

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
OCTOBER 18, 2022 AGENDA

Subject:	Type:	Submitted By:
GENERAL BUSINESS OCCUPATION TAXES & RELATED REVENUE NOTE – VICINITY OF 120 TH AND GILES RD	◆ RESOLUTION ◆ ORDINANCE RECEIVE/FILE	BRENDA GUNN CITY ADMINISTRATOR

SYNOPSIS

A proposed Resolution would approve an Occupation Tax Revenue Note (“Revenue Note”), and a proposed Ordinance would enact general business occupation taxes (“GBOT”) upon certain businesses and users of space within a designated enhanced employment area in the vicinity of 120th and Giles Road, as requested by such businesses and users of space, for the purpose of paying all or part of the costs and expenses of public improvements or other authorized work required of Nebraska Multisport Complex in connection with development within such enhanced employment area. GBOT proceeds also may be used to pay debt service or other costs or expenses connected with the Revenue Note.

FISCAL IMPACT

Proposed actions would provide for potential Revenue Note or GBOT proceeds to pay costs and expenses of public improvements or other authorized work within the designated enhanced employment area. GBOT proceeds also may be used to pay debt service or other costs or expenses connected with the Revenue Note.

Nebraska Multisport Complex (“Nebraska Multisport”) is required to construct, perform, and pay for all public improvements and other authorized work, if proceeds of the GBOT are insufficient. The City is not obligated to provide or pay for any of such improvements or work. In addition, only GBOT proceeds can be used to make payments on the Revenue Note. If GBOT proceeds are insufficient, other City revenues or funds will not be used.

RECOMMENDATION

Approval.

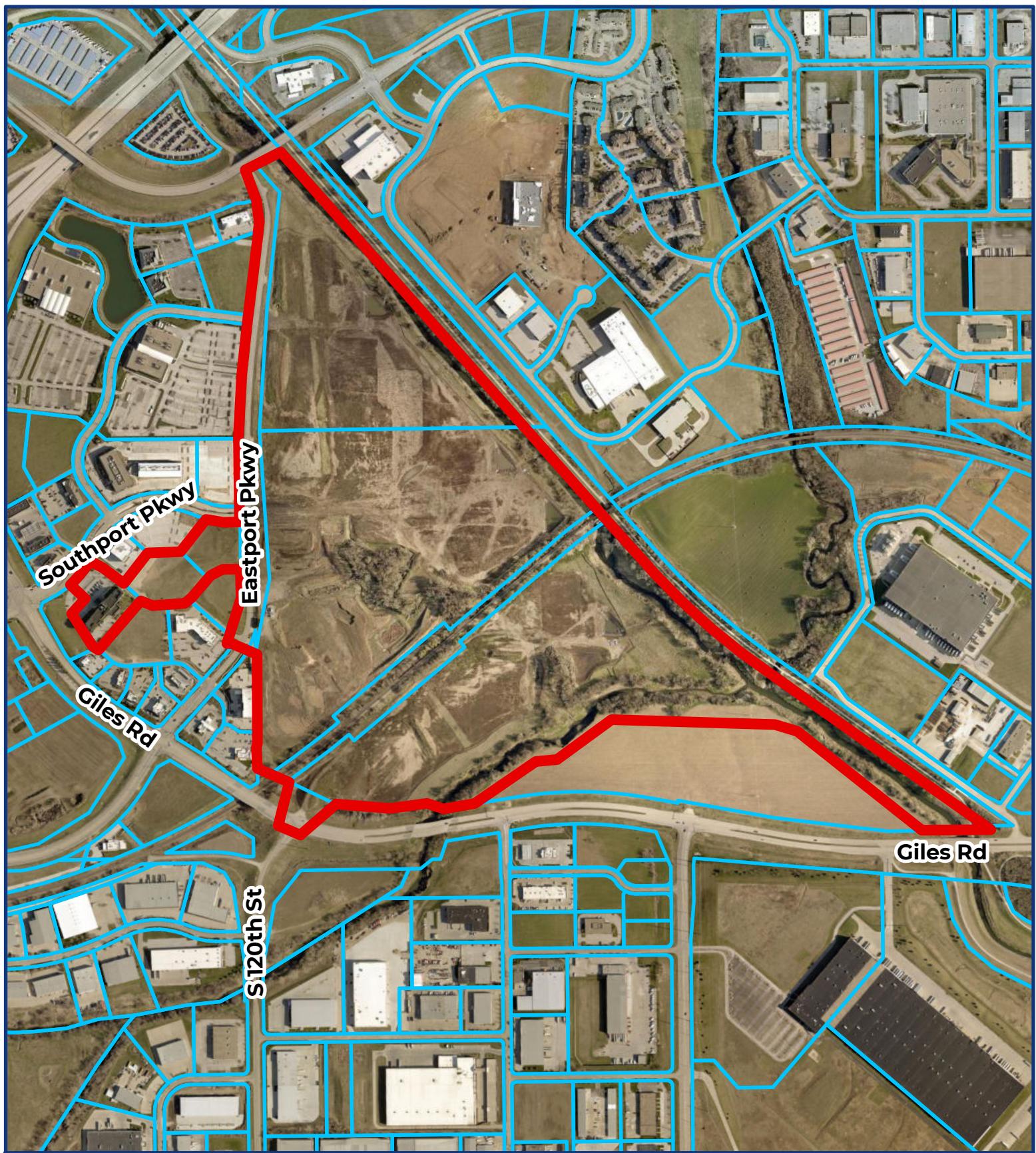
BACKGROUND

The Improvement Agreement requires Nebraska Multisport to construct, perform, and pay for all public improvements and other authorized work connected with development of the complex and adjacent areas. The City is not obligated to provide or pay for any of the improvements or work.

