Honorable President

and Members of the City Council,

Attached is an Ordinance to provide for the designation of an Enhanced Employment Area and to levy a general business occupation tax as requested by the property owner of the Capitol District. It will provide for the administration, imposition and collection of a general occupation tax, as allowed by Nebraska Community Development Law, pursuant to Omaha Municipal Code. The establishment of an Enhanced Employment Area and the use of occupation tax financing was included as part of the Capitol District Redevelopment Plan. The occupation tax will be imposed on the gross receipts resulting from the sale, lease or rental of any products or services, as specified in the ordinance and will be used to repay expenses incurred for authorized work under the Nebraska Community Development Law.

Your favorable consideration is respectfully requested.

Respectfully submitted,

David K. Fanslau
Planning Director

Referred to City Council for Consideration:

Jean Stothert 6-9-17
Mayor's Office/Title

Approved:

Stephen B. Curtiss
Finance Director

2017 JUN - 9 PM 2:43
CITY CLERK
OMAHA, NEBRASKA

Amended by Doc. #41188 of 7/14/2017

RECEIVED

Planning Department
Omaha/Douglas Civic Center
1819 Farnam Street, Suite 1100
Omaha, Nebraska 68183
(402) 444-5150
Telefax (402) 444-6140

David K. Fanslau
Director
ORDINANCE NO. 41188

AN ORDINANCE providing for the designation of an Enhanced Employment Area; the levy of a general business occupation tax as requested by the property owner(s) of the Capitol District; providing for the administration, imposition and collection of such occupation tax; specifying how such tax revenue will be used; and related matters.

BE IT ORDAINED 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 provides for the establishment of an 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.

The City Council hereby determines that the City has prepared and adopted the Capitol District Redevelopment Plan, which, in part, provides for the development of a mixed use project (the "Redevelopment Project") bounded by 10th Street on the East, 12th Street on the West, Capitol Avenue on the South, and Interstate 480 on the North, all located in the "Capitol District Redevelopment Project Area"; and that the City has designated the area bounded by 9th Street on the East, 11th Street on the West, Dodge Street on the South, and Capitol Avenue on the North, as legally described on Exhibit "A" (attached hereto and incorporated herein by reference), as "substandard and blighted" pursuant to Neb. Rev. Stat. § 18-2109, and is included within and considered a part of a "community redevelopment area" for the City of Omaha (the "South Capitol District Area"); and that the City designates the area shown in Exhibit "B" (attached hereto and incorporated herein by reference) as an "enhanced employment area" as defined in Neb. Rev. Stat. § 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, the City is authorized to levy and collect 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. In order to be eligible for the occupation tax, the Enhanced Employment Area must satisfy the employment requirements of the Act. The City Council determines that based on written undertakings provided by the redeveloper, the new investment in the Enhanced Employment Area satisfies 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 that a general business occupation tax be imposed within the Enhanced Employment Area as provided 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 Chapter 19-901(b) of the Omaha Municipal Code.

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. 0.50% (one half of one percent) of the gross sales of all retail, restaurant, or hotel businesses located in the Capitol District Redevelopment Project Area;

2. 0.30% (three tenths of one percent) of the gross sales of all retail, restaurant, or hotel businesses located in the South Capitol District Area;

3. $0.25 (twenty-five cents) per square foot (gross) of commercial office space area not occupied by retail, restaurant, or hotel businesses, with optional increases not greater than 2% (two percent) on an annual basis; and

4. $95.00 (ninety-five dollars) per year for each residential apartment, with optional increases not greater than 2% (two percent) on an annual basis.

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 §§ 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 § 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 3. **Tax Cumulative.** The levy of the tax under this Ordinance is in addition to all other fees, taxes, excises and licenses levied and imposed under any contract or any other ordinances of the City, in addition to any fee, tax, excise or license imposed by the State.

