Honorable President

and Members of the City Council,

Attached is an Ordinance to provide for the designation of an Enhanced Employment Area and to levy a general business occupation tax as requested by the property owner for a site located southwest of 102nd and Nicholas Streets to support the construction of certain entertainment and restaurant facilities. It will provide for the administration, imposition and collection of a general occupation tax, as allowed by Nebraska Community Development Law, pursuant to Omaha Municipal Code. The establishment of an Enhanced Employment Area and the use of occupation tax financing was reviewed by the Occupation Tax Committee and recommended for approval. The occupation tax will be imposed on the gross receipts resulting from the sale, lease or rental of any products or services, as specified in the ordinance and will be used to repay expenses incurred for authorized work under the Nebraska Community Development Law.

Your favorable consideration is respectfully requested.

Respectfully submitted,

David K. Fanslau
Planning Director

Referred to City Council for Consideration:

Mayor's Office/Title

Approved:

Stephen B. Curtiss
Finance Director
ORDINANCE NO.  

AN ORDINANCE providing for the designation of an Enhanced Employment Area, the establishment of an Enhanced Employment Area for the purpose of paying all or any part of the total costs and expenses of the authorized work within the Enhanced Employment Area, and the imposition and collection of a general business occupation tax as requested by the administration, imposition and collection of such occupation tax revenue will be used; and related matters.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL

Section 1. Findings and Determinations. Pursuant to Neb. Rev. Stat. Chapter 18, Article 21, as amended (the “Act”), Chapter 19 of the Omaha Municipal Code provides for the establishment of an enhanced employment area for the purpose of paying all or any part of the total costs and expenses of the authorized work within the enhanced employment area.

The City Council hereby determines that the City designates the area located at _____ and shown in Exhibit “A” (attached hereto and incorporated herein by reference) as an “enhanced employment area” as defined in Neb. Rev. Stat. Section 18-2103(22), as amended (the “Enhanced Employment Area”).

Pursuant to the authority of Neb. Rev. Stat. § 18-2142.04, as amended, and Chapter 19 of the Omaha Municipal code, and at the request of the property owner located within the Enhanced Employment Area, the City is authorized to levy and collect a general business occupation tax upon businesses and users of space within the Enhanced Employment Area for the purpose of paying all or any part of the total costs and expenses of the “Authorized Work”, as said term is defined in Section 18-2142.04, performed within the Enhanced Employment Area. In order to be eligible for the occupation tax, the Enhanced Employment Area must satisfy the employment requirements of the Act. The City Council determines that based on written undertakings provided by the redeveloper, the new investment in the Enhanced Employment Area satisfies the employment requirements of the Act.
The City Council further determines that it is necessary, desirable, advisable and in the best interests of the City that a general business occupation tax be imposed within the Enhanced Employment Area as provided by the Act and chapter 19, article XVII of the Omaha Municipal Code entitled "general enhanced employment tax", and for the purpose set forth in Chapter 19-901(b) of the Omaha Municipal Code.

Section 2. Tax Imposed; Collection of Tax. Commencing upon the issuance of a certificate of occupancy for a Business located within the Enhanced Employment Area, and in each calendar month thereafter, there shall be imposed a general business occupation tax upon each and every Person operating a Business therein. The amount of such tax shall be one and seventy-five hundredths percent (1.75%) of the gross sales of all retail or restaurant Businesses located Enhanced Employment Area;

Such tax shall be imposed on the gross receipts resulting from the sale, lease, or rental of any products, rooms, units, or services within the Enhanced Employment Area, as indicated above, except that such tax shall not be imposed on any transaction which is subject to tax under Sections 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008, or which is exempt from tax under section 77-2704.24, Reissue Revised Statutes of Nebraska, as amended from time to time. The amount of such tax shall at all times be subject to such applicable rules and regulations imposed by the State of Nebraska Department of Revenue, regarding the use and imposition of the general business occupation tax authorized by Neb. Rev. Stat. § 18-2142.04.

The Person engaged in operating a Business may include the tax on or for the selling price, services rendered, charges incurred, rates, or other consideration received on a bill, statement, receipt, or other similar invoice to the purchaser, but each Person engaged in a Business shall remain liable for the tax imposed by this Ordinance.
Section 3. **Tax Cumulative.** The levy of the tax under this Ordinance is in addition to all other fees, taxes, excises and licenses levied and imposed under any contract or any other ordinances of the City, in addition to any fee, tax, excise or license imposed by the state.

Payment of the tax imposed by this Ordinance shall not relieve the Person paying the same from payment of any other tax now or hereafter imposed by contract or ordinance or by this Ordinance, including those imposed for any business or occupation he or she may carry on, unless so provided therein. The Occupation taxes imposed by this Ordinance shall be cumulative except where otherwise specifically provided.

