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Lloyd J. Dowling

REGISTER OF DEEDS



DECLARATION

(Space above reserved for Recorder of Deeds certification)

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS
FOR LA VISTA CITY CENTRE
LA VISTA, SARPY COUNTY, NEBRASKA

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**DECLARATION OF
EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS
FOR LA VISTA CITY CENTRE**

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR LA VISTA CITY CENTRE ("Declaration"), is made and entered into as of the 1st day of December, 2016, by La Vista City Centre, LLC, a Nebraska limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the current fee simple owner of certain property located in Sarpy County, Nebraska, which is legally described on Exhibit A (the "La Vista City Centre Property"); and

WHEREAS, Declarant desires to establish for its benefit and for the mutual benefit of all future Owners (as defined below) of the Lots (as defined below), or any part thereof, certain mutually beneficial easements, restrictions and obligations with respect to the use, operation and maintenance of the La Vista City Centre Property, consistent with a quality, first class, unified multi-use development.

NOW, THEREFORE, Declarant hereby declares that the La Vista City Centre Property shall be held, sold, leased and conveyed subject to the following covenants, conditions, easements and restrictions which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in such properties or any, part thereof, and their successors and assigns and shall inure to the benefit of each owner or occupant thereof. Each of the easements and rights created by this Declaration are appurtenant to the Lot or Lots to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to such Lot or Lots. For the purpose of each such easement and right, the Benefited Lot or Lots will constitute the dominant estate and the Burdened Lot or Lots will constitute the servient estate. Each easement or covenant contained in this Declaration: (a) is made for the direct, mutual and reciprocal benefit of each other Lot now or thereafter constituting a part of the La Vista City Centre Property; (b) creates mutual equitable servitudes on each Lot in favor of each other Lot; (c) constitutes a covenant running with the land; (d) binds every Owner now having or hereafter acquiring an interest in any Lot or Lots; and (e) will inure to the benefit of each Owner and each Owner's successors, assigns, mortgagees and beneficiaries under deeds of trust. Upon the conveyance of all or any part of a Lot or Lots, the grantee, by accepting such conveyance will thereby become a new party to and be bound by this Declaration and will be deemed to have assumed and agreed to perform each of the obligations of the conveying Owner under this Declaration with respect to the Parcel or portion thereof conveyed to such grantee. Upon recordation of such conveyance with the Register of Deeds of Douglas County, Nebraska, the conveying Owner will be released from any obligation under this Declaration arising thereafter with respect to the portion of the Lot or Lots so conveyed, but will remain responsible for any and all liability which has accrued prior to such recordation.

**ARTICLE I
DEFINITIONS**

Section 1.1 "Articles" or "Articles of Incorporation" shall mean the Articles of Incorporation to be filed with the Nebraska Secretary of State for the Association.

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Section 1.2 "Association" shall mean the owner's association to be formed at the expiration of the Declarant Control Period (as defined hereinafter), and unless the context otherwise requires, shall mean and include its board of directors, officers and other authorized agents.

Section 1.3 "Back of Curb Right of Way Areas" shall mean the portion of the La Vista City Centre Property located within the public right-of-way that is between the curb line and the property line, including all Improvements, facilities and equipment located within such public right-of-way area between the curb line and the property line, all of which shall be subject to such laws, regulations, permits or approvals of the City of La Vista as in effect or required from time to time.

Section 1.4 "Board" or "Board of Directors" shall mean the Board of Directors of the Association, to be governed by bylaws at the time of formation.

Section 1.5 "Bylaws" shall mean the bylaws of the Association.

Section 1.6 "Common Areas" shall mean the portion of the La Vista City Centre Property intended for the nonexclusive use by the Owners and their Permittees, in common with other users. Common Areas shall include, but not be limited to, surface parking lots, sidewalks, benches, landscaping, enhanced lighting for buildings and Common Areas, common utility lines and systems, any detention or retention ponds, cells, areas and drainage facilities, directional signage, signage promoting the La Vista City Centre Property or Tenants, security lighting and facilities, if any, public art, as may exist from time, and any other areas designated as common areas by Declarant; provided, however, Common Areas shall not include (i) any facilities in the interior of any building or other Improvements used exclusively by the Owner or tenants of that building, or (ii) any property or facilities owned or leased by the City of La Vista ("City") or La Vista Community Development Agency ("Agency"), including the public right of way, offstreet parking facilities, and public recreational areas located on or adjacent to the La Vista City Centre Property.

Section 1.7 "Declarant" shall mean La Vista City Centre, LLC, a Nebraska limited liability company and any successor by assignment and assumption of Declarant's rights and obligations hereunder.

Section 1.8 "Declarant Affiliate" shall mean any entity which, directly or indirectly, controls, is controlled by, or is under common control with the Declarant.

Section 1.9 "Declarant Control Period" shall mean the time period commencing with the recording of the Declaration and continuing until the earlier of (a) the date Declarant no longer owns a Lot in the La Vista City Centre Property, or (b) the date Declarant elects, in its discretion in an instrument recorded against the La Vista City Centre Property, to transfer, relinquish and/or surrender all of its rights and obligations as Declarant in this Declaration. The Declarant shall be deemed to own any Lot in which the Declarant or a Declarant Affiliate owns an interest in the record owner of such Lot.