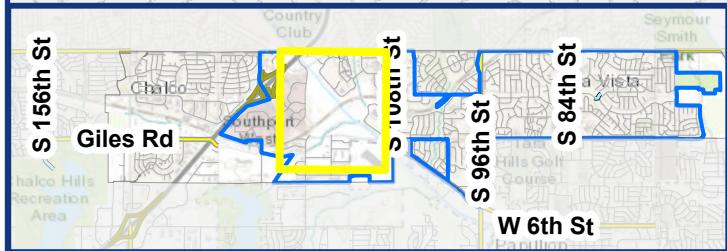
Nebraska Multisport and businesses within a designated development area - called an enhanced employment area - asked the City to levy the GBOT to provide an additional potential funding source to construct and pay for required public improvements and other authorized work. The GBOT only applies within the limited enhanced employment area in which the multisport complex and businesses are located. Developer remains solely liable for all costs and expenses of required public improvements or authorized work, for example if GBOT proceeds are insufficient. The City is not obligated to provide or pay for any of the improvements or work. In addition,

only GBOT proceeds can be used to make payments on the Revenue Note. If GBOT proceeds are insufficient, the City will not (and cannot) make payments on the Revenue Note from other City revenues or funds.

The Improvement Agreement with Nebraska Multisport provides for the GBOT to be levied on certain hotel or motel businesses and retail sales businesses on or adjacent to the multisport complex and included with the complex in the designated enhanced employment area for the purpose of paying all or any part of the costs and expenses of public improvements or other authorized work within such area, or payments connected with an Occupation Tax Revenue Note the proceeds of which are expended or allocated for such purpose. A Resolution is proposed to approve the City's Revenue Note and an Ordinance is proposed to approve the general business occupation taxes within the designated enhanced employment area.



General Orientation Map: 120 Giles Enhanced Employment Area



Legend

- La Vista Parcels
- Enhanced Employment Area



ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AN ENHANCED EMPLOYMENT AREA AND GENERAL BUSINESS OCCUPATION TAXES WITHIN SUCH AREA IN THE VICINITY OF 120TH AND GILES ROAD; AND PROVIDING FOR SEVERABILITY, PUBLICATION AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, as follows:

- I. **Findings and Determinations.** The Mayor and City Council hereby find, determine, declare, adopt, and approve the following:
 - A. Pursuant to Nebraska Statutes, including without limitation Neb. Rev. Stat. section 18-2142.04, and applicable provisions of La Vista Municipal Code sections 113.55 through 113.62, the City is authorized to levy a general business occupation tax upon businesses and users of space within a designated enhanced employment area that is not within a blighted and substandard community redevelopment area, based on a reasonable classification of businesses, users of space, or kinds of transaction, for the purpose of paying all or any part of the costs and expenses of authorized work within the enhanced employment area, or debt service or other costs or expenses in connection with any bonds the proceeds of which are expended for or allocated to authorized work.
 - B. Certain hotel or motel businesses and retail sales businesses on or in close proximity to the new multisport complex in the vicinity of 120th and Giles Road ("Nebraska Multisport Complex") are uniquely positioned to attract and benefit from visitors to the area for discretionary activities, including recreation, tourism, and leisure, that will place unique demands on City services, facilities, and resources. Subjecting such businesses to a general business occupation tax for purposes of raising revenues for public improvements or other authorized work within the area is fair, reasonable, just, and appropriate.
 - C. Such hotel or motel businesses and retail sales businesses form reasonable classifications of businesses, users of space, or kinds of transaction for purposes of imposing general business occupation taxes and raising revenues.
 - D. Based on these findings and in the interests of just, equitable and fair distribution of tax burdens as the City Council in its sole discretion determines appropriate, general business occupation taxes are proposed ("Proposed GBOTs") within a proposed enhanced employment area the boundaries of which shall encompass as a single unitary area all parcels, lots, right of way, creeks, or other real property described or depicted in section II below ("Proposed EEA"), the proceeds of which taxes will fund costs and expenses of authorized work within the Proposed EEA, or debt service or other costs and expenses of bonds the proceeds of which are expended or allocated for such work, pursuant to Neb. Rev. Stat. Section 18-2142.04 and Code sections 113.55 through 113.62.
 - E. The Proposed EEA is 600 acres or less, and is not blighted, substandard, or within a community redevelopment area.

- F. In reliance upon written representations and undertakings of property owners within the Proposed EEA, new investment within the Proposed EEA will result in new employees and new investment in accordance with applicable requirements of Neb. Rev. Stat. Section 18-2142.04(2).
- G. It is necessary, desirable, advisable, and in the best interests of the City to designate the Proposed EEA as an enhanced employment area and levy the Proposed GBOTs as general business occupation taxes upon the businesses and users of space within such area, as specified below, for the purpose of paying all or part of the costs and expenses of authorized work within such area, or debt service and other costs and expenses of bonds the proceeds of which are expended or allocated for such purpose, pursuant to Neb. Rev. Stat. Section 18-2142.04.

II. DESIGNATION OF ENHANCED EMPLOYMENT AREA. The City hereby designates, establishes, and approves the Proposed EEA as an enhanced employment area pursuant to Neb. Rev. Stat. Section 18-2142.04, comprised of the following parcels, lots and properties ("120 Giles Enhanced Employment Area"):

TAX LOTS 11 & 15, 17-14-12;

ALL OF TAX LOT 2A & PT OF TAX LOTS 2B1 & 3 LYING N & W OF RAILROAD R.O.W. 17-14-12;

NORTHEASTERLY PT OF TAX LOT 1A1B & NORTHWESTERLY PT OF TAX LOT 2B1 & NORTHWESTERLY PT OF TAX LOT 3 ALL LYING S & E OF RAILROAD R.O.W. 17-14-12;

LOT 1 SOUTHPORTE EAST REPLAT TWO;

LOT 1 SOUTHPORTE EAST REPLAT NINE;

