

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
APRIL 19, 2018 AGENDA**

Subject:	Type:	Submitted By:
AMENDMENT 4 TO THE DECLARATION & MASTER DEED — LA VISTA METROPOLITAN COMMUNITY COLLEGE CONDOMINIUM PROPERTY REGIME	◆ RESOLUTION ORDINANCE RECEIVE/FILE	BRENDA S. GUNN CITY ADMINISTRATOR

SYNOPSIS

A resolution has been prepared authorizing amendments to the Declaration & Master Deed, which established the relationship between the City and Metropolitan Community College and their facilities corporations for the day to day operation of the Public Library/MCC Sarpy Center.

FISCAL IMPACT

The FY 17/18 Biennial Budget provide funding for the City’s share of facility insurance.

RECOMMENDATION

Approval.

BACKGROUND

On June 3, 1997, by Resolution No. 97-082 the City Council approved the Declaration and Master Deed for the La Vista Public Library/Metropolitan Community College Sarpy Center project, which the City of La Vista Facilities Corporation and Metropolitan Community College Facilities Corporation (together “Facilities Corporations”) subsequently entered. The Facilities Corporations delegated to the City and College voting authority under the Declaration and Master Deed. The City and College desire to exercise such authority to again amend the Declaration and Master Deed (earlier amendments were adopted on December 1, 1998, July 2, 1999 and October 5, 1999).

Amendment 4 amends Section 6.7 of the Declaration and amends and restates the insurance requirements constituting Article VIII of the Declaration to track insurance that actually is in place and intended for the City and College. The amendment includes:

- Several Clarifications within the document
- Specifies med pay coverage as a separate and distinct requirement from general liability coverage
- Specifies med pay coverage in an amount determined by the Board, but not less and \$5,000 should be obtained. \$5,000 is the maximum amount available through the Condo Association’s insurer.
- Specifically identifies MCC and La Vista as additional insureds.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LA VISTA NEBRASKA APPROVING AN AGREEMENT TO AMEND SECTION 6.7 AND AMEND AND RESTATE ARTICLE VIII OF THE DECLARATION AND MASTER DEED OF THE LA VISTA METROPOLITAN COMMUNITY COLLEGE CONDOMINIUM PROPERTY REGIME.

WHEREAS, on June 3, 1997, by Resolution No. 97-082, the City Council approved the Declaration and Master Deed for the La Vista Metropolitan Community College Condominium Property Regime, which the City of La Vista Facilities Corporation and Metropolitan Community College Facilities Corporation (together "Facilities Corporations") subsequently entered; and

WHEREAS, the Facilities Corporations delegated to the City and College voting authority under the Declaration and Master Deed, and the City and College desire to exercise such authority to amend the Declaration and Master Deed; and

WHEREAS, an amendment to Section 6.7 and amendment and restatement of Article VIII of Declaration and Master Deed have been prepared to make several clarifications and to specify med pay insurance coverage requirements; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of La Vista, Nebraska, that the amendment to Section 6.7 and amendment and restatement of Article VIII of the Declaration and Master Deed of the La Vista Metropolitan Community College Condominium Property Regime presented in the form and content presented at this meeting and incorporated herein by this reference ("Amendment") are hereby adopted and approved, subject to any additions, subtractions, or modifications as the City Administrator determines necessary or appropriate; and the Mayor and City Clerk are authorized to execute and to take any other action that is necessary or appropriate to carry out said Amendment

PASSED AND APPROVED THIS 19TH DAY OF JUNE, 2018.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

After Recording, Return to:

Robert T. Cannella
Fitzgerald, Schorr, Barmettler & Brennan P.C., L.L.O.
10050 Regency Circle, #200
Omaha, NE 66114-3794

**AGREEMENT TO AMEND AND RESTATE SECTION 6.7 AND ARTICLE VIII
OF THE DECLARATION AND MASTER DEED
OF LA VISTA METROPOLITAN COMMUNITY COLLEGE
CONDOMINIUM PROPERTY REGIME**

