

**CITY OF LA VISTA**  
**LA VISTA COMMUNITY DEVELOPMENT AGENCY REPORT**  
**MARCH 6, 2018 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
ACQUISITION OF DEMOLITION RIGHTS – FIRST NATIONAL BANK, LOT 11, LA VISTA CITY CENTRE, 84 <sup>TH</sup> STREET REDEVELOPMENT AREA	◆ RESOLUTION ORDINANCE RECEIVE/FILE	RITA RAMIREZ ASSISTANT CITY ADMINISTRATOR

**SYNOPSIS**

A resolution has been prepared for consideration regarding the proposed acquisition of demolition and site preparation rights with respect to the First National Bank, Lot 11, La Vista City Centre in the 84<sup>th</sup> Street Redevelopment Area.

**FISCAL IMPACT**

The FY 17/18 Biennial Budget provides funding.

**RECOMMENDATION**

Adopt resolution.

**BACKGROUND**

The City declared the 84th 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 84<sup>th</sup> Street Redevelopment Area, as amended, (“Redevelopment Plan”). The Agency and City, pursuant to applicable documents and instruments including the Redevelopment Plan, desire approval of an agreement providing for the acquisition of rights regarding demolition and site preparation with respect to the First National Bank, Lot 11, La Vista City Centre in the 84<sup>th</sup> Street Redevelopment Area.

The Agency would be the contracting party and the City would directly pay amounts arising under the agreement. A resolution and agreement are presented at this meeting for this purpose and a public hearing will be held to hear and consider any comments, support, opposition, or criticism regarding the acquisition of such rights. A separate agenda item will be considered for City approval

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LA VISTA NEBRASKA, ACTING AS THE LA VISTA COMMUNITY DEVELOPMENT AGENCY, APPROVING AN AGREEMENT FOR ACQUISITION OF DEMOLITION RIGHTS WITH RESPECT TO LEASEHOLD IMPROVEMENTS OF THE BRANCH BANKING FACILITY OF FIRST NATIONAL BANK IN THE 84<sup>th</sup> 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 option 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, determines that acquisition of demolition rights is necessary to carry out such demolition and site preparation ("Demolition Rights"); and

WHEREAS, a proposed agreement is presented to acquire such Demolition Rights with respect to building and other improvements of the branch banking facility of First National Bank located in the vicinity of 84th Street and Brentwood Drive.

NOW, THEREFORE, BE IT RESOLVED, that the City Council, acting as the La Vista Community Development Agency and pursuant to the City - Agency Agreement and the Redevelopment Plan for the 84<sup>th</sup> Street Redevelopment Area, as amended by Amendment No. 1, hereby approves the agreement, as presented, subject to any additions, subtractions, or modifications as the City Administrator or City Engineer determines necessary or advisable ("Agreement"), and completion of any applicable statutory or regulatory requirements to the satisfaction of the Mayor, City Administrator, or any designee of the Mayor or City Administrator.

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

BE IT FURTHER RESOLVED, that recitals at the beginning of this Resolution are incorporated into this Resolution by reference.

PASSED AND APPROVED THIS 6TH DAY OF MARCH, 2018.

LA VISTA COMMUNITY DEVELOPMENT AGENCY

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk

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First National - Acquisition Of Of Demolition Rights - Agency 03.06.18.DOCX



## **AGREEMENT FOR ACQUISITION OF DEMOLITION RIGHTS WITH RESPECT TO LEASEHOLD INTERESTS**

**THIS AGREEMENT FOR ACQUISITION OF DEMOLITION RIGHTS WITH  
RESPECT TO LEASEHOLD INTERESTS** (the “Agreement”) is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2018 (“Effective Date”) by and between First National Bank of Omaha, a national banking association, (“Grantor”) and the La Vista Community Development Agency, a community development agency created pursuant to Neb. Rev. Stat. 18-2101.01 by Ordinance No. 1167 adopted by the City of La Vista, Nebraska (the “Agency or “Grantee”).

### **RECITALS**

WHEREAS, the City of La Vista declared the 84<sup>th</sup> Street Redevelopment Area substandard and blighted and in need of redevelopment, and adopted the Redevelopment Plan - 84<sup>th</sup> Street Redevelopment Area, as amended by Amendment No. 1, (“Redevelopment Plan”), which provides for a Mixed Use Redevelopment Project to eliminate and prevent recurrence of the substandard and blighted area (“Mixed Use Redevelopment Project”); and

WHEREAS, the Redevelopment Agreement entered into December 1, 2016 (the “Redevelopment Agreement”) pursuant to the Redevelopment Plan and Mixed Use Redevelopment Project described therein provides for Grantee to demolish, clear, remove and dispose of existing buildings and improvements commonly known as the Brentwood Crossing shopping center generally located in the vicinity of 84<sup>th</sup> Street and Brentwood Drive in La Vista, Nebraska (“Demolition and Site Preparation”) and for Grantee to obtain such rights to carry out such Demolition and Site Preparation (“Demolition Rights”); and

