

ORDINANCE NO. _____

1 **AN ORDINANCE PROVIDING FOR THE LEVY OF A GENERAL**
 2 **BUSINESS OCCUPATION TAX; ESTABLISHING DEFINITIONS;**
 3 **PROVIDING FOR THE ADMINISTRATION, COLLECTIONS,**
 4 **RETURNS, DELINQUENCIES AND RECOVERY OF UNPAID**
 5 **AMOUNTS RELATED TO SUCH OCCUPATION TAX;**
 6 **SPECIFYING HOW SUCH TAX REVENUE WILL BE USED;**
 7 **PROVIDING A SUNSET PROVISION FOR THE TAX; AND**
 8 **RELATED MATTERS**

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

10 **AS FOLLOWS:**

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

13 (a) Pursuant to Chapter 18, Article 21, Reissue Revised Statutes of Nebraska, as
 14 amended (the "**Act**"), the City has designated property located generally at the southeast
 15 corner of 9th Street and O Street intersection as an "enhanced employment area" as defined in
 16 Section 18-2103(22), Reissue Revised Statutes of Nebraska, as amended (the "**Enhanced**
 17 **Employment Area**"). The Enhanced Employment Area is legally described as Lots 7-12, Block
 18 54, Original Plat, Lincoln, Lancaster County, Nebraska, and Lots D-F, County Clerks
 19 Subdivision of Lot 6, Block 54, Original Plat, Lincoln, Lancaster County, Nebraska.

20 (b) Pursuant to Section 18-2142.02, Reissue Revised Statutes of Nebraska, as
 21 amended, the City is authorized to levy and collect a general business occupation tax upon the
 22 businesses and users of space within the Enhanced Employment Area for the purpose of
 23 paying all or any part of the costs and expenses of the 9th & O Redevelopment Project
 24 performed within the Enhanced Employment Area.

25 (c) It is necessary, desirable, advisable, and in the best interests of the City that a
 26 general business occupation tax be imposed within the Enhanced Employment Area as
 27 provided by the Act for the purpose set forth in Section 1(b).

1 **Section 2. Definitions.** As used in this Ordinance, the following words and phrases
2 shall have the meanings ascribed to them in this Section 2, except where the context clearly
3 indicates or requires a different meaning:

4 (a) **"Ballroom"** shall mean a large function room inside a building, which is rented
5 out for the designated purpose of hosting a party, banquet, wedding, dance, or other reception
6 or social event and shall include the sale of food and beverages supplied as part of the function.

7 (b) **"General Business"** means any activity engaged in by any Person in the
8 business of operating a hotel or ballroom or caused to be engaged in by such Person.

9 (c) **"Hotel"** shall mean any facility, offering at least three rooms for occupancy, in
10 which the public may, for consideration, obtain sleeping accommodations in any space
11 ordinarily used for accommodations.

12 (d) **"Occupied Room"** shall mean any space ordinarily used for sleeping
13 accommodations and for which any occupant has, for consideration, obtained the use or
14 possession, or the right to use or possess, for a period not to exceed thirty (30) contiguous
15 days. The term does not include a function room such as a ballroom, banquet room, reception
16 room, or meeting room.

17 (a) **"Person"** means any natural person, individual, partnership, association,
18 organization, or corporation of any kind or character engaging in the business of operating a
19 General Business.

20 (c) **"Taxpayer"** shall mean any Person engaged in the business of operating a
21 General Business as herein defined who is required to pay the tax herein imposed.

22 **Section 3. Tax Imposed; Collection of Tax.**

23 (a) On or after the earlier date of issuance of a certificate of occupancy for the two
24 hotels within the Enhanced Employment Area or July 1, 2020, and in each calendar month
25 thereafter, there is hereby imposed a general business occupation tax upon each and every
26 Person operating a General Business within the Enhanced Employment Area for any period of
27 time during a calendar month.

1 (b) The amount of such tax for the operation of a hotel shall be two percent (2%) of
2 the total consideration charged for occupancy per occupied room per night for each calendar
3 month, provided that such consideration shall not include the charge for any food or beverage
4 served or personal services rendered to the occupant of such space.

5 (c) The amount of such tax for the operation of the ballroom shall be two percent
6 (2%) of the total consideration charged for each calendar month derived from (1) rental of the
7 ballroom, including any separate ballroom charges for preparing, serving, or delivering food and
8 beverages, charges for the use of reusable chairs, tableware, and tablecloths used by the
9 operator in providing food and beverage service in the ballroom, but not mandatory gratuities to
10 the extent that the proceeds of the service charge are in fact turned over as tips or as a
11 substitute for tips to the employees who participate directly in preparing, serving, hosting, or
12 cleaning up the food or beverage function with respect to which the service charge is imposed,
13 and (2) the gross receipts from the sale of food and beverages, subject to sales and use tax, in
14 conjunction with rental of the ballroom.

