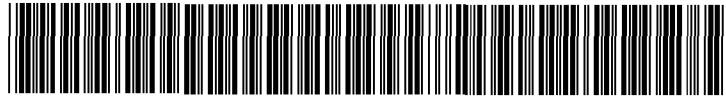




MISC 2016077874



SEP 20 2016 17:15 P 13

Fee amount: 82.00
FB: 07-05673
COMP: SB

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



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WHEN RECORDED, PLEASE RETURN TO:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attn: Andrew Romshek, Esq.

**SUBORDINATION, NONDISTURBANCE, ATTORNMEN
AND ESTOPPEL AGREEMENT**

THIS SUBORDINATION, NONDISTURBANCE, ATTORNMEN AND ESTOPPEL AGREEMENT ("Agreement") is entered into as of September 19, 2016, by and among CAPITOL DISTRICT PARKING, LLC, a Nebraska limited liability company, whose address is 1111 N. 13th Street, Suite 101, Omaha, NE 68102 ("Licensor"), THE RESIDENCES AT THE CAPITOL DISTRICT, LLC, a Nebraska limited liability company, whose address is 1111 N. 13th Street, Suite 101, Omaha, NE 68102 ("Licensee"), and FIRST NATIONAL BANK OF OMAHA, a national banking association, whose address is 1620 Dodge Street, Omaha, Nebraska 68102 ("Lender").

RECITALS:

A. Licensee is the present licensee, and Licensor is the current licensor, under a certain Parking License Agreement dated May 29, 2015, as amended by the First Amendment to Parking License Agreement dated on or about the date hereof (the "Parking License"), between Licensor, as licensor, and Licensee, as licensee, which provides for an exclusive right by Licensee to use 293 reserved parking spaces (the "Parking Spaces") within a parking facility to be constructed on certain real property legally described on Exhibit A (the "Parking Facility").

B. Licensee has been advised that the Parking License has been or will be assigned by Licensor to Lender as security for a loan (the "Loan") with an original principal balance of up to \$10,350,000, subject to increase to \$11,050,000 upon satisfaction of certain conditions (the "Loan"), secured by, among other things, a Construction Deed of Trust, Security Agreement and Assignment of Rents (the "Security Instrument") to be recorded contemporaneously herewith covering the Parking Facility.

C. A condition precedent to Lender's disbursement of Loan proceeds is that Licensor obtain this Agreement from Licensee in order to confirm certain matters and to subordinate the Parking License and Licensee's interest in the Parking Facility to the lien of the Security Instrument.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Licensee represents and warrants to Lender as follows:

(a) The Parking License is in full force and effect.

(b) On the Parking Commencement Date (as defined in the Parking License), Licensee shall execute an estoppel in the form of Exhibit B hereto.

(c) Licensor has done everything that it promised to do in order to induce Licensee to enter into the Parking License. There are no concessions or inducements which have been promised by Licensor or any other party to Licensee other than as set forth in the Parking License.

(d) The Parking License as described above has not been further modified, altered or amended.

(e) Licensee has no notice of a currently effective assignment, hypothecation or pledge of rents on the Parking License to any party other than Lender. Licensee has not assigned any of its rights, title or interest under the Parking License except to Great Western Bank ("Licensee's Mortgagee").

(f) The Parking License does not contain, and Licensee does not have, an outstanding option to extend or renew the term of the Parking License.

(g) Licensee has no claim to or interest in the Parking Facility, legal or equitable, or any contract or option therefor other than as a licensee under the Parking License.

(h) Licensor is not in default of any of its obligations under the Parking License, and, to the best of Licensee's knowledge, no event has occurred which, with notice, the passage of time or both, would constitute a default in any of Licensor's obligations under the Parking License.

(i) Licensee has not paid Licensor a security or similar type deposit.

2. Licensee shall promptly provide Lender at its address first shown above with a written notice of any default on the part of the Licensor under the Parking License. Lender shall have the option to cure such default within the time allotted to Licensor under the Parking License plus 15 business days in the case of a monetary default and 30 business days in the case of a non-monetary default. Licensee shall not terminate the Parking License or withhold any

license fee during any period that Lender is proceeding to cure any such default with due diligence or (if possession of the Parking Facility is necessary for such cure to be effectuated) during any period that Lender is taking steps with due diligence to obtain the legal right to enter the Parking Facility and cure any such default.

