

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
MAY 16, 2023 AGENDA

Subject:	Type:	Submitted By:
FIRST AMENDMENT – IMPROVEMENTS AGREEMENT NEBRASKA MULTI-SPORT COMPLEX	◆ RESOLUTION ORDINANCE RECEIVE/FILE	BRUCE FOUNTAIN COMMUNITY DEVELOPMENT DIRECTOR

SYNOPSIS

A proposed resolution is presented to approve a First Amendment to the Improvement Agreement with Omaha Multi-Sport Complex, doing business as Nebraska Multi-Sport Complex (NMSC). The Improvement Agreement, approved by the City Council on October 18, 2022, among other things provided for required public improvements to be constructed within a designated 120 Giles Enhanced Employment Area. The First Amendment incorporates changes to the 120 Giles Enhanced Employment Area including locations of anticipated hotel(s), restaurant(s) and other improvements.

FISCAL IMPACT

N/A.

RECOMMENDATION

Approval.

BACKGROUND

The City on October 18, 2022 approved an Improvement Agreement that, among other things provided for required public improvements to be constructed in connection with multisport, hotel(s) and other facilities within a designated 120 Giles Enhanced Employment Area. Locations of some improvements changed, including without limitation, hotel(s) and restaurant(s). A Resolution is proposed to approve a First Amendment to Improvement Agreement that reflects changes to the 120 Giles Enhanced Employment Area, including without limitation locations of anticipated hotel(s) and restaurant(s) within the Area. Proceeds of a general business occupation tax (“GBOT”) within the 120 Giles Enhanced Employment may be directly or indirectly used to pay costs of public improvements or other authorized work within the 120 Giles Enhanced Employment Area. Nebraska Multisport is required to construct, provide and pay for all public improvements and other authorized work if GBOT proceeds are insufficient.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING THE FIRST AMENDMENT TO IMPROVEMENT AGREEMENT IN CONNECTION WITH MULTISPORT RECREATIONAL FACILITY GENERALLY NORTH AND EAST OF GILES ROAD AND EASTPORT PARKWAY.

WHEREAS, the City Council did on October 18, 2022 approved an Improvement Agreement, filed with the Sarpy County Register of Deeds as Instrument No. 2022-28876, for a private recreational facility to be constructed, owned, and operated by Omaha Multi-Sport Complex, a Nebraska nonprofit corporation d/b/a Nebraska Multisport Complex, ("Nebraska Multisport") upon the following described tract of land within the City of La Vista: Tax Lots 11 and 15, together with all of Tax Lot 2A and parts of Tax Lots 2B1 and 3 lying North and West of railroad right-of-way, together with Northwesterly part of Tax Lot 1A1B and the Northwesterly part of Tax Lots 2B1 and 3 lying South and East of railroad right-of-way, all located in Section 17, Township 14 North, Range 12 East, of the 6th P. M., and other development on adjacent lots, subject to certain conditions; and

WHEREAS, in the Improvement Agreement, the parties among other things agreed to designation of a 120 Giles Enhanced Employment Area that included without limitation the NMSC Project and potential site of the Hotel(s) Project, and imposition and levy of the 120 Giles GBOT within such 120 Giles Enhanced Employment Area pursuant to Neb. Rev. Stat. Section 18-2142.04 for the purpose of paying all or any part of the costs and expenses of 120 Giles Authorized Work, as initially described or depicted in Exhibit 19 of the Improvement Agreement.

WHEREAS, the City and Nebraska Multisport desire to execute and enter a First Amendment to Improvement Agreement including without limitation Exhibit 19, to incorporate changes to the 120 Giles Enhanced Employment Area including location(s) of proposed Hotel Project(s), restaurant(s) or other improvements.

NOW THEREFORE, BE IT RESOLVED, a proposed First Amendment to Improvement Agreement ("Amendment") is presented with this Resolution for consideration of the City Council, which Amendment is approved in form and content presented, subject to any additions, subtractions, or modifications as the Mayor or City Administrator or his or her designee determines necessary or appropriate before the Amendment is executed, the final form and content of which Amendment the Mayor is authorized to execute and deliver on behalf of the City.

