**Bill No. 15-66** **Introduced: June 1, 2015**

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**THE CITY OF LINCOLN, NEBRASKA**

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**ORDINANCE NO. _____**

**PASSED: _____, 2015**
**APPROVED: _____, 2015**

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**AN ORDINANCE AMENDING ORDINANCE NO. 19978**

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**THE CITY OF LINCOLN, NEBRASKA**

**ORDINANCE NO. _____**

**AN ORDINANCE AMENDING ORDINANCE NO. 19978 TO (A) ADD ANOTHER CATEGORY OF BONDS WHICH MAY BE ISSUED AND (B) MODIFY PROVISIONS RELATED TO REPAYMENT PRIORITY; TO REPEAL CERTAIN PROVISIONS OF ORDINANCE NO. 19978 IN CONNECTION THEREWITH; TAKING OTHER ACTION IN CONNECTION WITH THE FOREGOING; AND RELATED MATTERS.**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LINCOLN, NEBRASKA:**

**Section 1.** The Council (the **"Council"**) of The City of Lincoln, Nebraska (the **"City"**) hereby finds and determines as follows:

(a) Pursuant to the provisions of Ordinance No. 19978 (the "**Ordinance No. 19978**") passed by the Council on January 6, 2014, and approved by the Mayor on January 13, 2014, the City authorized the issuance of its not to exceed $8,116,515 principal amount Block 68 Redevelopment Project Tax Allocation Bonds (the "**Bonds**") to finance the Project (as defined in Ordinance No. 19978).

(b) Capitalized terms used and not otherwise defined in this Ordinance have the meanings assigned to those terms in the Ordinance No. 19978.

(c) Ordinance No. 19978 authorized the issuance of the Bonds as Lender Bonds or Redeveloper Bonds and provided for payment provisions and priorities for each type of bond issued.

(d) It is necessary, desirable, advisable and in the best interest of the City that certain amendments be made to Ordinance No. 19978 to (1) add another category of Bonds which may be issued and (2) modify provisions related to payment priority and order for the Bonds.

**Section 2.** Section 1.1 of Ordinance No. 19978 is hereby amended to read as follows:

**Section 1.1. Findings and Determinations.** The Council (the **"Council"**) of The City of Lincoln, Nebraska (the **"City"**) hereby finds and determines as follows:

(a) The City, pursuant to Resolution (hereinafter defined), approved the Lincoln Center Redevelopment Plan (the **"Redevelopment Plan"**) under and pursuant to which the City shall undertake from time to time to redevelop and rehabilitate the Redevelopment Area (hereinafter defined).

(b) Pursuant to the Redevelopment Plan, the City has previously obligated itself and/or will hereafter obligate itself to acquire, purchase, construct, reconstruct, improve, extend, rehabilitate, install, equip, furnish and complete, at the cost and expense of the City, certain improvements, including, without limitation, the Redeveloper Public Improvements and the City Public Improvements (as defined in the Redevelopment Agreement hereinafter identified) in the Redevelopment Area, some or all of which may be accomplished through the City's public improvements executive order process (collectively, the **"City Improvements"**), in connection with the acquisition of certain real property, site preparation, the design and construction of a mixed-use student housing complex with 600 beds and approximately 45,180 square feet

of retail space and related surface and underground parking (the **"Project"**), as more fully described in the Redevelopment Agreement (hereinafter defined).

(c) The City is authorized by the Redevelopment Law (hereinafter defined) and its Home Rule Charter to issue tax allocation bonds for the purpose of paying the costs and expenses of the City Improvements, the principal and interest of which is payable from certain tax revenues as set forth in the Redevelopment Law.

(d) In order to provide funds to pay the costs of the City Improvements, it is necessary, desirable, advisable, and in the best interest of the City for the City to issue one or more series of taxable or tax-exempt tax allocation bonds in an aggregate principal amount not to exceed $8,116,515 (the **"Bonds"**).

(e) All conditions, acts and things required to exist or to be done precedent to the issuance of the Bonds do exist and have been done as required by law.

