

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
AUGUST 7, 2012 AGENDA

Subject:	Type:	Submitted By:
APPLICATION FOR REPLAT AND SUBDIVISION AGREEMENT APPROVAL — LOTS 1 & 2, SOUTHWIND REPLAT THREE (NE OF 96 TH & GILES)	◆ RESOLUTION ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

SYNOPSIS

On July 17, 2012, Council continued the public hearing to this meeting and resolutions have been prepared to approve a replat application and subdivision agreement for Lots 1 and 2, Southwind Replat Three (a replat of Lot 177, Southwind), generally located northeast of 96th Street and Giles Road.

FISCAL IMPACT

None.

RECOMMENDATION

Approve.

BACKGROUND

A public hearing was continued from the July 17, 2012 meeting and resolutions have been prepared to approve a replat application and subdivision agreement for Lots 1 and 2, Southwind Replat Three, generally located northeast of 96th Street and Giles Road. The application was submitted by Kimley-Horn and Associates, Inc. on behalf of the property owner, BHI Development Inc. The property is zoned C-1, Shopping Center Commercial, with the Gateway Corridor Overlay District. The property is currently vacant; proposed Lot 2 is anticipated to be developed as a Walmart Neighborhood Market.

A subdivision agreement has been prepared and details the responsibilities of the parties including access to the development, construction of sanitary sewers, shared roadway construction, payment of tract sewer connection fees, payment of storm water management fees, sidewalks and other improvements.

A detailed staff report is attached.

On November 17, 2011, the Planning Commission unanimously recommended approval of the proposed replat.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, FOR APPROVAL OF THE REPLAT FOR LOT 177, SOUTHWIND, TO BE REPLATTED AS LOTS 1, AND 2, SOUTHWIND REPLAT THREE, A SUBDIVISION LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., IN SARPY COUNTY, NEBRASKA.

WHEREAS, the owners of the above described piece of property have made application for approval of a Replat for Lot 177, Southwind, to be replatted as Lots 1 and 2, Southwind Replat Three; and

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

WHEREAS, on November 17, 2011, the La Vista Planning Commission held a public hearing and reviewed the replat and recommended approval.

NOW THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of La Vista, Nebraska, that the plat for Lot 177, Southwind, to be replatted as Lots 1 and 2, Southwind Replat Three, a subdivision located in the Southwest $\frac{1}{4}$ of Section 15, Township 14 North, Range 12 East of the 6th P.M., Sarpy County, Nebraska, generally located northeast of 96th Street and Giles Road, be, and hereby is, approved..

PASSED AND APPROVED THIS 7TH DAY OF AUGUST, 2012.

CITY OF LA VISTA

ATTEST:

Douglas Kindig, Mayor

Pamela A. Buethe, CMC
City Clerk

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, SOUTHWIND REPLAT THREE SUBDIVISION.

WHEREAS, the City Council did on August 7, 2012, approve the replat for Lots 1 and 2, Southwind Replat Three Subdivision subject to certain conditions; and

WHEREAS, the Subdivider, BHI Development, Inc., has agreed to execute a Subdivision Agreement satisfactory in form and content to the City; and

NOW THEREFORE, BE IT RESOLVED, that the Subdivision Agreement presented at the August 7, 2012, City Council meeting for the Southwind Replat Three 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, subject to the conditions of Council Replat approval and with such revisions that the City Administrator or City Engineer may determine necessary or advisable.

PASSED AND APPROVED THIS 7TH DAY OF AUGUST, 2012.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

**CITY OF LA VISTA
PLANNING DIVISION**

RECOMMENDATION REPORT

CASE NUMBER:

FOR HEARING OF: August 7, 2011

Report Prepared on: August 1, 2011

I. GENERAL INFORMATION

A. APPLICANT:

Kimley-Horn and Associates, Inc.
2550 University Ave West, Ste 238N
St. Paul, MN 55114

B. PROPERTY OWNER:

BHI Development Inc.
11205 S. 150th Street, Ste 100
Omaha, NE 68138

C. LOCATION: Northeast of 96th Street and Giles Road

D. LEGAL DESCRIPTION: Lot 177, Southwind

E. REQUESTED ACTION(S): Replatting of Lot 177 into two lots and providing for right-of-way dedication.

F. EXISTING ZONING AND LAND USE: C-1, Shopping Center Commercial, Gateway Corridor Overlay District

G. PURPOSE OF REQUEST: Development of one lot for Food Sales (General) as per 5.10.02.06 of the Zoning Ordinance; creation of separate lot for further development, provision of right-of-way dedication for traffic improvements.

H. SIZE OF SITE: 10.66 Acres

II. BACKGROUND INFORMATION

A. EXISTING CONDITION OF SITE: Existing Lot 177 is a relatively flat, vacant lot behind the existing Casey's General Store.

B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:

1. **North:** R-3 High Density Residential/Southwind Villas Apartments
2. **East:** R-1 Single-Family Residential and R-2 Two-Family Residential/Villas at Southwind
3. **South:** R-2 - Single-Family Residential (Medium-Density) (Papillion)

4. **West:** C-1 Shopping Center Commercial/Mayfair commercial area (Alegent Clinic)

C. RELEVANT CASE HISTORY: Not applicable.

D. APPLICABLE REGULATIONS:

1. Section 5.10 of the Zoning Regulations – C-1 Shopping Center Commercial
- 2.
3. Section 3.08 of the Subdivision Regulations – Replots

III. ANALYSIS

A. COMPREHENSIVE PLAN: The Future Land Use Map of the Comprehensive Plan designates the area for Commercial development.

B. OTHER PLANS: Not applicable.

C. TRAFFIC AND ACCESS:

1. The original platting of Southwind identified the permissible access points to this property. The proposed development plan is utilizing the permitted access points. At the City's request a traffic impact study was conducted. As a result of this study a northbound right-turn bay is warranted at the full access point onto 96th Street. The applicant is proposing to construct a right-turn bay.

The study also indicates a traffic signal at the full access point onto 96th Street may be warranted as traffic volumes increase due to this project and other commercial developments using this access. Participation in the signal is addressed in the Subdivision Agreement.

2. There is an existing cross easement on the property for ingress and egress to serve this property as well as the existing commercial property on Lots 178 and 179 abutting the site on the south.
3. The City obtained the services of Felsburg, Holt, & Ullevig (FHU) to review the Traffic Impact Analysis as they have traffic engineering experience. FHU has reviewed a revised submittal and approved of the Traffic Impact Analysis in a November 1, 2011 email.

UTILITIES:

4. Sanitary sewer is available to serve proposed Lot 1 along its easterly and southerly perimeter. Sanitary sewer for proposed Lot 2 is shown to be provided by a separate sanitary sewer extension across Lot 1. An easement across Lot 1 has been provided in the plat document.
5. The property presently has access to water, gas, power and communication utilities.

IV. REVIEW COMMENTS:

1. Chapter 154 of the City Municipal Code requires a Post Construction Storm Water Management Plan and a permit will be required through the Permix web site that is utilized by all Papillion Creek Watershed Partnership communities. A Post Construction Storm Water Management Plan has been provided and a draft Maintenance Agreement has been provided in the draft Subdivision Agreement. The PCSMP will be reviewed in detail as part of the review process through the Permix web site, but the concept of using an extended detention basin to serve both lots is acceptable. Stormwater Management fees will be collected and remitted to the Papillion Creek Watershed Partnership.

V. PLANNING COMMISSION RECOMMENDATION:

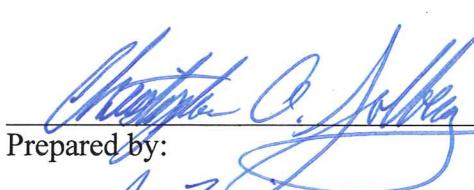
Approval of Southwind Replat Three.

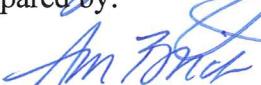
VI. ATTACHMENTS TO REPORT:

1. Vicinity Map
2. Preliminary Plat, Final Plat
3. Subdivision Agreement with Exhibits

VII. COPIES OF REPORT SENT TO:

1. Wil Matzek, Kimley-Horn and Associates, Inc.
2. Larry Jobeun, Fullenkamp, Doyle & Jobeun
3. Public Upon Request


Prepared by:

 8-2-12

Community Development Director

Date

96th Street

S 94th St

Hillcrest Dr

94th Street

Giles Road

Lambert Dr

Reeve Dr



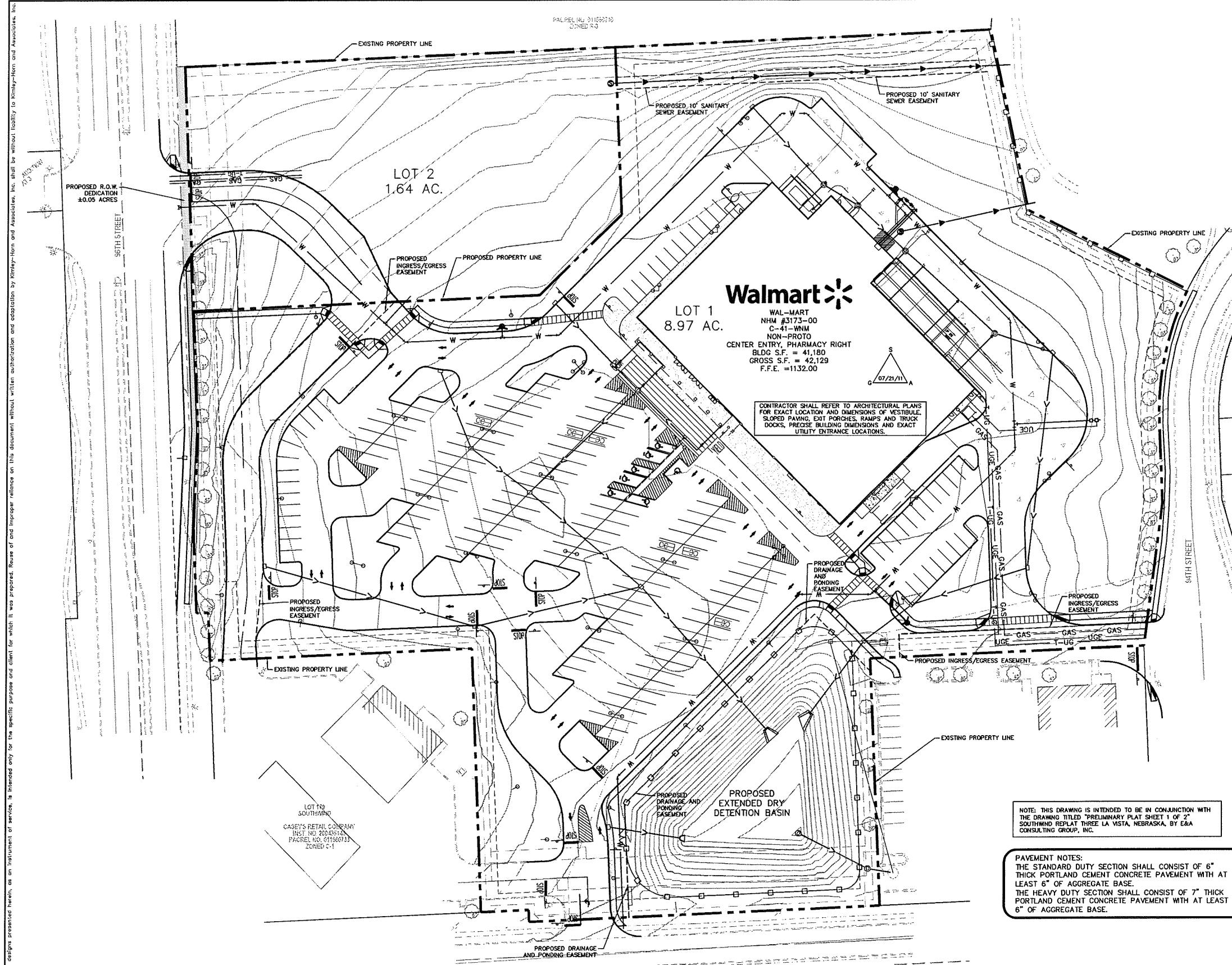
0 50 100 200
Feet

Subject Area Map

Southwind Replat 3

November 17, 2011
CAS





NOTE: THIS DRAWING IS INTENDED TO BE IN CONJUNCTION WITH THE DRAWING TITLED "PRELIMINARY PLAT SHEET 1 OF 2" SOUTHWIND REPLAY THREE LA VISTA, NEBRASKA, BY E&A CONSULTING GROUP, INC.

PAVEMENT NOTES:
THE STANDARD DUTY SECTION SHALL CONSIST OF 6" THICK PORTLAND CEMENT CONCRETE PAVEMENT WITH AT LEAST 6" OF AGGREGATE BASE.
THE HEAVY DUTY SECTION SHALL CONSIST OF 7" THICK PORTLAND CEMENT CONCRETE PAVEMENT WITH AT LEAST 6" OF AGGREGATE BASE.



GRAPHIC SCALE IN FEET
0 20 40 60 80

96TH AND GILES		Walmart STORE #3173-00		PRELIMINARY PLAT	
LOT 1	LA VISTA	SARPY COUNTY	NEBRASKA		
DATE 10/03/2011	PROJECT NO. 116199081				
REVISIONS	DATE				
1	10/26/11				
No.	REVISED PER CITY COMMENTS				

1	REvised per City Comments	10/26/11	WA
No.	REVISED PER CITY COMMENTS	DATE	WA

SOUTHWIND REPLAT THREE

LOTS 1 AND 2 INCLUSIVE

BEING A REPLAT OF LOT 177, SOUTHWIND, A SUBDIVISION LOCATED IN THE SW 1/4 OF SECTION 15, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6th P.M., SARPY COUNTY, NEBRASKA.

DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT WE, BHI INVESTMENT CO., INC., OWNERS OF THE PROPERTY DESCRIBED IN THE CERTIFICATION OF SURVEY AND EMBRACED WITHIN THE PLAT, HAVE CAUSED SAID LAND TO BE SUBDIVIDED INTO LOTS AND STREETS TO BE NUMBERED AND NAMED AS SHOWN, SAID SUBDIVISION TO BE HEREAFTER KNOWN AS SOUTHWIND REPLAT THREE (LOTS TO BE NUMBERED AS SHOWN), AND WE DO HEREBY RATIFY AND APPROVE OF THE DISPOSITION OF OUR PROPERTY AS SHOWN ON THE PLAT, AND WE DO HEREBY GRANT EASEMENTS AS SHOWN ON THIS PLAT, WE DO FURTHER GRANT A PERPETUAL EASEMENT TO THE OMAHA PUBLIC POWER DISTRICT, CENTURYLINK COMMUNICATIONS AND ANY COMPANY WHICH HAS BEEN GRANTED A FRANCHISE TO PROVIDE A CABLE TELEVISION SYSTEM IN THE AREA TO BE SUBDIVIDED, THEIR SUCCESSORS AND ASSIGNS, TO ERECT, OPERATE, MAINTAIN, REPAIR AND RENEW POLES, WIRES, CABLES, CONDUITS AND OTHER RELATED FACILITIES, AND TO EXTEND THEREON WIRES OR CABLES FOR THE CARRYING AND TRANSMISSION OF ELECTRIC CURRENT FOR LIGHT, HEAT AND POWER AND FOR THE TRANSMISSION OF SIGNALS AND SOUNDS OF ALL KINDS INCLUDING SIGNALS PROVIDED BY A CABLE TELEVISION SYSTEM, AND THE RECEPTION ON, OVER, THROUGH, UNDER AND ACROSS A FIVE-FOOT (5') WIDE STRIP OF LAND ABUTTING ALL FRONT AND SIDE BOUNDARY LOT LINES; AN EIGHT-FOOT (8') WIDE STRIP OF LAND ABUTTING THE REAR BOUNDARY LINES OF ALL INTERIOR LOTS; AND A SIXTEEN-FOOT (16') WIDE STRIP OF LAND ABUTTING THE REAR BOUNDARY LINES OF ALL EXTERIOR LOTS. THE TERM EXTERIOR LOTS IS HEREIN DEFINED AS THOSE LOTS FORMING THE OUTER PERIMETER OF THE ABOVE-DESCRIBED ADDITION. SAID SIXTEEN-FOOT (16') WIDE EASEMENT WILL BE REDUCED TO AN EIGHT-FOOT (8') WIDE STRIP WHEN THE ADJACENT LAND IS SURVEYED, PLATTED AND RECORDED AND WE DO FURTHER GRANT A PERPETUAL EASEMENT TO METROPOLITAN UTILITIES DISTRICT OF OMAHA AND BLACK HILLS ENERGY, THEIR SUCCESSORS AND ASSIGNS, TO ERECT, INSTALL, OPERATE, MAINTAIN, REPAIR AND RENEW PIPELINES, HYDRANTS AND OTHER RELATED FACILITIES, AND TO EXTEND THEREON PIPES FOR THE TRANSMISSION OF GAS AND WATER ON, THROUGH, UNDER AND ACROSS A FIVE-FOOT (5') WIDE STRIP OF LAND ABUTTING ALL CUL-DE-SAC STREETS. NO PERMANENT GATES OR RETAINING WALLS SHALL BE PLACED IN THE SAID EASEMENT WAYS, BUT THE SAME MAY BE USED FOR GARDENS, SHRUBS, LANDSCAPING AND OTHER PURPOSES THAT DO NOT THEN OR LATER INTERFERE WITH THE AFORESAID USES OR RIGHTS HEREIN GRANTED.

BHI INVESTMENT CO., INC.

MUTUAL OF OMAHA BANK

BY: GERALD L. TORCZON, PRESIDENT

BY:

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA
COUNTY OF SARPY)

ON THIS _____ DAY OF _____, BEFORE ME A NOTARY PUBLIC, DULY COMMISSIONED AND QUALIFIED IN AND FOR SAID COUNTY, APPEARED GERALD L. TORCZON, PRESIDENT OF BHI INVESTMENT CO., INC., PERSONALLY KNOWN BY ME TO BE THE IDENTICAL PERSON WHOSE NAME IS AFFIXED TO THE DEDICATION ON THIS PLAT, AND ACKNOWLEDGED THE EXECUTION THEREOF TO BE HIS VOLUNTARY ACT AND DEED AS PRESIDENT OF SAID CORPORATION.

WITNESS MY HAND AND NOTARIAL SEAL THE DAY AND YEAR LAST ABOVE WRITTEN.

