

MISC 2016051095



JUN 29 2016 14:09 P 57

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FEE *346<sup>00</sup>* FB *03-80000* *07-05674 (CD)*

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Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
6/29/2016 14:09:56.99



2016051095

THE ABOVE SPACE IS FOR THE REGISTER OF DEEDS RECORDING INFORMATION

RETURN TO:

*City-3*

*legal pg 7*

CHECK NUMBER



City of Omaha  
Jean Stothert, Mayor

May 24, 2016

RECEIVED

2016 MAY 13 AM 8:56

CITY CLERK  
OMAHA, NEBRASKA

**Public Works Department**

Omaha/Douglas Civic Center  
1819 Farnam Street, Suite 601  
Omaha, Nebraska 68183-0601  
(402) 444-5220  
Fax (402) 444-5248

**Robert G. Stubbe, P.E.**  
Public Works Director

Honorable President

and Members of the City Council,

Transmitted herewith is a proposed Ordinance to vacate the following:

Davenport Street from the West right-of-way line of North 10th Street to the East right-of-way line of North 12th Street.

The minutes from the approval of the Planning Board at their meeting on March 2, 2016 are attached. The redevelopment agreement that provisioned for this vacation is also attached.

The form of the documents for this vacation has been approved by the City Law Department.

The purpose of the request is to vacate Davenport Street from 10<sup>th</sup> to 12th to the abutting property owners in accordance with the Capitol District Redevelopment Agreement. The Fair Market Value Committee has decided to waive the determination of fair market value for this right-of-way.

The Public Works Department recommends approval of the proposed Ordinance.

Respectfully submitted,

This action has been reviewed and found to be in conformance with the Master Plan.

Robert G. Stubbe 5-6-16  
Robert G. Stubbe, P.E. Date  
Public Works Director

James R. Thele 5/9/16  
James R. Thele Date  
Planning Director

Referred to City Council for Consideration:

1140hra

Jean Stothert 5/10/2016  
Jean Stothert Date  
Mayor's Office

ORDINANCE NO. 40766

AN ORDINANCE vacating Davenport Street from the West right-of-way line of North 10th Street to the East right-of-way line of North 12th Street, in the City of Omaha and providing the effective date hereof.

WHEREAS, under Section 14-375, Reissue, Revised Statutes of Nebraska, 1943, provides that the City Council may vacate a street or alley without petition upon City Planning Board recommendation; and,

WHEREAS, the Statute further provides that a Committee of Appraisers be appointed to appraise damages, if any, to property affected by the vacation; and,

WHEREAS, Resolution No. 846 adopted on July 14, 2015, appointed Pete Festersen, Chris Jerram, and Aimee Melton, members of the City Council, to assess damages to all property affected by the vacation; and,

WHEREAS, on May 3, 2016, the Committee of Appraisers held a meeting immediately following the 10:30 a.m. staff meeting in the City Council Office, Omaha/Douglas Civic Center, 1819 Farnam Street, Omaha, Nebraska; and,

WHEREAS, the Committee of Appraisers found no cause for any damages as a result of the vacation; and,

WHEREAS, the City Council finds there are no damages as a result of this vacation,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. That Davenport Street from the West right-of-way line of North 10th Street to the East right-of-way line of North 12th Street, located in the Northeast 1/4 of the Northeast 1/4 Quarter of Section 22-15-13 of the 6th P.M. in Douglas County, Nebraska:

be, and hereby is, vacated and that without further act of the City, title to the vacated right-of-way shall pass to the abutting properties on the south side of the vacated right-of-way as requested by the applicant and shown on Exhibit "A" attached hereto and incorporated herein by this reference; the vacating of the property herein described, pursuant to applicable law, shall be subject to the conditions and limitation that there is reserved to the City of Omaha the right to maintain, operate, repair and renew sewers now existing therein and in the future to construct, maintain, repair and renew additional or other sewers; and also the right to authorize the public utilities and cable television systems to construct, maintain, repair or renew and operate now or hereafter installed water mains and gas mains, pole lines, conduits, electrical transmission lines, sound and signal transmission lines and other similar services and equipment and appurtenances above, on and below the surface of the ground for the purpose of serving the general public or abutting property; and the right so reserved shall also include such lateral connection or branch lines as may be ordered, desired or permitted by the City or such other utility and to enter upon the premises to accomplish the above purposes at any and all times. This vacation is further subject to the conditions and limitation that there is reserved to the owners of the property to the immediate north of the vacated right-of-way as depicted on Exhibit "A", a perpetual and permanent easement and right over that portion of Davenport Street as depicted as the cross-hatched area on the attached Exhibit "A", for the purpose of allowing truck deliveries and emergency vehicles to use the private roadway for ingress and egress over and across that said easement area. The owners of the property to the immediate south of the vacated right-of-way shall maintain the vacated right-of-way for use as a private roadway, including snow removal and ice treatment, in conformance with the standards for public roadways within the City of Omaha. No buildings, improvements, or other structures shall be placed in, on, over, or across said vacated right-of-way without express written approval of the City; provided, that surface paving for access to Lots 1 through 5, inclusive, The Capitol District, an addition to the City of Omaha, Douglas County, Nebraska, and the perpetual permanent easement rights granted herein are allowed. All vegetation upon the property, including but not limited to, trees, bushes, and crops on the property, including but not limited to, walls, fences, drives and walks, may be damaged or removed as necessary in the exercise of the rights herein reserved without compensation to any person.

Section 2. The owners of the vacated right-of-way of Davenport Street shall have the right to restrict the access to the vacated right-of-way for the purposes of using the space for public gatherings, including the sale of liquor, in accordance with all applicable state and local laws, rules and regulations, but subject to the easement created herein for the benefit of the owner of the property to the immediate north of the vacated right-of-way.

ORDINANCE NO. 40766  
PAGE 3

Section 3. In accord with Omaha Municipal Code section 34-342, in lieu of payment to the City of Omaha for fair market value of the right-of-way to be vacated, the applicant is making public improvements to the area on and near the right-of-way that offset that cost.

Section 4. That this Ordinance shall be in full force and take effect fifteen (15) days from and after the date of its passage.

INTRODUCED BY COUNCILMEMBER

Ben S. Gray

APPROVED BY:

Jan Stothert 6/16/2016  
MAYOR OF THE CITY OF OMAHA DATE

PASSED JUN 14 2016 6-0

ATTEST:

Buster Brown 6/16/2016  
CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

W. J. Miller 5-9-16  
CITY ATTORNEY DATE

1139hra/jjt

I hereby certify that the foregoing is a true and correct copy of the original document now on file in the City Clerk's Office.

Imprinted Seal

Buster Brown  
Buster Brown, City Clerk, City of Omaha



## OMAHA CITY COUNCIL

Omaha/Douglas Civic Center  
1819 Farnam Street - Suite LC-1  
Omaha, NE 68183  
Phone (402) 444-5520  
Fax (402) 444-5263

Ben Gray  
President  
Chris Jerram  
Vice President  
Pete Festersen  
Garry Germandt  
Rich Pahls  
Franklin Thompson  
Aimee Melton

May 3, 2016

WHEREAS, the City Planning Board, at its meeting of March 2, 2016, recommended to the City Council that the following parcel of right-of-way be vacated, to wit:

Vacation of Davenport Street from the West right-of-way line of North 10<sup>th</sup> Street to the East right-of-way Line of North 12<sup>th</sup> Street.

WHEREAS, Section 14-375, Reissue Revised Statutes of Nebraska, 1943, provides that: "Upon recommendation of the City Planning Board, the City may, by ordinance or resolution, vacate any street or alley within any such city without any petition being filed therefore." It further provides that: "Before any such street or alley be vacated, the Council shall appoint a committee of at least three members thereof who shall faithfully and impartially, and after reasonable notice to the others and parties interested in the property affected by the vacation, assess damages, if any, to such owners and parties affected"; and,

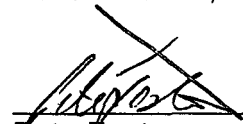
WHEREAS, the City Council of the City of Omaha adopted Resolution Number 846 on July 14, 2015, appointing Pete Festersen, Chris Jerram and Aimee Melton, members of the City Council, to assess damages, if any, to such owners and parties affected by the vacation of the above said right-of-way; and,

WHEREAS, notice was given that a hearing was to be held on Tuesday, May 3, 2016, immediately following the 10:30 a.m. staff meeting in the City Council Office, Omaha/Douglas Civic Center, 1819 Farnam Street, Omaha, Nebraska, to assess damages, if any, and such hearing was held.

NOW, THEREFORE, that Councilmembers Chris Jerram, Aimee Melton and Pete Festersen report to the City Council that it assesses no damages in favor of the owners or parties affected.

  
Chris Jerram, City Councilmember

  
Aimee Melton, City Councilmember

  
Pete Festersen, City Councilmember

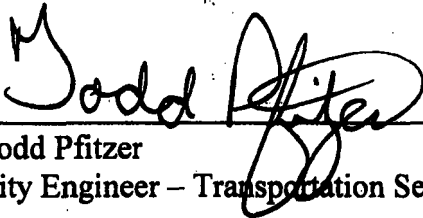
**INTER-OFFICE COMMUNICATION**

**January 28, 2016**

**TO:** James Thele, Planning Director  
**FROM:** Todd Pfitzer, City Engineer – Transportation Services  
**SUBJECT:** Vacation Recommendation

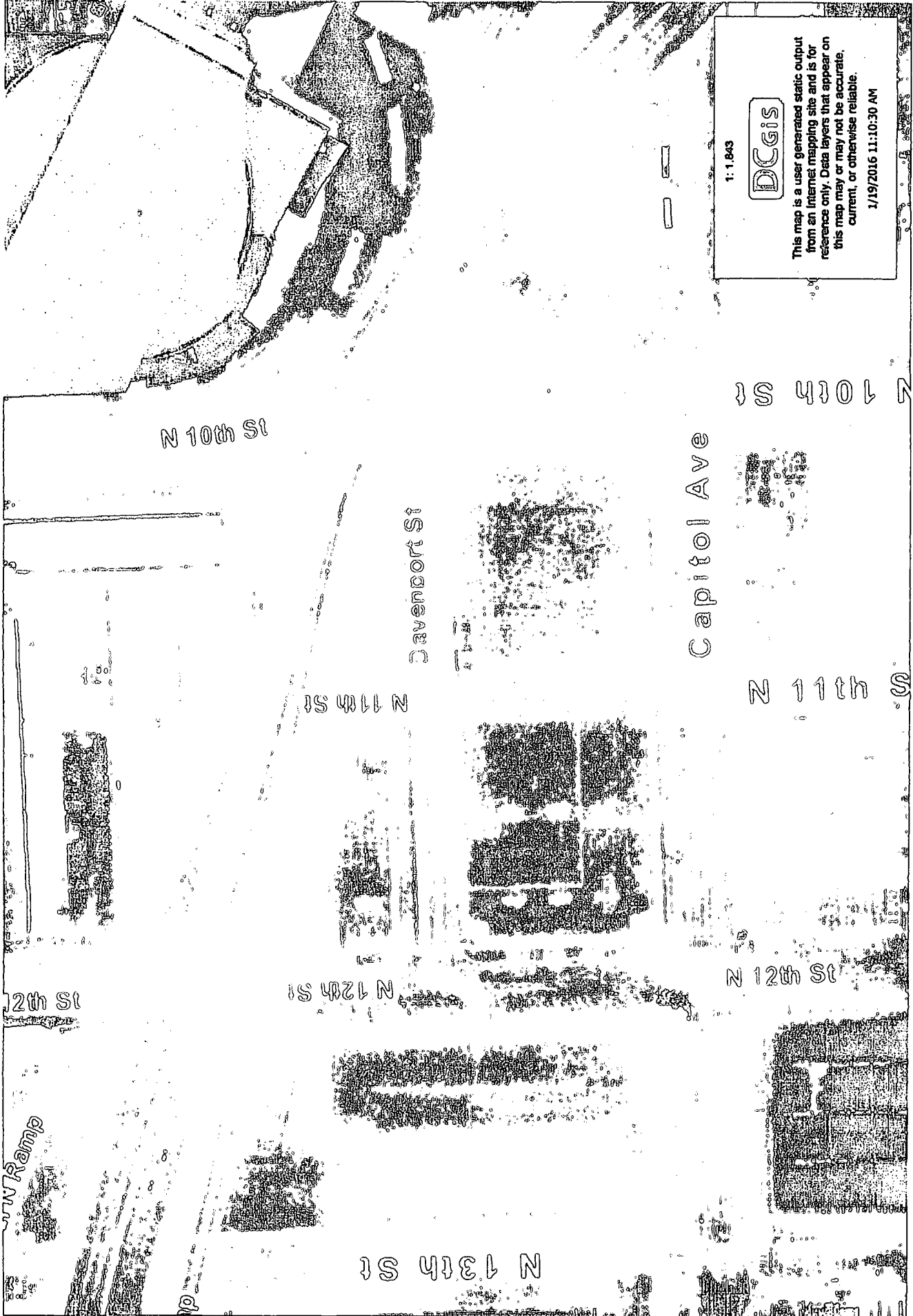
Attached is a copy of documentation for the proposed vacation of Davenport Street between North 10<sup>th</sup> Street and North 12<sup>th</sup> Street, abutting Lots 1 and 2, Block 0 of the Capitol District the Replat 1, Lots 1 and 2, Block 0 of the Capitol District, and Lot 8, Block 62 of City Lots.