Section 1.10 "Exempt Property" shall mean Lots or other property in the La Vista City Centre Property, and Improvements thereon, now or hereafter owned or leased by the City or Agency for public purposes or uses. Notwithstanding anything in this Declaration to the contrary, any covenants, easements, requirements, or obligations arising out of or resulting from this Declaration, the Articles, or Bylaws, as amended from time to time, including without limitation any rules, regulations, covenants, agreements, restrictions, fees, fines, assessments, liabilities,

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claims, expenses, or charges, shall not be binding on such Exempt Property, the City, or Agency, except (i) to the extent otherwise expressly provided in this Declaration, or (ii) unless approved in a separately recorded instrument executed by the City; provided, however, all Back of Curb Right of Way Areas shall be maintained by Declarant in accordance with provisions of this Declaration applicable to maintenance of Common Areas, and all costs of such maintenance shall be included, assessed, and paid by each Owner of each Lot as Common Area Charges in the manner provided in this Declaration. Any such Exempt Property shall become subject to provisions of this Declaration as applicable to any other Lot or Owner upon termination of all ownership or lease interests of the City or Agency.

Section 1.11 "Improvements" shall mean all land preparation and excavation, buildings (exterior only), outbuildings, structures, underground installations, slope and grade alterations, lighting, roads, walkways, curbs, gutters, storm drains, drainageways, detention or retention ponds, cells, areas and other drainage facilities, utilities, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, patio areas, windbreaks, plantings, planted trees and shrubs, sidewalks, bicycle racks, planters, poles, flags, signs, storage or display areas, loading areas, docks, water retention areas, fountains, water features, ponds, recreational facilities and all other structures, land development or landscaping improvements of every type and kind.

Section 1.12 "Lot" or "Lots" shall mean and refer to any platted lot or lots located on the La Vista City Centre Property, as may be subdivided or replatted.

Section 1.13 "Owner" shall mean and refer to the record owner of a fee simple title to a Lot, excluding, however, those parties having such interest merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust or a mortgagee).

Section 1.14 "Permittee" shall mean all Owners, their Tenants or licensees of the Lots, and each of their respective officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, and invitees.

Section 1.15 "Tenant" shall mean the designated tenant or lessee under a lease agreement for parts of the Improvements constructed on the La Vista City Centre Property, and including any sublessees or subtenants of a Tenant.

Section 1.16 In addition to the definitions set forth above, there are other defined terms set forth elsewhere in this Declaration. All of the recitals to this Declaration are incorporated into this Declaration as though fully rewritten here at length.

**ARTICLE II
ASSOCIATION**

Section 2.1 Formation of Association. The Association shall be formed by Declarant prior to the expiration of the Declarant Control Period. The Association shall be formed as a non-profit corporation formed under the laws of the State of Nebraska, charged with the duties and empowered with the rights prescribed by law and set forth herein and in the Bylaws and Articles of Incorporation of the Association. Upon incorporation of the Association by Declarant, a majority of the Members shall approve the Bylaws governing the Association. The Association shall be charged with the duties and vested with the powers of Declarant or the Association set forth in this Declaration and in the Articles and Bylaws of the Association.

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Section 2.2 Powers and Responsibilities. The Association shall have the powers conferred upon non-profit corporations organized under the laws of the State of Nebraska and all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association as provided in this Declaration and the Articles and Bylaws of the Association. The business and affairs of the Association shall be managed by its Board of Directors and the Directors shall have all of the powers set forth in the Bylaws and all other powers now or hereafter conferred by law.

Section 2.3 Membership. After the expiration of the Declarant Control Period and the formation of the Association, each Owner, including Declarant, shall automatically be a member of the Association (hereafter collectively, a "Member") and, by its purchase or acquisition and ownership of a Lot, shall be deemed to have agreed to be bound by all provisions of this Declaration, as well as the Bylaws adopted by a majority of the Members and the rules and regulations promulgated by the Association or the Board. Membership shall be appurtenant to ownership of any Lot, and may not be separated from ownership of each Lot. Membership shall not be transferred, pledged or alienated in any way, except as appurtenant to the transfer of ownership of a Lot. Any attempt to transfer a membership except as appurtenant to the transfer of ownership of a Lot shall be void and shall not be reflected upon the Association's books and records.

Section 2.4 Voting. Each Member shall be entitled to a number of votes based on square footage of the buildings located on the Lot(s) owned by such Member, the amounts and process to be more particularly set forth in the Bylaws, and shall be entitled to vote on each matter properly coming before the Members of the Association, as determined by the Bylaws. The City or Agency will be a nonvoting Member during the period it owns or leases any Exempt Property.

Section 2.5 Board of Directors. The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint in accordance with the Articles and Bylaws of the Association. Except as otherwise provided herein or in the Articles or Bylaws of the Association, all acts of the Association shall be made by a majority of the Directors on the Board of Directors. The Board of Directors may also appoint various committees at its discretion and may contract with a person or entity to serve as a manager who shall, subject to the direction of the Board of Directors, be responsible for the day-to-day operation of the Association. The number of Directors on the Board of Directors shall not be less than three (3) nor more than seven (7). The initial Board of Directors of the Association shall consist of three (3) Directors and shall be appointed by the Declarant upon incorporation of the Association. No member of the Board of Directors or of any committee of the Association or employee of the Association, or any manager, or the Declarant, or any agent employee or officer of Declarant, shall be personally liable to any Owner, or to any Tenant or other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity if such person or entity has, on the basis of such information as may be possessed by such person or entity, acted in good faith without willful or intentional misconduct.