Section 4. **Use of Revenue.** The occupation tax imposed by this Ordinance, less any administrative expenses, shall be used to fund any expenditures that are lawfully authorized to be made under the Act and this Ordinance in connection with the costs and expenses for the Authorized Work performed within the Enhanced Employment Area.

Section 5. **Sunset Provision.** The occupation tax imposed by this Ordinance shall terminate and collection of the tax shall cease no later than the earlier of December 31, 2037, or upon payment in full of all Authorized Work to be incurred and indebtedness issued by the City pursuant to the provisions of Neb. Rev. Stat. Section 18-2142.04, for which such occupation tax receipts have been pledged.

Section 6. The Mayor is hereby authorized to execute, and the City Clerk to attest, the attached Development Agreement for Occupation Tax in an Enhanced Employment Area between the City of Omaha and Westroads Investors, LLC to authorize the collection and use of up to Five Million Dollars ($5,000,000.00) in general business occupation tax revenue, in addition to any other documents necessary or appropriate to implement the Development Agreement or to consummate the loan documents, in order to implement the provisions of this Ordinance.
Section 7. **Effective Date.** This Ordinance shall be in full force and take effect 15 days from and after the date of its passage.

INTRODUCED BY COUNCILMEMBER

APPROVED BY:

MAYOR OF THE CITY OF OMAHA DATE

PASSED

ATTEST:

CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY DATE
ORDINANCE NO. 41348

Item Submitted By: Sunny LaPuzza
Department: Law
Council Meeting Dates:
    First Reading: November 21, 2017
    Second Reading: December 5, 2017
    Third Reading and Public Hearing: December 12, 2017

An ordinance providing for the designation of an Enhanced Employment Area; the levy of a general business occupation tax as requested by the property owner(s); providing for the administration, imposition and collection of such occupation tax; specifying how such tax revenue will be used; and related matters.

PUBLICATIONS

PUBLICATION OF HEARING: 11-24-17
PUBLICATION OF PASSAGE: 12-20-17

Presented to City Council

December 12, 2017

APPROVED 5-2

Elizabeth Butler
City Clerk
MOTION BY COUNCILMEMBER

I hereby move that Council Document No. ________, Current Series, be amended in the whole by deleting the existing Ordinance in its entirety and substituting in lieu thereof the attached Ordinance.

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY DATE

11/23/17

PILAW - CITY COUNCIL DOCUMENTS/2017/20127 sel
AN ORDINANCE providing for the designation of an Enhanced Employment Area; the levy of a
general business occupation tax as requested by the property owner(s); providing for the
administration, imposition and collection of such occupation tax; specifying how such
tax revenue will be used; and related matters.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF OMAHA:

21, as amended (the "Act"), Chapter 19 of the Omaha Municipal Code provides for the
establishment of an enhanced employment area for the purpose of paying all or any part of the
total costs and expenses of the authorized work within the enhanced employment area.

The City Council hereby determines that the City designates the area located at
_____ and shown in Exhibit "A" (attached hereto and incorporated herein by reference) as an
"enhanced employment area" as defined in Neb. Rev. Stat. Section 18-2103(22), as amended
(the "Enhanced Employment Area").

Pursuant to the authority of Neb. Rev. Stat. § 18-2142.04, as amended, and Chapter 19
of the Omaha Municipal code, and at the request of the property owner located within the
Enhanced Employment Area, the City is authorized to levy and collect a general business
occupation tax upon businesses and users of space within the Enhanced Employment Area for
the purpose of paying all or any part of the total costs and expenses of the "Authorized Work",
as said term is defined in Section 18-2142.04, performed within the Enhanced Employment
Area. In order to be eligible for the occupation tax, the Enhanced Employment Area must satisfy
the employment requirements of the Act. The City Council determines that based on written
undertakings provided by the redeveloper, the new investment in the Enhanced Employment
Area satisfies the employment requirements of the Act.
The City Council further determines that it is necessary, desirable, advisable and in the best interests of the City that a general business occupation tax be imposed within the Enhanced Employment Area as provided by the Act and chapter 19, article XVII of the Omaha Municipal Code entitled "general enhanced employment tax", and for the purpose set forth in Chapter 19-901(b) of the Omaha Municipal Code.