The Public Works Department has reviewed this request and has no objection to this vacation with the following stipulations. First, the Public Works Department requires that easements be retained. Additionally, approval will be subject to the stipulations per the approved subdivision agreement, which includes maintaining the public access easement on Davenport Street which connects to 11<sup>th</sup> Street.

 1/28/16  
\_\_\_\_\_  
Todd Pfitzer Date  
City Engineer – Transportation Services

Vacrec/hra

POOR COPY



N 10th St

Cavenport St

Capitol Ave

N 10th St

N 11th St

N 12th St


N 13th St

N 12th St

N 12th St

N 11th St

1: 1.843



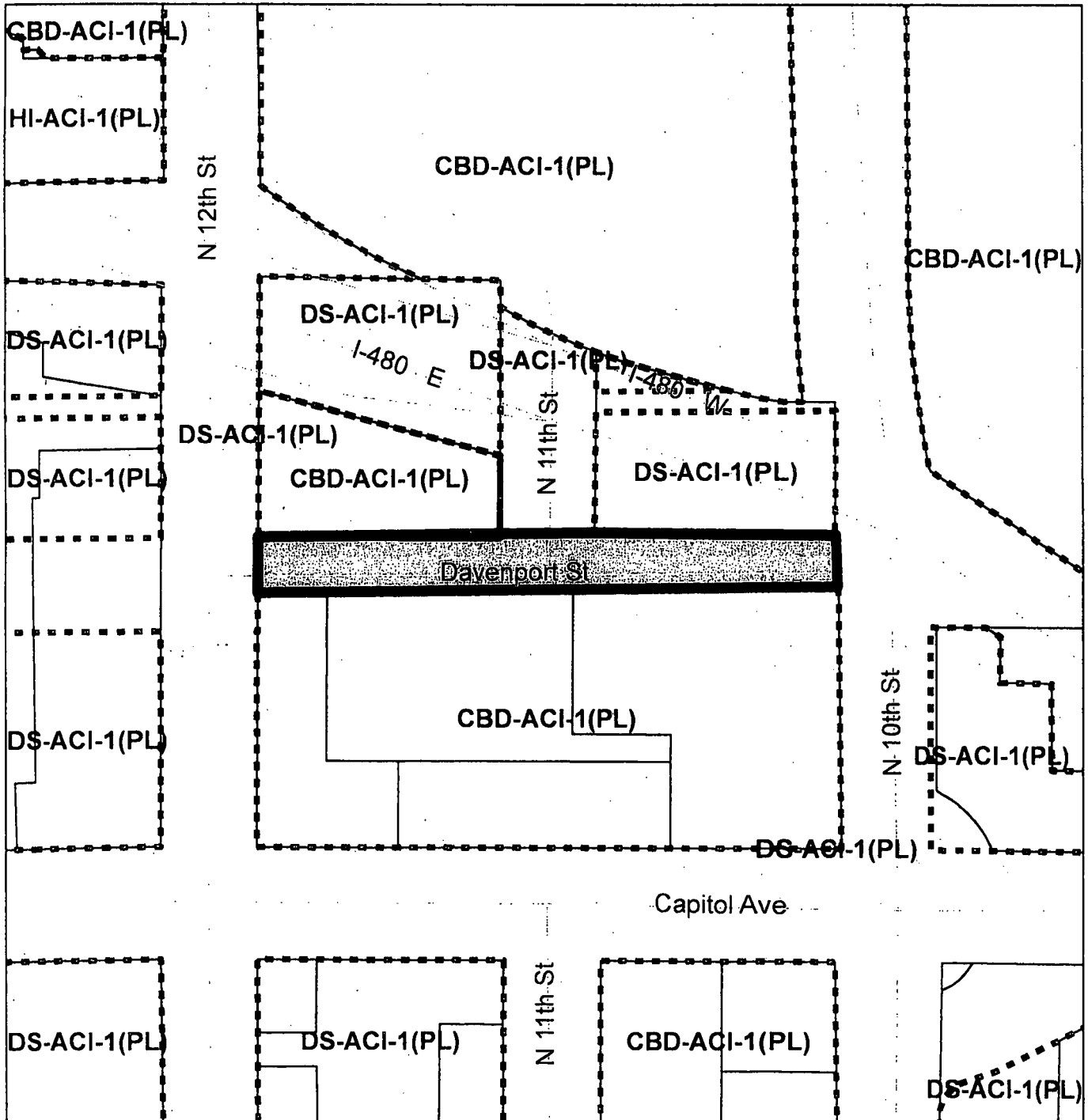
This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

1/19/2016 11:10:30 AM



CASE: C14-16-063  
APPLICANT: Planning Board  
REQUEST: Vacation of Davenport Street from North 10th Street to North 12th Street

SUBJECT AREA IS SHADED - MARCH 2016





## OMAHA CITY COUNCIL

Omaha/Douglas Civic Center  
1819 Farnam Street - Suite LC-1  
Omaha, NE 68183  
Phone (402) 444-5520  
Fax (402) 444-5263

Ben Gray  
President  
Chris Jerram  
Vice President  
Pete Festersen  
Garry Gernandt  
Rich Pahls  
Franklin Thompson  
Aimee Melton

April 26, 2016

TO: Capital District LLC  
% Mike Moylan  
1414 Harney Street #400  
Omaha, NE 68102-0000

Capitol District LLC  
1111 N 13 Street #101  
Omaha, NE 68102-0000

Residences at the Capitol Dist  
1111 N 13 Street #101  
Omaha, NE 68102-0000

Capitol District Hotel LLC  
1111 N 13 Street #101  
Omaha, NE 68102-0000

State of Nebraska  
Department of Roads  
PO Box 94759  
Lincoln, NE 68509-0000

SUBJECT: Vacation of Davenport Street from the West right-of-way line of North 10<sup>th</sup> Street to the East right-of-way line of North 12<sup>th</sup> Street.

Upon recommendation of the City Planning Board to the Mayor and City Council, the City Council may, by ordinance or resolution, vacate any street or alley. The City Planning Board has recommended subject vacation and members of the City Council have been appointed to assess damages, if any, to the owners and parties affected by the above vacation.

Therefore, you are hereby notified that Councilmembers Pete Festersen, Chris Jerram and Aimee Melton will meet in the City Council Conference Room, Room LC-1 of the Omaha/Douglas Civic Center, 1819 Farnam Street, Omaha, Nebraska, on **Tuesday, May 3, 2016, immediately following the 10:30 a.m. staff meeting** to assess damages, if any, to the owners and parties affected by the above vacation.

by Toni Hansen  
Secretary



City of Omaha  
Jean Stothert, Mayor

April 26, 2016

**Public Works Department**

Omaha/Douglas Civic Center  
1819 Farnam Street, Suite 601  
Omaha, Nebraska 68183-0601  
(402) 444-5220  
Fax (402) 444-5248

**Robert G. Stubbe, P.E.**  
Public Works Director

Honorable President

and Members of the City Council,

On July 14, 2015, the City Council of the City of Omaha adopted Resolution 846 appointing Pete Festersen, Chris Jerram, and Aimee Melton, members of the City Council, to assess damages, if any, to the owners and parties affected by the vacation of a street or alley within the City of Omaha.

This Resolution is relative to the proposed vacation of Davenport Street from the West right-of-way line of North 10<sup>th</sup> Street to the East right-of-way line of North 12<sup>th</sup> Street. The requirements provided in Section 14-375, Reissue, Revised Statutes states, "Whenever the Planning Board recommends vacating a street or alley without petition, a Board of Appraisers will assess damages, if any, to owners affected by the vacation".

The purpose of the request is to vacate unneeded, unused right-of-way and allow it to be consolidated with the adjacent property.

The Public Works Department requests your consideration and approval of this Resolution.

Respectfully submitted,

This action has been reviewed and found to be in conformance with the Master Plan.

Robert G. Stubbe 4-2-16  
Robert G. Stubbe, P.E. Date  
Public Works Director

James R. Thele 4/8/16  
James R. Thele Date  
Planning Director

Referred to City Council for Consideration:

Jean Stothert 4/17/2016  
Jean Stothert Date  
Mayor's Office

N 13th St

17th St


12th St

N 12th St

N 11th St

N 10th St

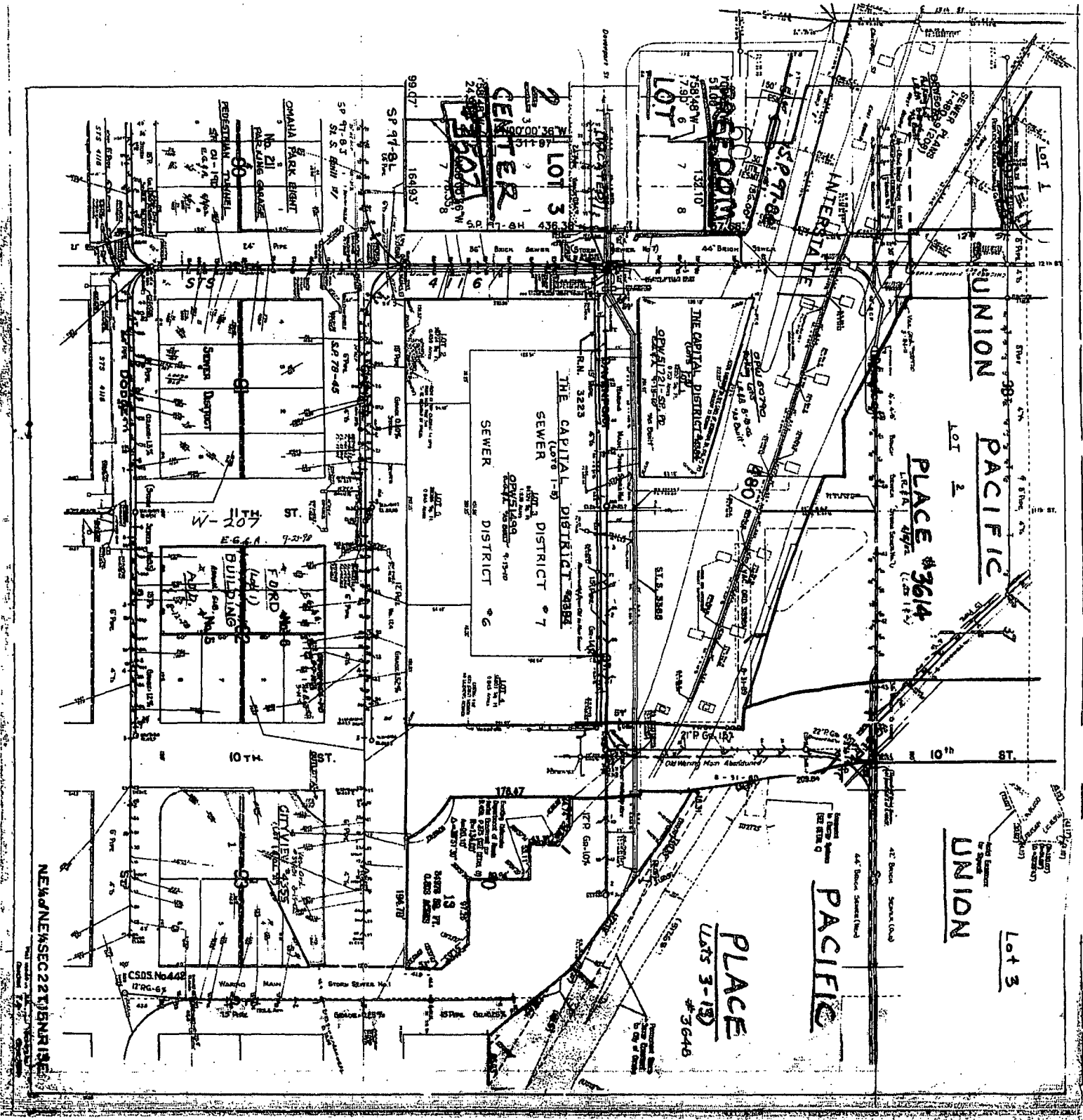
1:1 8/23



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1/19/2016 11:10:30 AM

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**OMAHA CITY PLANNING DEPARTMENT  
RECOMMENDATION REPORT**

February 24, 2016

**Case Number:** #C14-16-063

**Applicant:** Planning Board

**Request:** Vacation of Davenport Street from the West right-of-way line of North 10<sup>th</sup> Street to the East right-of-way line of North 12<sup>th</sup> Street.