NOTARY PUBLIC

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA
COUNTY OF SARPY)

ON THIS _____ DAY OF _____, BEFORE ME A NOTARY PUBLIC, DULY COMMISSIONED AND QUALIFIED IN AND FOR SAID COUNTY, APPEARED _____ OF MUTUAL OF OMAHA BANK, PERSONALLY KNOWN BY ME TO BE THE IDENTICAL PERSON WHOSE NAME IS AFFIXED TO THE DEDICATION ON THIS PLAT, AND ACKNOWLEDGED THE EXECUTION THEREOF TO BE HIS VOLUNTARY ACT AND DEED AS PRESIDENT OF SAID CORPORATION.

WITNESS MY HAND AND NOTARIAL SEAL THE DAY AND YEAR LAST ABOVE WRITTEN.

NOTARY PUBLIC

APPROVAL OF LA VISTA CITY PLANNING COMMISSION

THIS PLAT OF SOUTHWIND REPLAT THREE (LOTS NUMBERED AS SHOWN) WAS APPROVED BY THE CITY PLANNING COMMISSION ON THIS _____ DAY OF _____.

CHAIRMAN OF LA VISTA CITY PLANNING COMMISSION

REVIEW OF SARPY COUNTY SURVEYOR

THIS PLAT OF SOUTHWIND REPLAT THREE (LOTS NUMBERED AS SHOWN) WAS REVIEWED BY THE OFFICE OF THE SARPY COUNTY SURVEYOR ON THIS _____ DAY OF _____.

SARPY COUNTY SURVEYOR

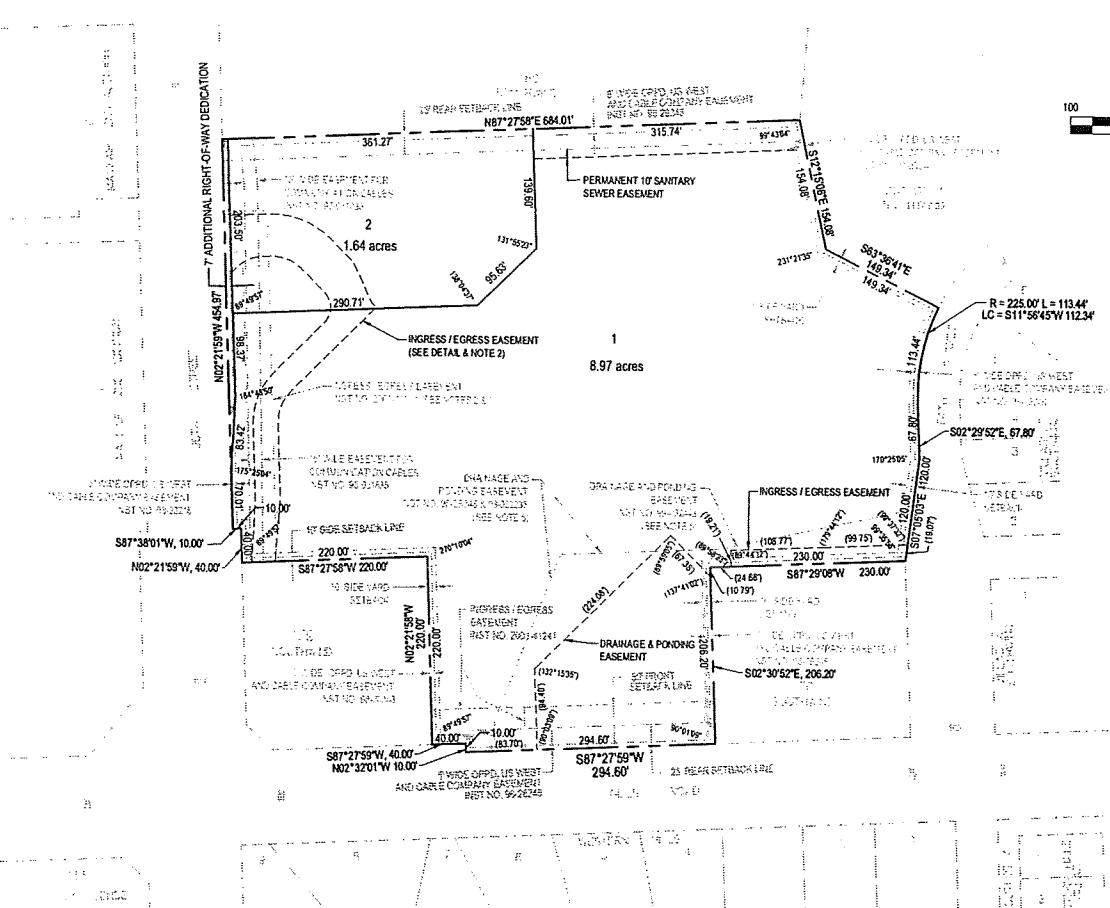
E&A CONSULTING GROUP, INC.
ENGINEERING • PLANNING • FIELD SERVICES

330 NORTH 117TH STREET OMAHA, NE 68144
PHONE: (402) 855-4700 FAX: (402) 855-3599
WWW.eacg.com

SOUTHWIND REPLAT THREE
LA VISTA, NEBRASKA

FINAL PLAT

Proj No:	P2011-02-013	Date:	11-26-11
Revisions:	(No)	Date:	
Designed By:		NAV	
Drawn By:		TRM	
Sale:	1	1 of 100	
Sheet:	1	of	1



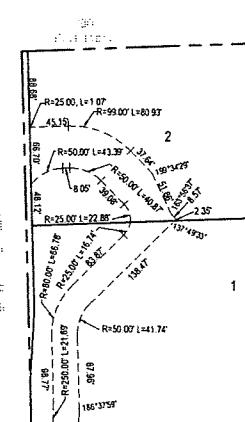
LEGEND
— BOUNDARY LINE
— LOT LINE
- - - EXISTING EASEMENTS
- - - PROPOSED EASEMENTS

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE MADE A GROUND SURVEY OF THE SUBDIVISION DESCRIBED HEREIN AS SOUTHWIND REPLAT THREE. I CERTIFY THAT I HAVE SURVEYED THE PROPERTY DESCRIBED HEREON AND THAT PERMANENT MARKERS HAVE BEEN FOUND OR SET AT ALL CORNERS OF THE LOT BEING PLATTED.

SAID TRACT OF LAND CONTAINS AND AREA OF 464,226 SQUARE FEET OR 10.66 ACRES MORE OR LESS.

JASON HEADLEY L.S. 604 DATE



ACCEPTANCE BY SARPY COUNTY REGISTER OF DEEDS

RECORDED ON THIS _____ DAY OF _____.

SARPY COUNTY REGISTER OF DEEDS

[Space above the line for recording data]

Subdivision Agreement
Southwind Replat Three

This Subdivision Agreement (this "Agreement" or "Subdivision Agreement") is made and entered into this _____ day of _____, 2012, by and between WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware statutory trust (hereinafter referred to as "Subdivider"), BHI Investment Company, Inc., a _____ (hereinafter referred to as "BHI", and the CITY OF LA VISTA, NEBRASKA (hereinafter referred to as "City").

WHEREAS, BHI is the owner and has a contract to sell to Subdivider, and Subdivider has a contract to purchase from BHI, the land shown on the proposed Final Plat attached hereto as Exhibit A (hereinafter referred to as the "Property") and any private improvements thereon; and

WHEREAS, the attached Final Plat is a replat of Lot 177, Southwind, into two lots – being Lots 1 and 2, Southwind Replat Three; and

WHEREAS, Subdivider at its cost proposes to construct buildings and other private improvements on or serving Lots 1 and 2, with Lot 1 to be used for the operation of an approximately 42,000 square foot Walmart Neighborhood Market, and Lot 2 to be held by Subdivider for possible future development ("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 has caused a traffic impact study to be performed which shows that vehicular access to and from 96th Street at the location identified on Exhibit B is not expected to meet traffic signal warrants under the Manual of Uniform Traffic Control Devices immediately upon development of Lot 1 shown on Exhibit A, though warrants subsequently

might be met and Subdivider and City desire to provide for acquisition and installation of traffic signals for vehicular access to and from 96th Street at the locations identified on Exhibit B, when warranted, at the cost of Subdivider and the owners of other specially benefited commercial properties as determined by the City.

WHEREAS, Subdivider, BHI 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 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, paving of public streets, sidewalks, and landscaping (hereinafter referred to as "Improvements"). City hereby approves the street layout, access, curb cuts and other matters shown on Exhibit B as they relate to the proposed development and operation of the Walmart Neighborhood Market on Lot 1. 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. Although Subdivider shall have no obligation to proceed with its proposed development of the Property for a Walmart Neighborhood Market on Lot 1, in the event Subdivider elects to proceed with said proposed development of the Property, then all of such Improvements shall be constructed by Subdivider at its sole cost and expense, and, to the extent located solely on the Property or provided in this Agreement, maintained by Subdivider at its own expense; and Subdivider shall substantially complete all of such Improvements by not later than the issuance of a Certificate of Occupancy for the Walmart Neighborhood Market on Lot 1. 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 any existing improvements or 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 Easement Agreement recorded in the office of the Register of Deeds of Sarpy County, Nebraska, on December 11, 2001 as Instrument No. 2001-41241 (the "Casey's Easement")

B. Not in limitation of the foregoing, Subdivider and adjacent property owners, before City releases the Final Plat for recording, shall enter an easement and maintenance agreement with respect to the private drives and other areas depicted on Exhibit E, in form and content satisfactory to the City Engineer unless easements for

access to, and maintenance of, such drives and areas already exist and have been recorded, in form and content satisfactory to the City Engineer.

