

RESOLUTION NO._____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA TO AUTHORIZE AND APPROVE THE PURCHASE OF REAL PROPERTY, PURCHASE AGREEMENT AND FURTHER ACTIONS.

WHEREAS, the City desires to purchase property described or depicted in attached Exhibit 1 ("Property") for public improvements and purposes. The estimated purchase price is approximately \$10.14, plus pro rated costs at closing as approved by the City Administrator ("Price"), for tracts totaling an estimated 473,187 square feet. Terms and conditions of the purchase, including price, amounts, locations, and boundaries of the Property, are subject to adjustment, finalization, and approval by the City Administrator or City Engineer.

NOW THEREFORE, BE IT RESOLVED, that the Mayor and City Council find and determine that:

- (i) Nebraska Statutes, among other provisions, require that the City Council, before purchasing an interest in real property, authorize the acquisition by action at a public meeting after notice and public hearing; and
- (ii) The City published notice of public hearing on the proposed purchase of the Property, to be held during the regular City Council meeting on August 2, 2016, which notice is hereby approved. The public hearing was held and completed at the August 2, 2016 Council meeting before consideration of this Resolution; and
- (iii) All applicable statutory requirements related to the proposed purchase have been satisfied; and
- (iv) A purchase agreement for the Property has been presented in form and content attached hereto as Exhibit 2 and incorporated herein by this reference ("Purchase Agreement"). Purchase of the Property may be carried out by and through the parties entering and executing more than one purchase agreement and closing. The Purchase Agreement as presented will be the form of purchase agreement for all such purchases and closings, subject to any additions, subtractions, or changes in accordance with this Resolution.

BE IT FURTHER RESOLVED, that, in consideration of the foregoing, the Mayor and City Council hereby adopt and approve the following actions:

1. The foregoing recitals are incorporated into this Resolution by reference;
2. Purchase of the Property at a price not to exceed \$10.14 per square foot, plus costs, is approved, subject to any adjustment as approved by the City Administrator in connection with the final determination of the total square footage acquired;
3. Property to be acquired in the estimated amount of 473,187 square feet is approved, subject to any adjustments and final determination of amounts, dimensions, locations, and boundaries as approved by the City Administrator, City Engineer, or her or his designee;
4. The Purchase Agreement as presented in form and content at this meeting is approved, subject to any additions, subtractions, or changes as the City Administrator or City Administrator from time to time determines necessary or appropriate. The Purchase Agreement shall be used to carry out the purchase of the Property in one or more transactions or closings.

BE IT FURTHER RESOLVED, that the Mayor, City Administrator, or City Engineer, or his or her designee, is hereby authorized to take all actions he or she determines necessary or appropriate to carry out this Resolution or the actions approved herein.

