

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

Subject:	Type:	Submitted By:
84 TH STREET REDEVELOPMENT AREA ENCROACHMENT EASEMENT AGREEMENT – CITY OF LA VISTA & LA VISTA CITY CENTRE MUSIC VENUE, LLC	◆ RESOLUTION ORDINANCE RECEIVE/FILE	CHRISTOPHER SOLBERG DEPUTY COMMUNITY DEVELOPMENT DIRECTOR

SYNOPSIS

A resolution has been prepared to approve and authorize execution of an encroachment easement agreement in connection with public improvements to be constructed on Lot 2, La Vista City Centre Replat Four.

FISCAL IMPACT

N/A

RECOMMENDATION

Approve.

BACKGROUND

The City will construct public improvements on Lot 2, La Vista City Centre Replat Four that will encroach upon Lot 3, La Vista City Centre Replat Four. City Centre Music Venue LLC, as owner of Lot 3 is willing to grant the City of La Vista an easement for such encroachments. A proposed Encroachment Easement Agreement 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 AUTHORIZING THE EXECUTION OF AN ENCROACHMENT EASEMENT AGREEMENT IN CONNECTION WITH PUBLIC IMPROVEMENTS TO BE CONSTRUCTED ON LOT 2, LA VISTA CITY CENTER REPLAT FOUR .

WHEREAS, the Mayor and City Council of the City of La Vista, pursuant to the Public Improvement Redevelopment Project, will construct certain improvements on Lot 2, La Vista City Centre Replat Four that will encroach upon Lot 3 La Vista City Center Replat Four ("Lot 3"); and

WHEREAS, City Centre Music Venue LLC or any affiliated entity of City Centre Music Venue, LLC, as owner of Lot 3, finds the encroachments upon Lot 3, La Vista City Centre Replat Four acceptable and is willing to grant the City of La Vista an easement for such encroachments; and

WHEREAS, a proposed Encroachment Easement Agreement 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 Encroachment Easement Agreement 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:
Tom McKeon, Esq.
Fitzgerald Schorr PC LLC
200 Regency One
10050 Regency Circle
Omaha, NE 68114

ENCROACHMENT EASEMENT AGREEMENT

THIS ENCROACHMENT EASEMENT AGREEMENT (this "Agreement") is made effective this ____ day of _____, 2021 by and between City Centre Music Venue, LLC, a Nebraska limited liability company ("LVCC Music"), and the City of La Vista, a Nebraska municipality (the "City").

WHEREAS, LVCC Music is the owner of that certain real property located in the La Vista City Center and legally described as set forth on Exhibit "A" attached hereto and incorporated herein by reference (the "LVCC Music Parcel");

WHEREAS, City is the owner of that certain real property legally described as set forth on Exhibit "B" attached hereto and incorporated herein by reference (the "City Parcel");

WHEREAS, the City Parcel is immediately adjacent to the LVCC Music Parcel;

WHEREAS, City plaza restroom, concession and other improvements will be located on City Parcel (collectively, the "Improvements"), of which a portion thereof, namely the roof overhang, will encroach onto the LVCC Music Parcel ("Encroachment"); and

WHEREAS, the Parties wish to provide for said Encroachment.

NOW, THEREFORE, incorporating the recitals set forth above, and in consideration of the premises and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Grant of Easement. LVCC Music hereby grants and conveys unto City and City's successors and assigns a perpetual, exclusive easement for purposes of allowing the Encroachment to remain undisturbed on the LVCC Music Parcel (the "Improvements Easement").

2. Maintenance. City shall maintain the Improvements constituting the Encroachment in good condition and repair. City may, to the extent reasonably necessary, enter onto the LVCC Music Parcel for the express purpose of maintaining, inspecting, repairing, or replacing any or all of said Improvements.

3. Duration. This Agreement shall remain in effect so long as the Improvements remains in substantially the same form and location as initially constructed or its replacement is in substantially the same form or location and that, upon removal, demolition, or destruction thereof, this Agreement shall terminate.

4. Binding Effect. This Agreement is and shall be deemed to be a covenant running with the land and shall be binding upon the Parties and upon their respective successors and/or assigns until terminated as set forth herein.

