

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
MARCH 20, 2018 AGENDA

| Subject: | Type: | Submitted By: |
|--|---|-------------------------------------|
| PARTY WALL AND EASEMENT AGREEMENT LOT 15, LA VISTA CITY CENTRE AND LOTS 1 AND 2, LA VISTA CITY CENTRE REPLAT 2 | ◆ RESOLUTION ORDINANCE RECEIVE/FILE | CHRISTOPHER SOLBERG CITY PLANNER |

SYNOPSIS

A resolution has been prepared to approve a Party Wall and Easement Agreement for Lot 15, La Vista City Centre and Lots 1 and 2, La Vista City Centre Replat 2.

FISCAL IMPACT

None.

RECOMMENDATION

Approval.

BACKGROUND

The Party Wall and Easement Agreement is necessary to allow for a shared foundation between Offstreet Parking District No. 2-Structure No. 1 on Lot 2, Replat 2 and the private mixed-use building currently under construction on Lot 15.

The easement language within the agreement allows for a variety of access easements between the three lots involved.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING PARTY WALL AND EASEMENT AGREEMENT, LOT 15, LA VISTA CITY CENTRE, AND LOTS 1 AND 2 LA VISTA CITY CENTRE REPLAT 2.

WHEREAS, the City Council did on March 20, 2018, approve boundary adjustments, property conveyances, vacation of part of Cottonwood Avenue right of way, and replatting of Lots 16 and 17, La Vista City Centre, as Lots 1 and 2, La Vista City Centre Replat 2 ("Boundary Adjustments"); and

WHEREAS, the City Engineer determines that agreements are required for common infrastructure, improvements, and easements as a condition of such Boundary Adjustments, and a proposed Party Wall and Easement Agreement is presented at this meeting for such purposes.

NOW THEREFORE, BE IT RESOLVED, that the Party Wall and Easement Agreement as presented at this meeting hereby is approved, subject to any additions, subtractions, or modifications, as the City Administrator, City Engineer, or her or his designee determines necessary or appropriate, and final exhibits thereto in form and content satisfactory to the City Engineer or his designee ("Agreement").

FURTHER RESOLVED, that the Mayor and City Clerk be and hereby are authorized to execute the Agreement on behalf of the City; and that the Mayor, City Administrator, City Clerk, City Engineer, or his or her designee, shall be authorized to take any additional actions as he or she may determine necessary or advisable to carry out the resolutions approved herein.

PASSED AND APPROVED THIS 20TH DAY OF MARCH, 2018.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

**Pamela A. Buethe, CMC
City Clerk**

-----[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 such 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, a permanent, nonexclusive easement for motor vehicle use of driving lanes and pedestrian use of pedestrian areas, including stairwells, of the City's public offstreet parking facility on Lot 2, as described or 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.
- 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 in and to the easement area described or depicted in Exhibit "C," to construct, install, locate, maintain, repair, remove, and replace from time to time at City's cost a retaining wall as described or 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 and across Lot 1, and on or across Lot 15, as described or 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 84th 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.

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.

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

By: _____
Christopher L. Erickson, Manager

Date: _____, 2018

CITY CENTRE I, LLC,
a Nebraska limited liability company

By: _____
Christopher L. Erickson, Manager

Date: _____, 2018

ATTEST: CITY OF LA VISTA

By: _____
City Clerk Mayor

Date: _____, 2017 Date: _____, 2018

CONSENT OF MORTGAGEE

The undersigned, as the holder of a lien with respect to some or all of the property described in the **PARTY WALL AND EASEMENT AGREEMENT** ("Agreement") above hereby consents and agrees to the Agreement and all terms and conditions thereof.

Dated this _____ day of _____, 2018.

_____, a _____

By _____
Its _____

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this _____ day of _____, 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

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this _____ day of _____, 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

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

On this day of _____ day of _____, 2018, before me, a Notary Public duly commissioned and qualified in and for said County, appeared _____, personally known by me to be the Mayor of the City of La Vista, and _____, 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.