WHEREAS, Grantee desires to obtain from Grantor on a voluntary basis such Demolition Rights of Grantor with respect to the real property legally described below and commonly known as 7855 So. 84<sup>th</sup> Street, La Vista, Nebraska 68128 (the “Property”) to proceed with such Demolition and Site Preparation, and Grantor on a voluntary basis desires to grant such Demolition Rights to Grantee:

Lot 11, La Vista City Centre, an Addition to the City of La Vista, in Sarpy County, Nebraska; and

WHEREAS, as of the date hereof, Grantor is the current lessee under that certain Lease Agreement pertaining to the Property dated August 1, 1993, as extended and subject to additional extension up to the remaining useful life of the building and other improvements on or serving the Property, (the “Ground Lease”) by and between La Vista City Centre, LLC (“Landlord”) (as successor-in-interest to Brentwood Crossing Associates II, a Missouri general partnership), as landlord, and Grantor, as lessee, with respect to the building and other improvements on or serving the Property (the “Building”) (the Property and the Building are collectively referred to herein as the “Premises”). Grantor occupies and operates the Premises as a retail branch bank (“Branch Banking Facility”); and

WHEREAS, Grantor is the owner of the Building and all interests of lessee under the

Ground Lease, and has not pledged or otherwise conveyed such Ground Lease, Building, or Premises, or any interest therein, to any person or entity as security or otherwise, and no lien has attached to any interests of Grantor in, to or otherwise with respect to the Ground Lease, Building, or Premises; and

WHEREAS, Grantor is agreeable to selling and conveying, and Grantee is agreeable to acquiring and obtaining all Demolition Rights of Grantor with respect to the Ground Lease, Building, and Premises so Grantee can carry out the Demolition and Site Preparation, including without limitation, all Grantor interests in, to or otherwise with respect to the Building and relinquishment of all Grantor interests under the Ground Lease. This Agreement is entered pursuant to the Redevelopment Plan and Redevelopment Agreement.

NOW, THEREFORE, for good and valuable consideration, including the Consideration to be paid or provided pursuant to Section 2 below, the receipt and sufficiency of which are agreed by the parties, the parties agree as follows:

**1. Agreement to Sell and Purchase.** Grantor agrees to sell and convey, and Grantee agrees to acquire and obtain, at Closing (as such term is defined in Section 9.1 below) all Demolition Rights with respect to all rights or interests of Grantor in the Property, including without limitation, all rights of Grantor on, in, under, over, across, or otherwise connected with the Property, Ground Lease, Building, or Premises, for Grantee to carry out Demolition and Site Preparation, and an easement to carry out such work. Upon Closing, Grantee shall be authorized to immediately proceed with Demolition and Site Preparation with respect to such Property, Building and Premises.

**2. Consideration.** Consideration shall include the following:

2.1 As consideration for this Agreement, the Grantee shall:

2.1.1 Pay to Grantor the amount of \$850,000.00 in immediately available funds at Closing as consideration for acquisition of all Demolition Rights or other interests of Grantor on, in, under, over, across, or otherwise connected with the Property, Ground Lease, Building, or Premises, for Grantee to proceed with Demolition and Site Preparation with respect to such Property, Building, and Premises, including without limitation:

2.1.1.1 All fixtures and equipment on, in, under, over, across, or otherwise connected with the Building or Premises, and all cabinetry and electrical, plumbing, heating, ventilation, air conditioning, safes, safe deposit boxes, signage, and drive-through teller facilities and equipment on, in, under, over, across, or otherwise located wholly or partly on, at or within the Property on the Closing Date, all of which the parties agree shall constitute real property, and

2.1.1.2 An easement for Grantee or Grantee's designee to carry out the Demolition and Site Preparation work.

2.1.2 Pay to Grantor the sum of \$35.03 per safe or safety deposit box, totaling \$29,004.84 for 828 boxes ("Safety Deposit Amount"), with respect to which Grantor has a contract in

effect on the Effective Date of this Agreement, as represented by Grantor to Grantee (together all consideration described in this section 2.1 shall be referred to as the “Grantee Consideration”)

2.2 As consideration for this Agreement, the Grantor provides the following:

2.2.1 (a) Grantor shall convey and deliver to Grantee at Closing all Demolition Rights with respect to all rights or interests of Grantor in the Property, including without limitation, all rights of Grantor on, in, under, over, across, or otherwise connected with the Property, Ground Lease, Building, or Premises, and all fixtures, equipment and other property described in section 2.1.1 above, to carry out Demolition and Site Preparation. The Premises shall be vacated, all personal property shall be removed and possession shall be surrendered by Grantor to Grantee at Closing. Grantor represents and agrees as follows:

- (i) Grantor constructed, and during the Lease owns, the Building and other improvements on or serving the Premises,
- (ii) Grantor voluntarily is entering and conveying the Demolition Rights pursuant to this Agreement, and
- (iii) Grantor at its cost and expense shall be solely responsible and liable for moving or relocating from the Premises (“Responsibility for Moving”), including without limitation, removing, moving, or relocating all personal property, and Grantee shall not have any such responsibility or liability.

