



MISC 2016077871



SEP 20 2016 17:15 P 9

Fee amount: 58.00
FB: 03-80000
COMP: BW

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
09/20/2016 17:15:54.00



2016077871

WHEN RECORDED, PLEASE RETURN TO:

Mortgage Loan Department
First National Bank of Omaha
Third Floor, First National Plaza
11404 West Dodge Road
Omaha, Nebraska 68154

RECOGNITION AGREEMENT

THIS RECOGNITION AGREEMENT (this "Agreement") is made and executed as of SEPTEMBER 19, 2016, by the CITY OF OMAHA, a political subdivision duly organized and validly existing under the laws and constitution of the State of Nebraska, whose address is Omaha/Douglas Civic Center, 1819 Farnam Street, Omaha, NE 68183, Attn: Director—Public Works (the "City"), and CAPITOL DISTRICT PARKING, LLC, a Nebraska limited liability company, whose address is 1111 N. 13th Street, Suite 101, Omaha, NE 68102 ("Capitol District"), in favor of FIRST NATIONAL BANK OF OMAHA, a national banking association, whose address is 1620 Dodge Street, Omaha, Nebraska 68102 (together with its successors and assigns, "FNBO");

RECITALS:

A. Department of Roads of the State of Nebraska ("NDOR") is the owner of certain real property in Douglas County, Nebraska, which is described on Exhibit A attached hereto and made a part hereof for all purposes, and all rights, privileges and appurtenances thereto (collectively, the "NDOR Property"). NDOR leases the NDOR Property and other property to the City pursuant to the following leases (collectively, the "NDOR Leases"): (i) the Airspace Lease Agreement dated as of July 14, 2016 between NDOR and the City relating to the portion of the NDOR Property commonly known as the 9th Street Parking Lot, and (ii) the Airspace Lease Agreement dated as of July 1, 2010 between NDOR and the City relating to the portion of the NDOR Property commonly known as Lot E.

B. The City subleases the NDOR Property to Capitol District pursuant to the following subleases (collectively, the "City Subleases"): (i) the Sublease Agreement dated July 14, 2016 (the "9th Street Sublease") between the City and Capitol District relating to the portion of the NDOR Property commonly known as the 9th Street Parking Lot and (ii) the Sublease Agreement dated July 14, 2016 (the "Lot E Sublease") between the City and Capitol District relating to the portion of the NDOR Property commonly known as Lot E.

C. The City is the owner of certain real property in Douglas County, Nebraska, which is described on Exhibit B attached hereto and made a part hereof for all purposes, and all rights, privileges and appurtenances thereto (the "City Property"; together with the NDOR Property, the "Property"). The

City leases the City Property to Capitol District pursuant to the Lease Agreement dated as of July 14, 2016 (the "City Lease") between the City and Capitol District.

D. Capitol District has requested that FNBO provide financial accommodations from time to time (collectively, the "Financings") to Capitol District to be secured, in part, by the lien and provisions of a certain Construction Deed of Trust, Security Agreement and Assignment of Rents (the "Mortgage"), covering all of Capitol District's right, title and interest in the City Subleases and the City Lease and certain other assets and rights of Capitol District.

E. As a condition to FNBO's agreement to make advances of the Financings to Capitol District, and as a material inducement to FNBO to do so, FNBO has required that Capitol District obtain this Agreement for the benefit of FNBO.

NOW, THEREFORE, for and consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the City hereby agrees as follows:

1. Representations and Warranties. The City represents and warrants that (a) the Recitals hereto contain an accurate and complete description of the City Subleases and the City Lease (including any modifications thereto); (b) the City Subleases and the City Lease are the only subleases, leases or agreements between the City and Capitol District with respect to the Property; (c) the City Subleases and the City Lease are in full force and effect and are valid and enforceable against the City; (d) neither the City Subleases nor the City Lease have commenced; therefore, none of NDOR, the City or Capitol District is in default thereunder; and (e) the City has not received any notice that (i) the Property is in violation of any laws, municipal ordinances, rules or requirements, or (ii) there is any pending or threatened condemnation action or eminent domain proceeding affecting the Property.

2. Consent to Mortgage. The City hereby consents to the recording of the Mortgage against Capitol District's leasehold interests in the Property and the collateral assignment of the City Subleases and the City Lease to FNBO.

3. Default by Capitol District. Upon FNBO's receipt of written notice of any default by Capitol District under the City Subleases or the City Lease, FNBO shall have the right, but shall not be obligated, to cure any such default (except for any default that relates to a cross-default under the NDOR Leases) on behalf of Capitol District within the time period provided to Capitol District under the City Subleases or the City Lease.

