

**REDEVELOPMENT CONTRACT  
(Heartland Flats Mall and Apartment Project)**

This Redevelopment Contract is made and entered into as of the \_\_\_\_\_ day of January, 2023, by and between the Community Redevelopment Authority of the City of Alliance, Nebraska ("Authority"), the City of Alliance, Nebraska, a Nebraska municipality of the first class ("City"), and 385 Apartments, LLC, a Nebraska limited liability company ("Redeveloper").

WITNESSETH:

WHEREAS, the City in furtherance of the purposes and pursuant to the provisions of Section 12 of Article VIII of the Nebraska Constitution and Sections 18-2101 through 18-2155, Reissue Revised Statutes of Nebraska, as amended (collectively the "Act"), has designated an area within the City as blighted and substandard;

WHEREAS, the Authority has adopted, after approval by the Mayor and Council of the City, that redevelopment plan entitled "CITY OF ALLIANCE REDEVELOPMENT PLAN FOR THE HEARTLAND FLATS MALL AND APARTMENT PROJECT INCLUDING: (1) A REQUEST FOR TAX INCREMENT FINANCING; (2) DESIGNATION OF THE REDEVELOPMENT PROJECT SITE AS AN ENHANCED EMPLOYMENT AREA; (3) IMPOSITION OF A 2.0% PERCENT OCCUPATION TAX ON TAXABLE SALES; AND (4) ISSUANCE OF AN OCCUPATION TAX BOND (the "Redevelopment Plan");

WHEREAS, Authority, City and Redeveloper desire to enter into this Redevelopment Contract in order to implement the Redevelopment Plan and provide for the redevelopment of lots and lands located in a blighted and substandard area and enhanced employment area; and

WHEREAS, this Redevelopment Contract is entered into by the Authority and City to provide financing for an approved redevelopment project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, Authority, City and Redeveloper do hereby covenant, agree and bind themselves as follows:

**ARTICLE I**

**DEFINITIONS AND INTERPRETATION**

Section 1.01 Terms Defined in this Redevelopment Contract.

Unless the context otherwise requires, the following terms shall have the following meanings for all purposes of this Redevelopment Contract, such definitions to be equally applicable to both the singular and plural forms and masculine, feminine and neuter gender of any of the terms defined:

"Act" means Section 12 of Article VIII of the Nebraska Constitution, Sections 18-2101 through 18-2155, Reissue Revised Statutes of Nebraska, as amended, and acts amendatory thereof and supplemental thereto.

"Authority" means the Community Redevelopment Authority of the City of Alliance, Nebraska.

"City" means the City of Alliance, Nebraska.

"Governing Body" means the Mayor and City Council of the City.

"Holder(s)" means the registered owner or owners of TIF Indebtedness and the registered owner or owners of the Enhanced Employment Act Indebtedness issued by the Authority from time to time outstanding.

"Enhanced Employment Act" shall mean Nebraska Legislative Bill 562, 100th Legislature, effective date September 1, 2007, known as the "Enhanced Employment Area Occupation Tax," amending Sections 18-2101, 18-2103, 18-2107, 18-2111, 18-2116, 18-2119, and 18-2130 of the Nebraska Revised Statutes and set forth in the Community Development Law, as may be amended from time to time to include §§18-2142.02, 18-2142.03 and 18-2142.04 of the Act.

"Enhanced Employment Act Area" referred to in Section 18-2142.02 of the Nebraska Revised Statutes and shall mean the Enhanced Employment Act Area as shown on Exhibit A.

"Enhanced Employment Act Indebtedness" shall mean the occupation tax revenue bonds, refunding bonds, notes, interim certificates, debentures, anticipation notes, and other indebtedness or obligations issued under the terms of this Agreement, the Bond Resolution, and the Occupation Tax Ordinance. The Enhanced Employment Act Indebtedness as initially issued by the Authority shall consist of the Authority's Occupation Tax Revenue Bond (Heartland Flats Mall and Apartment Project), Series 2022, to be issued in an amount not to exceed \$1,114,100.00 in substantially the form set forth on Exhibit D, attached hereto and incorporated herein by this reference, ("Occupation Tax Revenue Bond"), and purchased by the Redeveloper as set forth in Section 4.03 of this Redevelopment Contract.

"Enhanced Employment Act Period" shall mean the lesser of (i) the time period necessary for the occupation taxes levied on the Enhanced Employment Act Area to pay off any outstanding Enhanced Employment Act Indebtedness which have been issued stating such occupation tax as an available source for payment or (ii) twenty (20) years after the effective date imposition of the occupation tax in the Occupation Tax Ordinance adopted by the City.

"Enhanced Employment Act Proceeds" shall mean any net proceeds from the issuance of the Enhanced Employment Act Indebtedness.

"Enhanced Employment Act Project" means the improvements to the Enhanced Employment Act Area, as further described in Exhibit A and, as used herein, shall include additions and improvements thereto. The Enhanced Employment Act Project shall include all eligible costs and expenses as set forth on Exhibit F, attached hereto and incorporated herein by this reference.

"Enhanced Employment Act Project Costs" means only costs or expenses incurred by Redeveloper in the Enhanced Employment Act Area as set forth on Exhibit A for the purposes set forth in Section 18-2142.04 (1) (a) or Section 18-2103(28) (a) through (f), inclusive, of the Nebraska Revised Statutes, including providing for such costs by the exercise of the powers set forth in §18-2107(4) of the Act, all as identified on Exhibit F attached hereto and incorporated herein by this reference.

"Enhanced Employment Act Project Cost Certification" means a statement prepared and signed by an authorized representative of the Redeveloper verifying the Redeveloper has become legally obligated for the payment of Enhanced Employment Act Project Costs identified on Exhibit F.

"Enhanced Employment Act Tax Revenues" shall mean the occupation tax revenues generated and collected under the occupation tax authorized by the Bond Resolution and the Occupation Tax Ordinance.

"Issuance Costs" shall mean: (1) costs and expenses of the City and Authority attributable to the Authority's and City's benefit and for the public purpose to issue the indebtedness, pledges, bonds and notes described in this Agreement of the TIF Indebtedness and Enhanced Employment Act Indebtedness, including but not limited to, redeveloper counsel fees, special authority attorney fees, fiscal advisory fees, placement fees, legal opinions and advice, and business memorandums, analysis, and advice given to the City and Authority and incurred before or after the Redevelopment Contract date in order to fund the Enhanced Employment Act Project and the TIF Project; and (2) the costs the City incurs (on an annual or prorated year) to collect, process and administer the Enhanced Employment Act Revenues and Proceeds and TIF Revenues and proceeds, and related bond funds pursuant to the requirements of the Act, including labor costs, equipment, software, promulgated regulations, City and State of Nebraska Department of Revenue accounting, procedures, reports, audits, review and accountability and reporting measures.

"Liquidated Damages Amount" means the amounts to be repaid to Authority by Redeveloper pursuant to Section 7.02 of this Redevelopment Contract.

"Lot" or "Lots" shall mean the separately platted and subdivided lots within the Redevelopment Project Area established pursuant to an approved and filed subdivision plat in accordance with the ordinances and regulations of the City.

"Master Project" shall mean the TIF Project and Enhanced Employment Act Project.

"Occupation Tax Ordinance" shall mean the City of Alliance Ordinance No. 2950, passed December 20, 2022, as amended, and related ordinances authorizing the levy, collection and enforcement of the occupation tax imposed pursuant to the Enhanced Employment Act.

"Redeveloper" means 385 Apartments, LLC, a Nebraska limited liability company.

"Redevelopment Project Area" means that certain real property situated in the City of Alliance, Box Butte County, Nebraska which has been declared blighted and substandard by the City pursuant to the Act, and which is more particularly described on Exhibit A attached hereto and incorporated herein by this reference. All such legal descriptions are subject to change based upon any re-platting requested by the Redeveloper and approved by the City.

"Redevelopment Project Property" means all of the Redevelopment Project Area which is the site for the improvements constituting the TIF Project, as more particularly described on Exhibit A.

"Redevelopment Contract" means this redevelopment contract between the City, Authority and Redeveloper with respect to the TIF Project and the Enhanced Employment Act Project, as the same may be amended from time to time, including, without limitation, by Redevelopment Contract Amendment executed from time to time in connection with the Project.

"Redevelopment Contract Amendment" shall mean an amendment to this Redevelopment Contract, for the purpose of establishing the effective date for the division of *ad valorem* taxes pursuant to section 18-2147 of the Act. The form of the Redevelopment Contract Amendment is attached hereto as Exhibit H.

"Redevelopment Plan" means the Redevelopment Plan (also defined in the recitals hereto) for the Redevelopment Project Property and the Enhanced Employment Act Area related to the TIF Project and Enhanced Employment Act Project, as attached hereto and incorporated herein as Exhibit B, prepared by the Authority and approved by the City pursuant to the Act, as amended from time to time.

"Resolution" or "Bond Resolution" means the Resolution of the Authority authorizing the issuance of the TIF Indebtedness and Enhanced Employment Act Indebtedness, as supplemented from time to time, and also approving this Redevelopment Contract.