Payment of the tax imposed by this Ordinance shall not relieve the person paying the same from payment of any other tax now or hereafter imposed by contract or ordinance or by this Ordinance, including those imposed for any business or occupation he or she may carry on, unless so provided therein. The occupation taxes imposed by this Ordinance shall be cumulative except where otherwise specifically provided.

Section 4. **Use of Revenue.** The occupation tax imposed by this Ordinance, less any administrative expenses, shall be used to fund any expenditures that are lawfully authorized to be made under the Act and this Ordinance in connection with the development, operation, or
promotion of a business, or a redevelopment project, located within the Enhanced Employment Area.

Section 5. The Mayor is hereby authorized to execute, and the City Clerk to attest, the attached Redevelopment Agreement for Occupation Tax in an Enhanced Employment Area between the City of Omaha and Capitol District Retail, LLC, a Nebraska limited liability company, to authorize the collection and use of up to $10,000,000.00 (ten million dollars) in general business occupation tax revenue, in any in addition to any other documents necessary or appropriate to implement the Agreement or to consummate the loan documents in order to implement the provisions of this Ordinance.

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

INTRODUCED BY COUNCILMEMBER

APPROVED BY:

JUL 18 2017
PASSED As Amended 6-1
ATTEST:

MAYOR OF THE CITY OF OMAHA DATE

CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY DATE

PILAW - CITY COUNCIL DOCUMENTS\2017\130096dlim
EXHIBIT A

SOUTH CAPITOL DISTRICT
LEGAL DESCRIPTIONS

1009 Capitol Avenue – Lot 2, Block 92, in the Original City of Omaha, as surveyed and lithographed in Douglas County, Nebraska.

1000 Dodge Building Condo – C1, C2, and C3 all within THE 1000 DODGE BUILDING CONDOMINIUM PROPERTY REGIME, a condominium property regime organized under the laws of the State of Nebraska, in the City of Omaha, in Douglas County pursuant to the Declaration and Master Deed of The 1000 Dodge Building Condominium Property Regime and By-Laws filed with the Douglas County Register of Deeds on December 2, 2003 as Instrument Number 2003231041.

902 Dodge - Lot 101, 902 Dodge Condominium, Block 0 in the Original City of Omaha, as surveyed and lithographed in Douglas County, Nebraska.
EXHIBIT B

LEGAL DESCRIPTION AND DEPICTION OF ENHANCED EMPLOYMENT AREA

Lots 1, 2, and 5, each in The Capitol District, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska; and Lots 1 and 2, each in The Capitol District Replat 1, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

1009 Capitol Avenue – Lot 2, Block 92, in the Original City of Omaha, as surveyed and lithographed in Douglas County, Nebraska.

1000 Dodge Building Condo – C1, C2, and C3 all within THE 1000 DODGE BUILDING CONDOMINIUM PROPERTY REGIME, a condominium property regime organized under the laws of the State of Nebraska, in the City of Omaha, in Douglas County pursuant to the Declaration and Master Deed of The 1000 Dodge Building Condominium Property Regime and By-Laws filed with the Douglas County Register of Deeds on December 2, 2003 as Instrument Number 2003231041.

902 Dodge - Lot 101, 902 Dodge Condominium, Block 0 in the Original City of Omaha, as surveyed and lithographed in Douglas County, Nebraska.
REDEVELOPMENT AGREEMENT FOR OCCUPATION TAX
IN AN ENHANCED EMPLOYMENT AREA

THIS AGREEMENT is entered into by and between the City of Omaha, a Nebraska Municipal Corporation in Douglas County, Nebraska, and CAPITOL DISTRICT RETAIL, LLC, a Nebraska limited liability company.

