



City of Omaha
Jean Stothert, Mayor

Planning Department

Omaha/Douglas Civic Center
1819 Farnam Street, Suite 1100
Omaha, Nebraska 68183
(402) 444-5150
Telefax (402) 444-6140

David K. Fanslau
Director

November 1, 2022

Honorable President

and Members of the City Council,


The attached Ordinance transmits two Tax Increment Financing Redevelopment Loan Agreements between Kennedy East LIHTC, LLC and the City of Omaha and between Kennedy East Market, LLC for a redevelopment project located southwest of 30th and Bristol Streets. The Redevelopment Agreements implement the Kennedy Square East Tax Increment Financing Redevelopment Project Plan that provides for the new construction of a 102 unit mixed income affordable housing complex with 11 residential structures and one mixed use building.

The Redevelopment Agreement authorizes the City's participation in the development by providing up to \$1,960,000.00, plus capitalized interest, in Tax Increment Financing (TIF) loan proceeds: \$900,000.00 to Kennedy East LIHTC, LLC and \$1,060,000 to Kennedy East Market, LLC to offset TIF eligible costs such as site preparation, demolition, architectural and engineering costs, various studies and any public improvements as may be necessary. The total estimated project costs are \$38,726,522.00, but are subject to change as final costs come in.

Your favorable consideration of this Ordinance will be appreciated.

Respectfully submitted,

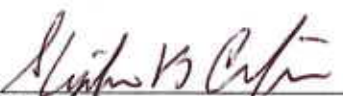
Approved:

 10-14-2022
David K. Fanslau Date
EE Planning Director *ss* *Ball*

 10-18-22
Robert G. Stubbe, P.E. Date
Public Works Director

Approved:

Referred to City Council for Consideration:

 10/17/22
Stephen B. Curtiss Date
Finance Director *TC*

 11/18/22
Mayor's Office Date

3296 nsp

ORDINANCE NO. _____

AN ORDINANCE approving a redevelopment and Tax Increment Financing (TIF) Redevelopment Agreement between the City of Omaha and Kennedy East LIHTC, LLC, a Nebraska limited liability company, and between the City of Omaha and Kennedy East Market, LLC, a Nebraska limited liability company, to implement the Kennedy Square Est Tax Increment Financing (TIF) Redevelopment Project Plan for a redevelopment project site located southwest of 30th and Bristol Streets, which proposes a 102 unit mixed income affordable housing complex with 11 residential structures and one mixed use building; the agreement authorizes the use of up to \$1,960,000.00, plus capitalized interest, in excess ad valorem taxes (TIF) generated by the development to help fund the cost of the project, 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 Redevelopment Agreement between the City of Omaha and Kennedy East LIHTC, LLC, a Nebraska limited liability company, and between the City of Omaha and Kennedy East Market, LLC, a Nebraska limited liability company, to authorize the use of up to \$1,960,000.00, plus capitalized interest, to offset TIF eligible costs such as site preparation, demolition, architectural and engineering costs, various studies, and public improvements as required, for a project with total estimated costs of \$38,726,522.00; including any other documents in connection with the Redevelopment Agreement necessary or appropriate to consummate the loan.

Section 2. Said Redevelopment Agreement contains obligations undertaken pursuant to the Nebraska Community Development Law and Sections 18-2147 through 18-2150; and, are not otherwise obligations of the City of Omaha.

ORDINANCE NO. _____
PAGE TWO

Section 3. This Ordinance shall be in full force and take effect fifteen (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

3296 nsp

APPROVED AS TO FORM:



ASSISTANT CITY ATTORNEY DATE 10/14/2022

REDEVELOPMENT AGREEMENT

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

RECITALS:

WHEREAS, on October 4, 2022 by Resolution No. 2022-0882, the City Council of the City of Omaha approved the Kennedy Square East Tax Increment Financing (TIF) Redevelopment Project Plan for a redevelopment site located southeast of 30th and Bristol Streets, which proposes the construction of an aggregate 102 unit mixed income affordable housing complex, of which 38 units will be unrestricted market rate units, with 11 residential structures and one mixed use building as shown in Exhibit "A", which is attached hereto and made a part hereof; and,

WHEREAS, the Kennedy Square East Tax Increment Financing (TIF) Redevelopment Project Plan recommends authorizing up to \$1,960,000.00 in TIF, plus capitalized interest, to offset eligible expenses, as provided for pursuant to the Nebraska by the Community Development Law, including, but not limited to, site preparation, demolition, architectural and engineering costs, various studies, and other public improvements as required, for public infrastructure enhancements and improvements as required, for a project with total estimated costs of \$38,726,522.00; and,

WHEREAS, this Agreement is authorized and governed by the Nebraska Community Development Law and implements the Kennedy Square East Redevelopment Project Plan, which provides for the use of the excess ad valorem taxes, as provided for herein.

IN CONSIDERATION OF THESE MUTUAL COVENANTS, AND FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH THE PARTIES ACCEPT AND ACKNOWLEDGE, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. DEFINITIONS

The following terms, whether plural or singular, shall have the following meanings.

1.1 “Base Year” and “Base Year Valuation” shall mean the year prior to the calendar year that the division of the property tax levied on the Redevelopment Site is to become effective. The Base Year is established by the Notice to Divide Tax for Community Redevelopment Project (“Notice to Divide”) form prepared by the City of Omaha, which establishes the valuation for the base amount and the calendar year that division of real property tax levied is to become effective. For purposes of this Agreement, the parties agree the Base Year and associated Base Year Valuation shall be established on January 1, 2023.

Prior to August 1st of the year of the Division Date, the Director, or Director’s designee, will file the Notice to Divide as required by law and in accordance with the Division Date set forth below, with the Office of the Douglas County Assessor/Register of Deeds. Prior to July 1st of the year of the Division Date the Owner may request, in writing, to change the Base Year and the Division Date. A request for an extension of the Base Year and Division Date may be approved administratively by the Director through an addendum to this Agreement. This addendum shall be executed by the Owner and the Director.

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 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. All statutory citations in the Agreement are to the Nebraska Revised Statutes.

1.4 “Director” shall mean the Director of the City of Omaha Planning Department.

1.5 “Division Date” shall mean the agreed upon date after which any ad valorem real estate taxes levied upon the Redevelopment Site shall be divided by the Douglas County Assessor pursuant to the Community Development Law and the Notice to Divide. For purposes of this Agreement, the parties agree the Division Date shall be January 1, 2024.

1.6 “Excess ad valorem Taxes” shall mean any ad valorem real estate tax levied upon and generated by the real property in the Redevelopment Site from and after the Division Date (at the rate fixed each year by or for each of the hereinafter defined public bodies) by or for the benefit of the State of Nebraska, the City, and any board, commission, authority, district or any other political subdivision or public body of the State of Nebraska (collectively “public bodies”) in excess of any ad valorem real estate tax generated by the levy on the Base Year Valuation.