Section 2.6 Rules and Regulations. The Board of Directors shall have the right to promulgate such rules and regulations as it deems necessary and each Member shall be bound by such rules and regulations. The rules and regulations may govern and restrict the use of any area of the La Vista City Centre Property. Upon adoption, the rules and regulations shall have the same force and effect as if set forth herein. Notwithstanding anything contained herein, no rules or regulations shall be promulgated by the Board of Directors that may materially and adversely affect any existing, or Declarant approved (if not already constructed), buildings or Improvements

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located on a Lot without the prior written consent of the applicable Owner of such Lot, and shall be at no cost to the Owner of such burdened Lot.

Section 2.7 Administration and Compliance. If the Articles or Bylaws of the Association are in any way inconsistent with this Declaration, then this Declaration shall prevail and control. Each Owner and Tenant of a Lot shall comply with, and shall cause their respective Permittees to comply with, the provisions of this Declaration, the Bylaws and such rules and regulations as the Association may implement, as each may be amended from time to time. Failure to so comply shall be grounds for (a) action for damages and/or injunctive relief, and (b) such remedies, by legal proceedings or otherwise, as are available by reason of this Declaration or by law, each of which remedies shall be cumulative and in addition to any other available remedy.

Section 2.8 Expiration of the Declarant Control Period. Prior to expiration of the Declarant Control Period, the Association shall be formed in accordance with foregoing and thereafter the Association shall have all of Declarant's rights, privileges, duties and obligations derived from, created or imposed by the provisions of this Declaration.

**ARTICLE III
CONSTRUCTION REQUIREMENTS**

Section 3.1 Plan Approval. Commencing upon the full execution of this Declaration, before commencing any work on Improvements on any Lot (including expansions or alterations to existing Improvements), the Owner of such Lot shall first submit to the Declarant for prior written approval, the plans and specifications for such Lot which shall include, but not be limited to, the following items proposed to be located on the Lot (i) the footprint of any buildings or other Improvements, (ii) the vertical and horizontal dimensions for any Improvements, (iii) building architectural elevations depicting materials, (iv) exterior design, including all building materials and colors, (v) any landscaped areas, (vi) any parking areas, sidewalks, accessways and entrances to the Lot and (vii) any other proposed common areas to be located on the Lot. All Improvements constructed on any Lot shall be constructed in accordance with a site plan approved in accordance with this Declaration. Upon approval by the Declarant of the applicable plans and specifications, any proposed common area shall become and remain Common Area under this Declaration and the Bylaws unless otherwise designated by the Declarant. The approval by the Declarant of any plans submitted for approval in accordance with this Declaration shall not constitute any representation or warranty as to the adequacy, sufficiency, performance or compliance with laws and regulations. All modifications to an approved plan now or hereafter proposed by the Owner of such Lot must be approved by the Declarant in accordance with this Article III prior to commencement of such modifications.

Section 3.2 Performance of Construction. Each Owner shall be bound to perform all construction on its Lot or Lots (i) in accordance with the applicable plans and specifications as approved by the Declarant, (ii) with due diligence and in a good and workmanlike manner, using new and first-class materials, (iii) in full cooperation with Declarant and the other Owners of the La Vista City Centre Property to the extent necessary to effect a unified, integrated development, (iv) in accordance with all applicable laws, ordinances, rules and regulations of all governmental and quasi-governmental agencies and authorities having jurisdiction over such construction, including, but not limited to Design Standards set forth in that certain Redevelopment Agreement between Declarant and the La Vista Community Development Agency, dated of even date herewith (the "Redevelopment Agreement"), (v) only after having procured and paid for authorizations of the various departments and governmental agencies having jurisdiction, and (vi) in accordance with the terms and provisions of this Declaration. The Owners shall be responsible

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for providing staging and parking areas for its construction workers so as to keep the public parking areas and accessways available for customers of the La Vista City Centre Property and surrounding development. The Owners shall keep all Common Areas and other Lots free from debris and shall repair or replace any Common Areas damaged by Owner or its agents, employees or contractors. The Owners in the performance of their construction shall not (i) cause any unnecessary or unreasonable increase in the cost of construction of any other Owner, (ii) unreasonably interfere with any other construction being performed on the La Vista City Centre Property, or (iii) unreasonably impair the use, occupancy or enjoyment of the development or any part thereof.

Section 3.3 Indemnity. Each Owner shall indemnify, defend and hold harmless the Declarant, Association and other Owners from and against all claims and all costs, expenses and liabilities incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of any mechanic's liens or other claims regarding materials supplied or work performed, or the death of, or any accident, injury, loss or damage whatsoever caused to, any person or to the property of any person, as shall occur by reason of the performance of any construction by or at the request of the indemnitor, except for claims caused by the gross negligence or willful act or omission of the indemnitee, its licensees, concessionaires, agents, servants or employees. If any mechanic's, materialman's or other similar lien shall at any time be filed against any part of the La Vista City Centre Property on account of any work, labor or services performed or claimed to have been performed or on account of any materials furnished or claimed to have been furnished, for or at the direction of an Owner, such Owner shall, without cost or expense to any other Owner, cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction within thirty (30) days after the filing of said lien.