RECITALS:

WHEREAS, on August 20, 2013, by Resolution No. 1023, the City Council of the City of Omaha approved The Capitol District Tax Increment Financing (TIF) Redevelopment Project Plan for a project site bordered by 10th Street, Capitol Avenue, 12th Street and Interstate 480, including the adjacent public right-of-way of Davenport Street and 11th Street ("Redevelopment Project"), which proposed the development of a full-service hotel and other buildings, structures, and improvements, which may include uses such as multi-family residential housing, residential and commercial condominium, structured parking, office, retail and entertainment, as shown in Exhibit "A", which is attached hereto and made a part hereof; and,

WHEREAS, on April 22, 2014, by Ordinance No. 39976, the City Council of the City of Omaha approved The Capitol District Tax Increment Financing (TIF) Redevelopment Loan Agreement, as further amended and assigned ("Redevelopment Agreement"), which acknowledged the intent to designate an "enhanced employment area" as defined in Neb. Rev. Stat. Section 18-2103(22), (reissue 2012), such that pursuant to Neb. Rev. Stat. Section 18-2142.02, (reissue 2012), as amended, the City would be authorized to levy and collect a general business occupation tax upon the 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; and,
WHEREAS, the Redevelopment Agreement authorized the use of up to $35,000,000.00 in TIF to offset $51,952,529.00 in eligible expenses (which amount does not include the projected $2,945,798 costs for the proposed affordable housing), as allowed by the Community Redevelopment Law, for acquisition, demolition, site work, architectural and engineering fees, surveys, studies and public improvements, as required, for a project with total estimated costs of $205,161,959.00; and,

WHEREAS, the Redevelopment Agreement authorized the use of Redevelopment Loan Proceeds (as defined in the Redevelopment Agreement) for land acquisition, demolition, site preparation, construction of the structured parking facility, and other costs of improving, developing and redeveloping the Redevelopment Area (as defined in the Redevelopment Agreement), including, but not limited to the $51,952,529.00 in eligible costs set forth on Exhibit “D” of the Redevelopment Agreement (“Eligible Costs”), which Eligible Costs exceed the amount of the Redevelopment Note (as defined in the Redevelopment Agreement) (the “TIF Redevelopment Note”) authorized by the Redevelopment Agreement; and

WHEREAS, Neb. Rev. Stat. §18-2142.02 (reissue 2012) authorizes the City to levy a general business occupation tax upon the businesses and users of space within an enhanced employment area, which lies within a community redevelopment area, for the purpose of paying all or any part of the costs and expenses of any redevelopment project within such enhanced employment area, which costs and expenses include the previously authorized Eligible Costs, which may be repaid from collected general business occupation tax revenues within such enhanced employment area; and,

WHEREAS, this Agreement is a redevelopment agreement prepared pursuant to the Nebraska Community Development Law in order to further carry out the above-referenced
Redevelopment Plan, and contemplates the use of a general business occupation tax generated by such redevelopment project.

IN CONSIDERATION OF THESE MUTUAL COVENANTS, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. DEFINITIONS

The following terms, whether plural or singular, shall have the following meanings for purposes of this Agreement.

1.1 “City” shall mean the City of Omaha, Nebraska, a Municipal Corporation of the metropolitan class or such successor entity lawfully established pursuant to the applicable provision of the Nebraska Community Development Law.

1.2 “Community Redevelopment Law” shall mean the Community Redevelopment Law of the State of Nebraska (Chapter 18, Article 21, Sections 18-2101, et. seq.), as supplemented by and including Sections 18-2147 to 18-2153, Reissue Revised Statutes of Nebraska, 1943, as amended.

1.3 “Director” shall mean the Director of the City of Omaha Finance Department.

1.4 “Enhanced Employment Area” shall mean the area designated by the Occupation Tax Ordinance and as also identified on Exhibit “B”, attached hereto and incorporated herein by reference,

1.5 “LB562” shall mean the Nebraska Legislative Bill 562, 100th Legislature, effective date September 1, 2007, known as the “Enhanced Employment Area Occupation Tax” and as set forth in the Community Development Law, as may amended from time to time.

1.6 “LB562 Administrative Cost” shall mean the costs the City incurs (on an annual or prorated year) to collect, process and administer the LB562 Loan Proceeds pursuant to the requirements of LB562, including labor costs, equipment, software, promulgated regulations, City and State of Nebraska Department of Revenue accounting, procedures, reports, audits, review and accountability and reporting measures.

