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FILED SARPY CO. NE.  
INSTRUMENT NUMBER

**2017-29846**

2017 Dec 11 03:51:09 PM

*Sheryl J. Dowling*

REGISTER OF DEEDS



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### DEMOLITION AND SITE PREPARATION EASEMENT

THIS DEMOLITION AND SITE PREPARATION EASEMENT ("Easement") is made and entered into as of this 11th day of December, 2017 ("Effective Date"), by and between **La Vista City Centre, LLC**, a Nebraska limited liability company ("Redeveloper"), **E&W Holdings, LLC**, a Nebraska limited liability company ("E&W"), and the **La Vista Community Development Agency**, a community development agency created pursuant to Neb. Rev. Stat. 18-2101.01 (the "Agency").

WHEREAS, that certain Purchase Agreement for Leasehold Interests (Ground Lease, Sublease, and Conveyance of Building) and Demolition Rights (the "Purchase Agreement") has been entered by and between E&W, as successor by assignment from Redeveloper, and JL Holdings IV, LLC, a Delaware limited liability company ("JLH") as of August 8, 2017 and is being executed and delivered at Closing simultaneously herewith by Agency;

WHEREAS, Redeveloper, E&W, as successor by assignment from Redeveloper, and Agency are parties to that certain Easement and Demolition Agreement dated December 11, 2017 (the "E & D Agreement"), which shall be incorporated herein by this reference. Capitalized terms used but not defined herein shall have the meanings for such terms that are set forth in the E & D Agreement;

WHEREAS, Redeveloper is the owner of the real property legally described as:

Lot 8, La Vista City Centre, an Addition to the City of La Vista, in Sarpy County, Nebraska,

and commonly known as 7865 So. 84th Street, La Vista, Nebraska 68128 (the "Property"), on which Property a building and related improvements owned by E&W are located (the "Building") (the Property and the Building are collectively referred to herein as the "Premises"), which Premises is subject to the E & D Agreement;

WHEREAS, Redeveloper and E&W desire to grant and convey to the Agency an easement and rights in, to and over the Property and the Building in order for the Agency to complete the Agency Work, including the Demolition and Site Preparation, in accordance with

Upon Recording Please Return To:  
Fitzgerald Schorr PC LLO  
Attn: Thomas G. McKeon  
10050 Regency Circle, Suite 200  
Omaha, NE 68114

the Agency's obligations under the Redevelopment Agreement, which shall be incorporated herein by this reference; and

WHEREAS, by virtue of the recording of this Easement, during the Term (as defined hereinafter) the Property, Ground Lease, Store Lease, Building, and all Redeveloper and E&W interests therein, ("Redeveloper and E&W Interests") shall be owned, held, transferred, sold, conveyed, used and occupied, and mortgaged or otherwise encumbered subject to Agency's Demolition Rights and the provisions of this Easement and every grantee of any Redeveloper and E&W Interests, by acceptance of a deed or other conveyance of such interest, and every person or entity owning an interest in such Property or Building shall be subject to this Easement.

NOW, THEREFORE, in consideration of the foregoing and the mutual grants, covenants, and promises contained herein, the mutual benefits accruing to each of the parties hereto, their respective successors and assigns, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, and intending to be legally bound, Redeveloper, E&W, and Agency hereby agree as follows:

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

2. Grant of Demolition and Site Preparation Easement. Simultaneously at Closing with (a) the parties' execution and delivery of the E & D Agreement, (b) the Agency's execution and delivery of the Purchase Agreement, and (c) the Agency's payment pursuant to terms of the Purchase Agreement, Redeveloper and E&W hereby grant, transfer and convey to Agency a temporary, non-exclusive easement with rights in, to and over the Property, the Building and all improvements thereon or therein in order for Agency to complete the Agency Work in accordance with the Agency's obligations under the Redevelopment Agreement, including without limitation, completing Demolition and Site Preparation. Notwithstanding the foregoing, the parties agree that the Agency will not commence the Agency Work until Redeveloper and E&W have satisfied their obligations under the E & D Agreement, including without limitation, to (a) eliminate all Encumbrances, (b) terminate the Store Lease and the Store Sublease, and (c) cause Subtenant to vacate the Premises (the "Commencement Date"), and Agency's performance of the Agency Work will be subject to Redeveloper and E&W satisfying such obligations. Agency agrees to keep the Property free and clear of liens for labor and material expended by Agency. Not in limitation of the foregoing, Redeveloper and E&W convey to Agency their interests in the Building and all other structures or other improvements of the Property as necessary for the Agency Work. Agency, in performing the Agency Work, shall promptly, at Agency's sole cost and expense, remove from the Property and dispose of any and all materials, debris and equipment connected with the Agency Work. Agency shall not transfer, assign or otherwise convey any interest Agency has in the Easement without prior written consent of Redeveloper.

3. Beneficiaries. This Easement is also for the benefit of any contractor, agent, employee, and representative of Agency that performs any of the Agency Work.