1.7 “Owner” shall mean Kennedy East Market, LLC, a Nebraska limited liability company..

- 1.8 "Redevelopment Project" shall be as more particularly described in the Redevelopment Project Plan and as shown on the Site Plan attached hereto as Exhibit "A" and incorporated herein.
- 1.9 "Redevelopment Project Plan" shall mean the Kennedy Square East Tax Increment Financing Redevelopment Project Plan approved by the City Council of the City of Omaha on October 4, 2022 by Resolution No. 2022-0882.
- 1.10 "Redevelopment Promissory Note" or "Note" shall mean any obligation issued by the City in the form of Exhibit "B" attached hereto and incorporated herein by reference, which shall be in the principal amount set forth in such Exhibit ("Redevelopment Loan Proceeds") and which shall be repaid from and secured by the Excess ad valorem Taxes generated by the real property within the Redevelopment Site.
- 1.11 "Redevelopment Site" shall mean the real property legally described on Exhibit "C", attached hereto and incorporated herein.

SECTION 2. OBLIGATIONS OF THE CITY

The City shall:

- 2.1 execute and deliver to the Owner at closing the Redevelopment Promissory Note in substantially the same form as that which is attached hereto as Exhibit "B".
- 2.2 grant Redevelopment Loan Proceeds for TIF eligible expenses, including any public improvements, to the Owner in an amount not to exceed \$1,060,000.00 plus capitalized interest.
- 2.3 establish a special fund, as required by Section 18-2147(b) of the Community Development Law, for the Excess ad valorem Taxes, if any, generated by the Redevelopment Project and the Redevelopment Site, which shall be allocated to and, when collected, paid into this special fund, and shall be used for no other purpose than to pay debt retirement principal and interest as required by the Redevelopment Promissory Note. Interest on monies in the special fund shall accrue first to debt retirement interest and then to principal.
- 2.4 ensure that prior to expenditure or disbursement of Redevelopment Loan Proceeds, the following shall be obtained, to wit:
- 2.4.1 Owner shall provide the Director, or Director's designee, with evidence, acceptable to the Director, or Director's designee, in their sole discretion, that sufficient private funds have been committed to complete the Redevelopment Project.
- 2.4.2 Owner shall provide evidence of, and maintain, adequate performance and labor materials bonds in the amount of no less than \$1,060,000.00 during the period of construction of the project. The City shall be specified as a

co-obligee. This requirement may be satisfied by reasonably sufficient labor and materials bond or payment and performance bond from the Owner's general contractor or contractors, or the bond required pursuant to Section 3.9 of this Agreement.

- 2.5 make payments, as required by this Agreement and the Redevelopment Promissory Note, of the Excess ad valorem Taxes held in the special fund pursuant to Section 2.3 above. All Excess ad valorem Taxes shall be allocated, and when collected, paid into the special fund for a period not to exceed twenty (20) calendar years from the Division Date. Under no circumstance shall the Owner receive payments from the special fund for more than twenty (20) years of Excess ad valorem Taxes (i.e. forty (40) semi-annual installments) or after such time as the Redevelopment Promissory Note has been paid in full.

The City and Owner acknowledge and agree that the Owner shall receive the benefit of the Redevelopment Loan Proceeds, as limited to eligible expenses allowed by the Community Redevelopment Law, with the understanding that the Excess ad valorem Taxes and resulting Redevelopment Loan Proceeds may not be available for each and every installment or may not be sufficient to fully amortize the Redevelopment Promissory Note issued by the City.

- 2.6 grant the entire amount of the Redevelopment Loan proceeds to the Owner for costs of improving and redeveloping the Redevelopment Site, as authorized and allowed pursuant to the Community Development Law, including, but not limited to, those estimated eligible costs set forth on Exhibit "E", attached hereto. Expenses identified on Exhibit "E" are a reasonably accurate estimate of the eligible expenses for the Redevelopment Project.
- 2.7 execute such documents as may be reasonably necessary to effectuate City's obligations under this Agreement.

SECTION 3. OBLIGATIONS OF THE OWNER

The Owner shall:

- 3.1 complete the Redevelopment Project on or before July 31, 2024. In the event the Redevelopment Project cannot be completed on or before July 31, 2024, the Owner may submit a request, in writing, for an extension of the completion date. The request must be submitted no less than three months prior to the completion date set forth herein. The request may be acknowledged and approved by the Planning Director.
- 3.2 cause all real estate taxes and assessments levied on the Redevelopment Site and Redevelopment Project to be paid prior to the time such become delinquent.
- 3.3 loan redevelopment funds to the City in the principal amount of \$1,060,000.00, plus capitalized interest, as set forth in Sections 2.1 and 2.2, which, when combined with other private funds available, will be sufficient to construct the Redevelopment Project.

- 3.4 execute and deliver the Redevelopment Promissory Note with the terms set forth below, at closing, which shall be as soon as reasonably possible after execution of this Agreement but not more than 60 days thereafter, unless otherwise agreed by the parties. At closing, the loan to be accomplished by this Section and the obligation of the City to use the Redevelopment Loan Proceeds for redevelopment purposes under Section 2.2 may be accomplished by offset so that the Owner retains the Redevelopment 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 Redevelopment Loan Proceeds.
- 3.4.1 Such Redevelopment Loan Proceeds shall be disbursed as provided in Section 2.
- 3.4.2 Such Redevelopment Promissory Note shall bear a 5.5% interest rate.
- 3.4.3 The principal and interest shall be repaid by the City from the special fund established pursuant to Section 2.3 to collect and hold Excess ad valorem Taxes, pursuant to the Redevelopment Project Plan and Section 18-2147 of the Community Development Law, as they become collected in such fund and available to the City for such use. To the extent such Excess ad Valorem Taxes are insufficient or unavailable to the City, the loan shall be forgiven and the obligations of the Owner shall remain unaffected.
- 3.5 provide the City with quarterly progress reports during the construction of the Redevelopment Project and at any time upon written request from the City, and allow the City reasonable access, upon written request to Owner, to any relevant financial records pertaining to the Redevelopment Project.
- 3.6 retain copies of all supporting documents (as defined under Section 18-2119(4) of the Community Development Law) that are received or generated by the Owner in relation to the Redevelopment Project or Redevelopment Plan, until the expiration of three years following the end of the last fiscal year in which Excess ad valorem Taxes are divided in relation to the Redevelopment Project and provide such copies to the City upon written request of the Director.
- 3.7 during the period that the Redevelopment Promissory Note is outstanding:
- 3.7.1 not protest the real estate improvement valuation on the Redevelopment Site or request a reduction in the real estate improvement valuation on the Redevelopment Site certified as of January 1, 2023 (Base Year) prior to and during construction; and not protest the real estate improvement valuation on the Redevelopment Site to request a reduction in the real estate improvement base valuation on the Redevelopment Site to any amount less than as certified as of January 1, 2023 (Base Year) **plus \$4,692,152.34 (excess valuation) after substantial completion or occupancy of the Redevelopment Project. This covenant is for the benefit of, and binding upon, both the City and the Owner and any successors and assigns, but all parties acknowledge that the excess valuation agreed to herein is not binding on the Douglas County Assessor and that any partial or full valuation designated by the**

