



City of Omaha
Jean Stothert, Mayor

RECEIVED

2016 JUN 20 PM 3:31

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,

The attached Ordinance authorizes the sublease of two certain air space lease agreements between the City of Omaha and Department of Roads of the State of Nebraska to Capitol District Parking, LLC for certain property adjacent to the Capitol District beginning June 1, 2017, or earlier upon proper notice, by Capitol District Parking. These leases will permit the construction of a new parking lot and allow for the productive use of the properties as surface parking lots to support activities at the Capitol District and provide parking for its visitors. The lots that are the subject of the subleases are generally located northwest of 10th and Davenport Street and commonly known as "Lot E", and between 8th and 10th Streets north of Capitol Avenue.

Capitol District Parking, LLC will pay the cost of these leases in the amounts of \$15,167.00 and \$2,880.00 per year as required per the sublease agreements, with payments directed to Parking Fund No. 21116, Org. No. 116241 Interstate Parking, upon receipt.

We therefore, recommend approval of the attached Ordinance.

Respectfully submitted:

Referred to City Council for Consideration:

Robert G. Stubbe 6/20/16
for Robert G. Stubbe, P.E. Date
Public Works Director

Jean Stothert 6/20/16
Mayor's Office/Title Date

Approved as to Funding:

Approved:

Stephen B. Curtiss 6/20/16
Stephen B. Curtiss Date
Finance Director

James R. Thele 6/20/16
James R. Thele Date
Planning Director

ORDINANCE NO. 40813

AN ORDINANCE to approve the sublease of two air space lease agreements between the City of Omaha and the Department of Roads of the State of Nebraska with Capitol District Parking, LLC for certain premises located adjacent to the Capitol District, specifically property northwest of 10th and Davenport Streets, commonly known as "Lot E" and property between 8th and 10th Street, north of Capitol Avenue, beginning June 1, 2017, or earlier upon proper notice by Capitol District Parking, in the amount of approximately \$15,167.00 and \$2,880.00 per year respectively; and to provide an effective date.

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

Section 1. That the attached subleases to Capitol District Parking, LLC of air space lease agreements between the City of Omaha and the Department of Roads of the State of Nebraska for certain premises adjacent to the Capitol District, specifically that property northwest of 10th and Davenport Streets, commonly known as "Lot E" and that property between 8th and 10th Street, north of Capitol Avenue, beginning June 1, 2017, or earlier upon proper notice by Capitol District Parking, in the amount of approximately \$15,167.00 and \$2,880.00 per year respectively is hereby approved.

Section 2. That Capitol District Parking, LLC shall pay the cost hereof, as required by the sublease.

Section 3. That this Ordinance, not being of legislative character, shall be in force and take effect immediately upon its date of passage.

ORDINANCE NO. 40813
PAGE NO. 2

INTRODUCED BY COUNCILMEMBER

Ben B. Bray

APPROVED BY:

Jan Stothel 7/14/16
MAYOR OF THE CITY OF OMAHA DATE

PASSED JUL 12 2016 7-0

ATTEST:

DEPUTY Sandra L. Lopez 7/14/16
CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

[Signature] 6/16/16
CITY ATTORNEY DATE

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT is hereby made and entered into this 14 day of July, 2016, by and between the CITY OF OMAHA, a municipal corporation organized and existing under the laws of the State of Nebraska located in Douglas County, Nebraska, (hereinafter referred to as "City") and CAPITOL DISTRICT PARKING, LLC, a Nebraska limited liability company, (hereinafter referred to as "Capitol Parking").

WHEREAS, the City of Omaha leases certain real property located under Interstate Highway 480 between 8th and 10th Streets and north of Capitol Avenue (the "Premises") from the Department of Roads (NDOR) of the State of Nebraska; and,

WHEREAS, Capitol Parking desires to sublease such real property for construction and operation of surface parking lot on the Premises; and,

WHEREAS, it is in the best interests of the citizens of the City of Omaha to facilitate the development of such surface parking lot on the Premises for the purpose set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the City and Capitol Parking do hereby mutually undertake, promise, agree and contract each for itself and its successors and assigns as follows:

I. SUBLEASED PREMISES

The City hereby subleases the below listed Premises to Capitol Parking throughout the term of this Sublease Agreement ("Sublease") for the sole purpose of operating surface parking thereon, subject to the terms and conditions set forth herein and delineated in the lease between the City of Omaha and the NDOR ("Lease"), which is attached hereto as Exhibit "A" and incorporated herein by this reference as if fully set forth herein:

See attached Exhibit "A"
(Diagram and legal description)

II. TERM AND TERMINATION

The term of this Sublease shall run concurrently with that certain Airspace Lease Agreement (Lease) between the NDOR and the City of Omaha commencing on the earlier of: (x) June 1, 2017; or (y) upon thirty (30) days prior written notice from Capitol Parking to the City, and ending on the date of expiration of the Sublease or the date of termination of the Lease with the NDOR.

In addition to all other remedies available to the City, this Sublease shall be subject to cancellation by the City should any one or more of the following events occur:

1. If Capitol Parking shall default in or fail to make any payment at the times and in the amounts as required of it under the Sublease.

2. If Capitol Parking shall abandon and discontinue the operation of the surface parking.

3. If Capitol Parking shall fail to perform, keep and observe any of the terms, provisions, covenants and conditions contained in this Sublease, including the failure to make any required payments, or the related Airspace Lease Agreement between the NDOR and the City of Omaha.

4. If Capitol Parking shall fail to abide by all applicable laws, ordinances, rules and regulations of the United States, State of Nebraska, Douglas County, or the City of Omaha.

5. If Capitol Parking shall fail to obtain any insurance or indemnity required under the terms of this Sublease or permit any such insurance or indemnity to lapse or become void.

6. If Capitol Parking shall fail to construct the surface parking lot on the Premises and have the same operational on or before June 1, 2017.