PASSED AND APPROVED THIS _____ TH DAY OF _____ 2016
CITY OF LA VISTA

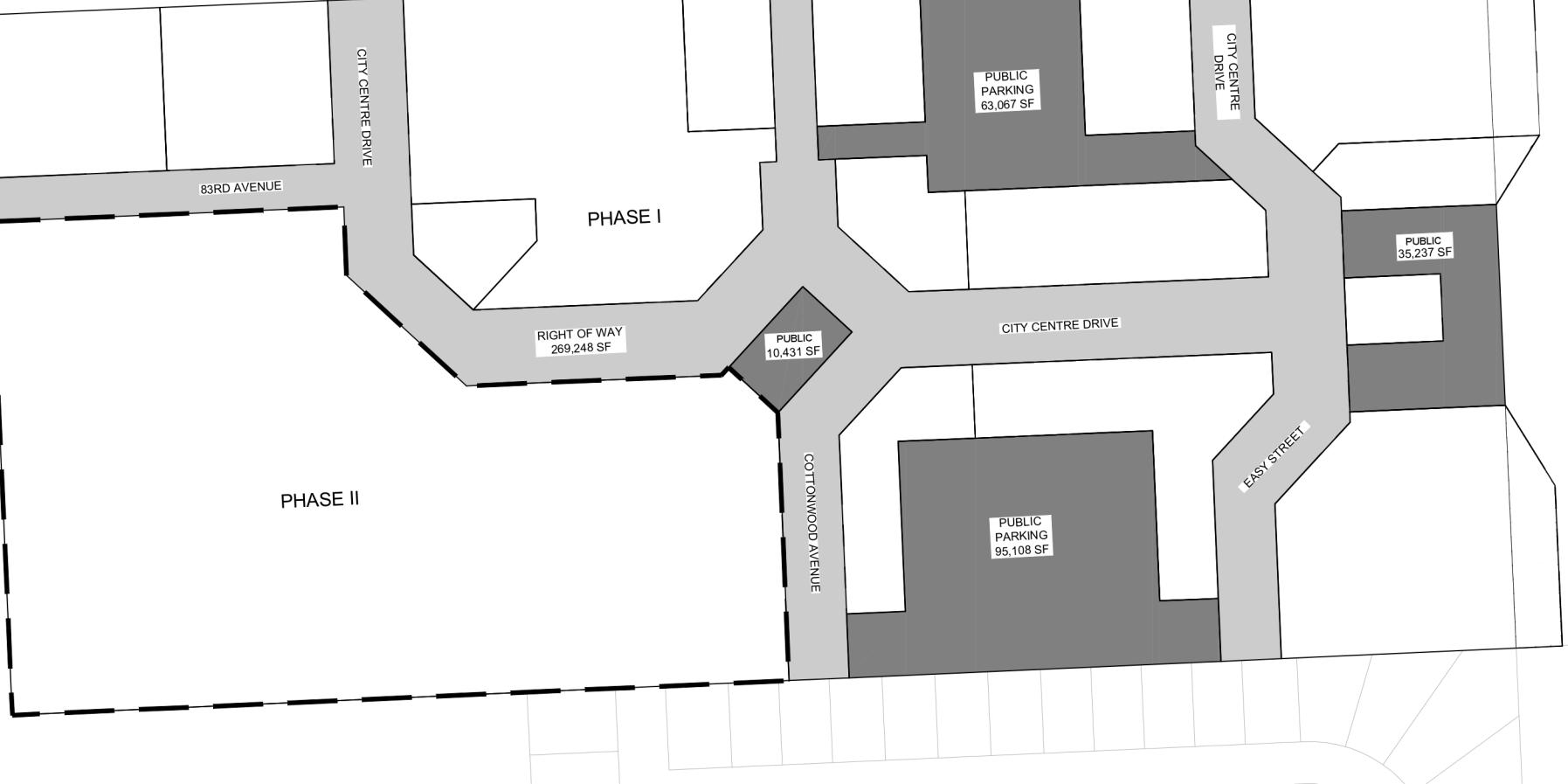
Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

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84TH STREET



LAND TO BE ACQUIRED

N

0' 50' 100' 200'

SCALE IN FEET

LA VISTA CITY CENTRE

LOTS 1 THRU 17 AND OUTLOTS A THRU C

BEING A REPLATTING OF LOTS 1 THRU 7, BRENTWOOD CROSSING, LOTS 8B AND 8C, BRENTWOOD CROSSING REPLAT 1, AND ALSO LOTS 8A1, 8A2, 8A3, AND 8A4, BRENTWOOD CROSSING REPLAT 2, SUBDIVISIONS, AS SURVEYED, PLATTED, AND RECORDED IN SARPY COUNTY, NEBRASKA, IN THE SOUTHWEST QUARTER, AND ALSO A PART OF TAX LOT 12 IN THE NORTHWEST QUARTER, ALL IN SECTION 14, TOWNSHIP 14 NORTH, RANGE 12 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA

PROJECT NO: 016-0546

DRAWN BY: PAN

DATE: 6/21/16

CITY PROPERTY EXHIBIT

OLSSON
ASSOCIATES

2111 South 67th Street, Suite 200
Omaha, NE 68106
TEL 402.341.1116
FAX 402.341.5895

EXHIBIT

1

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (“Agreement”) is made and entered into as of this _____ day of _____, 2016, by and between La Vista City Center, LLC, a Nebraska limited liability company (“Seller”), and the City of La Vista, a Municipal Corporation in the State of Nebraska (“Buyer”).