**Location:** Generally located on Davenport Street between North 10<sup>th</sup> and North 12<sup>th</sup> Streets.

**I. GENERAL INFORMATION:**

**Purpose:** To vacate the right-of-way and allow its consolidation with the adjacent properties.

**Adjacent Land Use and Zoning:**

**North:** Surface Parking DS-ACI-1(PL)/CBD-ACI-1(PL)

**South:** Surface Parking CBD-ACI-1(PL)

**East:** Right-of-Way

**West:** Right-of-Way

**Future Land Use Plan Designation:** Downtown mixed use.

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**II. SPECIAL INFORMATION:**

**Public Works:** The Public Works Department has reviewed this request and has no objection to the vacation with the following conditions:

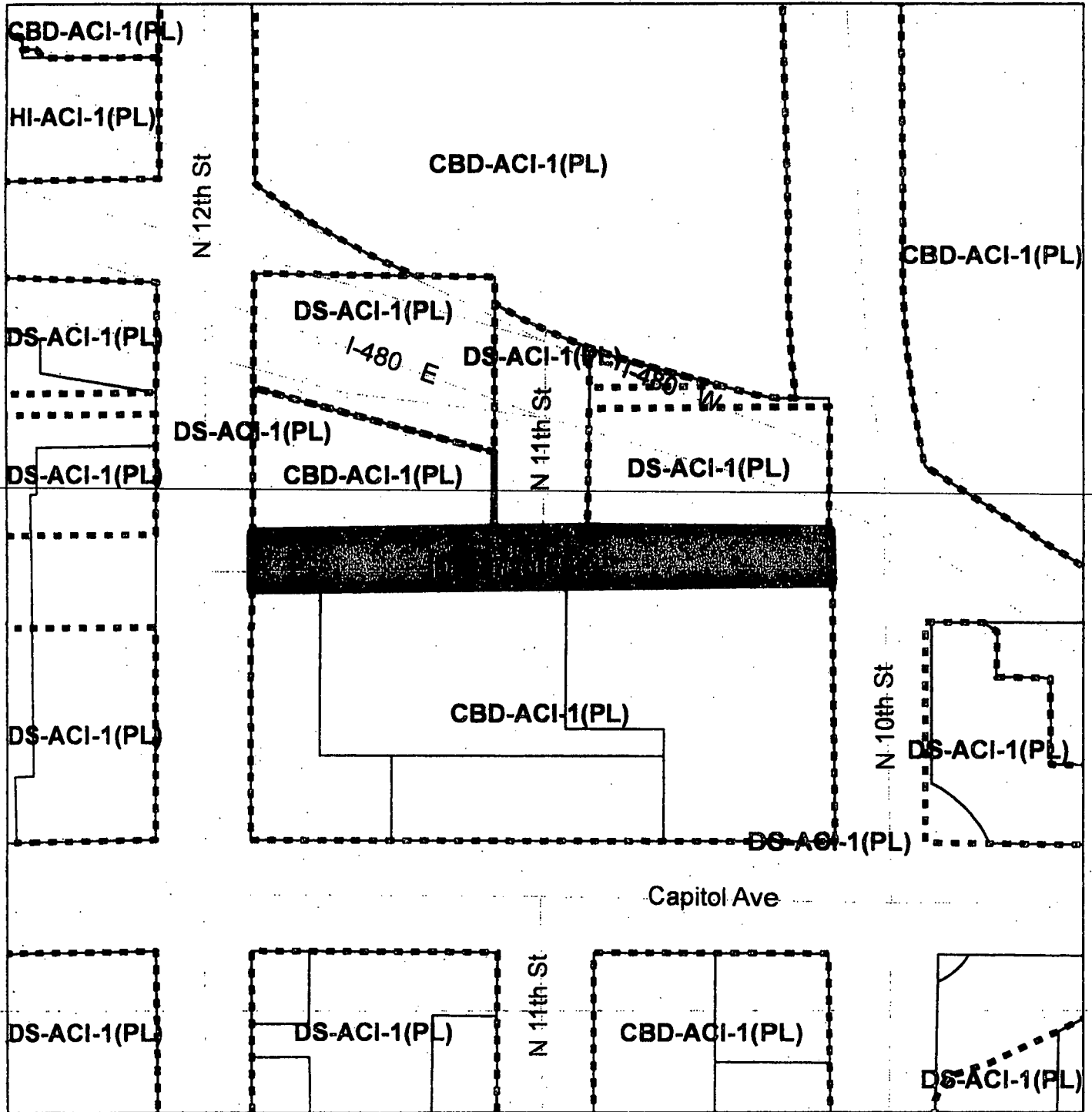
1. The Public Works Department requires that easements be retained.
2. Approval will be subject to the stipulations of the approved subdivision agreement, which includes maintaining the public access easement on Davenport Street which connects to 11<sup>th</sup> Street.

**III. ANALYSIS:** The proposed vacation is consistent with City policy regarding vacation of unneeded and/or excess right-of-way.

**IV. RECOMMENDATION:** Approval, subject to retention of any and all necessary easements, including the maintenance of the public access easement on Davenport Street which connects to 11<sup>th</sup> Street, as well as, any other stipulations identified in the approved subdivision agreement.

CASE: C14-16-063  
APPLICANT: Planning Board  
REQUEST: Vacation of Davenport Street from North 10th Street to North 12th Street

SUBJECT AREA IS SHADED - MARCH 2016



No. \_\_\_\_\_

Planning Board and Planning Department  
recommend approval of the vacation of  
Davenport Street from the West right-of-  
way line of North 10th Street to the East  
right-of-way line of North 12th Street.

(Inside City)

pln564mra



Information is valid as of 2016-01-26

[Print Report](#)  
[View Interactive GIS Map](#)  
[Treasurer's Tax Report](#)  
[Subdivision Sales Search](#)

New Feature → → →

**Owner**

CAPITAL DISTRICT LLC

C/O MIKE MOYLAN  
 1414 HARNEY ST #200  
 OMAHA NE 68102-0000

**Property Information**

**Key Number:** 4705 0050 07  
**Account Type:** Commercial  
**Parcel Number:** 0747050050  
**Parcel Address:**  
**Legal Description:** CAPITOL DISTRICT THE LOT 1 BLOCK 0 LT 1 32957 SQ FT

**Value Information**

	Land	Improvement	Total
2016	\$247,200.00	\$0.00	\$247,200.00
2015	\$247,200.00	\$0.00	\$247,200.00
2014	\$247,200.00	\$0.00	\$247,200.00
2013	\$0.00	\$0.00	\$0.00
2012	\$0.00	\$0.00	\$0.00
2011	\$0.00	\$0.00	\$0.00

**Show All Transactions**

**Land Information**

Acres	SF	Units	Depth	Width	Vacant
0.75	32957.0	1.0	0.0	0.0	Yes

**Land Attributes**

Attribute	Attribute Description
Negative Influence	Soil Contamination

**Douglas County, Nebraska Property Record - R074705005**

Information is valid as of 2016-01-26

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[Treasurer's Tax Report](#)  
[Subdivision Sales Search](#)

New Feature → → →

**Owner**

RESIDENCES AT THE CAPITOL DIST

1111 N 13 ST #101  
 OMAHA NE 68102-0000

**Property Information**

<b>Key Number:</b>	4705 0052 07
<b>Account Type:</b>	Commercial
<b>Parcel Number:</b>	0747050052
<b>Parcel Address:</b>	225 N 12 ST OMAHA NE 68102-0000
<b>Legal Description:</b>	CAPITOL DISTRICT THE LOT 2 BLOCK 0 LT 2 28724 SQ FT

**Value Information**

	<b>Land</b>	<b>Improvement</b>	<b>Total</b>
2016	\$215,400.00	\$0.00	\$215,400.00
2015	\$215,400.00	\$0.00	\$215,400.00
2014	\$215,400.00	\$0.00	\$215,400.00
2013	\$0.00	\$0.00	\$0.00
2012	\$0.00	\$0.00	\$0.00
2011	\$0.00	\$0.00	\$0.00

**Show All Transactions**

**Land Information**

<b>Acres</b>	<b>SF</b>	<b>Units</b>	<b>Depth</b>	<b>Width</b>	<b>Vacant</b>
0.65	28724.0	1.0	0.0	0.0	Yes

**Land Attributes**

<b>Attribute</b>	<b>Attribute Description</b>
Negative Influence	Soil Contamination

Information is valid as of 2016-01-26

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[View Interactive GIS Map](#)  
**Treasurer's Tax Report**  
[Subdivision Sales Search](#)

New Feature → → →

**Owner**

CAPITOL DISTRICT LLC

1111 N 13 ST #101  
 OMAHA NE 68102-0000

**Property Information**

**Key Number:** 4705 0070 07

**Account Type:** Commercial

**Parcel Number:** 0747050070

**Parcel Address:**

**Legal Description:** CAPITOL DISTRICT THE REPLAT 1 LOT 1 BLOCK 0 LT 1 53084 SQ FT

**Value Information**

	<i>Land</i>	<i>Improvement</i>	<i>Total</i>
2016	\$398,100.00	\$0.00	\$398,100.00
2015	\$398,100.00	\$0.00	\$398,100.00
2014	\$398,100.00	\$0.00	\$398,100.00
2013	\$0.00	\$0.00	\$0.00
2012	\$0.00	\$0.00	\$0.00
2011	\$0.00	\$0.00	\$0.00

**Show All Transactions**

**Land Information**

<i>Acres</i>	<i>SF</i>	<i>Units</i>	<i>Depth</i>	<i>Width</i>	<i>Vacant</i>
1.21	53084.0	1.0	0.0	0.0	Yes

**Land Attributes**

<i>Attribute</i>	<i>Attribute Description</i>
Negative Influence	Soil Contamination

Information is valid as of 2016-01-26

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[Treasurer's Tax Report](#)  
[Subdivision Sales Search](#)

New Feature → → →

**Owner**

CAPITOL DISTRICT HOTEL LLC

1111 N 13 ST #101  
 OMAHA NE 68102-0000

**Property Information**

<b>Key Number:</b>	4705 0072 07
<b>Account Type:</b>	Commercial
<b>Parcel Number:</b>	0747050072
<b>Parcel Address:</b>	222 N 10 ST OMAHA NE 68102-0000
<b>Legal Description:</b>	CAPITOL DISTRICT THE REPLAT 1 LOT 2 BLOCK 0 LT 2 68046 SQ FT

**Value Information**

	<b>Land</b>	<b>Improvement</b>	<b>Total</b>
2016	\$2,041,400.00	\$0.00	\$2,041,400.00
2015	\$510,300.00	\$0.00	\$510,300.00
2014	\$510,300.00	\$0.00	\$510,300.00
2013	\$0.00	\$0.00	\$0.00
2012	\$0.00	\$0.00	\$0.00
2011	\$0.00	\$0.00	\$0.00

**Show All Transactions**

**Land Information**

<b>Acres</b>	<b>SF</b>	<b>Units</b>	<b>Depth</b>	<b>Width</b>	<b>Vacant</b>
1.56	68046.0	1.0	0.0	0.0	Yes

Information is valid as of 2016-01-26

[Print Report](#)  
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[Treasurer's Tax Report](#)  
[Subdivision Sales Search](#)

New Feature → → →

**Owner**

STATE OF NEBRASKA

DEPARTMENT OF ROADS  
P O BOX 94759  
LINCOLN NE 68509-0000

**Property Information**

**Key Number:** 1349 0019 03

**Account Type:** Ex Government

**Parcel Number:** 0313490019

**Parcel Address:** 315 N 11 ST OPPD  
OMAHA NE 68102-0000

**Legal Description:** CITY LOTS LOT 8 BLOCK 62 1/2 WAC ALLEY ADJ & IRREG STHLY PT LTS 2  
THRU 4 & ALL LTS 5 THRU 8 BLK 62 1.06

**Value Information**

	<i>Land</i>	<i>Improvement</i>	<i>Total</i>
2016	\$0.00	\$0.00	\$0.00
2015	\$0.00	\$0.00	\$0.00
2014	\$0.00	\$0.00	\$0.00
2013	\$0.00	\$0.00	\$0.00
2012	\$0.00	\$0.00	\$0.00
2011	\$0.00	\$0.00	\$0.00

**Land Information**

<i>Acres</i>	<i>SF</i>	<i>Units</i>	<i>Depth</i>	<i>Width</i>	<i>Vacant</i>
0.0	0.0	0.0	0.0	0.0	No



NO.....

Resolution by .....

Res. that, Council members Pete Festeren, Chris Jerram, and Aimee Melton shall assess damages, if any, to owners and parties affected by the vacation of Davenport Street from the West right-of-way line of North 10<sup>th</sup> Street to the East right-of-way line of North 12<sup>th</sup> Street. Said committee shall give reasonable notice to the owners and parties interested in the property affected by such vacation.

1305Bhra

Presented to City Council

.....

.....

.....

*Buster Brown*

City Clerk



City of Omaha  
Jean Stierfert, Mayor

Planning Department

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

James R. Thele  
Director

April 8, 2014

Honorable President

and Members of the City Council,

The attached Ordinance transmits a Tax Increment Financing (TIF) Redevelopment Loan Agreement between The Capitol District, LLC and the City of Omaha for a redevelopment project which contemplates the redevelopment of an area consisting of approximately 5.86 acres of land bordered by 10<sup>th</sup> Street, Capitol Avenue, 12<sup>th</sup> Street and Interstate 480, including the adjacent public right-of-way of Davenport Street and 11<sup>th</sup> Street. In addition, City and State right-of-way at 9<sup>th</sup> Street under Interstate 480 will be leased for additional parking for the project. The Redevelopment Agreement implements the Capitol District Tax Increment Financing (TIF) Redevelopment Project Plan which was approved by the City Council by Resolution No. 1023 on August 20, 2013.

The Redevelopment Plan contemplates the development of a full-service hotel containing approximately 335 rooms, and the development of other buildings, structures and improvements, which may include uses such as multi-family residential housing, residential and commercial condominiums, structured parking, office, retail and entertainment. By separate ordinance, this area will become an Entertainment District and subject to a developer requested Enhanced Employment Occupation Tax. The Capitol District, LLC, a Nebraska limited liability company, which is controlled by Shamrock Development, Inc., is the owner and Master Developer of the site.