7. Provided; however upon the happening of any of the events recited in subparagraphs 1 through 6 above, the City shall provide Capitol Parking written notice identifying the event and requiring Capitol Parking to correct or cure same, and, if, within thirty (30) days from the date of such notice, the default, failure to perform or breach complained of shall not have been corrected in a manner reasonably satisfactory to the City, then the City shall have the right to terminate this Lease, without further notice, to enter upon and take full possession, ownership and control of the Premises. Upon such happening, this Lease shall automatically be deemed to have been irrevocably breached by Capitol Parking and shall terminate. The acceptance of the Lease Payment (as defined in Section III below) or any portion thereof, by the City for any period or periods after an event of default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by Capitol Parking shall not be deemed a waiver of any rights on the part of the City to terminate this Lease for failure by Capitol Parking to so perform, keep, or observe, any of the terms of the Lease to be kept, performed and observed by Capitol Parking. Upon termination, Capitol Parking shall immediately vacate the Premises and cease all operation and control of the use of the Premises, except for removal activity as provided herein below in Article IV.

III. CONSIDERATION

Capitol Parking agrees to pay to City the sum of Two Thousand Eight Hundred Eighty Dollars (\$2,880.00) per year of consideration plus any increases proposed by the State of Nebraska (the "Lease Payment"). Capitol Parking shall pay City the Lease payment amount, in monthly installments, on or before the 10th of each month of the Lease term. Any increases imposed by the State on lease payments from the City to the State on the related Lease agreement will be the basis for an increase in this Sublease Agreement on a per stall basis.

The parties hereby acknowledge that Capitol Parking shall not be responsible for the payment of any additional amounts to City for maintenance and repairs, taxes and assessments or insurance or any other costs, expenses or liabilities arising out of or relation to the ownership, use or leasing of the Premises of any kind whatsoever, except as specifically set forth in this Sublease.

IV. ALTERATIONS AND IMPROVEMENTS

Capitol Parking shall not develop, construct or install any alterations, improvements or fixtures ("Improvements") on the Premises, other than the contemplated surface parking lot to be constructed by Capitol Parking, without the express prior written approval of the City. Such Improvements shall be limited to surface parking and landscaping. Advertising signs, devices or displays shall not be permitted on the Premises except that public service messages and local event information may be displayed.

Such written approval by City shall not relieve Capitol Parking from ensuring that Improvements comply with plans and construction documents, and all pertinent City ordinances, state and federal law, building, plumbing, mechanical, safety, fire, sanitation and electrical codes, and other pertinent laws and regulations and that any necessary permits, licenses or other approvals for design, construction or operation are obtained from any jurisdiction having management or regulatory control over development construction and operation of the transit center or Improvements.

Capitol Parking may remove any of the Improvements it has installed on the Premises upon the expiration or termination of this Lease. If Capitol Parking elects to remove some or all of such Improvements, Capitol Parking shall perform such work on a schedule acceptable to City, and in a manner, form and method approved by City. Provided, that at City's option, Capitol shall be required, at its cost, to remove all Improvements it has not elected to remove from the Premises. All Improvements not elected for removal by Capitol Parking or required by City to be removed shall be the property of the City. Capitol Parking shall, in a timely fashion, provide to City documents satisfactory to the City evidencing title.

V. MAINTENANCE

Capitol Parking shall maintain the Premises and all Improvements located thereon in a safe and neat appearing condition and free of noxious weeds, trash, debris, scrap material, or flammable, explosive, or hazardous substances. If Capitol Parking fails to maintain the Premises and Improvements in such a manner, Capitol Parking agrees to reimburse City for any costs incurred to remove or repair the Premises and Improvements.

VI. NOTICE OF ACTIVITY ON HIGHWAY

Capitol Parking expressly acknowledges that the NDOR has reserved the right (1) to push, blow or otherwise remove snow from the elevated structures of the interstate highway above the Premises, (2) to store snow, and (3) to paint the elevated structures of such interstate highway, as more specifically delineated in the Lease, and that such activity may occur on short

notice. Capitol Parking further acknowledges that debris may fall or land on the Premises due to usage and maintenance of the interstate highway. Such activities or occurrences may cause injury, damage or inconvenience to Capitol Parking and/or to persons or property on the Premises. Capitol Parking agrees to hold City and the State of Nebraska harmless from any and all claims or suits for damages to persons or property due to such activities or occurrences.

VII. PIER PROTECTION

Capitol Parking shall provide pier protection, in a design, form, method and manner acceptable to City and NDOR, on each pier on the Premises throughout the term of this Sublease.

VIII. FEES TAXES OR ASSESSMENTS

Capitol Parking agrees, at its own expense, to pay any and all fees, taxes or assessments properly levied by any city, county, state, federal or other governmental unit against its operations, property or income or the Premises as a result of this Sublease or the use of the Premises by Capitol Parking for operation of surface parking or the Improvements.

Capitol Parking agrees, at its own expense, to pay all franchise, royalty and licensing fees and protect and save harmless the City from any claims and suits that may arise from infringement of any ownership, trademark, or patent right or from the provision or use of articles or services by Capitol Parking on the Premises under this Sublease.

IX. RIGHT OF ENTRY

The NDOR, their agents or authorized Federal Highway Administration (FHWA) representatives, may enter the premises at any time. The City, NDOR and FHWA, and its duly authorized representatives, shall, throughout the term of this Sublease, have full and unrestricted access and the right to enter the Premises at any and all times the surface parking is open, or following a minimum of four (4) hours' notice if the facility is closed, for the purposes of (1) inspecting, observing, or protecting the Premises, including the interstate highway located above the Premises (2) performing any obligation of the City under this Sublease, or (3) taking any action the City deems necessary in the exercise of its police powers. Where feasible, City shall not unreasonably interfere with the operation of the Premises in exercising such access and entry rights.

X. NONDISCRIMINATION

Capitol Parking shall not, in the performance of this Sublease and in the operation of surface parking on the Premises, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, disability, political or religious opinions, affiliations or national origin.