Section 2. Tax Imposed; Collection of Tax. Commencing upon the issuance of a certificate of occupancy for a Business located within the Enhanced Employment Area, and in each calendar month thereafter, there shall be imposed a general business occupation tax upon each and every Person operating a Business therein. The amount of such tax shall be one and seventy-five hundredths percent (1.75%) of the gross sales of all retail or restaurant Businesses located Enhanced Employment Area;

Such tax shall be imposed on the gross receipts resulting from the sale, lease, or rental of any products, rooms, units, or services within the Enhanced Employment Area, as indicated above, except that such tax shall not be imposed on any transaction which is subject to tax under Sections 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008, or which is exempt from tax under section 77-2704.24, Reissue Revised Statutes of Nebraska, as amended from time to time. The amount of such tax shall at all times be subject to such applicable rules and regulations imposed by the State of Nebraska Department of Revenue, regarding the use and imposition of the general business occupation tax authorized by Neb. Rev. Stat. § 18-2142.04.

The Person engaged in operating a Business may include the tax on or for the selling price, services rendered, charges incurred, rates, or other consideration received on a bill, statement, receipt, or other similar invoice to the purchaser, but each Person engaged in a Business shall remain liable for the tax imposed by this Ordinance.
Section 3. **Tax Cumulative.** The levy of the tax under this Ordinance is in addition to all other fees, taxes, excises and licenses levied and imposed under any contract or any other ordinances of the City, in addition to any fee, tax, excise or license imposed by the state.

Payment of the tax imposed by this Ordinance shall not relieve the Person paying the same from payment of any other tax now or hereafter imposed by contract or ordinance or by this Ordinance, including those imposed for any business or occupation he or she may carry on, unless so provided therein. The Occupation taxes imposed by this Ordinance shall be cumulative except where otherwise specifically provided.

Section 4. **Use of Revenue.** The occupation tax imposed by this Ordinance, less any administrative expenses, shall be used to fund any expenditures that are lawfully authorized to be made under the Act and this Ordinance in connection with the costs and expenses for the Authorized Work performed within the Enhanced Employment Area.

Section 5. **Sunset Provision.** The occupation tax imposed by this Ordinance shall terminate and collection of the tax shall cease no later than twenty (20) years from the date the Occupation Tax Promissory Note is executed, or upon payment in full of all Authorized Work to be incurred and indebtedness issued by the City pursuant to the provisions of Neb. Rev. Stat. Section 18-2142.04, for which such occupation tax receipts have been pledged, whichever occurs earliest.

Section 6. The Mayor is hereby authorized to execute, and the City Clerk to attest, the attached Development Agreement for Occupation Tax in an Enhanced Employment Area between the City of Omaha and Westroads Investors, LLC to authorize the collection and use of up to Five Million Dollars ($5,000,000.00) in general business occupation tax revenue, in addition to any other documents necessary or appropriate to implement the Development
Agreement or to consummate the loan documents, in order to implement the provisions of this Ordinance.

Section 7. Effective Date. This Ordinance shall be in full force and take effect 15 days from and after the date of its passage.

INTRODUCED BY COUNCILMEMBER

APPROVED BY:

PASSED DEC 12 2017 5-2
As Amended:

ATTEST:

CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY DATE
DEVELOPMENT AGREEMENT FOR OCCUPATION TAX
IN AN ENHANCED EMPLOYMENT AREA

THIS AGREEMENT is entered into by and between the City of Omaha, a Nebraska Municipal Corporation in Douglas County, Nebraska, and Westroads Investors, LLC, a Nebraska limited liability company.

RECITALS:

WHEREAS, Neb. Rev. Stat. §18-2142.04 (reissue 2012) and Omaha Municipal Code Sections 19-1900 through 19-1912 authorize the City to levy a general business occupation tax upon the businesses and users of space within an enhanced employment area for the purpose of paying all or any part of the total costs and expenses of authorized work, as said term is defined in Section 18-2142.04, within such enhanced employment area; and

WHEREAS, on the 12th day of November, 2018, the City Council of the City of Omaha approved the designation of an enhanced employment area, as shown in Exhibit “A”, which is attached hereto and made a part hereof (“Putt ‘N’ Place Enhanced Employment Area”), pursuant to Neb. Rev. Stat. Section 18-2142.04, (reissue 2012) and Omaha Municipal Code Sections 19-1900 through 19-1912, as amended, authorizing the City to levy and collect a general business occupation tax upon the businesses and users of space within the Putt ‘N’ Place Enhanced Employment Area for the purpose of paying all or any part of the total costs and expenses of the Authorized Work, (as defined below) (“Occupation Tax Ordinance”); and,

WHEREAS, this Agreement is a development agreement prepared pursuant to the Nebraska Community Development Law in order to implement the Occupation Tax Ordinance, and contemplates the use of a general business occupation tax generated by such development.
IN CONSIDERATION OF THESE MUTUAL COVENANTS, THE PARTIES AGREE

AS FOLLOWS:

SECTION 1. DEFINITIONS

The following terms, whether plural or singular, shall have the following meanings for purposes of this Agreement.