**Section 3.** Section 2.1 of Ordinance No. 19978 is hereby amended to read as follows:

**Section 2.1. Definitions of Special Terms.** Unless the context clearly indicates some other meaning or may otherwise require, and in addition to those terms defined elsewhere herein, the terms defined in this **Section 2.1** shall, for all purposes of this Ordinance, any ordinance or other instrument amendatory hereof or supplemental hereto, and any certificate, opinion, instrument or document herein or therein mentioned, have the meanings specified herein, with the following definitions to be equally applicable to both the singular and plural forms of any terms defined herein:

**"Assessor"** means the Assessor of Lancaster County, Nebraska.

**"Bond Counsel"** means Gilmore & Bell, P.C., or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the City.

**"Bonds"** means the Block 68 Redevelopment Project Tax Allocation Bonds of the City, issued in one or more series, which may include Taxable Bonds and Tax-Exempt Bonds, in an aggregate principal amount not to exceed $8,116,515, issued pursuant to this Ordinance, and shall include any bonds, including refunding bonds, notes, interim certificates, debentures, or other obligations issued pursuant to the Redevelopment Law. At the option of the Owner of a Bond, the titular designation of such Bond may be revised to state bond, note, interim certificate, debenture, obligation, or such other designation as is appropriate.

**"City Improvements"** means the improvements to be purchased, constructed, reconstructed, acquired, improved, extended, rehabilitated, installed, equipped, furnished and completed in the Project Area in accordance with the Redevelopment Plan and identified and defined in the Redevelopment Agreement as the Redeveloper Public Improvements and the City Public Improvements~~ (as defined in the Redevelopment Agreement)~~.

**"Clerk"** means the Clerk of the City.

**"Code"** means the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder.

**"Cumulative Outstanding Principal Amount"** means the aggregate principal amount of each series of Bonds issued and Outstanding from time to time in accordance with the provisions of this Ordinance, as reflected in the records maintained by the Registrar as provided in this Ordinance.

**"Date of Original Issue"** means the date each respective series of Bonds is initially issued and delivered, which, for each series of Bonds shall be the date of the first deposit of proceeds of that series in the Project Fund as further described in **Section 3.2**.

**"Debt Service"** means, as of any particular date of computation, and with respect to any period, the amount to be paid or set aside as of such date or such period for the payment of the principal of or interest on the Bonds.

**"Escrow Obligations"** means (a) Government Obligations, (b) certificates of deposit issued by a bank or trust company which are (1) fully insured by the Federal Deposit Insurance Corporation or similar corporation chartered by the United States or (2) secured by a pledge of any Government Obligations having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured, which security is held in a custody account by a custodian satisfactory to the Registrar or the Registrar, as the case may be, or (c)(1) evidences of a direct ownership in future interest or principal on Government Obligations, which Government Obligations are held in a custody account by a custodian satisfactory to the Registrar pursuant to the terms of a custody agreement in form and substance acceptable to the Registrar and (2) obligations issued by any state of the United States or any political subdivision, public instrumentality or public authority of any state, which obligations are fully secured by and payable solely from Government Obligations, which Government Obligations are held pursuant to an agreement in form and substance acceptable to the Registrar and, in any such case, maturing as to principal and interest in such amounts and at such times as will insure the availability of sufficient money to make the payment secured thereby.

**"Finance Director"** means the Finance Director or Acting Finance Director, as the case may be, of the City.

**"Fiscal Year"** means the twelve-month period established by the City or provided by law from time to time as its fiscal year.

**"Government Obligations"** means direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America.

**"Interest Payment Date"** means June 1 and December 1 of each year any Bond is outstanding, commencing on the first Interest Payment Date following the Date of Original Issue.

**"Investor Bonds"** means Bonds designated as Investor Bonds by the Finance Director or Mayor and noted as such on the records of the Registrar.

**"Lender Bonds"** means Bonds ~~that are owned by a party (which may include the City) other than the Redeveloper according to~~ designated as Lender Bonds by the Finance Director or Mayor and noted as such on the records of the Registrar.

**"Ordinance"** means this ordinance as from time to time amended or supplemented.

**"Outstanding"** means when used with reference to Bonds, as of a particular date, all Bonds theretofore authenticated and delivered under this Ordinance except:

(a) Bonds theretofore canceled by the Registrar or delivered to the Registrar for cancellation;

(b) Bonds which are deemed to have been paid in accordance with **Section 10.1** hereof;

(c) Bonds alleged to have been mutilated, destroyed, lost or stolen which have been paid as provided in **Section 3.9** hereof; and

(d) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Ordinance.