XI. ASSIGNMENT

Capitol Parking shall not sublease, sell, or assign its interests or rights in the Premises and this Sublease without the express prior written consent of the City and the NDOR. Notwithstanding the foregoing, Capitol Parking anticipates the need to execute a collateral assignment of this Sublease in favor First National Bank of Omaha. The City and the NDOR agree to use their best efforts to accommodate such a collateral assignment in the event such a request is made.

XII. INDEMNIFICATION AND INSURANCE

- A. Capitol Parking covenants and agrees to indemnify and hold harmless the City of Omaha, its officers, agents and employees, their successors and assigns, individually or collectively from and against all liability for any fines, claims, suits, demands, actions or causes of action of any kind and nature asserted by Capitol Parking or by anyone else, for personal injury or death, or property damage in any way arising out of or resulting from any activity or operation of Capitol Parking on the Premises or in connection with its sublease of the Premises and Capitol Parking further agrees to pay all expenses in defending against any claims made against the City; provided, however, that Capitol Parking shall not be liable for any injury, damage or loss occasioned by the sole negligence or willful misconduct of the City, its agents or employees. Capitol Parking and the City shall give prompt and timely notice of any claim made or suit instituted which, in any way, directly or indirectly, contingently or otherwise, affects or might affect either party.
- B. Capitol Parking covenants and agrees to indemnify and hold harmless the NDOR, its officers, agents and employees, their successors and assigns, individually or collectively from and against all liability for any fines, claims, suits, demands, actions or causes of action of any kind and nature asserted by Capitol Parking or by anyone else, for personal injury or death, or property damage in any way arising out of or resulting from any activity or operation of Capitol Parking on the Premises or in connection with its sublease of the Premises and Capitol Parking further agrees to pay all expenses in defending against any claims made against the NDOR; provided, however, that Capitol Parking shall not be liable for any injury, damage or loss occasioned by the sole negligence or willful misconduct of the NDOR, its agents or employees. Capitol Parking and the NDOR shall give prompt and timely notice of any claim made or suit instituted which, in any way, directly or indirectly, contingently or otherwise, affects or might affect either party.
- C. Capitol Parking shall procure and maintain in effect during the term of this Sublease, with companies licensed to do business in the State of Nebraska, public liability insurance with at minimum, policy limits of \$1,000,000/\$5,000,000 for bodily injury or death and property damage. Said policy shall expressly include the City and NDOR as additional named insured.

A certified copy of the policy or a certificate evidencing the existence thereof, shall be delivered to the Public Works Department Director within ten (10) days after the execution of this Sublease. Each such copy shall contain a valid provision or endorsement that the policy may not be cancelled, terminated or materially changed or modified without giving thirty (30) days written advance notice thereof to the City and or NDOR. Each such policy

shall contain an additional endorsement providing that the insured's carrier shall not, without obtaining express advance permission from the City or NDOR, raise any defense involving in any way the immunity of the City, NDOR, officers, agents or employees, the governmental nature of the City or NDOR, or the provisions of any statutes respecting suits against the City or the State.

- C. Capitol Parking shall furnish to the City satisfactory evidence that it carries Workers' Compensation Insurance in accordance with the laws of the State of Nebraska.
- D. Upon receipt of notice from the City or NDOR, Capitol Parking shall take such action as the City or NDOR shall deem necessary and expedient to insure that the City or NDOR are held harmless from any liability from any cause whatsoever arising as a result of Capitol Parking's operations and activities in and upon the Premises to any person, individual or entity.
- E. Capitol Parking shall procure and maintain in effect during the term of this Sublease, with companies licensed to do business in the State of Nebraska, fire, theft and extended coverage hazard insurance on all property utilized by Capitol Parking on the Premises and all buildings or Improvements installed by Capitol Parking.
- F. In the event Capitol Parking shall fail to obtain any such insurance, or shall permit any such insurance or other type of indemnity to lapse or become void, the City may terminate this Sublease.
- G. Except to the extent of the Capitol Parking's negligence or willful misconduct, City shall defend all actions against Capitol Parking, any partner, officer director, members employees and shareholder of Capitol and the holder of any mortgage on the Premises (collectively, "Capitol Parking's Indemnified Parties"), with respect to, and shall pay, protect, indemnify and save harmless the Capitol Parking's Indemnified Parties from and against, any and all liabilities, losses, damages, costs, expenses (including, without limitation, reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature arising from (i) violations by City of this Sublease, (ii) any act or omission of City or City's agents, employees, or contractors.

XIII. INDEPENDENT CONTRACTOR

It is understood and agreed by and between Capitol Parking and City that any and all acts that Capitol Parking or its personnel, employees, agents, contractors, or servants, perform pursuant to the terms of this Sublease shall be undertaken as independent contractors and not as employees of the City. The City and Capitol Parking shall each act in their individual capacities and not as agents, employees, partners, joint venturers or associates of the other. An employee or agent of one shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Neither Capitol Parking nor its personnel, employees, agents, contractors, or servants shall be entitled to any City benefits. The City shall not provide any insurance coverage to Capitol Parking or its employees including, but not limited to, workers' compensation insurance. Capitol Parking shall pay all wages, salaries and other amounts due its

employees and shall be responsible for all reports, obligations, and payments pertaining to social security taxation, income tax withholding, workers' compensation, unemployment compensation, group insurance coverage, collective bargaining agreements or any other such similar matters. Capitol Parking shall have no authority to bind the City by or with any contract or agreement, nor to impose any liability upon the City. All acts and contracts of Capitol Parking shall be in its own name and not in the name of the City, unless otherwise provided herein.

