ORDINANCE NO. 42110

AN ORDINANCE approving a Development Agreement for Occupation Tax in an Enhanced Employment Area by and between the City of Omaha and Village Pointe Lodging LLC and Anant Partners LLC, and its successors or assigns, for a project site located at 215 South 181st Street, 303 South 181st Street, and 18120 Harney Street, authorizing the use of up to $3,600,000.00, plus accrued interest in occupation tax revenues generated by the development located in an enhanced employment area, as shown in Exhibit "A", as properly authorized and designated by the Omaha City Council; and providing for an effective date.

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

Section 1. 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 Village Pointe Lodging LLC and Anant Partners LLC, to authorize the use of up to $3,600,000.00, plus accrued interest, to offset authorized work, as allowed by the Community Redevelopment Law through the use of general business occupation tax revenues generated by such development and any other documents in connection with the Development Agreement necessary or appropriate to consummate the duties, obligations and loans, as set forth therein.

Section 2. Said Development Agreement contains obligations undertaken pursuant to the Nebraska Community Development Law in Sections 18-2147 through 18-2150.

Section 3. This Ordinance shall be in full force and take effect fifteen (15) days from and after the date of its passage.
ORDINANCE NO. 4210

INTRODUCED BY COUNCILMEMBER

Christopher Jones

APPROVED BY:

Mayor of the City of Omaha

January 14, 2020

PASSED

Attest:

CITY CLERK OF THE CITY OF OMAHA

DATE

ASS'T CITY ATTORNEY

DATE

1-11-2020

12/10/19
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 ("City"), and Village Pointe Lodging LLC,
Anant Partners LLC ("Owner", and collectively, with the City, the "Parties").

RECITALS:

Sections 19-900 through 19-912 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 14/20 by Ordinance No. 14/09 the City Council of the City of
Omaha approved the Occupation Tax Ordinance ("Occupation Tax Ordinance") designating "an
enhanced employment area", as shown in Exhibit "A", which is attached hereto and made a part
hereof ("Village Pointe Anant Development Enhanced Employment Area"), pursuant to Neb.
through 19-912, as amended, authorizing the City to levy and collect a general business
occupation tax upon the businesses and users of space within the Village Pointe Anant
Development Enhanced Employment Area for the purpose of reimbursing the Owner for costs
associated with Authorized Work (defined below), as provided for herein; and,

WHEREAS, this Agreement is a development agreement prepared pursuant to
Nebraska’s 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 “Administrative Cost” shall mean the reasonable costs the City incurs (on an annual or prorated year) to collect, process and administer the Loan Reimbursement 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.

1.2 “Authorized Work” shall mean the performance of any one or more of the purposes within an enhanced employment area pursuant to Section 18-2142.04, which includes, but is not limited to, the projects otherwise identified on Exhibit “B”.

1.3 “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.

1.4 “Community Development Law” shall mean the Community Development 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.

1.5 “Director” shall mean the Director of the City of Omaha Finance Department.

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 “Loan Proceeds” shall mean the money borrowed by the City from the Owner or a third party for the purpose of funding all or a portion of the Promissory Note.

1.8 “Loan Reimbursement Proceeds” shall mean the Occupation Tax Revenues generated within the designated Village Pointe Anant Development Enhanced Employment Area.

1.9 “Occupation Tax Ordinance” shall mean Ordinance No. ______ approved by the City Council of the City of Omaha on ________ that imposes a general business occupation tax upon the businesses and users of space within the Village Pointe Anant Development Enhanced Employment Area.
1.10 "Occupation 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 Village Pointe Anant Development Enhanced Employment Area, or so long as the Occupation Tax Promissory Note remains outstanding.

1.11 "Occupation Tax Revenues" shall mean the general business occupation tax revenues generated and collected as authorized by the Occupation Tax Ordinance.

1.12 "Owner" shall mean Village Pointe Lodging LLC, Anant Partners LLC.