Douglas County Assessor may not be an amount sufficient to produce Excess ad valorem Taxes necessary on an annual basis to amortize the Redevelopment Promissory Note;

- 3.7.2 not convey the Redevelopment Site or structures thereon to any entity which would be exempt from the payment of real estate taxes, not apply for exemption of real estate taxes from the county or the state, or cause the nonpayment of such real estate taxes; if the county and/or state award the exemption of real estate taxes, this Redevelopment Agreement and its associated Redevelopment Promissory Note will be rendered void and cancelled;
- 3.7.3 not apply to the Douglas County Assessor for the structures, or any portion thereof, to be taxed separately from the underlying real property encompassed within the Redevelopment Site;
- 3.7.4 maintain insurance for a minimum of ninety percent (90%) of the full value of the structures on the Redevelopment Site;
- 3.7.5 in the event of casualty, apply such insurance proceeds to the reconstruction of the Redevelopment Project, to the extent permitted by Owner's mortgage lender, and
- 3.7.6 cause all real estate taxes and assessments levied on the Redevelopment Site to be paid *prior to* the time such become delinquent. The Owner acknowledges and agrees that any ad valorem taxes that become delinquent may be forfeited and any portion of the Excess ad valorem Taxes levied in the twentieth year under this Agreement that become delinquent shall be forfeited and returned to the appropriate public bodies or taxing jurisdictions.
- 3.7.7 acquiesce to any and all requests deemed necessary by the City related to compliance with the Community Development Law.
- 3.8 provide the City of Omaha Finance Department with an executed copy of the Redevelopment Promissory Note prior to disbursement of any proceeds for repayment of such Note pursuant to Section 2.5, so that such payment can be noted on the Note and the Note returned to Owner.
- 3.9 the Owner shall provide the City with a penal bond as required by Section 18-2151 of the Community Development Law.
- 3.10 install and construct all of the public infrastructure improvements set forth in the Redevelopment Project Plan approved by the City Council of the City of Omaha on October 4, 2022 by Resolution No. 2022-0882, in coordination with the Owner's development team, the City of Omaha Planning Department – Urban Design, and the City of Omaha Public Works Department as referenced in the Redevelopment Plan, and as subsequently modified to comply with City of Omaha requirements.

- 3.11 inform the City, in writing, of any conveyance of the entire Redevelopment Project or Redevelopment Site, which shall include name, and address of the purchaser and contact information for the purchaser's authorized representative.
- 3.12 If 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 Redevelopment Promissory Note, after reasonable notice and opportunity to cure. Each of the foregoing covenants shall be referenced in a Notice of Redevelopment 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. A copy of the Notice of Redevelopment Agreement shall be delivered to the City within one week of recording. The Owner shall include the same covenants and restrictions agreed to above in any conveyance of the Redevelopment Site, 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 Redevelopment Site.

SECTION 4. ADDITIONAL OBLIGATIONS OF THE CITY AND OWNER AND GOVERNING 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 and the Redevelopment Plan. The parties hereto recognize that any such minor amendments to this Agreement negotiated and executed by the parties' respective representatives or such addendums as provided for herein, other than those defined in §18-2117 of the Community Development Law, shall be considered and treated as administrative in nature and not as a legislative amendment to this Agreement or the Redevelopment Plan. 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 major or material 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 approve, in writing, a collateral assignment of this Agreement and the Redevelopment Promissory Note to the Owner's lender, or 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 Binding Effect. 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.

4.12 Force Majeure. As related only to the project completion date in Section 3.1 of this Agreement, neither the City nor Owner shall be liable for any failure or delay in performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including,

without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; acts of terrorism; sabotage; strikes; disease; pandemics; quarantines; epidemics; acts of government; a state of emergency; riots; power failures; computer failure and any such circumstances beyond its reasonable control as may cause interruption, loss or malfunction of utility, transportation, computer (hardware or software) or telephone communication service; accidents; labor disputes; acts of civil or military authority; governmental actions; or inability to obtain labor, material, equipment or transportation; provided, however, that in the event of a failure or delay, the affected party shall provide the other party notice of such delay as soon as reasonably practicable following its discovery, and each party shall use its best efforts to mitigate the effects of any such failure or delay.

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) <u>City of Omaha:</u>
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 |
| (2) <u>Owner:</u>
Kennedy East Market, LLC
Attn: Todd Lieberman
1603 Orrington Avenue, Suite 450
Evanston, IL 60201 | Copy to:
Bennett P. Applegate
Applegate & Thorne-Thomsen, P.C.
425 S. Financial Place, Suite 1900
Chicago, IL 60605 |

Either party may designate additional representatives or substitute representatives by giving written notice thereof to the designated representative of the other party.

Executed this ____ day of _____, 20__.

ATTEST:

CITY OF OMAHA:

CITY CLERK OF THE CITY OF OMAHA DATE

MAYOR OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

 10/14/2014

ASSISTANT CITY ATTORNEY DATE

Executed this 13th day of October, 2020

OWNER:

Kennedy East Market, LLC,
a Nebraska limited liability company

By: Brinshore TL, LLC,
an Illinois limited liability company,
its Managing Member

By: 
Name: Richard J. Sciortino
Title: Authorized Signatory

STATE OF ILLINOIS)

) SS

COUNTY OF COOK)

I, Sally Lewinski, a Notary Public in and for the County and State aforesaid, do hereby certify that Richard J. Sciortino, as Authorized Signatory of Brinshore TL, LLC, an Illinois limited liability company, which is the managing member of Kennedy East Market, LLC, a Nebraska limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Authorized Signatory, appeared before me in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of such corporation on behalf of such limited liability companies, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of October, 2020



Sally Lewinski
Notary Public

REDEVELOPMENT AGREEMENT

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

RECITALS:

WHEREAS, on October 4, 2022 by Resolution No. 2022-0882, the City Council of the City of Omaha approved the Kennedy Square East Tax Increment Financing (TIF) Redevelopment Project Plan for a redevelopment site located southeast of 30th and Bristol Streets, which proposes the construction of an aggregate 102 unit mixed income affordable housing complex, of which 64 units will be reserved for rental to individuals and families of low income, with 11 residential structures and one mixed use building as shown in Exhibit "A", which is attached hereto and made a part hereof; and,

WHEREAS, the Kennedy Square East Tax Increment Financing (TIF) Redevelopment Project Plan recommends authorizing up to \$1,960,000.00 in TIF, plus capitalized interest, to offset eligible expenses, as provided for pursuant to the Nebraska by the Community Development Law, including, but not limited to, site preparation, demolition, architectural and engineering costs, various studies, and other public improvements as required, for public infrastructure enhancements and improvements as required, for a project with total estimated costs of \$38,726,522.00; and,

WHEREAS, this Agreement is authorized and governed by the Nebraska Community Development Law and implements the Kennedy Square East Redevelopment Project Plan, which provides for the use of the excess ad valorem taxes, as provided for herein.

