

City Council Introduction: **Monday**, June 7, 2004
Public Hearing: **Monday**, June 14, 2004, at **1:30 p.m.**

Bill No. 04-115

FACTSHEET

TITLE: **STREET VACATION NO. 04006**, requested by the Public Works & Utilities Department, to vacate the north 9'4" of "Q" Street right-of-way adjacent to a part of the Haymarket Parking Garage as part of a contractual agreement between B&J Partnership and the City of Lincoln, generally located at 9th & "Q" Streets.

STAFF RECOMMENDATION: A finding of conformance with the Comprehensive Plan.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 05/26/04
Administrative Action: 05/26/04

RECOMMENDATION: A finding of conformance with the Comprehensive Plan (8-0: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand voting 'yes'; Taylor absent).

FINDINGS OF FACT:

1. This is a request to vacate right-of-way adjacent to a part of the Haymarket Parking Garage as part of a contractual agreement. The contractual obligation contemplates the granting of an easement from the City to B&J Partnership for the use of this area for outdoor seating.
2. The staff recommendation to find the proposed right-of-way vacation to be in conformance with the Comprehensive Plan is based upon the "Analysis" as set forth on p.2-3, concluding that the vacation of this right-of-way conforms with the Comprehensive Plan since title to the property will be retained by the City. The vacation of this right-of-way is necessary due to contractual obligations of the City.
3. The minutes of the Planning Commission hearing and action are found on p.4-5.
4. Paul Ahrendt of The Tool House testified in support, as long as all of the other businesses "get equal rights".
5. On May 26, 2004, the Planning Commission agreed with the staff recommendation and voted 8-0 to find the proposed right-of-way vacation to be in conformance with the Comprehensive Plan.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: June 1, 2004

REVIEWED BY: _____

DATE: June 1, 2004

REFERENCE NUMBER: FS\CC\2004\SAV.04006

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for May 26, 2004 PLANNING COMMISSION MEETING

P.A.S.: Street and Alley Vacation #04006

PROPOSAL: Vacate the north 9'-4" of "Q" Street right-of-way adjacent to a part of the Haymarket Parking Garage as part of a contractual agreement between B&J Partnership and the City.

LOCATION: 9th and "Q" Streets.

LAND AREA: 460 square feet, more or less.

CONCLUSION: The vacation of this right-of-way conforms to the Comprehensive Plan since title to the property will be retained by the City. The vacation of this right-of-way is necessary due to contractual obligations of the City.

<u>RECOMMENDATION:</u>	Conforms to the Comprehensive Plan
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GENERAL INFORMATION:

LEGAL DESCRIPTION: The North 9'-4" of "Q" Street right-of-way adjacent to Lot 2, Haymarket Parking Garage Addition, located in the SE 1/4 of Section 23 T10N R6E, Lancaster County, Nebraska.

SURROUNDING LAND USE AND ZONING:

North:	Haymarket Parking Garage	B-4 Lincoln Center Business
South:	Commercial	B-4 Lincoln Center Business
East:	Commercial	B-4 Lincoln Center Business
West:	Commercial	B-4 Lincoln Center Business

HISTORY:

Oct 2001 Executive Orders #63113 and #63114 approved the Purchase Agreement and Exchange Subagreement executed between the City of Lincoln and B&J Partnership.

COMPREHENSIVE PLAN SPECIFICATIONS: The Land Use Plan identifies the surrounding area as Commercial. (F 25)

UTILITIES: There are no utilities located within this right-of-way.

ANALYSIS:

1. This is a request to vacate the north 9'-4" of "Q" Street right-of-way adjacent to a part of the Haymarket Parking Garage as part of a contractual agreement.

2. The contractual obligation contemplates the grant of an easement from the City to B&J Partnership for the use of this area for outdoor seating. Relevant paragraphs from the contract are attached. Paragraph 1.12 defines Outdoor Seating Area. Paragraph 6.1.3(g) includes the Outdoor Seating Area in the list of Tenant Improvements. Paragraph 6.6.5 provides for an easement to use this space for Tenant Improvements.
3. Title to this vacated portion of right-of-way will be retained by the City, and the seating area easement covered by the contract will be provided to B&J Partnership. This area will continue to be City property, but will no longer be public right-of-way.
4. Along the south and east limits of the easement area, there is a wall separating the public right-of-way and pedestrian sidewalk from the easement area. The easement to be granted includes an obligation of B&J Partnership to maintain the easement area including the wall.
5. The cost associated with the grant of the easement rights is included in the purchase agreement.
6. This vacation will not create lots without frontage and access to a public street.
7. The Public Works Department points out the use of right-of-way can be authorized by a use of right-of-way permit or a sidewalk café permit rather than by vacation of a portion of the right-of-way. Public Works would generally recommend these methods be used rather than a vacation because the right-of-way is retained and unforeseen street improvements may require future use of the right-of-way. The use of right-of-way permit procedures also maintain the building line setbacks because they do not change property lines. In this circumstance, the City proposes to maintain ownership, and the land can potentially be again dedicated to right-of-way use if the need arises.