(b) Not in limitation of the foregoing, Grantor’s Responsibility for Moving shall include removal or relocation from the Premises or return of any property of any customers of Grantor, including without limitation, notifying and returning to customers or relocating to another banking facility contents of any safe or safety deposit boxes in accordance with customer direction, if applicable. Grantor and Grantee agree that the Safety Deposit Amount shall constitute and be used in full and final compensation of any customer or other claims or costs or expenses of moving, returning or relocating customer property, and Grantor shall indemnify, defend, and hold harmless Grantee from and against any liabilities, claims, or expenses arising out of or resulting from such Responsibility for Moving or any customers of Grantor or any customer property;

2.2.2 Grantor shall deliver to Grantee at Closing a Bill of Sale substantially in form and content attached to this Agreement and incorporated herein as Exhibit 1, subject to any modifications as satisfactory to the Mayor, City Administrator or City Engineer of the City of La Vista on behalf of Grantee;

2.2.3 Grantor shall deliver to Grantee at Closing the Landlord Consent, Easement Agreement, and Lease Termination executed by Grantor and Landlord, substantially in form and content attached to this Agreement and incorporated herein as Exhibit 2, subject to any modifications as satisfactory to the Mayor, City Administrator or City Engineer of the City of La Vista on behalf of Grantee; and

2.2.4 Grantor shall execute and deliver to Grantee at or before Closing documentation requested by Grantee, if any, attesting to the voluntary nature of this Agreement in form and content satisfactory to the Grantor and to the Grantee, as determined by the Mayor, City Administrator or City Engineer (“Acknowledgement”).

Grantor and Grantee agree to cooperate and deliver at Closing any other documents or instruments required by this Agreement or reasonably requested in connection with Closing. Payments or performance by Grantor or Grantee under this Section 2 are collectively referred herein to as the “Consideration”. Any Consideration to be paid by Grantee at its option may be paid by the City of La Vista. Grantor agrees that the Grantee Consideration and other amounts and consideration paid or provided to Grantor pursuant to this Agreement shall be full and just compensation for all rights and interests of Grantor in, to, or otherwise with respect to the Property, the easement, and performance of Grantor pursuant to this Agreement.

**3. Due Diligence Deliverables.** Within thirty (30) days after the execution of this Agreement by all parties hereto, and as may be periodically requested thereafter during the Diligence Period, Grantor will provide Grantee the following (collectively, the “Diligence Materials”):

3.1. Full and complete copies of all documents or instruments in the possession or control of Grantor pertaining to the Property or any Grantor interest therein, including without limitation, copies of the Ground Lease (as amended) and any amendments, all surveys, plats, grading plans, development plans, inspection reports, environmental reports, soil reports, geotechnical reports, surveys, or similar studies or examinations pertaining to the Building, Premises or Property, and any documents in Grantor’s possession or control regarding any lien or encumbrance in connection with the Building, Premises or Property; and

3.2 A title insurance commitment obtained by Grantor for an ALTA owner's title insurance policy issued by TitleCore National, LLC ("Title Company") for the full amount of the Grantee Consideration. Within thirty (30) days after receipt of the title commitment, Grantee shall forward to Grantor written notice of any defect in title discovered during the examination of the title commitment by Grantee (collectively "Title Defect"). Notwithstanding the foregoing, Grantee shall have no obligation to object to any existing mortgages, deeds of trust, UCC financing statements, or other such liens or encumbrances with respect to which Grantor is the debtor or obligor and of which Grantor shall cause the release by payment or delivery of releases at Closing. All recorded plats and utility easements or building or zoning restrictions which the City Engineer on behalf of Grantee determines do not materially impair the intended Demolition and Site Preparation work shall not be deemed to be Title Defects. After receiving a written notice of a Title Defect from Grantee, Grantor shall have a reasonable period of time to cure all such Title Defects or have the Title Company insure over such Title Defects, at Grantor’s expense. In the event Grantor does not cure all such Title Defects or have the Title Company insure over such Title Defects, then Grantee shall have the option to terminate this Agreement and upon such termination all obligations of the Grantee under this Agreement shall terminate and be null and void except for Grantee’s obligations under Section 12 (Closing Costs) hereof. The title insurance premium for the owner's title insurance policy and any escrow or closing fees shall be divided equally between Grantor and Grantee.