**"Owner"** means the person(s) identified as the owner(s) of the Bonds from time to time, as indicated on the books of registry maintained by the Registrar and may include the City.

**"Project"** means the Redeveloper Improvements and the City Public Improvements, each as defined in the Redevelopment Agreement.

**"Project Area"** means the area identified and referred to as the Project Site in the Redevelopment Agreement.

**"Project Revenue"** means all net rents, proceeds, revenue and other income derived by the City by virtue of any lease, sale, conveyance or other disposition of any part of the Project, plus all sums received by the City as a result of damage to or destruction or condemnation of the Project, but shall not mean any part of the Tax Revenue.

**"Record Date"** means, for each Interest Payment Date, the 15th day of the month immediately preceding such Interest Payment Date.

**"Redeveloper"** means the Redeveloper as defined in the Redevelopment Agreement responsible for purchasing, constructing, reconstructing, acquiring, improving, extending, rehabilitating, installing, equipping, furnishing and completing the Project on behalf of the City.

**"Redeveloper Bonds"** means Bonds ~~that are owned by the~~ designated as Redeveloper ~~according to~~ Bonds by the Finance Director or Mayor and noted as such on the records of the Registrar.

**"Redevelopment Agreement"** means the City of Lincoln Redevelopment Agreement, dated the date of its execution, between the City and CA/Argent-Block 68, LLC, a Delaware limited liability company, relating to the Project.

**"Redevelopment Area"** means the community redevelopment area described, defined or otherwise identified or referred to in the Redevelopment Plan.

**"Redevelopment Law"** means Article VIII, Section 12 of the Constitution of the State and Chapter 18, Article 21, Reissue Revised Statutes of Nebraska, as amended.

**"Redevelopment Plan"** means the "Lincoln Center Redevelopment Plan" passed, adopted and approved by the City pursuant to the Resolution, and shall include any amendment of said Redevelopment Plan heretofore or hereafter made by the City pursuant to law.

**"Refunding Bonds"** means the bonds authorized to be issued pursuant to **Article V**.

**"Registrar"** means the Treasurer of The City of Lincoln, Nebraska, in its capacity as registrar and paying agent for the Bond.

**"Resolution"** means, collectively, Resolution Nos. A-70273 , A-71073, A-71490, A-71701, A-72046, A-72329, A-72774, A-73000, A-73698, A-74165, A-74186, A-74291, A-74603, A-74583, A-75257, A-75784, A-75974, A-76438, A-77828, A-78138, A-78688, A-80587, A-81681, A-83005, A-83839, A-84238, A-84478, A-84603, A-84867, A-84924, A-84867, A-84979, A-85062, A-85323, A-85518, A-85547, A-85574, A-85641, A-85689, A-86139, A-86302, A-86823, and A-86999, together with any other resolution providing for an amendment to the Lincoln Center Redevelopment Plan.

**"Revenue"** means the Project Revenue and the Tax Revenue.

**"Special Fund"** means the fund by that name created in **Section 7.1**.

**"State"** means the State of Nebraska.

**"Tax Certificate"** means the Federal Tax Certificate executed and delivered by the City on the Date of Original Issue of any Bond issued as a Tax-Exempt Bond, as the same may be amended or supplemented in accordance with its provisions.

**"Tax Revenue"** means, with respect to the Project Area, (a) those tax revenues referred to (1) in the last sentence of the first paragraph of Article VIII, Section 12 of the Constitution of the State and (2) in Section 18-2147, Reissue Revised Statutes of Nebraska, as amended, and (b) all payments made in lieu thereof.

**"Taxable Bond"** means any of a series of the Block 68 Redevelopment Project Taxable Tax Allocation Bonds of the City, the interest on which is determined by the City to be includable in gross income for federal income tax purposes.

**"Tax-Exempt Bond"** means any of a series of the Block 68 Redevelopment Project Tax Allocation Bonds of the City, the interest on which is determined by the City to be excludable from gross income for federal income tax purposes.

