

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
OCTOBER 5, 2021 AGENDA

Subject:	Type:	Submitted By:
ACQUISITION OF DEMOLITION RIGHTS- CHILI'S BAR & GRILL, LOT 8, LA VISTA CITY CENTRE, REPLAT THREE - AMEND AGREEMENT AND EASEMENT	◆RESOLUTION ORDINANCE RECEIVE/FILE	RITA RAMIREZ ASSISTANT CITY ADMINISTRATOR DIRECTOR OF COMMUNITY SERVICES

SYNOPSIS

A resolution has been prepared to approve an amendment to the Easement and Demolition Agreement and Demolition and Site Preparation Easement regarding the demolition and site preparation rights with respect to the Chili's Bar and Grill, Lot 8, La Vista City Centre Replat Three in the 84th Street Redevelopment Area.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval.

BACKGROUND

The City declared the 84th Street Redevelopment Area a substandard and blighted area in need of redevelopment, created the La Vista Community Development Agency ("Agency"), and adopted documents and instruments that include a Redevelopment Plan for the 84th Street Redevelopment Area, as amended, ("Redevelopment Plan").

The Agency and City, pursuant to applicable documents and instruments including the Redevelopment Plan, on October 3, 2017 approved agreements for the acquisition of rights to carry out demolition and site preparation with respect to building and other improvements of the Chili's Grill and Bar located in the vicinity of 84th Street and Brentwood Drive, which agreements were executed and entered by the City, Agency, or other appropriate parties together with other applicable documents and instruments, including without limitation an Easement and Demolition Agreement and Demolition and Site Preparation Easement ("Agreement and Easement Instrument").

The Agreement and Easement Instrument require that certain obligations be completed by October 10, 2021 to facilitate Agency demolition and site preparation. It has become apparent that these obligations cannot be met by October 10, 2021, and that an extension is needed to allow for additional time to complete said obligations. A six-month extension is being proposed and all obligations would need to be met by April 10, 2022 to allow for demolition and site preparation. An amendment to the Agreement and Easement Instrument is presented with this agenda item to provide the extension.

As outlined in the previously approved agreements, the Agency would be the contracting party and the City would directly pay amounts arising under the agreements for the demolition and site preparation work. A separate agenda item will be considered for Community Development Agency approval.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA NEBRASKA, APPROVING AN AMENDMENT TO AN AGREEMENT AND EASEMENT INSTRUMENT IN CONNECTION WITH ACQUISITION OF DEMOLITION RIGHTS WITH RESPECT TO LEASEHOLD IMPROVEMENTS OF THE CHILI'S GRILL AND BAR, LOT 8, LAVISTA CITY CENTRE REPLAT THREE IN THE 84TH STREET REDEVELOPMENT AREA.

WHEREAS, the La Vista Community Development Agency ("Agency") and City of La Vista entered an agreement ("City - Agency Agreement") for the Agency to act as lead agent and contract and otherwise provide for all actions or requirements for demolition and site preparation of the former Brentwood Crossing shopping area located in the vicinity of 84th Street and Brentwood Drive, with the City Engineer designated as the project manager and the City to fund and pay for all costs arising under the agreement from proceeds of the additional one-half of one percent local sales and use tax approved by voters in 2014 for public infrastructure projects within the 84th Street Redevelopment Area, or other available resources; and

WHEREAS, the City Council, acting as the La Vista Community Development Agency and based on advice of the City Engineer, determined that acquisition of demolition rights was necessary to carry out such demolition and site preparation ("Demolition Rights"); and

WHEREAS, proposed agreements to acquire such Demolition Rights with respect to building and other improvements of the Chili's Grill and Bar located in the vicinity of 84th Street and Brentwood Drive were approved by the City Council and the La Vista Community Development Agency on October 3, 2017 and together with other applicable documents and instruments were executed and entered by the City, Agency, or other appropriate parties, including without limitation an Easement and Demolition Agreement and Demolition and Site Preparation Easement ("Agreement and Easement Instrument"); and

WHEREAS, the Agreement and Easement Instrument specified October 10, 2021 as the date by which all obligations would be met in order to facilitate the demolition and site preparation work; and

WHEREAS, it has become apparent that obligations cannot be met by October 10, 2021 and that an extension is necessary.

NOW, THEREFORE, BE IT RESOLVED, that the City Council, acting on behalf of the City of La Vista and pursuant to the City - Agency Agreement and the Redevelopment Plan for the 84th Street Redevelopment Area, as amended, hereby approves the amendment to the Easement and Demolition Agreement and Demolition and Site Preparation Easement in form and content as presented at this meeting, subject to any additions, subtractions, or modifications as the Mayor or City Administrator of the City of La Vista, or any designee of the Mayor or City Administrator, on behalf of the City determines necessary or appropriate ("Amendment").

BE IT FURTHER RESOLVED, that the Mayor or City Administrator of the City of La Vista, or any designee of the Mayor or City Administrator, shall be authorized to take all actions on behalf of the City as he or she determines necessary or appropriate to carry out the Amendment, this Resolution, or any actions approved in this Resolution, including without limitation executing and delivering the Amendment or any other documents or instruments on behalf of the City.