3. Without the prior written consent of Lender, Licensee shall not (a) modify or in any manner alter the terms of the Parking License so as to reduce the license fee payable under the Parking License, increase or decrease the number of parking spaces licensed under the Parking License, increase or decrease the term of the Parking License, alter the provisions of the Parking License regarding assignment, subletting and encumbrance of the Parking License or Parking Spaces or increase the material economic obligations of Licensor under the Parking License; (b) pay the rent or any other sums becoming due under the terms of the Parking License more than one month in advance; (c) accept Licensor's waiver of or release from the performance of any material obligation under the Parking License; (d) assign the Parking License; (e) sublet the Parking Spaces to any party other than an Authorized User (as defined in the Parking License); (f) assign the Parking License as collateral security or mortgage or otherwise encumber its rights under the Parking License except to Licensee's Mortgagee; or (g) agree with Licensor to terminate the Parking License.

4. In the event Lender notifies Licensee in writing that Licensor is in default under the Security Instrument and demands that payment of all future license fees be made directly to Lender, Licensee shall honor such demand and pay the full amount of all license fees and all other sums due under the Parking License directly to Lender or as otherwise instructed by Lender pursuant to such notice, beginning with the payment next due after such notice of default. Licensor hereby consents to such payment and agrees that Licensee shall not be liable to Licensor for any license fees actually paid to Lender pursuant to this Section 4.

5. Subject to the nondisturbance provisions in Section 11 below, the Parking License and all right, title and interest of Licensee in, to and under the Parking License are now, and shall at all times continue to be, unconditionally subject and subordinate in each and every respect to the Security Instrument and to any and all renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Security Instrument.

6. No provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and permitted assigns, including without limitation Licensee's Mortgagee in the event it succeeds to Licensee's interest in the Parking License. Upon recorded satisfaction of the Security Instrument, this Agreement shall become null and void and be of no further effect.

7. This Agreement shall be construed under the laws of the State of Nebraska.

8. This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Agreement by signing any such counterpart.

9. Licensee shall not, nor allow any of its tenants or invitees to, use, produce, store, release, dispose of or bring into the Parking Facility any hazardous waste or materials or allow any other entity or person to do so except as incidentally related to the use of the Parking Facility. As used herein, the term "hazardous waste or materials" includes any substance, waste or material defined or designated as hazardous, toxic or dangerous (or any similar term) by any federal, state or local statute, regulation, rule or ordinance now or hereafter in effect including, without limitation, petroleum products and byproducts, asbestos, polychlorinated biphenyls, chlorinated solvents and urea formaldehyde. Licensee shall indemnify and hold harmless Licensor and Lender against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, cleanup costs, remedial actions, costs and expenses (including, without limitation, attorneys' fees and disbursements) which may be imposed on, incurred or paid by or asserted against Licensor and/or Lender directly or indirectly arising from or attributable to any misrepresentation or breach of any warranty, covenant or agreement by Licensee under this Section. The provisions of this Section shall survive expiration or termination of the Parking License.

10. If Lender shall become the owner of the Parking Facility, or if the Parking Facility shall be sold by reason of foreclosure or other proceedings brought to enforce the Security Instrument, or if the Parking Facility shall be transferred by deed in lieu of foreclosure, then (a) the Parking License shall continue in full force and effect as a direct license between Licensee and the then owner of the Parking Facility (including Lender or the grantee under any deed given as a result of any foreclosure or in lieu of foreclosure), upon and subject to all of the terms, covenants and conditions of the Parking License for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Parking License, and (b) Licensee shall attorn to Lender or any other such owner as its Licensor, said attornment to be effective and self-operative without the execution of any further instruments. From and after Lender's or other such owner's succession to the interest of Licensor under the Parking License, Licensee shall have the same remedies against Lender or such other owner for the breach of any covenant contained in the Parking License that Licensee might have had under the Parking License against Licensor, except that neither Lender nor any other such owner shall be:

(i) liable for any act or omission of, or for performance of any obligation of, any prior licensor (including Licensor), including any obligation to repair or restore the Parking Facility, except to the extent that Licensee shall have given Lender or such other owner notice of default and opportunity to cure pursuant to Section 2 above;

(ii) subject to any offsets or defenses which Licensee might have against any prior licensor (including Licensor) except to the extent that Licensee shall have given Lender or such other owner notice of default and opportunity to cure pursuant to Section 2 above;

(iii) bound by any prepayment of rent or additional rent which Licensee might have paid for more than the current month or by payment of any security deposits to any prior Licensor (including Licensor), except such security deposits as have actually been received by Lender or such other owner;

(iv) bound by any amendment or modification of the Parking License or by any waiver or forbearance on the part of any prior licensor (including Licensor) made or given after the date hereof without the written consent of Lender or any subsequent holder of the Security Instrument, to the extent that such consent is required pursuant to Section 3 above; or

(v) bound by any representations or warranties of Licensor under the Parking License.