4. Acquisition. If FNBO, its designee or any third party (a "Successor Owner") becomes the owner of the subleasehold interest in the NDOR Property (the "Subleasehold Interests") or the leasehold interest in the City Property (the "Leasehold Interests") as a result of the exercise of rights and remedies against Capitol District, the City hereby consents to FNBO, its designee or such third party as an assignee under the City Subleases and the City Lease or owner of the Subleasehold Interests and the Leasehold Interests; *provided, however*, notwithstanding the foregoing, if such Successor Owner or an affiliate thereof under common ownership does not also own Lot 1, The Capitol District, an Addition to the City of Omaha, Nebraska, as surveyed, platted, and recorded in Douglas County, Nebraska, such Successor Owner shall be subject to the approval of the City.

5. Covenants and Agreements of the City. The City hereby covenants to and agrees with and for the benefit of FNBO as follows:

(a) The City shall not mortgage or encumber the NDOR Property or the City Property or any of its interests therein after the date hereof without prior written notice to FNBO; and

(b) In the event of any termination or rejection of the City Subleases or the City Lease (including, without limitation, any termination or rejection pursuant to the Federal Bankruptcy Code), (i) FNBO shall have the right to request that the City enter into a new sublease agreement or lease agreement, as the case may be, with FNBO or its designee within 60 days after the date on which FNBO receives written notice of the termination or rejection of the City Subleases or the City Lease, and (ii) the City and FNBO or its designee shall enter into such new sublease agreement or lease agreement, as the case may be, on substantially the same terms and conditions as the City Subleases and the City Lease, within 30 days after the City receives FNBO's request.

6. Subordination. The City hereby subordinates any and all liens in favor of the City against the Property, whether contractual or statutory, to the liens in favor of FNBO against the Property.

7. Notices. All notices to be given under this Agreement shall be in writing and shall be given in to the applicable party at its respective address set forth above. The address to which any notice or other writing must be sent to either party hereto may be changed upon written notice given by such party.

8. Conflict. In the event of any conflict between the terms of this Agreement and any of the terms of the City Subleases and the City Lease, the terms of this Agreement shall govern and control.

9. Illegal or Invalid Provisions. If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining terms and provisions of this Agreement shall not be affected thereby, and in lieu of such illegal, invalid or unenforceable term or provision there shall be added automatically to this Agreement a legal, valid and enforceable term or provision as similar as possible to the term or provision declared illegal, invalid, and unenforceable.

10. Governing Law. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Nebraska.

11. Successors and Assigns. This Agreement shall inure to the benefit of FNBO and be binding upon the City, Capitol District and FNBO and their respective heirs, successors and assigns.

12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; EXECUTION PAGE FOLLOWS]

EXECUTED, ACKNOWLEDGED AND DELIVERED as of the date first above written.

CITY:

THE CITY OF OMAHA, a municipal corporation

Attest: Dustin Brown
City Clerk, City of Omaha

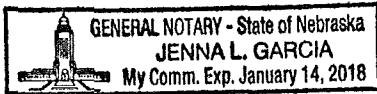
By: Jean Stothert
Mayor, City of Omaha

Approved as to Form:

[Signature] 8/30/16
Assistant City Attorney

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30th day of August, 2016, by Jean Stothert, the Mayor of the City of Omaha, a municipal corporation, on behalf of the municipal corporation.



Jenna L. Garcia
Notary Public

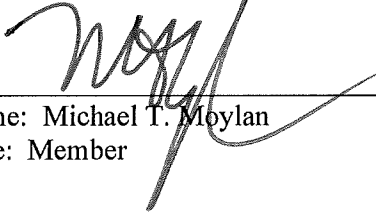
[EXECUTION PAGE OF THE CITY TO RECOGNITION AGREEMENT]

CAPITOL DISTRICT:

CAPITOL DISTRICT PARKING, LLC, a Nebraska limited liability company

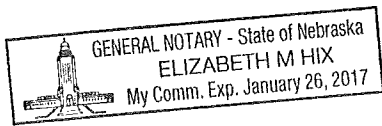
By: The Capitol District, LLC, a Nebraska limited liability company, its Sole Member


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

By: 
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 The Capitol District, LLC, a Nebraska limited liability company, the sole member of Capitol District Parking, LLC, a Nebraska limited liability company, on behalf of the company.




