

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
NOVEMBER 18, 2014 AGENDA**

Subject:	Type:	Submitted By:
RELEASE AND SETTLEMENT AGREEMENT WITH MUTUAL OF OMAHA BANK	◆ RESOLUTION ORDINANCE RECEIVE/FILE	RITA M. RAMIREZ ASSISTANT CITY ADMINISTRATOR DIRECTOR OF ADMINISTRATIVE SERVICES

SYNOPSIS

A resolution has been prepared to approve a Release and Settlement Agreement with Mutual of Omaha Bank regarding special assessments on Lot 20 and Lot 36 Brook Valley II Business Park.

FISCAL IMPACT

Revenue of \$340,812.00.

RECOMMENDATION

Approval

BACKGROUND

In 2008 the City levied special assessments for improvements against Lot 20 and Lot 36 in Brook Valley II Business Park. Mutual of Omaha Bank is the current owner of these lots and the assessments, as well as the interest that has accumulated thereon, have not been paid. In December of 2013 the City filed two lawsuits against the bank seeking to foreclose on these liens against the property.

As a result of that lawsuit, the City and the bank have had settlement talks and have negotiated a Release and Settlement Agreement in which the bank would pay the City \$340,812.00 in full satisfaction of the assessment debt and the City would dismiss the assessment lawsuits. This settlement represents the principal amount of the assessments plus \$50,000.00 of the accrued interest.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING A RELEASE AND SETTLEMENT AGREEMENT WITH MUTUAL OF OMAHA BANK REGARDING SPECIAL ASSESSMENTS ON LOT 20 AND LOT 36 BROOK VALLEY II BUSINESS PARK.

WHEREAS, Mutual of Omaha Bank is the current owner of Lot 20 and Lot 36 Brook Valley II Business Park; and

WHEREAS, on or about January 23, 2008 the City levied special assessments against Lot 20 in the amount of \$100,557.25 and against Lot 36 in the amount of \$190,255.41; and

WHEREAS, as of December 17, 2013 the special assessment amounts plus accrued interest had not been paid and the City filed two lawsuits against the bank seeking to foreclose its asserted liens against the property; and

WHEREAS, the City and the bank desire to resolve these matters by compromise and without need for further litigation; and

WHEREAS, the City and the bank have negotiated a Release and Settlement Agreement in which the bank will pay the City \$340,812.00 in full satisfaction of the assessment debt and the City will dismiss the assessment lawsuits.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of La Vista, Nebraska, that the Release and Settlement Agreement is hereby approved in form and content presented at this meeting, subject to any modifications the City Administrator determines necessary or advisable; and the City Clerk is hereby authorized and directed to instruct Sarpy County officials to remove the special assessment liens from Lot 20 and Lot 36, and to take any other actions as necessary or appropriate to carry out the Settlement Agreement.

PASSED AND APPROVED THIS 18TH DAY OF NOVEMBER 2014.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT ("**Agreement**") is made and entered into as of November ___, 2014, by and between the **CITY OF LA VISTA, NEBRASKA** ("**City**") and **MUTUAL OF OMAHA BANK** ("**Bank**").

RECITALS

A. By virtue of certain non-judicial foreclosure proceedings, Bank is the current owner of the following real property:

- i. Lot 20 Brook Valley II Business Park, an addition in Sarpy County, Nebraska ("**Lot 20**"); and
- ii. Lot 36 Brook Valley II Business Park, an addition in Sarpy County, Nebraska ("**Lot 36**", and collectively with Lot 20, the "**Real Property**").

B. On or about January 23, 2008, City levied special assessment 2007-011336366 in the amount of \$100,557.25 against Lot 20, and special assessment 2007-011564303 in the amount of \$190,255.41 against Lot 36 (collectively, the "**Special Assessments**").

C. As of August 22, 2013, City asserts Bank owes the principal amount of \$100,577.25, plus interest in the amount of \$78,644.03 and accruing interest pursuant to the Lot 20 Special Assessment, and the principal amount of \$190,255.41, plus interest in the amount of \$148,792.36 and accruing interest pursuant to the Lot 36 Special Assessment (collectively, the "**Assessment Debt**").

D. City asserts that it has a first priority lien against the Real Property securing payment of the Assessment Debt.

E. On December 17, 2013, City filed two lawsuits against, among others, Bank seeking to foreclose its asserted liens against the Real Property, case numbers CI 13-1908 and CI 13-1909 in the District Court of Sarpy County, Nebraska (collectively, the "**Assessment Foreclosure Lawsuits**").

F. City and Bank desire to resolve these matters by compromise and without the need for further litigation.

NOW THEREFORE in consideration of the mutual covenants and representations set forth herein, City and Bank agree as follows:

1. The parties acknowledge and agree that, after the parties have signed this Agreement, both the City's Mayor and City Council must approve the Agreement after notice and a public meeting pursuant to NEB. REV. STAT. § 84-713. Approval by the City's Mayor and City Council is a condition precedent to the parties' obligations to perform under this Agreement, and the Agreement shall be null, void, and of no force or effect if the City's Mayor and City Council do not approve the Agreement.

2. After all parties have signed this Agreement and within seven (7) days after the City's Mayor and City Council have approved this Agreement, Bank shall pay City the total amount of Three Hundred Forty Thousand Eight Hundred Twelve Dollars (\$340,812.00) (the

"**Settlement Payment**") in full satisfaction of the Assessment Debt and any and all other amounts owed pursuant to the Special Assessments. The Settlement Payment shall be delivered to Gerald L. Friedrichsen, Fitzgerald, Schorr, Barmettler & Brennan, P.C., L.L.O., 10050 Regency Circle, Suite 200, Omaha, Nebraska 68114-3794.