XIV. CONSENT OF NDOR

Upon execution of this Sublease, City shall attempt to obtain the consent of NDOR and any other governing authority over the Lease or the Premises. If NDOR has not granted such consent on or before December 31, 2016, then this Sublease shall automatically and immediately terminate and neither party shall have any further obligation hereunder. Upon the request of Capitol Parking, the parties shall attempt to obtain a non-disturbance agreement pursuant to which NDOR will agree to allow Capitol Parking to occupy the Premises in the event City is in default under the Lease so long as Capitol Parking is not in default under this Sublease. If NDOR has not executed a non-disturbance agreement in form and substance mutually satisfactory to City and Capitol Parking, then Capitol Parking shall have the right to terminate this Sublease in Capitol Parking's sole discretion and neither party thereafter shall have any further rights or obligations hereunder.

XV. ESTOPPEL CERTIFICATES

City and the NDOR will, upon twenty (20) days' written notice at the request of Capitol Parking, execute, acknowledge and deliver to Capitol Parking a certificate of City, stating that this Sublease is unmodified and in full force and effect (or, if there have been modifications, that this Sublease is in full force and effect as modified, and setting forth such modifications) and the dates to which Rent, additional rent and other sums payable hereunder have been paid, and either stating that to the knowledge of City and the NDOR no default exists hereunder or specifying each such default of which City and the NDOR has knowledge. Any such certificate may be relied upon by Capitol Parking or any actual or prospective assignee of Capitol Parking of the Premises, subject to the terms of Section XI hereof.

XVI. APPLICABLE LAW

Parties to this Sublease shall conform with all existing and applicable City ordinances, resolutions, state and local laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this Sublease.


XVII. AUTHORIZED REPRESENTATIVES

In further consideration of the mutual covenants herein contained, the parties hereto expressly agree that for purposes of notice, including legal service of process, during the term of this Sublease and for the period of any applicable statute of limitations thereafter, the following individuals shall be the authorized representatives of the parties:

(1) City of Omaha
Director
Public Works
Omaha/Douglas Civic Center
1819 Farnam Street
Omaha, Nebraska 68183

(2) Capitol District Parking LLC
Attn: Michael T. Moylan
1111 N. 13th Street, Suite 101
Omaha, Nebraska 68102

ATTEST:


Public Works Department Director 7/12/16

CAPITOL DISTRICT PARKING, LLC, a
Nebraska limited liability company

By: The Capitol District, LLC, a Nebraska
limited liability, as Administrative Member

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

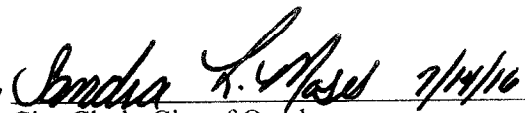
By  5/17/16
Michael T. Moylan, Managing Member

(3) Nebraska Department of Roads

Robert Frickel, Right of Way Manager


ATTEST:

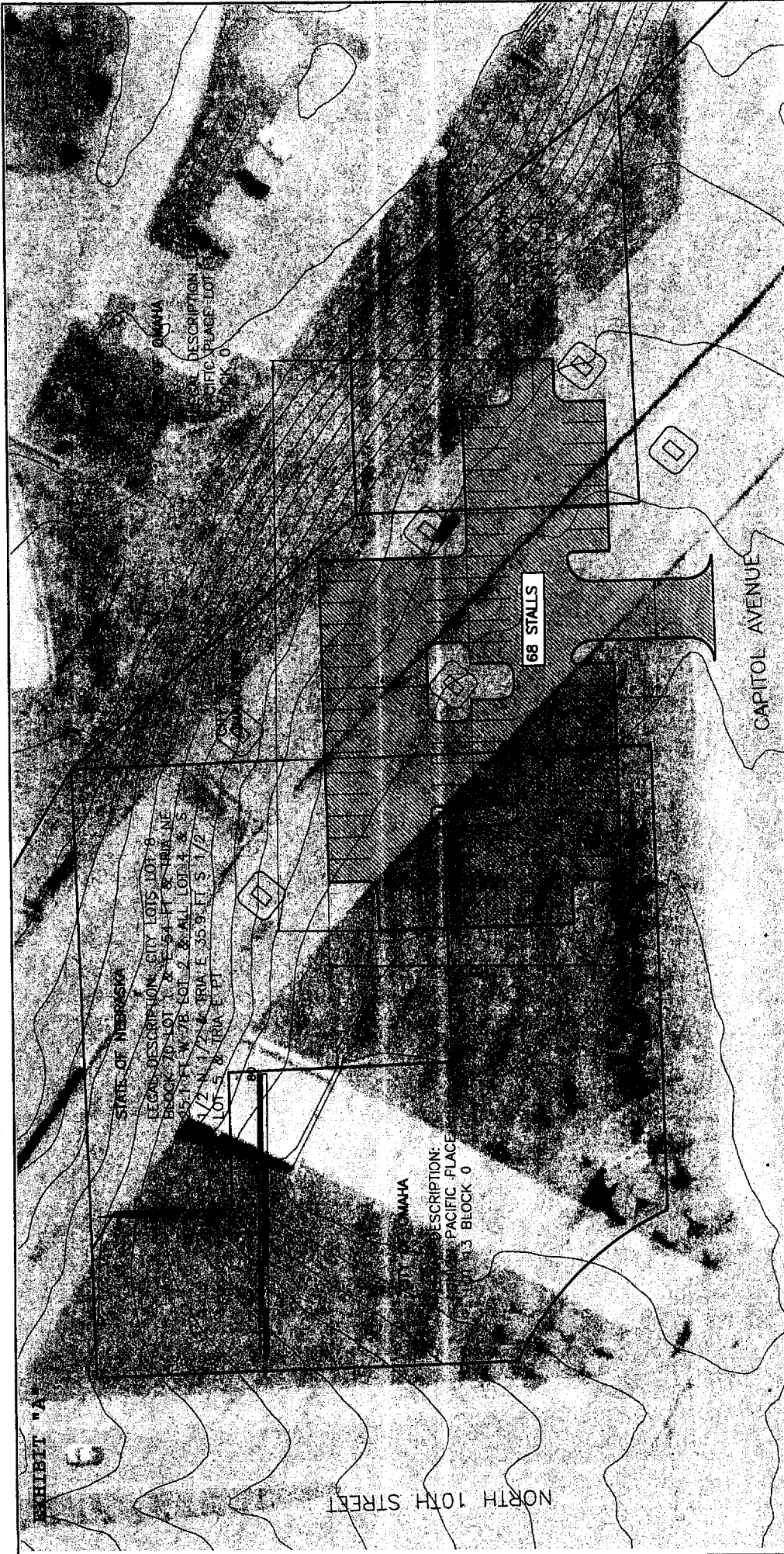
THE CITY OF OMAHA, A Municipal
Corporation