LOT 4 SOUTHPORTE EAST REPLAT NINE;

THE ENTIRE WIDTH OF ANY PART OF EASTPORT PARKWAY IMMEDIATELY ADJACENT TO ANY PARCEL OR LOT DESCRIBED ABOVE, OR PART THEREOF, TO ITS INTERSECTION WITH GILES ROAD;

THE ENTIRE WIDTH OF ANY OTHER PUBLIC RIGHT OF WAY, OR OF ANY RAILROAD RIGHT OF WAY OR OF ANY CREEK (BANK TO BANK), IMMEDIATELY ADJACENT TO ANY SUCH PARCEL OR LOT OR PART THEREOF;

ALL RIGHT OF WAY COMPRISING THE INTERSECTION OF 120TH STREET AND GILES ROAD AND ANY OTHER IMMEDIATELY ADJACENT PROPERTY NEEDED FOR CONSTRUCTION OF TRAFFIC SIGNAL OR OTHER PUBLIC STREET IMPROVEMENTS THEREIN; AND

ANY OTHER PROPERTY, OR PARTS THEREOF, IMMEDIATELY ADJACENT TO ANY RIGHT OF WAY DESCRIBED ABOVE AS FROM TIME TO TIME NEEDED TO CONSTRUCT PUBLIC STREET OR OTHER PUBLIC IMPROVEMENTS.

III. CLASSIFICATION OF BUSINESSES, USERS OF SPACE, OR KINDS OF TRANSACTIONS. The following classifications of businesses, users of space, or kinds of transactions are hereby found, determined, and declared to be reasonable, and such classifications are hereby established, for purposes of imposing and levying general business occupation taxes upon businesses and users of space within the 120 Giles Enhanced Employment Area pursuant to this Ordinance:

Hotel or motel business, which means engaging in a business that offers or provides temporary lodging, including without limitation any extended stay lodging, within the 120 Giles Enhanced Employment Area for fees, charges, or other consideration ("Hotel or Motel Business")

Retail sales business, which means engaging in a business of retail sales, including without limitation food, beverage and merchandise retail sales, operated on the site of the Nebraska Multisport Complex or in other parts of the 120 Giles Enhanced Employment Area ("Retail Sales Business"), excluding any Hotel or Motel Business.

IV. GENERAL BUSINESS OCCUPATION TAX LEVY

A. On and after the Effective Date (as defined below), the City, in addition to any other applicable occupation, sales or other taxes imposed by the City from time to time, hereby imposes and levies the following general business occupation taxes ("120 Giles GBOT") on all persons engaged in a Hotel or Motel Business or Retail Sales Business within the 120 Giles Enhanced Employment Area, the amount of which 120 Giles GBOT shall be determined as follows:

<u>Classification of Business</u>	<u>120 Giles GBOT Rate</u>
Hotel or Motel Business	120 Giles GBOT shall be calculated as 2% of total gross receipts derived by the taxpayer from room rentals of temporary lodging of any Hotel or Motel Business within the 120 Giles Enhanced Employment Area ("Hotel or Motel Business Gross Receipts"), and
Retail Sales Business	120 Giles GBOT shall be calculated as 5% of total gross receipts derived by the taxpayer from retail sales within the 120 Giles Enhanced Employment Area, as "retail sales" is defined in the Nebraska Revenue Act of 1967, as amended from time to time ("Retail Sales Business Gross Receipts").

Provided, however, the 120 Giles GBOT shall be subject to the following conditions:

1. Any person engaged in a Hotel or Motel Business shall be subject to and pay the 120 Giles GBOT on the Hotel or Motel Business, and shall be exempt from any 120 Giles GBOT on Retail Sales Businesses.

2. Gross receipts for purposes of determining the amount of any occupation taxes of any Hotel or Motel Business or Retail Sales Business pursuant to this Ordinance shall mean the total amount of receipts, revenues, consideration, donations, contributions, or monetary charges of any nature received from room rentals or retail sales, as the case may be, without any deduction on account of expenses, taxes, or other costs.
3. The 120 Giles GBOT will be levied and payable at such times and subject to applicable provisions, terms or conditions of Nebraska Statutes or the Municipal Code or other ordinances, resolutions, regulations, policies, guidance, agreements, documents, or instruments of the City, as adopted, enacted, implemented, or amended from time to time, including without limitation applicable provisions of Municipal Code Sections 113.55 through 113.62.

Taxes imposed by this Ordinance are taxes on taxpayers for the privilege of engaging in Hotel or Motel Business or Retail Sales Business occupations within the 120 Giles Enhanced Employment Area of the City, and will be binding on all owners and operators engaged in a Hotel or Motel Business or Retail Sales Business within the 120 Giles Enhanced Employment Area and their respective successors and assigns.

B. **Use of Proceeds.** Proceeds of the 120 Giles GBOT shall be deposited in a separate fund established by the City and used to pay all or part of the costs and expenses of any authorized work within the 120 Giles Enhanced Employment Area, or debt service or other costs and expenses of bonds the proceeds of which are expended or allocated for authorized work, as specified or approved from time to time by the City Council, Mayor, City Administrator, or any designee of the City Council, Mayor or City Administrator, pursuant to Neb. Rev. Stat. Section 18-2142.04 and Code Sections 113.55 through 113.62.

C. **Effective Date; Term.** The 120 Giles GBOT shall commence _____ ("Effective Date") at 4:00 a.m. and continue and remain in effect until _____, _____, unless otherwise specified by any applicable ordinance or resolution of the City. Notwithstanding anything in this Ordinance to the contrary, the 120 Giles GBOT shall remain in effect, and shall not terminate, so long as the City has bonds outstanding that have been issued pursuant to Neb. Rev. Stat. Section 18-2142.04 and are secured by the 120 Giles GBOT or state the 120 Giles GBOT as an available source for payment.