WHEREAS, the City of La Vista Facilities Corporation ("City Facilities Corporation") and the Metropolitan Community College Facilities Corporation ("College Facilities Corporation") made and entered into the Declaration and Master Deed of La Vista Metropolitan Community College Condominium Property Regime dated December 20, 1997, as subsequently amended on December 1, 1998, July 2, 1999 and October 5, 1999 (collectively the "Declaration"), and pursuant thereto, created the La Vista/Metropolitan Community College Condominium Owners Association, Inc.; and

WHEREAS, the City Facilities Corporation and College Facilities Corporation delegated to the City of La Vista, Nebraska ("City") and to Metropolitan Community College, real and true name The Metropolitan Community College Area ("College"), respectively, voting authority under the Declaration pursuant to Article 1.24 thereof; and

WHEREAS, the City and College desire to exercise said voting authority, pursuant to Article X of said Declaration, to amend Section 6.7 of the Declaration and to amend and restate the insurance requirements found in Article VIII of the Declaration; and

WHEREAS, pursuant to Neb. Rev. Stat. § 85-1511(12) and resolutions of the Board of Governors of the College ("Board") adopted on May 27, 1997 and October 14, 1997, and filed in the office of the Board, the President of the College is authorized to take certain actions with respect to the City Library/Sarpy Center for, on behalf of, and in the name of, the Board.

NOW THEREFORE, the City and College hereby agree that the Fourth Amendment and Restatement of the Declaration, amending Section 6.7 of the Declaration and amending and restating the insurance requirements constituting Article VIII of the Declaration, as attached hereto as Exhibit A and incorporated herein by this reference, is hereby approved and adopted.

This action is subject to approval of the La Vista City Council.

Dated as of this _____ day of _____, 2018.

CITY OF LA VISTA, NEBRASKA,

By: _____
Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, City Clerk

STATE OF NEBRASKA]
] ss.
COUNTY OF SARPY]

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Douglas Kindig, Mayor of the City of La Vista, Nebraska, and Pamela A. Buethe, City Clerk, on behalf of the City.

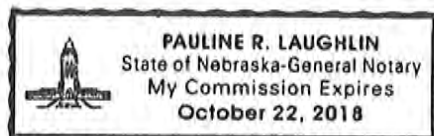
NOTARY PUBLIC

THE METROPOLITAN COMMUNITY COLLEGE AREA,
a political subdivision of the State of Nebraska

By: Randy Schmailzl
Randy Schmailzl, President
for, on behalf of, and in name of, the
Board of Governors of The Metropolitan
Community College Area

STATE OF NEBRASKA]
] ss.
COUNTY OF DOUGLAS]

The foregoing instrument was acknowledged before me this 7th day of June, 2018, by Randy Schmailzl, President of The Metropolitan Community College Area, on behalf of The Metropolitan Community College Area.



Pauline R. Laughlin
NOTARY PUBLIC

EXHIBIT A

FOURTH AMENDMENT TO DECLARATION AND MASTER DEED OF LA VISTA METROPOLITAN COMMUNITY COLLEGE CONDOMINIUM PROPERTY REGIME

Section 6.7 of the Declaration and Master Deed of La Vista Metropolitan Community College Condominium Property Regime is amended to read as follows:

6.7. Except as placed, erected or agreed to by Declarant or its assigns, agents or successors, no sign, billboards, unsightly objects, or nuisances shall be erected, placed, or permitted to remain on the Property subject to this Declaration, nor shall such Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Unit or occupant thereof. Nothing herein contained however, should be construed as prohibiting reasonable signage as may be necessary for the operation of a public library and/or community college.