**"Treasurer"** means the Treasurer of Lancaster County, Nebraska.

**Section 4.** Section 3.1 of Ordinance No. 19978 is hereby amended to read as follows:

**Section 3.1. Authorization of Bonds.** Pursuant to and in full compliance with the Redevelopment Law, the Home Rule Charter of the City, and this Ordinance, and for the purpose of providing funds to pay (a) the cost of acquiring, purchasing, constructing, reconstructing, improving, extending, rehabilitating, installing, equipping, furnishing, and completing the City Improvements, and (b) the costs of issuing the Bonds, the City shall issue Bonds from time to time in one or more series, which may be Taxable Bonds or Tax-Exempt Bonds, in the aggregate principal amount not to exceed $8,116,515. A series of Bonds shall be designated as "The City of Lincoln, Nebraska, Block 68 Redevelopment Project [Taxable/Tax-Exempt] Tax Allocation Bonds~~,~~;" shall have an appropriate series designation as determined by the Finance Director~~,~~; shall be dated the Date of Original Issue for such series~~,~~; shall mature, subject to right of prior redemption, not later than the December 1 following the fifteenth anniversary of the effective date (as defined in the Redevelopment Agreement) with respect to the improvements for which such series of Bonds was issued, as determined by the Finance Director~~, and~~; shall bear interest (computed on the basis of a 360-day year consisting of twelve, 30-day months) at a rate not to exceed seven percent (7.00%)~~.~~; and

shall be designated as an Investor Bond, a Lender Bond or a Redeveloper Bond as determined by the Finance Director. Each series of Bonds shall be issued as a single Bond as further described in **Section 3.2**. In connection with the issuance of a series of Investor Bonds or Lender Bonds, the Finance Director may establish an amortization schedule for the payment of principal of and interest on such Investor Bonds or Lender Bonds; provided, however, that any Bonds issued pursuant to this Ordinance shall only be due and payable to the extent moneys are available therefor in accordance with the terms of this Ordinance. The Finance Director or Mayor may change the designation of any Outstanding Bond as an Investor Bond, a Lender Bond or a Redeveloper Bond at any time, but only upon the written consent of the Owners of all Bonds then Outstanding. Not more than one Bond may be designated and issued as an Investor Bond without the written consent of the Owners of all Investor Bonds then Outstanding.

The Bonds, together with the interest thereon, are special, limited obligations of the City payable solely from the Revenue and the amounts on deposit in the funds and accounts established by this Ordinance. The Bonds shall not in any event be a debt of the City (except to the extent of the Revenue and other money pledged under this Ordinance), the State, nor any of its political subdivisions, and neither the City (except to the extent of the Revenue and other money pledged under this Ordinance), the State nor any of its political subdivisions is liable in respect thereof, nor in any event shall the principal of and interest on the Bonds be payable from any source other than the Revenue and other money pledged under this Ordinance. The Bonds do not constitute a debt within the meaning of any constitutional, statutory, or charter limitation upon the creation of general obligation indebtedness of the City and does not impose any general liability upon the City. Neither any official of the City nor any person executing the Bonds shall be liable personally on the Bonds by reason of its issuance. The validity of the Bonds is not and shall not be dependent upon the completion of the Project or upon the performance of any obligation relative to the Project.

The Revenue and the amounts on deposit in the funds and accounts established by this Ordinance are hereby pledged and assigned for the payment of the Bonds, and shall be used for no other purpose than to pay the principal of and interest on the Bonds, except as may be otherwise expressly authorized in this Ordinance. The Bonds shall not constitute a debt of the City within the meaning of any constitutional, statutory, or charter limitation upon the creation of general obligation indebtedness of the City, and the City shall not be liable for the payment thereof out of any money of the City other than the Tax Revenue and the other funds referred to herein.

Nothing in this Ordinance shall preclude the payment of the Bonds from (a) the proceeds of future bonds issued pursuant to law or (b) any other legally available funds. Nothing in this Ordinance shall prevent the City from making advances of its own funds howsoever derived to any of the uses and purposes mentioned in this Ordinance.

**Section 5.** Section 3.2 of Ordinance No. 19978 is hereby amended to read as follows:

**Section 3.2. Details of Bonds; Authority of Finance Director.**

(a) Each series of the Bonds shall be dated the Date of Original Issue for the respective series and shall be issued to the respective purchasers thereof, as Owners, in installments. Each series shall be issued as a single Bond.

(b) Proceeds of each series of Bonds may be advanced and disbursed in the manner set forth below:

(1) There shall be submitted to the Finance Director a disbursement request in a form acceptable to the Finance Director (the **"Disbursement Request"**), executed by the City's Director of Urban Development and an authorized representative of the Redeveloper, (A) certifying that a portion of the City Improvements has been substantially completed and (B) certifying the actual costs incurred by the Redeveloper in the completion of such portion of the City Improvements.