"Taxes" shall mean taxes and assessments from all applicable government entities including, but not limited to, any income, excise, sales or occupation taxes, *ad valorem* (real property) taxes, and personal property taxes.

"TIF Indebtedness" means any bonds, notes, loans, and advances of money or other indebtedness, including interest and premium, if any, thereon, incurred by the Authority pursuant to the Resolution and Article III hereof to provide financing for a portion of the TIF Project Costs and secured in whole or in part by TIF Revenues. The TIF Indebtedness as initially issued by the Authority shall consist of the Authority's Tax Increment Development Revenue Bond (Heartland Flats Mall and Apartment Project), Series 2022, to be issued in an amount not to exceed \$1,500,000.00 in substantially the form set forth on Exhibit C attached hereto and incorporated herein by this reference ("TIF Bond"), and the Redevelopment Contract Amendment, and purchased by the Redeveloper as set forth in Section 3.04 of this Redevelopment Contract.

"TIF Project" means the improvements to the Redevelopment Project Property, as further described in Exhibit A, and shall include the additions and improvements thereto. The TIF Project shall include all eligible costs and expenses as set forth on Exhibit E, attached hereto and incorporated herein by this reference.

"TIF Project Costs" means only costs or expenses incurred by Redeveloper in the Redevelopment Project Area, as set forth on Exhibit A for the purposes set forth in §18-2103(28)(a) through (f), inclusive and §18-2117.03 including providing for such costs by the exercise of the powers set forth in §18-2107(4) of the Act, all as identified on Exhibit E.

"TIF Revenues" means incremental ad valorem taxes generated on the Redevelopment Project Property by the TIF Project which are to be allocated to and paid to the Authority pursuant to the Act.

Section 1.02 Construction and Interpretation.

The provisions of this Redevelopment Contract shall be construed and interpreted in accordance with the following provisions:

- (a) Whenever in this Redevelopment Contract it is provided that any person may do or perform any act or thing the word "may" shall be deemed permissive and not mandatory and it shall be construed that such person shall have the right, but shall not be obligated, to do and perform any such act or thing.
- (b) The phrase "at any time" shall be construed as meaning at any time or from time to time.
- (c) The word "including" shall be construed as meaning "including, but not limited to."
- (d) The words "will" and "shall" shall each be construed as mandatory.
- (e) The words "herein," "hereof," "hereunder", "hereinafter" and words of similar import shall refer to the Redevelopment Contract as a whole rather than to any particular paragraph, section or subsection, unless the context specifically refers thereto.
- (f) Forms of words in the singular, plural, masculine, feminine or neuter shall be construed to include the other forms as the context may require.
- (g) The captions to the sections of this Redevelopment Contract are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary by implication or otherwise any of the provisions hereof.

**ARTICLE II  
FINDINGS AND REPRESENTATIONS**

Section 2.01 Findings of Authority.

The Authority makes the following findings:

(a) The Authority is a duly organized and validly existing community redevelopment authority under the Act.

(b) The Redevelopment Plan has been duly approved by the City and adopted by the Authority pursuant to Sections 18-2109 through 18-2117 of the Act.

(c) The Authority deems it to be in the public interest and in furtherance of the purposes of the Act to accept the proposal submitted by Redeveloper as specified herein.

(d) The Master Project is expected to achieve the public purposes of the Act by \among other things, increasing employment, increasing investment, increasing the tax base, and lessening blighted and substandard conditions in the Redevelopment Project Area and Enhanced Employment Act Area and other purposes set forth in the Act.

(e) (1) The Redevelopment Plan is feasible and in conformity with the general plan for the development of the City as a whole and the Redevelopment Plan is in conformity with the legislative declarations and determinations set forth in the Act, and

(2) Based solely on representations made by the Redeveloper:

(i) the TIF Project would not be economically feasible without the use of tax-increment financing, which has been documented by a rate of return on investment analysis; and

(ii) the TIF Project would not occur in the Redevelopment Project Area without the use of tax-increment financing.

(f) The Authority has determined that the costs and benefits of the TIF Project, including costs and benefits to other affected political subdivisions, the economy of the community, and the demand for public and private services have been analyzed by the Authority and have been found to be in the long-term best interest of the community impacted by the TIF Project.

(g) The Authority has determined that the proposed land uses and building requirements in the Redevelopment Project Area and Enhanced Employment Act Area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted, and harmonious development of the City and its environs which will, in accordance with present and future needs, promote health, safety, morals, order, convenience, prosperity, and the general welfare, as well as efficiency and economy in the

process of development: including, among other things, adequate provision for traffic, vehicular parking, the promotion of safety from fire, panic, and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the provision of adequate transportation, water, sewerage and other public utilities, schools, parks, recreational and community facilities, and other public requirements, the promotion of sound design and arrangement, the wise and efficient expenditure of public funds, and the prevention of the recurrence of insanitary or unsafe dwelling accommodations, or conditions of blight.

#### Section 2.02 Representations of Redeveloper.

The Redeveloper makes the following representations:

(a) The Redeveloper is a Nebraska limited liability company, having the power to enter into this Redevelopment Contract and perform all obligations contained herein and by proper action has been duly authorized to execute and deliver this Redevelopment Contract. Prior to the execution and delivery of this Redevelopment Contract, the Redeveloper has delivered to the Authority a certificate of good standing, a certified copy of the Redeveloper's operating agreement and a certified copy of the resolution or resolutions authorizing the execution and delivery of this Redevelopment Contract.

(b) The execution and delivery of this Redevelopment Contract and the consummation of the transactions herein contemplated will not conflict with or constitute a breach of or default under any bond, debenture, note or other evidence of indebtedness or any contract, loan agreement or lease to which Redeveloper is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Redeveloper contrary to the terms of any instrument or agreement.

(c) There is no litigation pending or to the best of its knowledge threatened against Redeveloper affecting its ability to carry out the acquisition, construction, equipping and furnishing of the Master Project or the carrying into effect of this Redevelopment Contract or in any other matter materially affecting the ability to Redeveloper to perform its obligations hereunder.

(d) The TIF Project would not be economically feasible without the use of tax increment financing (division of tax under §18-2147 of the Act) as the rate of return on the investment is wholly insufficient to induce the Redeveloper to undertake the TIF Project.

(e) The TIF Project would not occur in the Redevelopment Project Area without the use of tax-increment financing (division of tax under §18-2147 of the Act).

(f) The Enhanced Employment Act Project will result in at least two (2) new employees and new investment of at least one hundred twenty five thousand dollars (\$125,000.00) within the Enhanced Employment Act Area, pursuant to §18-2116 of the Nebraska Revised Statutes. (Note: Box Butte County population estimate is 10,772)

(g) The TIF Indebtedness and Enhanced Employment Act Indebtedness shall not be tax-exempt financing and no interest paid on the TIF Indebtedness and Enhanced Employment Act Indebtedness shall be exempt from federal or state income taxation.

(h) Redeveloper warrants and represents that the costs set forth on Exhibit E are permitted costs under the Act and fit within the statutory definitions set forth in §18-2103(28)(a) through (f), inclusive, and §18-2117.03 of the Nebraska Revised Statutes.

(i) Redeveloper warrants and represents that the costs set forth on Exhibit F are permitted costs under the Enhanced Employment Act and the Act and fit within the statutory definitions set forth in §18-2142.04(1)(a) of the Nebraska Revised Statutes.

(j) There are no, nor will there be, any business in the Enhanced Employment Act Area that has one hundred thirty-five thousand square feet or more.

(k) Exhibit G, attached hereto and incorporated herein by this reference, is an accurate list of the proposed businesses and each business's classification that are to be in the Enhanced Employment Act Area.

(l) Redeveloper agrees and covenants for itself its successors and assigns that it will not discriminate against any person or group of persons on account of race, sex, color, religion, national origin, ancestry, disability, marital status or receipt of public assistance in connection with the Master Project. Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Master Project, Redeveloper will not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, ancestry, disability, marital status or receipt of public assistance. Redeveloper will comply with all applicable federal, state and local laws related to the Master Project.

(m) The Redeveloper agrees that Redeveloper and any contractor for the improvements to be reimbursed as a part of the Master Project costs shall be required to agree to use a federal immigration verification system (as defined in §4-114, Reissue Revised Statutes of Nebraska, as amended) to determine the work eligibility status of new employees physically performing services on the Master Project and to comply with all applicable requirements of §4-114, Reissue Revised Statutes of Nebraska, as amended.

(n) The Redeveloper has not filed and does not intend to file an application with the Department of Revenue to receive tax incentives under the Nebraska Advantage Act or the ImagiNE Nebraska Act related to a project in the Redevelopment Project Area. In as much as no such application has been filed, none has been approved.

(o) No application has been filed with the Department of Revenue requesting a refund of any local option sales tax.