Article VIII of the Declaration and Master Deed of La Vista Metropolitan Community College Condominium Property Regime is amended to read as follows:

ARTICLE VIII – INSURANCE – DAMAGE, DESTRUCTION AND RECONSTRUCTION

8.1 Scope of Coverage.

(a) The Condominium is one in which all of the units are restricted to nonresidential use. The Association shall maintain, to the extent reasonably available, the following insurance coverages:

(i) Property insurance on the Common Elements and Units, exclusive of improvements and betterments installed in Units by Owners, insuring against all risk of direct physical loss commonly insured against in an amount equal to the maximum insurable replacement value of the Common Elements and Units, as determined or obtained by the Board of Directors or its

representative; provided, however, the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(ii) Medical payments insurance in an amount determined or obtained by the Board of Directors or its representative, which shall be not less than \$5,000 with respect to bodily injury to each person arising out of any occurrence and not more in total for any number of persons injured in a single occurrence than any aggregate amount of medical payments coverage specified in such insurance coverage obtained.

(iii) Comprehensive general liability insurance in an amount determined or obtained by the Board of Directors or its representative, but not less than \$1,000,000 with respect to personal injury to, or the deaths of, any number of persons arising out of any occurrence; and not less than \$2,000,000 with respect to personal injury to, or the deaths of, any number of persons arising out of any occurrence or number of occurrences during any twelve month period.

(iv) Excess liability insurance in the amount of \$5,000,000 with respect to personal injury to, or the deaths of, any number of persons arising out of any occurrence, subject to an aggregate limit of \$5,000,000 with respect to personal injury to, or the deaths of, any number of persons arising out of any occurrence or number of occurrences during any twelve month period.

(v) Such other or alternate insurance coverages as the Board of Directors or its representative shall determine from time to time to be appropriate to protect the Association or the Owners.

(b) The insurance policy or policies obtained pursuant to this Article shall cover the following entities or persons, as additional insureds, for occurrences commonly insured against, arising out of or in connection with the use, ownership or maintenance of the Common Elements or any other portion of the Condominium that the Association or such named insureds have the responsibility to maintain:

(i) The Association, its Board of Directors and each member of such board, its officers, and all of its agents and employees;

(ii) The City of La Vista Facilities Corporation, its Board of Directors and each member of such board, its officers, and all of its agents and employees;

(iii) The Metropolitan Community College Facilities Corporation, its Board of Directors and each member of such board, its officers, and all of its agents and employees;

(iv) The City of La Vista, Nebraska, its city council and the members of such council, its officers, and all of its agents and employees;

(v) The Metropolitan Community College Area, its Board of Governors and the members of such board, its officers, and all of its agents and employees; and

(vi) All Owners and other Persons entitled to occupy any Unit or other portion of the Condominium Unit.

(c) The policy or policies obtained by the Association shall include hired automobiles and non-owned automobile coverage with cross liability endorsements to cover liabilities of the Owner as a group to an Owner.

(d) The insurance policy or policies obtained by the Association shall contain the following provisions, to the extent reasonably available:

(i) Each Owner shall be an insured under the policy with respect to liability arising out of his, her or its ownership of an undivided interest in the Common Elements or their membership in the Association.

(ii) There shall be no subrogation with respect to the Association, its agents, servants, and employees, or with respect to the Owners, their lessees, successors or assigns.

(iii) No act or omission by any Owner, unless acting within the scope of its authority on behalf of the Association, shall void the policy or be a condition to recovery on the policy.

(iv) The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust.

(v) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners.

(vi) Statement of the name of the insured as La Vista/Metropolitan Community College Condominium Owners Association, Inc., for the use and benefit of the individual Owners (designated by name if required by the insurer).

(vii) For policies of hazard insurance and standard mortgagee clause providing that the insurance carrier shall notify the First

Mortgagee named in the policy at least ten (10) days in advance of the effective date of any reduction or cancellation of the policy.