The City hereby acknowledges that Subdivider as of the date hereof may not own fee title to the Property. The parties further agree that none of the obligations set forth herein shall be binding on any party unless Subdivider within 24 months after the date of this Agreement acquires fee title to the Property, picks up and pays for a building permit and diligently proceeds to construct the Improvements and development of the Walmart Neighborhood Market on Lot 1 of the Property, in Subdivider's sole and absolute discretion; provided, however, if Subdivider within 24 months after the date of this Agreement fails to acquire fee title to the Property, pick up and pay for a building permit and diligently proceed to construct the Improvements and development of the Walmart Neighborhood Market on Lot 1 of the Property, neither Subdivider nor BHI shall be required, nor entitled without written consent of the City, to move forward with said project, and, absent the desire of Subdivider or BHI, with written consent of the City, to move forward with said project, this Agreement, any building permit that has been issued and the Final Plat shall be null and void and of no effect, the Final Plat shall be vacated pursuant to Neb. Rev. Stat. Section 19-917, and all obligations of the parties as set forth in this Agreement shall cease, with the exception of obligations of this paragraph that follow. If the Final Plat shall be so vacated, the parties agree that this Subsection 1B shall be deemed to constitute and shall suffice as an irrevocable petition to the City of the owners of all lots or lands to vacate the Final Plat in its entirety pursuant to Neb. Rev. Stat. Section 19-917, and no further action of any owner shall be required for the City to proceed to vacate said plat. The parties agree that any party may record with the Sarpy County Register of Deeds the certified ordinance vacating the Final Plat. Upon vacating the Final Plat, the Property automatically shall revert and again become Lot 177, Southwind, subject to any subsequent replat proposed by the owner and approved by the City pursuant to Neb. Rev. Stat. Section 19-917 and any other applicable laws or regulations.

The City agrees to grant to Subdivider or Subdivider's contractors or agents any temporary construction easement to enter onto property of the City and to regulate pedestrian and vehicular traffic to such areas as required for construction of the Improvements, in form and content satisfactory to the City Engineer.

2. **Water, Gas and Electrical Power:** In the event Subdivider elects to proceed with its proposed development of the Walmart Neighborhood Market on Lot 1, 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 picking up its building permit for said proposed development. 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: Upon picking up its building permit for its proposed development of the Walmart Neighborhood Market on Lot 1, Subdivider agrees to commence the timely and orderly installation of the Improvements in accordance with 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.

Subject to all other provisions of the Agreement and any exhibits hereto attached, to the extent any of the Improvements constructed pursuant to this Agreement are not considered already owned by the City, Subdivider, upon completion of said Improvements and without charge to the City, hereby unconditionally gives, grants, conveys and fully dedicates Improvements comprising the widening of 96th Street for the right turn bay, including relocated public sidewalks, and public sidewalks along 94th Street to the City, its successors and assigns free and clear of all encumbrances, subject to any further action required of Subdivider or City to complete said conveyance, and City thereafter shall be responsible for maintenance, repairs and replacements of said Improvements comprising the widening of 96th Street for the right turn bay, excluding relocated public sidewalks, in accordance with all applicable laws, regulations and requirements. Notwithstanding the foregoing, Subdivider shall retain ownership to all private improvements located on the Property and Improvements comprising the storm water detention area as reconfigured, and Subdivider shall have responsibility for maintenance, repairs and replacements of all private improvements, the Improvements comprising the public sidewalk along 94th Street, the public sidewalks relocated with the widening of 96th Street, and storm water detention area as reconfigured, and any other improvements if so provided in this Agreement, in accordance with all applicable laws, regulations and requirements.

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 Property 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	8.97 ± AC @ \$5,973/AC	\$53,577.81
Lot 2, Commercial	1.64 ± AC @ \$5,973/AC	<u>\$ 9,795.72</u>
Total Fee		\$63,373.53

6. **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 Forty One Thousand Forty Nine and 84/100ths Dollars (\$41,049.84) for construction of the Improvements, 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 showing that the City accepts the public improvements as constructed by Subdivider shall operate as a release of such financial guarantee.

Subdivider shall also require its contractor performing the Improvements to provide to Subdivider and City a performance bond, a labor and materials payment bond, and a two-year 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 at Subdivider's sole cost 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 Subdivider at its expense,
- (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 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 Subdivider shall make payment to City for Watershed Management Fees. This fee is computed as follows for the Property 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	8.97 ± AC @ \$4,000/AC	\$35,880.00
Lot 2, Commercial	1.64 ± AC @ \$4,000/AC	<u>\$6,560.00</u>
		Total \$42,440.00

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

10. **Private Improvement Compliance.** All Private Improvements shall be designed, constructed, maintained, repaired and replaced at the Subdivider's sole cost 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. **Traffic Signal.** The parties agree that traffic signals shall be acquired and installed by the City or its designee at the location specified in Exhibit B as and when warranted, as determined in the City Engineer's sole discretion, but based on an updated traffic study supporting such determination. Subdivider agrees that the acquisition and installation of said traffic signals will provide a special benefit to the Property. Accordingly, provided that Subdivider has proceeded with its proposed development of the Walmart

Neighborhood Market on Lot 1 of the Property or is then operating or proceeding with construction of said store on Lot 1 of the Property, Subdivider agrees to pay upon demand 50% of the total costs of the acquisition and installation of said traffic signals. If and when the traffic signals are warranted, and before the City's acquisition or commencement of installation of the traffic signals, Subdivider, at the option of the City, agrees to pay to the City 50% of the City Engineer's estimate of the total cost of the traffic signals, which payment the City shall use for the acquisition and installation of the signals. If the payment made by Subdivider based on the City Engineer's estimate is greater or lesser than the payment that is required of Subdivider under this paragraph based on total actual costs of the signals upon completion of the work, the parties agree that the City shall refund to Subdivider, or Subdivider shall pay City, the amount that is necessary so Subdivider ultimately pays 50% of the actual costs of the signals. If the City does not elect to have Subdivider pay in advance based on the City Engineer's estimated cost of the traffic signals, Subdivider shall pay 50% of the total cost upon completion of the work. Subdivider, at its option, may enter an agreement with the owner of Lot 178 and/or 179, Southwind, to reimburse Subdivider a portion of Subdivider's cost of the traffic signals under this paragraph in proportion to the relative benefit of said signals to the Property, Lot 178 and/or Lot 179, which agreement shall be in form and content satisfactory to the City Engineer.

12. Binding Effect; Recording: This Subdivision Agreement shall be binding upon the parties, and their respective successors, contractors, agents 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, BHI and their 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 (i) Subdivider provides to City the financial guarantees and fully executed easement and maintenance agreement required by this Agreement; and (ii) City is satisfied that BHI and Subdivider, or their respective successors and assigns, have concluded (closed), or made arrangements satisfactory to the City to conclude (close), purchase and sale of the Property as described herein and 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 conditions described in the immediately preceding sentence have not occurred within 24 months after the date of this Subdivision Agreement, neither Subdivider nor BHI shall be required, nor entitled without the written consent of the City, to move forward with the project.
13. Any development of Lot 2 shall be subject to all applicable laws, rules, regulations, approvals and other requirements of the City in effect at the time of said development.
14. The recitals on pages 1 and 2 of this Agreement and exhibits referenced herein are incorporated herein and shall be a part of this Agreement. This Agreement shall

constitute the complete agreement and understanding of the parties regarding the subject matter contained herein and shall not be amended except by written amendment signed by both parties. If any provision of this Agreement is determined unenforceable, the unenforceable provision shall be deemed stricken and the remainder of the Agreement shall be enforced. This Agreement shall be governed and construed in accordance with Nebraska law and the parties submit to the jurisdiction and venue of the District Court of Sarpy County to resolve any dispute hereunder, and agree not to challenge said jurisdiction or venue.

[Remainder of page intentionally left blank; signatures to follow]

CITY OF LA VISTA, NEBRASKA,

Mayor _____ Date _____

Date

ATTEST:

City Clerk

Date

ACKNOWLEDGMENT

STATE OF NEBRASKA _____)
) ss.
COUNTY OF SARPY _____)

On this _____ day of _____, _____, before me, a Notary Public in and for said County and State, personally appeared Douglas Kindig, Mayor of the City of La Vista, Nebraska, and Pamela A. Buethe, City Clerk of the City of La Vista, Nebraska, who executed the above instrument and acknowledged the execution thereof to be their voluntary act and deed on behalf of the City.

NOTARY PUBLIC
My Commission expires _____.

SUBDVIDER:

_____, Trustee of the Wal-Mart
Real Estate Business Trust

Date: _____

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, _____, before me, a Notary Public in and for said County and State, personally appeared _____, the Trustee of the Wal-Mart Real Estate Business Trust, who executed the above instrument and acknowledged the execution thereof to be his/her voluntary act and deed on behalf of the trust.

NOTARY PUBLIC
My Commission expires _____.

BHI:

_____, President of BHI Investment Company, Inc.

Date: _____

ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, _____, before me, a Notary Public in and for said County and State, personally appeared Gerald L. Toczon, President of BHI Investment Company, Inc., who executed the above instrument and acknowledged the execution thereof to be his/her voluntary act and deed on behalf of the corporation.

NOTARY PUBLIC
My Commission expires _____.