R E C I T A L S:

A. Seller and Buyer are parties to a Subdivision Agreement with respect to La Vista City Centre, (the “Subdivision Agreement”), and Seller and the La Vista Community Development Agency are parties to a Redevelopment Agreement (“Redevelopment Agreement”), both of which are dated on or about even date herewith in connection with La Vista City Centre generally located in the vicinity of 84th Street and Brentwood Drive;

B. Seller has an agreement to purchase and upon closing on such purchase will be the owner of the land depicted or described in Exhibit “A” attached to the Subdivision Agreement and included within the proposed plat attached as Exhibit “B” to the Subdivision Agreement;

C. Buyer, at its cost, will acquire from Seller the property described or depicted in Schedule I attached hereto (the “Property”), for certain public improvements as preliminarily described or depicted in Exhibit “__” attached to the Subdivision Agreement (“Public Improvements”); and

D. Seller desires to sell and Buyer desires to purchase the Property for Public Improvements upon the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises contained herein, Seller and Buyer hereby agree as follows:

1. Agreement to Sell and Purchase. Seller covenants and agrees to sell, and Buyer covenants and agrees to purchase the Property, together with any and all rights, structures, easements, appurtenances, or improvements located thereon or appertaining thereto, upon the terms and conditions set forth herein.

2. Purchase Price. The purchase price for the Property shall be _____ & _____/100's DOLLARS (\$_____) per square foot, , plus additional amounts for pro rated actual costs, if any, as approved by Buyer's City Administrator, which total price is anticipated to be _____ & _____/100's DOLLARS (\$_____) (_____) (“Purchase Price”). Seller will provide Buyer documentation of any such costs proposed for proration upon request. The Purchase Price will be paid to Seller at Closing in the form of (i) the exchange and transfer by Buyer to Seller of the parcels of real property described or depicted in Schedule II attached hereto (“Exchanged Parcels”) in exchange for portions of the

Property that in total equal the total square footage of the Exchanged Parcels, which parcels will be conveyed to Seller pursuant to Neb. Rev. Stat. Section 16-202 or other applicable statutes as described in the Subdivision Agreement, and (ii) the balance of the Purchase Price, consisting of _____ & ____/100's DOLLARS (\$_____), shall be paid in cash at Closing.

3. Closing. Closing shall occur following satisfaction or waiver of the closing conditions set forth in this Agreement and the conditions and obligations set forth in the Subdivision Agreement, with such closing to occur at such time and place as may be acceptable to both Buyer and Seller ("Closing" or "Closing Date"). All of the obligations, warranties, and indemnities of the parties and terms and conditions under the Subdivision Agreement or Redevelopment Agreement shall survive closings and all conveyances of real estate pursuant to this Agreement.

4. Possession. Seller shall deliver possession of the Property to Buyer on the Closing Date upon Buyer's payment of the Purchase Price to Seller.

5. Title. The conveyance and transfer of the Property at Closing shall be marketable fee simple title conveyed and transferred by special warranty deed and free and clear of all encumbrances, liens, assessments, taxes for years prior to Closing, restrictions, and covenants, but subject to any Permitted Exceptions not expressly objected to by Buyer in writing as provided below.

