

2016-31250

12/02/2016 9:43:23 AM

Wayne J. Dowling

REGISTER OF DEEDS

COUNTER	<i>ah</i>	C.E.	<i>Rp</i>
VERIFY	<i>ah</i>	D.E.	
PROOF			
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RECIPROCAL CONSTRUCTION EASEMENT, AND CONVEYANCE OF DEMOLITION AND SITE PREPARATION RIGHTS AND EASEMENT

THIS RECIPROCAL CONSTRUCTION EASEMENT, AND CONVEYANCE OF DEMOLITION AND SITE PREPARATION RIGHTS AND EASEMENT ("Easement") is made and entered into as of this 1st day of December, 2016 ("Effective Date"), by and between La Vista City Centre, LLC, a Nebraska limited liability company ("Redeveloper"), the City of La Vista, a municipal corporation in Sarpy County, Nebraska ("City").

WHEREAS, Redeveloper is the owner of certain real property located in the City of La Vista, County of Sarpy, State of Nebraska, as more particularly described or depicted on Exhibit "A" attached hereto and incorporated herein by this reference (the "Redeveloper Property");

WHEREAS, City is the owner of certain real property located in the City of La Vista, County of Sarpy, State of Nebraska, as more particularly described or depicted on Exhibit "B" attached hereto and incorporated herein by this reference (the "City Property");

WHEREAS, the parties desire to grant a reciprocal easement over the Redeveloper Property and City Property for the purposes set forth herein for the benefit of each party and their respective successors and assigns; and

WHEREAS, Redeveloper and City desire to grant and convey to the La Vista Community Development Agency, a community development agency created pursuant to Neb. Rev. Stat. Section 18-2101.01, ("Agency") an easement and rights in, to and over the Redeveloper Property and City Property and existing improvements thereon or therein for Agency demolition, removal and disposal of existing improvements, grading, and site preparation.

WHEREAS, by virtue of the recording of this Easement, during the Term (as defined hereinafter) the Redeveloper Property and City Property shall be owned, held, transferred, sold, conveyed, used and occupied, and mortgaged or otherwise encumbered subject to the provisions of this Easement and every grantee of any interest in either such property, by acceptance of a deed or other conveyance of such interest, and every person or entity owning an interest in either such property shall be subject to this Easement.

NOW, THEREFORE, in consideration of the foregoing and the mutual grants, covenants, and promises contained herein, and of the mutual benefits accruing to each of the parties hereto, their respective successors and assigns, and other good and valuable

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consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, and intending to be legally bound, Redeveloper and City hereby agree as follows:

1. Recitals. The forgoing recitals are hereby incorporated herein as a material part of this Easement.

2. Grant of Temporary Construction Easement.

a. City Easement. Subject to the terms of this Easement, Redeveloper hereby grants to City a temporary non-exclusive construction easement over the Redeveloper Property for the purpose of staging and access for constructing of improvements on the City Property or other work, in accordance with that certain Subdivision Agreement by and between City and Redeveloper, as amended from time to time, (the "Subdivision Agreement"), or that certain Redevelopment Agreement by and between Agency and Redeveloper, as amended from time to time, ("Redevelopment Agreement") (the "City Work"). City upon completing a particular improvement or stage of City Work promptly shall, at City's sole cost and expense, remove from Redeveloper Property any and all materials, debris and equipment connected with the City Work. City agrees to keep the Redeveloper Property free and clear of liens for labor and material expended by City. City shall not transfer, assign or otherwise convey any interest City has in the Easement without prior written consent of Redeveloper.

b. Redeveloper Easement. Subject to the terms of this Easement, City hereby grants to Redeveloper a temporary non-exclusive construction easement over the City Property for the purpose of staging and access for constructing of improvements on the Redeveloper Property in accordance with that certain Subdivision Agreement or Redevelopment Agreement (the "Redeveloper Work"). Redeveloper upon completing a particular improvement or stage of Redeveloper Work promptly shall, at Redeveloper's sole cost and expense, remove from City Property any and all materials, debris and equipment connected with the Redeveloper Work. Redeveloper agrees to keep the City Property free and clear of liens for labor and material expended by Redeveloper. Redeveloper shall not transfer, assign or otherwise convey any interest Redeveloper has in the Easement without prior written consent of City.

