

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JUNE 15, 2021 AGENDA**

Subject:	Type:	Submitted By:
84 th STREET REDEVELOPMENT AREA RECIPROCAL CONSTRUCTION, GRADING AND SITE PREPARATION EASEMENT - CITY OF LA VISTA AND CITY CENTRE MUSIC VENUE, LLC	◆ RESOLUTION ORDINANCE RECEIVE/FILE	PAT DOWSE CITY ENGINEER

SYNOPSIS

A resolution has been prepared to approve and authorize execution of a reciprocal easement in connection with grading, site preparation, and construction of the event venue and public improvements.

FISCAL IMPACT

N/A

RECOMMENDATION

Approve.

BACKGROUND

Due to the proximity of the construction activities on the event venue and public improvements within the Mixed Use and Public Improvement Redevelopment Project Areas, a reciprocal construction, grading, and site preparation easement is necessary. A proposed easement is presented for consideration, subject to any additions, subtractions, or modifications as determined necessary or appropriate.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AND AUTHORIZING EXECUTION OF A RECIPROCAL CONSTRUCTION, GRADING AND SITE PREPARATION EASEMENT WITHIN THE PUBLIC IMPROVEMENT AND THE MIXED USE REDEVELOPMENT PROJECT AREAS.

WHEREAS, the City of La Vista, pursuant to the Public Improvement Redevelopment Project, will construct certain improvements within the Public Improvement Redevelopment Project Area; and

WHEREAS, City Centre Music Venue, LLC or or any affiliated entity of City Centre Music Venue, LLC, as the Redeveloper, pursuant to the Mixed Use Redevelopment Project will construct certain improvements within the Mixed Use Redevelopment Project Area, as amended; and

WHEREAS, the parties desire to grant reciprocal easements over certain Redeveloper property and City property for the purposes of construction, grading and site preparation in connection with such improvements; and

WHEREAS, a proposed Reciprocal Construction, Grading, and Site Preparation Easement is presented with this Resolution.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of La Vista, Nebraska, do hereby approve the Reciprocal Construction, Grading, and Site Preparation Easement as presented, subject to any additions, subtractions, or modifications as the City Administrator, City Engineer, or any designee of the City Administrator or City Engineer determines necessary or appropriate ("Easement").

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized to execute the Easement and to take all other actions as he or she determines necessary or appropriate to carry out this Resolution or the Easement.

PASSED AND APPROVED THIS 15TH DAY OF JUNE, 2021.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

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

RECIPROCAL CONSTRUCTION, GRADING AND SITE PREPARATION EASEMENT

THIS RECIPROCAL, CONSTRUCTION, GRADING AND SITE PREPARATION EASEMENT ("Easement") is made and entered into as of this _____ day of _____, 2021 ("Effective Date"), by and between La Vista City Centre, LLC, a Nebraska limited liability company ("Redeveloper" or "Subdivider"), 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, 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 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, Grading and Site Preparation 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, grading, site preparation and other work, as initially described on Exhibit "C" attached hereto and incorporated herein by this reference and including without limitation, initial grading, temporary or permanent removal or relocation of utilities or soils, or other work, in preparation for constructing improvements on the City Property in accordance with that certain Subdivision Agreement by and between City and Subdivider, as amended from time to time, (the "Subdivision Agreement"), that certain Redevelopment Agreement by and between the La Vista Community Development Agency and Redeveloper, as amended from time to time, ("Redevelopment Agreement"), or that certain Redevelopment Plan, 84th Street Redevelopment Area, as amended from time to time, ("Redevelopment Plan") (the "City Work"). For purposes of this Easement, the City Administrator, City Engineer, or her or his designee shall be authorized to make all determinations regarding City Work, including without limitation its time of commencement, which may begin upon such approvals of the City Council as the City Administrator, City Engineer, or such designee determines sufficient; provided, however, any use of the City Easement for any City Work pursuant to any approved amendment or agreement of City and Subdivider before it is executed shall require prior written approval of the Manager of Subdivider. City upon completing a particular improvement or stage of the 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, grading, site preparation and other work as initially described on Exhibit "D" attached hereto and incorporated herein by this reference and including without limitation, initial grading, temporary or permanent removal or relocation of utilities or soils, or other work in preparation for constructing improvements on the Redeveloper Property in accordance with that certain Subdivision Agreement, Redevelopment Agreement, or Redevelopment Plan (the "Redeveloper Work"). For purposes of this Easement, the Manager of Redeveloper or his designee shall be authorized to make all determinations regarding Redeveloper Work, including without limitation its time of commencement, which may begin upon such approvals of the Redeveloper as such Manager or his designee determines sufficient; provided, however, any use of the Redeveloper Easement for any Redeveloper Work pursuant to any approved amendment or agreement of City and Redeveloper before it is executed shall require prior written approval of the City Administrator, City Engineer, or her or his

designee. Redeveloper upon completing a particular improvement or stage of the 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.

c. Erosion Control. Subdivider and City shall maintain erosion control measures for NPDES compliance on their respective properties covered by this Easement.