11. So long as Licensee is not in default (beyond any period given Licensee by the terms of the Parking License to cure such default) in the payment of rent or additional rent or in the performance of any part of the terms, covenants or conditions of the Parking License on Licensee's part to be performed, Licensee's possession of the Parking Facility under the Parking License, or any extensions or renewals thereof which may be effected in accordance with any option therefor in the Parking License, shall not be diminished or interfered with by Lender and Lender will not join Licensee as a party defendant in any action or proceeding for the purpose of terminating Licensee's interest and estate under the Parking License because of any default under the Security Instrument.

12. Other than the right to seek a separate award for loss of business resulting from its inability to use the Parking Spaces due to the exercise of the power of eminent domain (as set forth in Article 7 of the Parking License), Licensee hereby waives any rights it may have to an award for a taking by eminent domain.

13. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

14. Any and all notices, elections, demands or requests permitted or required to be made under this Agreement shall be in writing, signed by the party giving such notice, election, demand or request, and shall be delivered personally, or sent by registered, certified or Express United States mail, postage prepaid, or by Federal Express or similar service requiring a receipt, to the other party at the address stated above, or to such other party and at such other address within the United States of America as any party may designate in writing as provided herein. The date of receipt of such notice, election, demand or request shall be the earliest of (a) the date of actual receipt, (b) three business days after the date of mailing by registered or certified mail, (c) one business day after the date of mailing by Express Mail or the delivery (for redelivery) to Federal Express or another similar service requiring a receipt or (d) the date of personal delivery (or refusal upon presentation for delivery).

15. Licensee shall cause Licensee's Mortgagee to execute and deliver the Licensee's Mortgagee Consent attached hereto as Exhibit C.

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FOLLOWS]

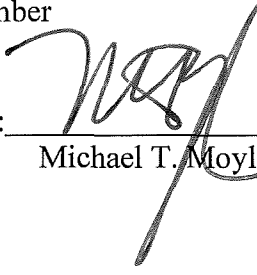
IN WITNESS WHEREOF the undersigned parties have executed this Agreement under seal as of the day and year first above written.

LICENSEE:

THE RESIDENCES AT THE CAPITOL DISTRICT, LLC, a Nebraska limited liability company

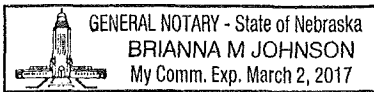
By: The Capitol District, LLC, a Nebraska limited liability company, as Administrative Member

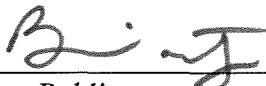
By: MTM Capitol District, LLC, a Nebraska limited liability company, its Administrative Member

By: 
Michael T. Moylan, Member

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 29th day of August, 2016, by Michael T. Moylan, Member of MTM Capitol District, LLC, a Nebraska limited liability company in its capacity as the administrative member of The Capitol District, LLC, a Nebraska limited liability company, in its capacity as the administrative member of The Residences at the Capitol District, LLC, a Nebraska limited liability company, on behalf of the company.





Notary Public

[EXECUTION PAGE OF LICENSEE TO SUBORDINATION, NONDISTURBANCE, ATTORNMENT AND ESTOPPEL AGREEMENT]

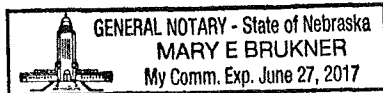
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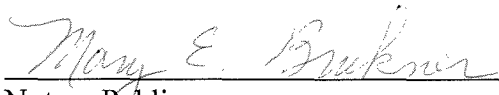
FIRST NATIONAL BANK OF OMAHA, a
national banking association

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, Vice President of First National Bank of Omaha, a national banking association, on behalf of said national banking association.




Notary Public

[EXECUTION PAGE OF LENDER TO SUBORDINATION, NONDISTURBANCE,
ATTORNMENT AND ESTOPPEL AGREEMENT]

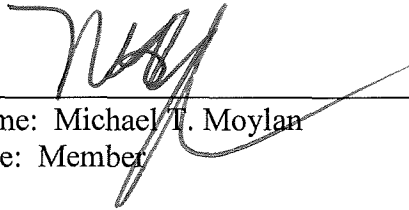
Licensors join in the execution of this document for the purpose of acknowledging and confirming the matters herein set forth.