3. Grant of Demolition and Site Preparation Rights and Easement. Subject to the terms of this Easement, Redeveloper and City each hereby grants, transfers and conveys to the Agency an easement and rights in, to and over the Redeveloper Property and City Property and all existing improvements thereon or therein for demolition, site preparation or other work in accordance with that certain Redevelopment Agreement or Subdivision Agreement, including without limitation, demolition, clearance, removal, transport, transfer, or disposal of some or all such existing improvements, initial grading, removal or relocation of utilities or soils, or other work, ("Agency Work"), Not in limitation of the foregoing, Redeveloper and City each conveys to Agency its interest in existing structures or other improvements of the Redeveloper Property or City Property now or hereafter subject to demolition, removal, relocation, or disposal, or otherwise as necessary for the Agency Work. Agency upon completing the Agency Work promptly shall, at Agency's or City's sole cost and expense, remove from Redeveloper Property and City Property any and all materials, debris and equipment connected with the Agency Work. Agency shall keep the Redeveloper Property and City Property free and clear of liens for labor and material expended by Agency. Agency shall not transfer, assign or otherwise convey any interest Agency has in the Easement without prior written consent of Redeveloper

4. Beneficiaries. This Easement is also (i) for the benefit of any contractor, agent, employee and representative of City that performs any of the City Work, (ii) for the benefit of any contractor, agent, employee and representative of Redeveloper that performs any of the Redeveloper Work, and (iii) for the benefit of any contractor, agent, employee and representative of Agency that performs any of the Agency Work.

5. Term. This Easement runs with the land and shall be binding on the parties and their respective successors and assigns during the Term (as hereinafter defined). The Easement shall commence as of the Effective Date and shall terminate four (4) years after the Effective Date or by mutual agreement, whichever is earlier (the "Term"). Notwithstanding the foregoing, (i) the City and Agency each shall continue to have access to the Redeveloper Property to the extent the City or Agency is obligated to accomplish any follow-up actions to the City Work or Agency Work, provided such follow-up actions do not materially interfere with construction of improvements or damage already constructed improvements on the Redeveloper Property, and (ii) Redeveloper shall continue to have access to the City Property to the extent Redeveloper is obligated to accomplish any follow-up actions to the Redeveloper Work, provided such follow-up actions do not materially interfere with construction of improvements or damage already constructed improvements on the City Property. Notwithstanding the automatic termination of this Easement as described herein, the parties shall promptly execute and record a release of this Easement in the event the Easement is terminated by mutual agreement.

6. Indemnification. Subject to applicable limitations or other provisions of the Nebraska Political Subdivisions Tort Claims Act, each party (the "Indemnifying Party") and its successors and assigns hereby agrees to defend, indemnify and hold harmless the other party and its tenants, subtenants, licensees, successors and assigns and their respective directors, officers, members, employees, tenants, invitees, agents, representatives and affiliates (collectively, the "Indemnified Party") from and against any and all claims, obligations, liabilities, losses, damages, causes of action, suits, demands, claims from indemnity or contribution, penalties, judgments, costs and expenses, including reasonable attorneys' fees and expenses, of every kind and nature whatsoever ("Claims"), to the extent such are proximately caused by any negligent action or inaction of the Indemnifying Party, its successors and assigns or their respective directors, officers, members, employees, tenants, invitees, contractors, agents, representatives and affiliates in connection with or related to, directly or indirectly, the use of the other's property pursuant to this Easement. Provided, however, the foregoing provisions of this section shall not operate or be effective to the extent that any Claims are proximately caused by the negligent action or inaction of the Indemnified Party.

7. Authority. Redeveloper and City each confirms that it is the lawful owner of the Redeveloper Property or City Property, as the case may be, and has the right to grant this Easement in the manner, content and form set forth in this instrument

8. Insurance. Each party shall, throughout the Term of this Easement, continuously carry commercial general liability insurance in commercially reasonable limits as agreed by the Manager of Redeveloper and by the City Engineer on behalf of City and Agency against claims for personal injury or death and property damage, occasioned by accident occurring in connection with the respective party's access to or use of the applicable property. The policies shall be written as primary and not contributing. Each policy of insurance shall contain an express waiver in favor of the other party of any and all rights of subrogation thereunder whatsoever against the insured party, its partners, officers, agents and employees.

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9. Coordination. Uses or exercise of rights pursuant to this Easement shall not interfere with use, improvement, or enjoyment of the Redeveloper Property by Redeveloper, or use, improvement or enjoyment of the City Property by City. Coordination of uses and exercise of rights pursuant to this Easement from time to time, including without limitation the scope and timing of such uses and exercise of rights, shall be required and subject to approval of the Manager of the Redeveloper with respect to uses and exercise of rights relating to Redeveloper Work or Redeveloper Property, and City Engineer on behalf of City or Agency with respect to uses or exercise of rights relating to City Work, Agency Work, or City Property.

