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COMP: CC

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
09/20/2016 17:15:53.00



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### MINIMUM VALUATION AGREEMENT

THIS MINIMUM VALUATION AGREEMENT ("Valuation Agreement") is dated as of this the 24<sup>th</sup> day of August, 2016, by and among the City of Omaha, Nebraska, a municipal corporation (the "City"), The Capitol District, LLC, a Nebraska limited liability company (the "Developer"), and Capitol District Parking, LLC, a Nebraska limited liability company ("Capitol District Parking").

#### WITNESSETH:

WHEREAS, the City and the Developer entered into a Redevelopment Agreement dated as of April 24, 2014, approved by Ordinance No. 39976 (as amended, the "Redevelopment Agreement") regarding the Entire Development Property (as defined in the Redevelopment Agreement); and

WHEREAS, the City, the Developer and Capitol District Parking entered into an Amendment and Partial Assignment of the Redevelopment Agreement (Amendment No. 3) relating to the construction and development of a parking facility consisting of approximately 505 parking stalls; and

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

Lot 1, The Capitol District, an Addition to the City of Omaha, Nebraska, as surveyed, platted, and recorded in Douglas County, Nebraska (the "Applicable Property"); and

WHEREAS, it is contemplated that Capitol District Parking will undertake construction of a parking facility consisting of approximately 505 parking stalls on the Applicable Property in accordance with the terms and conditions of the Redevelopment Agreement (the "Minimum Improvements"); and

WHEREAS, Capitol District Parking agrees to construct the Minimum Improvements on the Applicable Property; and

WHEREAS, the City, the Developer and Capitol District Parking 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, Capitol District Parking agrees to be bound to the Minimum Actual Value (defined below) of the Minimum Improvements of this Valuation Agreement.

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 January 1, 2018, Capitol District Parking anticipates that 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 \$9,750,000.00 (hereafter referred to as the "Minimum Actual Value"). The Minimum Actual Value shall continue to be effective until the Redevelopment Promissory Note that is issued by the City which will be repaid from Excess Tax Revenues from the Minimum Improvements constructed on the Applicable Property is paid in full or fifteen (15) years after the Division Date, whichever occurs first (the "Valuation Agreement Termination Date").

2. Capitol District Parking and its successors and assigns 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. Capitol District Parking agrees that, prior to the Valuation Agreement Termination Date, it will not 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. Notwithstanding the foregoing and anything herein to the contrary, nothing in this Valuation Agreement shall limit the discretion of the Assessor to assign an actual value to the Applicable Property which is less or more than the Minimum Actual Value nor prohibit the Developer from seeking through the exercise of legal or administrative remedies a reduction in such actual value for ad valorem property tax purposes; provided, however, the Developer shall not be permitted seek and/or obtain a reduction of such actual value below the Minimum Actual Value prior to the Valuation Agreement 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. Capitol District Parking 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.

**[Remainder of Page Left Intentionally Blank; Execution Pages Follow.]**

Executed this 24<sup>th</sup> day of August, 2016

ATTEST:

CITY OF OMAHA:

  
CITY CLERK OF THE CITY OF OMAHA

  
MAYOR OF THE CITY OF OMAHA

APPROVED AS TO FORM:

 8/24/16  
Asst. CITY ATTORNEY



**CAPITOL DISTRICT PARKING, LLC, a  
Nebraska limited liability company**

By: The Capitol District, LLC, a  
Nebraska limited liability company,  
its Sole Member

By: MTM Capitol District, LLC,  
a Nebraska limited liability  
company, its Administrative Member

By: *[Signature]*  
Name: Michael T. Moylan  
Title: Member

STATE OF NEBRASKA )  
                                  )ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 29 day of August, 2016, by Michael T. Moylan, Member of MTM Capitol District, LLC, a Nebraska limited liability company, the administrative member of Capitol District Parking, LLC, on behalf of said limited liability company.

[Seal]

*Elizabeth M. Hix*  
Notary Public