The Redevelopment Agreement authorizes the City's participation in the redevelopment by providing up to \$35,000,000.00 in Tax Increment Financing (TIF) that will be used to offset TIF eligible costs such as acquisition, site work, architectural and engineering fees, surveys, studies, and any public improvements as may be necessary. The estimated total project cost is \$205,161,959.00, but is subject to change as final costs come in.

Your favorable consideration of this Ordinance will be appreciated.

Respectfully submitted,

Referred to City Council for Consideration:

*James R. Thele* 3/25/14  
James R. Thele Date  
Planning Director *BAH*

*Jean Stierfert* 3/25/14  
Jean Stierfert Date  
Mayor's Office

Approved:

*Stephen B. Curtiss* 3/26/14  
Stephen B. Curtiss Date  
Finance Director *SP*

*Robert G. Stubbe* 3-25-14  
Robert G. Stubbe, P.E. Date  
Public Works Director



ORDINANCE NO. 39976

AN ORDINANCE approving a redevelopment and tax increment financing loan agreement between the City of Omaha and The Capitol District, LLC, a Nebraska limited liability company, to implement the Capitol District Tax Increment Financing (TIF) Redevelopment Project Plan which contemplates the redevelopment of an area consisting of approximately 5.86 acres of land bordered by 10<sup>th</sup> Street, Capitol Avenue, 12<sup>th</sup> Street and Interstate 480, including the adjacent public right-of-way of Davenport Street and 11th Street, and which proposes an urban mixed-use redevelopment project anchored by a full-service hotel and the development of other buildings, structures and improvements, which may include uses such as multi-family residential housing, residential and commercial condominiums, structured parking, office, retail and entertainment; the agreement authorizes the use of up to \$35,000,000.00 in excess ad valorem taxes (TIF) generated by the development to help fund the cost of the project; and providing for an effective date.

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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 The Capitol District, LLC, a Nebraska limited liability company, to authorize the use of up to \$35,000,000.00 in TIF that will be used to offset costs of acquisition, site work, architectural and engineering fees, surveys, studies, and any public improvements as may be necessary, for a project with an estimated total project cost of \$205,161,959.00.

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. 39976  
PAGE 2

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

*Peterson*

APPROVED BY:

*John Stork* 4/24/14  
MAYOR OF THE CITY OF OMAHA DATE

PASSED APR 22 2014 7-0

ATTEST:

APPROVED AS TO FORM:

*Buster Brown* 4/24/14  
City Clerk of the City of Omaha

*[Signature]* 3/25/14  
Deputy City Attorney

## **REDEVELOPMENT AGREEMENT**

This Redevelopment Agreement (the "Agreement") is entered into by and between the City of Omaha, Nebraska, a Nebraska municipal corporation in Douglas County, Nebraska (the "City"), and The Capitol District, LLC, a Nebraska limited liability company (the "Developer"), the successor-in-interest to Shamrock Development Inc., the developer selected by the City pursuant to a Request for Proposals to redevelop the area as contemplated therein (the "RFP").

### **PRELIMINARY STATEMENT**

On August 20, 2013, the City Council of the City of Omaha approved The Capitol District Tax Increment Financing Redevelopment Project Plan (the "Redevelopment Plan") which contemplates the redevelopment of an area consisting of approximately 5.86 acres of land bordered by 10<sup>th</sup> Street, Capitol Avenue, 12<sup>th</sup> Street and Interstate 480 above, including the adjacent public right-of-way of Davenport Street and 11th Street. The Redevelopment Plan contemplates the development of a full-service hotel containing approximately 335 rooms (the "Hotel Improvements"), and the development of other buildings, structures and improvements, which may include uses such as multi-family residential housing, residential and commercial condominiums, structured parking, office, retail and entertainment (collectively referred to herein as the "Non-Hotel Improvements", and together with the Hotel Improvements and the hereinafter described Public Improvements, the "Improvements").

The Redevelopment Plan provides for up to \$35,000,000.00 in tax increment financing ("TIF") to offset the costs of site-specific TIF eligible costs including acquisition, site preparation, engineering, public parking and other public improvements, as set forth in a separate Subdivision Agreement between the parties; and

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This Agreement is a redevelopment agreement prepared pursuant to the Nebraska Community Development Law in order to implement the Redevelopment Plan.

IN CONSIDERATION OF THESE MUTUAL COVENANTS THE PARTIES AGREE AS FOLLOWS:

#### **SECTION 1. DEFINITIONS.**

In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings for purposes of this Agreement.

- 1.1 "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 Act.
- 1.2 "Developer" shall mean The Capitol District, LLC, a Nebraska limited liability company, successor-in-interest to Shamrock Development, Inc., and any successors

and assigns.

- 1.3 **"Director"** shall mean the Director of the City of Omaha Planning Department.
- 1.4 **"Division Date"** shall mean those dates after which any ad valorem real estate tax levied upon real property in the Redevelopment Area shall be divided as is provided in the Redevelopment Law and as established from time to time in accordance with Section 2.3, below.
- 1.5 **"Base Year Valuation"** for the purposes of this Agreement, the Base Year Valuation shall be January 1<sup>st</sup> of the year immediately preceding the Division Date for any legally subdivided parcel within the Redevelopment Area as requested by the Developer from time to time and included by the City in the Notice to Divide Tax for Community Redevelopment Project (**"Notice to Divide"**) in accordance with Nebraska law and Section 1.4, above.
- 1.6 **"Entire Development Property"** shall mean the real estate described as Lots 1 through 5, inclusive, The Capitol District, an Addition to the City of Omaha, Douglas County, Nebraska, platted or to be platted substantially as shown on Exhibit "A" and developed in substantial accordance with the Site Plan (the **"Site Plan"**) attached hereto as Exhibit "A-1", which Site Plan the parties expressly acknowledge, generally conforms to the RFP. The definition of "Entire Development Property" may include, at Developer's election, in its sole discretion, the real estate depicted on the attached Exhibit "B" in accordance with Section 2.5, below (the **"Supplemental Site Property"**).
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- 1.7 **"Excess Tax Revenues"** shall mean any ad valorem tax which is produced after the Division Date upon real property in the Redevelopment Area by the levy (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 tax which is produced by such levy upon the Redevelopment Project valuation.
- 1.8 **"Lot" or "Lots"** shall mean and refer to Lots 1 through 5, inclusive, The Capitol District, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.
- 1.9 **"Public Improvements"** shall mean those public improvements set forth and in that certain Subdivision Agreement entered into by and between the City and the Developer of even date herewith and any other improvements permitted under the Redevelopment Law.
- 1.10 **"Redevelopment Area"** shall mean the Entire Development Property, including any

adjacent public right-of-ways, including, but not limited to Davenport Street, and the Supplemental Site Property which may be added in accordance with the terms of this Agreement.

- 1.11 **"Redevelopment 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.
- 1.12 **"Redevelopment Loan"** shall mean any loan made by the Developer to the City pursuant to Section 3.2 of this Agreement.
- 1.13 **"Redevelopment Note"** or **"Redevelopment Notes"** shall mean any obligation or obligations issued by the City and secured by the Excess Tax Revenues generated within the Redevelopment Area. Each Redevelopment Note shall be in substantially the form of Exhibit "C" attached hereto.
- 1.14 **"Redevelopment Project"** shall mean the acquisition of the Entire Development Property and the development of the Hotel and the Non-Hotel Improvements in substantial accordance with the Site Plan, including the installation and construction of certain Public Improvements as set forth in a separate Subdivision Agreement between the parties of the same date herewith; the term **"Redevelopment Project"** may be amended, at Developer's election, to include those redevelopment projects to be constructed on the Supplemental Site Property.

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## **SECTION 2. OBLIGATIONS OF THE CITY.**

2.1 **Issue of Redevelopment Notes.** Upon the Developer's acquisition of any portion of the Entire Development Property, the City shall borrow from the Developer, or the subsequent owner of such Lot or group of Lots, a portion of the Redevelopment Loan, which amount shall be determined by the Developer in its sole discretion, it being understood that the total amount requested for the Entire Development Property shall not to exceed \$35,000,000.00 (the **"Maximum Redevelopment Loan Amount"**). Concurrently with the acquisition of any Lot or group of Lots by Developer, or the subsequent owner of such Lot or group of Lots, as directed in writing by Developer, the City may issue to the Developer, or the subsequent owner of such Lot or group of Lots, at closing one or more Redevelopment Notes in such denominations specified by the Developer to evidence the City's obligation to repay that portion of the Redevelopment Loan initially borrowed by the City from the Developer. Thereafter, as the Developer, or the subsequent owner of a Lot or group of Lots, lends additional monies to the City pursuant to this Agreement, the City shall execute and deliver such additional Redevelopment Notes in such denominations specified by the Developer from time to time to evidence the City's obligation to repay the Redevelopment Loan. Each Redevelopment Note shall be repaid from the Excess Tax Revenues from the Lot or group of Lots within the Redevelopment Area specified by the Developer, from time to time, provided that the principal amount of all such Redevelopment Notes secured by the

Excess Tax Revenues from a particular Lot or group of Lots shall not exceed the Maximum Redevelopment Loan Amount.

The Redevelopment Note or Redevelopment Notes shall be secured by and payable only from the Excess Tax Revenues produced from the improvement, development, and redevelopment of each Lot or group of Lots within the Redevelopment Area as designated by the Developer from time to time. Unless the Developer requests that a Redevelopment Note be secured by and payable solely from the Excess Tax Revenues produced from the improvement, development and redevelopment of one or more, but less than all of the Lots within the Redevelopment Area, the Redevelopment Notes shall be secured by and payable from the Excess Tax Revenues produced from the improvement, development and redevelopment of all of the Lots within the Redevelopment Area. If requested by the Developer, the City shall enter into an administrative amendment or amendments to this Agreement with the Developer identifying the development of a particular Lot or Lots within the Redevelopment Area as a separate redevelopment project under the Capitol District Redevelopment Plan and providing for the issuance of Redevelopment Notes secured by and payable only from the Excess Tax Revenues produced from the improvement, development, and redevelopment of such designated Lot or Lots, as more fully described in Section 2.5 hereof.

**2.2 Use of Redevelopment Loan Proceeds.** The City shall grant the entire amount of the Redevelopment Loan proceeds to the Developer, or the subsequent owner of a Lot or group of Lots, for land acquisition, demolition, site preparation, construction of the structured parking facility, and other costs of improving, developing and redeveloping the Lots within the Redevelopment Area allowed by law, including, but not limited to, those estimated eligible costs set forth on Exhibit "D", attached hereto, which estimated costs may be allocated by Developer, in Developer's sole discretion, to any Lot or group of Lots within the Redevelopment Area.

**2.3 Division Dates.** The Division Date(s) for the Redevelopment Project shall be established from time to time by the Developer based upon the development of any Lot or group of Lots within the Redevelopment Area. The Developer shall send written notice to the City requesting the Division Date for each Lot or group of Lots within the Redevelopment Area. Upon receipt of the written request of Developer to set the Division Date for any Lot or group of Lots within the Redevelopment Area, the City shall promptly file a Notice to Divide with respect to such parcel with the Douglas County Assessor, which such Notice to Divide shall specify the calendar year that the division of the real property tax is to become effective and the Base Year Valuation for each Lot or group of Lots, as the case may be. The Excess Tax Revenues for each Lot or group of Lots within the Redevelopment Area shall not exceed fifteen (15) years after the effective date the Notice to Divide is executed and delivered by the City to the Douglas County Assessor's office with respect to such Lot or group of Lots; it being understood by the parties hereto that the real property taxes which are levied in the fifteenth (15<sup>th</sup>) year with respect to such Lot or group of Lots, but are actually paid by Developer (or its successor/assign) in the sixteenth (16<sup>th</sup>) year, shall be paid, immediately upon being available to the City, towards the retirement of the amounts due under the applicable Redevelopment Note(s), but in no event shall the Developer receive more than fifteen (15) years of tax payments (30 semi annual payments). The City shall not file a Notice to

Divide for any Lot or group of Lots within the Redevelopment Area unless and until a written request is made by the Developer for such Lot or group of Lots.

2.4 **Redevelopment Notes.** The Maximum Redevelopment Loan Amount to be issued pursuant to Section 2.1 hereof has been agreed upon and shall be issued to Developer, or the subsequent owner of a Lot or group of Lots, as established by written notice delivered by Developer to the City, based upon the: (i) timing of construction and completion of the Improvements on each Lot or group of Lots; (ii) the estimated amount of eligible cost associated in improving, developing, and redeveloping each Lot or group of Lots within the Redevelopment Area; and (iii) the anticipated increment to be created upon completion of the improvements on each Lot or group of Lots. The City and the Developer both intend that the Developer shall receive the maximum benefit up to the Maximum Redevelopment Loan Amount from Excess Tax Revenues that will be available as a result of the improvement, development, and redevelopment of the Entire Development Property, including the Supplemental Site Property, limited to eligible expenses allowable under the Redevelopment Law.