Prepared by:

Greg Czaplewski
441.7620
gczaplewski@ci.lincoln.ne.us

Date: May 17, 2004

Applicant: City of Lincoln Public Works Department
Ken Smith, Parking Manager
555 South 10th Street
Lincoln, NE 68508
441.6097

Owner: City of Lincoln

Contact: City of Lincoln Law Department
Joel Pedersen, Assistant City Attorney
575 South 10th Street, Suite 4201
Lincoln, NE 68508 441.7232

STREET VACATION NO. 04006

PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand; Taylor absent.

Staff recommendation: A finding of conformance with the Comprehensive Plan.

Ex Parte Communications: None.

Proponents

1. **Greg Czaplewski** of Planning staff explained that this is a request from the Public Works Department to vacate this portion of right-of-way, based upon a contractual agreement that the city has with B&J Partnership, which is going to be purchasing the tenant space in the Haymarket Parking Garage.

Carroll referred to #7 of the analysis as to giving away the right-of-way instead of giving an easement. If the city is going to give them an easement, how hard would it be to get it back if the city wants the land for right-of-way? **Joel Pedersen of the Law Department** advised that this is related to the acquisition of a property which was voluntary for the construction of the Haymarket Parking Garage. The retail space on the first floor was part of the design of the garage which was done in concert with Urban Development and was done with city cooperation—not requested. The feeling was that the retail use fit in on this corner and helped the garage fulfill the design element in that it didn't look as much like a garage with that corner retail space. As a tradeoff, the city agreed to design this tenant space as part of the building. The agreement provided that it would be by easement for so long as the retail space was there. The connection is to the retail space. In event the retail space is no longer used as retail, then the potential is there for that to revert back for right-of-way. The design does provide for pedestrian accommodation outside the wall. It adds an attractive element to the garage that has been well-received. It is tied to the tenant space and the retail use.

Pearson wondered why the street vacation if it is an easement. Pedersen stated that they did review that issue and the city does not have authority to grant an easement in right-of-way. In order to grant the easement, we need the vacation. The vacation implies that you are going to sell, but in this case the city will retain the fee ownership and the city has agreed to provide an easement only.

Larson knows what kind of negotiations went on to get this parking garage there and the retail space, and he thinks the Commission needs to do this in order to live up to all the elements of the negotiations.

2. **Paul Ahrendt**, 940 Old Cheney Road, owner of **The Tool House**, testified that he will support this vacation as long as "all the rest of us get equal rights". What they are doing is good and some of the rest of us in that area need those same rights. If this is approved, he would be in favor of the rest of the businesses having the same type of rights. "Just give us the same rights of using the city property in front of our buildings as you are giving here."

There was no testimony in opposition.

Staff questions

Marvin wondered whether this opens a Pandora's box where everyone is going to ask for similar type of treatment. Czaplewski stated that the position of the Public Works Department is that the policy in the Haymarket area is still to not vacate right-of-way and the preference is a permit or license to use the right-of-way. This case is different because there was a negotiated contract and there are some obligations to which the city has agreed.

Pedersen further explained that because of the footprint of the building and the design of the parking itself, in order to maximize the parking stalls, the tenant space was located right up to the lot line. He acknowledged that there are other businesses in a similar situation. This is not going to be for parking. The other part is design of the right-of-way. There are improvements to the right-of-way that give adequate pedestrian space, even with the wall. We have room to do that here where we don't in other instances. He knows there is already another application coming forward. What drove this was the design and plan to have retail space on the corner of this parking garage. This also included maximizing the number of stalls in the parking garage. This was approved by the Urban Design Committee and this vacation is the followup to get the paperwork completed.

