ORDINANCE NO. 42100

AN ORDINANCE providing for an amendment to the levy of a general business occupation tax as requested by the property owner(s) of the Capitol District; and related matters.

BE IT ORDEIGNED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. Findings and Determinations. Pursuant to Neb. Rev. Stat. Chapter 18, Article 21, as amended (the “Act”), Chapter 19 of the Omaha Municipal Code, and Ordinance No. 41188 the City Council established an enhanced employment area for the purpose of paying all or any part of the costs and expenses of a redevelopment project pursuant to the approved Capitol District Redevelopment Plan, which, in part, provides for the development of a mixed use project (the “Redevelopment Project”) within the area bounded by 10th Street on the East, 12th Street on the West, Capitol Avenue on the South, and Interstate 480 on the North (“Capitol District Redevelopment Project Area”); which together with that area bounded by 9th Street on the East, 11th Street on the West, Dodge Street on the South, and Capitol Avenue on the North (“South Capitol District Area”), previously designated as “substandard and blighted” pursuant to Neb. Rev. Stat. §18-2109, constitute the established as an “enhanced employment area” as defined in Neb. Rev. Stat. Section 18-2103(22), as amended (the “Enhanced Employment Area”).

Pursuant to the authority of Neb. Rev. Stat. § 18-2142.02, as amended, and at the request of the property owners located within the Enhanced Employment Area, and pursuant to Ordinance No. 41188, the City authorized the levy and collection of a general business occupation tax upon businesses and users of space within the Enhanced Employment Area for the purpose of paying all or any part of the costs and expenses of the Redevelopment Project within the Enhanced Employment Area and determined, based on written undertakings provided by the developer, the investment in the Enhanced Employment Area satisfied the employment requirements of the Act.
The City Council further determines that it is necessary, desirable, advisable and in the best interests of the City to amend the established general business occupation tax imposed within the Enhanced Employment Area and implementing Ordinance No. 41188, as provided for herein, and as authorized by the Act and Chapter 19, Article XVII of the Omaha Municipal Code entitled "general enhanced employment tax", and for the purpose set forth in Section 19-901(b) of the Omaha Municipal Code.

Section 2. Amendment. Section 2 of Ordinance No. 41188 is hereby amended and replaced with the following:

"Section 2. Tax Imposed; Collection of Tax Commencing upon the issuance of a certificate of occupancy for a business located within the Enhanced Employment Area, and in each calendar month thereafter (except for residential apartments which shall be collected on an annual basis) until December 31, 2037, there shall be imposed a general business occupation tax upon each and every Person operating a business therein. The amount of such tax shall be based on the following business uses taking place within the Enhanced Employment Area:

1. 1.50% (one and one half percent) of the gross sales of all retail, restaurant, or hotel (other than hotel group/event sales) businesses located in the Capitol District Redevelopment Project Area;

2. 1.25% (one and one quarter percent) of the gross sales of all hotel group/event sales businesses located in the Capitol District Redevelopment Project Area;

3. 0.75% (three quarters of one percent) of the gross sales of all retail, restaurant, or hotel businesses located in the South Capitol District Area;

4. $0.25 (twenty-five cents) per square foot (gross) of commercial office space area not occupied by retail, restaurant, or hotel businesses; and

5. $95.00 per year for each residential apartment.

6. Parking: none."
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Such tax shall be imposed on the gross receipts resulting from the sale, lease, or rental of any products, rooms, units, or services within the Enhanced Employment Area, as indicated above, except that such tax shall not be imposed on any transaction which is subject to tax under Sections 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602, or 77-4008, or which is exempt from tax under section 77-2704.24, Reissue Revised Statutes of Nebraska, as amended from time to time. The amount of such tax shall at all times be subject to such applicable rules and regulations imposed by the State of Nebraska Department of Revenue, regarding the use and imposition of the general business occupation tax authorized by Neb. Rev. Stat. § 18-2142.02.

The Person engaged in operating a business may include the tax on or for the selling price, services rendered, charges incurred, rates, or other consideration received on a bill, statement, receipt, or other similar invoice to the purchaser, but each Person engaged in a Business shall remain liable for the tax imposed by this Ordinance.

Section 4. Effect. Except as provided for in this Ordinance, all other aspects of Ordinance No. 41188 shall remain in full force and effect.

Section 5. Execution. The Mayor is hereby authorized to execute, and the City Clerk to attest, the attached First Amendment to Redevelopment Agreement For Occupation Tax In An Enhanced Employment Area, and that certain Amended and Restated Redevelopment Promissory Note in the amount of $17,000,000.00, and related documents necessary or appropriate in order to implement the Agreement, consummate the loan, or implement the provisions of this Ordinance.