2.5 **Additional Redevelopment Notes for Supplemental Site Property.** It is anticipated that the total valuation of the Redevelopment Project will not generate Excess Tax Revenues sufficient to recapture the total expenditure of TIF eligible costs associated with the Redevelopment Project. Accordingly, in the event any portion or all of the Supplemental Site Property is developed or redeveloped, the Developer shall have the right, in its discretion, to add a portion or all of the Supplemental Site Property into the Redevelopment Area for the purposes of securing valuation to support the issuance of additional Redevelopment Notes. In such event, the City shall execute and issue such additional Redevelopment Notes to the Developer or its designees or assigns in such amounts and denominations as determined by the Developer to the extent the ~~issuance of such Redevelopment Notes may be supported by the incremental increase in valuation~~ of the Supplemental Site Property. If the Supplemental Site Property is added to the Redevelopment Area, the additional Redevelopment Notes may be issued even if such issuance brings the aggregate principal amount of Redevelopment Notes issued in connection with the Redevelopment Project to an amount greater than the Maximum Redevelopment Loan Amount.

2.6 **Delivery of Evidence.** The City shall ensure that prior to expenditure or disbursement of Redevelopment Note proceeds, the following shall be obtained, to wit:

2.6.1 Developer, or the subsequent owner of a Lot or group of Lots, as applicable, shall provide the City with evidence, acceptable to the City, that private funds have been irrevocably committed to complete that portion of the Public Improvements funded by the corresponding Redevelopment Note.

2.6.2 Developer, or the subsequent owner of a Lot or group of Lots, as applicable, shall provide evidence of, and maintain adequate performance and labor materials bonds for Public Improvements to be constructed during the period of construction of the Redevelopment Project. The City shall be specified as a co-obligee.

2.7 **Special Fund.** The City shall establish a special fund or funds under Section 18-2147 of the Nebraska Revised Statutes for the purpose of collecting the Excess Tax Revenues generated by the Redevelopment Project. All Excess Tax Revenues shall be collected and held in a special fund or funds and shall be used for no purpose other than to repay the Redevelopment Notes, until such time as no Redevelopment Notes are outstanding and unpaid.

2.8 **Intentionally Deleted.**

2.9 **No Special Assessments.** The City shall not levy special assessments against any Lot within the Redevelopment Area, or against the improvements located thereon in regard to the Redevelopment Project. This section does not prohibit future special assessments for future projects initiated and constructed by the City.

2.10 **Implementation of City Obligations.** The City shall take all actions required by law, including, but not limited to, holding public hearings and issuing approvals, to issue permits for utility relocation where necessary pursuant to the City's existing policies, approving and executing contracts and agreements and enacting resolutions and ordinances to implement the City's obligations under this Agreement.

2.11 **Miscellaneous Obligations of the City.**

2.11.1 Cause all of the Lots within the Redevelopment Area, except for Lot 1, The Capitol District, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, to be rezoned to Central Business District (CBD) pursuant to Chapter 55 of the Omaha Municipal Code.

2.11.2 If requested by the Developer, the City and Developer shall use commercially reasonable efforts to cause the removal of the existing Lamar billboard from the Redevelopment Area to a location mutually agreeable to Developer and the City.

2.11.3 Install new street light poles with light shields that reduce the amount of light projecting towards the Redevelopment Project, as the City and Developer determine is reasonably necessary, along the streets adjacent to the Lots at no cost to the Developer; provided, however, in the event the City and/or OPPD installs decorative street light poles in addition to those decorative street light poles in place on the Lots, the Developer shall be responsible for the cost differential not to exceed \$2,200.00 for each decorative light pole installed in addition to the currently installed decorative street light poles. Upon such installation, the City shall be solely responsible for the costs of operating and maintaining the street light poles if they are approved City light poles.

2.11.4 Support the issuance of Industrial Development Bonds to finance the



construction of the structured parking facility to be constructed by the Developer within the Redevelopment Area.

- 2.11.5 To the extent the current granite curbs cannot be retained, provide new granite curbs for the Redevelopment Project at no cost to the Developer; provided, however, the granite curbs shall be installed by Developer, at Developer's cost, during the construction of the Redevelopment Project.
- 2.11.6 City shall enter into a separate sublease agreement with Developer whereby City agrees to a long term sublease of certain surface parking area adjacent to the Redevelopment Area, commonly referred to as "Lot E", but only to the extent the City controls the lot and has the right to lease or sublease the lot, on substantially the same terms and conditions as the City is bound by under its current lease with the State of Nebraska.
- 2.11.7 It is anticipated that the Developer will apply for and seek the classification of the Redevelopment Area as an "Entertainment District" in such a manner so as to make the Redevelopment Area eligible under Nebraska Revised Statute Section 53-123.17.
- 2.11.8 Enter into an agreement with the Developer, or the subsequent owner of each Lot or group of Lots, concurrently with the issuance of a building permit on such Lot or group of Lots, to establish the minimum valuation for each Lot within the Redevelopment Area (the "Minimum Valuation Agreement") in substantially the same form attached hereto as Exhibit "E". The Minimum Valuation Agreement shall be delivered to the Douglas County Assessor for the calculation of real property taxes. City and Developer recognize that the Douglas County Assessor independently determines the value of the Redevelopment Area.
- 2.11.9 It is anticipated that the Developer will apply for and seek to designate the Redevelopment Area as an "enhanced employment area" as defined in Section 18-2103(22), Reissue Revised Statutes of Nebraska, such that, pursuant to Section 18-2142.02, Reissue Revised Statutes of Nebraska, as amended, the City would be authorized to levy and collect a general business occupation tax upon the businesses and users of space within the Enhanced Employment Area for the purpose of paying all or any part of the costs and expenses of the Redevelopment Project within the Enhanced Employment Area.
- 2.11.10 City shall enter into a separate lease and/or sublease agreement with Developer whereby City agrees to a long term lease of that certain area adjacent to the Redevelopment Area shown on Exhibit "G" attached hereto pursuant to the terms to be provided in a separate agreement, which terms

shall be substantially similar to the terms and conditions the City is bound by under its current lease with the State of Nebraska.

2.11.11 **Public Parking Facility.** Support the issuance of Industrial Development Bonds to finance the Developer's construction of the structured parking facility to be constructed by the Developer on Lot 3, The Capitol District, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

### **SECTION 3. OBLIGATIONS OF THE DEVELOPER.**

3.1 **Acquisition, Rezoning and Subdivision of the Entire Development Property.** The Developer has entered into a purchase contract to acquire the Entire Development Property, and the Developer and City are in the process of rezoning and subdividing the Entire Development Property into the Lots. The Developer and City shall complete the rezoning and subdivision and Subdivision Agreement prior to closing. The following shall be conditions precedent to the obligations of the Developer and the City under this Agreement: (i) that the Developer, and/or such third-party purchasers designated by Developer, complete the acquisition of any portion of the Entire Development Property, and (ii) that the Developer is able to obtain all necessary governmental approvals of the rezoning and subdivision of the Entire Development Property into the Lots on terms acceptable to the Developer, in its sole discretion. The City and Developer shall make good faith efforts to satisfy such conditions, including rezoning and subdividing the Entire Development Property substantially as shown on Exhibit "A" attached hereto, which will include dedication of rights-of-way, vacation of rights-of-way and easements as shown on Exhibit "A". If the Developer determines that the conditions set forth above will not be satisfied, the Developer shall so notify the City and upon delivery of such notice, this Agreement shall be deemed cancelled and neither party shall have any further rights or obligations hereunder. Filing of the final plat of the Entire Development Property by the Developer shall be conclusive evidence that such conditions precedent have been satisfied. The Developer shall use the proceeds of any Redevelopment Loan granted to the Developer pursuant to this Agreement for land acquisition, demolition, site preparation, construction of the Public Parking Facility and such other costs of improving, developing and redeveloping the Entire Development Property allowed by law as set forth on Exhibit "D" attached hereto. In the event Developer requests additional Redevelopment Notes, pursuant to Section 2.5 hereof, the Developer shall lend or have lent additional redevelopment funds to the City in an amount equal to the principal amount of such Redevelopment Notes, and such redevelopment funds shall be granted to the Developer, subject to TIF eligible expenses, as allocated by the Developer pursuant to Section 2.2 hereof. Any such subsequent Redevelopment Loan, when combined with the principal amounts of the outstanding Redevelopment Loans, shall not exceed the Maximum Redevelopment Loan Amount and shall be closed in the same manner as the initial Redevelopment Loan; provided, however, that notwithstanding the foregoing, to the extent that the TIF eligible development costs associated with the redevelopment project(s) to be constructed on the Supplemental Site Property can support a higher Maximum Redevelopment Loan Amount, additional Redevelopment Notes may be issued pursuant to Section 2.5 of this Agreement even if such issuance brings the aggregate principal

amount of Redevelopment Notes issued in connection with the Redevelopment Project to an amount greater than the Maximum Redevelopment Loan Amount.

3.2 **Redevelopment Loan.** Subject to the Developer's ability to increase the Maximum Redevelopment Loan Amount pursuant to Section 2.5, above, the Developer, or the subsequent owner of a Lot or group of Lots, as applicable, may lend to the City the sum of not more than the Maximum Redevelopment Loan Amount which shall be evidenced by one or more Redevelopment Notes. The Redevelopment Loan proceeds, when combined with other private or public funds available, will be used by the Developer, or its successors and assigns, for the development of each Lot within the Redevelopment Area in substantial accordance with the RFP and Site Plan. Execution and delivery of the initial Redevelopment Note or Redevelopment Notes shall be at the Redevelopment Loan closing. The Maximum Redevelopment Loan Amount to be issued pursuant to this Agreement as specified in Section 2.1 assumes that the Redevelopment Notes will bear interest at the rate of *six percent (6%)* per annum. In the event the interest rate changes, the Maximum Redevelopment Loan Amount may be amended accordingly.

3.3 **Lot 4 Sidewalk Easement.** The Developer, and/or its successor/assign, will negotiate in good faith with the City to provide for a sidewalk easement to allow public access on the private sidewalk to be constructed on Lot 4, The Capitol District, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

3.4 **Certification of Note for Payment.** The Developer and any subsequent holder of any Redevelopment Note shall provide the City Finance Department with written certification that it owns and holds the original executed Redevelopment Note prior to disbursement of any proceeds for the payment of such Redevelopment Note. If a Redevelopment Note is lost, destroyed, or stolen, ~~the Developer or any subsequent holder of a Redevelopment Note may so certify to the~~ City, whereupon the City shall issue a replacement Redevelopment Note; provided, that the Developer or such subsequent holder shall provide the City with an indemnity agreement or other security reasonably required by the City in connection with the issuance of such Replacement Note.

3.5 **Entire Development Property Improvements.** The Developer shall design and construct or shall enter into agreements with third parties who acquire title to any Lot or group of Lots within the Redevelopment Area to design and construct on such Lot or group of Lots the following:

<u>Lot No.</u>	<u>Building Use Type</u>
1	Commercial/Multi-Family Residential/ and/or Parking
2	Multi-family Residential Housing/Retail
3	Public Parking Facility/Ballroom Condominium
4	Hotel Improvements
5	Office/Retail or Multi-family Residential/Retail

generally as shown on the Site Plan (which may be modified from time to time by mutual agreement of the Developer and the City) creating a minimum stipulated value of improvements for real estate tax assessment purposes valued to the extent necessary to pay the Redevelopment

Note with Excess Tax Revenues. The Developer specifically covenants and agrees that construction of the Non-Hotel Improvements will not commence until after the Developer or its successor and assign has commenced construction of the footings and foundations for the Hotel Improvements. If the Developer fails to comply with the provisions of this Section, the only consequence will be that there may not be sufficient Excess Tax Revenues to repay the outstanding Redevelopment Note or Notes; and the Developer shall not be deemed in default hereunder and the City shall have no recourse or remedies, except pursuant to the Repurchase Agreement, or responsibility to pay any obligations of the Developer. It is anticipated that the first phase(s) of the Redevelopment Project will be substantially completed on or before March 1, 2016.

**3.6 Certain Agreements Regarding Tax Increment Financing.** While the Redevelopment Notes are outstanding, the following shall apply:

3.6.1 Developer intends to sell and convey the Lots within the Entire Development Property to third party developers/users. As such, the parties agree that it is not feasible in this Agreement to allocate any minimum real estate tax valuation to any particular Lot or group of Lots. At each Redevelopment Loan closing, the Developer will certify to the City in writing that the Developer has given written notice to the bank or other lender of the Redevelopment Loan funds that the owners of the Lot or group of Lots within the Redevelopment Area will not have the right to protest any real estate tax valuations of their respective Lots while any Redevelopment Note is outstanding below the amount agreed to in the Minimum Valuation Agreement. Nothing in the Minimum Valuation Agreement shall limit the discretion of the Assessor to assign an actual value to the property in excess of such Minimum Valuation Agreement nor prohibit the Developer or property owner from seeking through the exercise of legal or administrative remedies a reduction in such actual value for property tax purposes; provided, however, neither the Developer nor the owner of any Lot within the Redevelopment Area shall seek and/or obtain a reduction of such actual value below the valuation established in the Minimum Valuation Agreement. The Minimum Valuation Agreement shall remain in effect until all of the Redevelopment Notes are either paid in full or the fifteen year amortization period has expired with respect to each Lot within the Redevelopment Area in accordance with the Redevelopment Law. The Minimum Valuation Agreements shall be filed for record in the office of the Douglas County, Nebraska, Register of Deeds, and such filing shall constitute notice to any subsequent encumbrancer or purchaser of any such Lot or group of Lots to which the Minimum Valuation Agreement applies, whether voluntary or involuntary. Such Minimum Valuation Agreement shall be binding and enforceable in its entirety against any such subsequent purchaser or lienholder, as well as all prior lienholders, each of which prior lienholders shall sign a consent to the Minimum Valuation Agreement. The Developer agrees that it will not protest a real estate improvement valuation on the Entire Development Property of an aggregate of approximately \$142,000,000.00 or less after substantial completion of the Redevelopment Project.