PASSED AND APPROVED THIS 5TH DAY OF OCTOBER, 2021.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

**AMENDMENT TO
EASEMENT AND DEMOLITION AGREEMENT AND
DEMOLITION AND SITE PREPARATION EASEMENT**

This Amendment to Easement and Demolition Agreement and Demolition and Site Preparation Easement ("Amendment") is entered into effective as of October 5, 2021 by and among La Vista City Centre, LLC ("LVCC"), a Nebraska limited liability company, the La Vista Community Development Agency, a community development agency created pursuant to Neb. Rev. Stat. section 18-2101.01 by Ordinance No. 1167 adopted by the City of La Vista, Nebraska (the "Agency"), and E&W Holdings, LLC ("E&W"), a Nebraska limited liability company.

1. LVCC, E&W, as successor by assignment from LVCC, and Agency are parties to that certain Easement and Demolition Agreement dated December 11, 2017 (the "E & D Agreement"), which is incorporated herein by this reference;
2. LVCC owns the real property legally described as follows (which constituted part of Lot 8, La Vista City Centre, when the E & D Agreement was entered before La Vista City Centre Replat Three):

**Lot 8, La Vista City Centre Replat Three, an Addition to the City of La Vista,
in Sarpy County, Nebraska**

and commonly known as 7865 So. 84th Street, La Vista, Nebraska 68128 ("Property"), on which Property a building and improvements owned by E&W are located ("Building"), which Property and Building are subject to the E & D Agreement.

3. LVCC and E&W pursuant to a Demolition and Site Preparation Easement dated December 11, 2017 ("Easement Instrument") granted and conveyed to Agency an easement and rights in, to and over the Property and Building in order for the Agency to complete the Agency Work, which Agency Work cannot begin until LVCC and E&W have satisfied certain obligations under the E & D Agreement ("Obligations"), which Obligations the E & D Agreement requires to be completed by October 10, 2021.
4. The parties desire to extend the date by which such Obligations must be satisfied.

Upon Recording Please Return To:
Fitzgerald Schorr PC LLO
200 Regency One
10050 Regency Circle
Omaha, NE 68114

5. Extended Date. The E & D Agreement is hereby modified as follows: Delete all references to "October 10, 2021" and replace them with "April 10, 2022".

6. As security for LVCC's and E&W's obligations, including without limitation the obligation under Section 5 of the E & D Agreement to repay \$1,100,000.00 to reimburse Agency the amount that Agency contributed to the Purchase Price, LVCC or E&W shall, simultaneously with the execution of this Amendment, deliver to Agency an Irrevocable Standby Letter of Credit in the amount of \$1,100,000.00 in Agency's favor issued by a bank acceptable to Agency, in such form and content and having an expiration date satisfactory to the La Vista City Administrator acting on behalf of the Agency.

7. All terms and conditions of the E & D Agreement or Easement Instrument shall be deemed modified to be consistent with this Amendment.

8. All references to the E & D Agreement or Easement Instrument shall be deemed modified to refer to the E & D Agreement or Easement Instrument as amended by this Amendment.

9. Capitalized terms used but not defined herein shall have the meanings for such terms that are set forth in the E & D Agreement or Easement Instrument.

10. Except as modified pursuant to this Amendment, all terms and conditions of the E & D Agreement or Easement Instrument shall remain in full force and effect.

11. This Amendment, and the E & D Agreement and Easement Instrument as modified by this Amendment, shall constitute covenants running with the land and shall be binding on the Property, parties and all successors and assigns.

12. This Amendment may be signed in one or more counterparts, which when taken together, shall constitute one and the same Amendment.

[REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURE PAGES FOLLOW.]

LA VISTA COMMUNITY DEVELOPMENT AGENCY

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 _____, _____, 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 authorized to act on behalf of the La Vista Community Development Agency, and the identical persons whose names are affixed to the foregoing Amendment to Easement and Demolition Agreement and Demolition and Site Preparation Easement, and acknowledged the execution thereof to be their voluntary act and deed and the voluntary act and deed of said Agency.

[Seal]

Notary Public

LA VISTA CITY CENTRE, LLC,
a Nebraska limited liability company

By: _____
Christopher L. Erickson, Manager

STATE OF NEBRASKA)
)ss.
COUNTY OF _____)

The foregoing Amendment to Easement and Demolition Agreement and Demolition and Site Preparation Easement (“Amendment”) was acknowledged before me this _____ day of _____, _____ by Christopher L. Erickson, Manager of La Vista City Centre, LLC, a Nebraska limited liability company, and the identical person whose name is affixed to the foregoing Amendment, and acknowledged the execution thereof to be his voluntary act and deed, and the voluntary act and deed of said company.

[Seal]

Notary Public

E&W HOLDINGS, LLC,
a Nebraska limited liability company

La Vista City Centre, LLC, a Nebraska limited liability company, Sole Member

By: _____
Christopher L. Erickson, Manager

STATE OF NEBRASKA)
)ss.
COUNTY OF _____)

The foregoing Amendment to Easement and Demolition Agreement and Demolition and Site Preparation Easement ("Amendment") was acknowledged before me this _____ day of _____, _____ by Christopher L. Erickson, Manager of La Vista City Centre, LLC, a Nebraska limited liability company, which is the Manager of E&W Holdings, LLC, a Nebraska limited liability company, and the identical person whose name is affixed to the foregoing Amendment, and acknowledged the execution thereof to be his voluntary act and deed, and the voluntary act and deed of said companies.

[Seal]

Notary Public