1.1 "Authorized Work" shall mean those costs and expenses identified on Exhibit "D", as allowed by Section 18-2142.04.

1.2 "City" shall mean the City of Omaha, Nebraska, a Municipal Corporation of the metropolitan class or such successor entity lawfully established pursuant to the applicable provision of the Nebraska Community Development Law.

1.3 "Community Redevelopment Law" shall mean the Community Redevelopment Law of the State of Nebraska (Chapter 18, Article 21, Sections 18-2101, et. seq.), as supplemented by and including Sections 18-2147 to 18-2153, Reissue Revised Statutes of Nebraska, 1943, as amended.

1.4 "Director" shall mean the Director of the City of Omaha Finance Department.

1.5 "Putt 'N' Place Enhanced Employment Area" shall mean the area designated by the Occupation Tax Ordinance and as also identified on Exhibit "A", attached hereto and incorporated herein by reference.

1.6 "LB562" shall mean the Nebraska Legislative Bill 562, 100th Legislature, effective date September 1, 2007, known as the "Enhanced Employment Area Occupation Tax" and as set forth in the Community Development Law, as may be amended from time to time.

1.7 "LB562 Administrative Cost" shall mean the costs the City incurs (on an annual or prorated year) to collect, process and administer the LB562 Loan Proceeds pursuant to the requirements of LB562, 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.

1.8 "LB562 Tax Period" shall mean the period the general business occupation tax shall remain in effect, which shall be no later than the earlier of twenty (20) years after the first certificate of occupancy is issued for a business located within the Putt 'N' Place Enhanced Employment Area, or so long as the Occupation Tax Promissory Note remains outstanding.
1.9 "LB562 Tax Revenues" shall mean the general business occupation tax revenues generated and collected under the general business occupation tax authorized by the Occupation Tax Ordinance.

1.10 "Occupation Tax Ordinance" shall mean Ordinance No. 41348 approved by the City Council of the City of Omaha on Dec. 17, 2007 that imposes a general business occupation tax upon the businesses and users of space within the Putt 'N' Place Enhanced Employment Area.

1.11 "Occupation Tax Promissory Note" or "Note" shall mean any obligation issued by the City in the form of Exhibit "C", attached hereto and incorporated herein by reference, which shall be in the principal amount set forth in such Exhibit ("LB562 Loan Proceeds") and which shall be repaid from and secured by the general business occupation taxes generated by gross receipts resulting from the sale, lease, or rental of any products, rooms, or services within the Putt 'N' Place Enhanced Employment Area.

1.11 "Owner" shall mean Westroads Investors, LLC.

1.12 "Project" shall mean the construction of certain entertainment and restaurant facilities within the Putt 'N' Place Enhanced Employment Area, as depicted in the Site Plan attached hereto as Exhibit "B" and incorporated herein.

SECTION 2. OBLIGATIONS OF THE CITY

The City shall:

2.1 execute and deliver to the Owner, after City Council's formal passage of the Occupation Tax Ordinance but prior to the issuance of the first certificate of occupancy for a business located in the Putt 'N' Place Enhanced Employment Area, the Occupation Tax Promissory Note in substantially the same form as that which is attached hereto as Exhibit "C", which Note shall bear an interest rate equal to 5.0%. The Note shall be repaid by the City with the LB562 Tax Revenues as such revenues are deposited into the LB562 Fund and only as provided for in Section 3.6 below. To the extent such LB562 Tax Revenues are insufficient or unavailable to the City, the City’s repayment obligations under the Note shall be adjusted to reflect such insufficient or unavailable LB562 Tax Revenues, provided that, the obligations of the Owner shall remain unaffected.

2.2 grant LB562 Loan Proceeds for those costs and expenses of the Authorized Work, to the Owner in an amount not to exceed $5,000,000.00.

2.3 establish a City fund account to receive the LB562 Tax Revenues ("LB562 Fund"), which, when collected, shall be used for no other purpose than to pay
debt retirement principal and interest as required by the Occupation Tax Promissory Note. Interest on monies in the LB562 Fund shall accrue first to debt retirement interest and then to principal. The Occupation Tax Promissory Note shall specifically provide that any shortfall in anticipated LB562 Tax Revenues generated by the businesses within the Putt ‘N’ Place Enhanced Employment Area for any reason whatsoever, specifically including a decline in gross receipts resulting from the sale, lease, or rental of any products, rooms, or services within the within the Putt ‘N’ Place Enhanced Employment Area, shall be borne entirely by the Holder of the Note without recourse of any kind against the City.