**4. Diligence Period.** The Grantee, during the period beginning on the date the

Diligence Materials are provided to the Grantee until the Closing Date (“Diligence Period”), shall have the opportunity to review all of the information related to the Diligence Materials and such other information as the Grantee may deem relevant to determine, in Grantee’s sole and absolute discretion, whether the transaction is desirable and feasible. If Grantee, in its sole and absolute discretion, shall determine that Grantee does not desire to effectuate the transaction contemplated herein for whatever reason, then Grantee may terminate this Agreement by giving written notice of such termination to Grantor prior to expiration of the Diligence Period, and upon such termination all obligations of the Grantee under this Agreement shall terminate and be null and void except for Grantee’s obligations under Section 12 (Closing Costs) hereof. During the Diligence Period, Grantor shall allow reasonable access by the Grantee or its designees to the Premises and the Building to facilitate the Grantee’s conduct of its due diligence review, physical inspections of the Property, and testing at its own cost and expense.

**5. Real Estate Taxes and Assessments.** Grantor shall pay the real estate taxes (if any) relative to the Building which become delinquent in the year prior to the year of Closing. Real estate taxes (if any) relative to the Building which become delinquent in the year of Closing shall be prorated between Grantor and Landlord from January 1 of the year of Closing to the Closing Date based upon the most recent tax levy rate and property valuation. Landlord shall indicate its consent to such proration by executing the Landlord Consent, Easement Agreement, and Lease Termination.

## **6. Transaction Documents.**

6.1 The Closing is conditioned upon the parties entering into or providing the following documents or instruments at Closing and such other documents as may be reasonably required to effectuate the transaction:

6.1.1 Grantor executing and delivering to Grantee the Bill of Sale for recording with the Sarpy County Register of Deeds at Closing. The Bill of Sale will contain a representation and warranty of Grantor’s ownership of the Building and of no liens or encumbrances initiated by, or occurring in connection with any action or inaction of, Grantor. There will be no representation or warranty with respect to the condition of the Building or any improvements.

6.1.2 Grantor delivering to Grantee the Landlord Consent, Easement Agreement, and Lease Termination, executed by Grantor and Landlord, for recording with the Sarpy County Register of Deeds at Closing.

6.1.3 Grantor executing and delivering to Grantee the Acknowledgment, if required by Grantee, in form and content satisfactory to the Grantor and to the Mayor, City Administrator or City Engineer of the City of La Vista on behalf of Grantee.

6.1.4 Grantor and Grantee each agrees to execute and/or deliver such other documents or instruments as may be required by applicable laws or regulations or by the Title Company, escrow or closing agent, including without limitation, any required affidavits or certifications of non-foreign status pursuant to IRC Section 1445 and regulations thereunder.

6.2 Closing shall be subject to Grantor or Landlord, at or before Closing, eliminating all recorded or unrecorded interests or encumbrances that might interfere with the Demolition and Site Preparation (“Encumbrances”), to the satisfaction of Agency.

6.3 This Agreement and all documents or instruments delivered at Closing shall survive Closing.

**7. Representations and Warranties.** Grantor represents and warrants to the Grantee as of the date of the execution of this Agreement and as of the date of Closing as follows:

7.1 Grantor is a duly organized national banking association operating in Nebraska;

7.2 Grantor owns the Building and is the sole tenant under the Ground Lease. Grantor does not provide any representations or warranties with respect to the condition of the Building, which shall be provided at Closing in its “as-is where-is condition” for Demolition and Site Preparation; and

7.3 Grantor has the authority and power to execute and perform and complete the transactions and obligations contemplated by this Agreement, subject to Landlord approval by executing the Landlord Consent, Easement Agreement, and Lease Termination; and

7.4 The person signing this Agreement is duly authorized to execute this Agreement on behalf of Grantor; and

7.5 The Property is not now and on the date of Closing will not be in violation of any federal, state, or local law, ordinance, or regulation or requirement relating to industrial hygiene or to the environmental conditions of or about the Property, including, but not limited to, soil and groundwater conditions, erosion controls and agricultural waste management, or subject to any pending or threatened enforcement actions with respect thereto, or litigation.

**8. Grantee’s Representations and Warranties.** Grantee represents and warrants to Grantor as of the date of the execution of this Agreement and as of the Closing that:

8.1 Grantee is a community development agency created pursuant to Neb. Rev. Stat. 18-2101.01 by Ordinance No. 1167 adopted by the City;

8.2 The Grantee has authority and power to execute and perform and complete the transactions and obligations contemplated by this Agreement; and

8.3 The person signing this Agreement on behalf of the Grantee is duly authorized to sign this Agreement on behalf of the Grantee.

**9. Closing.**

9.1 Unless this Agreement is terminated by Grantee during the Diligence Period or

otherwise in accordance with its terms, the Grantor and Grantee shall close the transaction (the "Closing") on the Closing Date determined in accordance with this Section 9.1. The parties estimate that Closing will occur within twelve (12) months after the Effective Date of this Agreement when a new facility within the Mixed Use Redevelopment Project Area ("New Branch Banking Facility") has been completed to which Grantor has relocated its Branch Banking Facility from its current location. Grantor and Grantee mutually shall determine the date that Closing shall occur (the "Closing Date"), which shall be within thirty (30) days after a certificate of occupancy is granted for the New Branch Banking Facility and no later than eighteen (18) months after the Effective Date of this Agreement, provided none of the circumstances described in subsections 9.2(i) through 9.2(vi) exists. Closing shall be subject to final walk through inspection of the Property satisfactory to Grantee.