## ARTICLE III

### THE PARTIES OBLIGATIONS RELATING TO TAX INCREMENT FINANCING

#### A. OBLIGATIONS OF THE AUTHORITY

##### Section 3.01A Division of Taxes.

In accordance with §18-2147 of the Act and the terms of the Resolution, the Authority hereby provides that any *ad valorem* tax on the Redevelopment Project Property, for the benefit of any public body be divided for a period of fifteen years after the effective date (the “Effective Date”), as described in §18-2147 (1) of the Act (which Effective date shall be the January 1 of the year in which the division of taxes occurs which shall be the Division Date as described in Exhibit H of this provision as set forth in a Redevelopment Contract Amendment, consistent with the Redevelopment Plan). Said taxes shall be divided as follows:

(a) That portion of the ad valorem tax which is produced by levy at the rate fixed each year by or for each public body upon the Redevelopment Project Valuation (defined in the Act) shall be paid into the funds of each such public body in the same proportion as all other taxes collected by or for the bodies; and

(b) That portion of the ad valorem tax on real property in the Redevelopment Project Property in excess of such amount, if any, shall be allocated to, is pledged to, and, when collected, paid into a special fund of the Authority to pay the principal of, the interest on, and any premium due in connection with the TIF Indebtedness incurred by, whether funded, refunded, assumed, or otherwise, such Authority for financing or refinancing, in whole or in part, such TIF Project. When such TIF Indebtedness, including interest and premium due have been paid, the Authority shall so notify the County Assessor and County Treasurer and all ad valorem taxes upon such real property shall be paid into the funds of the respective public bodies.

##### Section 3.02A Issuance of TIF Indebtedness

The Authority shall authorize the issuance of the TIF Indebtedness in the form and stated principal amount and bearing interest and being subject to such terms and conditions as are specified in the Resolution and this Redevelopment Contract; provided, at all times the maximum amount of the TIF Indebtedness shall be limited to the lesser of (i) the stated face amount of the TIF Indebtedness, or (ii) the sum of all TIF Project Costs incurred by the Redeveloper as set forth on Exhibit E. No TIF Indebtedness will be issued until Redeveloper has acquired fee title to the Redevelopment Project Property and become obligated for construction of the additions and improvements forming a part of the TIF Project as described in the Plan. The Authority may require, as a condition of issuing the TIF Indebtedness, or of consenting to the sale or assignment of the TIF Indebtedness, that any holder, purchaser, or assignee make certain investor related representations to confirm to the Authority that such holder, purchaser, or assignee acknowledges and understands the nature, risks, and limitations of the TIF Indebtedness.

Upon the request of the Redeveloper, and provided that all Redeveloper's obligations under this Redevelopment Contract are satisfied, the Authority shall issue one Tax Increment Development Revenue Bond, in one taxable series, in a maximum principal amount of One Million, Five Hundred Thousand and no/100 Dollars (\$1,500,000.00), in substantially the form shown on the attached Exhibit C ("TIF Bond"), for net funds available to be purchased by Redeveloper ("TIF Bond Purchaser"), in a written form acceptable to Authority's attorney, and receive TIF Bond proceeds from the TIF Bond Purchaser in said amount. At the option of the Authority, the Authority shall make a grant to Redeveloper in such amount, and such grant shall offset TIF Bond Purchaser's obligation to purchase the TIF Bond. Subject to the terms of this Agreement and the Resolution, the Authority's Treasurer on behalf of the Authority shall have the authority to determine the timing of issuing the TIF Indebtedness and all the other necessary details of the TIF Indebtedness.

The Redeveloper agrees to purchase the TIF Indebtedness at a price equal to the principal amount thereof, in a private placement satisfactory to the Authority as to its terms and participants (including any pledgee thereof). Neither the Authority nor the City shall have any obligation to provide for the sale of the TIF Indebtedness. It is the sole responsibility of the Redeveloper to effect the sale of the TIF Indebtedness by purchasing the TIF Indebtedness in accordance with the terms of this Redevelopment Contract and the Resolution.

#### Section 3.03A Pledge of Revenues.

Under the terms of the Resolution, the Authority pledges 100% of the available annual TIF Revenues derived from the Redevelopment Project Property as security for and to provide payment of the TIF Indebtedness as the same fall due (including payment of any mandatory redemption amounts set for the TIF Indebtedness in accordance with the terms of the Resolution).

#### Section 3.04A Purchase and Pledge of TIF Indebtedness/Grant of Net Proceeds of TIF Indebtedness.

The Redeveloper has agreed to purchase the TIF Indebtedness from the Authority for a price equal to the principal amount thereof, payable as provided in Section 3.02A and this Section 3.04A. The Redevelopment Plan provides for the Redeveloper to receive a grant under this Redevelopment Contract. In accordance with the terms of the Redevelopment Plan the Redeveloper is to receive a grant sufficient to pay the costs for reimbursement of eligible and lawful TIF Project Costs as set forth on Exhibit E in the aggregate maximum amount not to exceed \$1,500,000.00. Notwithstanding the foregoing, the aggregate amount of the TIF Indebtedness and the grant shall not exceed the amount of TIF Project Costs as certified pursuant to Section 3.02B of this Redevelopment Contract. Such grant shall be made to the Redeveloper upon certification of TIF Project Costs as set forth herein and in the Resolution, and payment purchase of the TIF Indebtedness as provided in Section 3.02A, unless Authority elects to offset the payment of the purchase of the TIF Indebtedness with the grant proceeds as provided herein and in the Resolution. The Authority shall have no obligation to provide grant funds from any source other than as set forth in the Resolution and this Redevelopment Contract.

Section 3.05A Creation of Funds.

The Authority shall create a fund to collect and hold the TIF Revenues. Such fund shall be used for no other purpose than to pay the TIF Indebtedness.

**B. OBLIGATIONS OF REDEVELOPER**

Section 3.01B Construction/ Management of TIF and EEA Project; Insurance.

(a) Redeveloper will complete the Master Project, prepare the site for redevelopment and install all infrastructure, planned building construction, lighting, fixtures, equipment and furnishings necessary to operate the Master Project. Redeveloper shall provide ongoing maintenance of the Master Project and undertake development of program management and promotions for the Master Project as provided in the Act. Redeveloper shall be solely responsible for obtaining all permits and approvals necessary to acquire, construct and equip the Master Project. Until construction of the Master Project has been completed, Redeveloper shall make reports in such detail and at such times as may be reasonably requested by the Authority as to the actual progress of Redeveloper with respect to construction of the Master Project. Such reports shall include actual expenditures incurred as described on Exhibit E. Promptly after completion by the Redeveloper of each segment of public infrastructure portion of the TIF Project, the Redeveloper shall furnish to the Authority a Certificate of Completion as to such segment (supported by such architect's or engineer's certificates as are required under the terms of the contract documents) for such segment, including each structure or element of infrastructure completed in such segment.

(b) Any general contractor chosen by the Redeveloper or the Redeveloper itself shall be required to obtain and keep in force at all times until completion of construction, policies of insurance including coverage for contractors' general liability and completed operations and a penal bond or bonds as required by the Act or as is otherwise required by law. The City, the Authority and the Redeveloper shall be named as additional insureds. Any contractor chosen by the Redeveloper or the Redeveloper itself, as owner, shall be required to purchase and maintain property insurance upon the Master Project to the full insurable value thereof. This insurance shall insure against the perils of fire and extended coverage and shall include 'All Risk' insurance for physical loss or damage. The contractor with respect to any specific contract or the Redeveloper shall also carry insurance on all stored materials. The contractor or the Redeveloper, as the case may be, shall furnish the Authority and the City with a Certificate of Insurance evidencing policies as required above. Such certificates shall state that the insurance companies shall give the Authority prior written notice in the event of cancellation of or material change in any of any of the policies.

(c) This Redevelopment Contract shall not replace or supersede the need for the Redeveloper to obtain other agreements, consents, permits, licenses from the City related to the public improvements or other improvements as may be required by the City for the type of work to be performed.

Section 3.02B Cost Certification & Disbursement of TIF Bond Proceeds.

Proceeds of the TIF Bond may be advanced and disbursed in the manner set forth below:

- a. The Redeveloper shall submit to the Authority a grant disbursement request (the "TIF Cost Certification and Disbursement Request") executed by an authorized representative of the Redeveloper. The TIF Cost Certification and Disbursement Request shall: (i) certify the portion of the Master Project that has been completed (ii) certify the actual costs incurred by the Redeveloper in the completion of such portion of the Master Project, including an itemization of the actual TIF Project Costs incurred; and (iii) include documentation to the Authority's satisfaction that such TIF Project Costs have been incurred and all other requirements under this Redevelopment Contract relating to the work have been met. All TIF Cost Certification and Disbursement Requests are subject to review and approval by the Authority. Determinations by the Authority whether costs included in the TIF Cost Certification and Disbursement Request are properly included as TIF Project Costs as defined in this Redevelopment Contract shall be made in the sole discretion of the Authority and shall be conclusive and binding on the Redeveloper.
- b. The Authority shall inform the holder of the TIF Indebtedness (the "TIF Bond Holder") in writing of the amount of the TIF Cost Certification and Disbursement Request allocated to the TIF Indebtedness for reimbursable TIF Project Costs under this Redevelopment Contract. Upon notification from the Authority, the TIF Bond Holder (if other than the Redeveloper) may make deposits to the Authority in such amount necessary to pay the TIF Project Costs set forth in the TIF Cost Certification and Disbursement Request. Such amounts shall be proceeds of the TIF Indebtedness to be granted to the Redeveloper according to this Redevelopment Contract. If the Redeveloper is the TIF Bond Holder, the grant to the Redeveloper shall be offset by the increase in the principal balance of the TIF Indebtedness by the amount of the TIF Project Costs of the approved TIF Cost Certification Disbursement Request.