2.4 ensure that prior to expenditure or disbursement of LB562 Loan Proceeds; the following shall be obtained, to wit:

2.4.1 Owner shall provide the Director with evidence, acceptable to the Director, in their sole discretion, that sufficient private funds have been committed to complete the Project.

2.5 make a grant to the Owner up to the total amount of LB562 Loan Proceeds less the LB562 Administrative Costs, as required by this Agreement and the Occupation Tax Promissory Note. All LB562 Tax Revenues shall be allocated, and when collected, paid into the LB562 Fund only during the LB562 Tax Period.

The City and Owner acknowledge and agree that the Owner shall receive the benefit of the LB562 Loan Proceeds, as allowed by the Community redevelopment Law, with the understanding that the resulting LB562 Loan Proceeds may not be sufficient to fully amortize the Occupation Tax Promissory Note issued by the City.

SECTION 3. OBLIGATIONS OF THE OWNER

The Owner shall:

3.1 complete the Project on or before December 31, 2022.

3.2 cause all real estate taxes and assessments levied on the real property within the Putt ‘N’ Place Enhanced Employment Area and Project to be paid prior to the time such taxes and assessments become delinquent.

3.3 loan the LB562 Loan Proceeds to the City in the principal amount of $5,000,000.00 as set forth in Sections 2.1 and 2.2. Execution and delivery of the Occupation Tax Promissory Note shall be effectuated as soon as reasonably possible after City Council’s formal passage of the Occupation Tax Ordinance, but prior to the issuance of the first certificate of occupancy for a business in the Putt ‘N’ Place Enhanced Employment Area. The loan to be accomplished by this Section and the obligation of the City to remit the LB562 Loan Proceeds for the
development purposes under Section 2.2 may be accomplished by offset so that the Owner retains the LB562 Loan Proceeds. If the City so requests, the Owner shall, from time-to-time, furnish the City with satisfactory evidence as to the use and application of the LB562 Loan Proceeds.

3.4 agree to use commercially reasonable efforts to require all businesses and users of space within the Putt ‘N’ Place Enhanced Employment Area to pay all occupation taxes imposed under the Occupation Tax Ordinance prior to the time the taxes become delinquent. Owner shall include this requirement in all tenant leases. This contractual obligation to pay such taxes prior to delinquency shall remain in effect so long as the Occupation Tax Promissory Note remains outstanding.

3.5 covenant and consent with respect to the designation of the Putt ‘N’ Place Enhanced Employment Area under LB562 and such covenant shall be recorded with the Register of Deeds as required by the Community Redevelopment Law and shall be binding upon all future owners of the property within the Putt ‘N’ Place Enhanced Employment Area during the LB562 Tax Period.

In the event the Owner violates or breaches any of the agreements, representations or covenants in this section, the Owner may be required by the City to surrender any remaining amount outstanding of the Occupation Tax Promissory Note, after reasonable notice and opportunity to cure. Each of the foregoing covenants shall be referenced in a Memorandum of Development Agreement to be recorded by the Owner with the Douglas County, Nebraska Register of Deeds within sixty (60) days of the execution of this Agreement. The Owner shall include the same covenants and restrictions agreed to above in any conveyance of the real property within the Putt ‘N’ Place Enhanced Employment Area, or any portion thereof, including but not limited to, any sale, assignment, sale-leaseback or other such transfer of the property, but shall not be responsible otherwise for the actions of the third parties if these covenants are breached by such third parties if the Owner no longer owns the property.

3.6 prior to the disbursement of LB562 Loan Proceeds, submit to the City of Omaha Planning Department Economic Development staff such documentation satisfactory to the City establishing and verifying the amounts expended for Authorized Work, along with a certification by Owner, and the licensed architect or engineer responsible for the final approved architectural design of the Project, or the provider of subject products or services.

3.7 provide the City of Omaha Finance Department with an executed copy of the Occupation Tax Promissory Note prior to disbursement of any LB562 Loan Proceeds, so that such payment can be noted on the Note and the Note returned to Owner.
SECTION 4. PROVISIONS OF THE AGREEMENT

4.1 **Equal Employment Opportunity Clause.** Annexed hereto as Exhibit “E” and made a part hereof by reference are the equal employment provisions of this Agreement, wherein the “Owner” is referred to as “Contractor”.

4.2 **Non-discrimination.** The Owner shall not, in the performance of this Agreement, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, political or religious opinions, affiliations or national origin.

4.3 **Captions.** Captions used in this Agreement are for convenience and are not used in the construction of this Agreement.

4.4 **Applicable Law.** Parties to this Agreement shall conform with all existing and applicable city ordinances, resolutions, state laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this Agreement.

