

ORDINANCE NO. 8277

AN ORDINANCE OF THE CITY OF KEARNEY, NEBRASKA PROVIDING FOR THE LEVY OF A GENERAL BUSINESS OCCUPATION TAX; PROVIDING FOR THE ADMINISTRATION, IMPOSITION AND COLLECTION OF SUCH OCCUPATION TAX; AND SPECIFYING THE USE OF SUCH OCCUPATION TAX REVENUE.

WHEREAS, on July 10, 2018, the City of Kearney, Nebraska (the "City"), adopted a plan for redevelopment of areas previously designated blighted and substandard and in need of redevelopment (the "Redevelopment Plan"); and

WHEREAS, the Redevelopment Plan proposed the designation of an "enhanced employment area" (as defined in the Act) to fund certain eligible costs of a redevelopment project set forth in the Redevelopment Plan (the "Project"); and

WHEREAS, the Community Redevelopment Authority for the City (the "CRA") and the City determined, based upon the written undertakings provided by Kearney Investment Corporation d/b/a Holiday Inn Hotel & Convention Center, as redeveloper (the "Redeveloper"), that the Project met the requirements of the Act for designation of an enhanced employment area; and

WHEREAS, pursuant to Nebraska Revised Statutes sections 18-2101 et. seq., as amended (the "Act"), the Redevelopment Plan and the City's adoption thereof set forth the designation of an enhanced employment area, as particularly described on Exhibit "A", attached hereto and incorporated herein; and

WHEREAS, pursuant to section 18-2142.02 of the Act, the City may levy a general business occupation tax upon all non-exempt businesses and users of space within an enhanced employment area; and

WHEREAS, the City, CRA and Redeveloper intend to enter into an agreement governing the levy of the general business occupation tax upon all non-exempt businesses and users of space within the enhanced employment area to fund certain eligible expenses of the Project as provided under the Act (the "Occupation Tax Agreement"); and

WHEREAS, in consideration of the foregoing, the City wishes to levy a general business occupation tax upon all non-exempt businesses and users of space within the enhanced employment area via this Ordinance pursuant to the below terms and conditions.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF KEARNEY, NEBRASKA:

Section 1. Designation of Enhanced Employment Area. The City hereby designates the area described on Exhibit "A", attached hereto and incorporated herein, as an "enhanced employment area" as defined under section 18-2103(11) of the Act (the "Enhanced Employment Area").

Section 2. Occupation Tax Imposed; Collection of Occupation Tax. Commencing October 1, 2018, and in each calendar month thereafter there shall be imposed a general business occupation tax upon each and every business or user of space within the Enhanced Employment Area to which the City has issued, or will issue prior to the expiration of this Ordinance, a certificate of occupancy (the "Occupation Tax"). The amount of the Occupation Tax shall be one percent (1.00%) of the gross sales of all retail, restaurant, hotel, or other businesses or users of space within the Enhanced Employment Area (each, a "General Business"), except that no occupation tax shall be imposed on any transaction which is subject to tax under sections 53-160,

66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602 or 77-4008 of the Nebraska Revised Statutes or which is exempt from tax under section 77-2704.24 of the Nebraska Revised Statutes (each, an "Exempt Transaction").

Such Occupation Tax shall be imposed on the gross receipts resulting in the sale, lease, or rental of any products, rooms, units or services by a General Business within the Enhanced Employment Area; provided, however, that such receipts of Exempt Transactions shall be excluded and exempt from such Occupation Tax. Each General Business may itemize the Occupation Tax levied on a bill, receipt, or other invoice to the purchaser, but each General Business shall be ultimately liable for the tax imposed by this Ordinance.

Section 3. Return. Each General Business within the Enhanced Employment Area for the calendar month beginning October 1, 2018, and for each and every month thereafter, shall prepare and file, on or before the 25th day of the following month on a form prescribed and furnished by the Finance Director of the City (the "Finance Director"), a return for such month, and at the same time pay to the City the tax herein imposed. An officer or authorized agent of the General Business shall submit a sworn statement with respect to the contents of each return. The City shall consider the return filed on time if mailed in an envelope properly addressed to the Finance Director, postage prepaid and postmarked before midnight of the 25th day of the appropriate month.