Notary Public

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

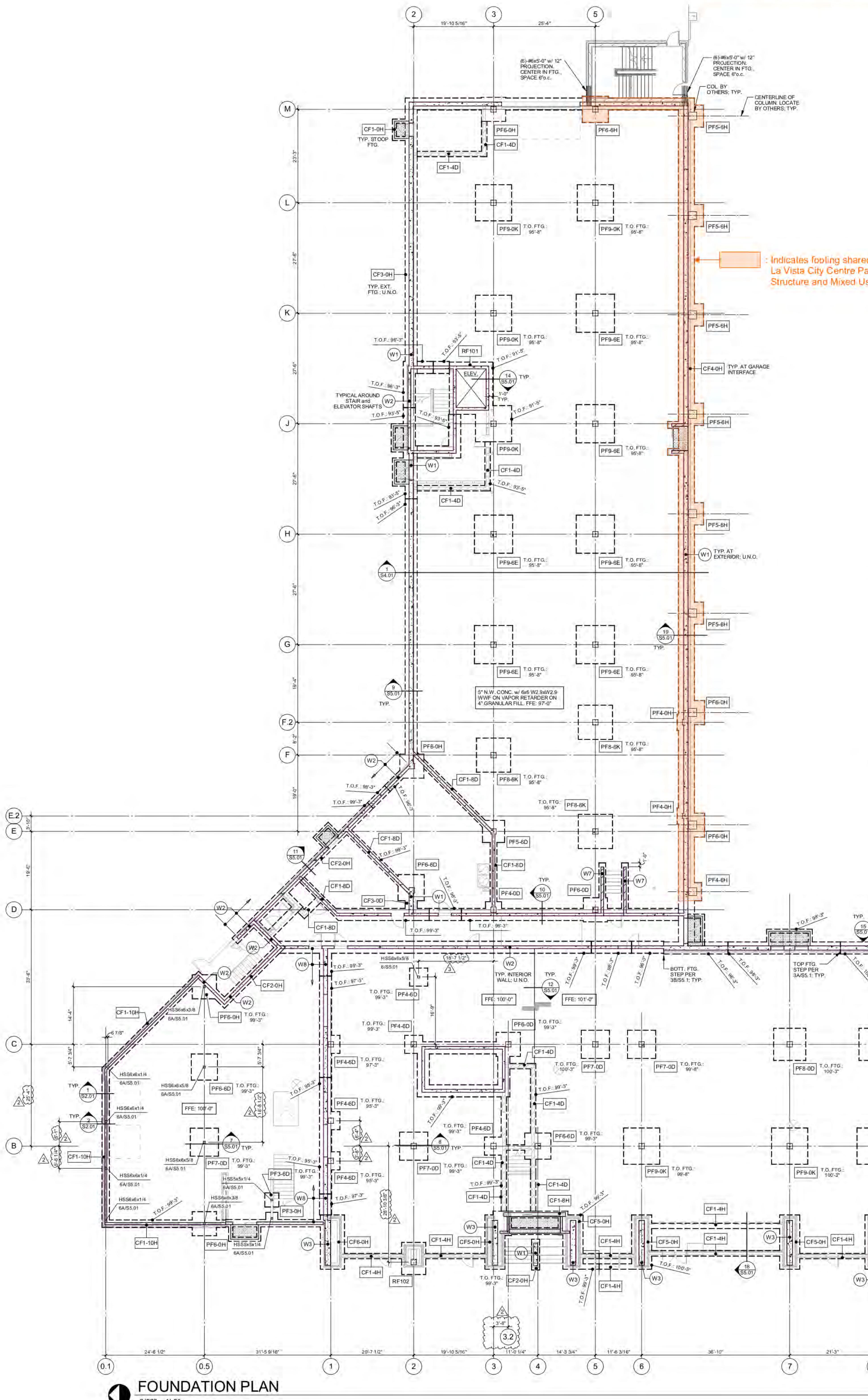
The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, a Nebraska _____ company, as his voluntary act and deed and the voluntary act and deed of said company.