3.6.2 Developer, or the subsequent owner of a Lot or group of Lots, shall not convey any Lot or any portion thereof or any structures thereon to any entity that would be

exempt from the payment of ad valorem taxes.

3.6.3 Developer, or the subsequent owner of a Lot or group of Lots, shall not apply to the Douglas County Assessor for the structures, or any portion thereof, to be taxed separately from the underlying land of such Lot.

3.6.4 Developer, or the subsequent owner of a Lot or group of Lots, shall maintain with respect to any structures on any Lot or portion thereof fire and extended coverage insurance thereon for the full insurable value thereof, subject to such commercially reasonable deductibles, however, as the Developer and any subsequent owner of the Lot may determine. An owner or occupant of a building on any Lot may, with the consent of the City (which consent shall be reflected in an administrative amendment to this Agreement), which consent shall not be unreasonably withheld, and the written consent of the then holder or holders of any outstanding Redevelopment Notes, elect to self-insure such risks, but only if such owner has a net worth of at least \$100,000,000.00. In the event of a casualty loss, the Developer or the then owner of the damaged property, as appropriate, shall reconstruct such improvements or, alternatively, shall escrow funds or provide insurance proceeds in an amount equivalent to the amount of Excess Tax Revenues that would have been generated from the property had it not been damaged. Such escrowed funds or insurance proceeds shall be used to amortize the outstanding Redevelopment Notes secured by the Excess Tax Revenues from that owner's real estate.

3.6.5 As long as any Redevelopment Note or Redevelopment Notes remain outstanding, the Developer shall cause all real estate taxes and assessments levied on any Lot owned by Developer to be paid prior to delinquency. In addition, as long as any ~~Redevelopment Note or Redevelopment Notes remain outstanding, the subsequent owner of~~ a Lot or group of Lots shall cause all real estate taxes and assessments levied on any such Lot to be paid prior to delinquency.

Each of the foregoing covenants shall run with the land and be binding on subsequent owners of any Lot or group of Lots within the Redevelopment Area as long as any Redevelopment Note is outstanding, and shall be referenced in a Notice of Redevelopment Agreement to be recorded in the office of the Register of Deeds of Douglas County, Nebraska after the final plat is recorded in the office of the Register of Deeds of Douglas County, Nebraska. Unless and until the final plat is recorded, neither this Agreement nor any Memorandum of this Agreement shall be recorded. The Developer agrees to include the covenants set forth in this Section in any subsequent sale, assignment, sale-leaseback or other transfer of any Lot within the Redevelopment Area, but shall not be responsible otherwise for the actions of the third parties if these covenants are breached by such third parties if the Developer no longer owns the Lot as to which a covenant was breached.

3.7 **Penal Bond.** The Developer shall provide the City with a penal bond as required by Section 18-2151 of the Redevelopment Law. A reasonably sufficient payment and performance bond from the Developer's general contractor or contractors will satisfy this requirement.

3.8 **Compliance with Capitol Avenue Streetscape Requirements.** The Developer will comply with the Capitol Avenue Streetscape requirements in all material respects.

**SECTION 4. MISCELLANEOUS PROVISIONS OF THE AGREEMENT.**

4.1 **Equal Employment Opportunity Clause.** Annexed hereto as Exhibit "F" and made a part hereof by reference are the equal employment provisions of this Agreement, wherein each "Developer" is referred to as "Contractor".

4.2 **Non-discrimination.** The Developer 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, sexual orientation, 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 to 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 contract. Any violation of this section with the knowledge of the person or corporation contracting with the City of Omaha shall render the contract voidable by the Mayor or Council.

4.6 **Merger.** This Agreement shall not be merged into any other oral or written contract, lease or deed of any type.

4.7 **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.

4.8 **Assignment and Delegation of Developer's Duties.** Subject to the City's approval, which approval will not be unreasonably withheld, conditioned or delayed, the Developer shall have the right to assign its respective rights and delegate some or all of its respective duties hereunder to anyone they believe to be creditworthy, qualified, and capable of performing the duties delegated to it. The Developer shall give the City reasonable prior notice and information concerning the identity, creditworthiness, and qualifications of any party to whom the Developer delegates any of its duties hereunder. The Developer shall also provide the City with a true and

complete copy of documentation evidencing such a delegation of duties promptly after it has been executed by the parties thereto. Notwithstanding anything herein the contrary, Developer shall have the privilege of assigning its respective rights and delegating some or all of its respective duties hereunder to any Affiliate of Developer. Developer shall deliver to the City an executed copy of any such assignment. For the purposes of this Agreement, the term "Affiliate" shall mean any partnership, corporation, L.L.C. or L.L.P directly or indirectly Controlling, Controlled by or under direct or indirect common Control with Developer. For the purposes of this Agreement, the terms "Control," "Controlling" and "Controlled" mean, with respect to any specified partnership, corporation, L.L.C. or L.L.P, the power to direct or cause the direction of the management or policies of such partnership, corporation, L.L.C. or L.L.P directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

**4.9 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 Capitol District Redevelopment Plan. In that regard, the parties hereto hereby nominate the following individuals, or their successors, to be their respective authorized representatives, acting in their specific capacities, to execute any such administrative amendments to this Agreement on their behalf:

For the City: The Mayor  
For the Developer: Michael T. Moylan

The parties hereto recognize that any such minor amendments to this Agreement negotiated and executed by the parties' respective representatives, other than those defined in §18-2117 of the Redevelopment Law, shall be considered and treated as administrative in nature and not as a legislative amendment to this Agreement or the Capitol District Redevelopment Plan. However, amendments of the following types shall be referred to the City Council for approval:

- (i) Those that materially alter or reduce existing areas or structures otherwise available for public use or access;
- (ii) Those that require the expenditure of \$75,000.00 or more of City funds above the levels contained in this Agreement;
- (iii) Those that increase City loans, bonded indebtedness, deferred payments of any types, or other financial obligations above the levels contained in this Agreement; and
- (iv) Those are otherwise considered major or material.

**4.10 Remedies.** The parties understand and agree that with respect to the various obligations of the parties hereunder, time is of the essence, and in the event that any party hereto shall fail to carry out any of its obligations under this Agreement, the remaining parties hereto

would have no adequate remedy at law. Therefore, the parties hereto shall be entitled to enforce the obligations of a defaulting party under this Agreement pursuant to all available equitable remedies, including, but not limited to, specific performance, injunction, and mandamus.

4.11 **Survival.** All of the obligations, warranties, and indemnities of the parties to this Agreement shall survive all conveyances of real estate required pursuant to this Agreement.

4.12 **No Reliance on Others.** Except for any specific representations and warranties set forth in this Agreement, each party hereto agrees that it is relying on its own opinions, estimates, studies, and information with regard to such party's respective obligations under this Agreement and no party hereto or its agents or contractors shall be responsible or liable for estimates or opinions of costs given to other parties in connection herewith.

4.13 **Delays.** No party hereto shall be liable to any other party hereto for direct or consequential damages suffered or incurred as the result of delays in completion of Redevelopment Project proximately caused by External Causes (as defined below). In addition, to the extent the City or the Developer is prevented or delayed in timely performing its obligations hereunder due to External Causes, its performance shall be excused for so long as any such External Causes stand as an impediment to such performance and the amount of time for such party to fulfill its obligations under this Agreement shall be extended for a like period of time. However, the party whose performance hereunder is thus impeded shall use reasonable efforts to eliminate or overcome such delays. If the City or the Developer is delayed in the performance of its obligations hereunder due to External Causes, then the other party shall be entitled to an extension for a like period of time for performance of its obligations reasonably related to the obligations the performance of which is delayed by External Causes. As used herein, the term "External Causes" shall include strikes, riots, acts of God, shortages of labor or materials, war, and material changes in governmental laws, regulations or restrictions.

4.14 **Cooperation and Coordination.** The City and the Developer shall cooperate with each other and seek to coordinate their respective grading, demolition, site preparation, street relocation and improvement, utility relocation, removal, and construction activities hereunder so as to minimize to the extent reasonably practical the costs of such work for both parties and to accommodate the construction by the Developer and any successor or assign of the Developer; provided that the foregoing shall not be construed to permit or require that the Developer consent to any delays or extensions of the times set forth herein for the City to commence or complete its obligations under this Agreement.

4.15 **Severability.** In the event any clause or provision in this Agreement is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, or by other governmental authority with jurisdiction thereof, the remaining portion of this Agreement shall not be affected thereby. The parties hereto agree that, in lieu of such illegal, invalid or unenforceable clause or provision, a provision that is legal, valid and enforceable, with as substantially similar terms as possible, shall be inserted in lieu thereof as an administrative amendment.



4.16 **Waiver.** The parties hereto agree that, notwithstanding any sale or lease of any portion of the Entire Development Property after the date hereof, the Plan may be modified or amended by the City without the consent of any other party or any successor or assign of such party, unless such amendment will materially and adversely affect such party's rights under this Agreement or otherwise, or unless such amendment involves the property owned by such party. To the extent Section 18-2117, Nebraska Revised Statutes, as amended, may provide to the contrary, any rights under such statute are waived by the parties hereto.

4.17 **Purchase Agreement Amendments.** The City and Developer are parties to that certain Purchase and Sale Agreement dated March 7, 2013 (the "Purchase Agreement"), pursuant to which the City intends to sell and Developer intends to buy certain property collectively described therein as the "Property". The City and Developer desire to supplement, revise and amend certain provisions within the Purchase Agreement as set forth in this Section 4.17. Any capitalized term herein contained shall bear the meaning ascribed to such term in the Purchase Agreement unless otherwise herein defined.

4.17.1 Section 4(A)(6) is hereby amended by adding the following sentence:

"Notwithstanding anything herein to the contrary, it is agreed that Lot 1, The Capitol District, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, shall be permitted to be developed for any purpose/use which, in the Developer's discretion, generally conforms and supports the other portions of the Development, including, but not limited to, commercial, multi-family residential housing and/or surface parking."

4.17.2 Section 10(c) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

**"Davenport Street Right of Way:** As part of the purchase of the above two parcels, at no additional cost to Purchaser, the Seller shall transfer to Purchaser the entire Davenport Street right of way between 10<sup>th</sup> and 12<sup>th</sup> street, consisting of approximately 70,493 square feet, subject to easements and relocation requirement as set forth in the redevelopment agreement, final plat, and/or vacation ordinance(s). The City shall initiate the vacation and diligently pursue the same to completion, at no cost or expense to the City."

4.17.3 Section 27 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

"Purchaser agrees to accept the Property without any environmental warranties; however, Seller shall deposit Seven Hundred Fifty Thousand and No/100ths Dollars (\$750,000.00) of the Purchase Price into an account

controlled by Purchaser at the Closing to cover the estimated costs to remediate all existing environmental issues on the Property to allow for the Development, which deposited amount shall be non-refundable to Seller and shall be considered the sole property of the Purchaser. In addition, Seller shall use commercially reasonable good faith efforts to assist Purchaser in its application and pursuit of reimbursement opportunities from the Nebraska Department of Environmental Quality and any such reimbursed funds shall be paid to the Purchaser.”

4.17.4 The Purchase Agreement is hereby revised to replace any reference to “350 rooms” with the phrase “approximately 335 rooms”,

4.17.5 The second paragraph of Section 5 is hereby deleted in its entirety and replaced with the following:

“Notwithstanding any provision herein to the contrary, if (i) the Redevelopment Documents are not fully executed by Purchaser and Seller, or (ii) the final plat, subdivision agreement, and rezoning ordinance are not finally approved by the Omaha City Council, or (iii) any necessary consents or approvals have not been received from MECA before the expiration of the Inspection Period, as may be extended as provided herein, the Inspection Period shall automatically be extended until such time as each of the foregoing has been received and/or finally approved, as applicable.

4.17.6 Section 10(a) is hereby deleted in its entirety. Section 10(b) is hereby deleted in its entirety and replaced with the following:

“The purchase price for Property shall be \$2,235,000.00 (referred to herein as the “Purchase Price”).”

4.18 **Option Agreement Amendments.** The City and Developer are parties to that certain Option Agreement dated March 26, 2013 and approved by Ordinance No. 39629 (the “Option Agreement”), pursuant to which the City granted to Developer the option to purchase the Supplemental Site Property. The City and Developer desire to supplement, revise and amend certain provisions within the Option Agreement as set forth as follows:

4.18.1 Section 1.02 of the Option Agreement is deleted in its entirety and replaced with the following:

**Section 1.02 Term of Option.** The exclusive option granted hereunder shall continue in effect until 5:00 p.m. C.S.T. on December 5, 2014 (the “Option Expiration Date”).

4.18.2 Section 2.01 of the Option Agreement is deleted in its entirety and replaced with the following:

**"Section 2.01 Purchase Price.** The purchase price (the "Purchase Price") for the Optioned Property shall be the sum of Two Hundred Thousand and No/100ths Dollars (\$200,000.00)."