9.2 Notwithstanding anything in this Section 9 or otherwise in this Agreement to the contrary, this Agreement may be terminated at Grantee's option and transactions contemplated by this Agreement abandoned if more than eighteen (18) months have passed since the Effective Date and (i) the New Branch Banking Facility has not been completed or does not have a certificate of occupancy, (ii) Grantor has not entered a lease for the New Branch Banking Facility to commence within thirty (30) days of the certificate of occupancy and having an initial lease term of 10 years or more, (iii) Grantor has not vacated the Premises, (iv) the Landlord Consent, Easement Agreement, and Lease Termination is not forthcoming, (v) any Encumbrances described herein or in Exhibit 2 remain, or (vi) Grantee for reasons beyond its reasonable control is not able to commence or complete the Demolition and Site Preparation.

9.3 At Closing:

9.3.1 Grantor shall deliver to Grantee:

- 9.3.1.1. A fully executed Bill of Sale.
- 9.3.1.2. A fully executed Landlord Consent, Easement Agreement, and Lease Termination.
- 9.3.1.3. A fully executed Acknowledgement, if requested by Grantee.

9.3.2. Grantee shall deliver to Grantor:

- 9.3.2.1. The Grantee Consideration.

**10. Right to Assign.** Any proposed assignment of this Agreement or any rights or obligations hereunder shall be subject to approval of both parties.

**11. Notices.** Any notice required to be given hereunder shall be in writing and shall be deemed duly served if and when delivered personally or by first class United States mail, postage prepaid, to the following addresses:

To Grantor:

First National Bank of Omaha

1620 Dodge Street  
Attn: Real Estate, MS1150  
Omaha, NE 68197

and

To Grantee:

La Vista Community Development Agency  
Attn: Brenda Gunn  
8116 Park View Blvd.  
La Vista, NE 68128

With a copy to David Hohman or Tom McKeon, Fitzgerald Schorr, PC, LLO, 200 Regency One, 10050 Regency Circle, Omaha, NE 68114. Each party may change its address for the purposes hereof by giving written notice thereof to the other.

**12. Closing Costs.** The Grantee shall pay the following costs associated with the Closing of this transaction: all due diligence costs, one-half of the premium for any title insurance and one-half of any escrow closing, Title Company, or closing agent costs or fees, the recording cost of any documents required to be recorded, and its own legal fees. Grantor shall pay the following costs associated with the Closing of this transaction: the documentary stamp tax (if any), one-half of any title insurance premium and one-half of any escrow closing, Title Company, or closing agent costs or fees, and all of its own legal fees.

**13. Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

**14. Time of the Essence.** The parties agree that times for performance are of the essence of this Agreement.

**15. 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. All parties agree to waive any right to a trial by jury on any dispute between the parties, whether contract or tort. All parties consent to jurisdiction of the state courts in the State of Nebraska and agree that any lawsuit between the parties shall be brought only in the state courts located in Papillion, Sarpy County, Nebraska.

**16. 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.

**17. Severability.** If any provision of this Agreement conflicts with applicable law or regulation or is declared invalid or otherwise unenforceable, such conflict or invalidity shall not affect the other provisions of this Agreement which can be given effect without the conflicting provision, and to this end the provisions of this Agreement are declared to be severable.

**18. No Oral Agreements; Integration.** This Agreement constitutes the entire understanding and agreement of the parties, and any prior understandings, negotiations, agreements or representations of the parties are merged herein. This Agreement may not be added to, subtracted from, or modified in any manner except by agreement in writing executed by both parties.

**19. No Waiver.** The waiver of any breach of this Agreement by any party hereto shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision of this Agreement. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall be deemed a modification, waiver or release of any requirement of the Redevelopment Plan, Redevelopment Agreement or Subdivision Agreement applicable to the Property.

**20. 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.

**21. 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 any 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 parties 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.

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

**23. Duly Authorized.** By signing this Agreement, the person signing on behalf of each party confirms that (i) the undersigned signatory has been duly authorized to sign this Agreement on behalf of the respective party, and (ii) each has read this Agreement, in full, is fully apprised of its contents, understands the meaning and implications of this Agreement, and executes this Agreement voluntarily and with full understanding of its import.

**24. Recitals.** The recitals at the beginning of this Agreement are incorporated herein by reference.

**25. Paragraph Headings.** The paragraph headings of this Agreement are solely for the convenience of reference and shall not in any way limit or amplify the terms and conditions hereof.