V. **SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the constitutionality or validity of the remaining portions of this Ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

VI. **PUBLICATION AND EFFECTIVE DATE OF ORDINANCE.** This Ordinance shall be published in a legal newspaper in or of general circulation within the City or in pamphlet form in accordance with applicable law, as determined by the City Clerk to be in the best interests of the City and its residents, and shall be in full force and effect from and after its passage, approval and publication in accordance with applicable law.

PASSED AND APPROVED THIS _____ DAY OF _____, _____.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, MMC
City Clerk

RESOLUTION NO. _____

OF THE

THE CITY OF LA VISTA, NEBRASKA

ADOPTED OCTOBER ___, 2022

**\$ _____
OCCUPATION TAX REVENUE NOTE
(120 AND GILES PROJECT)**

RESOLUTION NO. ____

A RESOLUTION AUTHORIZING THE ISSUANCE OF AN OCCUPATION TAX REVENUE NOTE (120 AND GILES PROJECT), OF THE CITY OF LA VISTA, NEBRASKA, FOR THE PURPOSE OF PAYING CERTAIN PROJECT COSTS IN CONNECTION WITH THE 120 AND GILES ENHANCED EMPLOYMENT AREA; PRESCRIBING THE FORM AND DETAILS OF SUCH NOTE AND THE COVENANTS AND AGREEMENTS TO FACILITATE AND PROTECT THE PAYMENT THEREOF; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of La Vista, in the State of Nebraska, (the “**City**”) is a municipal corporation and first class city organized and existing under the constitution and laws of the State of Nebraska;

WHEREAS, pursuant to Section 18-2142.04, R.R.S. Neb., as amended, (the “**Act**”) the City may establish an enhanced employment area for a portion of the City under certain terms and conditions as provided in the Act;

WHEREAS, the City established the 120 and Giles Enhanced Employment Area of the City of La Vista, Nebraska, under the Act (the “**Enhanced Employment Area**”) and pursuant to an Improvement Agreement (the “**Improvement Agreement**”) between the City and Omaha Multi-Sport Complex, a Nebraska nonprofit corporation d/b/a Nebraska Multisport Complex (“**NMSC**”) approved by the Mayor and Council of the City prior to the adoption of this resolution;

WHEREAS, the Act permits the City to levy general business occupation taxes within the Enhanced Employment Area, and the City has established the 120 Giles GBOT pursuant to the Occupation Tax Ordinance (defined herein) and as described and defined in the Improvement Agreement which shall be imposed and levied within the Enhanced Employment Area (the “**GBOT**”) for the purpose of paying all or any part of the costs or expenses to design, construct, and provide the 120 Giles Authorized Work, as defined in the Improvement Agreement; and

WHEREAS, in order to pay a portion of the 120 Giles Authorized Work, it is necessary, desirable, advisable, and in the best interest of the City to issue the Occupation Tax Revenue Note (120 and Giles Project) (the “**Note**”), in a principal amount determined by an Authorized City Representative and deliver such Note to NMSC in exchange for NMSC paying the costs of the GBOT Public Improvements, as described and defined in the Improvement Agreement, to pay the costs of issuing the Note, and such Note to be issued and secured in the form and manner as hereinafter provided.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LA VISTA, NEBRASKA, AS FOLLOWS:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to words and terms defined elsewhere in this Resolution, the following capitalized words and terms as used in this Resolution shall have the following meanings:

“**Act**” means Section 18-2142.04, Reissue Revised Statutes of Nebraska, as amended.

“**Authorized City Representative**” means the Mayor, City Administrator or a designee of the City Administrator.

“**Business Day**” means a day on which the banking institutions in the City are scheduled in the normal course of operations to be open to the public.

“**City**” means the City of La Vista, Nebraska.

“**Clerk**” means the Clerk of the City of La Vista, Nebraska.

“**Council**” means City Council of the City of La Vista, Nebraska.

“**Cumulative Outstanding Principal Amount**” means the aggregate principal amount of the Note issued and outstanding from time to time in accordance with the provisions of this Resolution, as reflected in the Note Register as provided in this Resolution.

“**Date of Original Issue**” means the date the Note is initially issued and delivered to the Purchaser.

“**Enhanced Employment Area**” shall have the meaning provided in the recitals hereto.

“**Government Obligations**” means direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America.

“**Mayor**” means Mayor of the City.

“**NMSC**” shall have the meaning provided in the recitals hereto.

“**Note**” means the Occupation Tax Revenue Note (120 and Giles Project) authorized and issued pursuant to this Resolution in an aggregate principal amount not to exceed \$3,500,000, with the final stated principal amount of the Note to be determined by an Authorized City Representative based on reasonable expectations for Occupation Tax Revenues to be generated during the course of the 20 year term of the Note, the interest rate of the Note, and other factors which may be appropriate in the determination of such Authorized City Officer.

“**Note Counsel**” means Gilmore & Bell, P.C., or other firm of nationally recognized bond counsel acceptable to the City.

“Note Payment Date” means such dates as determined by an Authorized City Representative and indicated in the Note, with a final maturity of not more than 20 years after the date of issuance.

“Note Register” means the books for the registration, transfer and exchange of the Note kept at the office of the Clerk.

“Occupation Tax Ordinance” means the ordinance of the City providing for the initial general business occupation taxes in the Enhanced Employment Area, passed and approved contemporaneously with this resolution.

“Occupation Tax Revenue Fund” means the fund by that name described by **Section 5.1** hereof.

“Occupation Tax Revenues” means the moneys received by the City attributable to the general business occupation tax imposed pursuant to the Occupation Tax Ordinance, as the same may be amended from time to time.

“Permitted Investments” means any securities and obligations, if and to the extent the same are at the time legal for investment of the City’s moneys held in the funds and accounts referred to in **Section 5.1** hereof.