DEPUTY 
City Clerk, City of Omaha 7/14/16

By  7/14/16
Mayor, City of Omaha

APPROVED AS TO FORM:

 5/17/14
Assistant City Attorney



NOTES:

1. A Post Construction Stormwater Management Plan Will Be Required For This Parking Lot.



**LAMP RYNEARSON
& ASSOCIATES**

14710 West Dodge Road, Suite 100 402.496.2498 | P
Omaha, Nebraska 68154-2027 402.496.2730 | F
www.LRA-Inc.com

drawn by	designed by	reviewed by	project - task number	date	book and page	revisions
JTF	JTF	MPM	0110011.01	12/19/2013		

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CAPITOL DISTRICT
EAST PARKING LOT
PRELIMINARY DESIGN

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT is hereby made and entered into this 14 day of July, 2016, by and between the CITY OF OMAHA, a municipal corporation organized and existing under the laws of the State of Nebraska located in Douglas County, Nebraska, (hereinafter referred to as "City") and CAPITOL DISTRICT PARKING, LLC, a Nebraska limited liability company, (hereinafter referred to as "Capitol Parking").

WHEREAS, the City leases certain real property located under Interstate Highway 480 between 10th and 11th Streets and north of Davenport Street from the State of Nebraska Department of Roads (NDOR) for parking purposes, commonly known as Lot "E" (the "Premises"); and,

WHEREAS, Capitol Parking desires to sublease the Premises for operation of surface parking on the Premises.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the City and Capitol Parking do hereby mutually undertake, promise, agree and contract each for itself and its successors and assigns as follows:

I. SUBLEASED PREMISES

The City hereby subleases the Premises to Capitol Parking throughout the term of this Sublease Agreement ("Sublease") for the sole purpose of operating surface parking thereon, subject to the terms and conditions set forth:

See attached Exhibit "A"
(Diagram and legal description)

II. TERM AND TERMINATION

The term of this Lease shall run concurrently with that certain Airspace Lease Agreement (Lease) between the NDOR and the City of Omaha commencing on the earlier of: (x) June 1, 2017; or (y) upon thirty (30) days prior written notice from Capitol Parking to the City and NDOR, and ending on the date of expiration of the Lease or the date of termination of the Lease with the State.

In addition to all other remedies available to the City, this Sublease shall be subject to cancellation by the City should any one or more of the following events occur:

1. If Capitol Parking shall abandon and discontinue the operation of the surface parking.
2. If Capitol Parking shall fail to use the premises for parking and landscaping purposes without prior written approval from the City and the NDOR.

3. If Capitol Parking shall fail to perform, keep and observe any of the terms, provisions, covenants and conditions contained in this Sublease, including the failure to make any required payments, or the related Airspace Lease Agreement between the NDOR and the City of Omaha, which is attached hereto as Exhibit "B".

4. If Capitol Parking shall fail to abide by all applicable laws, ordinances, rules and regulations of the United States, State of Nebraska, Douglas County, or the City.

5. If Capitol Parking shall fail to obtain any insurance or indemnity required under the terms of this Sublease or permit any such insurance or indemnity to lapse or become void.

6. Provided that upon the happening of any of the contingencies recited in subparagraphs 1 through 5 above, the City shall provide Capitol Parking written notice identifying the event and requiring Capitol Parking to correct or cure same, and, if, within thirty (30) days from the date of such notice, the default, failure to perform or breach complained of shall not have been corrected in a manner reasonably satisfactory to the City, then the City shall have the right to terminate this Lease, without further notice, to enter upon and take full possession, ownership and control of the Premises. Upon such happening, this Lease shall automatically be deemed to have been irrevocably breached by Capitol Parking and shall terminate. The acceptance of the Lease Payment (as defined in Section III below) or any portion thereof, by the City for any period or periods after an event of default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by Capitol Parking shall not be deemed a waiver of any rights on the part of the City to terminate this Lease for failure by Capitol Parking to so perform, keep, or observe, any of the terms of the Lease to be kept, performed and observed by Capitol Parking. Upon termination, Capitol Parking shall immediately vacate the Premises and cease all operation and control of the use of the Premises, except for removal activity as provided herein below in Article IV.

III. CONSIDERATION

Capitol Parking agrees to pay to City the sum of Fifteen Thousand One Hundred Sixty Seven Dollars (\$15,167.00) per year of consideration plus any increases proposed by the State of Nebraska (the "Lease Payment"). Capitol Parking shall pay City the Lease payment amount, in twelve equal monthly installments, on or before the 10th of each month of the Lease term. Any increases imposed by the State on lease payments from the City to the State on the related Lease agreement will be the basis for an increase in this Sublease Agreement on a per stall basis.

The parties hereby acknowledge that Capitol Parking shall not be responsible for the payment of any additional amounts to City for maintenance and repairs, taxes and assessments or insurance or any other costs, expenses or liabilities arising out of or relation to the ownership, use or leasing of the Premises of any kind whatsoever, except as specifically set forth in this Sublease.

IV. ALTERATIONS AND IMPROVEMENTS

Capitol Parking shall not develop, construct or install any alterations, improvements or fixtures ("Improvements") on the Premises, other than the contemplated surface parking lot, without the express prior written approval of the City. Such Improvements shall be limited to

surface parking and landscaping. Advertising signs, devices or displays shall not be permitted on the Premises except that public service messages and local event information may be displayed.