Notary Public

EXHIBIT "A"
PARTY WALL

EXHIBIT A-1

BVH



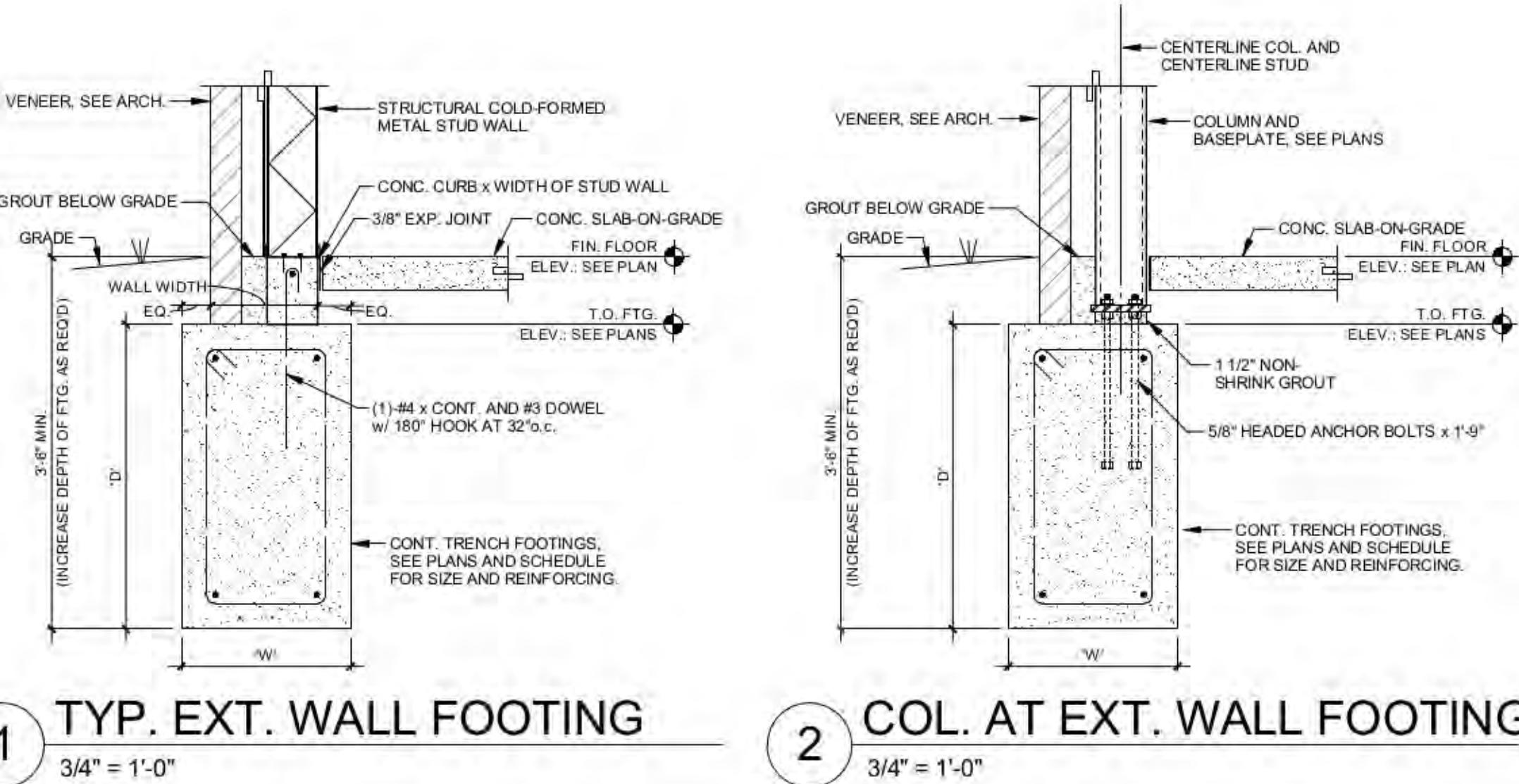
| MARK | SIZE | | | REINFORCING | REMARKS |
|--------|-------|-------|-------|--|----------------------------|
| | W | L | D | | |
| CF1-0H | 1'-0" | 1'-0" | 3'-2" | (1) #6 TOP & BOT. w/ #12 VERT. AT 32! | DO NOT SUPPORT ON GEOPER |
| CF1-4D | 1'-4" | 1'-4" | 3'-2" | (2) #6 TOP & BOT. w/ #3 TIES AT 48! | DO NOT SUPPORT ON GEOPER |
| CF1-4H | 1'-4" | 1'-4" | 3'-2" | (2) #6 TOP & BOT. w/ #3 TIES AT 48! | GEOPER DESIGN FOR 1900 PSF |
| CF1-8D | 1'-8" | 1'-8" | 3'-2" | (2) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| CF1-8H | 1'-8" | 1'-8" | 3'-2" | (2) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| CF2-0H | 2'-0" | 2'-0" | 3'-2" | (2) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| CF3-0D | 3'-0" | 3'-0" | 2'-0" | (3) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| CF3-0H | 3'-0" | 3'-0" | 3'-2" | (3) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| CF4-0D | 4'-0" | 4'-0" | 3'-2" | (2) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| CF4-0H | 4'-0" | 4'-0" | 3'-2" | (2) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| CF4-4H | 4'-6" | 4'-6" | 2'-0" | (5) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| CF4-6H | 4'-6" | 4'-6" | 2'-0" | (5) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| CF5-0D | 5'-0" | 5'-0" | 2'-0" | (3) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| CF5-0H | 5'-0" | 5'-0" | 3'-2" | (3) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| CF5-6D | 5'-6" | 5'-6" | 2'-0" | (6) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| CF5-8H | 5'-6" | 5'-6" | 3'-2" | (6) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| CF6-0D | 6'-0" | 6'-0" | 2'-0" | (6) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| CF6-0H | 6'-0" | 6'-0" | 3'-2" | (6) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| CF6-4D | 6'-6" | 6'-6" | 2'-0" | (7) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| CF6-6H | 6'-6" | 6'-6" | 3'-2" | (7) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| CF7-0D | 7'-0" | 7'-0" | 2'-0" | (7) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| CF7-0H | 7'-0" | 7'-0" | 3'-2" | (7) #6 TOP & BOT. w/ #3 TIES AT 48! | |
| PF3-0H | 3'-0" | 3'-0" | 2'-0" | (3) #4s E.W. TOP & BOT. | |
| PF3-4D | 3'-6" | 3'-6" | 2'-0" | (4) #4s E.W. TOP & BOT. | |
| PF3-6H | 3'-6" | 3'-6" | 2'-0" | (4) #4s E.W. TOP & BOT. | |
| PF4-0H | 4'-0" | 4'-0" | 2'-0" | (4) #4s E.W. TOP & BOT. | |
| PF4-4H | 4'-6" | 4'-6" | 2'-0" | (5) #6s E.W. TOP & BOT. | |
| PF4-6H | 4'-6" | 4'-6" | 2'-0" | (5) #6s E.W. TOP & BOT. | |
| PF5-0H | 5'-0" | 5'-0" | 2'-0" | (5) #6s E.W. TOP & BOT. | |
| PF5-4H | 5'-6" | 5'-6" | 2'-0" | (6) #6s E.W. TOP & BOT. | |
| PF5-6H | 5'-6" | 5'-6" | 3'-2" | (6) #6s E.W. TOP & BOT. | |
| PF6-0H | 6'-0" | 6'-0" | 2'-0" | (6) #6s E.W. TOP & BOT. | |
| PF6-4H | 6'-6" | 6'-6" | 2'-0" | (7) #6s E.W. TOP & BOT. | |
| PF6-6H | 6'-6" | 6'-6" | 3'-2" | (7) #6s E.W. TOP & BOT. | |
| PF7-0H | 7'-0" | 7'-0" | 2'-0" | (7) #6s E.W. TOP & BOT. | |
| PF7-4H | 7'-6" | 7'-6" | 2'-0" | (8) #6s E.W. TOP & BOT. | |
| PF8-0H | 8'-0" | 8'-0" | 2'-0" | (9) #6s E.W. TOP & BOT. | |
| PF9-0K | 9'-0" | 9'-0" | 2'-3" | (10) #6s E.W. TOP & BOT. | |
| PF9-6E | 9'-6" | 9'-6" | 2'-6" | (10) #6s E.W. TOP & BOT. | |
| RF101 | — | — | 2'-3" | #5s AT 12!c. TOP & BOT. | |
| RF102 | 6'-0" | 6'-0" | 5'-2" | #5s AT 12!c. TOP & BOT. | |