Section 4. Tax Cumulative. The levy of the tax under this Ordinance is in addition to all other fees, taxes, excises and licenses levied and imposed under any contract or any other ordinances of the City, in addition to any fee, tax, excise or license imposed by the State of Nebraska or federal government.

Payment of the tax imposed by this Ordinance shall not relieve the person or General Business paying the same from payment of any other tax now or hereafter imposed by contract

or ordinance, unless otherwise specified therein. The occupation taxes imposed by this Ordinance shall be cumulative except where otherwise specifically provided.

Section 5. Use of Revenue. The revenues from the Occupation Tax collected by the City shall be remitted by the Finance Director and placed in a special fund established by the CRA pursuant to the resolution adopted by the CRA governing the grant of such taxes as security for the promissory note held by Redeveloper in consideration of the Project. The Occupation Tax imposed by this Ordinance shall be used to fund any expenditure that is lawfully authorized to be made under the Act, the Redevelopment Plan, the Occupation Tax Agreement, and this Ordinance in connection with the Project.

Section 6. Failure to File Return; Delinquency; Assessment by City Finance Director.

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

(b) The Finance Director shall give the delinquent General Business written notice of such estimated taxes, penalty, and interest, which notice must be served personally or by certified mail at the last known address of the General Business.

(c) Such estimate shall thereupon become an assessment and such assessment shall be final and due and payable from the General Business to the Finance Director ten (10) days from the date of service of the notice or the date of mailing by certified mail; however, within such ten (10) day period the delinquent General Business may petition the Finance

Director for a revision or modification of such assessment and shall, within such ten-day period, furnish the Finance Director the documentation showing the correct amounts of such taxes.

(d) Such petition shall be in writing, and the General Business shall submit any supporting documentation in writing and under oath of the appropriate officer or agent of the General Business.

(e) The Finance Director may then modify such assessment in accordance with the information the General Business Provides. Such adjusted assessment shall be made in writing, and notice thereof shall be mailed to the General Business within ten (10) days after receipt of the petition; and all such decisions shall become final upon the expiration of thirty (30) days from the date of service, unless proceedings are commenced within that time for appeal in a court of competent jurisdiction in Buffalo County, Nebraska, or of the county wherein the General Business has its principal place of business having jurisdiction of the amounts sought to be collected.

Section 7. Administration; Miscellaneous Provision.

(a) The administration of this Ordinance is hereby vested in the Finance Director, or his designee, who shall prescribe forms in conformity with this Ordinance for the making of returns, for the ascertainment, assessment and collection of the Occupation Tax imposed hereunder, and for the proper administration and enforcement hereof.

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

(c) It shall be the duty of every General Business to keep and preserve suitable records and other books or accounts as may be necessary to determine the amount of tax for which it is liable hereunder.

(1) The General Business shall keep records of the transactions which the State of Nebraska is authorized to impose a tax allowed by the Nebraska Local Option Revenue Act by which this tax is measured separate and apart from the records of other sales or receipts in order to facilitate the examination of books and records as necessary for the collection of the Occupation Tax.

(2) It shall be the duty of every General Business to keep and preserve during and for a period of three (3) years following the expiration of this Ordinance all such books, invoices and other records, which shall be open for examination at any time by the Finance Director or his or her duly designated persons. If such General Business keeps or maintains its books, invoices, accounts or other records, or any thereof, outside of the state, upon demand of the Finance Director it shall make the same available at a suitable place within the City, to be designated by the Finance Director, for examination, inspection and audit by the Finance Director or his or her duly authorized persons. The General Business shall reimburse the City for the reasonable costs of examination, inspection and audit if the Finance Director determines that the General Business paid ninety-five percent (95%) or less of the tax owing for the period of the examination.

(3) The Finance Director, in his or her discretion, may make, permit or cause to be made the examination, inspection or audit of books, invoices, accounts or other records so kept or maintained by such General Business outside of the state at the place where the same are kept or maintained or at any place outside the state where the same may be made available, provided such General Business shall have entered into a binding agreement with the

City to reimburse it for all costs and expenses incurred by it in order to have such examination, inspection or audit made in such place.