BE IT FURTHER RESOLVED, that the Mayor or City Administrator or his or her designee shall be authorized to take any actions on behalf of the City as he or she determines necessary or appropriate to carry out the Amendment or actions approved in this Resolution.

PASSED AND APPROVED THIS 16TH DAY OF MAY 2023.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, MMC
City Clerk

[SPACE ABOVE THIS LINE FOR RECORDING DATA]

FIRST AMENDMENT TO IMPROVEMENT AGREEMENT

This First Amendment (the “Amendment”) to Improvement Agreement is entered into as of the Effective Date specified in Section 3 below by and between the City of La Vista, a Nebraska municipal corporation (“City”) and Omaha Multi-Sport Complex, a Nebraska nonprofit corporation d/b/a Nebraska Multisport Complex (“NMSC”).

NOW, THEREFORE, in consideration of the terms, provisions, agreements and covenants contained in this Amendment, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, and intending to be legally bound hereby, the parties agree as follows:

1. **Findings.**

- a. City and NMSC entered and filed with the Sarpy County Register of Deeds as Instrument No. 2022-28876 an Improvement Agreement in connection with development and construction of certain projects on parcels within the vicinity of 120th and Eastport Parkway, including without limitation the NMSC Project on the property owned by NMSC and described in Exhibit 1, as attached and incorporated into this Amendment by reference, and proposed Hotel Project(s).
- b. In the Improvement Agreement, the parties among other things agreed to designation of a 120 Giles Enhanced Employment Area that included without limitation the NMSC Project and potential site of the Hotel(s) Project, and imposition and levy of the 120 Giles GBOT within such 120 Giles Enhanced Employment Area pursuant to Neb. Rev. Stat. Section 18-2142.04 for the purpose of paying all or any part of the costs and expenses of 120 Giles Authorized Work, as initially described or depicted in Exhibit 19 of the Improvement Agreement.
- c. The parties desire to amend the Improvement Agreement, including without limitation Exhibit 19, to incorporate changes to the 120 Giles Enhanced Employment Area including location(s) of proposed Hotel Project(s), restaurant(s) or other improvements.

2. **Amendment.** The Improvement Agreement shall be amended by deleting and replacing Exhibit 19 of the Improvement Agreement in its entirety with Exhibit 19 as attached hereto and incorporated into this Amendment by reference. All provisions of the Improvement Agreement

Upon Recording Please Return To:

Fitzgerald, Schorr PC LLO
Attn: Tom McKeon
10050 Regency Circle
Omaha, NE 68114

shall be deemed amended and modified consistent with the provisions of this Amendment, including without limitation such Exhibit 19. Except as modified by this Amendment, all terms and conditions of the Improvement Agreement shall remain in full force and effect.

3. **Effective Date of Amendment.** This Amendment shall be effective as of the Effective Date specified in the Improvement Agreement.
4. **Definitions.** Unless otherwise defined in this Amendment or clearly indicated by the context, capitalized terms will have the meanings set forth in the Improvement Agreement.
5. **Recording.** Immediately after this Agreement is executed, NMSC shall record it with the Sarpy County Register of Deeds with respect to the Property and any other property within the 120 Giles Enhanced Employment Area. Notwithstanding anything in this Agreement to the contrary, City may elect to file this Agreement with the Sarpy County Register of Deeds, and City in its sole discretion is hereby authorized and shall have the right, but not any obligation, to enforce any terms or conditions of this Agreement at law or in equity.
6. **Counterparts.** This Amendment may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

**[Remainder of Page Intentionally Left Blank.
Signature Pages and Exhibits Follow.]**

City of La Vista, a Nebraska municipal corporation,

By: _____
Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, MMC, MPA
City Clerk

STATE OF NEBRASKA)
)ss.
COUNTY OF SARPY)

The foregoing FIRST AMENDMENT TO IMPROVEMENT AGREEMENT was acknowledged
before me this _____ day of _____, _____ by Douglas Kindig, Mayor, and Pamela A.
Buethe, City Clerk, on behalf of said City.