15 (d) The Person engaged in operating a General Business may itemize the tax levied
16 on a bill, receipt, or other invoice to the purchaser, but each Person engaged in such business
17 shall remain liable for the tax imposed by this Ordinance.

18 **Section 4. Return.** Each and every Person engaged in the operation of a General
19 Business within the Enhanced Employment Area for the calendar month beginning the earlier
20 date of issuance of a certificate of occupancy for the two hotels within the Enhanced
21 Employment Area or July 1, 2020, and for each and every month thereafter, shall prepare and
22 file, on or before the 25th day of the following month on a form prescribed and furnished by the
23 City Finance Director, a return for such month, and at the same time pay to the City the tax
24 herein imposed. The return shall be verified and sworn to by the officer in charge of the
25 business. The return shall be considered filed on time if mailed in an envelope properly
26 addressed to the City Finance Director, postage prepaid, and postmarked before midnight of the
27 25th of the appropriate month.

1 **Section 5. Tax Cumulative.**

2 (a) The levy of the tax under this Ordinance is in addition to all other fees, taxes,
3 excises, and licenses levied and imposed under any contract or any other ordinances of the
4 City, in addition to any fee, tax, excise, or license imposed by the state.

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

10 **Section 6. Use of Revenue.** The two percent (2%) occupation tax imposed by this
11 Ordinance, less City administrative expenses in the amount of one percent (1%) of the
12 Occupation Tax Revenues generated by the occupation tax, shall be used to fund any
13 expenditures that the City is lawfully authorized to make in connection with the Redevelopment
14 Project as permitted by the Act.

15 **Section 7. Failure to File Return; Delinquency; Assessment by City Finance**
16 **Director.**

17 (a) If any Person neglects or refuses to file a return or make payment of the taxes as
18 required by this Ordinance, the City Finance Director shall make an estimate, based upon such
19 information as may be reasonably available, of the amount of taxes due for the period or periods
20 for which the Taxpayer is delinquent, and upon the basis of such estimated amount, compute
21 and assess in addition thereto interest on such delinquent taxes, at the rate of one percent
22 (1.00%) per month, or fraction thereof from the date when due and, when applicable, a penalty
23 equal to ten percent (10.00%) thereof. Any such interest due may be compounded quarterly.

24 (b) The City Finance Director shall give the delinquent Taxpayer written notice of
25 such estimated taxes, penalty, and interest, which notice must be served personally or by
26 certified mail.

1 (c) Such estimate shall thereupon become an assessment, and such assessment
2 shall be final and due and payable from the Taxpayer to the City Finance Director ten (10) days
3 from the date of service of the notice or the date of mailing by certified mail; however, within
4 such ten (10) day period the delinquent Taxpayer may petition the City Finance Director for a
5 revision or modification of such assessment and shall, within such ten-day period, furnish the
6 City Finance Director with the facts and correct figures showing the correct amount of such
7 taxes.

8 (d) Such petition shall be in writing and the facts and figures submitted shall be
9 submitted in writing and shall be given under oath of the Taxpayer.

10 (e) The City Finance Director may then modify such assessment in accordance with
11 the facts which he or she deems correct. Such adjusted assessment shall be made in writing;
12 notice thereof shall be mailed to the Taxpayer within ten (10) days after receipt of the correct
13 figures from the Taxpayer; and all such decisions shall become final upon the expiration of thirty
14 (30) days from the date of service, unless proceedings are commenced within that time for
15 appeal in the District Court.

16 **Section 8. Administration; Miscellaneous Provisions.**

17 (a) The administration of the provisions of this Ordinance are hereby vested in the
18 City Finance Director, or his designee, who shall prescribe forms in conformity with this
19 Ordinance for the making of returns, for the ascertainment, assessment, and collection of the
20 tax imposed hereunder, and for the proper administration and enforcement hereof.

21 (b) All notices required to be given to the Taxpayer under the provisions of this
22 Ordinance shall be in writing. Notices shall be mailed by registered or certified mail, postage
23 prepaid, return receipt requested, to the Taxpayer at his or her last known address.

24 (c) It shall be the duty of every Taxpayer to keep and preserve suitable records and
25 other books or accounts as may be necessary to determine the amount of tax for which he/she
26 is liable hereunder.

1 (1) Records of the gross receipts by which this tax is measured shall be kept
2 separate and apart from the records of other sales or receipts in order to facilitate the
3 examination of books and records as necessary for the collection of this tax.