**ARTICLE IV**

**THE PARTIES OBLIGATIONS RELATING TO OCCUPATION TAX REVENUE BONDS**

Section 4.01 Enhanced Employment Act Area.

The Authority hereby designates the Enhanced Employment Act Area shown on Exhibit A as an enhanced employment area eligible for the imposition of an occupation tax pursuant to the Enhanced Employment Act. New investment within in the Enhanced Employment Act Area will result in at least two (2) new employees and new investment of at least one hundred twenty five thousand dollars (\$125,000.00), pursuant to Section 18-2116 of the Nebraska Revised Statutes. (Note: Box Butte County population is estimated to be 10,777) The Enhanced Employment Act Area does not exceed six hundred acres.

#### Section 4.02 Occupation Tax.

The City agrees to levy a general business occupation tax upon all businesses within the Enhanced Employment Act Area for the purpose of paying all or any part of the costs of the Enhanced Employment Act Project Costs within such Enhanced Employment Act Area during the Enhanced Employment Act Period. The City agrees with the Authority that the proceeds of the occupation tax, less administrative costs, shall be pledged to the payment of the Enhanced Employment Act Indebtedness. Beginning on \_\_\_\_\_, 202\_\_, and in each calendar month thereafter, there is hereby imposed an occupation tax upon each and every person operating a business within the Enhanced Employment Act Area. The amount of such tax shall be two percent (2.0%) of all transactions which the State of Nebraska is authorized to impose a tax as allowed by the Nebraska Local Option Revenue Act for each calendar month derived from the businesses subject to this tax as more particularly described in the Occupation Tax Ordinance.

#### Section 4.03 Issuance of Enhanced Employment Act Indebtedness.

As soon as is practicable following the date of this Agreement, the Bond Resolution, and the Occupation Tax Ordinance, and as set forth in this Agreement, the Authority shall issue its Enhanced Employment Act Indebtedness in the estimated amount not to exceed One Million One Hundred Fourteen Thousand One Hundred Dollars (\$1,114,100.00) that is payable during the Enhanced Employment Act Period. The Enhanced Employment Act Indebtedness shall be purchased by the Redeveloper ("Occupation Tax Revenue Bond Purchaser") and the Authority, or a depository agreed to by the Authority and Redeveloper shall receive the Enhanced Employment Act Proceeds to be deposited into an Authority fund account or a depository fund account agreed to by the Authority, City and Redeveloper ("Authority Enhanced Employment Act Project Account") and expended in the priority set forth in Section 4.06 (Use of Enhanced Employment Act Proceeds) below. The Enhanced Employment Act Indebtedness shall specifically provide that any shortfall in anticipated Enhanced Employment Act Tax Revenues from the businesses within the Enhanced Employment Act Area for any reason whatsoever, specifically including a decline in taxable receipts within the Enhanced Employment Act Area or termination of the Enhanced Employment Act Period, shall be borne entirely by the Occupation Tax Revenue Bond Purchaser without recourse of any kind against the City or Authority. The City, Authority, and Redeveloper agree that the City Manager on behalf of the City and Authority shall have the authority to determine all the other necessary and reasonable details and mechanics of the Enhanced Employment Act Indebtedness, Enhanced Employment Act Tax Revenues, Authority Enhanced Employment Act Project Account and the grant of funds for the eligible Enhanced Employment Act Project Costs. The Authority may require, as a condition of issuing the Enhanced Employment Act Indebtedness, or of consenting to the sale or assignment of the Enhanced Employment Act Indebtedness, that any holder, purchaser, or assignee make certain investor related representations to confirm to the Authority that such holder, purchaser, or assignee acknowledges and understands the nature, risks, and limitations of the Enhanced Employment Act Indebtedness.

#### Section 4.04 Enhanced Employment Act Tax Revenues.

The City intends to impose this occupation tax authorized by the Enhanced Employment Act to generate the Enhanced Employment Act Tax Revenues to be derived from the occupation taxes of the businesses located within the Enhanced Employment Act Area as determined in the manner provided for in the Act. The City and Authority shall work with the Nebraska Department of Revenue, if necessary, to facilitate the operation of the occupation tax and to secure the Occupation Tax Revenue Bond Purchaser receipt of the Enhanced Employment Act Tax Revenues from such occupation tax.

#### Section 4.05 Grant of Funds.

In order to support redevelopment of the Enhanced Employment Act Area and as an inducement for the Redeveloper to construct the Enhanced Employment Act Project, the Authority agrees, to the extent allowed by law and then only to the extent Enhanced Employment Act Proceeds are lawfully available from the issuance of the Enhanced Employment Act Indebtedness, to make a grant or grants to Redeveloper up to the total amount of the Enhanced Employment Act Proceeds less the Authority's costs to issue the Enhanced Employment Act Indebtedness ("Grant Funds"), and to reimburse Redeveloper for the cost of the priority items identified in Section 4.06 (Use of Enhanced Employment Act Proceeds) below, provided that only costs incurred after the Agreement Date shall be eligible for payment. The grants are restricted and earmarked for the funding of the eligible Enhanced Employment Act Project Costs as described herein and the Redeveloper does not have discretionary judgment over the applications of said Grant Funds.

Notwithstanding the foregoing, the aggregate amount of the Enhanced Employment Act Indebtedness and the grant shall not exceed the amount of Enhanced Employment Act Project Costs as certified pursuant to Section 4.06 of this Redevelopment Contract. Such grant shall be made to the Redeveloper upon certification of Enhanced Employment Act Project Costs as set forth herein and in the Resolution, and payment purchase of the Enhanced Employment Act Indebtedness as provided in Section 4.03, unless Redeveloper elects to offset the payment of the purchase of the Enhanced Employment Act Indebtedness with the grant proceeds as provided herein and in the Resolution. The Authority shall have no obligation to provide grant funds from any source other than as set forth in the Resolution and this Redevelopment Contract.

Section 4.06 Cost Certification & Disbursement of Enhanced Employment Act Occupation Tax Revenue Bond Proceeds.

Proceeds of the Occupation Tax Revenue Bond may be advanced and disbursed in the manner set forth below:

- a. The Redeveloper shall submit to the Authority a grant disbursement request (the “EEA Cost Certification and Disbursement Request”) executed by an authorized representative of the Redeveloper. The EEA Cost Certification and Disbursement Request shall: (i) certify the portion of the Master Project that has been completed (ii) certify the actual costs incurred by the Redeveloper in the completion of such portion of the Master Project, including an itemization of the actual Enhanced Employment Act Project Costs incurred; and (iii) include documentation to the Authority’s satisfaction that such Enhance Employment Act Project Costs have been incurred and all other requirements under this Redevelopment Contract relating to the work have been met. All EEA Cost Certification and Disbursement Requests are subject to review and approval by the Authority. Determinations by the Authority whether costs included in the EEA Cost Certification and Disbursement Request are properly included as Enhanced Employment Act Project Costs as defined in this Redevelopment Contract shall be made in the sole discretion of the Authority and shall be conclusive and binding on the Redeveloper.
- b. The Authority shall inform the holder of the Enhanced Employment Act Indebtedness (the “EEA Bond Holder”) in writing of the amount of the EEA Cost Certification and Disbursement Request allocated to the Enhanced Employment Act Indebtedness for reimbursable Enhanced Employment Act Project Costs under this Redevelopment Contract. Upon notification from the Authority, the EEA Bond Holder (if other than the Redeveloper) may make deposits to the Authority in such amount necessary to pay the Enhanced Employment Act Project Costs set forth in the EEA Cost Certification and Disbursement Request. Such amounts shall be proceeds of the Enhanced Employment Act Indebtedness to be granted to the Redeveloper according to this Redevelopment Contract. If the Redeveloper is the EEA Bond Holder, the grant to the Redeveloper shall be offset by the increase in the principal balance of the Enhanced Employment Act Indebtedness by the amount of the Enhanced Employment Act Project Costs of the approved EEA Cost Certification Disbursement Request.

The Enhanced Employment Act Proceeds shall be expended in the following priority:

- i. **FIRST PRIORITY:** Reimburse the Authority and Redeveloper for the Issuance Costs related to issuing the Enhanced Employment Act Indebtedness and for any costs incurred by the Authority or City under Section 4.10; and
- iv. **SECOND PRIORITY:** Reimburse Redeveloper for costs of the eligible Enhanced Employment Act Project Costs as may approved by the Authority in advance within the Enhanced Employment Act Area. It is understood and agreed that the Authority shall and hereby is obligated in any year after substantial completion of the Enhance Employment Act Project and for each and every succeeding year thereafter during the Enhanced Employment Act Period, to the extent allowed by law, and then only to the extent funds are lawfully available and collected from occupation taxes related to the Enhanced Employment Act Area and not otherwise obligated in this Agreement for debt service or otherwise, reimburse the Redeveloper for the Redeveloper’s costs for eligible and lawful Enhanced Employment Act Project Costs as may approved by the Authority in advance.