**26. Attorneys' Fees and Expenses.** To the extent permitted by applicable law, if any party hereto commences a lawsuit to enforce the provisions of this Agreement the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses.

**27. Effect of Agreement; Survival as Between Grantor and Grantee.** This Agreement has been entered into by the Grantee to provide financing for an approved redevelopment project. For this purpose, "financing" means providing funds for rights acquired in accordance with this Agreement. This Agreement shall continue in effect and survive all closings and conveyances of real estate required by this Agreement, and shall be enforceable by Grantor or Grantee against the other.

**28. Casualty Loss.** Grantor shall maintain commercially reasonable property and general liability insurance on the Building and Premises through Closing. If, before Closing, all or any part of the Building or other improvements of the Premises are condemned, or damaged or destroyed and not fully rebuilt or restored, the amount of Grantee Consideration payable at Closing shall be reduced by the amount of any condemnation award or insurance proceeds that the Grantor receives or is entitled to receive as a result of such condemnation or loss; or in the alternative, the Grantee shall have the option to terminate this Agreement.

**[Remainder of Page Intentionally Left Blank.  
Signature Page to Follow.]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**First National Bank of Omaha**, a national banking association

By: \_\_\_\_\_

Brenda Dooley  
Senior Vice President

**La Vista Community Development Agency**,  
a community development agency created  
pursuant to Neb. Rev. Stat. 18-2101.01

By: \_\_\_\_\_

Douglas Kindig, Mayor  
City of La Vista

**Exhibit “1”**

**Form of Bill of Sale**

(See attached)

**Form of Deed and Bill of Sale  
(in recordable form)**

**DEED AND BILL OF SALE**

FOR VALUABLE CONSIDERATION, First National Bank of Omaha, a national banking association, ("Grantor") transfers and conveys to the La Vista Community Development Agency, a community development agency created pursuant to Neb. Rev. Stat. Section 18-2101.01 ("Grantee"), all of Grantor's rights, title and interests in or to the following described property or improvements on or serving such property, for Grantee to carry out Demolition and Site Preparation of such property and improvements:

The Building and all other improvements on or serving the following real property:  
Lot 11, La Vista City Centre, an Addition to the City of La Vista, in Sarpy County, Nebraska (commonly known as 7855 So. 84th Street, La Vista, Nebraska) ("Property"),

and consents to Grantee's commencement and performance of Demolition and Site Preparation with respect to such Property, subject to consent of La Vista City Centre, LLC ("landlord") as successor-in-interest to Brentwood Crossing Associates II, and landlord of the Property under that certain Lease Agreement with Grantor, as lessee, dated August 1, 1993 (the "Ground Lease"), and consent of Dundee Bank, a branch of Security State Bank and holder of security interests in the Property, with such landlord and secured party consents evidenced by executing the Landlord Consent and Secured Party Consent in form and content below as applicable. Without limiting the foregoing, this Bill of Sale shall be deemed to include any personal property remaining at, on or in the Building, the improvements, or Property at the time of Closing, and any rights of Grantor under the Ground Lease for Grantee to carry out Demolition and Site Preparation.

Grantor for itself and its successors and assigns represents and warrants that Grantor owns the Building and other improvements of the Property and has the legal right to sell and hereby sells the rights and interests described in this Bill of Sale, free and clear of all encumbrances, liens, assessments, taxes for years prior to Closing, restrictions, and covenants ("Title"); and agrees to defend Grantee against any and all claims against such Title. Grantor gives no representation or warranty with respect to the condition of the Building or such improvements.

Any capitalized term not defined in this Bill of Sale shall have the meaning assigned to it in the AGREEMENT FOR ACQUISITION OF DEMOLITION RIGHTS WITH RESPECT TO LEASEHOLD INTERESTS between Grantor and Grantee, dated \_\_\_\_\_ 2018, a copy of which is on file with the La Vista City Clerk and incorporated herein by this reference.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

FIRST NATIONAL BANK OF OMAHA

BY: \_\_\_\_\_  
Brenda Dooley  
Senior Vice President

**LANDLORD CONSENT**

For valuable consideration, La Vista City Centre, LLC hereby consents to the **DEED** **AND BILL OF SALE** of First National Bank of Omaha above, including without limitation conveyance to Grantee of all Grantor rights and interests in or to the Building and other improvements on, in, under, over, across, or otherwise connected with the Property, and Grantee carrying out Demolition and Site Preparation with respect to such Property.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

LA VISTA CITY CENTRE, LLC

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

#### **SECURED PARTY CONSENT**

The undersigned, as the holder of a lien on the Property, hereby consents and agrees to the **DEED AND BILL OF SALE** of First National Bank of Omaha and Landlord Consent above, including without limitation conveyance to Grantee of all Grantor rights and interests in or to the Building and other improvements on, in, under, over, across, or otherwise connected with the Property, and Grantee or its designee carrying out Demolition and Site Preparation with respect to such Property.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Dundee Bank, a branch of Security State Bank

By \_\_\_\_\_  
Its \_\_\_\_\_

#### **ACKNOWLEDGEMENT OF NOTARY**

STATE OF NEBRASKA      )  
                                  ) ss.  
COUNTY OF DOUGLAS      )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Brenda Dooley, Senior Vice President of First National Bank of Omaha, a national banking association, as his or her voluntary act and deed and the voluntary act and deed of said bank.