1.7 “LB562 Tax Period” shall mean the period the general business occupation tax shall remain in effect, which shall be no later than the earlier of December 31, 2037 or so long as the Occupation Tax Promissory Note remains outstanding.
1.8 "LB562 Tax Revenues" shall mean the general business occupation tax revenues generated and collected under the general business occupation tax authorized by the Occupation Tax Ordinance.

1.9 "Occupation Tax Ordinance" shall mean Ordinance No. _____ approved by the City Council of the City of Omaha on July 18, 2017 that imposes a general business occupation tax upon the businesses and users of space within the Enhanced Employment Area.

1.10 "Occupation Tax Promissory Note” or “Note” shall mean any obligation issued by the City in the form of Exhibit “C” attached hereto and incorporated herein by reference, which shall be in the principal amount set forth in such Exhibit “C” ("LB562 Loan Proceeds") 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.

1.11 "Owner" shall mean Capital District Retail, LLC.

1.12 "Redevelopment Project” shall mean the project described in the Redevelopment Plan, and as shown on the Site Plan attached hereto as Exhibit “A” and incorporated herein.

SECTION 2. OBLIGATIONS OF THE CITY

The City shall:

2.1 execute and deliver to the Owner upon City Council’s formal passage of Occupation Tax Ordinance the Occupation Tax Promissory Note in substantially the same form as that which is attached hereto as Exhibit “C”. The Occupation Tax Promissory Note shall reflect:

2.1.2 Such loan shall bear a 5.0% interest rate.

2.1.3 The principal shall be repaid by the City with the LB562 Tax Revenues as such revenues are deposited into the LB562 Fund. To the extent such LB562 Tax Revenues are insufficient or unavailable to the City, the City’s repayment obligations under the Note shall be adjusted to reflect such insufficient or unavailable LB562 Tax Revenues, provided that, the obligations of the Owner shall remain unaffected.

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 $10,000,000.00.
2.3 establish a City fund account to receive the LB562 Tax Revenues ("LB562 Fund"), which, when collected, shall be used to pay debt retirement principal and interest as required by the Occupation Tax Promissory Note. Interest on monies in the LB562 Fund shall accrue first to debt retirement interest and then to principal. The Occupation Tax Promissory Note shall specifically provide that any shortfall in anticipated LB562 Tax Revenues generated by the businesses within the Enhanced Employment Area for any reason whatsoever, specifically including a decline in gross receipts resulting from the sale, lease, or rental of any products, rooms, units, or services within the Enhanced Employment Area, shall be borne entirely by the Holder of the Note without recourse of any kind against the City.

2.4 ensure that prior to expenditure or disbursement of LB562 Loan Proceeds, the following shall be obtained, to wit:

2.4.1 Owner shall provide the Director with evidence, acceptable to the Director, in their sole discretion, that sufficient private funds have been committed to complete the Redevelopment Project.

2.5 make a grant to the Owner up to the total amount of LB562 Loan Proceeds less the LB562 Administrative Costs, as required by this Agreement and the Occupation Tax Promissory Note. All LB562 Tax Revenues shall be allocated, and when collected, paid into the LB562 Fund through December 31, 2037, or until such time as the Occupation Tax Promissory Note has been paid in full.

The City and Owner acknowledge and agree that the Owner shall receive the benefit of the LB562 Loan Proceeds, as allowed by the Community Redevelopment Law, with the understanding that the resulting LB562 Loan Proceeds may not be sufficient to fully amortize the Occupation Tax Promissory Note issued by the City.

SECTION 3. OBLIGATIONS OF THE OWNER

The Owner shall:

3.1 diligently commence and complete the development, construction and operation of the Redevelopment Project, pursuant to the terms of the Redevelopment Agreement.

3.2 loan LB562 Tax Revenues to the City in the principal amount of $10,000,000.00 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 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 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.