EXHIBIT A
FINAL PLAT

(Attached)

SOUTHWIND REPLAT THREE

LOTS 1 AND 2 INCLUSIVE

BEING A REPLAT OF LOT 177, SOUTHWIND, A SUBDIVISION LOCATED IN THE SW 1/4 OF SECTION 15, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6th P.M., SARPY COUNTY, NEBRASKA.

DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT WE, BHI INVESTMENT CO., INC., OWNERS OF THE PROPERTY DESCRIBED IN THE CERTIFICATION OF SURVEY AND EMBRACED WITHIN THE PLAT, HAVE CAUSED SAID LAND TO BE SUBDIVIDED INTO LOTS AND STREETS TO BE NUMBERED AND NAMED AS SHOWN, SAID SUBDIVISION TO BE HEREAFTER KNOWN AS SOUTHWIND REPLAT THREE (LOTS TO BE NUMBERED AS SHOWN), AND WE DO HEREBY RATIFY AND APPROVE OF THE DISPOSITION OF OUR PROPERTY, AS SHOWN ON THE PLAT, AND WE DO HEREBY DEDICATE TO THE PUBLIC FOR PUBLIC USE THE STREETS, AVENUES AND CIRCLES, AND WE DO HEREBY GRANT EASEMENTS AS SHOWN ON THIS PLAT, WE DO FURTHER GRANT A PERPETUAL EASEMENT TO THE OMAHA PUBLIC POWER DISTRICT, CENTURYLINK COMMUNICATIONS AND ANY COMPANY WHICH HAS BEEN GRANTED A FRANCHISE TO PROVIDE A CABLE TELEVISION SYSTEM IN THE AREA TO BE SUBDIVIDED, THEIR SUCCESSORS AND ASSIGNS, TO ERECT, OPERATE, MAINTAIN, REPAIR AND RENEW POLES, WIRES, CABLES, CONDUITS AND OTHER RELATED FACILITIES, AND TO EXTEND THEREON WIRES OR CABLES FOR THE CARRYING AND TRANSMISSION OF ELECTRIC CURRENT FOR LIGHT, HEAT AND POWER, AND FOR THE TRANSMISSION OF SIGNALS AND SOUNDS OF ALL KINDS INCLUDING SIGNALS PROVIDED BY A CABLE TELEVISION SYSTEM, AND THE RECEPTION ON, OVER, THROUGH, UNDER AND ACROSS A FIVE-FOOT (5') WIDE STRIP OF LAND ABUTTING ALL FRONT AND SIDE BOUNDARY LOT LINES; AN EIGHT-FOOT (8') WIDE STRIP OF LAND ABUTTING THE REAR BOUNDARY LINES OF ALL INTERIOR LOTS; AND A SIXTEEN-FOOT (16') WIDE STRIP OF LAND ABUTTING THE REAR BOUNDARY LINES OF ALL EXTERIOR LOTS. THE TERM EXTERIOR LOTS IS HEREIN DEFINED AS THOSE LOTS FORMING THE OUTER PERIMETER OF THE ABOVE DESCRIBED ADDITION. SAID SIXTEEN-FOOT (16') WIDE EASEMENT WILL BE REDUCED TO AN EIGHT-FOOT (8') WIDE STRIP WHEN THE ADJACENT LAND IS SURVEYED, PLATTED AND RECORDED AND WE DO FURTHER GRANT A PERPETUAL EASEMENT TO METROPOLITAN UTILITIES DISTRICT OF OMAHA AND BLACK HILLS ENERGY, THEIR SUCCESSORS AND ASSIGNS, TO ERECT, INSTALL, OPERATE, MAINTAIN, REPAIR AND RENEW PIPELINES, HYDRANTS AND OTHER RELATED FACILITIES, AND TO EXTEND THEREON PIPES FOR THE TRANSMISSION OF GAS AND WATER ON, THROUGH, UNDER AND ACROSS A FIVE-FOOT (5') WIDE STRIP OF LAND ABUTTING ALL CUL-DE-SAC STREETS. NO PERMANENT BUILDINGS OR RETAINING WALLS SHALL BE PLACED IN THE SAID EASEMENT WAYS, BUT THE SAME MAY BE USED FOR GARDENS, SHRUBS, LANDSCAPING AND OTHER PURPOSES THAT DO NOT THEN OR LATER INTERFERE WITH THE AFORESAID USES OR RIGHTS HEREIN GRANTED.

BHI INVESTMENT CO., INC.

MUTUAL OF OMAHA BANK

BY: GERALD L. TORCZON, PRESIDENT

BY:

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA
COUNTY OF SARPY)

ON THIS ____ DAY OF _____, BEFORE ME A NOTARY PUBLIC, DULY COMMISSIONED AND QUALIFIED IN AND FOR SAID COUNTY, APPEARED GERALD L. TORCZON, PRESIDENT OF BHI INVESTMENT CO., INC., PERSONALLY KNOWN BY ME TO BE THE IDENTICAL PERSON WHOSE NAME IS AFFIXED TO THE DEDICATION ON THIS PLAT, AND ACKNOWLEDGED THE EXECUTION THEREOF TO BE HIS VOLUNTARY ACT AND DEED AS PRESIDENT OF SAID CORPORATION.

WITNESS MY HAND AND NOTARIAL SEAL THE DAY AND YEAR LAST ABOVE WRITTEN.

NOTARY PUBLIC

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA
COUNTY OF SARPY)

ON THIS ____ DAY OF _____, BEFORE ME A NOTARY PUBLIC, DULY COMMISSIONED AND QUALIFIED IN AND FOR SAID COUNTY, APPEARED _____ OF MUTUAL OF OMAHA BANK, PERSONALLY KNOWN BY ME TO BE THE IDENTICAL PERSON WHOSE NAME IS AFFIXED TO THE DEDICATION ON THIS PLAT, AND ACKNOWLEDGED THE EXECUTION THEREOF TO BE HIS VOLUNTARY ACT AND DEED AS PRESIDENT OF SAID CORPORATION.

WITNESS MY HAND AND NOTARIAL SEAL THE DAY AND YEAR LAST ABOVE WRITTEN.

NOTARY PUBLIC

APPROVAL OF LA VISTA CITY PLANNING COMMISSION

THIS PLAT OF SOUTHWIND REPLAT THREE (LOTS NUMBERED AS SHOWN) WAS APPROVED BY THE CITY PLANNING COMMISSION ON THIS ____ DAY OF _____.

CHAIRMAN OF LA VISTA CITY PLANNING COMMISSION

REVIEW OF SARPY COUNTY SURVEYOR

THIS PLAT OF SOUTHWIND REPLAT THREE (LOTS NUMBERED AS SHOWN) WAS REVIEWED BY THE OFFICE OF THE SARPY COUNTY SURVEYOR ON THIS ____ DAY OF _____.

SARPY COUNTY SURVEYOR

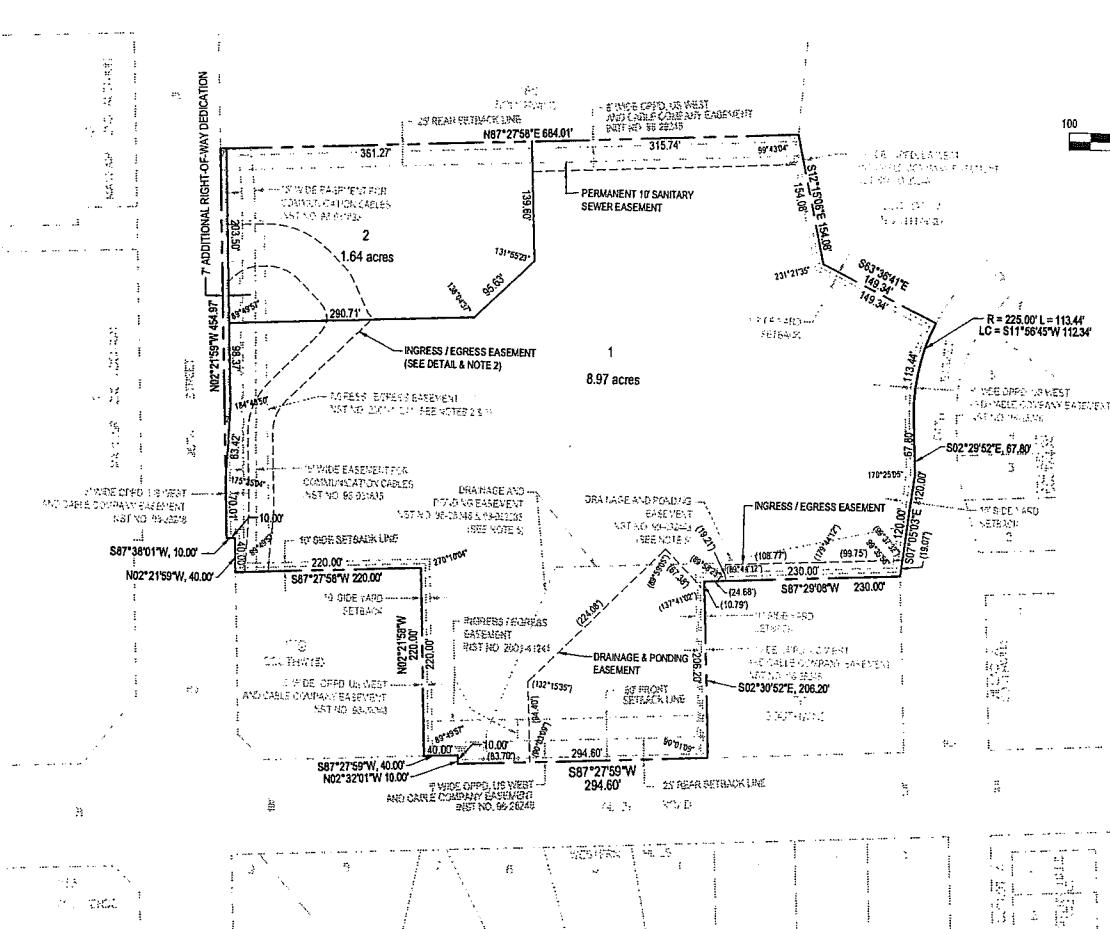
E&A CONSULTING GROUP, INC.
ENGINEERING • PLANNING • FIELD SERVICES
www.eag.com