**ARTICLE IV
LOT AND COMMON AREA MAINTENANCE AND TAXES**

Section 4.1 Maintenance by Owners. Each Owner shall maintain or cause to be maintained, at its expense, its Lot, including any adjacent public sidewalks, and all Improvements completed thereon (except those Common Areas to be maintained by the Declarant as set forth herein) in a well-maintained, clean, neat and attractive condition at all times and shall comply with all applicable health, fire, building and safety ordinances, codes, regulations and requirements applicable thereto. Except for those Common Areas to be maintained by the Declarant, each Owner's maintenance obligations under this Section shall include, but not be limited to:

- (a) Maintaining paved surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally approved by the Declarant, or such substitute as shall in all respects be equal in quality, use and durability to that originally approved and installed;
- (b) Removing all paper, mud and sand, snow and ice, trash, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
- (c) Placing, keeping in repair and replacing any necessary or appropriate directional signs, markers and lines;
- (d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities (including lighted signs) as shall be required or permitted;

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(e) In the event vertical improvements or structures are located on the lot, maintaining all signs, all windows, doors, perimeter walls and exterior building walls (including, but not limited to, all retaining walls) and other exterior surfaces in a good condition and state of repair;

(f) Promptly removing all graffiti or other similar markings from all perimeter walls, exterior building walls and other exterior surfaces, paved areas and other portions of any Improvements;

(g) Maintaining any pedestrian, vehicular or other easements granted or reserved pursuant to the terms and conditions of this Declaration; and

(h) In the event any act, omission or condition caused by any Owner or its Tenant or Permittees results in the destruction or removal of any landscaping, trash receptacle, bench, bike rack, light poles or other Improvements within the Common Areas maintained by the Declarant hereunder, the Declarant shall have the right to either, (i) require the Owner, at its sole cost and expense, repair and replace, in a good and workmanlike manner, free of liens and to as good a condition as the condition of such Improvements prior to such destruction or removal, all such Common Areas or (ii) cause the repair and replacement of such Improvements, in which case the Owner shall promptly reimburse the Declarant for such costs. Any landscape Improvements shall be promptly replaced with landscaping and other materials of like size and kind as approved by the Declarant or committee thereof. Notwithstanding anything herein to the contrary, in the event of an emergency or if any portion of the Common Areas located on a Lot is rendered unsafe or hazardous for any reason, at the Declarant's reasonable discretion, the Declarant shall have the right, but not the obligation, to immediately repair or remove such condition, in which case the Owner shall promptly reimburse the Declarant for such costs.

Section 4.2 Maintenance by Declarant. The Declarant shall maintain the Common Areas and the Back of Curb Right of Way Areas, including the Improvements within the Common Areas and the Back of Curb Right of Way Areas and all landscaping within the Common Areas and the Back of Curb Right of Way Areas, in good condition and repair, including snow removal, and replace the same as may be necessary from time to time, subject to the following:

(a) The Declarant shall maintain a reasonably high standard in providing for the repair, management, maintenance and replacement of the Common Areas and the Back of Curb Right of Way Areas; however, the Declarant shall determine the appropriate maintenance thereof, subject to the City's or Agency's rights under the Subdivision Agreement between Declarant and the City, dated of even date herewith (the "Subdivision Agreement") or Redevelopment Agreement to require that Declarant modify, replace, maintain or repair the Common Areas or the Back of Curb Right of Way Areas (including the Improvements and landscaping within the Common Areas and the Back of Curb Right of Way Areas) pursuant to the terms of such agreement. Declarant shall indemnify, release and hold harmless the City and Agency from and against all claims, liabilities and expenses arising out of or resulting from any acts or omissions of Declarant with respect to maintenance obligations relating to the Common Areas or the Back of Curb Right of Way Areas under this Declaration, except for any claims caused by the gross negligence or willful act or omission of the City or Agency, its contractors, employees or agents; and

(b) The cost of maintenance, repair and replacement for which the Declarant is responsible under this Section shall be apportioned among the Owners in accordance

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with the square footage of the buildings located on the Lot(s) owned by such Owner and shall be assessed as part of the regular assessments in accordance with the provision of Section 4.3 hereof.

Section 4.3 Common Area Charges. The Owner of each Lot shall be responsible for its share of actual expenses incurred by the Declarant in administrating, operating, managing, maintaining, repairing, rebuilding, replacing, restoring, securing, monitoring, promoting and marketing the Development, and insuring the Common Areas, the Back of Curb Right of Way Areas and Improvements thereon (collectively, "Common Area Charges"). The Common Area Charges shall be charged as follows: (i) for all Common Areas and Back of Curb Right of Way Areas (excluding any surface parking lots designated by Declarant that are not Exempt Property), assessments shall be allocated to each Lot based on the building square footage of each Lot divided by the total building square footage owned by the Lot Owners in the La Vista City Centre Property, (ii) for any surface parking areas designated by Declarant (that are not Exempt Property), assessments shall be allocated pro rata to the benefitted Lots based on building square footage on the benefitted Lots. The Declarant shall determine which Lots are benefitted by the applicable Common Areas described in Subsection (ii) above. The Declarant shall provide yearly estimates of the Common Area Charges and shall levy assessments against each Lot. The Declarant shall also have the right to levy special assessments. The time and manner of payment of such assessments shall be determined by the Declarant. Declarant and the Owners hereby acknowledge that pursuant to the Subdivision Agreement, the public property serving the La Vista City Centre Property, including but not limited to, rights of ways, recreational areas, and other public amenities and the public offstreet parking garages, are to be owned and, except for Back of Curb Right of Way Areas, are to be maintained by the City of La Vista or its designee. The City and Agency shall not be subject to or part of the Common Area Charges, nor shall the Owner of any Exempt Property be responsible for any share of the Common Area Charges, or any other costs, fees or assessments allocated to the Owners pursuant to this Declaration.

Section 4.4 Taxes and Assessments. Each Owner shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Lot and any Improvements located thereon, and any personal property owned or leased by such Owner in the La Vista City Centre Property, provided that if such taxes or assessments or any part thereof may be paid in installments, each Owner may pay each such installment as and when the same becomes due and payable. Subject to the terms of the Subdivision Agreement and the Redevelopment Agreement, as such may be amended, or any future Subdivision Agreement or Redevelopment Agreement affecting the La Vista City Centre Property, nothing contained herein shall prevent any Owner or Tenant from contesting at its cost and expense any taxes and assessments with respect to its Lot in any manner such Owner or Tenant elects, so long as such contest is in accordance with applicable law and maintained with reasonable diligence and in good faith.