4.18.3 Subsections 8.01(E), 8.01(F), 8.01(G) and 9.01(C) and 9.01(D) of the Option Agreement are deleted in their entirety.

4.18.4 Any reference to the term "Redevelopment Agreement" shall be deleted in its entirety.

4.18.5 Exhibit B to the Option Agreement is deleted in its entirety it being understood and agreed to by the parties that the City, as Seller, shall have no repurchase right under the Option Agreement.

#### **SECTION 5. AUTHORIZED REPRESENTATIVES.**

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><br>Director, City Planning Department<br>Omaha/Douglas Civic Center<br>1819 Farnam Street, Suite 1100<br>Omaha, NE 68183 | Legal Service<br>c/o City Clerk<br>Omaha/Douglas Civic Center<br>1819 Farnam Street<br>Omaha, NE 68183 |
| (2) <u>Developer</u><br>The Capitol District, LLC<br>Attn: Michael Moylan<br>1414 Harney Street, Suite 400<br>Omaha, NE 68102                      |  |

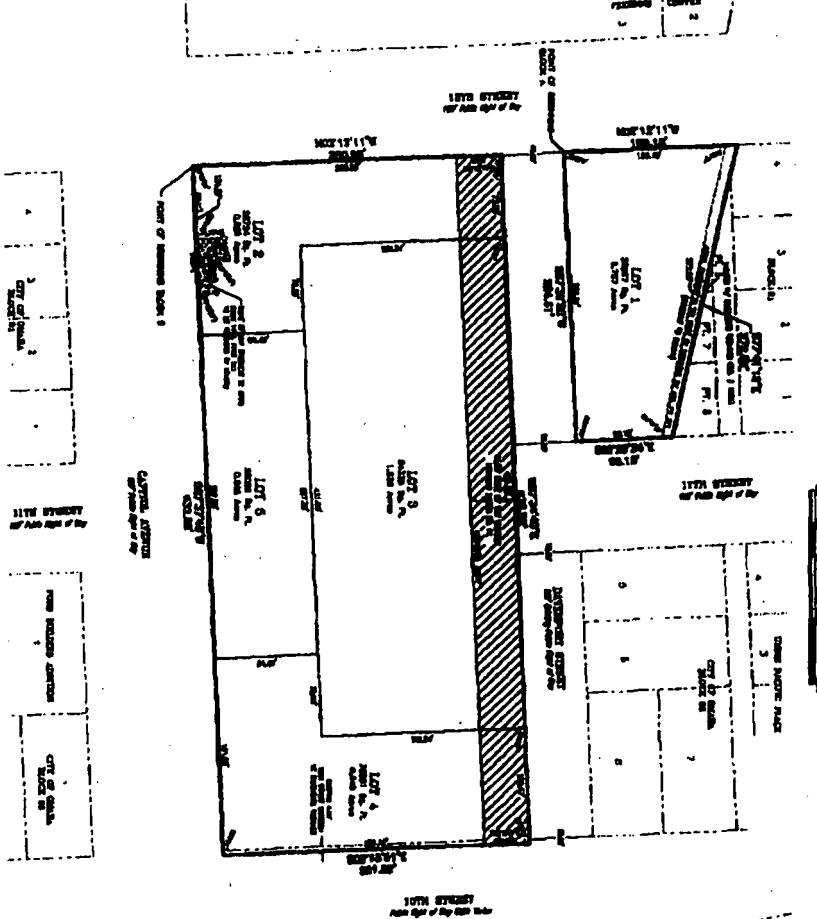
Either party may designate additional representatives or substitute representatives by giving written notice thereof to the designated representative of the other party.



# THE CAPITOL DISTRICT

Map 1 shows a portion of the Capitol District in Omaha, Nebraska. The map shows the location of the Capitol District, which is bounded by 10th Street to the north, 12th Street to the south, and the Missouri River to the east. The map also shows the location of the Capitol Building, which is located at the intersection of 10th Street and the Missouri River.

- LEGEND**
- 1. All buildings are shown in black.
  - 2. All streets are shown in red.
  - 3. All lots are shown in white.
  - 4. All lots are shown in white.
  - 5. All lots are shown in white.



**APPROVAL OF CITY ENGINEER OF OMAHA**  
 I hereby certify that the above described plan is correct and conforms to the requirements of the City of Omaha, Nebraska, and that the same has been approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

City Engineer

**APPROVAL OF OMAHA CITY BOARD OF PUBLIC WORKS**  
 I hereby certify that the above described plan is correct and conforms to the requirements of the City of Omaha, Nebraska, and that the same has been approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

City Board of Public Works

**APPROVAL OF OMAHA CITY BOARD OF PUBLIC WORKS**  
 I hereby certify that the above described plan is correct and conforms to the requirements of the City of Omaha, Nebraska, and that the same has been approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

City Board of Public Works

**APPROVAL OF OMAHA CITY BOARD OF PUBLIC WORKS**  
 I hereby certify that the above described plan is correct and conforms to the requirements of the City of Omaha, Nebraska, and that the same has been approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

City Board of Public Works

**APPROVAL OF OMAHA CITY BOARD OF PUBLIC WORKS**  
 I hereby certify that the above described plan is correct and conforms to the requirements of the City of Omaha, Nebraska, and that the same has been approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

City Board of Public Works



**LAMP RYNEARSON & ASSOCIATES**  
 14710 West Dodge Road, Suite 100  
 Omaha, Nebraska 68154 2027  
 www.LRA Inc.com

402.496.2498 : P  
 402.496.2720 : F

THE CAPITOL DISTRICT (Lots 1 through 6, Inclusive)  
 OMAHA, DOUGLAS COUNTY, NEBRASKA

THE CAPITOL DISTRICT SITE PLAN

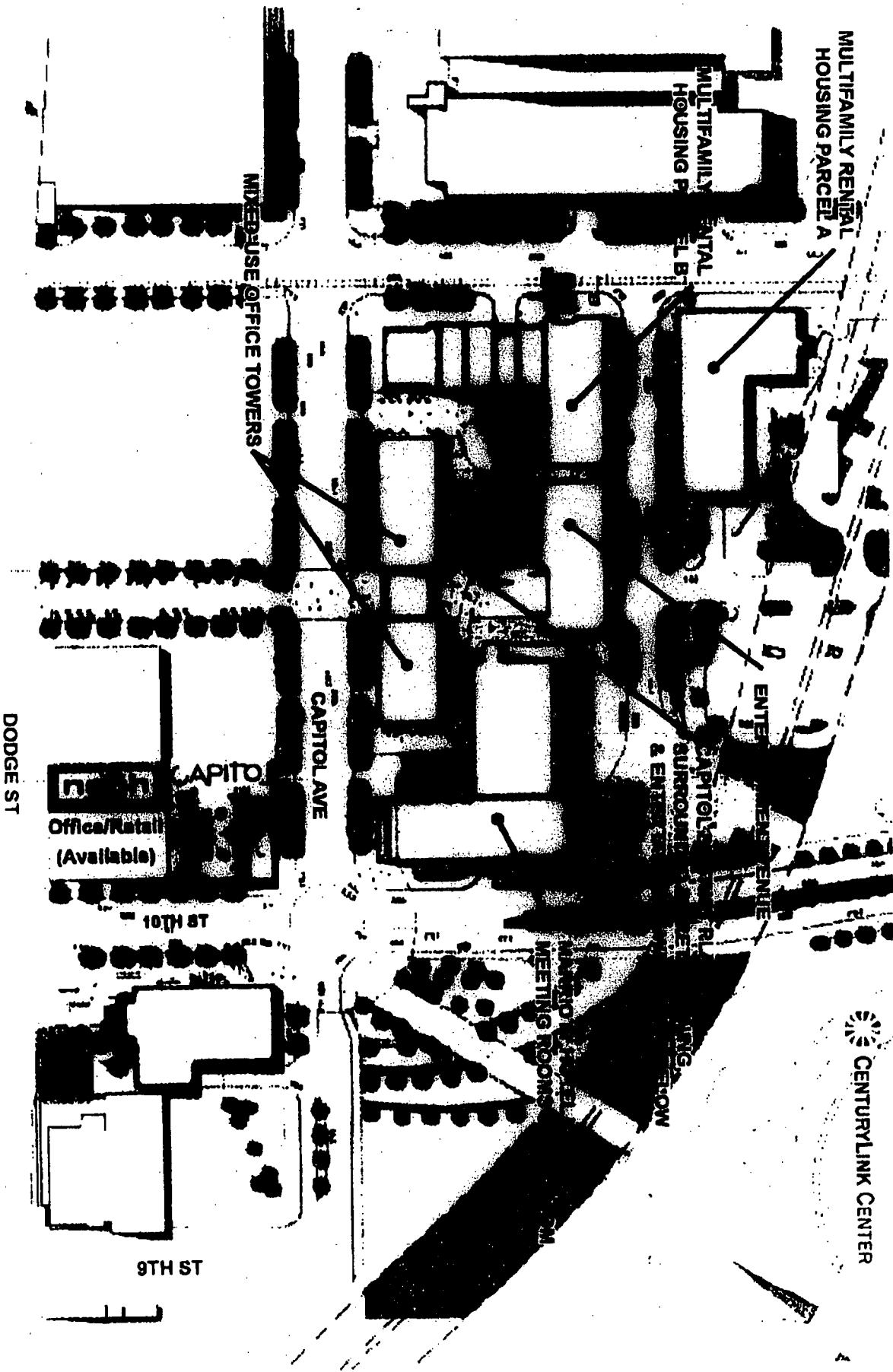
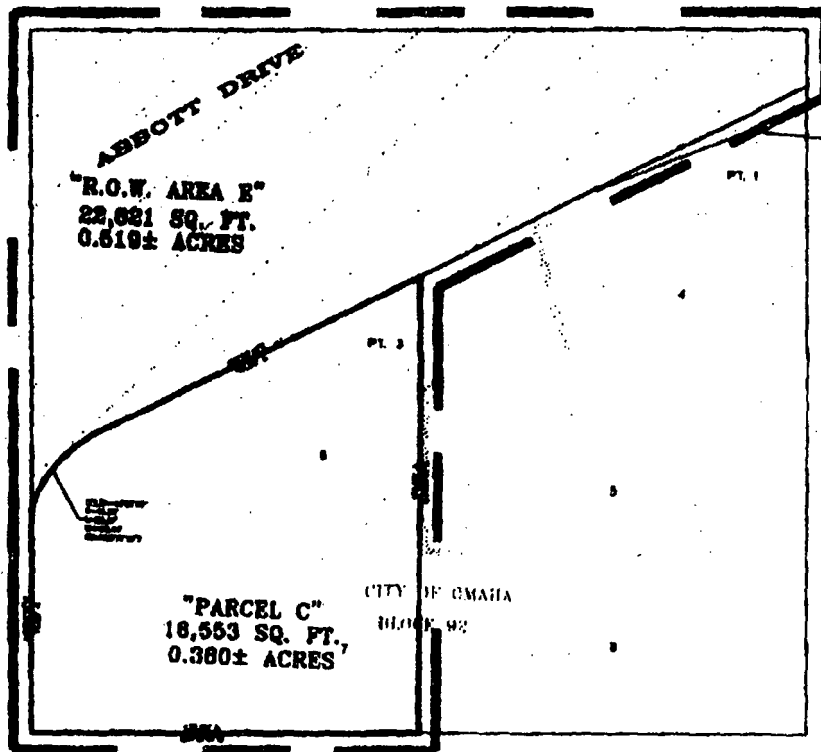


Exhibit B - Supplemental Site Property

CAPITOL AVENUE

"SUPPLEMENTAL SITE"



**EXHIBIT C**  
**FORM OF REDEVELOPMENT NOTE**

**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**

\$ \_\_\_\_\_ .00

*April 24, 2014*

FOR VALUE RECEIVED, the undersigned Borrower promises to pay to \_\_\_\_\_, whose address is \_\_\_\_\_, and/or its assigns ("Holder"), the principal sum of \_\_\_\_\_ and No/100 Dollars (\$ \_\_\_\_\_ .00), together with interest thereon at the rate of \_\_\_\_ percent (\_\_\_%) per annum from the date of the execution of this Note until paid in full. The principal balance and interest thereon shall be due and payable to the holder of said 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 City of Omaha and available for the retirement of this debt. All payments shall be applied first to interest and then to the principal sum of this Note.

In the event of default under said Redevelopment Promissory Note, all sums secured by this Note or any other agreement securing this Note shall bear interest at a rate equal to six percent (6%) above the national prime rate as published by the Wallstreet Journal; 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.

Borrower may prepay the principal amount outstanding in whole or in part, without 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 at a date fifteen (15) years from \_\_\_\_\_, and all excess ad valorem taxes generated by the Redevelopment Project, as set forth in the Redevelopment Agreement, have been collected by the City of Omaha and have been paid, immediately upon being available, towards the retirement



of the amounts due hereunder, then, at said date fifteen (15) years from \_\_\_\_\_, the Holder shall waive any unpaid portion of the principal and interest due upon written request of the City of Omaha. Borrower agrees that the real property taxes which are levied in the fifteenth (15<sup>th</sup>) year with respect to a lot or group of lots, but are actually paid by Holder (or its successor/assign) in the sixteenth (16<sup>th</sup>) year, shall be paid, immediately upon being available to the City of Omaha, towards the retirement of the amounts due hereunder, but in no event shall the Developer receive more than fifteen (15) years of tax payments (30 semi annual payments).