Notary Public

ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA      )  
                            )  
                            ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Christopher L. Erickson, Manager of La Vista City Centre, LLC, a Nebraska limited liability company, as his voluntary act and deed and the voluntary act and deed of said company.

---

Notary Public

STATE OF \_\_\_\_\_              )  
                            )  
                            ) ss.  
COUNTY OF \_\_\_\_\_              )

The foregoing Secured Party Consent was acknowledged before me this \_\_\_\_day of \_\_\_\_\_, 2018, by \_\_\_\_\_, \_\_\_\_\_ of Dundee Bank, a branch of Security State Bank, on behalf of said bank.

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Notary Public

**Exhibit “2”**

**Form of Landlord Consent, Easement Agreement, and Lease Termination**

(See attached)

**Landlord Consent, Easement Agreement, and Lease Termination  
(in recordable form)**

This Landlord Consent, Easement Agreement, and Lease Termination (“Agreement”) is made and entered into effective this \_\_\_\_ day of \_\_\_\_\_, 2018 (“Effective Date”) by and between First National Bank of Omaha, a national banking association, (“Tenant”) and La Vista City Centre, LLC, a Nebraska limited liability company (“Landlord”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, the parties agree as follows:

1. Landlord is fee simple owner and Landlord and Tenant are parties under that certain Lease Agreement dated August 1, 1993 by and between Landlord (as successor-in-interest to Brentwood Crossing Associates II, a Missouri general partnership, as landlord), and Tenant, as lessee, pertaining to property legally described below and commonly known as 7855 So. 84<sup>th</sup> Street, La Vista, Nebraska 68128 (the “Property”), as extended and subject to additional extension up to the remaining useful life of Tenant’s branch bank building and improvements, (the “Ground Lease”):

Lot 11, La Vista City Centre, an Addition to the City of La Vista, in Sarpy County, Nebraska,

on which Tenant constructed, owns, and operates a retail branch banking facility comprised of a building and other improvements on or serving such Property (“Building”).

2. This Agreement is entered into pursuant to that AGREEMENT FOR ACQUISITION OF DEMOLITION RIGHTS WITH RESPECT TO LEASEHOLD INTERESTS between Tenant and the La Vista Community Development Agency (the “Agency”), dated \_\_\_\_\_ and incorporated herein by this reference (“Demolition Agreement”), a copy of which is on file with the La Vista City Clerk, to provide Agency Demolition Rights so it can perform Demolition and Site Preparation with respect to the Property and Building.
3. Landlord hereby ratifies, affirms, adopts, approves, and consents to the Demolition Agreement, all terms and conditions thereof, and all performance of Tenant or Agency in accordance with such Demolition Agreement, including without limitation, Tenant’s conveyance of Demolition Rights and all of Tenant’s right, title and interest in or to the Property or Building for Agency to carry out Demolition and Site Preparation, and relinquishment of all rights of Tenant under the Ground Lease, and Agency’s exercise of the Demolition Rights and performance of Demolition and Site Preparation. Not in limitation of the foregoing, Landlord agrees to the proration of real estate taxes specified in Section 5 of the Demolition Agreement. Landlord shall not challenge any such terms, conditions, performance, conveyance, relinquishment, or exercise described in this paragraph.