ARCHITECT
BVI ARCHITECTURE
901 JONES STREET
OMAHA, NE 68102
V 402 330 3080
F 402 330 5866
www.bviv.com

STRUCTURAL ENGINEER
T2
1038 OLD MILL RD
OMAHA, NE 68154
V 402 330 8860
F 402 330 5866
www.t2co.com

MECHANICAL & ELECTRICAL ENGINEER
MORRISSEY ENGINEERING
200 N 18TH ST
OMAHA, NE 68102
V 402 491 4144
F 402 491 4168
www.morrisseyengineering.com

| WALL | TYPE | THICKNESS/ SIZE | REINFORCING | | REMARKS |
|------|----------|-----------------|---|------------|----------------------------------|
| | | | VERTICAL | HORIZONTAL | |
| W1 | CONCRETE | 12" | #5s AT 18!c. EA FACE | | |
| W2 | CONCRETE | 8" | #5s AT 18!c. | | |
| W3 | CONCRETE | 16" | #5s AT 18!c. EA FACE | | |
| W4 | MASONRY | 8" (NOMINAL) | (1) #4s CENTERED IN CELLS AT 16!c. | | GROUT WALL SOLID |
| W5A | MASONRY | 8" (NOMINAL) | (1) #4s CENTERED IN CELLS AT 16!c. | | JOINT REINFORCING AT 16!c. |
| W5B | MASONRY | 8" (NOMINAL) | (1) #4s CENTERED IN CELLS AT 16!c. | | GROUT WALL SOLID |
| W6 | MASONRY | 8" (NOMINAL) | (1) #4s CENTERED IN CELLS AT 48!c. | | JOINT REINFORCING AT 16!c. |
| W7 | MASONRY | 8" (NOMINAL) | (1) #4s CENTERED IN CELLS AT 32!c. | | 9 ga. JOINT REINF. AT 16!c. |
| W8 | CONCRETE | 12" | #6s AT 12!c. EA FACE | | 9 ga. JOINT REINF. AT 16!c. |



FOUNDATION PLAN NOTES:
1- SEE STRUCTURAL NOTES ON SHEET S0.00
2- COORDINATE AND VERIFY ALL DIMENSIONS WITH ARCHITECTURAL DRAWINGS AND EXIST. CONDITIONS.
3- TOP OF FOOTING ELEVATION = 90'-0" UNLESS NOTED OTHERWISE THUS: T.O.F. = xx'-xx"
4- F- MARK: SEE SCHEDULE ON SHEET S1.00.
5- W- WALL MARK: SEE SCHEDULE ON SHEET S1.00.
6- SEE DETAIL 1355.01 FOR CONTROL JOINTS. CONTRACTOR TO SUBMIT CONTROL JOINT LOCATION PLAN TO ARCHITECT FOR REVIEW AT WALLS EXPOSED TO VIEW