330 NORTH 117TH STREET, OMAHA, NE 68134
PHONE: (402) 885-4700 FAX: (402) 885-3599

SOUTHWIND REPLAT THREE
LA VISTA, NEBRASKA

FINAL PLAT

Ref No:	72011162013	Date:	10-26-11
Design By:	MAW	Drawn By:	TRH
Sheet:	1 of 1	Scale:	1" = 100'



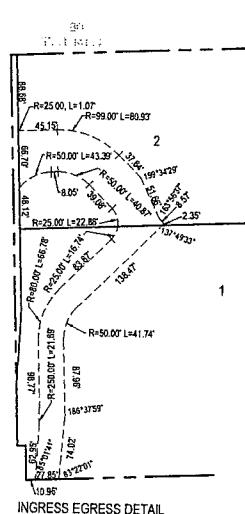
LEGEND
— BOUNDARY LINE
— LOT LINE
- - - EXISTING EASEMENTS
- - - PROPOSED EASEMENTS

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE MADE A GROUND SURVEY OF THE SUBDIVISION DESCRIBED HEREIN AS SOUTHWIND REPLAT THREE. I CERTIFY THAT I HAVE SURVEYED THE PROPERTY DESCRIBED HEREON AND THAT PERMANENT MARKERS HAVE BEEN FOUND OR SET AT ALL CORNERS OF THE LOT BEING PLATTED.

SAID TRACT OF LAND CONTAINS AND AREA OF 464,226 SQUARE FEET OR 10.66 ACRES MORE OR LESS.

JASON HEADLEY L.S. 604 DATE



ACCEPTANCE BY SARPY COUNTY REGISTER OF DEEDS

RECORDED ON THIS ____ DAY OF _____.

SARPY COUNTY REGISTER OF DEEDS

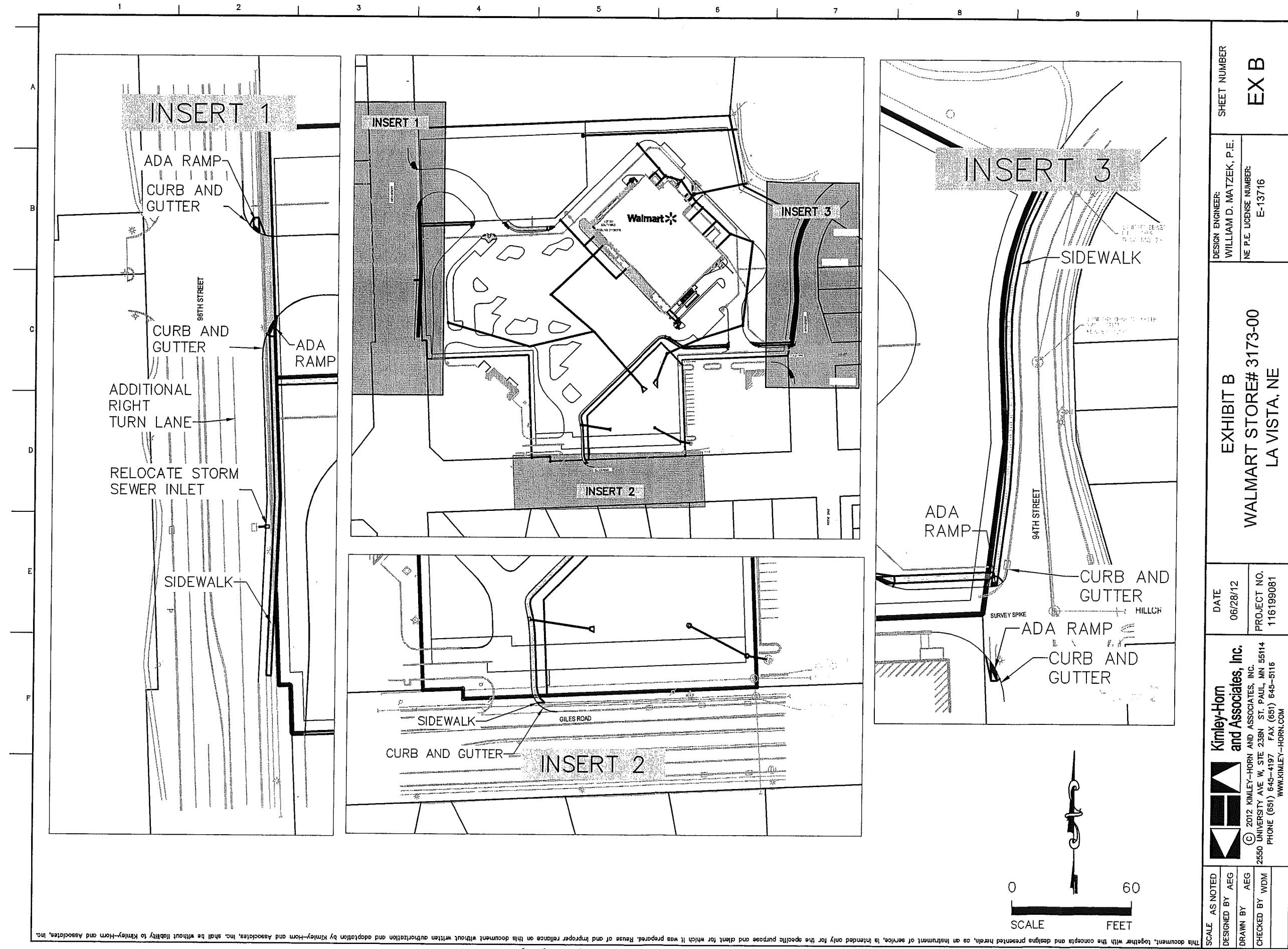
NOTES:

- ALL ANGLES ARE 90° UNLESS OTHERWISE NOTED.
- A PERMANENT RECIPROCAL INGRESS AND EGRESS, SIDEWALK, PARKING AND PEDESTRIAN EASEMENT GRANTED TO PRIVATE PARTIES PURSUANT TO A SEPARATE INSTRUMENT, AND SUBJECT TO THE TERMS THEREOF, AS RECORDED IN THE OFFICE OF DEEDS OF SARPY COUNTY, NEBRASKA.
- THERE IS AN EXISTING DRIVEWAY WITH FULL ACCESS TO 86TH FROM LOT 2, SOUTHWIND REPLAT THREE, THAT BENEFITS LOT 2, SOUTHWIND REPLAT THREE, AND LOT 179, SOUTHWIND, INST. NO. 2001-41241, AS MODIFIED IN THE INSTRUMENT REFERENCED IN NOTE 2, ABOVE.
- EXISTING RIGHT-IN / RIGHT-OUT ONLY ACCESS TO GILES ROAD FROM LOT 1, SOUTHWIND REPLAT THREE, SAID ACCESS WILL ALSO BENEFIT LOT 179, SOUTHWIND INST. NO. 98-28248
- EASEMENT TO BE VACATED WITH SEPARATE DOCUMENT AFTER PLAT IS RECORDED.

EXHIBIT "A"

EXHIBIT B
PUBLIC IMPROVEMENTS

(Attached)



This document, together with the concepts and diagrams presented herein, is an instrument of service, as an intended only for the specific purpose and client for which it was prepared. Release of and improper reliance on this document without written authorization by Kmetley-Horn and Associates, Inc. shall be without liability to Kmetley-Horn and Associates, Inc.