(d) The Finance Director or his or her duly authorized persons may conduct investigations concerning any matters covered by this Ordinance; and may examine any relevant books, papers, records or memoranda of any such General Business.

**Section 8. Recover of Unpaid Tax by Action at Law.**

(a) The Finance Director may treat any Occupation Tax, penalties or interest due and unpaid therefrom as a debt due the City.

(b) In case of failure to pay the Occupation Tax, or any portion thereof, or any penalty or interest thereon when due, the City may recover at law the amount of such taxes, penalties and interest in any court of Buffalo County, Nebraska, or of the county wherein the General Business has its principal place of business having jurisdiction of the amounts sought to be collected.

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

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

**Section 9. Suspension or Revocation of Licenses for Failure to Pay Tax: Hearing.** If the Mayor or the Mayor's designee, after holding a noticed public hearing, finds that any General Business has willfully evaded payment or collection and remittance of the Occupation Tax, such official may suspend or revoke any City license, permit or other approval held by such General Business. Such General Business shall have an opportunity to be heard at such hearing to be held not less than seven (7) days after notice is given of the time and place of the hearing to be

held, addressed to the last known address of such General Business. Pending the notice, hearing and finding, any licensee, permit or other approval issued by the City to the General Business may be temporarily suspended. No suspension or revocation hereunder shall release or discharge the General Business from civil liability for the payment or collection and remittance of the tax, nor from prosecution for such offense.

Section 10. Effective Date. This Ordinance shall take effect upon its passage and publication in the manner provided by law.

Section 11. Conflicts. All ordinances, resolutions, or orders, or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

Section 12. Severability. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid, the validity of the remainder hereof shall not be affected thereby.

Section 13. Headings of Section Not Controlling. The headings of sections of this Ordinance are set forth herein for convenience of reference only and shall not affect the construction or interpretation of this Ordinance or any section hereof.

Section 14. Sunset Provision. The Occupation Tax shall expire upon the earlier of September 30, 2038, or termination of the Occupation Tax Agreement.

DATED: August 14, 2018

**CITY OF KEARNEY, NEBRASKA**

By: Stanley A. Orsini

**Mayor**

**ATTEST:**

By: Lauren Brandt

**Clerk**



**EXHIBIT "A"**  
**Enhanced Employment Area**

Legal Description:

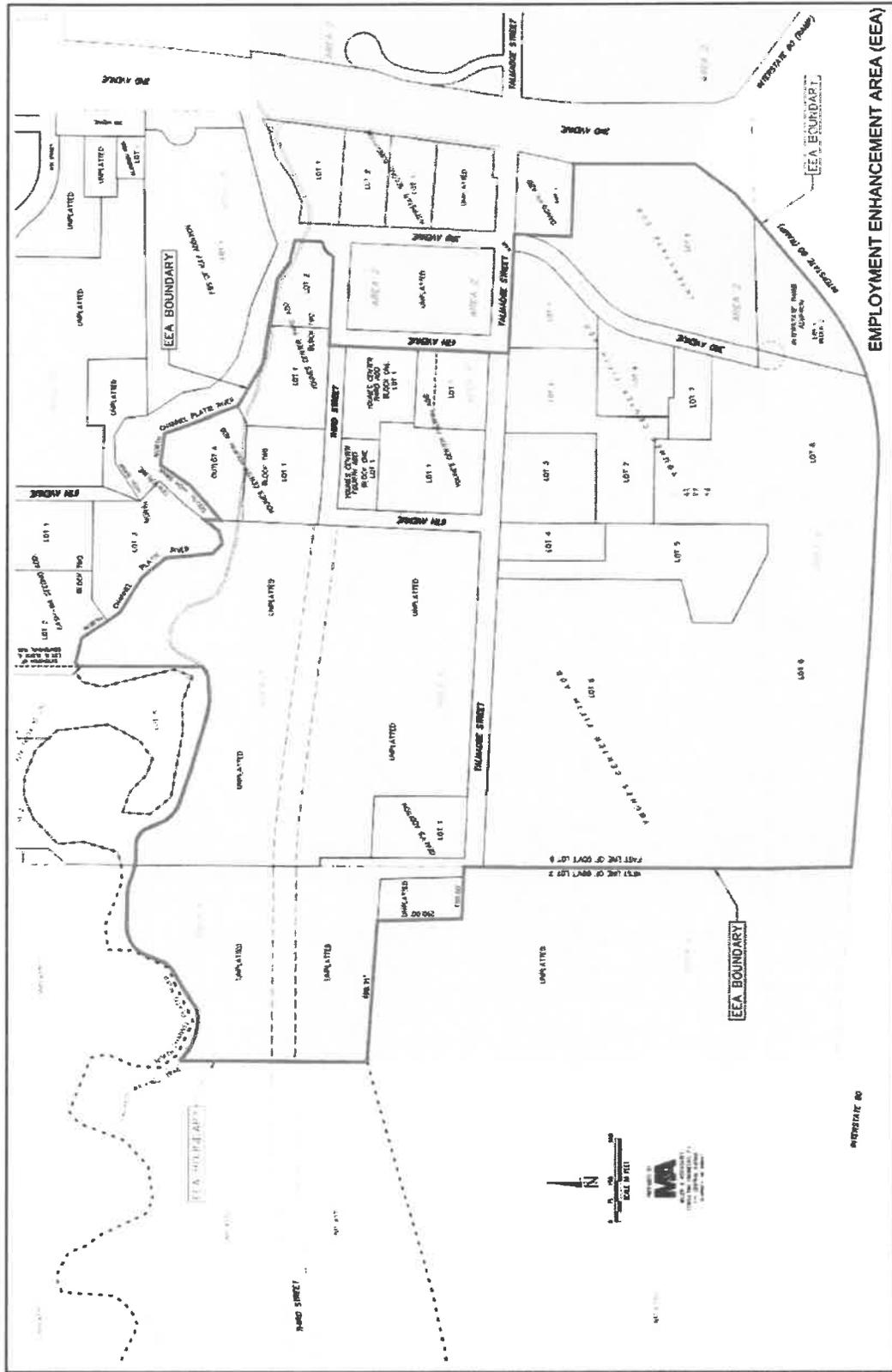
An area of land being all of Younes Center Addition, an addition to the City of Kearney, all of Younes Center Third Addition, an addition to the City of Kearney, all of Younes Center Fourth Addition, an addition to the City of Kearney, all of Younes Center Fifth Addition, an addition to the City of Kearney, all of Gealy's Addition, a subdivision being part of Government Lot 6 and accretions, all of Lot E Interstate Subdivision, a Subdivision to the City of Kearney, all of Lot 1, Block Two, Interstate Third Subdivision, a Subdivision to the City of Kearney, and part of Government Lots 6, 7, and 9, and accretions thereto, all in Section Eleven (11), and part of the Northeast Quarter (NE 1/4) of Section Fourteen (14), all in Township Eight (8) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska. And more particularly described as follows:

BEGINNING at the Northeast corner of Lot 1, Younes Center Fifth Addition, an addition to the City of Kearney, thence East to the Northwest Corner of DANCO KN Addition, an addition to the City of Kearney; thence South on the West line of said DANCO KN Addition, and the North line of Lot E Interstate Subdivision, a Subdivision to the City of Kearney to the Southwest corner of said DANCO KN Addition; thence East on the South line of said DANCO KN Addition, and continuing on the North line of Lot E Interstate Subdivision to the Southeast corner of said DANCO KN Addition, and the Northeast corner of said Lot E, Interstate Subdivision; thence Southerly on the East line of said Lot E to the Southeast corner of said Lot E, and the Northeast corner of Lot 1, Block Two, Interstate Third Subdivision, a Subdivision to the City of Kearney; thence Southwesterly on the Southerly line of said Lot 1, Block Two, Interstate Third Subdivision to the Southwest corner of said Lot 1, Block Two, and the Southeast corner of Lot 6, Younes Center Fifth Addition, an addition to the City of Kearney; thence Westerly on the South line of said Lot 6, Younes Center Fifth Addition to the Southwest corner of said Lot 6; thence North on the West line of said Lot 6 and its Northerly extension also being the East line of Government Lot 7 of Section 11 to the North line of Talmadge Street in the City of Kearney; thence Westerly on the Westerly extension of the North line of said Talmadge Street a distance of 150.00 feet; thence North parallel with the East line of said Government Lot 7 a distance of 290 feet to an existing fence line as referenced in Warranty Deed recorded as Instrument 2014-04739, in the Buffalo County Register of Deeds Office; thence Westerly on said existing fence line a distance of 498.71 feet and west line of Area 8 CRA boundary; thence North parallel with the East line of said Government Lot 7 and Government Lot 9 of said section 11 and on the west line of Area 8 CRA boundary to the North line of the concrete walking trail along the South side of the North Channel of the Platte River; thence meandering Easterly along said North line of the concrete trail to the Southerly extension of the West line of Lot 8, Block 4, Centennial Subdivision, a subdivision to the City of Kearney; thence North on said Southerly extension of the West line of Lot 8, Block 4, Centennial Subdivision to the centerline of said North Channel of the Platte River; thence meandering Easterly along said centerline of said North Channel of the Platte River to the Northerly extension of the West line of Younes Center fourth Addition, an addition to the City of Kearney; thence South on said Northerly extension of the West line of Younes Center Fourth Addition to the South high bank of said North Channel of the Platte River and the Northwest corner of said Younes Center Fourth Addition; thence Easterly on the North line of said Younes Center Fourth Addition, and the North line of Younes Center Third Addition to the Northeast corner of Lot 2, Block Two of said Younes Center Third Addition; thence South on the East line of said Lot 2, Block Two of Younes Center Third Addition to the Southeast corner of said Lot 2 and the North line of 3rd Street, as platted in the City of Kearney; thence West on the North line of Third Street and the South line of said Lot 2 and the South line Lot 1 of said Younes Center Third Addition to the Northerly extension of the West line of 4th Avenue; thence South on said Northerly extension and the West line of 4th Avenue and its Southerly extension to the South line of said Talmadge Street and the North line of said Younes Center Fifth Addition; thence East on said South line of Talmadge Street and the North line of Younes Center Fifth Addition to the Point of Beginning.

\* Any discrepancies between the above legal description and the below depiction with respect to the boundaries of the EEA Site shall be decided in favor of the depiction

EXHIBIT "A"

Depiction:



# CERTIFICATE

STATE OF NEBRASKA     )  
COUNTY OF BUFFALO    ) ss  
CITY OF KEARNEY        )

I, Lauren Brandt, City Clerk of the City of Kearney, Buffalo County, Nebraska, hereby certify that the attached is a true and correct copy of Ordinance No. 8277 authorizing the issuance of a one percent General Business Occupation Tax (GBOT) to be used to pay for infrastructure and related costs associated with the construction of a hotel and convention center for an area described as all of Younes Center Addition, all of Younes Center Third Addition, all of Younes Center Fourth Addition, all of Younes Center Fifth Addition, all of Younes Center Sixth Addition, all of Gealy's Addition, a subdivision being part of Government Lot 6 and accretions, all of Lot E Interstate Subdivision, all of Lot 1, Block Two, Interstate Third Subdivision, and part of Government Lots 6, 7, and 9, and accretions thereto, all in Section 11, and part of the Northeast Quarter of Section 14, all in Township 8 North, Range 16 West of the 6th P.M., Buffalo County, Nebraska (North of Interstate 80, West of 2nd Avenue and 4th Avenue, South of the North Channel Platte River and East of Talmadge Street and a portion of Third Street); which was passed and approved by the President and City Council on the 14th day of August, 2018 and ordered published in pamphlet form by the authority of the Council on August 15, 2018, with copies being made available to the public on such date at the Office of the City Clerk, the Police Department and the Public Library.

**IN WITNESS WHEREOF**, I have hereunto affixed my hand and seal this 15th day of August, 2018.

  
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LAUREN BRANDT, CITY CLERK