IN CONSIDERATION OF THESE MUTUAL COVENANTS, AND FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH THE PARTIES ACCEPT AND ACKNOWLEDGE, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. DEFINITIONS

The following terms, whether plural or singular, shall have the following meanings.

1.1 “Base Year” and “Base Year Valuation” shall mean the year prior to the calendar year that the division of the property tax levied on the Redevelopment Site is to become effective. The Base Year is established by the Notice to Divide Tax for Community Redevelopment Project (“Notice to Divide”) form prepared by the City of Omaha, which establishes the valuation for the base amount and the calendar year that division of real property tax levied is to become effective. For purposes of this Agreement, the parties agree the Base Year and associated Base Year Valuation shall be established on January 1, 2023.

Prior to August 1st of the year of the Division Date, the Director, or Director’s designee, will file the Notice to Divide as required by law and in accordance with the Division Date set forth below, with the Office of the Douglas County Assessor/Register of Deeds. Prior to July 1st of the year of the Division Date the Owner may request, in writing, to change the Base Year and the Division Date. A request for an extension of the Base Year and Division Date may be approved administratively by the Director through an addendum to this Agreement. This addendum shall be executed by the Owner and the Director.

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 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. All statutory citations in the Agreement are to the Nebraska Revised Statutes.

1.4 “Director” shall mean the Director of the City of Omaha Planning Department.

1.5 “Division Date” shall mean the agreed upon date after which any ad valorem real estate taxes levied upon the Redevelopment Site shall be divided by the Douglas County Assessor pursuant to the Community Development Law and the Notice to Divide. For purposes of this Agreement, the parties agree the Division Date shall be January 1, 2024.

1.6 “Excess ad valorem Taxes” shall mean any ad valorem real estate tax levied upon and generated by the real property in the Redevelopment Site from and after the Division Date (at the rate fixed each year by or for each of the hereinafter defined public bodies) by or for the benefit of the State of Nebraska, the City, and any board, commission, authority, district or any other political subdivision or public body of the State of Nebraska (collectively “public bodies”) in excess of any ad valorem real estate tax generated by the levy on the Base Year Valuation.

1.7 “Owner” shall mean Kennedy East LIHTC, LLC, a Nebraska limited liability company..

- 1.8 "Redevelopment Project" shall be as more particularly described in the Redevelopment Project Plan and as shown on the Site Plan attached hereto as Exhibit "A" and incorporated herein.
- 1.9 "Redevelopment Project Plan" shall mean the Kennedy Square East Tax Increment Financing Redevelopment Project Plan approved by the City Council of the City of Omaha on October 4, 2022 by Resolution No. 2022-0882.
- 1.10 "Redevelopment Promissory Note" or "Note" shall mean any obligation issued by the City in the form of Exhibit "B" attached hereto and incorporated herein by reference, which shall be in the principal amount set forth in such Exhibit ("Redevelopment Loan Proceeds") and which shall be repaid from and secured by the Excess ad valorem Taxes generated by the real property within the Redevelopment Site.
- 1.11 "Redevelopment Site" shall mean the real property legally described on Exhibit "C", attached hereto and incorporated herein.

SECTION 2. OBLIGATIONS OF THE CITY

The City shall:

- 2.1 execute and deliver to the Owner at closing the Redevelopment Promissory Note in substantially the same form as that which is attached hereto as Exhibit "B".
- 2.2 grant Redevelopment Loan Proceeds for TIF eligible expenses, including any public improvements, to the Owner in an amount not to exceed \$900,000.00 plus capitalized interest.
- 2.3 establish a special fund, as required by Section 18-2147(b) of the Community Development Law, for the Excess ad valorem Taxes, if any, generated by the Redevelopment Project and the Redevelopment Site, which shall be allocated to and, when collected, paid into this special fund, and shall be used for no other purpose than to pay debt retirement principal and interest as required by the Redevelopment Promissory Note. Interest on monies in the special fund shall accrue first to debt retirement interest and then to principal.
- 2.4 ensure that prior to expenditure or disbursement of Redevelopment Loan Proceeds, the following shall be obtained, to wit:
- 2.4.1 Owner shall provide the Director, or Director's designee, with evidence, acceptable to the Director, or Director's designee, in their sole discretion, that sufficient private funds have been committed to complete the Redevelopment Project.
- 2.4.2 Owner shall provide evidence of, and maintain, adequate performance and labor materials bonds in the amount of no less than \$900,000.00 during the

period of construction of the project. The City shall be specified as a co-obligee. This requirement may be satisfied by reasonably sufficient labor and materials bond or payment and performance bond from the Owner's general contractor or contractors, or the bond required pursuant to Section 3.9 of this Agreement.

- 2.5 make payments, as required by this Agreement and the Redevelopment Promissory Note, of the Excess ad valorem Taxes held in the special fund pursuant to Section 2.3 above. All Excess ad valorem Taxes shall be allocated, and when collected, paid into the special fund for a period not to exceed twenty (20) calendar years from the Division Date. Under no circumstance shall the Owner receive payments from the special fund for more than twenty (20) years of Excess ad valorem Taxes (i.e. forty (40) semi-annual installments) or after such time as the Redevelopment Promissory Note has been paid in full.

The City and Owner acknowledge and agree that the Owner shall receive the benefit of the Redevelopment Loan Proceeds, as limited to eligible expenses allowed by the Community Redevelopment Law, with the understanding that the Excess ad valorem Taxes and resulting Redevelopment Loan Proceeds may not be available for each and every installment or may not be sufficient to fully amortize the Redevelopment Promissory Note issued by the City.

- 2.6 grant the entire amount of the Redevelopment Loan proceeds to the Owner for costs of improving and redeveloping the Redevelopment Site, as authorized and allowed pursuant to the Community Development Law, including, but not limited to, those estimated eligible costs set forth on Exhibit "E", attached hereto. Expenses identified on Exhibit "E" are a reasonably accurate estimate of the eligible expenses for the Redevelopment Project.
- 2.7 execute such documents as may be reasonably necessary to effectuate City's obligations under this Agreement.

SECTION 3. OBLIGATIONS OF THE OWNER

The Owner shall:

- 3.1 complete the Redevelopment Project on or before July 31, 2024. In the event the Redevelopment Project cannot be completed on or before July 31, 2024, the Owner may submit a request, in writing, for an extension of the completion date. The request must be submitted no less than three months prior to the completion date set forth herein. The request may be acknowledged and approved by the Planning Director.
- 3.2 cause all real estate taxes and assessments levied on the Redevelopment Site and Redevelopment Project to be paid prior to the time such become delinquent.
- 3.3 loan redevelopment funds to the City in the principal amount of \$900,000.00, plus capitalized interest, as set forth in Sections 2.1 and 2.2, which, when combined with other private funds available, will be sufficient to construct the Redevelopment Project.