In the event the Enhanced Employment Act Proceeds are insufficient to fund any or all of the Priority item(s) as shown above, then such costs and expense shall be borne entirely by the Redeveloper without recourse of any kind against the City or Authority. Any ineligible use of the Grant Funds shall immediately be repaid by Redeveloper to the Authority.

Section 4.07 Debt Service for Enhanced Employment Act Indebtedness.

The Authority shall, to the extent allowed by law, and then only to the extent funds are lawfully available from Enhanced Employment Act Tax Revenues, pay the debt service on the Enhanced Employment Act Indebtedness with interest at a rate per annum equal to the Wall Street Journal Prime Rate (at the time of issuance), plus 1.00% or as otherwise agreed upon between the Authority and Redeveloper. Any debt service on the Enhanced Employment Act Indebtedness (including interest) to be paid from Enhanced Employment Act Tax Revenues shall not constitute a general obligation or debt of the City or Authority. Any excess Enhanced Employment Act Tax Revenues shall be held, invested and expended by the City for priorities described above in Section 4.06 (Use of Enhanced Employment Act Proceeds). Any such occupation tax shall remain in effect during the Enhanced Employment Act Period.

Section 4.08 Deficiency in Enhanced Employment Act Tax Revenues.

Any shortfall in anticipated Enhanced Employment Act Tax Revenues for any reason whatsoever, specifically including a decline in taxable receipts within the Enhanced Employment Act Area shall be borne entirely by the EEA Bond Holder without recourse of any kind against the City or Authority. To the extent of any deficiency in Enhanced Employment Act Tax Revenues from the occupation tax for required debt service on the Enhanced Employment Act Indebtedness during the Enhanced Employment Act Period, the EEA Bond Holder shall defer payment of the same for each year that there exists a deficiency. If the EEA Bond Holder is required to defer any such payments, the Authority shall reimburse all sums deferred plus interest (at the same interest rate of the then outstanding Occupation Tax Revenue Bond) if and when Enhanced Employment Act Tax Revenues do become available from the occupation taxes of the businesses located within the Enhanced Employment Act Area to meet current debt service. In the event the Enhanced Employment Act Indebtedness for the Enhanced Employment Act Area are not retired in full at the end of the Enhanced Employment Act Period, any remaining Enhanced Employment Act Indebtedness shall be forgiven without any further action on behalf of the holder of the Enhanced Employment Act Indebtedness, the City or Authority. In the event that any deficiency payments as required by this subsection or any interest that has accrued thereon have not been repaid at the end of the Enhanced Employment Act Period, Redeveloper agrees that neither the City nor Authority shall be liable for payment of said amounts and that said amounts shall be forgiven.

Section 4.09 Duty to Maintain.

During the Enhanced Employment Act Period, Redeveloper and any other person or entity that obtains title to Lot 4A, Holsten Replat of Lots One, Two and Three Holsten Addition to the City of Alliance, Box Butte County, Nebraska, in the Redevelopment Project Area, at their costs, shall, following construction of the Enhanced Employment Act Project and during the useful and functional life of such improvements, keep the same in a safe and sanitary condition and shall take all action reasonably necessary to (a) maintain the same in good order and condition and state of repair in accordance with the prevailing standards from time to time for developments and improvements of similar size, kind and quality, and (b) carry out proper and timely capital improvements for all interior and exterior public enhancements, including the routine and reasonable preventive maintenance and capital improvements of their service facilities including, but not limited to, foundations, roof, exterior walls, wiring, plumbing, heating and air conditioning systems, interior insect treatment, and all glass, including plate glass, exterior doors, and automatic doors, and (c) maintain the related grounds in a safe and sanitary condition including, but not limited to, sweeping and removal of trash, litter and refuse, repair and replacement of paving as reasonably necessary, maintenance of landscaped areas (including replacement and replanting), removal of snow and ice from sidewalks, driveways, parking areas, and private roadways, in order to keep the same free from dilapidation or deterioration and free from conditions which endanger life or property by fire or other causes. In addition, the Redeveloper's duty to maintain the Enhanced Employment Act Project on the Enhanced Employment Act Area during the Enhanced Employment Act Period shall include the following:

- i. The standard of maintenance for the Enhanced Employment Act Area shall be comparable to the standards of maintenance, repair and replacement followed in other good quality multi-use developments in Nebraska.
- ii. Maintaining, repairing and replacing all paved surfaces of the Enhanced Employment Act Area in a reasonably smooth and evenly covered condition, which maintenance work shall include, without limitation, cleaning, sweeping, restriping, repairing and resurfacing any paved surfaces as reasonably necessary.
- iii. Removing of all filth, paper and refuse to the extent necessary to keep the Enhanced Employment Act Area in a clean and orderly condition.
- iv. Placing, keeping in repair and replacing when reasonably necessary any appropriate directional signs, markers and lines.
- v. Keeping in repair and replacing when reasonably necessary such lighting facilities as may be installed on the Enhanced Employment Act Area.
- vi. Maintaining all finished landscaped areas, repairing irrigation systems and water lines, and replacing shrubs and other finished landscaping as reasonably necessary; provided, however, that nothing in this Agreement shall obligate the Redeveloper to landscape any portion of an unimproved real estate prior to the date it is improved.
- vii. Cleaning, maintaining and repairing of all sidewalks.
- viii. Providing reasonable security, if necessary, for the protection of persons and property.
- ix. Maintaining in good and safe condition and state of repair any building improvements located thereon.

#### Section 4.10 Reimbursement of Grants.

Redeveloper agrees to repay the Authority the grant or grants of funds as provided for in Section 4.05 above in the event Redeveloper fails to substantially complete the Enhanced Employment Act Project by September 1, 2024,. In the event the Redeveloper fails to maintain the Redeveloper's Enhanced Employment Act Project as provided in Section 4.09 above, and the Redeveloper fails to cure such breach within sixty (60) days after receiving written notice specifying the manner in which the Redeveloper has breached this Agreement from the Authority, or such longer period if such deficiency cannot reasonably be cured within such sixty (60) day period, then the Authority shall have the right, but not the obligation, to perform such maintenance activities and then the Redeveloper shall reimburse the Authority the fair and reasonable cost to the Authority to correct the maintenance deficiency as required under the Duty to Maintain provision of this Agreement or the Authority may reimburse itself from Enhanced Employment Act Tax Revenues.

#### Section 4.11 Agreement to Pay Taxes.

Redeveloper agrees to use commercially reasonable efforts to require its Tenants and other persons or entities subject to the occupation tax to pay all such occupation taxes levied upon the Enhanced Employment Act Area and improvements thereon prior to the time the taxes become delinquent. Redeveloper shall include this requirement in all Tenant leases. This contractual obligation to pay such taxes prior to delinquency shall cease upon expiration of the Enhanced Employment Act Period or so long as the Occupation Tax Revenue Bond remains outstanding whichever period of time is shorter.

#### Section 4.12 City and Authority Not Liable for Deficiency.

Any debt service on the Enhanced Employment Act Indebtedness (including interest) to be paid from Enhanced Employment Act Tax Revenues shall not constitute a general obligation or debt of the City or Authority. Neither the City nor Authority shall be liable for any deficiency nor shortfall in the anticipated collection of the occupation tax revenue collected in the Enhanced Employment Act Area.

#### Section 4.13 Insurance Damage or Destruction of the Enhanced Employment Act Project.

During the Enhanced Employment Act Period, Redeveloper shall include by restrictive covenant an enforceable obligation on the Redeveloper or other owner or tenant in possession of the Redevelopment Project Area to maintain property insurance on an extended coverage all-risk basis in an amount not less than the replacement value of the Enhanced Employment Act Project, allowing for reasonable coinsurance clauses and deductibles and also subject to the Redeveloper or other owner or tenant's obligation to restore the Enhanced Employment Act Project to its prior condition within fifteen (15) months from the date of the damage or destruction, diligently pursuing the same to completion.

Section 4.14 Termination.

Notwithstanding any contrary provision, the occupation tax upon the businesses within the Enhanced Employment Act Area shall cease upon expiration of the Enhanced Employment Act Period or full repayment of the Enhanced Employment Act Indebtedness, whichever period of time is shorter. The provisions of Section 4.1 through 4.13 of this Agreement shall terminate for the Enhanced Employment Act Area upon expiration of the Enhanced Employment Act Period or full repayment of the Enhanced Employment Act Indebtedness, whichever period of time is shorter.

**ARTICLE V**

**FINANCING REDEVELOPMENT PROJECT; ENCUMBRANCES**

Section 5.01 Financing.