Section 4.5 Liens for Assessments or Fines. The assessments, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time the assessments first become due and payable. The assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the assessments are charged. The grantee of any Lot shall be jointly and severally liable with the grantor of the Lot for all unpaid assessments against a Lot assessed and due prior to the time of the grant of conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee.

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ARTICLE V INSURANCE

Section 5.1 Insurance by the Declarant. With respect to the surface parking lots deemed Common Area and located on the La Vista City Centre Property, Declarant shall maintain or cause to be maintained in full force and effect commercial general liability insurance against claims for personal injury, death or property damage in an amount to be determined by the Declarant, and such other insurance which the Declarant considers appropriate. The costs for such insurance shall be included in the Common Area Charges allocated to the benefitted Lots pursuant to Section 4.3 above.

Section 5.2 Insurance by Owners. Each Owner (as to its Lot only) shall maintain or cause to be maintained the following insurance in accordance with the requirements set forth by the Declarant (i) commercial general liability insurance, (ii) workers' compensation insurance, (iii) employer's liability insurance, (iv) automobile liability insurance, (v) casualty insurance at replacement value for all improvements located on the applicable Lot, and (v) any other insurance required by the Declarant, as may be amended from time to time.

Each Owner agrees to defend, protect, indemnify and hold harmless each other Owner and the Declarant from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the injury to or death of any Permittee, or damage to the property of any Permittee located on the Lot owned by each indemnifying Owner; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or willful act or omission of such other Owner, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof. In the event it is determined that such other Owner was not at fault, then the indemnifying Owner shall reimburse such other Owner for all reasonable costs and/or expenses incurred by it defending against such claim or demand.

Section 5.3 Insurance During Construction. Prior to commencing any construction activities within the La Vista City Centre Property, each Owner shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring the following insurance in accordance with the requirements set forth by the Declarant: (i) workers' compensation insurance, (ii) employer's liability insurance, (iii) commercial general liability insurance covering all operations by or on behalf of the contractor, which shall include the following coverages: premises and operations; products and completed operations; contractual liability, insuring the indemnity obligations assumed by contractor under the contract documents; broad form property damage (including completed operations); explosion, collapse and underground hazards; and personal injury liability, (iv) automobile liability insurance including coverage for owned, hired and non-owned automobiles, and (v) contractor's umbrella/excess liability insurance.

Section 5.4 General Requirements. All insurance provided for herein shall be effected under valid and enforceable policies issued by insurance companies authorized and licensed to transact business in the State of Nebraska. All policies of liability insurance maintained by Owners shall name Declarant and, to the extent applicable, the Association and designated property manager as additional insureds. Each Owner and the Declarant shall be responsible for all additional insurance requirements set forth by the Declarant, including, but not limited to, the type of insurance coverage, company rating, minimum limits, named additional insureds and all other insurance requirements.

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**ARTICLE VI
USE RESTRICTIONS AND COVENANTS**

Section 6.1 Use in General. Subject to the limitations set forth below, the La Vista City Centre Property shall be used as a mixed use development, including retail, office, hotel and residential uses. The Owners understand that the success of a mixed use development depends greatly on the appropriate tenant mix. As such, the precise uses and allocation of use within a Lot shall be approved by Declarant during the Declarant Control Period.

Section 6.2 Zoning and Use Compliance. All uses on the Lots must conform to this Declaration and any subsequent amendments thereto, and to all applicable zoning regulations of any municipal body or agency with jurisdiction over La Vista City Centre Property and the surrounding development.

Section 6.3 No Interference. No Owner shall keep or maintain anything or shall permit any condition to exist upon such Owner's Lot or cause any other condition on any Lot which materially impairs or interferes with any easement or right of any other Owner, or otherwise materially impairs or interferes with the use and enjoyment of the other Owners of the Common Areas. No Owner shall engage in or permit any activity which interferes with the reasonable enjoyment of any other Owner within the La Vista City Centre Property. The Owners hereby acknowledge that Declarant or the Association shall have the right to close off part of City Centre Drive for purposes of community activities, festivals, concerts or other similar uses upon prior notice so long as (i) vehicular access and access to designated parking areas for the La Vista City Centre Property is maintained, (ii) pedestrian access throughout the La Vista City Centre Property is maintained, and (iii) such street closure is in compliance with any permit and other applicable regulations of the City.

Section 6.4 Storage and Loading Areas. No materials, supplies or equipment shall be stored in or allowed to remain in any area on any Lot except inside a closed building. Notwithstanding the foregoing, during the construction of any building on a Lot, construction materials may be stored on such Lot provided such storage is lawful and accomplished in a manner reasonably designed to minimize any interference with the use and enjoyment of any existing building and Common Area by any Owner(s) and Permittee(s) thereof.