- 3.4 execute and deliver the Redevelopment Promissory Note with the terms set forth below, at closing, which shall be as soon as reasonably possible after execution of this Agreement but not more than 60 days thereafter, unless otherwise agreed by the parties. At closing, the loan to be accomplished by this Section and the obligation of the City to use the Redevelopment Loan Proceeds for redevelopment purposes under Section 2.2 may be accomplished by offset so that the Owner retains the Redevelopment 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 Redevelopment Loan Proceeds.
- 3.4.1 Such Redevelopment Loan Proceeds shall be disbursed as provided in Section 2.
- 3.4.2 Such Redevelopment Promissory Note shall bear a 5.5% interest rate.
- 3.4.3 The principal and interest shall be repaid by the City from the special fund established pursuant to Section 2.3 to collect and hold Excess ad valorem Taxes, pursuant to the Redevelopment Project Plan and Section 18-2147 of the Community Development Law, as they become collected in such fund and available to the City for such use. To the extent such Excess ad Valorem Taxes are insufficient or unavailable to the City, the loan shall be forgiven and the obligations of the Owner shall remain unaffected.
- 3.5 provide the City with quarterly progress reports during the construction of the Redevelopment Project and at any time upon written request from the City, and allow the City reasonable access, upon written request to Owner, to any relevant financial records pertaining to the Redevelopment Project.
- 3.6 retain copies of all supporting documents (as defined under Section 18-2119(4) of the Community Development Law) that are received or generated by the Owner in relation to the Redevelopment Project or Redevelopment Plan, until the expiration of three years following the end of the last fiscal year in which Excess ad valorem Taxes are divided in relation to the Redevelopment Project and provide such copies to the City upon written request of the Director.
- 3.7 during the period that the Redevelopment Promissory Note is outstanding:
- 3.7.1 not protest the real estate improvement valuation on the Redevelopment Site or request a reduction in the real estate improvement valuation on the Redevelopment Site certified as of January 1, 2023 (Base Year) prior to and during construction; and not protest the real estate improvement valuation on the Redevelopment Site to request a reduction in the real estate improvement base valuation on the Redevelopment Site to any amount less than as certified as of January 1, 2023 (Base Year) **plus \$3,997,018.66 (excess valuation) after substantial completion or occupancy of the Redevelopment Project. This covenant is for the benefit of, and binding upon, both the City and the Owner and any successors and assigns, but all parties acknowledge that the excess valuation agreed to herein is not binding on the Douglas County**

Assessor and that any partial or full valuation designated by the Douglas County Assessor may not be an amount sufficient to produce Excess ad valorem Taxes necessary on an annual basis to amortize the Redevelopment Promissory Note;

- 3.7.2 not convey the Redevelopment Site or structures thereon to any entity which would be exempt from the payment of real estate taxes, not apply for exemption of real estate taxes from the county or the state, or cause the nonpayment of such real estate taxes; if the county and/or state award the exemption of real estate taxes, this Redevelopment Agreement and its associated Redevelopment Promissory Note will be rendered void and cancelled;
- 3.7.3 not apply to the Douglas County Assessor for the structures, or any portion thereof, to be taxed separately from the underlying real property encompassed within the Redevelopment Site;
- 3.7.4 maintain insurance for a minimum of ninety percent (90%) of the full value of the structures on the Redevelopment Site;
- 3.7.5 in the event of casualty, apply such insurance proceeds to the reconstruction of the Redevelopment Project, to the extent permitted by Owner's mortgage lender, and
- 3.7.6 cause all real estate taxes and assessments levied on the Redevelopment Site to be paid *prior to* the time such become delinquent. The Owner acknowledges and agrees that any ad valorem taxes that become delinquent may be forfeited and any portion of the Excess ad valorem Taxes levied in the twentieth year under this Agreement that become delinquent shall be forfeited and returned to the appropriate public bodies or taxing jurisdictions.
- 3.7.7 acquiesce to any and all requests deemed necessary by the City related to compliance with the Community Development Law.
- 3.8 provide the City of Omaha Finance Department with an executed copy of the Redevelopment Promissory Note prior to disbursement of any proceeds for repayment of such Note pursuant to Section 2.5, so that such payment can be noted on the Note and the Note returned to Owner.
- 3.9 the Owner shall provide the City with a penal bond as required by Section 18-2151 of the Community Development Law.
- 3.10 install and construct all of the public infrastructure improvements set forth in the Redevelopment Project Plan approved by the City Council of the City of Omaha on October 4, 2022 by Resolution No. 2022-0882, in coordination with the Owner's development team, the City of Omaha Planning Department – Urban Design, and the City of Omaha Public Works Department as referenced in the Redevelopment Plan, and as subsequently modified to comply with City of Omaha requirements.

- 3.11 inform the City, in writing, of any conveyance of the entire Redevelopment Project or Redevelopment Site, which shall include name, and address of the purchaser and contact information for the purchaser's authorized representative.
- 3.12 If 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 Redevelopment Promissory Note, after reasonable notice and opportunity to cure. Each of the foregoing covenants shall be referenced in a Notice of Redevelopment 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. A copy of the Notice of Redevelopment Agreement shall be delivered to the City within one week of recording. The Owner shall include the same covenants and restrictions agreed to above in any conveyance of the Redevelopment Site, 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 Redevelopment Site.

SECTION 4. ADDITIONAL OBLIGATIONS OF THE CITY AND OWNER AND GOVERNING 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 and the Redevelopment Plan. The parties hereto recognize that any such minor amendments to this Agreement negotiated and executed by the parties' respective representatives or such addendums as provided for herein, other than those defined in §18-2117 of the Community Development Law, shall be considered and treated as administrative in nature and not as a legislative amendment to this Agreement or the Redevelopment Plan. 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 major or material 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 approve, in writing, a collateral assignment of this Agreement and the Redevelopment Promissory Note to the Owner's lender, or 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 Binding Effect. 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.
- 4.12 Force Majeure. As related only to the project completion date in Section 3.1 of this Agreement, neither the City nor Owner shall be liable for any failure or delay in performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including,

without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; acts of terrorism; sabotage; strikes; disease; pandemics; quarantines; epidemics; acts of government; a state of emergency; riots; power failures; computer failure and any such circumstances beyond its reasonable control as may cause interruption, loss or malfunction of utility, transportation, computer (hardware or software) or telephone communication service; accidents; labor disputes; acts of civil or military authority; governmental actions; or inability to obtain labor, material, equipment or transportation; provided, however, that in the event of a failure or delay, the affected party shall provide the other party notice of such delay as soon as reasonably practicable following its discovery, and each party shall use its best efforts to mitigate the effects of any such failure or delay.