(2) The Finance Director shall determine whether the costs requested for reimbursement under the Disbursement Request are currently reimbursable under the Redevelopment Agreement and the Redevelopment Law, and if so whether such costs are properly paid or reimbursed from proceeds of a specific series of Bonds (taking into account particularly the provisions of **Section 8.7** hereof and the provisions of the Federal Tax Certificate). Upon determination thereof, the Finance Director shall evidence such allocation in writing and inform the Owners of each series of Bonds of any amounts allocated to each respective series of Bonds.

(3) Upon notification from the Finance Director as described in **Section 3.2(b)(2)**, deposits to the accounts in the Project Fund corresponding to the applicable series of Bonds may be made from time to time from funds received by the Finance Director from the Owners of the Bonds in the amounts necessary to pay amounts requested in properly completed, signed and approved written Disbursement Requests as described herein. Such amounts shall be proceeds of a series of the Bonds and the Finance Director shall inform the Registrar in writing of the date and amount of such deposits. The Registrar shall keep and maintain a record of the amounts deposited into the proper accounts of the Project Fund from each series of Bond proceeds pursuant to the terms of this Ordinance as "Principal Amount Advanced" and shall enter the aggregate principal amount then Outstanding as the "Cumulative Outstanding Principal Amount" on its records maintained for the Bonds. The aggregate amount deposited into the Project Fund from proceeds of all series of Bonds shall not exceed $8,116,515.

The City shall have no obligation to pay any Disbursement Request unless such request has been properly approved as described above, and proceeds of the applicable series of Bonds have been deposited by the respective Owners of the Bonds into the proper accounts of the Project Fund.

Notwithstanding anything in this Ordinance to the contrary, no proceeds of a Tax-Exempt series of Bonds shall be deposited in the Project Fund later than 3 years after the Date of Original Issue of such Tax-Exempt series of Bonds.

The records maintained by the Registrar as to principal amount advanced and principal amounts paid on the Bonds shall be the official records of the Cumulative Outstanding Principal Amount for all series of Bonds for all purposes.

(c) Each Bond shall be dated the Date of Original Issue, which shall be the initial date of a deposit of the proceeds of such Bond in the proper account of the Project Fund.

(d) Notwithstanding anything in this Ordinance to the contrary, on the Date of Original Issue of any series of Tax-Exempt Bonds, the amount entered by the Registrar as "Principal Amount Advanced" shall be not less than the lesser of $50,000 or 5% of the maximum possible principal amount of such series of Tax-Exempt Bonds. On the date of Original Issue of a Tax-Exempt series of Bonds, there shall be delivered to the Registrar the following:

(1) The executed Federal Tax Certificate, including all final and executed exhibits thereto;

(2) An opinion of Bond Counsel in a form and substance satisfactory to the Finance Director, dated as of the Date of Original Issuance of such series of Bonds, relating to the due authorization of such series of Bonds and the excludability of interest on such series of Bonds from gross income for federal income tax purposes;

(3) A signed investor's letter in a form acceptable to the Finance Director and Bond Counsel; and

(4) Such additional certificates and other documents as the Finance Director or Bond Counsel may require.

(e) As of the Date of Original Issue of a Taxable series of Bonds, there shall be delivered to the Registrar the following:

(1) An opinion of Bond Counsel in a form and substance satisfactory to the Finance Director, dated as of the Date of Original Issuance of such series of Bonds, relating to the due authorization of such series of Bonds;

(2) A signed investor's letter in a form acceptable to the Finance Director and Bond Counsel; and

(3) Such additional certificates and other documents as the Finance Director or Bond Counsel may require.

(f) Notwithstanding anything in this Ordinance to the contrary, no Disbursement Request shall be approved by the Finance Director that would result in the issuance of the principal amount of any Bonds the Debt Service on which, in the judgment of the Finance Director, when aggregated with the Debt Service on all Bonds then Outstanding, exceeds the Revenue available for the payment of Debt Service on all Bonds then Outstanding and the principal amount to be issued.