4. Term. This Easement runs with the land and shall be binding on the parties and their respective successors and assigns during the Term. The Easement shall be in effect as of the Effective Date and shall remain in effect until Agency's completion of the Agency Work as evidenced by written notice from Agency to Redeveloper and E&W certifying that the Agency Work has been completed, unless the E & D Agreement is earlier terminated by Agency as provided for therein, upon the occurrence of which this Easement shall also terminate (the

"Term"). Notwithstanding anything herein to the contrary, the parties agree that the Agency will not commence the Agency Work until on or after the Commencement Date. The parties agree to promptly execute and record a release of this Easement upon termination of this Easement.

5. 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 successor and assigns, and the City of La Vista and its 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 resulting from, arising out of, in connection with or related 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.

6. Authority. Redeveloper represents and warrants that as of the Effective Date, Redeveloper is the lawful owner of the Property and has the lawful right to grant this Easement to Agency in the manner, content and form as set forth in this instrument. E&W represents and warrants that as of the Effective Date, E&W is the lawful owner of the Building and has the lawful right to grant this Easement to Agency in the manner, content and form as set forth in this instrument. Redeveloper and E&W covenant that as of the Commencement Date, Redeveloper and E&W will have (a) eliminated the Encumbrances, (b) terminated of the Store Lease and the Store Sublease, and (c) caused the Subtenant to vacate the Premises, such that the Agency will have all necessary interests in the Property and the Building in order to have the lawful right to proceed with the Agency Work, including the Demolition and Site Preparation.

7. 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 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.

8. Coordination. Coordination of the exercise of rights pursuant to this Easement shall, from time to time, be required and shall be subject to the mutual approval and commercially reasonable cooperation of the Manager of Redeveloper on behalf of Redeveloper and of the City Administrator or City Engineer on behalf of Agency.

9. 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:

Agency  
La Vista Community Development Agency  
Attn: Mayor of La Vista

With copies to  
City Administrator  
8116 Park View Blvd.

8116 Park View Blvd  
La Vista, NE 68128

La Vista, NE 68128

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

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

Redeveloper and E&W  
La Vista City Centre  
Attn: Christopher L. Erickson  
905 Leavenworth Street  
Omaha, Nebraska 68102

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

10. 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.

11. Waiver. The failure of Redeveloper, E&W, 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.

12. 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.

13. 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. Provided, however, all parties consent to jurisdiction of the state and federal courts in the State of Nebraska and agree that any lawsuit between the parties shall be brought only in the state courts in Papillion, Sarpy County, Nebraska.

14. Nature of Easement. Nothing contained in this Easement will be deemed a gift, grant or dedication of any portion of the Property to or for the general public or, except parts of this Easement granting rights to Agency or the City of La Vista, for any public purpose whatsoever. No easement, except as expressly set forth herein, shall be implied. This Easement and performance of the Agency Work shall be subject to the terms and conditions of the E & D Agreement that do not conflict with terms or conditions of this Easement.

15. 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.

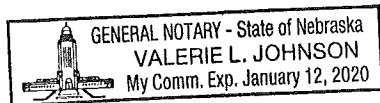
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ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF DOUGLAS                )

On this day of the 11<sup>th</sup> day of December, 2017, before me, a Notary Public duly commissioned and qualified in and for said County, appeared Christopher L. Erickson, Manager of La Vista City Centre, LLC, a Nebraska limited liability company, Sole Member of E&W Holdings, LLC, a Nebraska limited liability company, and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed, and the voluntary act and deed of E&W Holdings, LLC.



Valerie L. Johnson  
Notary Public

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

On this day of \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, a Notary Public duly commissioned and qualified in and for said County, appeared Douglas Kindig, Mayor of the City of La Vista, and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed, and the voluntary act and deed of the La Vista Community Development Agency.

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

**LA VISTA COMMUNITY  
DEVELOPMENT AGENCY,**  
a community development agency  
created pursuant to Neb. Rev. Stat.  
18-2101.01

By: \_\_\_\_\_  
Douglas Kindig, Mayor  
City of La Vista

**E&W HOLDINGS, LLC,**  
a Nebraska limited liability company

**LA VISTA CITY CENTRE, LLC,** a Nebraska  
limited liability company, Sole Member

By: \_\_\_\_\_  
Christopher L. Erickson, Manager

#### ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF DOUGLAS                )

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\_\_\_\_\_  
Notary Public



ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF DOUGLAS                )

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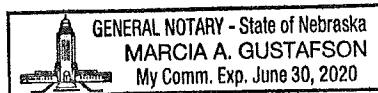
\_\_\_\_\_  
Notary Public

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF Sarpy                    )

On this day of 11<sup>th</sup> day of December, 2017, before me, a Notary Public duly commissioned and qualified in and for said County, appeared Douglas Kindig, Mayor of the City of La Vista, and the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed, and the voluntary act and deed of the La Vista Community Development Agency.

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



Marcia A. Gustafson  
Notary Public