10. Notices. All notices and correspondence under this Easement shall be given by verified or registered mail or by overnight delivery with a national courier providing confirmation of delivery to the following addresses:

City With copies to

City Clerk
8116 Park View Blvd.
La Vista, NE 68128

City Administrator
8116 Park View Blvd.
La Vista, NE 68128

Community Development Director
8116 Park View Blvd.
La Vista, NE 68128

City Engineer
9900 Portal Road
La Vista, NE 68128

Fitzgerald Schorr, PC, LLO
Attn: Tom McKeon
200 Regency One
10050 Regency Circle
Omaha, NE 68114

Redeveloper
La Vista City Centre
Attn: Christopher L. Erickson
P.O. Box 428
Boys Town, NE 68010

With a copy to
Dvorak & Donovan Law Group, LLC
Attn: Kendra J. Ringenberg
13625 California Street, Suite 110
Omaha, Nebraska 68154

11. Severability. If any portion of this Easement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision(s) of this Easement are invalid or unenforceable, but that by limiting such provision(s) the same would become valid and enforceable, then such provision(s) shall be deemed to be written, construed, and enforced as so limited.

12. Waiver. The failure of Redeveloper, City or Agency to enforce any provision of this Easement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with each and every provision of this Easement.

13. Headings. The section headings appearing herein are for the convenience of the parties only and do not affect, define, limit or construe the contents of the various sections in the Easement.

14. Governing Law. The laws of the State of Nebraska shall govern the jurisdiction, venue, interpretation and construction of this Easement, excluding the choice of law rules that may direct jurisdiction, venue, interpretation or construction of this Easement to other jurisdictions.

15. Nature of Easement. Nothing contained in this Easement will be deemed a gift, grant or dedication of any portion of the Redeveloper Property to or for the general public or, except parts of this Easement granting rights to City or Agency, for any public purpose whatsoever. No easement, except as expressly set forth herein, shall be implied.


16. Counterparts. This Easement may be signed in one or more counterparts, which when taken together, shall constitute one and the same Easement. The parties may execute this Easement and exchange counterparts by means of electronic transmission and the parties agree that the receipt of such executed counterparts shall be binding on the parties and shall be construed as originals.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

E

IN WITNESS WHEREOF, the parties have executed this Easement as of the Effective Date.

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

By: 
Christopher L. Erickson, Manager

ATTEST:

CITY OF LA VISTA

City Clerk

By: _____
Mayor

F

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 1st day of December, 2016, 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.



Diane L. Steffens
Notary Public

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

On this day of _____ day of _____, 2016, 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

IN WITNESS WHEREOF, the parties have executed this Easement as of the Effective Date.

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

By: _____
Christopher L. Erickson, Manager

ATTEST:

Pamela C. Luethe
City Clerk



CITY OF LA VISTA
By: [Signature]
Mayor

H

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, 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.

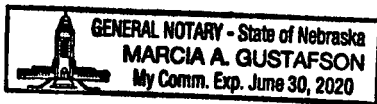
Notary Public

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
) ss.
COUNTY OF Sully)

On this day of 30th day of November, 2016, before me, a Notary Public duly commissioned and qualified in and for said County, appeared Douglas D. Kindig personally known by me to be the Mayor of the City of La Vista, and Pamela A. Buethe personally known by me to be the City Clerk of the City of La Vista, and the identical persons whose names are affixed to the foregoing instrument, and acknowledged the execution thereof to be their voluntary act and deed, and the voluntary act and deed of said City.

WITNESS my hand and Notarial Seal the day and year last above written.



Marcia A. Gustafson
Notary Public

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EXHIBIT "A"
REDEVELOPER PROPERTY

"Redeveloper Property" for purposes of this Easement means:

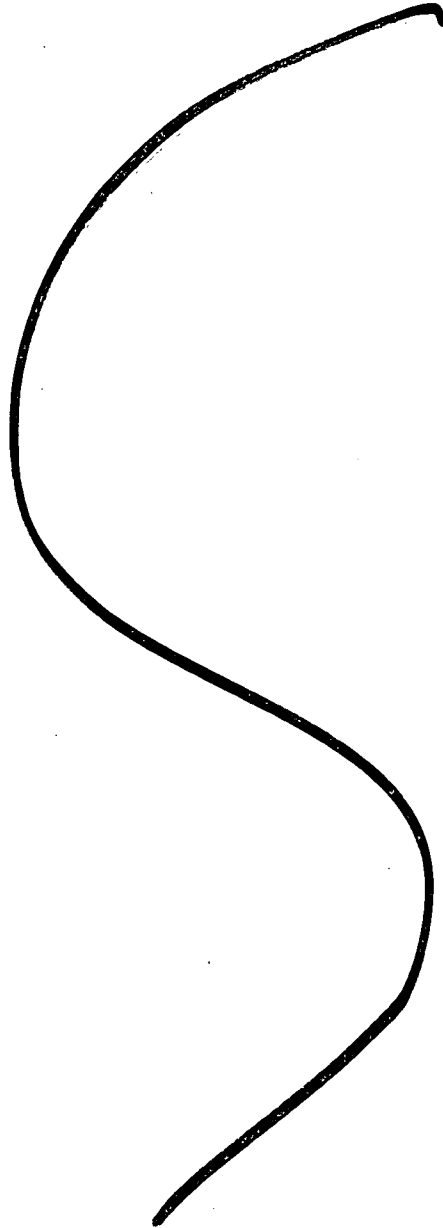
All real property within the platted area of the La Vista City Centre final plat, a copy of which is attached hereto and incorporated herein as Exhibit A-1 ("Plat" or "Platted Area"), as any lots or boundaries of such Plat may be adjusted in any subsequent replat approved by the City, and excluding Lots 7 and 17, Outlots A and B, and right of ways of the Plat. "Redeveloper Property" for purposes of this Easement also shall exclude any other parts of the Platted Area the City of La Vista acquires after the date of this Easement.

17

EXHIBIT "A-1"

PLAT

[Attach final plat]



L

EXHIBIT "B"
CITY PROPERTY

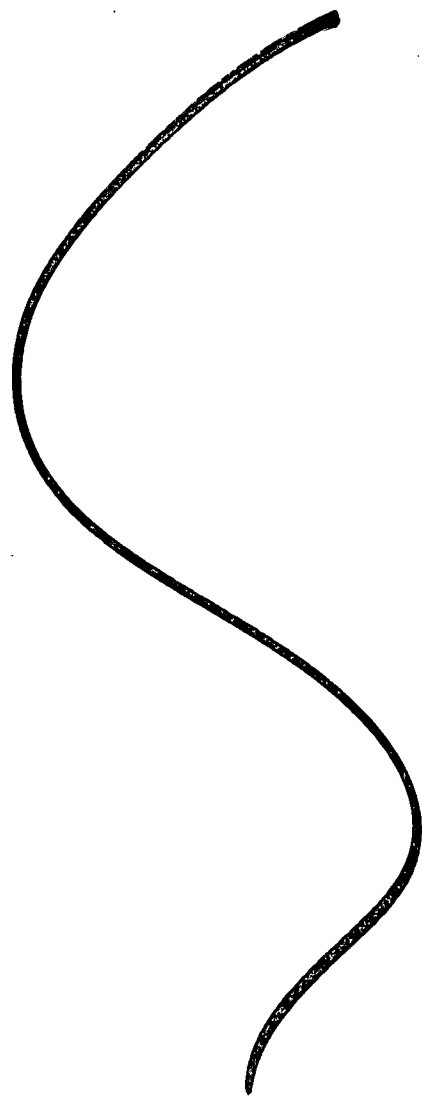
"City Property" for purposes of this Easement means:

1. Lots 7 and 17, Outlots A and B, and right of ways depicted in the Plat attached as Exhibit A-1; and
2. Areas described or depicted in Exhibit B-1 attached hereto and incorporated herein, except for portions of such areas constituting parts of Lot 12 or 14 of the Plat attached as Exhibit A-1.

City Property for purposes of this Easement also shall include any other parts of the Platted Area the City of La Vista acquires after the date of this Easement

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EXHIBIT "B-1"



2016-31250 N

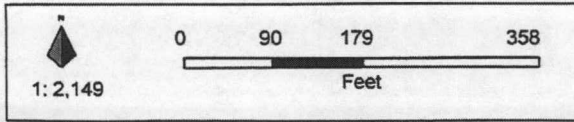
Sarpy County Property Information



Location

Legend

Temporary Easement Area



This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the source records and information sources to ascertain the usability of the information.

Sarpy County GIS
 1210 Golden Gate Dr.
 Suite 1130
 Peplion, NE 68046
 maps.sarpy.com