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) <u>City of Omaha:</u>
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 |
| (2) <u>Owner:</u>
Kennedy East LIHTC, LLC
Attn: Todd Lieberman
1603 Orrington Avenue, Suite 450
Evanston, IL 60201 | Copy to:
Bennett P. Applegate
Applegate & Thorne-Thomsen, P.C.
425 S. Financial Place, Suite 1900
Chicago, IL 60605 |

Either party may designate additional representatives or substitute representatives by giving written notice thereof to the designated representative of the other party.

Executed this ____ day of _____, 20__.

ATTEST:

CITY OF OMAHA:

CITY CLERK OF THE CITY OF OMAHA DATE

MAYOR OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:




ASSISTANT CITY ATTORNEY 10/14/2022
DATE

Executed this 13th day of October, 2022

Kennedy East LIHTC, LLC,
a Nebraska limited liability company

By: Kennedy East LIHTC Manager, LLC,
a Nebraska limited liability company,
Managing Member

By: 
Name: Richard J. Sciortino
Title: Authorized Signatory

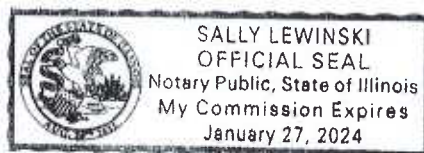
STATE OF ILLINOIS)

) SS

COUNTY OF COOK)

I, Sally Lewinski, a Notary Public in and for the County and State aforesaid, do hereby certify that Richard J. Sciortino, as Authorized Signatory of Kennedy East LIHTC Manager, LLC, a Nebraska limited liability company, which is the managing member of Kennedy East LIHTC, LLC, a Nebraska limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Authorized Signatory, appeared before me in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of such corporation on behalf of such limited liability companies, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of October, 2022

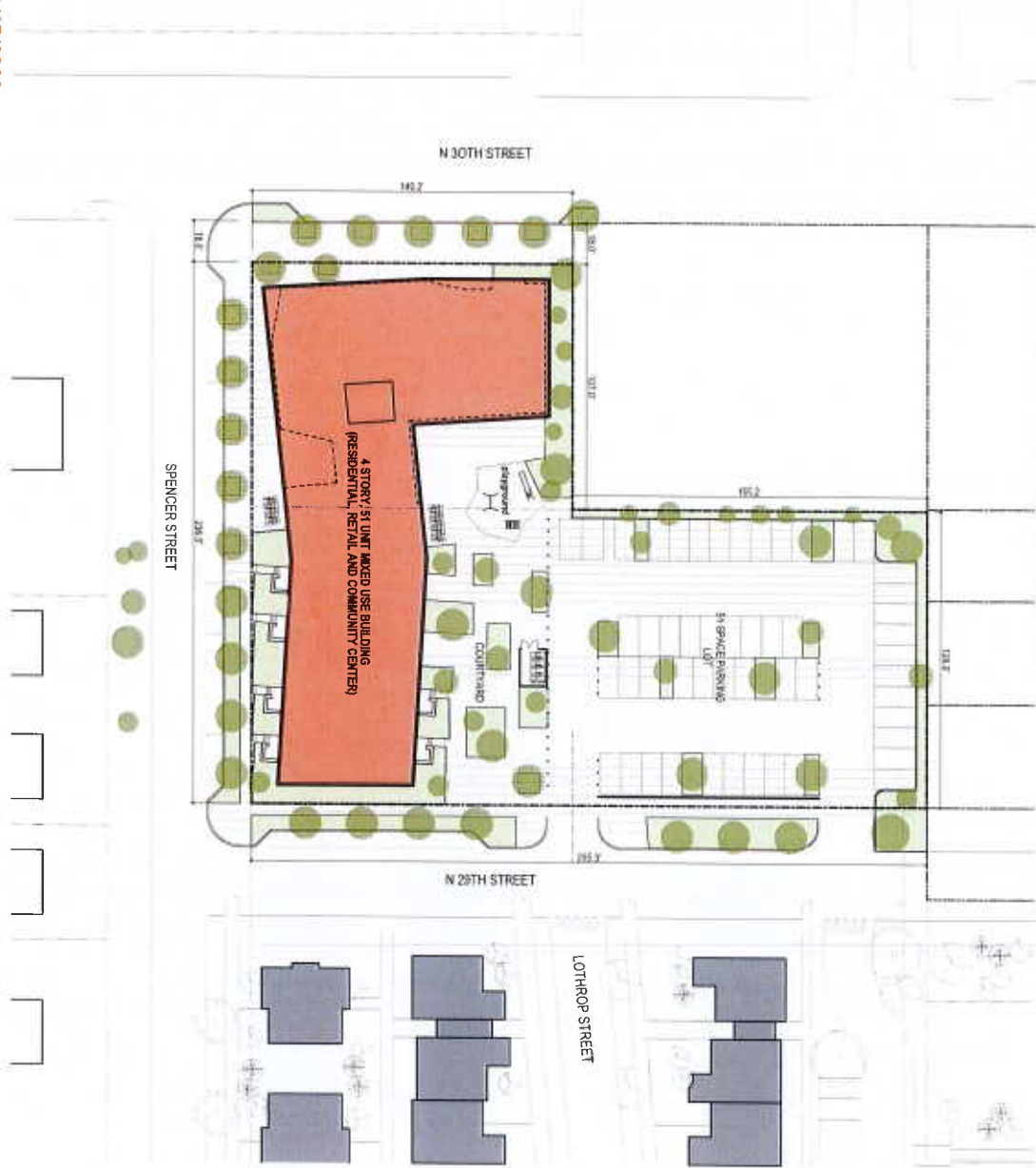


Sally Lewinski
Notary Public

EXHIBIT "A"

Project Site Plan – see following page(s)

SITE PLAN & PROJECT INFORMATION



ZONING INFORMATION

Existing Zoning:	CC, R7
Proposed Zoning:	CC with ACI-1 and PUR
Proposed Uses:	Residential, Retail, Office, Community Recreation
Site Area:	1bd min. 53,000sf
F.A.R.:	1.27 shown
Site Area / Unit:	869sf shown
Setbacks:	5' on 30th St. shown 4' on Spencer St. shown 10' on 29th St. shown 10' on north side yard shown
Parking:	1 space per res. unit No off-street parking for retail and community center 51 total off-street spaces

BUILDING INFORMATION

Building Height:	4 Stories
Building Area:	52' (to main roof coping), 55' (to penthouse coping)
Unit Mix:	Residential: 60,950sf Comm, Ctr.: 4,125sf Retail: 1,925sf Total: 67,000sf shown
Construction Type:	V-4A
Sprinklered:	Yes (NFPA 13R)
Storm Shelter:	690sf min

EXHIBIT "B"

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

\$900,000.00

_____, 20____

FOR VALUE RECEIVED, the undersigned, City of Omaha (hereinafter known as "Borrower"), promises to pay Kennedy East LIHTC, LLC, 1603 Orrington Avenue, Suite 450, Evanston, IL 60201, Attention: Todd Lieberman ("Holder"), and/or its assigns, the principal sum of Nine Hundred Thousand and No/100 Dollars (\$900,000.00), together with interest thereon at the rate of 5.5% per annum beginning two years from January 1st of the year ad valorem real estate taxes levied upon the Redevelopment Site are divided in accordance with Section 1.5 of the Redevelopment Agreement until paid in full. The principal balance and interest thereon shall be due and payable to the Holder of this Redevelopment Promissory Note as and at such time as any excess ad valorem taxes generated by the Redevelopment Project as set forth in that certain Redevelopment Agreement dated the _____ day of _____, 20____, by and between the Borrower and the Holder (the "Redevelopment Agreement") are collected by the Borrower and available for the retirement of this debt.