6. Title Examination. Within ten (10) days after the date of full execution of this Agreement, Seller shall obtain and deliver to Buyer a title insurance commitment for an ALTA owner's title insurance policy issued by _____ ("Title Company") insuring the marketability of the title to the Property. Within ten (10) days after receipt of the title commitment, Buyer shall forward to Seller written notice of any defect in title discovered during the examination of the title commitment by Buyer (collectively "Title Defect"). Any matter not objected to in said time shall be deemed waived and shall be considered as "Permitted Exceptions." Notwithstanding the foregoing, Buyer shall have no obligation to object to existing mortgages, deeds of trust, UCC financing statements, and other such liens, and Seller agrees to cause the release of such liens by payment at Closing. All recorded plats and utility easements, building and zoning restrictions which do not materially impair the current use of the Property shall not be deemed to be Title Defects. After receiving a written notice of a Title Defect from Buyer, Seller shall have a reasonable time to cure any Title Defect or have the Title Company insure over such Title Defect, at Seller's expense. The title insurance premium for the owner's title insurance policy shall be divided equally between Buyer and Seller. In the event Seller does not cure said Title Defect or have the Title Company insure over such Title Defect within any reasonable period of time, then Buyer shall have the option to terminate this Agreement. Notwithstanding anything in this Section 6 or otherwise in this Agreement to the contrary, nothing in this Agreement shall be deemed a waiver or release of any requirement or obligation of Seller under the Subdivision Agreement or Redevelopment Agreement

7. Due Diligence. Prior to or within ten (10) days following full execution of this Agreement, Seller shall deliver to Buyer copies of all surveys, plats, grading plans, development plans, inspection reports, environmental reports, soil reports, geotechnical reports or surveys, and similar studies or examinations pertaining to the Property that Seller may have in its possession (“Due Diligence Materials”). During the ten (10) days following receipt of the Due Diligence Materials until Closing (“Inspection Period”), Buyer shall have the right to review the Due Diligence Materials and to make its own physical inspections of the Property at its own cost and expense. Seller agrees that in the event Buyer determines in its sole discretion that the Property is not suitable for its purposes, or in the event the results of Buyer’s review of the Due Diligence Materials, or the results of any survey or environmental or other inspections are deemed by Buyer to be unacceptable, in its sole discretion, Buyer shall have the right to terminate this Agreement by sending written notice of termination to Seller prior to the end of the Inspection Period. Upon delivery by Buyer of any timely and proper notice of termination, this Agreement shall terminate.

8. Real Estate Taxes and Assessments. Seller shall pay the real estate taxes (if any) relative to the Property which become delinquent in the year prior to the year of Closing. Real estate taxes (if any) relative to the Property which become delinquent in the year of Closing shall be prorated between Seller and Buyer from January 1 of the year of Closing to the Closing Date based upon the most recent tax levy rate and property valuation. Buyer shall be responsible for all real estate taxes (if any) relative to the Property which become delinquent in the year following the year of Closing.

9. Closing Documents and Costs. Seller shall be obligated to prepare the special warranty deed and to pay Nebraska documentary stamp taxes (if any) relating to the transfer of the Property under this Agreement. On the Closing Date, Seller shall deliver to Buyer the Certification of Non-Foreign Status duly executed and containing such other information as may be required by Internal Revenue Code Section 1445 and the Regulations issued thereunder. Seller shall also execute a Seller’s Affidavit and such other documents as the Title Company may require on the Title Company’s form. Buyer shall pay the cost for filing the deed at Closing. Each party shall be responsible for its respective attorney fees. Title Company shall serve as closing agent and the fees and charges of Title Company shall be split equally between Seller and Buyer.

10. Risk of Loss. Risk of loss on the Property prior to Closing shall remain with Seller.

11. Real Estate Commission or Finder’s Fee. Buyer and Seller represent that neither party hereto has used an agent, broker or finder to bring about this sale. Each party warrants to the other party that it shall indemnify and hold the other party harmless for any and all claims by any person whomsoever making a claim through the indemnifying party for agents’ or brokers’ commissions or finder fees in connection with the transaction.