“Project” means the costs and expenses of the 120 Giles Authorized Work, as defined in the Improvement Agreement.

“Project Costs” means the costs attributable to the Project.

“Purchaser” means NMSC or such other party designated by NMSC and acceptable to the City, as the original purchaser of the Note.

“Record Date” for the interest payable on any Note Payment Date means the 15th day (whether or not a Business Day) preceding such Note Payment Date.

“Registered Owner” or **“Note Owner”** when used with respect to any Note means the person in whose name such Note is registered on the Note Register.

“Resolution” means this Resolution as from time to time amended in accordance with the terms hereof.

“State” means the State of Nebraska.

ARTICLE II

AUTHORIZATION OF NOTE

Section 2.1. Authorization of Note. There is hereby authorized and directed to be issued a Note of the City, designated “Occupation Tax Revenue Note (120 and Giles Project),” in the principal amount of not to exceed \$3,500,000, for the purpose of paying a portion of the Project Costs, and paying the costs of issuance of the Note.

Section 2.2. Description of the Note. The Note shall be substantially in the form set forth in **Exhibit A** hereto, and shall be subject to registration, transfer and exchange as provided in **Section 2.4** hereof. The Note shall be dated the date of its initial issuance and delivery, shall mature on the final Note Payment Date (subject to prior prepayment and subject to extension as provided in **Section 3.1**), and shall bear interest, if any, at the rate per annum, as determined by the Authorized City Representative and as provided in the Note delivered to the Purchaser.

The Note shall bear interest (computed on the basis of a 360-day year of twelve 30-day months), if any, from its issuance date or from the most recent interest payment date to which interest has been paid or duly provided for.

Section 2.3. Consideration for the Note. Upon execution of the Note, it shall be registered in the name of the Purchaser and shall be delivered in consideration of payment of the Project Costs by or on behalf of the Purchaser. Proceeds of the Note may be advanced and disbursed, and thus the outstanding principal amount determined, in the manner set forth below:

(a) There shall be submitted to the City Administrator a disbursement request in a form acceptable to the Authorized City Representative (the “**Disbursement Request**”), executed by an authorized representative of the Developer, (A) certifying that a portion of the Project has been substantially completed and (B) certifying the actual costs incurred by NMSC in the completion of such portion of the Project which are eligible expenses under the Improvement Agreement as part of the Project.

(b) The Authorized City Representative shall determine whether the costs requested for reimbursement under the Disbursement Request are currently reimbursable under the Improvement Agreement. Upon determination thereof, the Authorized City Representative shall evidence such allocation in writing and inform NMSC of the amount allocated to and drawn against the Note. Such amounts shall be proceeds of the Note and the Clerk shall enter on the Note Register in writing of the date and amount of such allocation. The Clerk shall keep and maintain a record of the amounts allocated pursuant to the terms of this Resolution as “Principal Amount Advanced” and shall enter the aggregate principal amount then Outstanding as the “Cumulative Outstanding Principal Amount” on its records maintained for the Note. The aggregate amount of Disbursement Requests approved for Project Costs and allocated to the principal amount drawn on the Note shall not exceed the stated principal amount of the Note.

The City shall have no obligation to approve any Disbursement Request unless such request has been properly approved as described above.

The records maintained by the Clerk as to principal amount advanced and principal amounts paid on the Note shall be the official records of the Cumulative Outstanding Principal Amount for the Note for all purposes.

Section 2.4. Method and Place of Payment of Note. The principal of and interest on the Note shall be payable in any coin or currency which, on the respective dates of payment thereof, is legal tender for the payment of debts due the United States of America.

Interest on the Cumulative Outstanding Principal Amount of the Note from the date of original issue or the most recent Payment Date to which interest has been paid or duly provided for on the Note, is

payable on each Payment Date until the principal of the Note has been paid, whether at maturity or upon earlier redemption.

The principal and interest payable on the Note on any Note Payment Date shall be paid to the Registered Owner of such Note as shown on the Note Register at the close of business on the Record Date for such interest (a) by check or draft mailed to such Registered Owner, or (b) by electronic transfer to such Registered Owner upon written notice given to the City by such Registered Owner not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank (which shall be in the continental United States), ABA routing number and account number to which such Registered Owner wishes to have such transfer directed. Such electronic transfer notice shall be effective until such Registered Owner gives the City written notice to the contrary.

Section 2.5. Registration, Transfer and Exchange of Note. The City covenants that it will, so long as the Note remains outstanding, cause to be kept at the office of the City books for the registration, transfer and exchange of the Note as herein provided. The Note when issued shall be registered in the name of the Registered Owner thereof on the Note Register.

The Note may be transferred and exchanged only upon the Note Register as provided in this Section. The Note is transferable only as permitted by the City in writing, and only upon the execution by such transferee of an investment letter substantially in a form approved by the City.

The City may deem and treat the person in whose name any Note is registered as the absolute owner of such Note, whether the Note is overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on said Note and for all other purposes. All payments so made to any such Registered Owner or upon the Registered Owner's order shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid, and the City shall not be affected by any notice to the contrary.

Section 2.6. Execution, Authentication and Delivery of the Note. The Note, including any Note issued in exchange or as substitution for the Note initially delivered, shall be signed by the manual or facsimile signatures of the officers of the City. In case any officer whose signature appears on any Note ceases to be such officer before the delivery of such Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such person had remained in office until delivery. Any Note may be signed by such persons who at the actual time of the execution of such Note are the proper officers to sign such Note although at the date of such Note such persons may not have been such officers.

The Mayor and Clerk are hereby authorized and directed to prepare and execute the Note. The City shall deliver the Note to the Purchaser.