Redeveloper shall pay all costs related to the redevelopment of the Redevelopment Project Area, the Redevelopment Project Property, and Enhanced Employment Act Area which are in excess of the amounts paid from the proceeds of the grant provided from the proceeds of the TIF Indebtedness and Enhanced Employment Act Proceeds and granted to Redeveloper. Redeveloper shall timely pay all costs, expenses, fees, charges and other amounts associated with the Project.

**ARTICLE VI**

**RESTRICTIONS AND CONSENT**

Section 6.01 Relocation.

Redeveloper, at its costs, shall be responsible to pay any required tenant relocation costs as required by any federal, state or local relocation laws, including but not limited to, the Nebraska Relocation Assistance Act (Neb. Rev. Stat. Section 76-12114 et seq.) (collectively "Relocation Laws"), in order to implement the Master Project within the Redevelopment Project Area and the Enhanced Employment Act Area.

Section 6.02 Use Restrictions.

During the Enhanced Employment Act Period, the Enhanced Employment Act Area shall be used for retail, services, lodging and restaurant purposes, unless the Authority agrees otherwise in writing. In addition, no portion of the Enhanced Employment Act Area shall include users of space, or kinds of transactions where an occupations tax cannot be imposed pursuant to Section 18-2142.02 of the Nebraska Revised Statutes, as amended during the Enhanced Employment Act Period.

Section 6.03 Consent.

Redeveloper hereby covenants and consents with respect to the designation of the property set forth in Exhibit A, and incorporated herein by this reference, as an enhanced employment area pursuant to Section 18-2119 of the Enhanced Employment Act and as a redevelopment project under the Act, and such covenant and consent shall be binding upon all future owners of the Enhanced Employment Act Area. Redeveloper agrees to provide written consent of all owners of real property in the Enhanced Employment Area to the imposition of the occupation tax upon the execution hereof.

**ARTICLE VII**

**DEFAULT, REMEDIES; INDEMNIFICATION**

Section 7.01 General Remedies of Authority and Redeveloper.

Subject to the further provisions of this Article VII, in the event of any failure to perform or breach of this Redevelopment Contract or any of its terms or conditions, by any party hereto or any successor to such party, such party, or successor, shall, upon written notice from the other, proceed immediately to commence such actions as may be reasonably designed to cure or remedy such failure to perform or breach which cure or remedy shall be accomplished within a reasonable time by the diligent pursuit of corrective action. In case such action is not taken, or diligently pursued, or the failure to perform or breach shall not be cured or remedied within a reasonable time, this Redevelopment Contract shall be in default and the aggrieved party may institute such proceedings as may be necessary or desirable to enforce its rights under this Redevelopment Contract, including, but not limited to, proceedings to compel specific performance by the party failing to perform or in breach of its obligations. The Redeveloper hereby acknowledges and agrees that the Authority shall have completed its required performances and satisfied all of its obligations under this Redevelopment Contract upon the issuance of the TIF Indebtedness and Enhanced Employment Act Indebtedness and the subsequent payment of grant amounts to the Redeveloper as set forth in this Agreement.

Section 7.02 Additional Remedies of Authority.

In the event that (each such event an "event of default"):

(a) the Redeveloper, or its successor in interest, shall fail to commence the construction of the improvements included in the TIF Project Costs and/or Enhanced Employment Act Project Costs on or before June 1, 2023, or shall abandon construction work related to the aforementioned costs, once commenced, for any period of 180 days, excepting delays caused by inclement weather,

(b) the Redeveloper, or any successor in interest to any portion or the Redevelopment Project Area, shall fail to pay real estate taxes or assessments on the Redevelopment Project Property owned by the Redeveloper or any part thereof when due; and

(c) there is a violation of any other provision of this Redevelopment Contract, and such failure or action by the Redeveloper has not been cured within 60 days following written notice from Authority,

then the Redeveloper shall be in default of this Redevelopment Contract.

In the event of default or other such failure to perform, breach or default occurs and is not cured in the period herein provided, the parties agree that the damages caused to the Authority would be difficult to determine with certainty and that a reasonable estimation of the amount of damages that could be incurred is the amount of the grant to Redeveloper pursuant to Section 3.04A and 4.05 of this Redevelopment Contract, less any reductions in the principal amount of the TIF Indebtedness and Enhanced Employment Act Indebtedness, plus interest on such amounts as provided herein (the "**Liquidated Damages Amount**"). Upon the occurrence of an event of default, the Liquidated Damages Amount shall be paid by Redeveloper to Authority within 30 days of demand from Authority given to the Redeveloper.

Interest shall accrue on the Liquidated Damages Amount at the rate of eight percent (8%) per annum and interest shall commence from the date that the Authority gives notice to the Redeveloper demanding payment.

Payment of the Liquidated Damages Amount shall not relieve Redeveloper of its obligation to pay real estate taxes, occupation taxes, or assessments with respect to the Redevelopment Project Property, the Project, and the Enhanced Employment Act Area.

Redeveloper, on or before contracting for work included within the TIF Project Costs and Enhanced Employment Act Project Costs, shall furnish to the Authority copies of labor and materials payment bonds and performance bonds for each contract entered into by Redeveloper or any purchaser of real estate in the Redevelopment Project Area, related to such costs. Each such bond shall show the Authority and the City as well as the Redeveloper as beneficiary of any such bond, as and to the extent commercially obtainable (as determined in the discretion of the Authority). In addition, the Redeveloper shall provide a penal bond with good and sufficient surety to be approved by the Authority, conditioned that the Redeveloper shall at all times promptly make payments of all amounts lawfully due to all persons supplying or furnishing to any contractor or his or her subcontractors (for each contract entered into by Redeveloper related to TIF Project Costs and Enhanced Employment Act Project Costs) with labor or materials performed or used in the prosecution of the work provided for in such contract, and will indemnify and save harmless the City and Authority to the extent of any payments in connection with the carrying out of such contracts which the Authority may be required to make under the law.

Section 7.03 Remedies in the Event of Other Redeveloper Defaults.

In the event the Redeveloper fails to perform any other provisions of this Redevelopment Contract (other than those specific provisions contained in Section 7.02), the Redeveloper shall be in default. In such an instance, the Authority may seek to enforce the terms of this Redevelopment Contract or exercise any other remedies that may be provided in this Redevelopment Contract or by applicable law; provided, however, that any defaults covered by this Section shall not give rise to a right or rescission on termination of this Redevelopment Contract, and shall not be covered by the Liquidated Damages Amount.

Section 7.04 Forced Delay Beyond Party's Control.

For the purposes of any of the provisions of this Redevelopment Contract, neither the Authority nor the Redeveloper, as the case may be, nor any successor in interest, shall be considered in breach of or default in its obligations with respect to the conveyance or preparation of the Redevelopment Project Area and Enhanced Employment Act Area or any part thereof for redevelopment, or the beginning and completion of construction of the TIF Project and Enhanced Employment Act Project, or progress in respect thereto, in the event of forced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays in subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such forced delay, the time or times for performance of the obligations of the Authority or of the Redeveloper with respect to construction of the Master Project, as the case may be, shall be extended for the period of the forced delay: Provided, that the party seeking the benefit of the provisions of this section shall, within thirty (30) days after the beginning of any such forced delay, have first notified the other party thereto in writing, and of the cause or causes thereof and requested an extension for the period of the forced delay.

Section 7.05 Limitations of Liability; Indemnification.

Notwithstanding anything in this Article VII or this Redevelopment Contract to the contrary, neither the City, the Authority, nor their respective elected officials, officers, directors, appointed officials, employees, agents, attorneys nor their governing bodies (the "Released Parties") shall have any pecuniary obligation or monetary liability under this Redevelopment Contract. The sole obligation of the Authority under this Redevelopment Contract shall be the issuance of the TIF Indebtedness and Enhanced Employment Act Indebtedness and granting of a portion of the proceeds thereof to Redeveloper, and full compliance with the terms specifically set forth in this Agreement and payment of TIF Revenues and Enhanced Employment Act Revenues pledged pursuant to the Resolution. The Redeveloper releases the City and Authority from, agrees that neither the City nor Authority shall be liable for, and agrees to indemnify and hold the City, Authority, and other Released Parties harmless from any liability for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Master Project.

Redeveloper agrees to indemnify and hold City and Authority harmless to the extent of any payments in connection with carrying out completion of the Enhanced Employment Act Project the City may make, for failure of Redeveloper to make payments of all amounts lawfully due to all persons, firms, or organizations who performed labor or furnished materials, equipment, or supplies used in construction of the Enhanced Employment Act Project.

Redeveloper agrees to indemnify and hold City and Authority harmless for failure of Redeveloper to make payments of all amounts lawfully due to all persons, firms, or organizations under the Relocation Laws in connection with or implementation of the Master Project within the Redevelopment Project Area and the Enhanced Employment Act Area. This Section survives any termination of this Agreement.