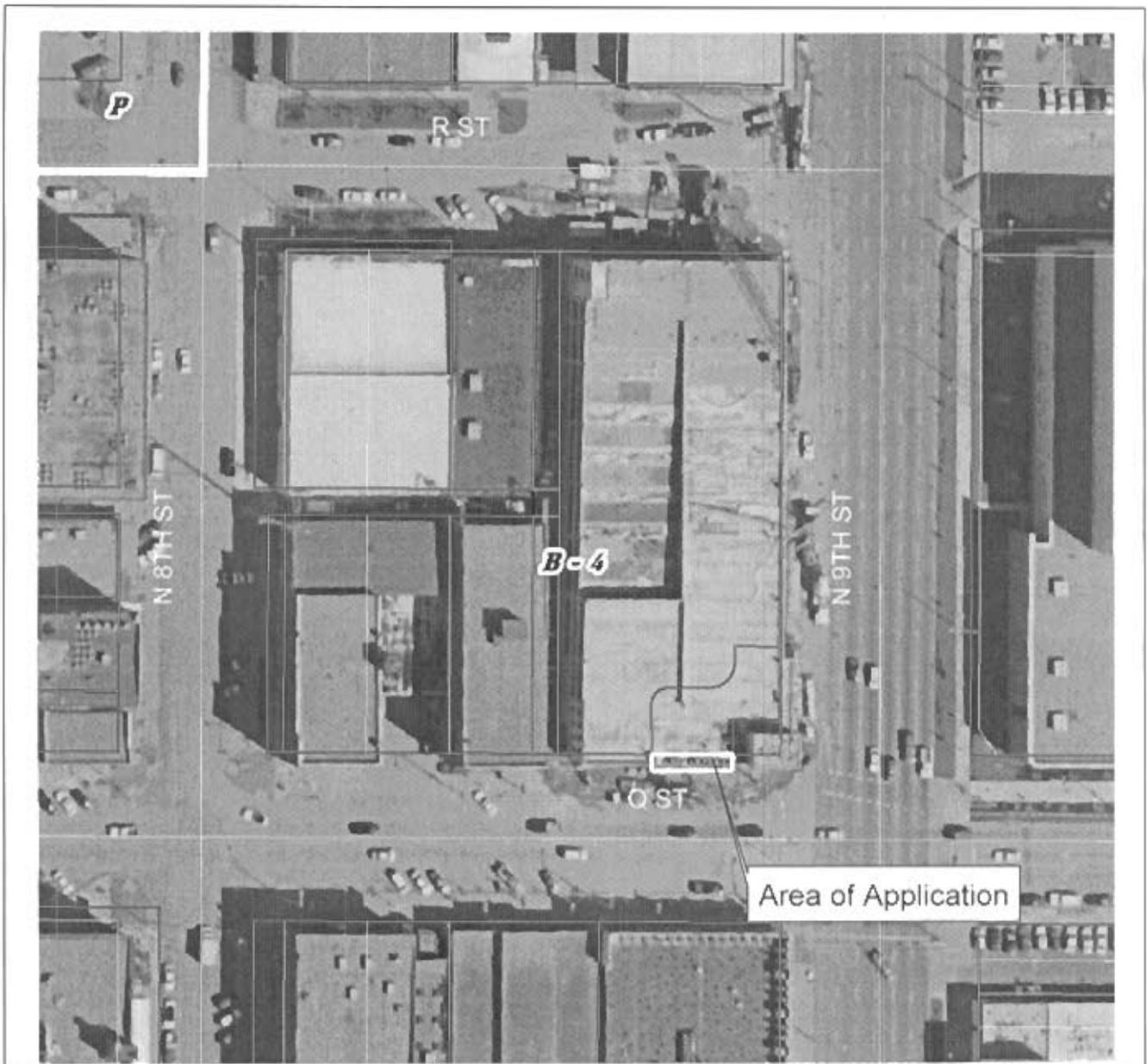
ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 26, 2004

Larson moved a finding of conformance, seconded by Sunderman.

Carlson thinks it is turning into a great project. This was built to have this use on the corner so that it looks more like a retail space instead of a parking garage. He thinks it accommodates the pedestrian motion.

Motion carried 8-0: Marvin, Krieser, Carlson, Larson, Sunderman, Pearson, Carroll and Bills-Strand voting 'yes'; Taylor absent. This is a recommendation to the City Council.