1.13 "Project" shall mean the performance or construction of Authorized Work within the Village Pointe Anant Development Enhanced Employment Area.

1.14 "Promissory Note" or "Note" shall mean any obligation or obligations issued by the City and secured by the Loan Proceeds, as may be amended from time to time. Each Promissory Note shall be in substantially the form of Exhibit "C", attached hereto.

1.15 "Village Pointe Anant Development 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.

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 Village Pointe Anant Development Enhanced Employment Area, the 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 Occupation Tax Revenues and only as provided for in Section 3.6 below. To the extent such Occupation 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 Loan Proceeds for those costs and expenses of the Authorized Work, to the Owner in an amount not to exceed $3,600,000.00.

2.3 establish a City fund account to receive the Occupation Tax Revenues ("Occupation Tax Fund 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 Occupation Tax Fund shall accrue first to debt retirement interest and then to principal. The Promissory Note shall specifically provide that any shortfall in anticipated
Occupation Tax Revenues generated by the businesses within the Village Pointe Anant Development 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 Village Pointe Anant Development 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 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 Loan Proceeds less the Administrative Costs, as required by this Agreement and the Promissory Note. All Occupation Tax Revenues shall be allocated, and when collected, paid into the Occupation Tax Fund only during the Occupation Tax Period.

The City and Owner acknowledge and agree that the Owner shall receive the benefit of the Loan Proceeds, as allowed by the Community Redevelopment Law, with the understanding that the resulting Loan Proceeds may not be sufficient to fully amortize the 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, 2020.

3.2 cause all real estate taxes and assessments levied on the real property within the Village Pointe Anant Development Enhanced Employment Area and Project to be paid prior to the time such taxes and assessments become delinquent.

3.3 loan the Loan Proceeds to the City in the principal amount of $3,600,000.00 as set forth in Sections 2.1 and 2.2. Execution and delivery of the 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 Village Pointe Anant Development Enhanced Employment Area. The loan to be accomplished by this Section and the obligation of the City to remit the Loan Proceeds for the development purposes under Section 2.2 may be accomplished by offset so that the Owner retains the 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 Loan Proceeds.

3.4 agree to use commercially reasonable efforts to require all businesses and users of space within the Village Pointe Anant Development 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 Promissory Note remains outstanding.

3.5 covenant and consent with respect to the designation of the Village Pointe Anant Development 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 Village Pointe Anant Development Enhanced Employment Area during the Occupation 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 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 Village Pointe Anant Development 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 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 or the provider of subject products or services.

3.7 provide the City of Omaha Finance Department with an executed copy of the Promissory Note prior to disbursement of any 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 “D” 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:**
    - Stephen Curtiss
    - Finance Director
    - City Planning Department
    - Omaha/Douglas Civic Center
    - 1819 Farnam Street, Suite 1100
    - Omaha, NE 68183

(2) **Owner:**

    - Legal Service

[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.


ATTEST:

CITY CLERK OF THE CITY OF OMAHA

CITY OF OMAHA:

MAYOR OF THE CITY OF OMAHA

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

[Signature]

12/16/19
Executed this ___ day of ______________________, 2019.

OWNER:

Village Pointe Lodging LLC, Anant Partners LLC

By: ___________________________
Its: Partner
Printed Name: Kirti Trivedi
Exhibit A
Enhanced Employment Area
Exhibit B
Authorized Work
Exhibit C
Form Promissory Note
Exhibit D
Equal Employment Opportunity Clause
LEGAL ADDRESS

PARCEL ADDRESS:
   215 S 181 ST 1
   DOUGLAS COUNTY NE 68022-0000

LEGAL DESCRIPTION:
   5TH FLOOR CONDOMINIUMS LOT 1 BLOCK 0 UNIT 1 --FLOORS 1 THRU 4-- APPROX 125976 SQFT
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*The numbers above are estimates and subject to change and supplementation.*