3. After all parties have signed this Agreement and within seven (7) days after Bank's delivery of the Settlement Payment as described in Paragraph 2 hereinabove, City shall dismiss the Assessment Lawsuits with prejudice. In addition, City shall take all action necessary to cancel, satisfy, release, and/or otherwise terminate the effectiveness of the Special Assessments so that they are no longer liens and/or encumbrances of record against the Real Property.

4. After: (a) all parties have signed this Agreement, (b) the City's Mayor and City Council have approved the Agreement pursuant to and NEB. REV. STAT. § 84-713, and (c) Bank has paid the Settlement Payment, City shall be deemed to release, acquit, and forever discharge Bank and any subsidiaries, affiliates, officers, directors, agents, employees, servants, attorneys, and representatives, as well as the respective heirs, personal representatives, successors, and assigns of any and all of them (collectively, the "**Released Bank Parties**") from any and all claims, demands, debts, actions, causes of action, suits, contracts, agreements, obligations, accounts, defenses, and liabilities of any kind or character whatsoever, known or unknown, suspected or unsuspected, in contract or in tort, at law or in equity, which the City ever had or now has against the Released Bank Parties, jointly or severally, for or by reason of any matter or cause arising out of and/or related to the Real Property, the Special Assessments, the Assessment Debt and/or the Assessment Foreclosure Lawsuits. In addition, City agrees not to commence, join in, prosecute, or participate in any suit or other proceeding in a position that is adverse to any of the Released Bank Parties arising directly or indirectly from any of the foregoing matters.

5. After: (a) all parties have signed this Agreement, (b) the City's Mayor and City Council have approved the Agreement pursuant to and NEB. REV. STAT. § 84-713, (c) City has dismissed the Assessment Foreclosure Lawsuits with prejudice, and (d) City has canceled, satisfied, released, and/or otherwise terminated the effectiveness of the Special Assessments, Bank shall be deemed to release, acquit, and forever discharge the City and any subsidiaries, affiliates, officers, directors, agents, employees, servants, attorneys, and representatives, as well as the respective heirs, personal representatives, successors, and assigns of any and all of them (collectively, the "**Released City Parties**") from any and all claims, demands, debts, actions, causes of action, suits, contracts, agreements, obligations, accounts, defenses, and liabilities of any kind or character whatsoever, known or unknown, suspected or unsuspected, in contract or in tort, at law or in equity, which Bank ever had or now has against the Released City Parties, jointly or severally, for or by reason of any matter or cause arising out of and/or related to the Real Property, the Special Assessments, the Assessment Debt and/or the Assessment Foreclosure Lawsuits. In addition, Bank agrees not to commence, join in, prosecute, or participate in any suit or other proceeding in a position that is adverse to any of the Released City Parties arising directly or indirectly from any of the foregoing matters.

6. The parties agree that the terms of this Agreement, and the proposals and discussions relating to this Agreement, are and shall be held confidential by them, unless and to the extent disclosure is required by law, except that any of the parties to this Agreement may disclose the terms of this Agreement to their attorneys, accountants, auditors, parent companies and/or subsidiaries, regulators, governmental bodies and agencies, and in response to a

subpoena or the equivalent. The parties may also disclose the terms of this Agreement for purposes of performing and enforcing this Agreement.

7. The parties acknowledge that: (a) they have each thoroughly read and reviewed the terms and provisions of this Agreement, are familiar with said terms and provisions, and that they have each had the full benefit and advice of competent counsel of their own selection in regard to understanding the meaning and effect of this Agreement; (b) the execution of this Agreement is done voluntarily and with full knowledge and without duress; and (c) in executing this Agreement, neither of the parties are relying on representations or promises, either written or oral, express or implied, made to them by the other party, other than any express representations and promises contained herein.

8. The terms and conditions of this Agreement shall be governed by and construed in accordance with the internal laws of the State of Nebraska, without regard to conflicts of laws principles.

9. If any provision of this Agreement shall be invalid, illegal or otherwise unenforceable, such provision shall be severable from the remainder of this Agreement and the validity, legality and enforceability of the remaining provisions shall not be adversely affected or impaired thereby and shall remain in full force and effect.

10. The parties do not intend, by this Agreement, to provide any benefit to any third parties and persons or entities who are not a party to this Agreement shall not be entitled to rely on any part or provision of it, and no such third party shall be entitled to make a claim against any party to this Agreement alleging third party beneficiary status.

11. This Agreement constitutes the entire and final agreement among the parties and there are no agreements, understandings, warranties, or representations among the parties except as set forth in this Agreement. All statements by or among the parties concerning matters leading up to this Agreement, and all negotiations and writings related thereto, by the parties and their officers, agents and representatives, are deemed integrated within this Agreement and no such statements or writings shall be admissible to vary the terms hereof.

12. This Agreement will inure to the benefit of and bind the respective heirs, personal representatives, successors, and permitted assigns of the parties to it.

13. This Agreement may be executed in counterparts, each of which will be deemed an original document, but all of which will constitute a single document. This Agreement will not be binding on or constitute evidence of a contract between the parties until such time as a counterpart of this Agreement has been executed by each party and a copy thereof delivered to each other party to this Agreement.

14. Neither this Agreement nor any of the provisions hereof may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

EXECUTED and effective as of the date first above written.

THE CITY OF LA VISTA, NEBRASKA

By: 

Douglas Kindig
Its: Mayor

MUTUAL OF OMAHA BANK

By: 

Its: Assistant vice president