LAVISTA CITY CENTRE
MIXED USE - SOUTH

PROJECT: F16102

DATE: 04/17/2017

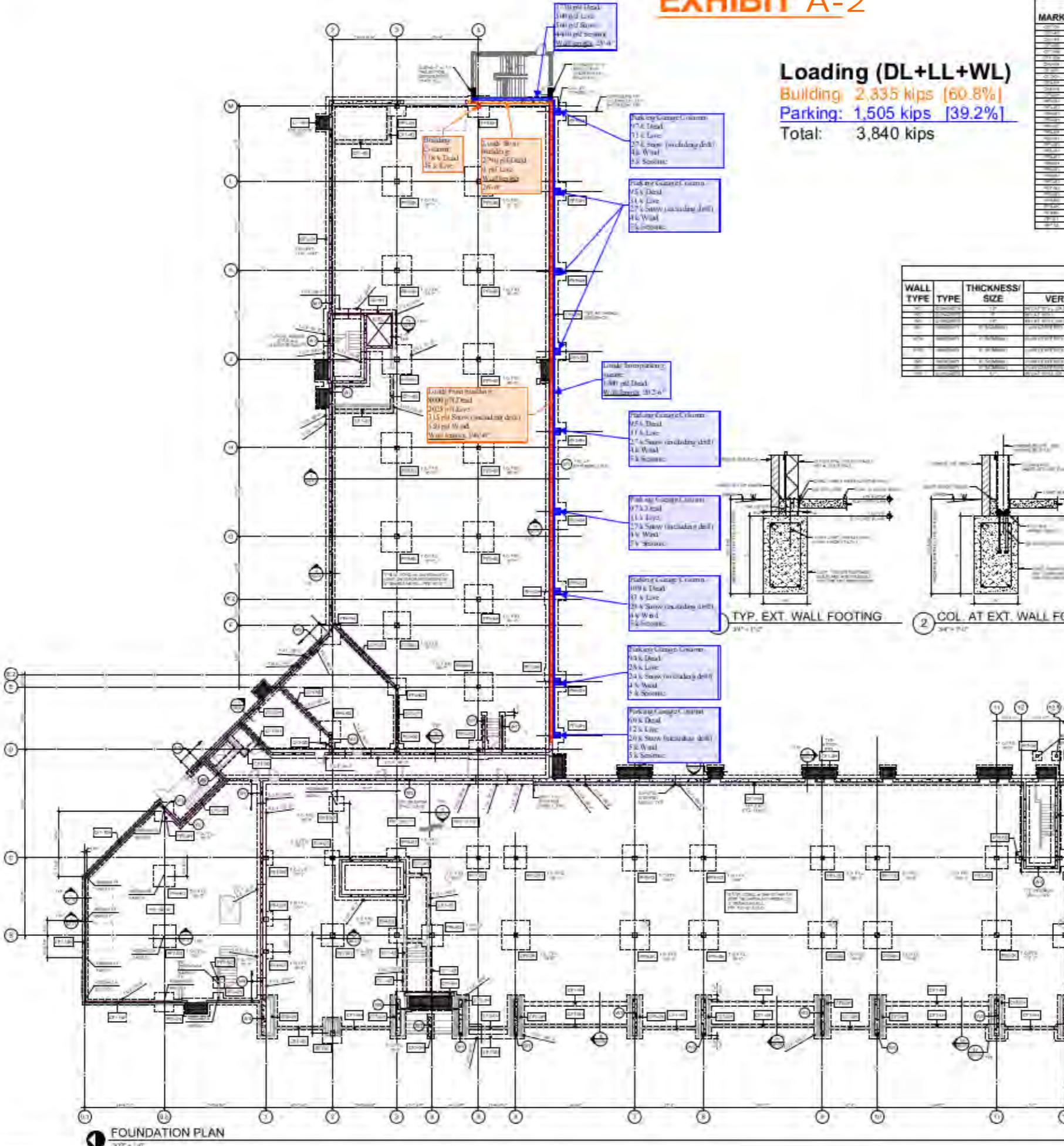
STATE OF NEBRASKA
SOCIETY OF PROFESSIONAL ENGINEERS
4/17/2017

FOUNDATION PLAN

S2.01

EXHIBIT A-2

Loading (DL+LL+WL)
Building: 2,835 kips [60.8%]
Parking: 1,505 kips [39.2%]
Total: 3,840 kips