(g) Interest on the Cumulative Outstanding Principal Amount of the Bonds from the respective Date of Original Issue of each series or the most recent Interest Payment Date to which interest has been paid or duly provided for on each respective series, is payable on each Interest Payment Date until the principal of the Bonds has been paid, whether at maturity or upon earlier redemption; provided, however, if any interest on any Bond is in default, such Bond shall bear interest from the date to which interest has been paid.

(h) Both the principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. Payments of interest on the Bonds due prior to maturity or earlier redemption and payment of any principal upon redemption price to maturity shall be made by wire transfer pursuant to the instructions from the Owners reflected in the books and records of the Registrar on the Record Date, or by check mailed by the Registrar on each Interest Payment Date to the Owners, at the Owners' address as it appears on the books of registry maintained by the Registrar on the Record Date. The principal of the Bonds and the interest thereon due at maturity or upon earlier redemption shall be payable upon presentation and surrender of the Bonds to the Registrar.

(i) In the event that payments of interest due on any Bond on an Interest Payment Date are not timely made, such interest shall cease to be payable to the Owner thereof as of the Record Date for such Interest Payment Date and shall be payable to the Owner as of a special record date for payment of defaulted interest to be designated by the Registrar whenever money for the purpose of paying such defaulted interest becomes available.

(j) The Bonds shall be executed by the manual signatures of the Mayor and Finance Director of the City and the original, official seal of the City shall be impressed or printed thereon. In case any officer whose signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if s/he had remained in office until such delivery, and each Bond may be signed by such persons as at the actual time of the execution of such Bond shall be the proper officers to sign such Bond although at the date of such Bond such persons may not have been such officers.

(k) The Finance Director is hereby authorized to hereafter, from time to time, specify, set, designate, determine, establish and appoint, as the case may be, and in each case in accordance with and subject to the provisions of this Ordinance, (1) the Date of Original Issue, the principal amount of each Bond in accordance with **Section 3.2(a)** and the series designation thereof, (2) the maturity date of each series of Bonds, which shall be not later than December 1 of the year that is fifteen (15) years after the effective date as defined in the Redevelopment Agreement, applicable to such series of Bonds, (3) whether a series of Bonds shall be issued as Taxable Bonds or Tax-Exempt Bonds and the rate of interest per annum to be carried by Bonds of such series in accordance with the first paragraph of **Section 3.1**, ~~and~~ (4) whether the Bonds shall be issued or designated as Investor Bonds, Lender Bonds or Redeveloper Bonds, and (5) any other term of the Bonds not otherwise specifically fixed by the provisions of this Ordinance.

(l) Any Bond issued upon transfer or exchange of any other Bond shall be dated as of the Interest Payment Date next preceding the date of registration thereof in the offices of the Registrar, unless such date of registration shall be an Interest Payment Date, in which case it shall be dated as of such date of registration; provided, however, that if, as shown by the records of the Registrar, interest on such Bond shall be in default, the Bond in lieu of the Bond surrendered for transfer or exchange may be dated as of the date to which interest has been paid in full on the Bond surrendered; and provided further, that if the date of registration shall be prior to the first Interest Payment Date, the Bond shall be dated of its Date of Original Issue.

(m) When any portion of any Bond shall have been duly called for redemption and payment thereof duly made or provided for, interest thereon shall cease on the principal amount of such Bond so redeemed from and after the date of redemption thereof.

(n) The Bonds shall be issued to the respective Owners thereof as shall be mutually agreed between the Redeveloper and the Finance Director for a price equal to 100% of the principal amount thereof. No Bond shall be delivered to any Owner unless the City shall have received from the Owner thereof such documents as may be required by the Finance Director to demonstrate compliance with all applicable laws, including without limitation compliance with **Section 3.6** hereof. The City may impose such restrictions on the transfer of any Bond as may be required to ensure compliance with all requirements relating to any such transfer.

**Section 6.** Section 5.1 of Ordinance No. 19978 is hereby amended to read as follows:

**Section 5.1. Refunding Bonds.** Refunding Bonds may be issued at any time at the direction of the Finance Director for the purpose of refunding (including by purchase) any Lender Bond or Redeveloper

Bond or any portion thereof, including amounts to pay principal and interest to the date of maturity or redemption (or purchase) and the expenses of issuing the Refunding Bonds and of effecting such refunding; provided that the Debt Service on all bonds to be outstanding after the issuance of the Refunding Bonds shall not be greater in any Fiscal Year than would have been the Debt Service in such Fiscal Year were such refunding not to occur.