3.3 agree to use commercially reasonable efforts to require all businesses and users of space within the Enhanced Employment Area to pay all occupation taxes imposed under the Occupation Tax Ordinance prior to the time the taxes become delinquent. Owner shall include this requirement in all tenant leases. This contractual obligation to pay such taxes prior to delinquency shall remain in effect so long as the Occupation Tax Promissory Note remains outstanding.

3.4 covenant and consent with respect to the designation of the Enhanced Employment Area under LB562 and such covenant shall be recorded with the Register of Deeds as required by the Community Redevelopment Law and shall be binding upon all future owners of the property within the Enhanced Employment Area during the LB562 Tax Period.

In the event the Owner violates or breaches any of the agreements, representations or covenants in this section, the Owner may be required by the City to surrender any remaining amount outstanding of the Occupation Tax Promissory Note, after reasonable notice and opportunity to cure. Each of the foregoing covenants shall be referenced in a Memorandum of Redevelopment Agreement to be recorded by the Owner with the Douglas County, Nebraska Register of Deeds within sixty (60) days of the execution of this Agreement. The Owner shall include the same covenants and restrictions agreed to above in any conveyance of any property within the Enhanced Employment Area, or any portion thereof, including but not limited to, any sale, assignment, sale-leaseback or other such transfer of the property, but shall not be responsible otherwise for the actions of the third parties if these covenants are breached by such third parties if the Owner no longer owns the property.

3.5 shall provide the City of Omaha Finance Department with an executed copy of the Occupation Tax Promissory Note prior to disbursement of any LB562 Loan Proceeds, so that loan payment can be noted on the Note, and the Note returned to Owner.

SECTION 4. PROVISIONS OF THE AGREEMENT

4.1 Equal Employment Opportunity Clause. Annexed hereto as Exhibit “D” and made a part hereof by reference are the equal employment provisions of this Agreement, wherein the “Owner” is referred to as “Contractor”.
4.2 **Non-discrimination.** The Owner shall not, in the performance of this Agreement, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, political or religious opinions, affiliations or national origin.

4.3 **Captions.** Captions used in this Agreement are for convenience and are not used in the construction of this Agreement.

4.4 **Applicable Law.** Parties to this Agreement shall conform with all existing and applicable city ordinances, resolutions, state laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this Agreement.

4.5 **Interest to the City.** Pursuant to Section 8.05 of the Home Rule Charter, no elected official or any officer or employee of the City of Omaha shall have a financial interest, direct or indirect, in any City of Omaha Agreement. Any violation of this section with the knowledge of the person or corporation contracting with the City of Omaha shall render the Agreement voidable by the Mayor or Council.

4.6 **Merger.** This Agreement shall not be merged into any other oral or written Agreement, lease or deed of any type.

4.7 **Administrative Amendments.** The parties hereto recognize that certain administrative amendments may need to be made to this Agreement in order to carry out the intent of this Agreement and the Redevelopment Plan. The parties hereto recognize that any such minor amendments to this Agreement negotiated and executed by the parties’ respective representatives, other than those defined in §18-2117 of the Redevelopment Law, shall be considered and treated as administrative in nature and not as a legislative amendment to this Agreement or the Redevelopment Plan. However, amendments of the following types shall be referred to the City Council for approval:

4.7.1 Those that materially alter or reduce existing areas or structures otherwise available for public use or access;

4.7.2 Those that require the expenditure of $75,000.00 or more of City funds above the levels contained in this Agreement;

4.7.3 Those that increase City loans, bonded indebtedness, deferred payments of any types, or other financial obligations above the levels contained in this Agreement; and

4.7.4 Those otherwise considered materially detrimental to the City’s repayment obligations under the Note, in the reasonable discretion of the City.
4.8 Modification. This Agreement contains the entire agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms herein unless done in writing and signed by an authorized officer of the respective parties.

4.9 Assignment. The Owner may not assign its rights under this Agreement without the express prior written consent of the City; such consent not to be unreasonably withheld. The Mayor may, without City Council approval, approve, in writing, the assignment of all rights hereunder to a successor entity owned by, or under common control with Owner, or to an entity that agrees to use the rights conferred herein for the betterment of the Redevelopment Project.