4. Landlord hereby grants and conveys to Agency all Demolition Rights of Landlord with respect to the Property or Building, including without limitation, all right, title, and interest in or to the Building and all other improvements or property therein or thereon, and authorizes Agency to commence and carry out the Demolition and Site Preparation, and Agency shall be authorized to demolish, remove, and discard or otherwise dispose of such Building, improvements, and property as the Agency determines in its sole discretion.
5. Landlord and Tenant each agrees that Agency is hereby granted an easement and rights in to and over the Property, Building and improvements, effective upon Closing under the Demolition Agreement, to enter upon the Property and perform Demolition and Site Preparation of the Property, including without limitation, demolition, clearance, removal, transport, transfer, and disposal of the Building and all improvements on, in, under, over, across, or otherwise connected with the Property, initial grading, removal or relocation of utilities or soils, or other work in a manner determined by the Agency in its sole discretion. Not in limitation of the foregoing, Landlord and Tenant each conveys all of its rights or interests in the Building and other improvements to Agency. The easement granted by this paragraph also shall be for the benefit of any contractors, agents, employees, or representatives designated to perform any of the Demolition and Site Preparation.
6. Not in limitation of the foregoing, Landlord hereby ratifies, affirms, adopts, and approves the **RECIPROCAL CONSTRUCTION EASEMENT, AND CONVEYANCE OF DEMOLITION AND SITE PREPARATION RIGHTS AND EASEMENT** recorded with the Sarpy County Register of Deeds as Instrument Number 2016-31250 (“Pre-existing Easement”) and easements and rights granted the City or Agency therein, and affirms that such easement and rights shall apply with respect to the Property and Building, all improvements thereon or therein, and all rights or interests therein, for the Agency to perform the Demolition and Site Preparation.
7. Landlord, on or before the Closing Date under the Demolition Agreement, and as a condition of such Closing, shall eliminate any recorded or unrecorded interests or encumbrances that might interfere with the Demolition and Site Preparation (“Encumbrances”). Tenant shall cooperate with Landlord to eliminate any such Encumbrances.
8. Landlord acknowledges that this Agreement shall be delivered at Closing as an inducement of the parties to close on the Demolition Agreement. Landlord does not have, is not seeking, and shall not seek any uncompensated rights or interests or rights to any additional consideration from Tenant or Agency with respect to any rights or interests on, in, under, over, across, or otherwise connected with the Ground Lease, Property or Building, or arising out of Agency’s performance of Demolition and Site Preparation.
9. Landlord agrees, within three (3) days after the Effective Date of the Demolition Agreement and in all events before the Closing Date, to provide the Agency with full and complete

copies of any documents or instruments in the possession or control of Landlord relating to Landlord's rights, title or interests in or to the Ground Lease, Building, or Property, including without limitation, copies of the Ground Lease (as amended) and any amendments; and such other information in Landlord's possession that might be relevant to Agency performance of Demolition and Site Preparation.

10. Landlord and Tenant agree that Tenant obligations to pay rent under the Ground Lease shall cease upon Tenant opening for business in the New Branch Banking Facility. If Closing is not on the first day of the month, any applicable rents and any other payments due under the Ground Lease shall be prorated to the date of Closing unless Landlord and Tenant otherwise agree.
11. The Ground Lease and all obligations of the parties thereunder automatically shall terminate upon completion of the Demolition and Site Preparation, without any further action required of any person or entity; provided, however that Tenant and Landlord agree that upon completion of the Demolition and Site Preparation they will sign and deliver a written release in recordable form as may be necessary to release the recorded Ground Lease or any recorded memorandum thereof.
12. This Agreement shall be subject to consent of Dundee Bank, a branch of Security State Bank and holder of security interests in the Property, in form and content of the Secured Party Consent below. Landlord and Tenant agree that Agency or its designee shall be authorized to proceed with Demolition and Site Preparation upon Closing on the Demolition Agreement.
13. This Agreement shall constitute covenants running with the land and shall be binding on Landlord and Tenant, and each of them, and their respective successors and assigns. Agency shall be authorized to enforce this Agreement. Terms and conditions of this Agreement shall survive and remain in full force and effect after Closing.
14. Agency shall be a beneficiary and authorized to enforce this Agreement against Landlord and/or Tenant.
15. Terms used in this Agreement shall have the same meaning as used in the Demolition Agreement, unless otherwise specified or the context otherwise requires.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

First National Bank of Omaha, a national  
banking association

By: Brenda Dooley

Senior Vice President

La Vista City Centre, LLC

By: \_\_\_\_\_  
Christopher L. Erickson, Manager

### **SECURED PARTY CONSENT**

The undersigned, as the holder of a lien on the Property, hereby consents and agrees to the Landlord Consent, Easement Agreement, and Lease Termination of First National Bank of Omaha, a national banking association, and La Vista City Centre, LLC above, including without limitation all grants, conveyances, rights and interests to or for the benefit of City or Agency with respect to the Property, and Agency shall be authorized to carry out Demolition and Site Preparation with respect to such Property.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Dundee Bank, a branch of Security State Bank

By \_\_\_\_\_  
Its \_\_\_\_\_

### **ACKNOWLEDGEMENT OF NOTARY**

STATE OF NEBRASKA      )  
                                    ) ss.  
COUNTY OF DOUGLAS      )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Brenda Dooley, Senior Vice President of First National Bank of Omaha, a national banking association, as his or her voluntary act and deed and the voluntary act and deed of said bank.

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Notary Public

## ACKNOWLEDGEMENT OF NOTARY

STATE OF NEBRASKA      )  
                            ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Christopher L. Erickson, Manager of La Vista City Centre, LLC, a Nebraska limited liability company, as his voluntary act and deed and the voluntary act and deed of said company.

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Notary Public

STATE OF \_\_\_\_\_                      )  
                                    )ss.  
COUNTY OF \_\_\_\_\_                      )

The foregoing Secured Party Consent was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, \_\_\_\_\_ of Dundee Bank, a branch of Security State Bank, on behalf of said bank.

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Notary Public