Block 10 Drawing Name: N:\WC\CLDE\VW\WLMARK1\11519901-LA-VIS1A.LAD0D (Exhibits\Exhibit 1-B - PUBLIC IMPROVEMENTS.dwg) B-5x11 Jul 27, 2012 3:29pm by dlylass,kast

EXHIBIT C
POST CONSTRUCTION STORM WATER MANAGEMENT PLAN

(Attached)

EXHIBIT "C"

Drawing name: K:\TWC\1DEV\WALMART\1699081_LA VISTA\GADDY-entitled\SD50 Grading-Drainage Plan.dwg Layout! Jul 05, 2012 12:59pm by brian.wurdenmon

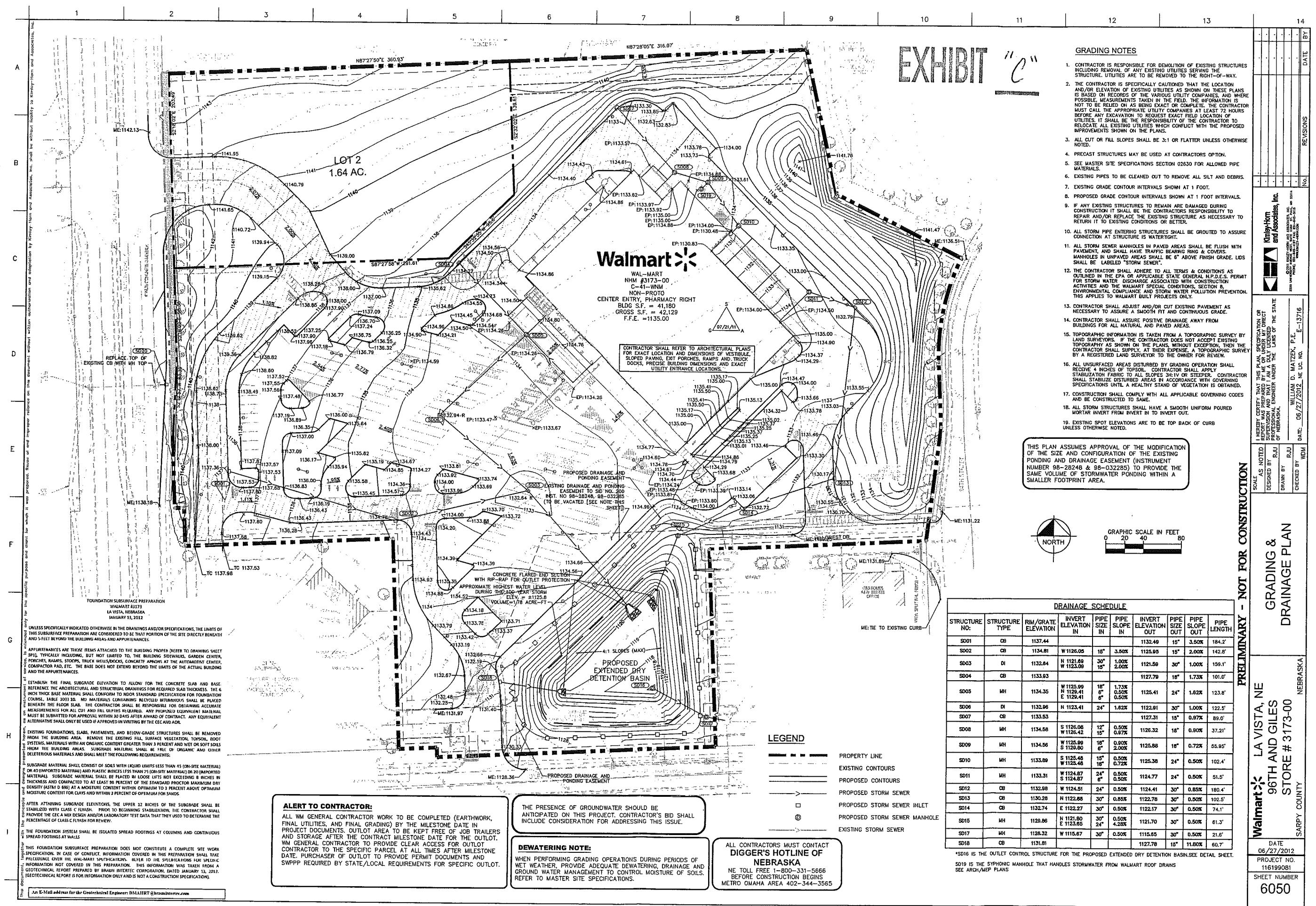


EXHIBIT D
MAINTENANCE AGREEMENT

[Space above the line for recording data]

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 _____, as Trustee of the Wal-Mart Real Estate Business 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.

PROPERTY OWNER:

By: _____, Trustee of the Wal-Mart Real
Estate Business Trust

CITY OF LA VISTA, NEBRASKA,

Mayor _____ Date _____

ATTEST:

City Clerk **Date**

APPROVED AS TO FORM:

City Attorney Date

STATE OF _____]
COUNTY OF _____] ss.

On this _____ day of _____, 2011, before me, a Notary Public in and for said County and State, personally appeared _____, the Trustee of the Wal-Mart Real Estate Business Trust, who executed the above instrument and acknowledged the execution thereof to be his/her voluntary act and deed on behalf of the corporation.

NOTARY PUBLIC
My Commission expires _____

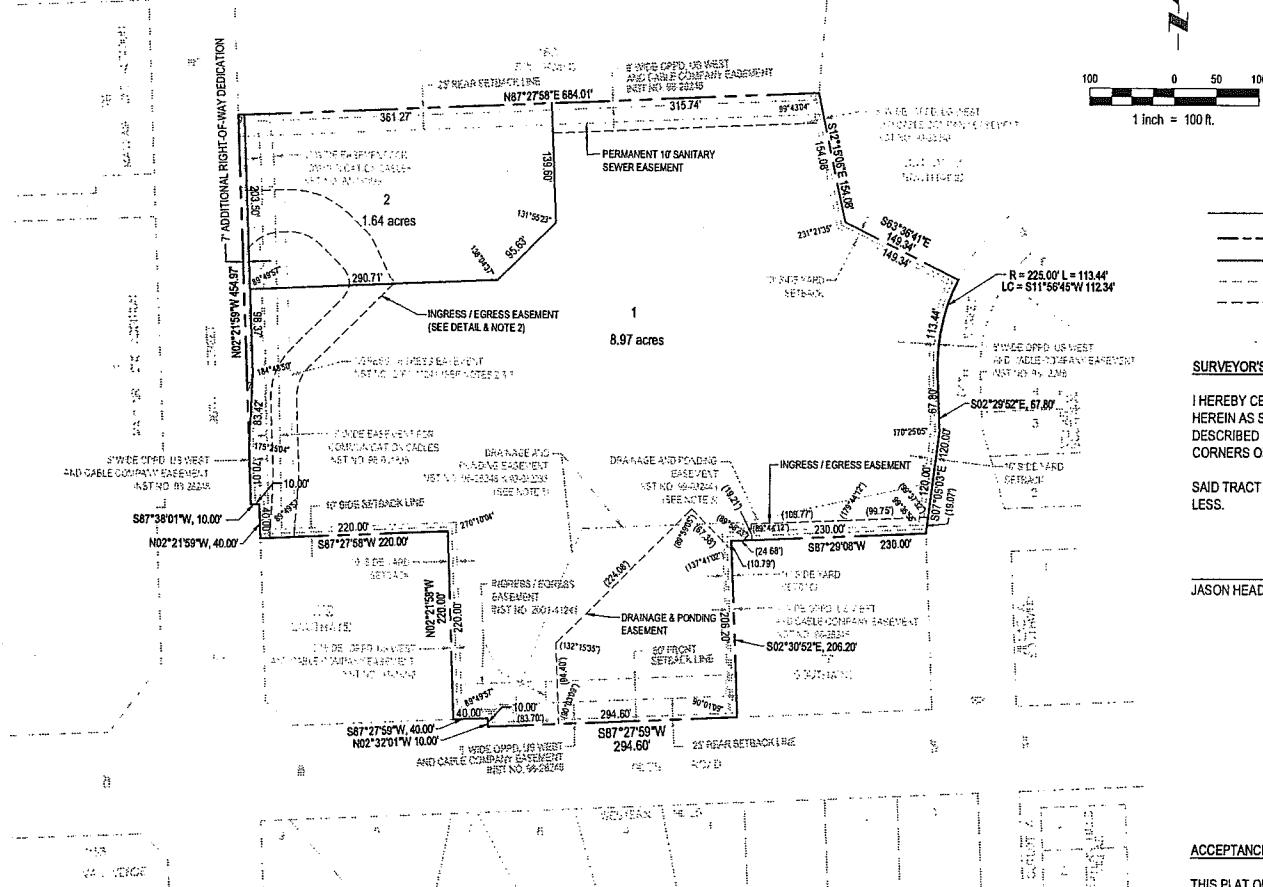
Exhibit "A"
Legal Description of the Property and Final Plat

Lots 1 and 2, Southwind Replat Three, as recorded in Sarpy County, Nebraska.

SOUTHWIND REPLAT THREE

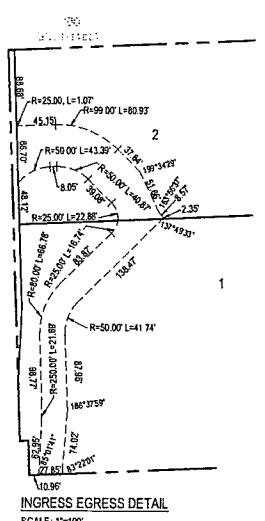
LOTS 1 AND 2 INCLUSIVE

BEING A REPLAT OF LOT 177, SOUTHWIND, A SUBDIVISION LOCATED IN THE SW 1/4 OF SECTION 15, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6th P.M., SARPY COUNTY, NEBRASKA.



NOTES:

1. ALL ANGLES ARE 90° UNLESS OTHERWISE NOTED..
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3. THERE IS AN EXISTING DRIVEWAY WITH FULL ACCESS TO 96TH FROM LOT 2, SOUTHWIND REPLAT THREE, THAT BENEFITS LOT 2, SOUTHWIND REPLAT THREE, AND LOT 179, SOUTHWIND, INST. NO. 2001-41241, AS MODIFIED IN THE INSTRUMENT REFERENCED IN NOTE 2, ABOVE.
4. EXISTING RIGHT-IN / RIGHT-OUT ONLY ACCESS TO GILES ROAD FROM LOT 1, SOUTHWIND REPLAT THREE, SAID ACCESS WILL ALSO BENEFIT LOT 179, SOUTHWIND INST. NO. 98-28248
5. EASEMENT TO BE VACATED WITH SEPARATE DOCUMENT AFTER PLAT IS RECORDED.



