities to grant necessary permits and approvals for the construction of the Facilities contemplated hereunder (the Parties agreeing to use reasonable diligence to procure the same), or any other cause beyond the reasonable control of the Property Owner (other than a financial cause).
9. The provisions of this Agreement are not intended to create, and they shall not in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Parties.
10. This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto. Whenever the phrase "Property Owner" appears in this Agreement, however, any right or obligation of the Property Owner under this Agreement shall extend to and be binding upon each successor in interest to Property Owner, as such successor's interest may appear.
11. This Agreement contains the entire agreement between the Parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement may be modified only by a written agreement of the City and the Property Owner.
12. Upon conveyance of the Property, the conveying owner shall thereafter be relieved of any obligations under this Agreement arising out of any act, occurrence or omission that occurs after the date of such conveyance.
13. 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, and inure to the benefit of the Property Owner, and its respective successors and assigns. The City shall have the right, but not the obligation, to enforce any and all such covenants.

IN WITNESS WHEREOF, the Property Owner has executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

DECLARANT:

By: \_\_\_\_\_  
Susan Sandelman, Trustee of the Esan Trust

**CITY OF LA VISTA, NEBRASKA,**

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Mayor \_\_\_\_\_ Date \_\_\_\_\_

ATTEST:

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**City Clerk**

APPROVED AS TO FORM:

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City Attorney Date

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me, a Notary Public in and for said County and State, personally appeared Susan Sandelman, Trustee of the Esan Trust, who executed the above instrument and acknowledged the execution thereof to be his/her voluntary act and deed on behalf of the Esan Trust.

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

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

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

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

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

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

**BMP Maintenance Requirements**

Name & Location

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

Site Data

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

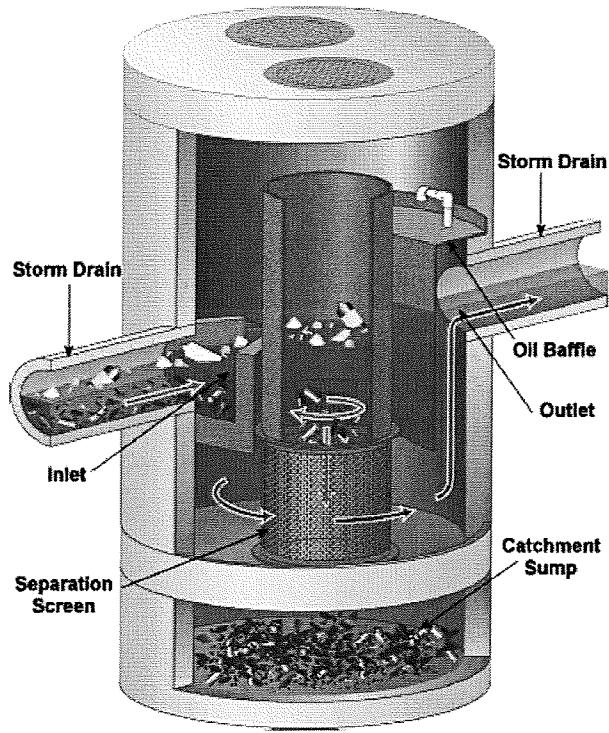
BMP Information

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

**Comment [A1]:** Need to verify that this serves both lots

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

### **Operations and Maintenance Guidelines for CDS Units:**



#### **INSPECTION AND CLEANOUT OVERVIEW**

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

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

## OPERATIONS

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

## CDS UNIT INSPECTIONS/CLEANOUT

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

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

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

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

## CONFINED SPACE

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

### **CDS Unit Record of Operations & Maintenance**

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

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

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

Model Designation:

- CDS3025-6-C

Site Location:

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

Depth from Cover to Bottom Sump (Sump Invert):

- 146 inches

Volume of Sump:

- 163 cubic feet

Volume/Inch of Depth:

- 2.36 cubic feet

Inspections:

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

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

### Inspection Observations:

**Cleanout:**

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