12. Full Disclosure. To the best of the actual knowledge of Seller’s representative, Christopher L. Erickson, who is directly involved in this transaction, there does not exist any Disclosable Matter (as hereinafter defined) which has not been disclosed to Buyer and which

could have a material adverse effect on the ownership or operation of the Property subsequent to the Closing. As used herein, a Disclosable Matter shall mean any material fact or condition known to Seller relating to the Property other than (i) any fact or condition relating to the present real estate and financial market conditions in the area where the Property is located or elsewhere, or (ii) any fact within the public domain or which has been the subject of a public disclosure.

13. Default. Time is agreed to be of the essence. In the event either party fails to comply with any material provision of this Agreement, then the other party may declare a default fifteen (15) days after the defaulting party receives written notice specifying the nature thereof, provided, however, in the case of a default which cannot, in the exercise of reasonable diligence, reasonably be cured within such fifteen (15) day period, the continuation thereof beyond such period as required to cure the same with the exercise of reasonable diligence. If Buyer commits any of the events of default set forth in this Agreement and fails to cure the same within the express curative time period herein provided, then Seller may seek any remedy at law or in equity without notice or demand, including specific performance. If Seller commits any of the events of default set forth in this Agreement and fails to cure the same within the express curative time period herein provided, Buyer may seek any remedy at law or in equity without notice or demand, including specific performance. No delay or omission of any party in exercising any remedies or power accruing upon any event of default shall impair any remedies or power or shall be construed to be a waiver of any event of default or any acquiescence therein.

14. Indemnification. Seller hereby agrees to indemnify, defend, and hold harmless Buyer, its successors and assigns, from and against any and all damages occasioned by, arising out of, or resulting from the operation of the Property on or before the Closing Date. Buyer hereby agrees to indemnify, defend and hold harmless Seller, its successors and assigns, from and against any and all damages occasioned by, arising out of, or resulting from the operation of the Property from and after the Closing Date.

15. Binding. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns. This Agreement shall be construed in accordance with the laws of the State of Nebraska.

16. Entire Agreement. This Agreement contains the entire agreement between the parties. This Agreement may not be changed or modified in any manner unless an instrument in writing is executed by the parties hereto.

17. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against a party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

18. Further Assurances. Each party agrees to fully support, coordinate and cooperate to carry out the provisions of this Agreement. Each party will, whenever it shall be reasonably requested to do so by the other party, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, all such further conveyances, confirmations, instruments, or further assurances and consents as may be necessary or proper, in order to effectuate the

covenants and agreements herein provided. Each party shall cooperate in good faith with the other party and shall execute, acknowledge, and deliver any and all documents or requests in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

19. Relationship of Parties. No provision contained in this Agreement nor any acts of any party shall be deemed or construed by Seller or Buyer or by any third person to create the relationship of partnership, joint venture or of any association between Seller and Buyer, other than contractual relationships stated in this Agreement.

20. Authority. By executing this Agreement, each party represents and warrants to the other that the terms and conditions of this Agreement and the transactions contemplated herein have received approval by its respective governing structure or boards, as required by law and applicable governing documents and no further authorization is required in order to consummate the transaction as described herein.

21. Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, we, the parties hereto, by our respective duly authorized agents, hereto affix our signatures the day and year first above written.

LaVista City Centre, LLC
a Nebraska limited liability company, Seller

By: _____
Name: _____
Title: _____
Date: _____

Attest:

THE CITY OF LA VISTA, a municipal
corporation, Buyer

Pamela A. Buethe, CMC
City Clerk

By: _____
Douglas D. Kindig, Mayor
Date: _____

Schedule I

**Description or Depiction of the Property
Being Sold by Seller and Purchased by Buyer**

Schedule II

**Description or Depiction of the Property
Exchanged or Transferred by Buyer to Seller**