Section 6. Effective Date. This Ordinance shall be in full force and take effect 15 days from and after the date of its passage.
INTRODUCED BY COUNCILMEMBER

C. James

APPROVED BY:

Juan Stoehr 1-9-2020
MAYOR OF THE CITY OF OMAHA  DATE

PASSED January 7, 2020 le-1

ATTEST:

1-9-2020
CITY CLERK OF THE CITY OF OMAHA  DATE

APPROVED AS TO FORM:

12/2/19
ASSISTANT CITY ATTORNEY  DATE
FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT FOR OCCUPATION TAX IN AN ENHANCED EMPLOYMENT AREA

THIS FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT FOR OCCUPATION TAX IN AN ENHANCED EMPLOYMENT AREA (this “First Amendment”) is made and entered into this ___ day of January, 2020 (the “Effective Date”), by and between the CITY OF OMAHA, NEBRASKA, a municipal corporation of the State of Nebraska (“City”), and CAPITOL DISTRICT RETAIL, LLC, a Nebraska limited liability company (hereinafter the “Owner”).

WITNESSETH:

WHEREAS, the City and the Owner have entered into a certain Redevelopment Agreement For Occupation Tax In An Enhanced Employment Area that was approved by the City Council of the City of Omaha on July 18, 2017, by Ordinance No. 41188 (hereinafter referred to as the “Redevelopment Agreement”); and

WHEREAS, the Redevelopment Agreement provided for the loan proceeds in the amount of Ten Million Dollars ($10,000,000) to be repaid from occupation tax revenues (“Redevelopment Promissory Note”); and

WHEREAS, the Owner desires to amend the Redevelopment Agreement as provided for herein.

NOW THEREFORE, the following is agreed between the parties hereto:

1. Capitalized Terms. All capitalized terms used in this First Amendment shall have the meanings set forth in the Redevelopment Agreement except as otherwise defined herein.

2. Amendment to Section 1.9. Section 1.9 of the Redevelopment Agreement is hereby deleted in its entirety and replaced with the following:

“Occupation Tax Ordinance” shall collectively mean Ordinance No. 41188 approved by the City Council of the City of Omaha on July 18, 2017, as amended by Ordinance No. ________, approved City Council of City of Omaha on January __, 2020, that imposes a general business occupation tax upon the businesses and users of space within the Enhanced Employment Area.

3. Amendment to Section 1.10. Section 1.10 of the Redevelopment Agreement is hereby deleted in its entirety and replaced with the following:

“Occupation Tax Promissory Note” or “Note” shall mean any obligation issued by the City in the form of Exhibit “A” attached hereto and incorporated herein by reference, which shall be in the principal amount set forth in such Exhibit “A” (“LB562 Loan Proceeds”), which amount includes the outstanding balance of principal and interest due and owing on the Redevelopment Promissory Note, and which shall be repaid from and secured by the occupation taxes generated by the gross receipts resulting from the sale, lease, or rental of any products, rooms, units, or services within the Enhanced Employment Area.

From and after the Effective Date, the Redevelopment Promissory Note dated July 20, 2017, by and between the City, as borrower, and Owner, as holder, shall be amended and replaced by that certain Amended and Restated Redevelopment Promissory Note, dated as of the date of this First Amendment, by and between
From and after the Effective Date, the Redevelopment Promissory Note dated July 20, 2017, by and between the City, as borrower, and Owner, as holder, shall be amended and replaced by that certain Amended and Restated Redevelopment Promissory Note, dated as of the date of this First Amendment, by and between the City, as borrower, and Owner, as holder (the "Amended and Restated Redevelopment Promissory Note"). All references to “Occupation Tax Promissory Note”, “Promissory Note” or “Note” in the Redevelopment Agreement shall mean the Amended and Restated Redevelopment Promissory Note.

4. Amendment to Section 2.2. Section 2.2 of the Redevelopment Agreement is hereby deleted in its entirety and replaced with the following:

“2.2 acknowledge the Owner has funded various Eligible Costs, for which the City may reimburse the Owner pursuant to the Community Development Law, and grant LB562 Loan Proceeds for those excess Eligible Costs, including any public improvements, to the Owner in an amount not to exceed $17,000,000.00.”

5. Amendment to Section 3.2. Section 3.2 of the Redevelopment Agreement is hereby deleted in its entirety and replaced with the following:

"3.2 loan LB562 Tax Revenues to the City in the principal amount of $17,000,000.00 as set forth in Sections 2.1 and 2.2. Execution and delivery of the Occupation Tax Promissory Note shall be effectuated upon City Council’s formal passage of the Amendment to Occupation Tax Ordinance, which shall be as soon as reasonably possible after execution of this Agreement but not more than 15 days after the City Council’s formal passage of the Amendment to Occupation Tax Ordinance. The loan to be accomplished by this Section, and the obligation of the City to remit the LB562 Loan Proceeds for redevelopment and operational purposes, may be accomplished by offset so that the Owner may retain the LB562 Loan Proceeds. If the City so requests, the Owner shall, from time-to-time, furnish the City with satisfactory evidence as to the use and application of the LB562 Loan Proceeds. Such loan funds shall be disbursed as provided in Section 2."

6. Termination of Existing Redevelopment Promissory Note and Execution of New Redevelopment Promissory Note. The Owner shall return to the City the Existing Note, and, simultaneously with the return of the Existing Note, the City shall execute the Amended and Restated Redevelopment Promissory Note, in the form attached hereto as Exhibit "A", in the amount of $17,000,000.00, which Amended and Restated Redevelopment Promissory Note shall replace, in its entirety, the Redevelopment Promissory Note.