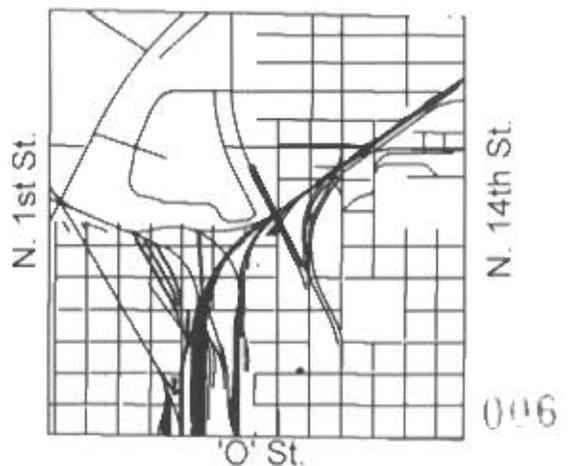
Street and Alley Vacation #04006 9th & 'Q' St.

2002 aerial

Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-7	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

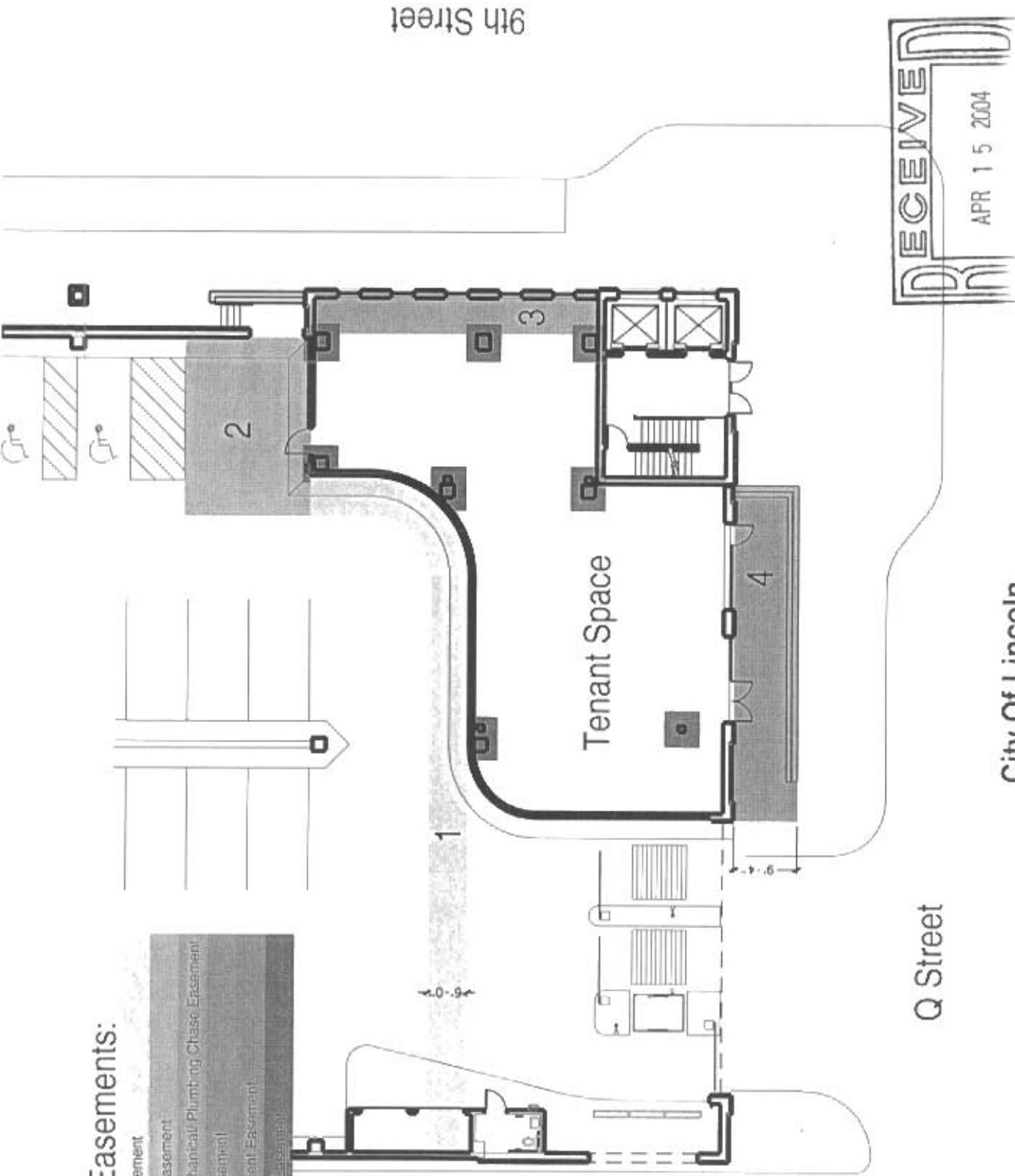
One Square Mile
Sec. 23 T10N R6E



Lincoln City - Lancaster County Planning Dept

Proposed Easements:

- 1 Service/Trash Easement
- 2 Parking/Delivery Easement
- 3 Vertical Utility/Mechanical/Plumbing Chase Easement
- 4 Outdoor Dining Easement
- 5 Mechanical Equipment Easement
- 6 Existing Structure Easement



City Of Lincoln Haymarket Parking Garage Tenant Space Easements

700

1.4 City Improvements shall mean the improvements associated with the Parking Garage and the Exterior Improvements.

1.5 Commercial Property shall mean the first level building shell space located in the southeast corner area of the Project legally described in the attached legal description and including the related Easements, Commercial Space and Logistical Improvements, but excluding the Parking Garage, as generally depicted in the Construction Documents and more particularly described in Section 6.1 below.

1.6 Commercial Space shall individually and collectively mean the Commercial Property, Exterior Improvements, Logistical Improvements and Tenant Improvements.

1.7 Completion Date shall mean no later than June 1, 2003.

1.8 Construction Documents shall mean the construction plans and specifications for the Project, dated August 31, 2001, as prepared by the Architect, which are incorporated herein by this reference.

1.9 Exterior Improvements shall mean improvements constructed at City expense as generally depicted in the Construction Documents and more particularly described in Paragraph 6.1.1.

1.10 Easements shall mean the easements described in Section 6.6 below.

1.11 Logistical Improvements shall mean improvements constructed by the City's contractor with the costs thereof to be recouped through the subsequent sale of the Commercial Property as generally depicted in the Construction Documents and more particularly described in Paragraph 6.1.2.

→ 1.12 Outdoor Seating Area shall mean the outdoor seating space area for eating and drinking alcoholic and non-alcoholic beverages located between the public sidewalk as permitted by applicable law and the interior building space of the Commercial Space, and related wall, railing, barrier, bushes and landscaping amenities as generally depicted in the Schematic Drawings.

1.13 Parking Garage shall mean the parking facility portion of the Project, including the abutting exterior public streets, turn lanes, loading zone, on-street parking; sidewalk and streetscape treatment, but excluding the Commercial Property and Commercial Space, as generally depicted in the Schematic Drawings.

1.14 Project shall individually and collectively mean the Parking Garage and Commercial Space located on Lots 1, 2, 11, and 12 and a portion of Lots 3 and 10 Block 30, Original Plat, Lincoln, Lancaster County, Nebraska.

building requirements for fire prevention and emergency exit(s) and not provided in Paragraph 6.1.1.;

(d) space, access, concrete platform and utility corridor(s) for installing, maintaining, replacing and operating heating, ventilation, and air conditioning equipment and related improvements outside the Commercial Property in order to provide the Commercial Property with heating, ventilation, and air conditioning;

(e) space, access and utility corridor(s) for installing, maintaining, replacing and operating exhaust and smoke ventilation equipment and related improvements outside the Commercial Property in order to provide the Commercial Property with exhaust and smoke ventilation from stoves, ovens, smokers and grills to the top level of the Parking Garage;

(f) storage space, concrete floor and access for installing, maintaining, replacing and operating garbage refuse area outside the Commercial Property in order to provide the Commercial Property with convenient garbage refuse service within the Parking Garage and said Commercial Property garbage refuse area will be separate from the Parking Garage garbage refuse area; and

(g) space, access, concrete floor, drainage and utility corridor(s) for installing, maintaining, replacing and operating the Outdoor Seating Area and related equipment and improvements outside the Commercial Property in order to provide the Commercial Property with an outdoor seating area including an appropriate separation treatment, between public sidewalk and potential outdoor eating area.