[Seal]

Notary Public

Omaha Multi-Sport Complex, a Nebraska nonprofit corporation d/b/a Nebraska Multisport Complex

By: _____

Print Name: _____

Title: _____

STATE OF NEBRASKA))ss.
COUNTY OF _____)

The foregoing FIRST AMENDMENT TO IMPROVEMENT AGREEMENT was acknowledged before me this _____ day of _____ by _____, _____ of Omaha Multi-Sport Complex, a Nebraska nonprofit corporation d/b/a Nebraska Multisport Complex, on behalf of said nonprofit corporation.

[Seal]

Notary Public

Property

TAX LOTS 11 AND 15,

TOGETHER WITH ALL OF TAX LOT 2A AND PARTS OF TAX LOTS 2B1 AND 3
LYING NORTH AND WEST OF RAILROAD RIGHT-OF-WAY,

TOGETHER WITH NORTHWESTERLY PART OF TAX LOT 1A1B AND
NORTHWESTERLY PART OF TAX LOTS 2B1 AND 3 LYING SOUTH AND EAST OF
RAILROAD RIGHT-OF-WAY,

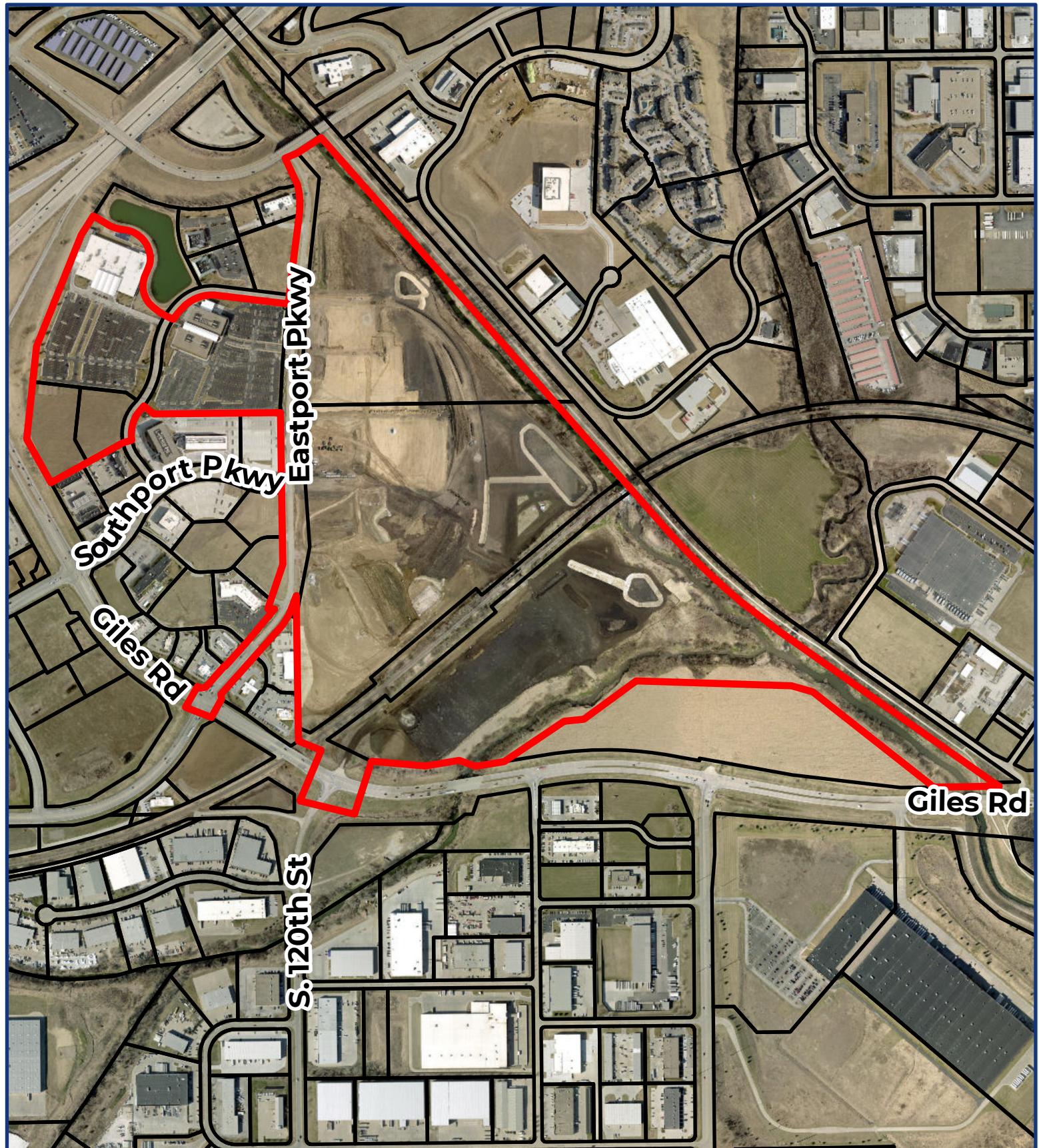
ALL LOCATED IN SECTION 17, TOWNSHIP 14 NORTH, RANGE 12 EAST, OF THE 6TH
P.M., SARPY COUNTY, NEBRASKA.