In the event this 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.

Unless prohibited by law, the Holder may, at its option, declare the entire unpaid balance of principal and interest immediately due and payable without notice or demand at any time after default, as such term is defined in the Redevelopment Agreement.

Holder may at any time before or after default, exercise its right to set off all or any portion of the indebtedness evidenced hereby against any liability or indebtedness of the Holder to the Borrower without prior notice to the Borrower.

Demand, presentment, protest and notice of nonpayment under this Note are hereby waived.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this 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 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 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, NEBRASKA, a  
Municipal Corporation**

By Jean Stothart  
Mayor of the City of Omaha

ATTEST:

APPROVED AS TO FORM:

  
City Clerk of the City of Omaha

  
City Attorney

CAPITOL DISTRICT - EXHIBIT D

TIF ELIGIBLE EXPENSES	LAND DEVELOPMENT	PARKING GARAGE	FULL SERVICE HOTEL	MIXED-USE OFFICE	RETAIL	HIGHEST RATE HOUSING	AFFORDABLE HOUSING	TOTAL
Acquisition - Parcel A & B	\$2,180,321							\$2,180,321
Site Demolition & Preparation	\$201,000	\$208,328	\$112,782	\$133,620		\$970,887	\$82,083	\$2,296,910
Site Excavation		\$2,090,308	\$871,431	\$98,000			\$239,827	\$3,219,866
Public Improvements (Park, Developer Street)	\$4,346,110							\$4,346,110
Approved Construction Costs (i.e. Printing & Forecasts & Revaluations)		\$9,872,000	\$24,088	\$540,006		\$708,384	\$150,000	\$12,094,478
Design & Consulting Fees	\$605,000	\$808,000	\$1,150,000	\$910,589	\$220,008	\$1,911,387	\$368,236	\$7,873,221
General Contractor Overhead Profit & Contingency	\$271,167	Included above	\$4,960,000	\$1,210,291	\$446,643	\$3,489,077	\$468,572	\$10,321,750
Project Management & Contingency	\$542,000	\$568,000	\$2,900,000	\$2,153,326	\$986,022	\$4,204,623	\$1,590,000	\$12,579,671
TIF Fees	\$66,000							\$66,000
TOTALS	\$8,571,598	\$13,801,868	\$12,338,301	\$4,888,832	\$1,230,674	\$11,294,258	\$2,845,788	\$24,888,827

**EXHIBIT E**  
**FORM OF MINIMUM VALUATION AGREEMENT**

THIS MINIMUM VALUATION AGREEMENT ("Valuation Agreement") is dated as of this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and among the City of Omaha, Nebraska, a municipal corporation (the "City") and \_\_\_\_\_ (the "Developer").

WITNESSETH:

WHEREAS, the City and The Capitol District, LLC, a Nebraska limited liability company, have entered into a Redevelopment Agreement dated as of \_\_\_\_\_, 2014 (the "Redevelopment Agreement") regarding certain real property legally described as:

[ \_\_\_\_\_ ] (the "Development Property"); and

WHEREAS, the following legally describe real property is part of the Development Property and is subject to the terms of the Redevelopment Agreement:

[ \_\_\_\_\_ ] (the "Applicable Property"); and

WHEREAS, it is contemplated that Developer will undertake the construction of \_\_\_\_\_ in accordance with the terms and conditions of the Redevelopment Agreement (the "Minimum Improvements") on the Applicable Property, as provided in the Redevelopment Agreement; and

WHEREAS, the Developer agrees to construct the Minimum Improvements on the Applicable Property; and

WHEREAS, the City and the Developer desire to establish a minimum actual value for the Minimum Improvements to be constructed on the Applicable Property by the Developer pursuant to the Redevelopment Agreement; and

WHEREAS, the Developer agrees to be bound to the Minimum Actual Value (defined below) of the Minimum Improvements of this Valuation Agreement; and

WHEREAS, the City and the Assessor have reviewed the preliminary plans and specifications for the Minimum Improvements that are contemplated will be erected.

NOW, THEREFORE, the parties to this Valuation Agreement, in consideration of the promises, covenants and agreements made by each other, do hereby agree as follows:

1. Upon substantial completion of construction of the above-referenced Minimum Improvements, but no later than \_\_\_\_\_, the minimum actual taxable value which shall be fixed for assessment purposes for the Applicable Property and the Minimum Improvements to be constructed thereon shall be not less than \$ \_\_\_\_\_

(hereafter referred to as the "Minimum Actual Value"). The Developer agrees that the Minimum Actual Value shall continue to be effective until all of the Redevelopment Notes (as defined in the Redevelopment Agreement) are paid in full (the "Valuation Agreement Termination Date").

2. The Developer shall pay or cause to be paid when due all real property taxes and assessments payable with respect to all and any parts of the Applicable Property and the Minimum Improvements pursuant to the provisions of this Valuation Agreement and the Redevelopment Agreement.

3. The Developer agrees that, prior to the Valuation Agreement Termination Date, it will not:

(a) seek administrative review or judicial review of the applicability or constitutionality of any Nebraska tax statute relating to the taxation of property contained as a part of the Applicable Property or the Minimum Improvements determined by any tax official to be applicable to the Applicable Property or the Minimum Improvements, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; or

(b) seek any tax deferral, exemption, abatement, or roll back, either presently or prospectively authorized under Nebraska law, or any other local or federal law, with respect to the taxation of real property, including improvements and fixtures thereon, contained on the Applicable Property or the Minimum Improvements between the date of execution of this Agreement and the Termination Date.

4. This Valuation Agreement shall be promptly recorded by the Douglas County, Nebraska Register of Deeds. Such filing shall constitute notice to any subsequent encumbrancer or purchaser of the Applicable Property (or part thereof), whether voluntary or involuntary, and this Valuation Agreement shall be binding and enforceable in its entirety against any such subsequent purchaser or encumbrancer, including the holder of any mortgage. The Developer shall pay all costs of recording.

5. Neither the preambles nor provisions of this Valuation Agreement are intended to, or shall be construed as, modifying the terms of the Redevelopment Agreement. The capitalized terms in this Valuation Agreement have the same meaning as defined in the Redevelopment Agreement.

6. This Valuation Agreement shall be assignable and shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

7. This Valuation Agreement may be amended or modified and any of its terms, covenants, representations, warranties or conditions waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance.

8. If any term, condition or provision of this Minimum Valuation Agreement is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity or inoperability shall not affect the remainder hereof, which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained herein.

9. The Minimum Actual Value herein established shall be of no further force and effect and this Valuation Agreement shall terminate on the Valuation Agreement Termination Date.

10. Developer has provided a title opinion to City listing all lienholders of record as of the date of this Valuation Agreement and all such lienholders have signed consents to this Valuation Agreement, which consents are attached hereto and made a part hereof.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.


ATTEST:

CITY OF OMAHA:

\_\_\_\_\_  
CITY CLERK OF THE CITY OF OMAHA

\_\_\_\_\_  
MAYOR OF THE CITY OF OMAHA

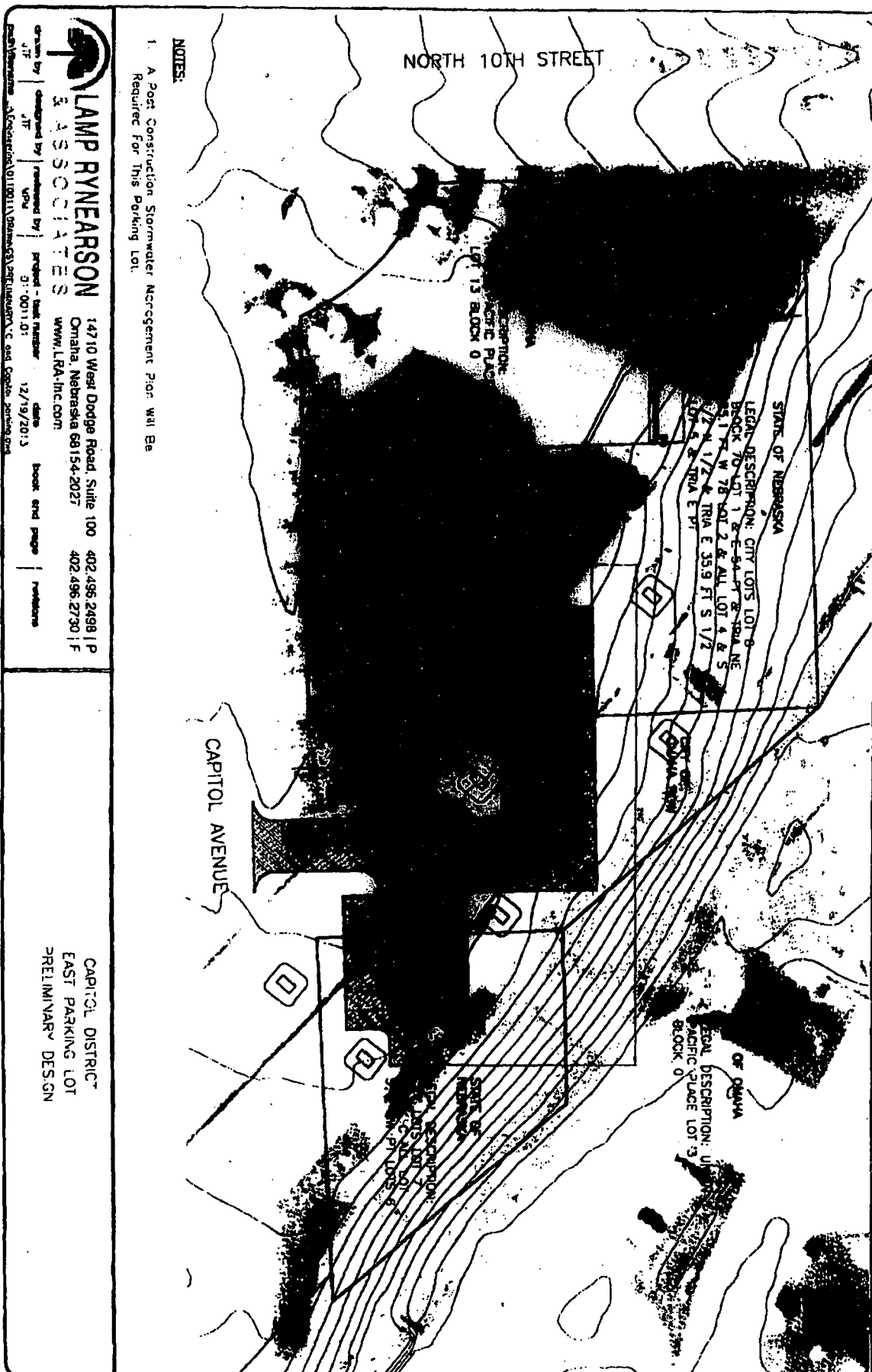
APPROVED AS TO FORM:

 3/25/14  
Deputy CITY ATTORNEY

DEVELOPER:

[To be provided]

Exhibit G



POOR COPY

444

Planning Misc.  
2

ORDINANCE NO. 3997b

AN ORDINANCE approving a redevelopment and tax increment financing loan agreement between the City of Omaha and The Capitol District, LLC, a Nebraska limited liability company, to implement the Capitol District Tax Increment Financing (TIF) Redevelopment Project Plan which contemplates the redevelopment of an area consisting of approximately 5.86 acres of land bordered by 10<sup>th</sup> Street, Capitol Avenue, 12<sup>th</sup> Street and Interstate 480, including the adjacent public right-of-way of Davenport Street and 11th Street, and which proposes an urban mixed-use redevelopment project anchored by a full-service hotel and the development of other buildings, structures and improvements, which may include uses such as multi-family residential housing, residential and commercial condominiums, structured parking, office, retail and entertainment; the agreement authorizes the use of up to \$35,000,000.00 in excess ad valorem taxes (TIF) generated by the development to help fund the cost of the project; and providing for an effective date.

1916 dlh



# PUBLICATIONS

PUBLICATION OF HEARING

Date 4-11-14

PUBLICATION OF ORDINANCE

Date \_\_\_\_\_

## PRESENTED TO COUNCIL

1st Reading APR - 8 2014 - Hearing  
4/15/14

Hearing APR 15 2014 - Over to  
4-22-14

Final Reading APR 22 2014

Passed 7-0

BUSTER BROWN  
City Clerk



959

Pub.  
5

ORDINANCE NO. 40266

**AN ORDINANCE** vacating Davenport Street from the West right-of-way line of North 10th Street to the East right-of-way line of North 12th Street, in the City of Omaha and providing the effective date hereof.

1139Bhra

58 ✓

# PUBLICATIONS

PUBLICATION OF HEARING

Date 5-27-16

PUBLICATION OF ORDINANCE

Date \_\_\_\_\_

## PRESENTED TO COUNCIL

1st Reading MAY 24, 2016 - Hearing  
at 7:00 AM Davenport St City  
Council Room III A.

Hearing JUN - 7 2016 - Verbo  
6/14/16

Final Reading JUN 14 2016

Passed 6-0

**BUSTER BROWN**  
City Clerk