Section 2.7. Mutilated, Destroyed, Lost and Stolen Note. If (a) any mutilated Note is surrendered to the City, or the City receives evidence to its satisfaction of the destruction, loss or theft of any Note, and (b) there is delivered to the City such security or indemnity as may be required to save the City harmless, then, in the absence of notice to the City that such Note has been acquired by a bona fide purchaser, the City shall execute, register and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a new Note of the same maturity and of like tenor and principal amount.

If any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the City in its discretion may, instead of issuing a new Note, pay such Note when due.

Upon the issuance of any new Note under this Section, the City may require the payment by the Registered Owner of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the City) connected therewith.

Every new Note issued pursuant to this Section shall constitute a replacement of the prior obligation of the City.

Section 2.8. Sale of Note. The delivery of the Note to the Purchaser is hereby ratified and confirmed. Delivery of the Note shall be made to the Purchaser as soon as practicable after the adoption of this Resolution.

Section 2.9. Redemption of Note . The Note is subject to redemption at the option of the City prior to the maturity thereof at any time as a whole or in part from time to time in such principal amount as the City shall determine, at a redemption price equal to 100% of the principal amount then being redeemed plus accrued interest thereon to the date fixed for redemption.

Section 2.10. Determination of Outstanding Principal Amount of Note . Notwithstanding the amount indicated on the face of the Note, the Cumulative Outstanding Principal Amount of the Note shall be determined and maintained by the Clerk. The Clerk shall make such notations in the Note Register as are required to reflect any redemptions of the Note from time to time. NMSC may examine the books of registry maintained by the Clerk upon request, and the Clerk shall grant such request as soon as reasonably practicable.

ARTICLE III

TERMS AND PAYMENT

Section 3.1. Terms and Payment. The Note shall be issued substantially in the form set forth in **Exhibit A**. The Note shall be dated the date of its initial issuance and delivery, shall become due and shall bear interest as set forth below and on the face of the Note.

On each Note Payment Date, an amount equal to all amounts then on deposit in the Occupation Tax Revenue Fund shall be due and payable, first to interest due and the remainder to principal. To the extent amounts in the Occupation Tax Revenue Fund are insufficient to pay all of the principal of or interest on the Note prior to or on the final Note Payment Date, such deficiency shall be borne entirely by the Registered Owner of the Note and NMSC without recourse of any kind to the City.

The City may prepay all or any portion of the Note at any time and from time to time without premium or penalty of any kind.

ARTICLE IV

SECURITY FOR THE NOTE

Section 4.1. Security for the Note. The Note shall be a limited, special obligation of the City payable solely from and secured as to the payment of principal and interest, subject to the provisions of **Section 4.2**, by a pledge of the Occupation Tax Revenues and no other moneys, revenues, funds or

accounts. Other than the power to impose and collect the Occupation Tax Revenues, the taxing power of the City are not pledged to the payment of the Note either as to principal or interest. The Note shall not constitute a general obligation of the City, nor shall it constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction.

Section 4.2. Pledge of Certain Funds. The moneys and securities now or hereafter held in, and moneys and securities to be deposited in the Occupation Tax Revenue Fund, and all interest and earnings thereon and proceeds thereof are hereby pledged to secure the payment of the Note. When the Note has been paid in full and discharged, then the requirements contained in this Resolution and the pledge of revenues made hereunder and all other rights granted hereby shall terminate.

Section 4.3. No Recourse. Notwithstanding any other provisions of this Resolution, neither the Registered Owner of the Note, the Purchaser, nor NMSC shall have any recourse of any kind against the City in the event of that the Occupation Tax Revenues are insufficient to pay the principal of or interest on the Note for any reason whatsoever.

ARTICLE V

CREATION OF FUNDS AND ACCOUNTS; DEPOSIT AND APPLICATION OF NOTE PROCEEDS

Section 5.1. Creation of Occupation Tax Revenue Fund. There are hereby created and ordered to be established within the treasury of the City the Occupation Tax Revenue Fund (the "Occupation Tax Revenue Fund"), which shall be a separate fund.

Such fund shall be segregated and kept separate and apart from all other moneys, revenues, funds and accounts of the City and shall not be commingled with any other moneys, revenues, funds and accounts of the City. The Occupation Tax Revenue Fund shall be maintained and administered in the manner provided in this Resolution so long as the Note remains outstanding hereunder.

ARTICLE VI

APPLICATION OF REVENUES

Section 6.1. Application of Occupation Tax Revenue Fund. The moneys in the Occupation Tax Revenue Fund shall be administered and applied solely for the purposes and in the manner provided in this Resolution. The Occupation Tax Revenues shall be determined and collected in the manner provided by law.

All amounts paid and credited to the Occupation Tax Revenue Fund shall be expended and used for the sole purpose of (a) paying the costs of issuance of the Note incurred by the City, and (b) paying the principal of and interest on the Note as and when the same become due on each Note Payment Date or as otherwise provided in **Section 3.1**.

ARTICLE VII

DEPOSIT AND INVESTMENT OF MONEYS

Section 7.1. Deposit of Moneys. Moneys in each of the fund created by and referred to in this Resolution and held by the City shall be continuously and adequately secured as provided by the laws of the State and invested in Permitted Investments.

Section 7.2. Investment of Moneys. All earnings on any investments held in any fund shall accrue to and become a part of such fund.

ARTICLE VIII

ADDITIONAL NOTE

Section 8.1. Additional Note. The City covenants and agrees that so long as the Note remains outstanding, the City will not issue any additional bonds, notes or debt payable from the Occupation Tax Revenue Fund or any part thereof without the prior written consent of the Registered Owner.

ARTICLE IX

DEFAULT AND REMEDIES

Section 9.1. Remedies. The provisions of this Resolution, including the covenants and agreements herein contained, shall constitute a contract between the City and the Registered Owner. Subject to the limitations set forth in **Section 9.2**, the Registered Owner shall have the following rights:

(a) by mandamus or other suit, action or proceedings at law or in equity to enforce the rights of the Registered Owner against the City and its officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Resolution or by the constitution and laws of the State of Nebraska;

(b) by suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(c) by suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Registered Owner.