The Redeveloper will indemnify and hold each of the City and Authority and their respective elected officials, directors, officers, appointed officials, agents, employees and members of their governing bodies free and harmless from any loss, claim, damage, demand, tax, penalty, liability, disbursement, expense, excluding litigation expenses, attorneys' fees and expenses, or court costs arising out of any damage or injury, actual or claimed, of whatsoever kind or character, to property (including loss of use thereof) or persons, occurring or allegedly occurring in, on or about that portion of the Master Project owned by the Redeveloper, during the term of this Redevelopment Contract or arising out of any action or inaction of Redeveloper, related to activities of the Redeveloper or its agents during the construction of the public infrastructure or public right of ways in the Master Project. The City and Authority do not waive their governmental immunity by entering into this Agreement and fully retain all immunities and defenses provided by law.

## **ARTICLE VIII**

### **MISCELLANEOUS**

#### Section 8.01 Notice Recording.

This Redevelopment Contract or a notice memorandum of this Redevelopment Contract shall be recorded in the office of the Register of Deeds of Box Butte County, Nebraska.

#### Section 8.02 Governing Law.

This Redevelopment Contract shall be governed by the laws of the State of Nebraska, including but not limited to the Act.

#### Section 8.03 Assignment or Conveyance.

This Redevelopment Contract shall not be assigned by the Redeveloper without the written consent of the Authority and City. Such consent shall not be unreasonably withheld. Redeveloper agrees that it shall not convey any Lot or any portion thereof or any structures thereon to any person or entity that would be exempt from payment of real estate taxes, and that it will not make

application for any structure, or any portion thereof, to be taxed separately from the underlying land of any Lot.

Section 8.04 Binding Effect: Amendment.

This Redevelopment Contract shall be binding on the parties hereto and their respective successors and assigns. The Redevelopment Contract shall not be amended except by a writing signed by the party to be bound. Redeveloper shall pay the Authority or its counsel for fees for plan preparation and bond issuance related to the redevelopment and enhanced employment area project as provided in the regular policies and guidelines of the City and Authority for Tax Increment Financing Projects and as otherwise set forth in this Redevelopment Contract. The City agrees that the Authority and Redeveloper may enter into the Redevelopment Contract Amendment substantially in the form of Exhibit H, without further approval from the City.

Section 8.05 Effective Date and Implementation of Redevelopment Contract.

This Agreement is in full force and effect from and after the date of execution hereof by both the Redeveloper and the Authority.

Section 8.06 Notices to Parties.

Notices to Parties shall be mailed by U. S. Mail to the following addresses:

Redeveloper:  
385 Apartments, LLC  
Attention: Mike Works  
1000 O Street  
Box Butte, NE 68508

With Copy to:  
Michael L. Bacon  
Bacon Vinton Venteicher  
P.O. Box 208  
Gothenburg, NE 69138  
And

Authority and City:  
Alliance City Clerk  
P.O. Box D  
Alliance, NE 69301

With Copy To:  
Simmons Olsen Law Firm  
c/o Alliance City Attorney  
1502 Second Avenue  
Scottsbluff, NE 69361

Section 8.08 Intent

This Redevelopment Contract is entered into by the Authority and City to provide financing for an approved redevelopment project.

IN WITNESS WHEREOF, City, Authority, and Redeveloper have signed this Redevelopment Contract as of the date and year first above written.

ATTEST:

\_\_\_\_\_  
Secretary

COMMUNITY REDEVELOPMENT  
AUTHORITY OF THE CITY OF  
ALLIANCE, NEBRASKA

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

ATTEST:

\_\_\_\_\_  
Clerk

THE CITY OF  
ALLIANCE, NEBRASKA

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

STATE OF NEBRASKA    )  
  ) SS  
COUNTY OF BOX BUTTE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_ and \_\_\_\_\_, Chairman and Secretary, respectively, of the Community Redevelopment Authority of the City of Alliance, Nebraska, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA    )  
  ) SS  
COUNTY OF BOX BUTTE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Mike Dafney and Tarrah S. Johnson, Mayor and Clerk, respectively, of the City of Alliance, Nebraska, on behalf of the City.

\_\_\_\_\_  
Notary Public

385 APARTMENTS, LLC.

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

STATE OF NEBRASKA    )  
                                  ) SS  
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2032, by  
\_\_\_\_\_ Manager of 385 Apartments, LLC, on behalf of the limited liability  
company.

\_\_\_\_\_  
Notary Public

EXHIBIT A

**DESCRIPTION OF REDEVELOPMENT PROJECT AREA AND ENHANCED  
EMPLOYMENT ACT AREA**

Redevelopment Project Property:

Lot 4A, Holsten Replat of Lots One, Two and Three Holsten Addition to the City of Alliance,  
Box Butte County, Nebraska.

Enhanced Employment Act Area:

Lots 1A, 2A, 3A and 4A, Holsten Replat of Lots One, Two and Three Holsten Addition to the  
City of Alliance, Box Butte County, Nebraska.

EXHIBIT B  
**REDEVELOPMENT PLAN**

[Attach copy]

**EXHIBIT C**  
**TIF INDEBTEDNESS**

THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, (THE '33 ACT) OR ANY STATE SECURITIES LAWS, AND THIS BOND MAY NOT BE TRANSFERRED, ASSIGNED, SOLD OR HYPOTHECATED UNLESS A REGISTRATION STATEMENT UNDER THE '33 ACT SHALL BE IN EFFECT WITH RESPECT THERETO AND THERE SHALL HAVE BEEN COMPLIANCE WITH THE '33 ACT AND ALL APPLICABLE RULES AND REGULATIONS THEREUNDER OR THERE SHALL HAVE BEEN DELIVERED THE ALLIANCE COMMUNITY REDEVELOPMENT AUTHORITY (THE "AUTHORITY") PRIOR TO THE TRANSFER, ASSIGNMENT, SALE, OR HYPOTHECATION, AN OPINION OF COUNSEL SATISFACTORY TO THE AUTHORITY TO THE EFFECT THAT REGISTRATION UNDER THE '33 ACT IS NOT REQUIRED.

THIS BOND MAY BE TRANSFERRED OR ASSIGNED ONLY IN THE MANNER AND ON THE TERMS AND CONDITIONS AND SUBJECT TO THE RESTRICTIONS STATED IN RESOLUTION NO. \_\_\_\_\_ OF THE AUTHORITY. THE AUTHORITY'S TREASURER IS PROHIBITED FROM REGISTERING THE OWNERSHIP OR TRANSFER OF OWNERSHIP OF THIS BOND TO ANY PERSON WITHOUT RECEIPT OF AN EXECUTED INVESTOR LETTER AS REQUIRED UNDER THE TERMS OF SAID RESOLUTION.

**TAX INCREMENT FINANCING BOND (Heartland Flats Mall and Apartments Project)**  
**ISSUED BY THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF**  
**ALLIANCE, NEBRASKA**

<b><u>Date of</u></b> <b><u>Original Issue</u></b>	<b><u>Date of</u></b> <b><u>Maturity</u></b> December 31, 20__	<b><u>Rate of</u></b> <b><u>Interest</u></b> _____ per annum
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**REGISTERED OWNER:** \_\_\_\_\_  
**PRINCIPAL AMOUNT:** SEE SCHEDULE 1 (not to exceed \$1,500,000.00)

FOR VALUE RECEIVED, the **COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF ALLIANCE, NEBRASKA** (the "Authority") promises to pay to the Registered Owner named above, but solely from tax increment revenues specified herein, the Principal Amount identified on Schedule 1, together with interest on the unpaid principal balance at the rate set forth above, calculated as simple interest and without compounding, on or before the maturity date set forth above, unless otherwise provided herein.

All payments of principal and interest prior to maturity shall be made by the Agent by mailing a check to the Registered Owner or its approved pledgee, as shown in the records of the Authority at the time of the payment. All amounts due at maturity or other final payment shall be paid to the Registered Owner or its approved pledgee upon the presentation of this Bond to the Agent at City Hall in Alliance, Nebraska.

To the extent funds securing this Bond are available to and received by the Authority, the accrued interest shall be payable semiannually on June 15 and September 15 of each year, commencing June 15, 202\_. If the date for any payment is a Saturday, Sunday, legal holiday or a day on which banking institutions in the City of Alliance Nebraska are closed, then the date for such payment shall be the next day. The Authority may prepay the outstanding principal and/or interest, in whole or in part, at any time without the prior consent of the Registered Owner or its pledgees. Payments made shall first be applied to accrued interest and then to principal. If funds securing this Bond are collected after the maturity date in accordance with applicable law, then the Agent shall pay such funds to the Registered Owner or its approved pledgee,

to the extent there are still amounts due and owing under this Bond.

The Authority and the Agent may treat the Registered Owner as the absolute owner of the Bond for the purpose of making payments and for all other purposes and neither the Authority nor the Agent shall be affected by any notice or knowledge to the contrary. The records maintained by the Authority as to the principal amount issued and principal amounts paid on this Bond shall be the official records of the cumulative outstanding principal amount of this Bond for all purposes.