4.5 **Interest to the City.** Pursuant to Section 8.05 of the Home Rule Charter, no elected official or any officer or employee of the City of Omaha shall have a financial interest, direct or indirect, in any City of Omaha Agreement. Any violation of this section with the knowledge of the person or corporation contracting with the City of Omaha shall render the Agreement voidable by the Mayor or Council.

4.6 **Merger.** This Agreement shall not be merged into any other oral or written Agreement, lease or deed of any type.

4.7 **Administrative Amendments.** The parties hereto recognize that certain administrative amendments may need to be made to this Agreement in order to carry out the intent of this Agreement. The parties hereto recognize that any such minor amendments to this Agreement negotiated and executed by the parties’ respective representatives, other than those defined in §18-2117 of the Community Redevelopment Law, shall be considered and treated as administrative in nature and not as a legislative amendment to this Agreement. However, amendments of the following types shall be referred to the City Council for approval:

1. Those that materially alter or reduce existing areas or structures otherwise available for public use or access;

2. Those that require the expenditure of $75,000.00 or more of City funds above the levels contained in this Agreement;
(3) Those that increase City loans, bonded indebtedness, deferred payments of any types, or other financial obligations above the levels contained in this Agreement; and

(4) Those otherwise considered materially detrimental to the City’s repayment obligations under the Note, in the reasonable discretion of the City.

4.8 Modification. This Agreement contains the entire agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms herein unless done in writing and signed by an authorized officer of the respective parties.

4.9 Assignment. The Owner may not assign its rights under this Agreement without the express prior written consent of the City; such consent not to be unreasonably withheld. The Mayor may, without City Council approval, approve, in writing, the assignment of all rights hereunder to a successor entity owned by, or under common control with Owner.

4.10 Strict Compliance. All provisions of this Agreement and each and every document that shall be attached shall be strictly complied with as written, and no substitution or change shall be made except upon written direction from authorized representatives of the parties.

4.11 This Agreement shall be binding upon the Owner’s successors and assigns, and shall run with the land described in Exhibit “C”, attached hereto, to the benefit of the City of Omaha.

SECTION 5. AUTHORIZED REPRESENTATIVE

In further consideration of the mutual covenants herein contained, the parties hereto expressly agree that for the purposes of notice, including legal service of process, during the term of this Agreement and for the period of any applicable statute of limitations thereafter, the following named individuals shall be the authorized representatives of the parties:

(1) City of Omaha:
    David K. Fanslau
    Planning Director
    City Planning Department
    Omaha/Douglas Civic Center
    1819 Farnam Street, Suite 1100
    Omaha, NE 68183

    Legal Service
c/o City Clerk
    Omaha/Douglas Civic Center
    1819 Farnam Street
    Omaha, NE 68183
Owner:
Westroads Investors, LLC
c/o Woodsonia Real Estate, Inc.
17007 Marcy Street, Suite 2
Omaha, NE 68118

Fullenkamp, Doyle & Jobeun
11440 West Center Road, Suite C
Omaha, Nebraska 68144
Attn: Brent W. Beller

[SIGNATURE PAGE TO FOLLOW]
Either party may designate additional representatives or substitute representatives by giving written notice thereof to the designated representative of the other party.

Executed this 14th day of December, 2017.

ATTEST:

CITY CLERK OF THE CITY OF OMAHA

CITY OF OMAHA:

MAYOR OF THE CITY OF OMAHA

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

1/1/17
Executed this ____ day of _______________________, 2017.

OWNER:

Westroads Investors LLC, a Nebraska limited liability company

By: ____________________________
   Co-Manager

Its: ____________________________

Printed Name: ____________________
   Drew Snyder
EXHIBIT "C"

THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE “33 ACT”) AND 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 TO THE CITY OF OMAHA PRIOR TO TRANSFER, ASSIGNMENT, SALE OR HYPOTHECATION AN OPINION OF COUNSEL, SATISFACTORY TO THE CITY OF OMAHA TO THE EFFECT THAT REGISTRATION UNDER THE ‘33 ACT IS NOT REQUIRED.

REDEVELOPMENT PROMISSORY NOTE

$5,000,000

FOR VALUE RECEIVED, the undersigned, City of Omaha (hereinafter known as “Borrower”), promises to pay Westroads Investors, LLC, a Nebraska limited liability company (“Holder”), and/or its assigns, the principal sum of Five Million and No/100 Dollars ($5,000,000), together with interest thereon at the rate of 5.0% per annum from the date of the execution of this Note until paid in full. The principal balance and interest thereon shall be due and payable to the Holder of this Occupation Tax Promissory Note as and at such time as any LB562 Tax Revenues generated as set forth in that certain Occupation Tax Development Agreement dated the _____ day of _____________, 20___, by and between the Borrower and the Holder (the “Development Agreement”) are collected by the Borrower and available for the retirement of this debt.