7. No Other Amendment. Except as specifically amended herein, the Redevelopment Agreement shall remain in full force and effect as originally executed, and it is hereby ratified and confirmed.
IN WITNESS WHEREOF, the executing parties, by their respective duly authorized agents, have entered into this First Amendment effective on the day and year first above-written.

ATTEST:  
[Signature] 1/9/2020  
CITY CLERK OF THE CITY OF OMAHA

CITY OF OMAHA:  
[Signature] 1/9/2020  
MAYOR OF THE CITY OF OMAHA

APPROVED AS TO FORM:  
[Signature] 12/2/19  
CITY ATTORNEY
OWNER:

CAPITOL DISTRICT RETAIL, LLC, a Nebraska limited liability company

By: TCD 2, 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
THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "33 ACT") AND MAY NOT BE TRANSFERRED, ASSIGNED, SOLD OR HYPOTHECATED UNLESS A REGISTRATION STATEMENT UNDER THE '33 ACT SHALL BE IN EFFECT WITH RESPECT THERETO AND THERE SHALL HAVE BEEN COMPLIANCE WITH THE '33 ACT AND ALL APPLICABLE RULES AND REGULATIONS THEREUNDER, OR THERE SHALL HAVE BEEN DELIVERED TO THE CITY OF OMAHA PRIOR TO TRANSFER, ASSIGNMENT, SALE OR HYPOTHECAATION AN OPINION OF COUNSEL, SATISFACTORY TO THE CITY OF OMAHA TO THE EFFECT THAT REGISTRATION UNDER THE '33 ACT IS NOT REQUIRED.

AMENDED AND RESTATED REDEVELOPMENT PROMISSORY NOTE

$17,000,000.00 January 9, 2020

FOR VALUE RECEIVED, the undersigned, City of Omaha (hereinafter known as "Borrower"), promises to pay CAPITOL DISTRICT RETAIL, LLC ("Holder"), and/or its assigns, the principal sum of SEVENTEEN MILLION and No/100 Dollars $17,000,000.00, together with interest thereon at the rate of 5.0% per annum from the date of the execution of this Amended and Restated Redevelopment Promissory Note (the "Promissory Note") until paid in full. The principal balance and interest thereon shall be due and payable to the Holder of this Promissory Note as and at such time as any LB562 Tax Revenues generated as set forth in that certain Redevelopment Agreement For Occupation Tax In An Enhanced Employment Area dated the 27th day of July, 2017, as amended by that certain First Amendment to Redevelopment Agreement For Occupation Tax In An Enhanced Employment Area, dated on or about the date hereof by and between the Borrower and the Holder (the "Redevelopment Agreement"), are collected by the Borrower and available for the retirement of this debt.

In the event of default under this Promissory Note, all sums secured by this Promissory Note or any other agreement securing this Redevelopment Promissory Note shall bear interest at a rate equal to five percent (5%) above the prime rate as published by the Wallstreet Journal from time-to-time; however, in the event said interest rate exceeds the maximum rate allowable by law, then such rate of interest shall equal the highest legal rate available.

The Borrower may prepay the principal amount outstanding in whole or in part, without penalty or the prior consent of the Holder.

In the event the monies collected and held in that LB562 Fund established by the City and pursuant to the Redevelopment Agreement are insufficient to pay the current amounts due and owing under this Promissory Note, then the Holder shall waive any unpaid portion of the principal and interest due. Holder hereby agrees and acknowledges that Borrower's repayment obligations hereunder are contingent upon Borrower's receipt of collected LB562 Tax Revenues, which amounts shall be deposited into the LB562 Fund pursuant to the Redevelopment Agreement.
In the event this Promissory Note is referred to an attorney for collection the Holder shall be entitled to reasonable attorney fees allowable by law and all court costs and other expenses incurred in connection with such collection.

The Borrower shall be in default in the event the Borrower shall fail to pay, when due, any amount required hereunder.

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

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Promissory Note shall operate as a waiver of such remedy, right or option. In any event, a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion.

Any notice provided for in this Promissory Note to the Borrower or the Holder shall be in writing and shall be given by regular mail to the Holder or Borrower, or at such other address as either party may designate by notice in writing.

This “Amended and Restated Redevelopment Promissory Note” is hereinafter the “Promissory Note” referred to in the Redevelopment Agreement, as amended, now by and between Borrower and Holder (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the terms used, but not defined herein, have the meanings set forth in the Redevelopment Agreement).

This Promissory Note shall be governed by and construed in accordance with the Laws of the State of Nebraska. All payments hereunder shall be payable in lawful money of the United States of America and shall be legal tender for public and private debts at the time of payment.
CITY OF OMAHA, A Municipal Corporation

By: [Signature] 1/9/2020
Mayor of the City of Omaha  Date

ATTEST:

[Signature] 1/9/2020
City Clerk of the City of Omaha  Date

APPROVED AS TO FORM:

[Signature] 1/9/2020
Asst. City Attorney  Date