In the event of default under this Redevelopment Promissory Note, all sums secured by this Redevelopment Promissory Note or any other agreement securing this Redevelopment Promissory Note shall bear interest at a rate equal to five percent (5%) above the prime rate as published by the Wall Street 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 special fund established under Section 18-2147 of the Nebraska Revised Statutes and pursuant to the Redevelopment Agreement are insufficient to pay in full all amounts due and owing after all excess ad valorem taxes generated by the Redevelopment Project, as set forth in the Redevelopment 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.

In the event this Redevelopment 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 Redevelopment Promissory Note are hereby waived.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Redevelopment 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 Redevelopment 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 Redevelopment 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:

APPROVED AS TO FORM:

City Clerk of the City of Omaha Date

Assistant City Attorney Date

EXHIBIT "B-1"

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

\$1,060,000.00

_____, 20____

FOR VALUE RECEIVED, the undersigned, City of Omaha (hereinafter known as "Borrower"), promises to pay Kennedy East Market, LLC, 1603 Orrington Avenue, Suite 450, Evanston, IL 60201, Attention: Todd Lieberman ("Holder"), and/or its assigns, the principal sum of One Million Sixty Thousand and No/100 Dollars (\$1,060,000.00), together with interest thereon at the rate of 5.5% per annum beginning two years from January 1st of the year ad valorem real estate taxes levied upon the Redevelopment Site are divided in accordance with Section 1.5 of the Redevelopment Agreement until paid in full. The principal balance and interest thereon shall be due and payable to the Holder of this Redevelopment Promissory Note as and at such time as any excess ad valorem taxes generated by the Redevelopment Project as set forth in that certain Redevelopment Agreement dated the _____ day of _____, 20____, by and between the Borrower and the Holder (the "Redevelopment Agreement") are collected by the Borrower and available for the retirement of this debt.

In the event of default under this Redevelopment Promissory Note, all sums secured by this Redevelopment Promissory Note or any other agreement securing this Redevelopment Promissory Note shall bear interest at a rate equal to five percent (5%) above the prime rate as published by the Wall Street 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 special fund established under Section 18-2147 of the Nebraska Revised Statutes and pursuant to the Redevelopment Agreement are insufficient to pay in full all amounts due and owing after all excess ad valorem taxes generated by the Redevelopment Project, as set forth in the Redevelopment 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.

In the event this Redevelopment 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 Redevelopment Promissory Note are hereby waived.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Redevelopment 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 Redevelopment 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 Redevelopment 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:

APPROVED AS TO FORM:

City Clerk of the City of Omaha Date

Assistant City Attorney Date

EXHIBIT "C"

Legal Description of Redevelopment Site – see following page(s)

SUBDIVISION - KENNEDY SQUARE EAST

LEGAL DESCRIPTION

KENNEDY SQUARE EAST, LOTS 1 THROUGH 5 AND OUT LOT "A" BEING A REPLAT OF, THE SOUTH 136.35 FEET OF THE WEST 124 FEET OF LOT 19, GISES ADDITION, AN ADDITION TO THE CITY OF OMAHA, AND BLOCKS 1 AND 2, AND THE WEST 297.6 FEET OF BLOCK 3 AND ALL OF BLOCK 5 LYING WEST OF THE WEST RIGHT-OF-WAY LINE OF NORTH 28TH STREET, AND ALL OF VACATED NORTH 29TH STREET ADJOINING SAID BLOCKS 1 AND 2, AND ALL OF THAT PART OF VACATED SPENCER HOMES COURT ADJOINING SAID BLOCKS 2 AND 3, ALL IN SPENCER HOMES, A SUBDIVISION, ALL AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGIN AT THE NORTHWEST CORNER OF SAID BLOCK 1, SPENCER HOMES; THENCE NORTH $86^{\circ}53'27''$ EAST ON THE NORTH LINE OF SAID BLOCK 1, A DISTANCE OF 438.50 FEET TO THE WEST RIGHT-OF-WAY LINE OF NORTH 28TH AVENUE; THENCE SOUTH $02^{\circ}33'56''$ EAST ON SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 298.19 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SPENCER STREET; THENCE SOUTH $86^{\circ}50'56''$ WEST ON SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 562.86 FEET TO THE EAST RIGHT-OF-WAY LINE OF NORTH 30TH STREET; THENCE NORTH $02^{\circ}24'34''$ WEST ON SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 133.80 FEET; THENCE NORTH $86^{\circ}43'29''$ EAST, A DISTANCE OF 123.72 FEET TO A POINT ON THE WEST LINE OF SAID BLOCK 1; THENCE NORTH $02^{\circ}28'13''$ WEST ON SAID WEST LINE OF BLOCK 1, A DISTANCE OF 164.45 FEET TO THE POINT OF BEGINNING.

AND

BEGIN AT THE NORTHWEST CORNER OF SAID BLOCK 3; THENCE NORTH $86^{\circ}53'27''$ EAST ON THE NORTH LINE OF SAID BLOCK 3, A DISTANCE OF 297.60 FEET; THENCE SOUTH $02^{\circ}33'54''$ EAST, A DISTANCE OF 297.94 FEET TO THE SOUTH LINE OF SAID BLOCK 3; THENCE SOUTH $86^{\circ}50'56''$ WEST ON SAID SOUTH LINE OF LOT 3, A DISTANCE OF 297.60 FEET TO THE WEST LINE OF SAID BLOCK 3; THENCE NORTH $02^{\circ}33'56''$ WEST ON SAID WEST LINE OF BLOCK 3, A DISTANCE OF 298.15 FEET TO THE POINT OF BEGINNING.