4 (2) It shall be the duty of every such Taxpayer to keep and preserve for a period of
5 four (4) years all such books, invoices, and other records, which shall be open for
6 examination at any time by the City Finance Director or his or her duly designated
7 persons. If such Person keeps or maintains books, invoices, accounts, or other records,
8 or any portion thereof, outside of the state, upon demand of the City Finance Director
9 he/she shall make the same available at a suitable place within the City, to be
10 designated by the City Finance Director, for examination, inspection, and audit by the
11 City Finance Director or his or her duly authorized persons. The Taxpayer shall
12 reimburse the City for the reasonable costs of the examination, inspection, and audit if
13 the City Finance Director determines that the Taxpayer paid ninety percent or less of the
14 tax owing for the period of the examination.

15 (3) The City Finance Director, in his or her discretion, may make, permit, or cause to
16 be made the examination, inspection, or audit of books, invoices, accounts, or other
17 records so kept or maintained by such Person outside of the state at the place where
18 same are kept or maintained or at any place outside the state where the same may be
19 made available, provided such Person shall have entered into a binding agreement with
20 the City to reimburse it for all costs and expenses incurred by it in order to have such
21 examination, inspection, or audit made in such place.

22 (d) For the purpose of ascertaining the correctness of a return, or for the purpose of
23 determining the amount of tax due from any Person, the City Finance Director or his or her duly
24 authorized persons, may conduct investigations concerning any matters covered by this
25 Ordinance; and may examine any relevant books, papers, records, or memoranda of any such
26 Person.

1 **Section 9. Recovery of Unpaid Tax by Action at Law.**

2 (a) The City Finance Director may also treat any such taxes, penalties, or interest
3 due and unpaid as a debt due the City.

4 (b) In case of failure to pay the taxes, or any portion thereof, or any penalty or
5 interest thereon when due, the City may recover at law the amount of such taxes, penalties, and
6 interest in any court of Lancaster County, Nebraska or of the county wherein the Taxpayer
7 resides or has its principal place of business having jurisdiction of the amounts sought to be
8 collected.

9 (c) The return of the Taxpayer or the assessment made by the City Finance Director,
10 as herein provided, shall be prima facie proof of the amount due.

11 (d) The City Attorney may commence an action for the recovery of taxes due under
12 this Ordinance and this remedy shall be in addition to all other existing remedies, or remedies
13 provided in this Ordinance.

14 **Section 10. Suspension or Revocation of Licenses for Failure to Pay Tax;**
15 **Hearing.** If the Mayor or the Mayor's designee, after holding a hearing, shall find that any
16 Person has willfully evaded payment or collection and remittance of the tax imposed by this
17 Ordinance, such official may suspend or revoke any City license, permit, or other approval held
18 by such tax evader. Such Person shall have an opportunity to be heard at such hearing to be
19 held not less than seven (7) days after notice is given of the time and place of the hearing to be
20 held, addressed to the last known place of business of such Person. Pending the notice,
21 hearing, and finding, any license, permit, or other approval issued by the City to the Person may
22 be temporarily suspended. No suspension or revocation hereunder shall release or discharge
23 the Person from civil liability for the payment or collection and remittance of the tax, nor from
24 prosecution for such offense.

25 **Section 11. Sunset Provision.** The occupation tax imposed by this Ordinance shall
26 terminate and collection of the tax shall cease no later than the earlier of June 30, 2040, or upon
27 payment in full of all EEA Priority Expenses to be incurred and indebtedness issued by the City

1 pursuant to the provisions of Section 18-2142.02, Reissue Revised Statutes of Nebraska, for
2 which such occupation tax receipts have been pledged.

3 **Section 12. Conflicts.** All ordinances, resolutions, or orders, or parts thereof in conflict
4 with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

5 **Section 13. Severability.** If any section, paragraph, clause, or provision of this
6 Ordinance shall for any reason be held to be invalid, the invalidity of the remainder hereof shall
7 not be affected thereby.

8 **Section 14. Headings of Sections Not Controlling.** The headings of sections of this
9 Ordinance are set forth herein for convenience of reference only and shall not affect the
10 construction or interpretation of this Ordinance or any section hereof.

11 **Section 15. Effective Date.** Pursuant to Article VII, Section 7 of the City Charter, this
12 ordinance shall be posted on the official bulletin board of the City, located on the wall across
13 from the City Clerk's office at 555 S. 10th Street, in lieu of and in place of newspaper publication
14 with notice of passage and such posting to be given by publication one time in the official
15 newspaper by the City Clerk. This ordinance shall take effect and be in force from and after its
16 passage and publication as herein and in the City Charter provided.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ____ day of _____, 2017:

Mayor