LAVISTA CITY CENTRE
MIXED USE - SOUTH

PHOTOGRAPH 3 - 2000-001241

4/17/2017

– S2.01

EXHIBIT "B"
ALLOCATION OF PARTY WALL COSTS & EXPENSES

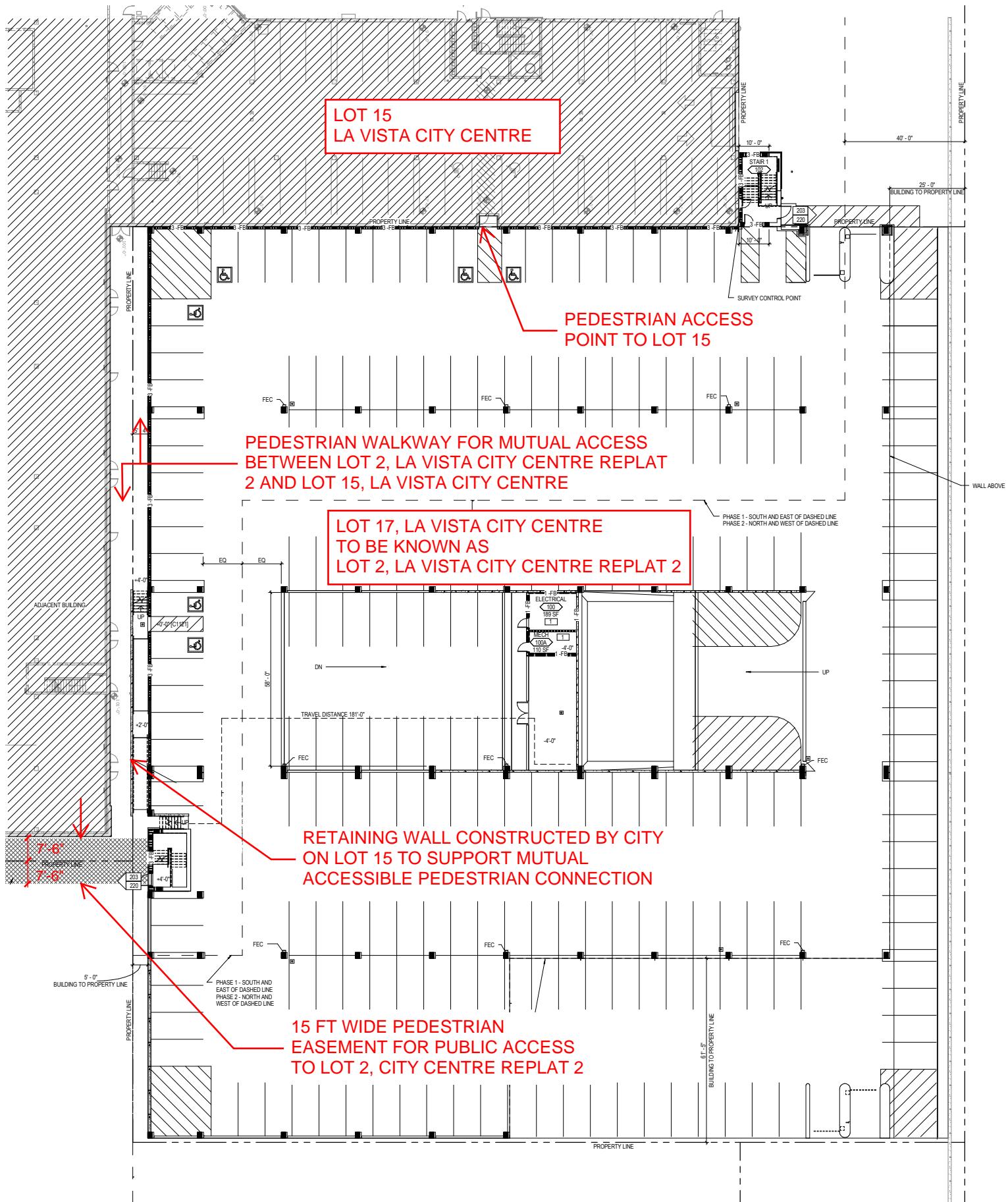
Except as otherwise provided in the Agreement, all costs and expenses of the Party Wall shall be allocated between Lot 1 and Lot 2, La Vista City Centre Replat 2 as follows:

| | <u>Lot 1</u> | <u>Lot 2</u> |
|---------------------------|--|--|
| Initial Construction | As agreed by City Engineer NTE 40% of allocable costs | As agreed by Manager of owner of Lot 2, 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.