Section 6.5 General Prohibited Uses. The uses of a Lot shall be consistent with this Declaration. None of the following uses or operations shall be conducted or permitted on or with respect to all or any part of the La Vista City Centre Property unless otherwise approved by Declarant and the City of La Vista:

- (a) Any public or private nuisance;
- (b) Any use which emits or results in strong, unusual or offensive odors (but not such odors as shall normally emit from restaurants) fumes, dust or vapors, is a public or private nuisance, emits noise, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse, other than in enclosed receptacles intended for such purpose;
- (c) Any use which emits excessive quantity of dust, dirt, or fly ash; provided however, this prohibition shall not preclude the sale of soils, fertilizers, or other garden materials or building materials in containers if incident to the operation of a home improvement or other similar store;

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(d) Any use which could result in, or cause fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;

(e) Any operation primarily used as assembly, manufacture, refining, smelting, agriculture or mining operations;

(f) Any mobile home or trailer court, auction house, labor camp, junkyard, stock yard or animal raising (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance). Notwithstanding the foregoing, pet shops shall be permitted;

(g) Any drilling for and/or removal of subsurface substances;

(h) Any flea market and/or swap meet;

(i) Any adult book shop, movie house or other establishment selling or exhibiting pornographic materials or other pornographic use; provided, however, that such restrictions shall not preclude the (i) showing of films in any first rate motion picture theater, and (ii) sale or rental of adult books, magazines or videos as an incidental part of the business of a general purpose bookstore or video store such as Blockbuster, which is normally found in a first class development;

(j) Any abortion clinic or drug rehabilitation clinic; and

(k) Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pick up and delivery by the ultimate consumer.

**ARTICLE VII
EASEMENTS**

Section 7.1 Access and Parking Easements. Declarant hereby creates and grants to all Owners, including the Owners of Exempt Property, non-exclusive easements in the Common Areas for (i) ingress to and egress from the Lots, including Exempt Property; (ii) the passage of vehicles; (iii) the passage and accommodation of pedestrians; (iv) construction and use of, and access to the Common Areas; (v) rights to park on all Common Areas designated by Declarant for parking; and (vi) reasonable access and use by Permittees; and (vii) the doing of such other things as are authorized or required to be done on the Common Areas under this Declaration. The Declarant shall have a non-exclusive easement in, to, over and across each Lot and the Common Areas for the purpose of accessing, repairing, replacing or maintaining the Common Areas in accordance with this Declaration.

Section 7.2 Drainage Easement. Each of the Lots and the Owners thereof, including Exempt Property and its Owners, shall have nonexclusive easements in, to, over, and through the drainage patterns and systems as are established from time to time within the Common Areas, for reasonable surface drainage purposes. To the extent an Owner's Lot includes Common Areas, nothing herein shall prevent such Owner from relocating the drainage patterns established upon such Owner's Lot, provided such Owner first provides Declarant with plans respecting such relocation and such relocation does not unreasonably interfere with the drainage of other Lots within the La Vista City Centre Property or the other lots in the surrounding development.

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Section 7.3 Monument Sign Easement. The Declarant, City and Agency each shall have an exclusive easement to install, access and maintain signage on the Common Areas.

Section 7.4 Encroachment. Subject to written approval by Declarant during the Declarant Control Period, each of the Lots and Owners thereof, including Exempt Property and its Owners, shall have nonexclusive easements in, on, over and under the Common Areas for minor encroachments (together with the maintenance thereof) such as building overhangs, building support columns, canopies, eaves, foundations, slabs, footings, pillars and other minor encroachments. Neither such easements nor minor encroachments shall unreasonably (i) interfere with Declarant's use or operation of the La Vista City Centre Property, (ii) interfere with the adjacent Owner's use or operation of its Lot, (iii) restrict or limit the operation or use of any building or other improvement constructed on the adjacent Lot, (iv) limit or restrict the type of building or other improvements that may be constructed on the adjacent Lot or (v) materially and adversely affect the visibility, access or signage for the buildings constructed on the adjacent Lot. Such encroachments shall be independent of the adjacent Owner's Lot and shall not receive any structural support from any improvement located on such adjacent Lot. Notwithstanding the foregoing, this subparagraph shall not create easements for intentional encroachments.

Each Owner may, at any time and from time to time, remove, exclude and restrain any person from the use, occupancy or enjoyment of any easement hereby created or the area covered thereby for failure to observe covenants and restrictions set forth herein. If the unauthorized use is being made of any easement area, such unauthorized use may be permanently restrained or terminated by appropriate proceedings after written notice and opportunity to cure as may be required by Section 9.4 below.

**ARTICLE VIII
EMINENT DOMAIN**

Section 8.1 Owner's Right to Award. Nothing herein shall be construed to give any Owner any interest in any award or payment made to the other Owners in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other Owner's Lot or giving the public or any government any rights in said Lot. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on the La Vista City Centre Property, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the Owner thereof, and no claim thereon shall be made by the Owners of any other portion of the Common Areas except as set forth in Section 9.2 below.

Section 8.2 Collateral Claims. All other Owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and Improvements taken from another Owner.

Section 8.3 Tenant's Claim. Nothing in this Article shall prevent a Tenant from making a claim against an Owner pursuant to the provisions of any lease between such Tenant and such Owner for all or a portion of any such award or payment.

Section 8.4 Restoration of Common Areas. The Owner of any portion of the Common Areas so condemned shall, at its sole cost and expense, promptly repair and restore the remaining portion of the Common Areas within its respective Lot as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer. In the event the Owner does not repair and restore the remaining portion of the Common Areas in a reasonable timeframe, the Declarant shall have the right, but not the obligation, to cause the repair and

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restoration of such remaining portion of the Common Areas, in which case the Owner shall promptly reimburse the Declarant or Association for such costs.