In the event of default under this Occupation Tax Promissory Note, all sums secured by this Occupation Tax Promissory Note or any other agreement securing this Occupation Tax Promissory Note shall bear interest at a rate equal to five percent (5%) above the prime rate as published by the Wallstreet Journal from time-to-time; however, in the event said interest rate exceeds the maximum rate allowable by law, then such rate of interest shall equal the highest legal rate available.

The Borrower may prepay the principal amount outstanding in whole or in part, without penalty or the prior consent of the Holder.

In the event the monies collected and held in that LB562 Fund established by the City and pursuant to the Occupation Tax Development Agreement are insufficient to pay in full all amounts due and owing under the Occupation Tax Promissory Note at such time as all LB562 Tax Revenues generated, as set forth in the Occupation Tax Development Agreement, have been collected by the Borrower and paid, immediately upon being available, towards the retirement of the amounts due hereunder, then the Holder shall waive any unpaid portion of the principal and interest due upon written request of the Borrower.

To be executed upon issuance of CO.
In the event this Occupation Tax Promissory Note is referred to an attorney for collection the Holder shall be entitled to reasonable attorney fees allowable by law and all court costs and other expenses incurred in connection with such collection.

The Borrower shall be in default in the event the Borrower shall fail to pay, when due, any amount required hereunder.

Demand, presentment, protest and notice of nonpayment under this Occupation Tax Promissory Note are hereby waived.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Occupation Tax Promissory Note shall operate as a waiver of such remedy, right or option. In any event, a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion.

Any notice provided for in this Occupation Tax Promissory Note to the Borrower or the Holder shall be in writing and shall be given by regular mail to the Holder or Borrower, or at such other address as either party may designate by notice in writing.

This Occupation Tax Promissory Note shall be governed by and construed in accordance with the Laws of the State of Nebraska. All payments hereunder shall be payable in lawful money of the United States of America and shall be legal tender for public and private debts at the time of payment.

CITY OF OMAHA, A Municipal Corporation

By: ________________________________  ________________________________
    Mayor of the City of Omaha          Date

ATTEST:

______________________________  ________________________________
City Clerk of the City of Omaha    Date

APPROVED AS TO FORM:

______________________________  ________________________________
Assistant City Attorney           Date
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<thead>
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<th>Exhibit D - Authorized Work</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Land Acquisition</strong></td>
</tr>
<tr>
<td>Property Acquisition (excluding parking lot area)</td>
</tr>
<tr>
<td>Parking Lot Area Acquisition (5.8 acres at $150.00 per sq ft)</td>
</tr>
<tr>
<td>Closing Costs</td>
</tr>
<tr>
<td><strong>Land Acquisition Subtotal</strong></td>
</tr>
<tr>
<td><strong>Sitework</strong></td>
</tr>
<tr>
<td><strong>Site Work improvements</strong></td>
</tr>
<tr>
<td>Demo / Rough Grade / Realize Assessment / Environmental Site Work</td>
</tr>
<tr>
<td>Site Work / Traffic Improvements</td>
</tr>
<tr>
<td>Change Order Contingency</td>
</tr>
<tr>
<td><strong>Site Work Subtotal</strong></td>
</tr>
<tr>
<td><strong>Site Monuments And Features</strong></td>
</tr>
<tr>
<td>Pylon Signs</td>
</tr>
<tr>
<td><strong>Site Monuments Subtotal</strong></td>
</tr>
<tr>
<td><strong>Building</strong></td>
</tr>
<tr>
<td>Building Improvements (Permits, Water &amp; Sewer Tap Fees)</td>
</tr>
<tr>
<td>Topoff</td>
</tr>
<tr>
<td>Topoff Tenant Improvements</td>
</tr>
<tr>
<td>Deduct Restaurant #1</td>
</tr>
<tr>
<td>Deduct Restaurant #2</td>
</tr>
<tr>
<td>Change Order Contingency</td>
</tr>
<tr>
<td><strong>Building Improvement Subtotal</strong></td>
</tr>
<tr>
<td><strong>Soft Costs</strong></td>
</tr>
<tr>
<td><strong>Carry Costs</strong></td>
</tr>
<tr>
<td>Interest Carry / Real Estate Taxes</td>
</tr>
<tr>
<td>Construction Carry Subtotal</td>
</tr>
<tr>
<td><strong>Site Work A/E - Construction Management</strong></td>
</tr>
<tr>
<td>Survey</td>
</tr>
<tr>
<td>Preliminary Plan / Preliminary Development Plan</td>
</tr>
<tr>
<td>Final Plan / Plan</td>
</tr>
<tr>
<td>Title / Survey / Storm Water Detention</td>
</tr>
<tr>
<td>Signal Design</td>
</tr>
<tr>
<td>Civil Engineering Plans</td>
</tr>
<tr>
<td>Traffic Study</td>
</tr>
<tr>
<td>Development Fee (%)</td>
</tr>
<tr>
<td>A/E / Development Fee Subtotal</td>
</tr>
<tr>
<td><strong>Legal</strong></td>
</tr>
<tr>
<td>Legal Fees</td>
</tr>
<tr>
<td>Lease Commissions</td>
</tr>
<tr>
<td><strong>Legal Subtotal</strong></td>
</tr>
<tr>
<td><strong>Site Permit / Fees</strong></td>
</tr>
<tr>
<td>Site Plan review fee</td>
</tr>
<tr>
<td>Final Plan review</td>
</tr>
<tr>
<td>Civil Engineering review fee</td>
</tr>
<tr>
<td>Title / Survey Fee</td>
</tr>
<tr>
<td>Appraisal Fee</td>
</tr>
<tr>
<td>Miscellaneous Fees</td>
</tr>
<tr>
<td>Permit / Fees Subtotal</td>
</tr>
<tr>
<td><strong>Total Project Cost</strong></td>
</tr>
</tbody>
</table>