4.10 Strict Compliance. All provisions of this Agreement and each and every document that shall be attached shall be strictly complied with as written, and no substitution or change shall be made except upon written direction from authorized representatives of the parties.

4.11 This Agreement shall be binding upon the Owner’s successors and assigns, and shall run with the land depicted in Exhibit “B”, attached hereto, to the benefit of the City of Omaha.

SECTION 5. AUTHORIZED REPRESENTATIVE

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

(1) City of Omaha:

Planning Director
City Planning Department
Omaha/Douglas Civic Center
1819 Farnam Street, Suite 1100
Omaha, NE 68183

Legal Service
c/o City Clerk
Omaha/Douglas Civic Center
1819 Farnam Street
Omaha, NE 68183

(2) Owner:

Capitol District Retail, LLC
1111 North 13th Street, Suite 101
Omaha, NE 68102

Fullenkamp, Doyle & Jobeun, LLP
c/o Larry A. Jobeun
11440 West Center Road, Suite C
Omaha, NE 68144
Either party may designate additional representatives or substitute representatives by giving written notice thereof to the designated representative of the other party.

Executed this 20th day of July, 2017.

ATTEST:

CITY CLERK OF THE CITY OF OMAHA

CITY OF OMAHA:

MAYOR OF THE CITY OF OMAHA

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

2143 dlh
Executed this ___ day of July, 2017.

OWNER:

CAPITOL DISTRICT RETAIL, LLC, a Nebraska limited liability company

By: TCD 2, LLC,
a Nebraska limited liability company

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

By: ________________________________
Name: Michael T. Moylan
Title: Member

- 10 -
EXHIBIT "B"
LEGAL DESCRIPTION AND DEPICTION OF ENHANCED
EMPLOYMENT AREA

Lots 1, 2, and 5, each in The Capitol District, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska; and Lots 1 and 2, each in The Capitol District Replat 1, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

1009 Capitol Avenue – Lot 2, Block 92, in the Original City of Omaha, as surveyed and lithographed in Douglas County, Nebraska.

1000 Dodge Building Condo – C1, C2, and C3 all within THE 1000 DODGE BUILDING CONDOMINIUM PROPERTY REGIME, a condominium property regime organized under the laws of the State of Nebraska, in the City of Omaha, in Douglas County pursuant to the Declaration and Master Deed of The 1000 Dodge Building Condominium Property Regime and By-Laws filed with the Douglas County Register of Deeds on December 2, 2003 as Instrument Number 2003231041.

902 Dodge - Lot 101, 902 Dodge Condominium, Block 0 in the Original City of Omaha, as surveyed and lithographed in Douglas County, Nebraska.
Exhibit “C”

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 HYPOTHECATION AN OPINION OF COUNSEL, SATISFACTORY TO THE CITY OF OMAHA TO THE EFFECT THAT REGISTRATION UNDER THE ’33 ACT IS NOT REQUIRED.

REDEVELOPMENT PROMISSORY NOTE

$10,000,000.00  ______________________, 2017

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 Ten Million and No/100 Dollars ($10,000,000.00), together with interest thereon at the rate of 5.0% per annum from the date of the execution of this Note until paid in full. The principal balance and interest thereon shall be due and payable to the Holder of this Occupation Tax Promissory Note as and at such time as any LB562 Tax Revenues generated as set forth in that certain Occupation Tax Redevelopment Agreement dated the _____ day of July, 2017, 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 Occupation Tax Promissory Note, all sums secured by this Occupation Tax 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 Occupation Tax Redevelopment Agreement are insufficient to pay the current amounts due and owing under the Occupation Tax 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 Occupation Tax Redevelopment Agreement.
In the event this Occupation Tax Redevelopment 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 Occupation Tax Redevelopment Promissory Note are hereby waived.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Occupation Tax Redevelopment 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 Occupation Tax Redevelopment 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 Occupation Tax Redevelopment 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: __________________________