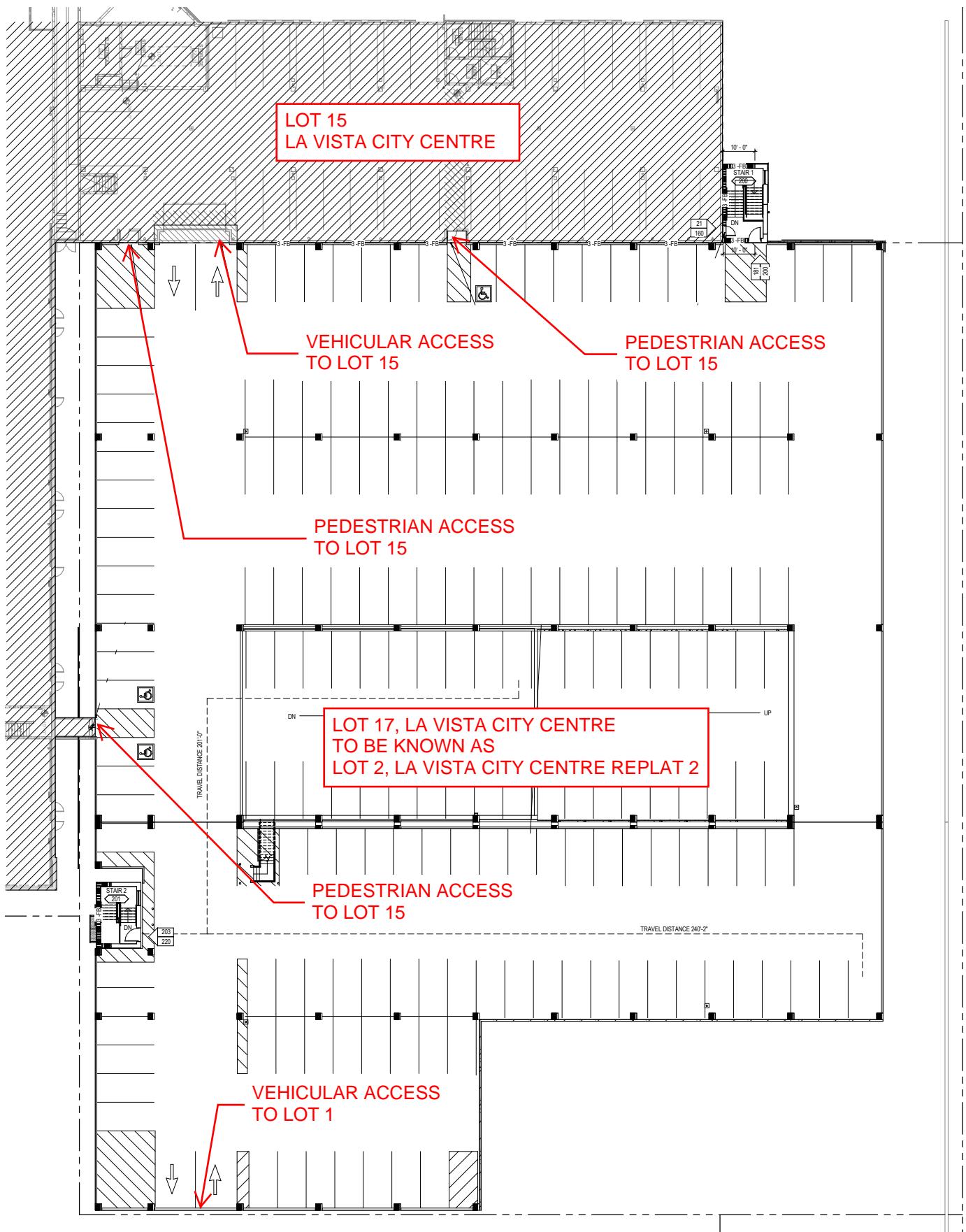
EXHIBIT "C"

EASEMENT AREAS



LOT 16, LA VISTA CITY CENTRE
TO BE KNOWN AS
LOT 1, LA VISTA CITY CENTRE REPLAT 2

LEVEL ONE
INGRESS-EGRESS
EXHIBIT 1



LOT 16, LA VISTA CITY CENTRE
TO BE KNOWN AS
LOT 1, LA VISTA CITY CENTRE REPLAT 2

LEVEL TWO
INGRESS-EGRESS
EXHIBIT 2