ACCEPTANCE BY SARPY COUNTY REGISTER OF DEEDS

RECORDED ON THIS _____ DAY OF _____

SARPY COUNTY REGISTER OF DEEDS

EXHIBIT 1A

LEGEND

- BOUNDARY LINE
- LOT LINE
- EXISTING EASEMENTS
- PROPOSED EASEMENTS

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE MADE A GROUND SURVEY OF THE SUBDIVISION DESCRIBED HEREIN AS SOUTHWIND REPLAT THREE. I CERTIFY THAT I HAVE SURVEYED THE PROPERTY DESCRIBED HEREON AND THAT PERMANENT MARKERS HAVE BEEN FOUND OR SET AT ALL CORNERS OF THE LOT BEING PLATTED.

SAID TRACT OF LAND CONTAINS AND AREA OF 464,226 SQUARE FEET OR 10.66 ACRES MORE OR LESS.

JASON HEADLEY L.S. 604

DATE

DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT WE, BHI INVESTMENT CO., INC., OWNERS OF THE PROPERTY DESCRIBED IN THE CERTIFICATION OF SURVEY AND EMBRACED WITHIN THE PLAT, HAVE CAUSED SAID LAND TO BE SUBDIVIDED INTO LOTS AND STREETS TO BE NUMBERED AND NAMED AS SHOWN, AND SUBDIVISION TO BE HERAFTER KNOWN AS SOUTHWIND REPLAT THREE (LOTS TO BE NUMBERED AS SHOWN), AND WE DO HEREBY RATIFY AND APPROVE OF THE DISPOSITION OF OUR PROPERTY AS SHOWN ON THE PLAT, AND WE DO HEREBY DEDICATE TO THE PUBLIC FOR PUBLIC USE THE STREETS, AVENUES AND CIRCLES, AND WE DO HEREBY GRANT EASEMENTS AS SHOWN ON THIS PLAT, WE DO FURTHER GRANT A PERPETUAL EASEMENT TO THE OMAHA PUBLIC POWER DISTRICT, CENTURYLINK COMMUNICATIONS AND ANY COMPANY WHICH HAS BEEN GRANTED A FRANCHISE TO PROVIDE A CABLE TELEVISION SYSTEM IN THE AREA TO BE SUBDIVIDED, THEIR SUCCESSORS AND ASSIGNS, TO ERECT, OPERATE, MAINTAIN, REPAIR AND RENEW POLES, WIRES, CABLES, CONDUITS AND OTHER RELATED FACILITIES, AND TO EXTEND THEREON WIRES OR CABLES FOR THE CARRYING AND TRANSMISSION OF ELECTRIC CURRENT FOR LIGHT, HEAT AND POWER AND FOR THE TRANSMISSION OF SIGNALS AND SOUNDS OF ALL KINDS INCLUDING SIGNALS PROVIDED BY A CABLE TELEVISION SYSTEM, AND THE RECEPTION ON, OVER, THROUGH, UNDER AND ACROSS A FIVE-FOOT (5') WIDE STRIP OF LAND ABUTTING ALL FRONT AND SIDE BOUNDARY LOT LINES; AN EIGHT-FOOT (8') WIDE STRIP OF LAND ABUTTING THE REAR BOUNDARY LINES OF ALL INTERIOR LOTS; AND A SIXTEEN-FOOT (16') WIDE STRIP OF LAND ABUTTING THE REAR BOUNDARY LINES OF ALL EXTERIOR LOTS. THE TERM EXTERIOR LOTS IS HEREIN DEFINED AS THOSE LOTS FORMING THE OUTER PERIMETER OF THE ABOVE-DESCRIBED ADDITION. SAID SIXTEEN-FOOT (16') WIDE EASEMENT WILL BE REDUCED TO AN EIGHT-FOOT (8') WIDE STRIP WHEN THE ADJACENT LAND IS SURVEYED, PLATTED AND RECORDED AND WE DO FURTHER GRANT A PERPETUAL EASEMENT TO METROPOLITAN UTILITIES DISTRICT OF OMAHA AND BLACK HILLS ENERGY, THEIR SUCCESSORS AND ASSIGNS, TO ERECT, INSTALL, OPERATE, MAINTAIN, REPAIR AND RENEW PIPELINES, HYDRANTS AND OTHER RELATED FACILITIES, AND TO EXTEND THEREON PIPES FOR THE TRANSMISSION OF GAS AND WATER ON, THROUGH, UNDER AND ACROSS A FIVE-FOOT (5') WIDE STRIP OF LAND ABUTTING ALL CUL-DE-SAC STREETS. NO PERMANENT BUILDINGS OR RETAINING WALLS SHALL BE PLACED IN THE SAID EASEMENT WAYS, BUT THE SAME MAY BE USED FOR GARDENS, SHRUBS, LANDSCAPING AND OTHER PURPOSES THAT DO NOT THEN OR LATER INTERFERE WITH THE AFORESAID USES OR RIGHTS HEREIN GRANTED.

BHI INVESTMENT CO., INC.

MUTUAL OF OMAHA BANK

BY: GERALD L. TORCZON, PRESIDENT

BY:

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA
COUNTY OF SARPY

ON THIS _____ DAY OF _____, BEFORE ME A NOTARY PUBLIC, DULY COMMISSIONED AND QUALIFIED IN AND FOR SAID COUNTY, APPEARED GERALD L. TORCZON, PRESIDENT OF BHI INVESTMENT CO., INC., PERSONALLY KNOWN BY ME TO BE THE IDENTICAL PERSON WHOSE NAME IS AFFIXED TO THE DEDICATION ON THIS PLAT, AND ACKNOWLEDGED THE EXECUTION THEREOF TO BE HIS VOLUNTARY ACT AND DEED AS PRESIDENT OF SAID CORPORATION.

WITNESS MY HAND AND NOTARIAL SEAL THE DAY AND YEAR LAST ABOVE WRITTEN.

NOTARY PUBLIC

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA
COUNTY OF SARPY

ON THIS _____ DAY OF _____, BEFORE ME A NOTARY PUBLIC, DULY COMMISSIONED AND QUALIFIED IN AND FOR SAID COUNTY, APPEARED _____ OF MUTUAL OF OMAHA BANK, PERSONALLY KNOWN BY ME TO BE THE IDENTICAL PERSON WHOSE NAME IS AFFIXED TO THE DEDICATION ON THIS PLAT, AND ACKNOWLEDGED THE EXECUTION THEREOF TO BE HIS VOLUNTARY ACT AND DEED AS PRESIDENT OF SAID CORPORATION.

WITNESS MY HAND AND NOTARIAL SEAL THE DAY AND YEAR LAST ABOVE WRITTEN.

NOTARY PUBLIC

APPROVAL OF LA VISTA CITY PLANNING COMMISSION

THIS PLAT OF SOUTHWIND REPLAT THREE (LOTS NUMBERED AS SHOWN) WAS APPROVED BY THE CITY PLANNING COMMISSION ON THIS _____ DAY OF _____.

CHAIRMAN OF LA VISTA CITY PLANNING COMMISSION

REVIEW OF SARPY COUNTY SURVEYOR

THIS PLAT OF SOUTHWIND REPLAT THREE (LOTS NUMBERED AS SHOWN) WAS REVIEWED BY THE OFFICE OF THE SARPY COUNTY SURVEYOR ON THIS _____ DAY OF _____.

SARPY COUNTY SURVEYOR

E&A CONSULTING GROUP, INC.
ENGINEERING • PLANNING • FIELD SERVICES
www.eacg.com

SOUTHWIND REPLAT THREE
LA VISTA, NEBRASKA

FINAL PLAT

Print No.	P2011182013	Revisions
Date:	10-26-11	Initials
Designed By:	MAW	Date:
Drawn By:	FRH	Drawn By:
Scale:	1" = 100'	Scale:
Sheet 1	of 1	Sheet 1

330 NORTH 117TH STREET, OMAHA, NE 68154
PHONE: (402) 884-7020 FAX: (402) 885-3399
www.eacg.com

Exhibit “B”
Post Construction Stormwater Management Plan

Exhibit "C"
BMP Maintenance Requirements

Name & Location

Project Name: WMNM #3173
Address: SEC 96th St. and Giles Road, La Vista, NE 68128

Site Data

Total Site Area: 10.61 AC
Total Disturbed Area: 10.61 AC
Total Undisturbed Area: 0 AC
Impervious Area Before Construction: ±6%
Impervious Area After Construction: ±59%

BMP Information

BMP ID	TYPE OF BMP	Longitude/Latitude
Pond 1	Extended Dry Detention Basin	96°02'33.5"W/41°11'22.6"N

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.

Dry Detention Basin/Pond Maintenance Tasks and Schedule

Task	Schedule
Remove debris and trash from trash rack and side slopes	Monthly
Outlet/inlet inspection and cleanout	Monthly
Bank mowing and inspection/stabilization of eroded areas	Monthly
Basin inspection and cleanout	Annually – remove sediment when 25% of storage volume has been lost
Remove woody vegetation along embankment	Annually
Inspect for structural damage	Annually
Inspect, exercise all mechanical devices	Annually
Repair broken pipes	As needed
Replace filtration riprap that has been choked with sediment	As needed
Security	As needed

Walmart, as the Property Owner, will be responsible for the maintenance of the water quality BMP.

EXHIBIT E
ACCESS EASEMENT AREA

(Attached)