**ARTICLE IX
MISCELLANEOUS**

Section 9.1 Nature and Effect. Each and all of the easements, covenants, conditions, restrictions and provisions contained in this Declaration:

- (a) are made for the direct, mutual and reciprocal benefit of the Declarant, the Association, the Owners, Tenants and Permittees of the Lots;
- (b) create mutual equitable servitudes upon each Lot in favor of the other Lots, except as otherwise specifically set forth herein;
- (c) constitute covenants running with the land; and
- (d) shall bind every person or entity having any fee, leasehold or other interest in any portion of the La Vista City Centre Property at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, condition, restriction or provision in question, or to the extent that such easement, covenant, condition, restriction or provision is to be performed on such portion.

Section 9.2 Rights and Obligations of Lenders. If by virtue of, any right or obligation set forth herein a lien shall be placed upon the Lot of any Owner hereto, such lien shall expressly be subordinate and inferior to the lien of any first lien holder now or hereafter placed on such Lot. Any holder of a first lien on any Lot, and any assignee or successor in interest of such first lien holder, shall be subject to the terms and conditions of this Declaration.

Section 9.3 Release from Liability. Any person acquiring fee or leasehold title to any Lot, shall be bound by this Declaration only as to the Lot or portion of the Lot acquired by such person. In addition, such person shall be bound by this Declaration only during the period such person is the fee or leasehold owner of such Lot or portion of the Lot, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this Section 9.3, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said Lots running with the land.

Section 9.4 Breach.

- (a) Right to Cure. The Declarant or its duly authorized agents shall have the right, upon violation or breach of any other covenant, restriction or easement set forth herein, if such violation or breach continues for a period of thirty (30) days after written notice thereof is given to the Owner to enter upon the Lot where such violation or breach exists, and summarily remove, at the expense of the Owner thereof who shall pay all such expenses plus interest at the prime rate plus five percent (5%) (not to exceed the maximum rate of interest allowed by law) within five (5) days after demand, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions of this Declaration. Notwithstanding the foregoing, if the cure of such violation or breach cannot reasonably be effected within such thirty (30) day period, the Declarant shall take no action so long as such Owner has commenced the cure of such breach or violation within such thirty (30) day period and is diligent in pursuing the

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completion of such cure. Notwithstanding the foregoing, the remedies available for an Owner's breach due to nonpayment of Assessments are determined by the Declarant.

(b) In addition to the rights and remedies set forth herein, in the event of any breach, default, non-compliance, violation or failure to perform or satisfy any of the covenants, conditions, restrictions and easements contained in this Declaration by an Owner, if the default is not cured within thirty (30) days after written notice describing the default is given to such Owner by the Declarant, the Declarant may enforce any one or more of the following rights or remedies, or any other rights or remedies available at law or in equity, whether or not set forth herein. All rights and remedies set forth in this Declaration or available at law or in equity shall be cumulative and not mutually exclusive.

(c) Damages. Declarant or any such Owner may bring a suit for damages arising from or with respect to any such default.

(d) Declaratory Relief. Declarant or any such Owner may bring suit for declaratory relief to determine the enforceability of any of the provisions of this Declaration.

(e) Injunctive Relief; Specific Performance. It is recognized that a default hereunder may cause material injury or damage not compensable by an award of money damages and that Declarant and/or any Owner shall be entitled to bring an action in equity or otherwise for a specific performance to enforce compliance with this Declaration, or for any injunctive relief to enjoin the continuance of any default or to prevent a default. The City or Agency may pursue any one or more of the rights or remedies above, or any other rights or remedies available at law or in equity, whether or not set forth herein, with respect to any terms or conditions of this Declaration applicable to it.

(f) Fines. This Subsection may be enforced only by the Declarant. Upon a default by an Owner or a Member, the Declarant may assess fines based on a schedule of fines (to be reasonably related to the nature of the default) adopted from time to time by the Declarant for various types of defaults that may arise under this Declaration, or as the Declarant may assess for defaults not covered by existing schedule of fines, provided that the Declarant shall assess a fine that is reasonable and appropriate under the circumstances, and provided further that the assessment of a fine shall be in addition to all other rights and remedies available hereunder.

(g) Rights of Lenders. No default under or violation of any provision of this Declaration shall defeat or render invalid the lien of any mortgage, deed of trust or similar instruments securing a loan made in good faith and for value with respect to the permanent financing, construction financing or any refinancing, of any Lot or portion thereof, or any improvement thereon. However, all of the provisions of this Declaration shall be binding upon and effective against any subsequent Owner of any Lot or any portion thereof whose title is acquired by foreclosure, trustee sale, deed in lieu of foreclosure or otherwise pursuant to the lien rights under any such mortgage, deed of trust or similar instrument.

(h) Denied Access. All Owners and Members shall be subject to partial or total denial of access to, benefit from, or use of all or any facilities, functions, or services, suspension partly or wholly of all or any rights or privileges of membership, following the procedure set forth in this Declaration or any other disciplinary action directed by the

Declarant for failure to pay any dues or charges or for any other act or omission detrimental to the affairs of the Lot owners or otherwise improper.

Section 9.5 Non-Merger. This Declaration shall not be subject to the doctrine of merger.

Section 9.6 Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

Section 9.7 Entire Agreement. This Declaration constitutes the entire agreement between the Owners hereto as to the matters set forth in this Declaration.

Section 9.8 Estoppel Certificates. Each Owner shall upon not less than thirty (30) days from receipt of written notice from any other Owner execute and deliver to such other Owner a certificate stating that (a) either this Declaration is unmodified and in full force and effect or is modified (and stating the modification); and (b) whether or not to the best of its knowledge the other Owner or Owners are in default in any respect under this Declaration and if in default, specifying such default.