**Section 7.** Section 7.2 of Ordinance No. 19978 is hereby amended to read as follows:

**Section 7.2. Special Fund.** All of the Revenue shall be deposited into the Special Fund. The Revenue accumulated in the Special Fund shall be used and credited in the following order of priority:

(a) **Debt Service Accounts**. Credits shall be made into the Debt Service Accounts on the Business Day prior to each Interest Payment Date so that the balance in each respective Debt Service Account on an Interest Payment Date shall be equal to the amount of Debt Service due on the corresponding series of Bonds on such Interest Payment Date. Money in each Debt Service Account shall be used solely for the payment of Debt Service on the corresponding series of Bonds as the same becomes due.

If the Bonds Outstanding are all Redeveloper Bonds, are all Lender Bonds or are all ~~Lender~~ Investor Bonds, to the extent that moneys on deposit in the Special Fund are not sufficient to fund Debt Service for each Outstanding series of Bonds on the next Interest Payment Date such moneys will be applied on a proportionate basis to each series Debt Service Account based upon the outstanding principal amounts of each series of Bonds. If ~~both~~ two or more of Investor Bonds, Lender Bonds and Redeveloper Bonds are Outstanding, then (a) the Debt Service Account for the Investor Bonds will be funded with all available Revenues until an amount sufficient to pay Debt Service on the next Interest Payment Date shall have been deposited in the Debt Service Account for the Investor Bonds; then (b) the Debt Service Account for the Lender Bonds will be funded with all available Revenues until an amount sufficient to pay Debt Service on the next Interest Payment Date shall have been deposited in the Debt Service Account for the Lender Bonds~~.~~; and then (c) the Debt Service Account for the Redeveloper Bonds will be funded with all available Revenues until an amount sufficient to pay Debt Service on the next Interest Payment Date shall have been deposited in the Debt Service Account for the Redeveloper Bonds.

(b) **Surplus Account**. After the credits required by **Section 7.2(a)** have been made, the remaining Revenue in the Special Fund shall be deposited into the Surplus Account and used and applied by the City ~~to (1) redeem principal of the Bonds (with any Lender Bonds to be redeemed prior to any Redeveloper Bonds, or if all Bonds are either Lender Bonds or Redeveloper Bonds such moneys will be applied on a proportionate basis to redeem Bonds based upon the outstanding principal amount of each series), (2) pay costs of construction incurred by the City in connection with the City Improvements, in its sole and absolute discretion, or~~ as follows:

(1) To redeem principal of Bonds outstanding on a proportionate basis within each category of Bonds being redeemed based upon the outstanding principal amount of each series then outstanding, in the following order of priority: first, to redeem principal of any Lender Bonds; next, so long as no Lender Bonds remain Outstanding, to redeem principal of any Redeveloper Bonds then Outstanding; last, so long as no Lender Bonds and no Redeveloper Bonds remain Outstanding, to redeem principal of any Investor Bonds then Outstanding;

(2) To pay costs of construction incurred by the City in connection with the City Improvements, in its sole and absolute discretion; or

(3) To pay costs allowed by the Redevelopment Agreement and the Redevelopment Law.

**Section 8.** Section 7.4 of Ordinance No. 19978 is hereby amended to read as follows:

**Section 7.4. Subordination of Debt Service Payments on Redeveloper Bonds.**

(a) Notwithstanding any other provision of this Ordinance to the contrary, the Owners of Redeveloper Bonds covenant and agree that, upon the issuance of ~~Lender Bonds~~ or ~~transfer~~ designation of ~~Redeveloper~~ Bonds as Investor Bonds ~~a party other than the Redeveloper~~ or Lender Bonds, the lien and security for the payment of principal of and interest on Investor Bonds and Lender Bonds shall for all purposes of this Ordinance be superior to and constitute a priority with respect to all other payments on Redeveloper Bonds with respect to the use of Revenues. No payment of principal or interest, or any payment related to redemption under **Section 4.1**, will be made on Bonds other than Investor Bonds or Lender Bonds from the Revenues upon the occurrence and continuance of the Finance Director being unable to make the deposits required by **Section 7.2(a)** of this Ordinance into the Debt Service Account established for Investor Bonds and Lender Bonds sufficient to make payments on the Investor Bonds and Lender Bonds on the next Interest Payment Date. Such limitation shall continue into effect until such payments are made on the Investor Bonds and Lender Bonds in full.