AND

BEGIN AT THE SOUTHWEST CORNER OF SAID BLOCK 5; THENCE NORTH $02^{\circ}28'44''$ WEST ON THE WEST LINE OF SAID BLOCK 5, A DISTANCE OF 140.50 FEET TO THE NORTH LINE OF SAID BLOCK 5; THENCE NORTH $86^{\circ}50'56''$ EAST ON THE NORTH LINE OF SAID BLOCK 5, A DISTANCE OF 310.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF NORTH 28TH STREET; THENCE SOUTH $02^{\circ}34'12''$ EAST ON SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 140.50 FEET TO THE SOUTH LINE OF SAID BLOCK 5; THENCE SOUTH $86^{\circ}50'57''$ WEST ON SAID SOUTH LINE OF BLOCK 5, A DISTANCE OF 310.22 FEET TO THE POINT OF BEGINNING.

EXHIBIT "D"

EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

During the performance of this Agreement, "Provider" agrees as follows:

- (1) Provider shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, sexual orientation, gender identity, disability or national origin. Provider shall ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, sexual orientation, gender identity, or national origin. As used herein, the word "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or by other means; compensated; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated. Provider agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of this nondiscrimination clause.
- (2) Provider shall, in all solicitations or advertisements for employees placed by or on behalf of Provider, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, sexual orientation, gender identity, or national origin, age, disability.
- (3) Provider shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or worker's representative of Provider's commitments under the Equal Employment Opportunity Clause of the City and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) Provider shall furnish to the City Contract Compliance Officer all Federal forms containing the information and reports required by the Federal government for Federal contracts under Federal rules and regulations, and including the information required by Sections 10-192 to 10-194, inclusive, and shall permit reasonable access to his records. Records accessible to the City Contract Compliance Officer shall be those which are related to Paragraphs (1) through (7) of this Exhibit and only after reasonable advance written notice is given to Provider. The purpose for this provision is to provide for investigation to ascertain compliance with the program provided for herein.
- (5) Provider shall take such actions as the City may reasonably direct as a means of enforcing the provisions of Paragraphs (1) through (7) herein, including penalties and sanctions for noncompliance; however, in the event Provider becomes involved in or is threatened with litigation as the result of such directions by the City, the City will enter into such litigation as necessary to protect the interests of the City and to effectuate the provisions of this division; and in the case of contracts receiving Federal assistance, Provider or the City may request the United States to enter into such litigation to protect the interests of the United States.

(6) Provider shall file, if any, compliance reports with Provider in the same form and to the same extent as required by the Federal government for Federal contracts under Federal rules and regulations. Such compliance reports shall be filed with the City Contract Compliance Officer. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of Provider.

(7) The Provider shall include the provisions of Paragraphs (1) through (7) of this Section, "Equal Employment Opportunity Clause", and Section 10-193 in every subcontract or purchase order so that such provisions will be binding upon each sub-Provider or vendor.

EXHIBIT "E"

TIF Eligible Expenses – Kennedy Square East

TIF Eligible Expenses	Amount
Property Acquisition	\$ 1
Public Improvements in the ROW	\$ 950,551
Landscaping, in the ROW	\$ 26,000
Site Preparation; Grading	\$ 260,000
Site Preparation; Excavation	\$ 96,153
Erosion Control and SWPPP Maintenance	\$ 34,548
Architecture and Engineering	\$ 1,465,000
Surveying	\$ 25,000
Mkt study, Appraisal, Env., Geotech (\$7.5K, \$5K, \$15K, & \$50K, respectively)	\$ 77,500
<u>Subtotal</u>	<u>\$ 2,934,753</u>
TIF Fees	\$ 18,200
Total TIF Eligible Expenses	\$ 2,952,953

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

\$900,000.00

_____, 20____

FOR VALUE RECEIVED, the undersigned, City of Omaha (hereinafter known as "Borrower"), promises to pay Kennedy East LIHTC, LLC, 1603 Orrington Avenue, Suite 450, Evanston, IL 60201, Attention: Todd Lieberman ("Holder"), and/or its assigns, the principal sum of Nine Hundred Thousand and No/100 Dollars (\$900,000.00), together with interest thereon at the rate of 5.5% per annum beginning two years from January 1st of the year ad valorem real estate taxes levied upon the Redevelopment Site are divided in accordance with Section 1.5 of the Redevelopment Agreement until paid in full. The principal balance and interest thereon shall be due and payable to the Holder of this Redevelopment Promissory Note as and at such time as any excess ad valorem taxes generated by the Redevelopment Project as set forth in that certain Redevelopment Agreement dated the _____ day of _____, 20____, by and between the Borrower and the Holder (the "Redevelopment Agreement") are collected by the Borrower and available for the retirement of this debt.

In the event of default under this Redevelopment Promissory Note, all sums secured by this Redevelopment Promissory Note or any other agreement securing this Redevelopment Promissory Note shall bear interest at a rate equal to five percent (5%) above the prime rate as published by the Wall Street 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 special fund established under Section 18-2147 of the Nebraska Revised Statutes and pursuant to the Redevelopment Agreement are insufficient to pay in full all amounts due and owing after all excess ad valorem taxes generated by the Redevelopment Project, as set forth in the Redevelopment 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.

In the event this Redevelopment 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 Redevelopment Promissory Note are hereby waived.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Redevelopment 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 Redevelopment 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 Redevelopment 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:

APPROVED AS TO FORM:

City Clerk of the City of Omaha Date

 10/14/2012
Assistant City Attorney Date

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

\$1,060,000.00

_____, 20____

FOR VALUE RECEIVED, the undersigned, City of Omaha (hereinafter known as "Borrower"), promises to pay Kennedy East Market, LLC, 1603 Orrington Avenue, Suite 450, Evanston, IL 60201, Attention: Todd Lieberman ("Holder"), and/or its assigns, the principal sum of One Million Sixty Thousand and No/100 Dollars (\$1,060,000.00), together with interest thereon at the rate of 5.5% per annum beginning two years from January 1st of the year ad valorem real estate taxes levied upon the Redevelopment Site are divided in accordance with Section 1.5 of the Redevelopment Agreement until paid in full. The principal balance and interest thereon shall be due and payable to the Holder of this Redevelopment Promissory Note as and at such time as any excess ad valorem taxes generated by the Redevelopment Project as set forth in that certain Redevelopment Agreement dated the _____ day of _____, 20____, by and between the Borrower and the Holder (the "Redevelopment Agreement") are collected by the Borrower and available for the retirement of this debt.

In the event of default under this Redevelopment Promissory Note, all sums secured by this Redevelopment Promissory Note or any other agreement securing this Redevelopment Promissory Note shall bear interest at a rate equal to five percent (5%) above the prime rate as published by the Wall Street 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 special fund established under Section 18-2147 of the Nebraska Revised Statutes and pursuant to the Redevelopment Agreement are insufficient to pay in full all amounts due and owing after all excess ad valorem taxes generated by the Redevelopment Project, as set forth in the Redevelopment 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.

In the event this Redevelopment 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 Redevelopment Promissory Note are hereby waived.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Redevelopment 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 Redevelopment 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 Redevelopment 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:

APPROVED AS TO FORM:

City Clerk of the City of Omaha Date

 10/14/20
Assistant City Attorney Date