Such written approval by City shall not relieve Capitol Parking from ensuring that Improvements comply with plans and construction documents, and all pertinent City ordinances, state and federal law, building, plumbing, mechanical, safety, fire, sanitation and electrical codes, and other pertinent laws and regulations and that any necessary permits, licenses or other approvals for design, construction or operation are obtained from any jurisdiction having management or regulatory control over development construction and operation of the transit center or Improvements.

Capitol Parking may remove any of the Improvements it has installed on the Premises upon the expiration or termination of this Lease. If Capitol Parking elects to remove some or all of such Improvements, Capitol Parking shall perform such work on a schedule acceptable to City, and in a manner, form and method approved by City. Provided, that at City's option, Capitol shall be required, at its cost, to remove all Improvements it has not elected to remove from the Premises. All Improvements not elected for removal by Capitol Parking or required by City to be removed shall be the property of the City. Capitol Parking shall, in a timely fashion, provide to City documents satisfactory to the City evidencing title.

V. MAINTENANCE

Capitol Parking shall maintain the Premises and all Improvements located thereon in a safe and neat appearing condition and free of noxious weeds, trash, debris, scrap material, or flammable, explosive, or hazardous substances. If Capitol Parking fails to maintain the Premises and Improvements in such a manner, Capitol Parking agrees to reimburse City for any costs incurred to remove or repair the Premises and Improvements.

VI. NOTICE OF ACTIVITY ON HIGHWAY

Capitol Parking expressly acknowledges that the NDOR has reserved the right (1) to push, blow or otherwise remove snow from the elevated structures of the interstate highway above the Premises, (2) to store snow, and (3) to paint the elevated structures of such interstate highway, as more specifically delineated in the Sublease, and that such activity may occur on short notice. Capitol Parking further acknowledges that debris may fall or land on the Premises due to usage and maintenance of the interstate highway. Such activities or occurrences may cause injury, damage or inconvenience to Capitol Parking and/or to persons or property on the Premises. Capitol Parking agrees to hold City and the State of Nebraska harmless from any and all claims or suits for damages to persons or property due to such activities or occurrences.

VII. PIER PROTECTION

Capitol Parking shall provide pier protection, in a design, form, method and manner acceptable to City and NDOR, on each pier on the Premises throughout the term of this Sublease.

VIII. FEES TAXES OR ASSESSMENTS

Capitol Parking agrees, at its own expense, to pay any and all fees, taxes or assessments properly levied by any City, county, state, federal or other governmental unit against its operations, property or income or the Premises as a result of this Sublease or the use of the Premises by Capitol Parking for operation of surface parking or the Improvements.

Capitol Parking agrees, at its own expense, to pay all franchise, royalty and licensing fees and protect and save harmless the City from any claims and suits that may arise from infringement of any ownership, trademark, or patent right or from the provision or use of articles or services by Capitol Parking on the Premises under this Sublease.

IX. RIGHT OF ENTRY

The NDOR, their agents or authorized Federal Highway Administration (FHWA) representatives, may enter the premises at any time. The City, NDOR and FHWA, and its duly authorized representatives, shall, throughout the term of this Sublease, have full and unrestricted access and the right to enter the Premises at any and all times the surface parking is open, or following a minimum of four (4) hours' notice if the facility is closed, for the purposes of (1) inspecting, observing, or protecting the Premises, including the interstate highway located above the Premises (2) performing any obligation of the City under this Sublease, or (3) taking any action the City deems necessary in the exercise of its police powers. Where feasible, City shall not unreasonably interfere with the operation of the Premises in exercising such access and entry rights.

X. NONDISCRIMINATION

Capitol Parking shall not, in the performance of this Sublease and in the operation of surface parking on the Premises, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, disability, political or religious opinions, affiliations or national origin.

XI. ASSIGNMENT

Capitol Parking shall not sublease, sell, or assign its interests or rights in the Premises and this Sublease without the express prior written consent of the City and the NDOR. Notwithstanding the foregoing, Capitol Parking anticipates the need to execute a collateral assignment of this Sublease in favor First National Bank of Omaha. The City and the NDOR agree to use their best efforts to accommodate such a collateral assignment in the event such a request is made.

XII. INDEMNIFICATION AND INSURANCE

- A. Capitol Parking covenants and agrees to indemnify and hold harmless the City of Omaha, its officers, agents and employees, their successors and assigns, individually or collectively from and against all liability for any fines, claims, suits, demands, actions or causes of action of any kind and nature asserted by Capitol Parking or by anyone else, for personal injury or death, or property damage in any way arising out of or resulting from any activity or

operation of Capitol Parking on the Premises or in connection with its sublease of the Premises and Capitol Parking further agrees to pay all expenses in defending against any claims made against the City; provided, however, that Capitol Parking shall not be liable for any injury, damage or loss occasioned by the sole negligence or willful misconduct of the City, its agents or employees. Capitol Parking and the City shall give prompt and timely notice of any claim made or suit instituted which, in any way, directly or indirectly, contingently or otherwise, affects or might affect either party.

- B. Capitol Parking covenants and agrees to indemnify and hold harmless the NDOR, its officers, agents and employees, their successors and assigns, individually or collectively from and against all liability for any fines, claims, suits, demands, actions or causes of action of any kind and nature asserted by Capitol Parking or by anyone else, for personal injury or death, or property damage in any way arising out of or resulting from any activity or operation of Capitol Parking on the Premises or in connection with its sublease of the Premises and Capitol Parking further agrees to pay all expenses in defending against any claims made against the NDOR; provided, however, that Capitol Parking shall not be liable for any injury, damage or loss occasioned by the sole negligence or willful misconduct of the NDOR, its agents or employees. Capitol Parking and the NDOR shall give prompt and timely notice of any claim made or suit instituted which, in any way, directly or indirectly, contingently or otherwise, affects or might affect either party.
- C. Capitol Parking shall procure and maintain in effect during the term of this Sublease, with companies licensed to do business in the State of Nebraska, public liability insurance with at minimum, policy limits of \$1,000,000/\$5,000,000 for bodily injury or death and property damage. Said policy shall expressly include the City and NDOR as additional named insured.