LICENSOR:

CAPITOL DISTRICT PARKING, LLC, a
Nebraska limited liability company

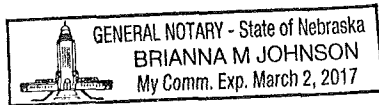
By: The Capitol District, LLC, a
Nebraska limited liability company,
its Sole Member

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 29th 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 OF LICENSOR TO SUBORDINATION, NONDISTURBANCE,
ATTORNEYMENT AND ESTOPPEL AGREEMENT]

EXHIBIT A

LEGAL DESCRIPTION

Lot 1, The Capitol District, an Addition to the City of Omaha, Nebraska, as surveyed, platted, and recorded in Douglas County, Nebraska.

EXHIBIT B

FORM OF ESTOPPEL

Reference is hereby made to that certain Subordination, Nondisturbance, Attornment and Estoppel Agreement dated as of September 19, 2016 (the "SNDA") among CAPITOL DISTRICT PARKING, LLC, a Nebraska limited liability company ("Licensor"), THE RESIDENCES AT THE CAPITOL DISTRICT, LLC, a Nebraska limited liability company ("Licensee"), and FIRST NATIONAL BANK OF OMAHA, a national banking association ("Lender"). All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the SNDA.

Licensee represents and warrants to Lender as follows:

(a) Licensee has accepted possession of the Parking Spaces in the Parking Facility pursuant to the terms of the Parking License, and the Parking License is in full force and effect.

(b) The Parking Spaces and the Parking Facility have been completed in all respects, all amounts owing from Licensor to Licensee in connection with delivery and construction of the Parking Facility (including, without limitation, liquidated damages and charges for construction delays) have been paid and Licensee hereby waives any and all rights and remedies which Licensee may have against Licensor (including, without limitation, any right to terminate the Parking License) as a result of any breach by Licensor of any of its obligations under the Parking License relating to the delivery, construction or initial condition of the Parking Facility.

(c) Licensor has done everything that it promised to do in order to induce Licensee to enter into the Parking License. All conditions to the commencement of the Parking License have been satisfied.

(d) The Parking License as described above has not been further modified, altered or amended.

(e) There are no offsets or credits against rentals, nor have rentals been prepaid except as provided by the Parking License terms, except as follows: _____
(Insert "None," if none.)

(f) Payment of license fees commenced to accrue on _____, the current monthly license fee for all of the Parking Spaces is \$35,160 and there is currently no outstanding unpaid license fees. The primary Parking License term commenced on _____, and expires on _____.

(g) Licensor is not in default of any of its obligations under the Parking License, and, to the best of Licensee's knowledge, no event has occurred which, with

notice, the passage of time or both, would constitute a default in any of Licensor's obligations under the Parking License.

Dated: _____, 20__

LICENSEE:

THE RESIDENCES AT THE CAPITOL
DISTRICT, LLC, a Nebraska limited liability
company

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

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

By: _____
Michael T. Moylan, Member

EXHIBIT C

LICENSEE'S MORTGAGEE'S CONSENT

Reference is hereby made to that certain Subordination, Nondisturbance, Attornment and Estoppel Agreement dated as of September 19, 2016 (the "SNDA") among CAPITOL DISTRICT PARKING, LLC, a Nebraska limited liability company ("Licensor"), THE RESIDENCES AT THE CAPITOL DISTRICT, LLC, a Nebraska limited liability company ("Licensee"), and FIRST NATIONAL BANK OF OMAHA, a national banking association ("Lender"). All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the SNDA.

Great Western Bank, a South Dakota corporation ("Licensee's Mortgagee"), has provided certain financings to Licensee, which financings are secured by, among other things, (a) a lien in favor of Licensee's Mortgagee on certain real estate and apartments thereon (collectively, the "Capitol District Apartments") and (b) a collateral assignment to Licensee's Mortgagee all of Licensee's rights, title and interest in and to the Parking License. In consideration of the premises and the covenants hereinafter contained, Licensee's Mortgagee hereby acknowledges the terms of the SNDA, and agrees that if it becomes the owner of the Capitol District Apartments (through foreclosure or otherwise) or otherwise obtains control of the Capitol District Apartments, it will be bound by, and agrees to comply with, the terms of the SNDA as Licensee's assignee or successor-in-interest.

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FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

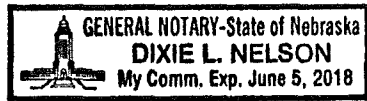
GREAT WESTERN BANK, a South Dakota corporation

By: *Michael Phelps*
Michael Phelps, Vice President – Business Banking

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 25th day of August, 2016, by Michael Phelps, a Vice President – Business Banking of Great Western Bank, a South Dakota corporation, on behalf of the corporation.

Dixie L. Nelson
Notary Public



[EXECUTION PAGE OF LICENSEE’S MORTGAGEE’S CONSENT]