

When Recorded, Return to: **Legal Division**
Nebraska Department of Economic Development
245 Fallbrook Blvd., Suite 002
Lincoln, NE 68521

DECLARATION OF COVENANT

This Declaration of Covenant (the “**Covenant**”) is made and entered into between the Nebraska Department of Economic Development (the “**Department**”) and City of Albion, Nebraska (the “**Owner**”), whose address is 420 W Market Street, Albion, Nebraska 68620, upon the date of signature by both parties.

WHEREAS, the Department has executed Rural Community Recovery Program (the “**Program**”) Subaward Agreement Number 23-RCRP-037 between the Department and the Owner.

WHEREAS, the Department has agreed to provide funding via the Program in an amount not to exceed One Million Dollars (\$1,000,000.00). Such funds were used by the Owner to facilitate the installation of a public feature, specifically upgrade and improve the public park, including installation of equipment designed for both young and older children, a new pavilion, updated basketball court, and trail extensions, while incorporating safety and accessibility features to promote equitable access to these public amenities [“**Originally Authorized Purpose**”], together with certain real property known as 825 W Clark Street, Albion, Nebraska (the “**Property**”), as described hereto:

LOTS 10, 11, 12, 13, 14, BLOCK 2, HAWKS ADDITION TO THE CITY OF ALBION, BOONE COUNTY, NEBRASKA

NOW THEREFORE, in consideration of the premises herein and other good and valuable considerations, the receipt and sufficiency are hereby acknowledged, and the undersigned Owner hereby establishes and agrees to be bound by the Covenant, as follows:

1. **Period of Compliance**. The Property must maintain its Originally Authorized Purpose for a period not less than twenty (20) years, which begins on the date of project completion. This requirement applies without regard to the term of any loan or

mortgage or the transfer of ownership but may terminate upon foreclosure or transfer in lieu of foreclosure. The Department may use purchase options, rights of first refusal, or other preemptive rights to purchase the Property before foreclosure or deed in lieu of foreclosure to maintain compliance. The restriction will be revived according to the original terms if, during the original compliance period, the Owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former Owner or those with whom the former Owner has or had family or business ties, obtains an ownership interest in the Property.

2. **Property Condition Standards.** Owner must maintain the Property safe and in good repair. The Property will meet all applicable State and local code requirements and ordinances and be free of all health and safety defects.
3. **Change in Use.** The Property must continue to be used as a public feature as stated in the Subaward Agreement, for the applicable compliance period, or the Owner does not meet the requirements of the compliance period, then:

Recoupment provisions will be invoked to ensure repayment of funds received from the Program. Several alternative options are available, including but not limited to informal consultation and remediation.

Recouped funds will be paid directly to the United States Department of the Treasury. Other applicable remedies may be taken under state or federal law.

4. **Binding.** All of the conditions, restrictions, and agreements included in this Covenant will be considered to run with the land. In any event, and without regard to technical classification or designation, legal or otherwise, they will be binding to the fullest extent permitted by law and equity and will be enforceable by the Department and its successors and assigns against the Owner and its successors and assigns to any part of the Property, or any interest therein and to any part in the possession or occupancy of any part of said Property, that is the subject of this Covenant.
5. **Enforcement.** The Department will require from the Owner this Covenant as documentation verifying the existence of and proper recordation of the necessary and appropriate legal instruments for enforcement of the Program requirements and restrictions for the compliance period. This Covenant and other legal instruments will be considered to touch and concern the land, burden and benefit the respective parties, and run with the land so as to be binding upon the Owner and upon their heirs, legal representatives, successors, or assigns in title to the Property.
6. **Release.** Upon satisfaction of the terms of this Covenant, the Department will record a release of this Covenant against the Property, and the Owner or their heirs, legal representatives, successors, or assigns in title to this Property, will no longer be bound by the terms of this Covenant.

Any notice, demand, request, consent, approval, or communication that any party desires or is required to give will be in writing and will be served personally or sent by first-class

mail, postage prepaid, addressed to the Owner (mailed to 420 W Market Street, Albion, Nebraska 68620), and to any current mortgage/deed of trust holder of record.

ACCEPTANCE PROVISIONS.

The parties acknowledge they have read and understand this Declaration of Covenant, they agree to its provisions, and that it will be effective on the date when both parties have signed.

NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT	
By: _____ (Director or Designee)	_____ (Date)
_____ (Typed or Printed Name)	_____ (Title)

STATE OF NEBRASKA }
COUNTY OF _____ } SS.

The foregoing instrument was subscribed to and acknowledged before me this ___ day of _____, 20___, by _____ as a voluntary act and deed.

Notary Public

[EXECUTION BY OWNER FOLLOWS ON THE NEXT PAGE]

OWNER → CITY OF ALBION

By: _____
(Authorized Official) (Date)

(Typed or Printed Name) (Title)

STATE OF NEBRASKA }
COUNTY OF _____ } SS.

The foregoing instrument was subscribed to and acknowledged before me this __ day of _____, 20__, by _____ as a voluntary act and deed.

Notary Public