A certified copy of the policy or a certificate evidencing the existence thereof, shall be delivered to the Public Works Department Director within ten (10) days after the execution of this Sublease. Each such copy shall contain a valid provision or endorsement that the policy may not be cancelled, terminated or materially changed or modified without giving thirty (30) days written advance notice thereof to the City and or NDOR. Each such policy shall contain an additional endorsement providing that the insured's carrier shall not, without obtaining express advance permission from the City or NDOR, raise any defense involving in any way the immunity of the City, NDOR, officers, agents or employees, the governmental nature of the City or NDOR, or the provisions of any statutes respecting suits against the City or the State.

- D. Capitol Parking shall furnish to the City satisfactory evidence that it carries Workers' Compensation Insurance in accordance with the laws of the State of Nebraska.
- E. Upon receipt of notice from the City or NDOR, Capitol Parking shall take such action as the City or NDOR shall deem necessary and expedient to insure that the City or NDOR are held harmless from any liability from any cause whatsoever arising as a result of Capitol Parking's operations and activities in and upon the Premises to any person, individual or entity.

- F. Capitol Parking shall procure and maintain in effect during the term of this Sublease, with companies licensed to do business in the State of Nebraska, fire, theft and extended coverage hazard insurance on all property utilized by Capitol Parking on the Premises and all buildings or Improvements installed by Capitol Parking.
- G. In the event Capitol Parking shall fail to obtain any such insurance, or shall permit any such insurance or other type of indemnity to lapse or become void, the City may terminate this Sublease.
- H. Except to the extent of the Capitol Parking's negligence or willful misconduct, City shall defend all actions against Capitol Parking, any partner, officer director, members employees and shareholder of Capitol and the holder of any mortgage on the Premises (collectively, "Capitol Parking's Indemnified Parties"), with respect to, and shall pay, protect, indemnify and save harmless the Capitol Parking's Indemnified Parties from and against, any and all liabilities, losses, damages, costs, expenses (including, without limitation, reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature arising from (i) violations by City of this Sublease, (ii) any act or omission of City or City's agents, employees, or contractors.

XIII. INDEPENDENT CONTRACTOR

It is understood and agreed by and between Capitol Parking and City that any and all acts that Capitol Parking or its personnel, employees, agents, contractors, or servants, perform pursuant to the terms of this Sublease shall be undertaken as independent contractors and not as employees of the City. The City and Capitol Parking shall each act in their individual capacities and not as agents, employees, partners, joint venturers or associates of the other. An employee or agent of one shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Neither Capitol Parking nor its personnel, employees, agents, contractors, or servants shall be entitled to any City benefits. The City shall not provide any insurance coverage to Capitol Parking or its employees including, but not limited to, workers' compensation insurance. Capitol Parking shall pay all wages, salaries and other amounts due its employees and shall be responsible for all reports, obligations, and payments pertaining to social security taxation, income tax withholding, workers' compensation, unemployment compensation, group insurance coverage, collective bargaining agreements or any other such similar matters. Capitol Parking shall have no authority to bind the City by or with any contract or agreement, nor to impose any liability upon the City. All acts and contracts of Capitol Parking shall be in its own name and not in the name of the City, unless otherwise provided herein.

XIV. CONSENT OF NDOR

Upon execution of this Sublease, City shall attempt to obtain the consent of NDOR and any other governing authority over the Lease or the Premises. If NDOR has not granted such consent on or before December 31, 2016, then this Sublease shall automatically and immediately terminate and neither party shall have any further obligation hereunder. Upon the request of Capitol Parking, the parties shall attempt to obtain a non-disturbance agreement pursuant to which NDOR will agree to allow Capitol Parking to occupy the Premises in the event City is in default under the Lease so long as Capitol Parking is not in default under this Sublease. If NDOR has not executed a non-disturbance agreement in form and substance mutually satisfactory to

City and Capitol Parking, then Capitol Parking shall have the right to terminate this Sublease in Capitol Parking's sole discretion and neither party thereafter shall have any further rights or obligations hereunder.

XV. ESTOPPEL CERTIFICATES

City and the NDOR will, upon twenty (20) days' written notice at the request of Capitol Parking, execute, acknowledge and deliver to Capitol Parking a certificate of City, stating that this Sublease is unmodified and in full force and effect (or, if there have been modifications, that this Sublease is in full force and effect as modified, and setting forth such modifications) and the dates to which Rent, additional rent and other sums payable hereunder have been paid, and either stating that to the knowledge of City and the NDOR no default exists hereunder or specifying each such default of which City and the NDOR has knowledge. Any such certificate may be relied upon by Capitol Parking or any actual or prospective assignee of Capitol Parking of the Premises, subject to the terms of Section XI hereof.

XVI. APPLICABLE LAW

Parties to this Sublease shall conform with all existing and applicable City ordinances, resolutions, state and local laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this Sublease.

XVII. AUTHORIZED REPRESENTATIVES

In further consideration of the mutual covenants herein contained, the parties hereto expressly agree that for purposes of notice, including legal service of process, during the term of this Sublease and for the period of any applicable statute of limitations thereafter, the following individuals shall be the authorized representatives of the parties:

(1) City of Omaha
Public Works Director
Omaha/Douglas Civic Center
189 Farnam Street
Omaha, NE 68183

(2) Capitol District Parking LLC
Attn: Michael T. Moylan
1111 North 13th Street, Suite 101
Omaha, NE 68102


ATTEST:



CAPITOL DISTRICT PARKING, LLC, a
Nebraska limited liability company

By: The Capitol District, LLC a Nebraska
limited LIABILITY COMPANY

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

By  5/17/16
Michael T. Moylan, Managing Member

(3) Nebraska Department of Roads
1500 Nebraska 2
Lincoln, NE 68502

Robert Frickel, Right of Way Manager

ATTEST:

THE CITY OF OMAHA, A Municipal
Corporation

DEPUTY

Donna L. Lewis 7/14/16
City Clerk, City of Omaha

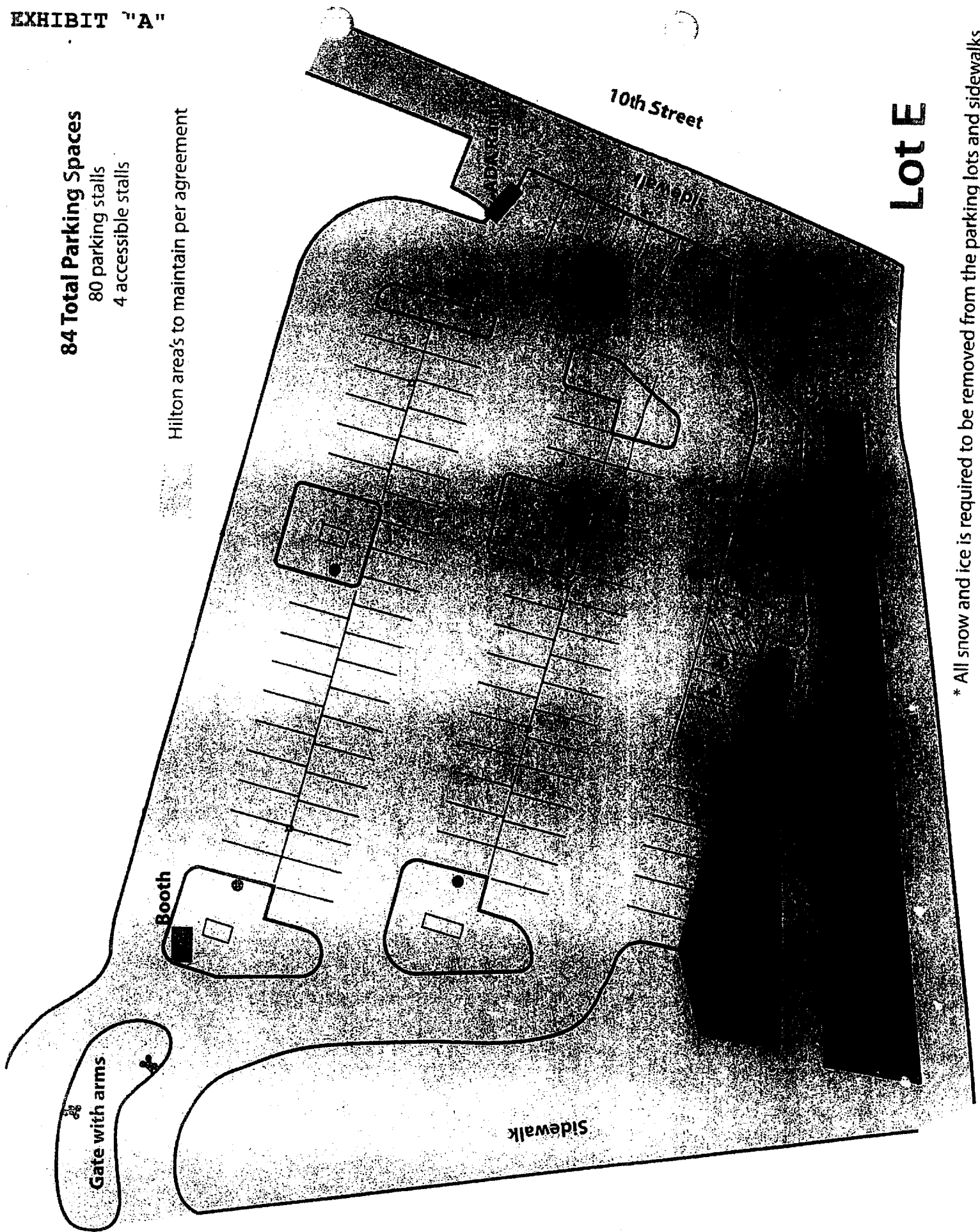
By *Jim Stothard* 7/14/16
Mayor, City of Omaha

APPROVED AS TO FORM:

[Signature] 5/17/16
Asst. City Attorney

84 Total Parking Spaces
80 parking stalls
4 accessible stalls

Hilton area's to maintain per agreement



* All snow and ice is required to be removed from the parking lots and sidewalks

915

915
5

ORDINANCE NO. 40813.

AN ORDINANCE to approve the sublease of two air space lease agreements between the City of Omaha and the Department of Roads of the State of Nebraska with Capitol District Parking, LLC for certain premises located adjacent to the Capitol District, specifically property northwest of 10th and Davenport Streets, commonly known as "Lot E" and property between 8th and 10th Street, north of Capitol Avenue, beginning June 1, 2017, or earlier upon proper notice by Capitol District Parking, in the amount of approximately \$15,167.00 and \$2,880.00 per year respectively; and to provide an effective date.

p:\law - city council documents\2016\20042.vxd

24 ✓

PRESENTED TO COUNCIL

1st Reading JUN 21 2016 - hearing
4/25/16

Hearing JUN 28 2016 - 2116g to
7/2/16 presented to City Council
Kyle Hill H

Final Reading JUL 12 2016

Passed 7-0

BUSTER BROWN
City Clerk

PUBLICATIONS

PUBLICATION OF HEARING
Date 6-24-16

PUBLICATION OF ORDINANCE
Date 7-20-16

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 _____, 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:

Sean Stothert
Mayor, City of Omaha

Approved as to Form:

[Signature]
Assistant City Attorney

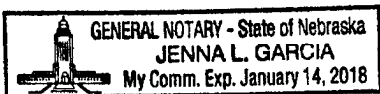
8/30/16

STATE OF NEBRASKA)

) ss.

COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 30th day of August, 2016, by Sean 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 ____ 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 ____ 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;

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;

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:

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;

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:

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:

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.

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.
- 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.