Section 9.2. Remedies Cumulative. No remedy conferred herein upon the Registered Owner is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred herein. No waiver of any default or breach of duty or contract by the Registered Owner shall extend to or affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of the Registered Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the Registered

Owner by this Resolution may be enforced and exercised from time to time and as often as may be deemed expedient. In case any suit, action or proceedings taken by the Registered Owner on account of any default or to enforce any right or exercise any remedy has been discontinued or abandoned for any reason, or has been determined adversely to the Registered Owner, then, and in every such case, the City and the Registered Owner shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Registered Owner shall continue as if no such suit, action or other proceedings had been brought or taken.

ARTICLE X

MISCELLANEOUS PROVISIONS

Section 10.1. Amendments. The rights and duties of the City and the Registered Owner, and the terms and provisions of the Note or of this Resolution, may be amended or modified at any time in any respect by Resolution of the City with the written consent of the Registered Owner, such consent to be evidenced by an instrument or instruments executed by the Registered Owner and duly acknowledged, and such instrument shall be filed with the City Finance Director.

Without notice to or the consent of the Registered Owner, the City may amend or supplement this Resolution for the purpose of curing any formal defect, omission, inconsistency or ambiguity therein or in connection with any other change therein which is not materially adverse to the interests of the Registered Owner.

Every amendment or modification of the provisions of the Note or of this Resolution, to which the consent of the Registered Owner is given, as above provided, shall be expressed in a Resolution adopted by the governing body of the City amending or supplementing the provisions of this Resolution and shall be deemed to be a part of this Resolution. A certified copy of every such amendatory or supplemental Resolution, if any, and a certified copy of this Resolution shall always be kept on file in the office of the Clerk and shall be made available for inspection by the Registered Owner or a prospective purchaser or owner of the Note authorized by this Resolution, and upon payment of the reasonable cost of preparing the same, a certified copy of any such amendatory or supplemental Resolution or of this Resolution will be sent by the Clerk to any such Registered Owner or prospective Registered Owner.

Notwithstanding anything to the contrary in this **Section 10.1**, before any Resolution supplementing or amending this Resolution pursuant to this **Section 10.1** shall become effective, there shall have been delivered to the City an opinion of Note Counsel stating that such supplemental Resolution is authorized or permitted by this Resolution and the Act, complies with their respective terms, will, upon the execution and delivery thereof, be valid and binding upon the City in accordance with its terms.

Any and all modifications made in the manner hereinabove provided shall not become effective until there has been filed with the Clerk a copy of the Resolution of the City, duly certified, as well as proof of any required consent to such modification by the Registered Owner. It shall not be necessary to note on any outstanding Note any reference to such amendment or modification.

Section 10.2. Payments Due on Days Other Than Business Days. In any case where the date of maturity of principal or interest on the Note or the date fixed for prepayment of any Note is not a Business Day, then payment of principal or interest need not be made on such date but may be made on the first succeeding Business Day with the same force and effect as if made on the date of maturity or the date

fixed for prepayment, with no adjustment in accrued interest for the period between such prepayment date and such first succeeding Business Day.

Section 10.3. Notices, Consents and Other Instruments by Registered Owner. Any notice, consent, request, direction, approval, objection or other instrument required by this Resolution to be signed and executed by the Registered Owner other than the assignment of the Ownership of the Note, may be in any number of concurrent writings of similar tenor and may be signed or executed by such Registered Owner in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of the Note, if made in the following manner, shall be sufficient for any of the purposes of this Resolution, and shall be conclusive in favor of the City with regard to any action taken, suffered or omitted under any such instrument, namely:

(a) The fact and date of the execution by any person of any such instrument may be proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of ownership of the Note, the amount or amounts, numbers and other identification of the Note, and the date of holding the same shall be proved by the Note Register.

Section 10.4. Further Authority. The officers of the City, including the Mayor and the Clerk, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution and to make any changes or additions in this Resolution and the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they determine to be in the City's best interest, and the execution or taking of such action shall be conclusive evidence of such determination.

Section 10.5. Severability. If any section or other part of this Resolution or the Note is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Resolution.

Section 10.6. Governing Law. This Resolution shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 10.7. Effective Date. This Resolution shall take effect and be in full force from and after its passage by the governing body of the City.

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**PASSED AND APPROVED THIS DAY OF OCTOBER, 2022, BY THE MAYOR AND
COUNCIL OF THE CITY OF LA VISTA, NEBRASKA.**

(Seal)

ATTEST:

Mayor

Clerk

EXHIBIT A

[FORM OF NOTE]

Registered
No. 1

Registered
Up to \$ _____
(subject to reduction as described herein)

**UNITED STATES OF AMERICA
STATE OF NEBRASKA**

CITY OF LA VISTA

**OCCUPATION TAX REVENUE NOTE
(120 AND GILES PROJECT)
SERIES 20**

Interest Rate

Maturity Date

Issue Date

— %

, 20

, 20

REGISTERED OWNER:

PRINCIPAL AMOUNT: SEE SCHEDULE 1 ATTACHED HERETO

All capitalized terms used in this Note and not otherwise defined herein shall have the meanings set forth for such terms in the resolution authorizing the issuance of this Note adopted by the City on October , 2022 (the “Resolution”).