→ 6.1.3 Tenant Improvements. B & J, at its expense and under separate contract, shall cause the design and construction of the Tenant Improvements and such Tenant Improvements must be made in compliance with all applicable local, state, and federal building and construction laws or codes. B & J, at its expense and under separate contract, shall use the Architect, or another architect acceptable to the City, to provide design services for the Tenant Improvements. B & J, at its expense, will provide or cause its tenants to provide the following improvements to the Commercial Property:

- (a) interior concrete subfloor and finish floor;
- (b) finish ceiling, if any;
- (c) other interior space improvements (interior walls, interior utilities, and heating, ventilation and air conditioning improvements);

(d) heating, ventilation, and air conditioning equipment and related conduit and improvements outside the Commercial Property in order to provide the Commercial Property with heating, ventilation, and air conditioning;

(e) exhaust and smoke ventilation equipment and related improvements outside the Commercial Property in order to provide the Commercial Property with exhaust and smoke ventilation from stoves, ovens, water heater, smokers and grills to the top level of the Parking Garage;

(f) garbage refuse containers and equipment outside the Commercial Property in order to provide the Commercial Property with convenient garbage refuse service within the Parking Garage;

→ (g) additional improvements to the Outdoor Seating Area and related equipment, trade fixtures and fixtures outside the Commercial Property in order to provide the Commercial Property with an outdoor seating area;

(h) two space identification hanging signs to be placed in the two hanging sign faces on the exterior street frontage of the Commercial Property based upon a design acceptable to the City's Historic Preservation Planner and in compliance with applicable laws and codes; and

(i) one space identification wall sign to be placed in the wall one wall sign face on the exterior street frontage of the Commercial Property based upon a design acceptable to the City's Historic Preservation Planner and in compliance with applicable laws and codes.

6.1.4 Schematic Drawings and Construction Documents of the Project. The Project Schematic Drawings have been prepared by the City, at City's expense, for the contemplated public and private improvements to be constructed by the City and in that portion of the Project designated herein as the Parking Garage and Commercial Property. Such Project Schematic Drawings have been reviewed by the City's Historic Preservation Planner Officer. The Schematic Drawings are hereby approved by the City and B & J. The Architect, at the expense of the City, has prepared detailed final construction plans and specifications for the City Improvements and Logical Improvements to be constructed. The Project Construction Documents have been submitted to the City Director of Public Works Department and B & J for approval prior to construction of the City Improvements and Logical Improvements by the City. B & J and the City have agreed to a requested change order to the Project

of this interdependence and need for continued mutual cooperation. Any easement or license herein or hereinafter granted by the owner of any of the lots or interests in the Project for the use or enjoyment of the public or for another owner or user of any other interest in the Project shall be liberally construed with the intention of providing such rights and privileges as may be reasonably necessary or convenient to adequately and properly operate the benefited facilities and properties without encroaching or interfering needlessly with the subservient facility or property. No person or entity involved with or interested in any part of the Project shall take any action or permit any action to be taken to interfere with the free beneficial use and enjoyment of any easement provided for herein or hereafter, or as may be expressly agreed by the interested Parties, or as may be necessary for proper maintenance or repairs. This covenant shall have no time limit and shall last as long as any component of the Project.

6.6.4 Easements for Support Structures. This Subagreement includes as easements the locations for all support structures to be constructed by the City. The City will be granted the permanent right to maintain, repair, replace, construct and reconstruct such support structures as may from time to time be necessary or appropriate by the City, and will be granted permanent rights of access to and through Project, for such purposes.

→ 6.6.5. Easements for Tenant Improvements and Logistical Improvements. This Subagreement includes as easements for all Tenant Improvements and tenant finishes to be constructed by B & J and its successors and assigns and Logistical Improvements to be constructed by the City and its Successors and assigns in the Project. Each Party will be granted the permanent right to maintain, operate, repair, replace, construct and reconstruct such improvements and replacement improvements as may from time to time be necessary or appropriate, and such Party will be granted permanent rights of access to and through the Project for such purposes.

6.6.6 Easement for Uniform Building Code. This Subagreement includes as easements for the Commercial Property and Commercial Space to permit the Commercial Property, Commercial Space, Tenant Improvements, tenant finishes, and Logistical Improvements to be able to meet the building and safety requirements of the applicable Uniform Building Code and any related building and life safety codes that are applicable to the Project, as may be amended from time to time.

6.6.7 Agreement to Grant Easements, Covenants, and Rights for Use and Enjoyment. It is recognized and agreed by the Parties hereto that their mutual cooperation in granting to each other the necessary and desired rights, licenses and easements to enter and make use of portions of their respective properties in the Project both temporarily during construction and permanently after construction, is required in order for any and all of the improvements to the