5. Indemnification. Subject to applicable limitations or other provisions of the Nebraska Political Subdivisions Tort Claims Act, City shall defend, protect, indemnify, and hold harmless LVCC Music against any and all damages, losses, expenses, costs, and liabilities (including, without limitation, all interest, penalties, and attorney's fees) based upon or arising out of any claim of personal injury, property damage, or other claim proximately caused by any negligent action or inaction of the City in connection with its use of the Improvements Easement hereunder or arising from its entering onto the LVCC Music Parcel pursuant to this Agreement for the express purpose of maintaining, inspecting, and repairing the Improvements, except for any losses, liabilities, damages, suits, claims, expenses, fees, or costs arising by reason of LVCC Music's negligence or willful misconduct. In the event that LVCC Music receives notice of any claim to which the indemnification hereunder applies, LVCC Music shall inform City of the claim as soon as is reasonably possible.

6. Notice. All notices and correspondence under this Agreement shall be given by certified or registered mail or by overnight delivery with a national courier providing confirmation of delivery to the following addresses:

<u>City</u>	<u>With copies to</u>
City Clerk 8116 Park View Blvd. La Vista, NE 68128	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
<u>LVCC Music</u>	<u>With a copy to</u>
City Centre Music Venue, LLC Attn: Christopher L. Erickson 222 S. 15 th Street #1404S Omaha, NE 68102	Ringenberg & Rattner Law Attn: Kendra J. Ringenberg 14301 FNB Parkway, Suite 204 Omaha, Nebraska 68154

7. Severability. If any portion of this Agreement 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 of this Agreement is invalid or unenforceable, but that by limiting such provision the same would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

8. Waiver. The failure of either Party to enforce any provision of this Agreement 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 Agreement.

9. Headings. The section headings appearing herein are for convenience of the Parties only and do not affect, define, limit, or construe the contents of the various sections in this Agreement.

10. Governing Law; Jury Trial Waiver; Consent to Jurisdiction and Choice of Venue. This Agreement is made and delivered in the State of Nebraska, and shall be governed by the laws thereof. Any suit in connection with this Agreement shall be filed and maintained in the District Court of Sarpy County. All parties consent to jurisdiction of said court and agree that venue is proper.

11. Entire Agreement; Amendment. Each Party acknowledges that he/she has read and fully understands the contents of this Agreement. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior oral or written negotiations, representations, or agreements, with respect to the subject matter hereof. This Agreement may be modified only by written instrument duly authorized and executed by all Parties.

12. Counterparts. This Agreement may be executed in two or more counterparts, which when taken together, shall constitute one and the same instrument. The parties may execute this Agreement 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 Pages to Follow.]**

IT WITNESS WHEREBY, the Parties have executed this Agreement as of the Effective Date.

CITY OF LA VISTA:

Douglas Kindig, Mayor

City of La Vista

ATTEST:

Pamela A. Buethe, City Clerk, CMC

STATE OF NEBRASKA)

)ss.

COUNTY OF SARPY)

On this ____ day of _____, 2021, before me, a Notary Public duly commissioned and qualified in and for said County and State, appeared Douglas Kindig and Pamela A. Buethe, personally known by me to be the Mayor and City Clerk of the City of La Vista, and the identical persons whose names are affixed to the foregoing Agreement, and acknowledged the execution thereof on behalf of the City to be their voluntary act and deed and the voluntary act and deed of said City.

[Seal]

Notary Public

CITY CENTRE MUSIC VENUE, LLC,
a Nebraska limited liability company

By: _____

Christopher L. Erickson, Manager

STATE OF NEBRASKA)

)ss.

COUNTY OF _____)

On this ____ day of _____, 2021, before me, a Notary Public duly commissioned and qualified in and for said County and State, appeared Christopher L. Erickson, Manager of City Centre Music Venue, LLC, a Nebraska limited liability company, the identical person whose name is affixed to the foregoing Agreement, and acknowledged the execution thereof on behalf of City Centre Music Venue, LLC to be his voluntary act and deed and the voluntary act and deed of said City Centre Music Venue, LLC.

[Seal]

Notary Public

EXHIBIT "A"

Legal Description of the LVCC Music Parcel

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

EXHIBIT “B”

Legal Description of the City Parcel

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