The **CITY OF LA VISTA, NEBRASKA**, (the "City") for value received, hereby promises to pay, but solely from certain specified tax revenues and other funds hereinafter specified, to the Registered Owner named above, or registered assigns, on the Date of Maturity stated above (or earlier as hereinafter referred to), the Principal Amount reflected above, or such lesser amount reflected on the books and records of the City, upon presentation and surrender hereof at the office of the registrar and paying agent herefor, and in like manner to pay interest on the Cumulative Outstanding Principal Amount reflected on the books and records of the City at the Rate of Interest stated above, calculated on the basis of a 360-day year consisting of twelve, 30-day months, from the Date of Original Issue stated above, or the most recent interest payment date to which interest has been paid or duly provided for, as specified below, to maturity or earlier redemption, payable on _____ of each year until payment in full of such Principal Amount, beginning _____, 202_____, by check or draft mailed to the Registered Owner hereof as shown on the bond registration books maintained by the City on the 15th day of the month preceding the month in which the applicable interest payment date occurs, at such Owner's address as it appears on such bond registration books. The principal of this Bond and the interest hereon are payable in any coin or currency which on the respective dates of payment thereof is legal tender for the payment of debts due the United States of America.

Payments hereon shall be due and payable on _____ of each year, beginning on _____, 20____, and ending on _____, 20____. Payments are to be applied first to interest due and the remainder to principal. The principal and interest payable on this Note on any payment date shall be paid to the person in whose name this Note is registered at the close of business on the 15th day (whether or not a business day) of the calendar month first preceding such payment date (a) by check or draft mailed by the City to such Registered Owner, or (b) by electronic transfer to such registered owner upon written notice given to the City by such Registered Owner not less than 15 days prior to such record date for such interest, containing the electronic transfer instructions including the bank (which shall be in the continental United States), ABA routing number and account number to which such registered owner wishes to have such transfer directed. The principal of and interest on this Note shall be payable in lawful money of the United States of America.

This Note is a duly authorized Note of the City designated "Occupation Tax Revenue Note (120 and Giles Project)." The Note is being issued for the purpose of paying a portion of the Project Costs in connection with the Project, and paying costs related to the issuance of the Note, under the authority of and in full compliance with the constitution and laws of the State of Nebraska, including particularly the Community Development Law, Chapter 18, Article 21, Reissue Revised Statutes of Nebraska, as amended, and pursuant to the Resolution.

The records maintained by the City Finance Director as to the principal amount issued and principal amounts paid on this Note shall be the official records of the Cumulative Outstanding Principal Amount of this Note for all purposes.

At its option, the City may prepay all or any portion of the Note at any time and from time to time without premium or penalty of any kind. The Note is subject to redemption and payment in accordance with the terms and conditions as set forth in the Resolution.

The Note is a special obligation of the City payable solely from and secured as to the payment of principal and interest by a pledge of Occupation Tax Revenues deposited in the Occupation Tax Revenue Fund, as more fully provided in the Resolution.

Other than the imposition and collection of the Occupation Tax Revenues, the taxing power of the City are not pledged to the payment of the Note either as to principal or interest. The Note shall not constitute a general obligation of the City, nor shall it constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction. Reference is made to the Resolution for a description of the covenants and agreements made by the City with respect to the collection, segregation and application of the Occupation Tax Revenues to pay the Note, the nature and extent of the security for the Note, the rights, duties and obligations of the City with respect thereto, and the rights of the Registered Owner thereof.

Reference is hereby made to the Resolution, a copy of which is on file in the office of the City Clerk, and to all of the provisions of which the Registered Owner of this Note by its acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the security for this Note; the Occupation Tax Revenues pledged to the payment of the principal of and interest on this Note; the nature and extent and manner of enforcement of the pledge; the conditions upon which the Resolution may be amended or supplemented with or without the consent of the Registered Owner of this Note; the rights, duties and obligations of the City and the Registrar thereunder; the terms and provisions upon which the liens, pledges, charges, trusts and covenants made therein may be discharged at or prior to the maturity or redemption of this Note, and this Note thereafter no longer be secured by the Resolution.

This Note is subject to redemption prior to maturity, at the option of the City, in whole or in part at any time at a redemption price equal to 100% of the principal amount being redeemed, plus accrued interest on such principal amount to the date fixed for redemption. Reference is hereby made to the Resolution for a description of the redemption procedures and the notice requirements pertaining thereto.

This Note may be transferred and exchanged only upon the Note Register as provided in the Resolution. This Note is transferable only to banks, other financial institutions or accredited investors (as defined in Rule 501 of Regulation D of the Securities Act of 1933) and only upon the execution by such transferee of an investment letter in such form as approved by an Authorized City Representative (as defined in the Resolution). Upon surrender hereof at the principal office of the City Clerk, the City shall transfer or exchange this Note for a new Note of the same maturity and in the same principal amount as the principal amount outstanding on this Note at such time. The City may deem and treat the person in whose name this Note is registered on the Note Register as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

This Note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until this Note has been executed by the City.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the Note have existed, happened and been performed in due time, form and manner as required by law, and that before the issuance of the Note, provision has been duly made for the collection and segregation of the Occupation Tax Revenues and for the application of the same as hereinbefore provided.

IN WITNESS WHEREOF, THE CITY OF LA VISTA, NEBRASKA, has executed this Note by causing it to be signed by the manual or facsimile signature of the Mayor of the City of La Vista, Nebraska and attested by the manual or facsimile signature of the Clerk of the City of La Vista, Nebraska, and its official seal to be affixed hereto or imprinted hereon.

CITY OF LA VISTA, NEBRASKA

This Note is the Note of the issue described in the within-mentioned Resolution.

By: _____
Mayor

Registration Date: , 202

(Seal)

ATTEST:

By: _____
City Clerk

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Print or Type Name, Address and Social Security Number
or other Taxpayer Identification Number of Transferee

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints agent to transfer the within Note on the books kept by the City for the registration thereof, with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Note in every particular.

Signature Guaranteed By:

[Name of Eligible Guarantor Institution (as defined by SEC Rule 17Ad-15 (12 CFR 240.17Ad-15) or any similar rule which the City deems appropriate)]

By _____
Title: _____

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