3. 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, and (ii) for the benefit of any contractor, agent, employee and representative of Redeveloper that performs any of the Redeveloper 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 (as hereinafter defined). The Easement shall commence as of the Effective Date and shall terminate sixty (60) months after the Effective Date or by mutual agreement, whichever is earlier (the "Term"), subject, however, to one or more extensions as the parties at any time agree in writing, as executed by the Manager of Redeveloper and the Mayor, City Administrator, or City Engineer of City. Notwithstanding the foregoing, (i) the City shall continue to have access to the Redeveloper Property to the extent the City is obligated to accomplish any follow-up actions to the City 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.

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 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.

6. 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

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 City 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. 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 with respect to uses or exercise of rights relating to City Work or City Property, which coordination of uses and exercise of rights pursuant to this Section 8 shall be communicated in writing, including by email, but shall not be subject to the notice requirements set forth in Section 9 below.

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:

City

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

With copies to

City Administrator
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
222 S. 15th Street #1404S
Omaha, NE 68102

With a copy to

Ringenberg & Rattner Law
Attn: Kendra J. Ringenberg
14301 FNB Parkway, Suite 204
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 or City 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. Further Assurances. In case, at any time after the Effective Date, further easements are deemed necessary or desirable in connection with the respective contemplated development and use of the Redeveloper Property and/or the City Property, each of the parties hereto agrees to cooperate in a commercially reasonable manner in connection with the negotiation, execution and delivery of such further easements and related instruments and documents, as the other party hereto may reasonably request.

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 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]

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

Pamela A. Buethe, CMC
City Clerk

By: _____
Douglas Kindig,
Mayor

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this day of _____ day of _____, 2021, before me, a Notary Public duly commissioned and qualified in and for said County, appeared Christopher L. Erickson, personally known to me to be the Manager of La Vista City Centre, 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 said company.

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

Notary Public

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

On this day of _____ day of _____, 2021, before me, a Notary Public duly commissioned and qualified in and for said County, appeared Douglas Kindig, personally known by me to be the Mayor of the City of La Vista, and Pamela A. Bueth, 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

EXHIBIT "A"
REDEVELOPER PROPERTY

"Redeveloper Property" for purposes of this Easement means:

Lot 1 La Vista City Centre Replat Four, City of La Vista, Sarpy County, NE.

Lot 3 La Vista City Centre Replat Four, City of La Vista, Sarpy County, NE.

EXHIBIT "B"
CITY PROPERTY

"City Property" for purposes of this Easement means:

PT Tax Lot 12, 14-14-12, City of La Vista, Sarpy County, NE.

Lot 12, La Vista City Centre Replat Three, City of La Vista, Sarpy County, NE.

Lot 2, La Vista City Centre Replat Four, City of La Vista, Sarpy County, NE.

EXHIBIT “C”

“City Work” for purposes of this Easement on Redeveloper Property means:

1. Over-excavation of pavilion area, if required.
2. Provide borrow soil, if required. City to identify site on adjacent City property where soil can be obtained by Redeveloper. Reseeding of the soil borrow area by City.
3. Provide soil waste area, if required. City to identify site on adjacent City property where excess suitable soils to be placed. Reseeding of soil waste area by Redeveloper.
4. Earthwork testing, including observations, density tests, settlement plates and other inspections—City responsible for Lot 2 and abutting City property.
5. Construction staging and access.
6. Equipment and material storage not permitted unless otherwise agreed to in writing between City and Redeveloper.

EXHIBIT “D”

“Redeveloper Work” for purposes of this Easement on City Property means:

1. Construction staging and access.
2. Prepare an approved grading plan for Lots 2 and 3 (details to be provided separately).
3. Earthwork on Lots 2 and 3 and adjacent areas pursuant to a grading plan approved by City. Fill on Lot 2 to be completed by July 31, 2021, subject to any extensions determined necessary or appropriate as approved by the City Engineer and Manager of Redeveloper in writing.
4. Earthwork testing, including observations, density tests, settlement plates and other inspections by Redeveloper’s engineers—Redeveloper responsible for Lots 1 and 3.
5. Grading permit modification by Redeveloper and its engineers.
6. Erosion control modifications on Lots 2 and 3.
7. Equipment and material storage not permitted unless otherwise agreed to in writing between City and Redeveloper.