Exhibit 1

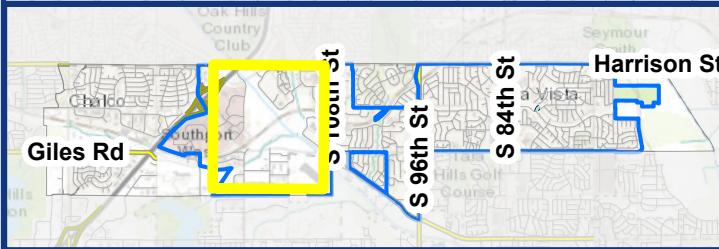
120 Giles GBOT Ordinance

[PROPOSED GBOT ORDINANCE ATTACHED]

Exhibit 19



General Orientation Map: 120 Giles Enhanced Employment Area



Legend

- Enhanced Employment Area
- Tax Parcels



ORDINANCE RECORD

No. 728-REFIDEL & COMPANY INC., OMAHA

ORDINANCE NO. 1462

AN ORDINANCE OF THE MAYOR AND CITY 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 CITY 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"):

ORDINANCE RECORD

No. 728—REFIELD & COMPANY INC., OMAHA

Ordinance No. 1462

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 SOUTHPORt EAST REPLAT TWO;

LOT 1 SOUTHPORt EAST REPLAT NINE;

LOT 4 SOUTHPORt 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:

Classification of Business

120 Giles GBOT Rate

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

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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 with respect to a particular Hotel or Motel Business or Retail Sales Business on the later of:

1. December 1, 2022, or
2. The first day of the month immediately after written consent of the Hotel or Motel Business or Retail Sales Business, or owner of the lot or parcel on or from which such Hotel or Motel Business or Retail Sales Business is located or conducted, to the 120 Giles GBOT or 120 Giles Enhanced Employment Area is delivered to the City Clerk

("Effective Date") at 4:00 a.m. and continue and remain in effect until revoked by the City, 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

ORDINANCE RECORD

No. 728-REFIELD & COMPANY INC., OMAHA

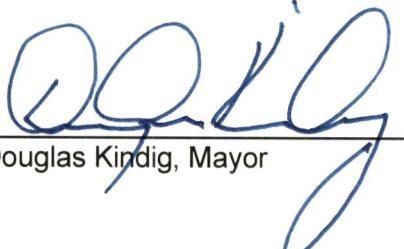
Ordinance No. 1462

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 18TH DAY OF OCTOBER 2022.

CITY OF LA VISTA



Douglas Kindig, Mayor

ATTEST:



Pamela A. Buethe

Pamela A. Buethe, MMC
City Clerk