(viii) The policy may not be canceled or not renewed until thirty (30) days after written notice of the proposed cancellation or non-renewal has been mailed to the Association, each Owner and each first mortgagee who is listed as a scheduled holder of a first mortgage in the insurance policy (if such a notice provision is reasonably available).

(e) “Agreed Amount” and “Inflation Guard” endorsements. It shall be the duty of the Board of Directors at least annually to conduct an insurance review to determine if the then-current policy is adequate to meet the needs of the Association and to satisfy the requirements of this Declaration and the Act. Such responsibility may be performed and shall be deemed reasonably performed by the Board’s Managing Agent (or other representative) requesting the Association’s insurance agent to verify that the insurance policies in existence reasonably meet the needs of the Association as set forth herein and satisfy the requirements of this Declaration and the Act. In all events, each Owner shall have the right to obtain additional coverage for such Owner’s improvements, or betterments or personal property within the Unit at such Owner’s own expense. Each policy may contain reasonable deductibles and the amount thereof shall be added to the face amount of the policies in determining whether the insurance equals at least full replacement cost. The Association may, together with the Unit Owners, their tenants and/or lessees, provide for a single or multiple policies of insurance on any one or more of them as their interests may appear.

8.2 Certificate of Insurance. An insurer who has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust.

8.3 Payment of Premiums. Premiums for all insurance obtained by the Association pursuant to this Article shall be Common Elements and shall be paid for by the Association.

8.4 Insurance Obtained by Owners. The issuance of insurance policies to the Association pursuant to this Article shall not prevent an Owner from obtaining insurance for their own benefit and at their own expense insuring their Unit, personal property and personal liability.

8.5 Payment of Insurance Proceeds. Any loss covered by property insurance obtained by the Association in accordance with this Article shall be adjusted with the Association and the insurance proceeds shall be payable to the

Association and not to any mortgagee or beneficiary under a deed of trust. The Association shall hold any insurance proceeds in trust for Owners and lienholders as their interests may appear. Subject to the provisions of Section 8.6 and 8.7 of this Article, the proceeds shall be disbursed for the repair or restoration of the damage to Common Elements and Units, and Owners and lienholders shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus after the Common Elements and Units have been completely repaired or restored, or the Declaration terminated.

8.6 Use of Insurance Proceeds. In the case of fire or any disaster, the insurance proceeds, if sufficient to reconstruct any building so damaged or destroyed, shall be applied to such reconstruction. Reconstruction of the building, as used herein, means restoring the insured building to substantially the same condition in which it existed prior to the fire or other disaster, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before.

8.7 Procedure Where Insurance Proceeds are Insufficient. In case of fire or other disaster, if the insurance proceeds are insufficient to reconstruct the building and the Condominium Unit Owners and all other parties in interest do not voluntarily make provision for reconstruction of the building within 180 days after the date of damage or destruction, the Association may record a notice setting forth such facts; and upon recording of such notice:

(a) The property shall be deemed to be owned in Common by the Condominium Unit Owners;

(b) The undivided interest in the property owned in Common which shall appertain to each Condominium Unit Owner shall be the percentage of undivided interest previously owned by such Unit Owner in the Common Elements;

(c) Any liens affecting any of the Condominium Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Condominium Unit Owner in the property as provided herein; and

(d) The property shall be subject to an action for partition at the suit of any Condominium Unit Owner, in which event the net proceeds of such sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund, and shall be divided among all the Condominium Unit Owners in a percentage equal to the percentage of undivided interest owned by each Unit Owner in the property, after first paying out of the respective share

of the Condominium Unit Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each Condominium Unit Owner.

8.8 Insurance Deductibles. If maintenance is required as a result of an insured loss, the amount of the deductible shall be considered a maintenance expense to be paid by the person or Persons who would be responsible for such repair in the absence of insurance. If the loss affects more than one (1) Unit or Unit and the Common Elements, the cost of the deductible may be apportioned equally by the Board of Directors among the parties suffering loss in accordance with the total cost of repair.