Section 9.9 Notice. Any notice required or permitted to be given under this Declaration shall be in writing and shall be made by personal delivery or deposit in the United States Mail as Certified Mail, Return Receipt Requested, postage prepaid, or deposit with a recognized national overnight courier and addressed to the Owner being notified at the address given below (or such other address which any Owner may designate for itself from time to time hereafter by written notice to the other Owners):

If to Declarant:	La Vista City Centre, LLC c/o City Ventures 905 Jones Street Omaha, NE 68102 Attn: Chris Erickson
If to Owner/Tenant:	To the party at the street address of the Lot owned or occupied.
If to the City of La Vista:	City of La Vista 8116 Park View Boulevard La Vista, NE 68128-2198 Attn: City Administrator

Any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of hand or overnight courier delivery or upon deposit in the United States Mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request or other communication.

Section 9.10 Assignment. The rights and obligations of any Owner hereunder may be assigned in whole or in part to any person acquiring the entire interest of such Owner in its Lot or to one or more ground lessees or lessees which rights and obligations shall be expressly assumed by such ground lessee or lessees for the term of the ground lease or lease between

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such Owner and such ground lessee or lessee.

Section 9.11 Amendment. This Declaration and any provision herein contained may be extended, modified, repealed, added to or amended in any respect as to the La Vista City Centre Property or any Lot therein only with the express written consent of the Members representing more than fifty percent (50%) of the square footage of the buildings located on the La Vista City Centre Property as evidenced by a fully executed and acknowledged instrument recorded with the Register of Deeds of Douglas County, Nebraska; provided, however, (i) during the Declarant Control Period, the Declarant must approve all amendments, and (ii) to the extent that such proposed extension, modification, repeal, addition or amendment impacts (a) the Common Area maintenance obligations set forth in this Declaration, (b) the prohibited uses described in Section 6.5, or (c) Exempt Property, Back of Curb Right of Way Areas, or any City or Agency rights or obligations, then the approval of the City of La Vista shall also be required.

Section 9.12 Exhibits. Each reference herein to an exhibit refers to the applicable exhibit that is attached to this Declaration. All such exhibits constitute a part of this Declaration and by this reference are expressly made a part hereof.

Section 9.13 Limitation of Liability. Any person acquiring fee or leasehold title to any of the Lots or any portion thereof, shall be bound by this Declaration only as to the Lot or portion of the Lot acquired by such person. In addition, such person shall be bound by this Declaration only during the period such person is the fee or leasehold owner of such Lot or portion of the Lot; and, upon conveyance or transfer of the fee or leasehold interest shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrue prior to such conveyance or transfer. Although persons may be released under this Section, the easements, covenants and restrictions in this Declaration shall continue to be benefits to and servitudes upon said tracts running with the land.

Section 9.14 Term of this Declaration. This Declaration shall be effective as of the date first above written and shall continue in full force and effect until January 1, 2066. At any time within one year prior to January 1, 2066, and each thirty (30) year period thereafter (each such date being referred to as a "Termination Date"), by majority vote of the Members, the Association may, by written declaration signed and acknowledged by a majority of the approving Members and duly recorded with the Register of Deeds for Sarpy County, Nebraska, terminate this Declaration, effective as of the next Termination Date; provided, however, that any such termination of this Declaration shall be conditional upon a replacement Declaration of Easements, Covenants, Conditions and Restrictions being approved by the City prior to the termination of this Declaration and thereafter being duly recorded with the Register of Deeds for Sarpy County, Nebraska. Failing such termination in accordance with the foregoing, this Declaration shall automatically be renewed and extended for successive periods of thirty (30) additional years, subject to the right of the Association by a vote of the majority of the Owners and upon approval by the City of a replacement of this Declaration, to terminate this Declaration. Upon the termination of this Declaration, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Declaration shall terminate and have no further force or effect; provided, however, that the termination of this Declaration shall not limit or affect any remedy at law or in equity that any Member may have against any other Member with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination.

Section 9.15 Severability. In the event any provision or portion of this Declaration is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect



the remainder hereof, and the remaining provisions shall continue in full force and effect at the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

Section 9.16. Requirements of City. The covenants, conditions, easements and restrictions contained herein are in addition to (i) the requirements, codes and ordinances imposed by the City of La Vista on the La Vista City Centre Property and the surrounding development, and (ii) the provisions of the Subdivision Agreement and the Redevelopment Agreement. In the event of a conflict or inconsistency between the provisions of this Declaration and the requirements, codes or ordinances of the City of La Vista applicable to La Vista City Centre Property and the surrounding development and/or the provisions of the Subdivision Agreement or the Redevelopment Agreement, then the more restrictive requirement or higher level of performance shall govern or be required.

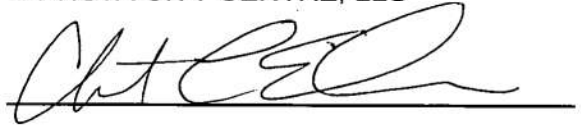
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Signature Page to Follow.]**

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IN WITNESS WHEREOF, Declarant has executed and delivered this Declaration as of the day and year first written above.

DECLARANT

LA VISTA CITY CENTRE, LLC

By: 

Name: Christopher Erickson

Title: Manager

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

On this 1st day of December, 2016, before me, a Notary Public in and for said county and state, personally appeared Christopher Erickson, who executed the foregoing Declaration, and acknowledged before me that he was duly authorized and did execute the same as Manager of La Vista City Centre LLC, a Nebraska limited liability company.




Notary Public

2016-31246 S

Exhibit A

Final Legal Description

Lots 3 thru 17 and Outlots A thru C, La Vista City Centre, a Subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska.