This Bond is issued by the Authority under the authority of and in full compliance with the Constitution and statutes of the State of Nebraska, including particularly Article VIII, Section 12 of the Nebraska Constitution, Sections 18-2101 to 18-2155 of the Nebraska Revised Statutes, as amended, and under Resolution No. \_\_\_\_\_ duly passed and adopted by the Authority on January 5, 2023, as from time to time amended and supplemented (the "**Resolution**"). The Resolution incorporates by reference the terms of the Redevelopment Contract between the Authority, the City of Alliance City Council, and 385 Apartments, LLC dated \_\_\_\_\_, 2023 (the "**Contract**"). This Bond has been authorized and issued by the Authority to aid in financing a redevelopment project as defined in the Nebraska Community Development Law.

This Bond is a special limited obligation of the Authority payable solely from and is secured solely by the TIF Revenues (as defined in the Contract) on the terms and conditions in the Resolution and Contract. The TIF Revenues represents that portion of ad valorem real estate taxes levied by public bodies of the State of Nebraska, including the City, on real property on the Redevelopment Project Property (as defined in the Contract) which is in excess of that portion of such ad valorem real estate taxes produced by the levy at the rate fixed each year by or for each such public body upon the valuation of the Redevelopment Project Property as of a certain date as set forth in the Contract, as amended and as has been or will be certified by the County Assessor of Box Butte County, Nebraska to the City in accordance with law.

This Bond shall not be payable from the general funds of the City or the Authority, nor shall this Bond constitute a legal or equitable pledge, charge, lien, security interest or encumbrance upon any of the property or upon any of the income, receipts, or money and securities of the City or the Authority or of any other party other than those specifically pledged under the Resolution and Contract. This Bond is not a debt of the City or the Authority within the meaning of any constitutional, statutory or charter limitation upon the creation of general obligation indebtedness of the City or the Authority, and does not impose any general liability upon the City or the Authority. Neither the City nor the Authority shall be liable for the payment of this Bond out of any funds of the City or the Authority other than TIF Revenues which have been pledged to the payment of this Bond according to and as limited by the Resolution and Contract. Neither the members of the Authority nor any person executing this Bond shall be liable personally on this Bond by reason of the issuance hereof.

This Bond is transferable by the Registered Owner in person or by its attorney or legal representative duly authorized in writing at City Hall in Alliance, Nebraska, but only in the manner, subject to the limitations and upon payment of the charges provided in the Resolution and Contract, and upon surrender of this Bond.

**IN WITNESS WHEREOF, THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF ALLIANCE NEBRASKA** has caused this Bond to be signed by the Chair of the Alliance, Nebraska, Community Redevelopment Authority, countersigned by the Secretary of the Community Redevelopment Authority, and with the City's corporate seal imprinted hereon.

**COMMUNITY REDEVELOPMENT  
AUTHORITY OF THE CITY OF  
ALLIANCE, NEBRASKA**

[S E A L]

By: \_\_\_\_\_ (manual signature)  
Chair

By: \_\_\_\_\_ (manual signature)  
Secretary

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EXHIBIT D

**ENHANCED EMPLOYMENT AREA INDEBTEDNESS**

THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, (THE '33 ACT) OR ANY STATE SECURITIES LAWS, AND THIS BOND MAY NOT BE TRANSFERRED, ASSIGNED, SOLD OR HYPOTHECATED UNLESS A REGISTRATION STATEMENT UNDER THE '33 ACT SHALL BE IN EFFECT WITH RESPECT THERETO AND THERE SHALL HAVE BEEN COMPLIANCE WITH THE '33 ACT AND ALL APPLICABLE RULES AND REGULATIONS THEREUNDER OR THERE SHALL HAVE BEEN DELIVERED THE ALLIANCE COMMUNITY REDEVELOPMENT AUTHORITY (THE "AUTHORITY") PRIOR TO THE TRANSFER, ASSIGNMENT, SALE, OR HYPOTHECATION, AN OPINION OF COUNSEL SATISFACTORY TO THE AUTHORITY TO THE EFFECT THAT REGISTRATION UNDER THE '33 ACT IS NOT REQUIRED.

THIS BOND MAY BE TRANSFERRED OR ASSIGNED ONLY IN THE MANNER AND ON THE TERMS AND CONDITIONS AND SUBJECT TO THE RESTRICTIONS STATED IN RESOLUTION NO. \_\_\_\_ OF THE AUTHORITY. THE AUTHORITY'S TREASURER IS PROHIBITED FROM REGISTERING THE OWNERSHIP OR TRANSFER OF OWNERSHIP OF THIS BOND TO ANY PERSON WITHOUT RECEIPT OF AN EXECUTED INVESTOR LETTER AS REQUIRED UNDER THE TERMS OF SAID RESOLUTION.

**OCCUPATION TAX REVENUE BOND (Heartland Flats Mall and Apartments Project)  
ISSUED BY THE COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF  
ALLIANCE, NEBRASKA**

<u>Date of</u> <u>Original Issue</u>	<u>Date of</u> <u>Maturity</u> December 31, 2043_	<u>Rate of</u> <u>Interest</u> _____ per annum
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**REGISTERED OWNER:** \_\_\_\_\_  
**PRINCIPAL AMOUNT:** SEE SCHEDULE 1 (not to exceed \$1,114,000.00)

FOR VALUE RECEIVED, the **COMMUNITY REDEVELOPMENT AUTHORITY OF THE CITY OF ALLIANCE, NEBRASKA** (the "Authority") promises to pay to the Registered Owner named above, but solely from certain occupation tax revenues specified herein, the Principal Amount identified on Schedule 1, together with interest on the unpaid principal balance at the rate set forth above, calculated as simple interest and without compounding, on or before the maturity date set forth above, unless otherwise provided herein.

All payments of principal and interest prior to maturity shall be made by the Agent by mailing a check to the Registered Owner or its approved pledgee, as shown in the records of the Authority at the time of the payment. All amounts due at maturity or other final payment shall be paid to the Registered Owner or its approved pledgee upon the presentation of this Bond to the Agent at City Hall in Alliance, Nebraska.

To the extent funds securing this Bond are available to and received by the Authority, the accrued interest shall be payable semiannually on June 15 and September 15 of each year, commencing June 15, 202\_. If the date for any payment is a Saturday, Sunday, legal holiday or a day on which banking institutions in the City of Alliance Nebraska are closed, then the date for such payment shall be the next day. The Authority may prepay the outstanding principal and/or interest, in whole or in part, at any time without the

prior consent of the Registered Owner or its pledgees. Payments made shall first be applied to accrued interest and then to principal. If funds securing this Bond are collected after the maturity date in accordance with applicable law, then the Agent shall pay such funds to the Registered Owner or its approved pledgee, to the extent there are still amounts due and owing under this Bond.

The Authority and the Agent may treat the Registered Owner as the absolute owner of the Bond for the purpose of making payments and for all other purposes and neither the Authority nor the Agent shall be affected by any notice or knowledge to the contrary. The records maintained by the Authority as to the principal amount issued and principal amounts paid on this Bond shall be the official records of the cumulative outstanding principal amount of this Bond for all purposes.

This Bond is issued by the Authority under the authority of and in full compliance with the Constitution and statutes of the State of Nebraska, including particularly Article VIII, Section 12 of the Nebraska Constitution, Sections 18-2101 to 18-2155 of the Nebraska Revised Statutes, as amended, and under Resolution No. \_\_\_\_\_ duly passed and adopted by the Authority on January 5, 2023, as from time to time amended and supplemented (the "**Resolution**"). The Resolution incorporates by reference the terms of the Redevelopment Contract between the Authority, the City of Alliance City Council, and 385 Apartments, LLC dated \_\_\_\_\_, 2023 (the "**Contract**"). This Bond has been authorized and issued by the Authority to aid in financing a redevelopment project as defined in the Nebraska Community Development Law.

This Bond is a special limited obligation of the Authority payable solely from and is secured solely by a portion of the Enhanced Employment Act Tax Revenues (as defined in the Contract) on the terms and conditions in the Resolution and Contract. The Enhanced Employment Act Tax Revenues are the occupation tax revenues collected according to the City's Occupation Tax Ordinance No. 2950, passed on December 20, 2022.

This Bond shall not be payable from the general funds of the City or the Authority, nor shall this Bond constitute a legal or equitable pledge, charge, lien, security interest or encumbrance upon any of the property or upon any of the income, receipts, or money and securities of the City or the Authority or of any other party other than those specifically pledged under the Resolution and Contract. This Bond is not a debt of the City or the Authority within the meaning of any constitutional, statutory or charter limitation upon the creation of general obligation indebtedness of the City or the Authority, and does not impose any general liability upon the City or the Authority. Neither the City nor the Authority shall be liable for the payment of this Bond out of any funds of the City or the Authority other than Enhanced Employment Act Tax Revenues which have been pledged to the payment of this Bond according to and as limited by the Resolution and Contract. Neither the members of the Authority nor any person executing this Bond shall be liable personally on this Bond by reason of the issuance hereof.

This Bond is transferable by the Registered Owner in person or by its attorney or legal representative duly authorized in writing at City Hall in Alliance, Nebraska, but only in the manner, subject to the limitations and upon payment of the charges provided in the Resolution and Contract, and upon surrender of this Bond.