Notary Public

[EXECUTION PAGE OF CAPITOL DISTRICT TO RECOGNITION AGREEMENT]

FNBO:

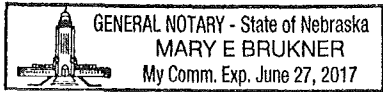
FIRST NATIONAL BANK OF OMAHA, a municipal corporation



By: _____
Name: Scott W. Damrow
Title: Vice President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30 day of August, 2016, by Scott W. Damrow, the Vice President of First National Bank of Omaha, a national banking association, on behalf of the national banking association.





Notary Public

[EXECUTION PAGE OF FNBO TO RECOGNITION AGREEMENT]

EXHIBIT A

**LEGAL DESCRIPTION OF
NDOR PROPERTY**

PARCEL 2: All of Lot 1, the East 54.0 feet of Lot 2, and the North Half (N½) of Lot 4, in Block 70, in the ORIGINAL CITY OF OMAHA, as surveyed and lithographed, in Douglas County, Nebraska;

03-80000

And,

The South Half (S½) of Lot 4 and the North Half (N½) of Lot 5, in Block 70, in the ORIGINAL CITY OF OMAHA, as surveyed and lithographed, in Douglas County, Nebraska;

03-80000

And,

A tract of land located in Lot 8 and the South 30 feet of Lot 5, in Block 70, in the ORIGINAL CITY OF OMAHA, as surveyed and lithographed, in Douglas County, Nebraska, described as follows:

03-80000

Referring to the Southeast corner of Lot 8, said Block 70; thence Northerly, on the East line of said Lot 8, a distance of 53.0 feet, to the Point of Beginning; thence continuing Northerly, on the East line of Lots 5 and 8, said Block 70, a distance of 37.0 feet, to a point on the Northerly property line; thence Westerly, on a line 30.0 feet Northerly from and parallel to the South line of said Lot 5 and on said property line, a distance of 35.9 feet; thence Southeasterly, a distance of 51.6 feet, to the Point of Beginning.

PARCEL 3: All that part of Lots 5, 6 and 7, in Block C, in the ORIGINAL CITY OF OMAHA, as surveyed and lithographed, in Douglas County, Nebraska, lying Southwesterly from and adjacent to the Southwesterly Chicago, Burlington and Quincy Railroad Company right-of-way line, and Southeasterly from and adjacent to the Southeasterly right-of-way line of Abbott Drive;

03-80000

And,

Part of Lot 5, in Block C, in the ORIGINAL CITY OF OMAHA, as surveyed and lithographed, in Douglas County, Nebraska, more particularly described as follows:

03-80000

Beginning at the Northwest corner of said Lot 5; thence Easterly, on the North line of said Lot 5, a distance of 25.1 feet; thence Southwesterly, on a 4,754.9 foot radius curve to the right (initial tangent of which forms an angle of 117°19' right from said North line, a distance of 54.1 feet, to a point on the West line of said Lot 5; thence Northerly, on said West line, a distance of 48.0 feet, to the Point of Beginning.

PARCEL 4: A tract of land located in Lots 2, 3 and 4, in Block 62, in the ORIGINAL CITY OF OMAHA, as surveyed and lithographed, in Douglas County, Nebraska, being more particularly described as follows:

03-80000

Beginning at the Southwest corner of Lot 4, said Block 62; thence Easterly, on the South line of Lots 2, 3 and 4, said Block 62, a distance of 178.6 feet; thence Northwesterly, on a 1,237.6 foot radius curve to the left (initial tangent of which forms an angle of 161°20' left from said South line), a distance of 13.0 feet, to a point of tangency; thence continuing Northwesterly, tangent, a distance of 124.8 feet, to a point of curvature; thence continuing Northwesterly, on a 2,276.3 foot radius curve to the right (initial tangent of which coincides with the last described course), a distance of

50.3 feet, to a point on the West line of said Lot 4; thence Southerly, on said West line, a distance of 59.2 feet, to the Point of Beginning;

And,

Lots 5, 6, 7 and 8, in Block 62, in the ORIGINAL CITY OF OMAHA, as surveyed and lithographed, in Douglas County, Nebraska, EXCEPT those portions thereof included within or designated as street improvement area in the Plat and Dedication of Union Pacific Place.

03-80000

EXHIBIT B

**LEGAL DESCRIPTION OF
THE CITY PROPERTY**

PARCEL 1: Lot 13, in UNION PACIFIC PLACE, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska.

07-39766

PARCEL 5: The vacated East-West alley between Davenport Street and Chicago Street from 10th Street to 11th Street, in Block 62, in the ORIGINAL CITY OF OMAHA, as surveyed and lithographed, in Douglas County, Nebraska, EXCEPT those portions thereof included within or designated as street improvement area in the Plat and Dedication of Union Pacific Place.