Mayor of the City of Omaha Date

ATTEST:

____________________________
City Clerk of the City of Omaha Date

____________________________
Assistant City Attorney Date

APPROVED AS TO FORM

7/3/17
<table>
<thead>
<tr>
<th>TIF ELIGIBLE EXPENSES</th>
<th>LAND DEVELOPMENT</th>
<th>PARKING GARAGE</th>
<th>FULL SERVICE HOTEL</th>
<th>MIXED-USE OFFICE</th>
<th>RETAIL</th>
<th>MARKET RATE</th>
<th>AFFORDABLE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Development &amp; Preparation</td>
<td>$201,000</td>
<td>$306,599</td>
<td>$112,782</td>
<td>$153,220</td>
<td></td>
<td></td>
<td></td>
<td>$829,501</td>
</tr>
<tr>
<td>Site Excavation</td>
<td>$2,090,038</td>
<td>$301,421</td>
<td>$35,200</td>
<td>$279,927</td>
<td></td>
<td></td>
<td></td>
<td>$3,066,606</td>
</tr>
<tr>
<td>Public Improvements (Plaza, Davisport Street)</td>
<td>$4,346,110</td>
<td>$824,088</td>
<td>$21,169</td>
<td>$706,904</td>
<td></td>
<td></td>
<td></td>
<td>$5,898,273</td>
</tr>
<tr>
<td>Approved Construction Costs (i.e. Painting &amp; Finishing)</td>
<td>$605,000</td>
<td>$900,000</td>
<td>$130,000</td>
<td>$155,000</td>
<td></td>
<td></td>
<td></td>
<td>$1,760,000</td>
</tr>
<tr>
<td>Other</td>
<td>$211,167</td>
<td>Included in bid</td>
<td>$14,500</td>
<td>$2,951,201</td>
<td></td>
<td></td>
<td></td>
<td>$3,096,867</td>
</tr>
<tr>
<td>General Contractor Overhead Profit &amp; Contingency</td>
<td>$252,000</td>
<td>$595,000</td>
<td>$2,920,000</td>
<td>$1,606,000</td>
<td></td>
<td></td>
<td></td>
<td>$7,373,000</td>
</tr>
<tr>
<td>Project Management &amp; Contingency</td>
<td>$95,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$95,000</td>
</tr>
<tr>
<td>TIF Fees</td>
<td>$6,111,598</td>
<td>$13,924,206</td>
<td>$12,338,301</td>
<td>$4,996,692</td>
<td></td>
<td>$1,980,674</td>
<td>$11,234,350</td>
<td>$27,052,278</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>$11,914,658</strong></td>
<td><strong>$26,865,505</strong></td>
<td><strong>$22,000,000</strong></td>
<td><strong>$14,128,000</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$103,114,153</strong></td>
</tr>
</tbody>
</table>
ORDINANCE NO. 41188

AN ORDINANCE providing for the designation of an Enhanced Employment Area; the levy of a general business occupation tax as requested by the property owner(s) of the Capitol District; providing for the administration, imposition and collection of such occupation tax; specifying how such tax revenue will be used; and related matters.

PRESENTED TO COUNCIL

1st Reading: June 13, 2017 - Public hearing to be held on 06/20/17

2nd Reading and Public Hearing: June 20, 2017 - Over to 06/27/17

3rd Reading: June 27, 2017 — Motion by Jerram that the Ordinance be passed
Seconded by Gray
Substitute Motion by Festersen to lay over three weeks to 07/18/17
Seconded by Harding
Substitute Motion Carried 4-3
Yea: Pahls, Festersen, Jerram, Melton
Nays: Palermo, Harding, Gray

July 18, 2017 — Ordinance read Amendment of the Whole PASSED AS AMENDED 9-1
Yea: Festersen, Harding, Jerram, Pahls, Palermo, Mr. President
Nay: Melton

ELIZABETH BUTLER
CITY CLERK