(b) Notwithstanding any other provision of this Ordinance to the contrary, the Owners of Lender Bonds covenant and agree that, upon the issuance of or designation of Bonds as Investor Bonds, the lien and security for the payment of principal of and interest on Investor Bonds shall for all purposes of this Ordinance be superior to and constitute a priority with respect to all other payments on Lender Bonds with respect to the use of Revenues. No payment of principal or interest, or any payment related to redemption under **Section 4.1**, will be made on Bonds other than Investor Bonds from the Revenues upon the occurrence and continuance of the Finance Director being unable to make the deposits required by **Section 7.2(a)** of this Ordinance into the Debt Service Account established for Investor Bonds sufficient to make payments on the Investor Bonds on the next Interest Payment Date. Such limitation shall continue into effect until such payments are made on the Investor Bonds in full.

(c) Upon any distribution to creditors of the City of moneys constituting Revenues in a liquidation or dissolution or in a bankruptcy, reorganization, insolvency, receivership or similar proceeding, (1) the Owners of Investor Bonds shall be entitled to receive indefeasible payment in full in cash of the principal of and interest (including interest accruing after the commencement of such proceeding) to the date of payment on the Investor Bonds before the Owners of the Lender Bonds or Redeveloper Bonds shall be entitled to receive any payment of principal or interest thereon, and (2) until the Investor Bonds are paid indefeasibly in full in cash, any distribution of Revenues to which the Owners of the Lender Bonds or Redeveloper Bonds would be entitled but for these provisions shall be made to Owners of the Investor Bonds.

~~(b)~~(d) Upon any distribution to creditors of the City of moneys constituting Revenues in a liquidation or dissolution or in a bankruptcy, reorganization, insolvency, receivership or similar proceeding, (1) the Owners of Lender Bonds shall be entitled to receive indefeasible payment in full in cash of the principal of and interest (including interest accruing after the commencement of such proceeding) to the date of payment on the Lender Bonds before the Owners of the Redeveloper Bonds shall be entitled to receive any payment of principal or interest thereon, and (2) until the Lender Bonds are paid indefeasibly in full in cash, any distribution of Revenues to which the Owners of the Redeveloper Bonds would be entitled but for these provisions shall be made to Owners of the Lender Bonds.

~~(c)~~(e) If a distribution is made to the Owner of Lender Bonds or Redeveloper Bonds that because ~~of subparagraphs (b) and (c)~~ of this Section should not have been made, the Owner who receives such distribution shall hold it in trust for the Owners of the ~~Lender~~ Bonds entitled to such distribution and

shall promptly pay such distribution to the Finance Director for the benefit of the Owners of ~~Lender~~ the Bonds entitled to such distribution.

**Section 9. Partial Invalidity.** If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the City or the Registrar to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the Bonds, but the Owners of the Bonds shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

**Section 10. Law and Place of Enforcement of this Ordinance.** The Ordinance shall be construed and interpreted in accordance with the laws of the State. All suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in the State except to the extent necessary for enforcement, by any trustee or receiver appointed by or pursuant to the provisions of this Ordinance, or remedies under this Ordinance.

**Section 11. Effect of Article and Section Headings and Table of Contents.** The headings or titles of the several Sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Ordinance.

**Section 12. Repeal of Inconsistent Provisions.** Sections 1.1, 2.1, 3.1, 3.2, 5.1, 7.2 and 7.4 of Ordinance No. 19978 as hitherto existing are hereby repealed. In addition, any part of any other ordinance or resolution of the City, inconsistent with this Ordinance is hereby repealed to the extent of such inconsistency.

**Section 13. Publication and Effectiveness of This Ordinance.** Pursuant to Article VII, Section 7, of the City Charter, this Ordinance shall be posted on the official bulletin board of the City in lieu of and in place of newspaper publication with notice of passage and such posting to be given by publication one time in the official newspaper by the City Clerk.

***[The remainder of this page intentionally left blank.]***

**INTRODUCED BY:**

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**PASSED** _____, **2015.**

**Approved as to Form:**

_____
**City Attorney**

_____
**Bond Counsel**

**APPROVED:** _____, **2015.**

_____
**Mayor**