Note 1: All certified reimbursable costs will be subject to 5% interest as additional reimbursement from the time the expense is incurred by Developer.

Note 2: All line items with reimbursable expenses may allocate any cost savings to other line items with reimbursable expenses for cost overruns.

Any projections are on an estimate based on assumptions of future revenue and expenses and no assurance can be given to the likelihood that the projected results will be achieved.
December 11, 2017

Re: Top Golf Development

To whom it may concern:

General Growth Properties and Westroads Mall are excited to see Top Golf come to the Omaha Market. We are especially pleased that they will be locating next to Westroads Mall. We hope that we can make them feel welcome and support this development. We know that they have had tremendous success around the Country and we truly look forward to their continued success here in Omaha. We look forward to having them as neighbors!

As I said, I am planning (barring any last minute retail emergency) on attending the Council Meeting and lending my support in person if called upon.

Jim Sadler, SCSM
Senior General Manager

GGP A RETAIL REAL ESTATE COMPANY
Westroads
10000 California Street, Suite 1221
Omaha, NE 68114
jim.sadler@GGP.com
(O) 402-506-9707
Communication submitted from Jim Sadler by Larry Jobeun re: Top Golf – see attached.

Presented to City Council

December 12, 2017

From Chair on File

Elizabeth Butler

City Clerk
"NOTICE TO PUBLIC"

The following Ordinance has been set for City Council Hearing on December 5, 2017, at 2:00 P.M.: 

AN ORDINANCE providing for the designation of an Enhanced Employment Area (a site located southwest of 102nd and Nicholas Streets); the levy of a general business occupation tax as requested by the property owner(s); providing for the administration, imposition and collection of such occupation tax; specifying how such tax revenue will be used; and, related matters.

Elizabeth Butler
City Clerk

11-24-17

THE DAILY RECORD
OF OMAHA

LYNDA K. HENNINGSSEN, Publisher

PROOF OF PUBLICATION

UNITED STATES OF AMERICA,
The State of Nebraska,
District of Nebraska,
County of Douglas,
City of Omaha,

} ss.

J. BOYD

being duly sworn, deposes and says that she is

LEGAL EDITOR

of THE DAILY RECORD, of Omaha, a legal newspaper, printed and published daily in the English language, having a bona fide paid circulation in Douglas County in excess of 300 copies, printed in Omaha, in said County of Douglas, for more than fifty-two weeks last past; that the printed notice hereto attached was published in THE DAILY RECORD, of Omaha, on

November 24, 2017

That said Newspaper during that time was regularly published and in general circulation in the County of Douglas, and State of Nebraska.

GENERAL NOTARY - State of Nebraska
ELLEN FREEMAN
My Comm. Exp. Dec. 11, 2017

Subscribed in my presence and sworn to before

Publisher's Fee $16.10
Additional Copies $\underline{\hspace{2cm}}$
Total $16.10

Notary Public in and for Douglas County, State of Nebraska

November 24, 2017
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OF OMAHA
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That said Newspaper during that time was regularly published and in general circulation in the County of Douglas, and State of Nebraska.

Subscribed in my presence and sworn to before me this 20th day of December 2017.

Notary Public in and for Douglas County, State of Nebraska

ELLEN FREEMAN
My Comm. Exp. December 11, 2021

Publisher's Fee $ 19.70
Additional Copies $
Total $19.70