

**CITY OF LINCOLN
REDEVELOPMENT AGREEMENT**

(18th & Q)

THIS REDEVELOPMENT AGREEMENT (“**Agreement**”) is made and entered into as of the date of execution hereof by the last signatory hereto as indicated below (“**Commencement Date**”) by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation in the State of Nebraska and its successors and assigns (“**City**”); and **AF-18R-Lincoln, LLC**, a Nebraska limited liability company, and its successors and assigns (“**Redeveloper**”).

A. The City has undertaken a program for the redevelopment of blighted and substandard areas in the City of Lincoln, Nebraska. As part of that program, the City has prepared and adopted the 18th & Q Streets Redevelopment Plan as amended which in part provides for the 18th & Q Streets Redevelopment Project in an area generally bounded by R Street on the north, Q Street on the south, 18th Street on the west, and Antelope Valley Parkway on the east, including abutting public right-of-ways as shown on Exhibit “A” (collectively “**Redevelopment Area**”). A copy of said Redevelopment Plan, together with any and all amendments thereto (collectively “**Redevelopment Plan**”), is on file in the Office of the City Clerk of the City of Lincoln, Nebraska (“**City Clerk**”).

B. The City is the legal titleholder of Lot Seven (7) and the West Eleven feet (11’) of Lot Eight (8), Block Nine (9), Kinney’s “O” Street Addition, Lincoln, Lancaster County, Nebraska located within the Redevelopment Area (“**City Property**”).

C. The Board of Regents of the University of Nebraska (the “**University**”) is the legal title holder of Lot One (1), Block (1), Antelope Valley 2nd Addition and the South Fifty feet (50’) of Lot Five (5), Block Nine (9), Kinney’s “O” Street Addition, all in Lincoln, Lancaster County, Nebraska (“**University Property**”) located within the Redevelopment Area.

D. The University is acquiring the City Property and once so acquired, the aggregate of the University Property and the City Property shall be ground leased by the University to the Redeveloper for the development of this Project.

E. The University has selected Redeveloper as developer of record to construct a Mixed Use University Parking and Residential Facility consisting of a parking structure including management office space, and a residential housing facility on the Project Site.

F. Redeveloper has submitted a proposal designated as the “**18th & Q Project**” or “**Redevelopment Project**” to use the City Property, the University Property, and the Vacated ROW (defined below) (collectively the “**Project Site**”) for the Mixed Use University Parking and Residential Facility. The Project Site is legally described on Exhibit “A-1”, attached and incorporated by this reference.

G. University pursuant to Chapter 14.20 of the Lincoln Municipal Code (“Chapter 14.20”) has submitted Petitions to Vacate 18th Street between Q and R Streets as well as the north four feet of Q Street and the south four feet of R Street between 18th Street and Antelope Valley Parkway (collectively “**Vacated ROW**”) to the City. The City intends to either (1) approve said Petitions to Vacate the Vacated ROW or (2) vacate 18th Street (“Vacated 18th Street”); simultaneously with the approval of this Agreement, subject to title to the Vacated ROW or Vacated 18th Street being transferred to the University and included as part of the Project Site and under the terms and conditions of Chapter 14.20 and the Ordinance approving said vacations. However in the event only 18th Street is vacated the City shall grant the University a permanent easement over the north four feet of Q Street and the south four feet of R Street to facilitate the subgrade installation of the Foundation for the Private Improvements

H. The planned construction for the Redevelopment Project includes, but is not limited to, the following “**Private Improvements**”, as generally shown on the Schematic Drawings attached as Exhibit “B”, which are incorporated herein by this reference:

1. “**Garage**”: Construction of a seven-story private garage containing approximately 1,610 parking stalls (1,270 for University Parking (“UNL Garage”) and 340 parking stalls for the Residential Housing Facility (“Private Garage”));

2. “**Residential Housing Facility**”: Construction of 124 dwellings contained in three stories of residential suites of two-, three- and four-bedroom units on top of the Garage, plus the first four stories wrapping around the Garage along R Street and Antelope Valley Parkway;

3. “**Public Enhancements**”: Construction and installation of certain upgraded improvements to the Garage and Residential Housing Facility for the greater good of the community and which exceed the requirements of City standards, regulations or codes (“**Public Enhancements**”) consisting of Façade Improvements and Energy Efficiency Enhancements defined in Section 104.C below.

4. The Private Garage and the Residential Housing Facility are collectively referred to as the “Redeveloper Project.”

I. The Private Improvements and Redeveloper Public Improvements (defined below) are collectively known as the “**Redevelopment Project Improvements**.” The costs of the Redevelopment Project Improvements are collectively known as the “**Redevelopment Project Costs**” and are shown on the Uses and Sources of Funds in Exhibit “D”.

J. Neb. Rev. Stat. § 18-2103(12) (2007 Supp.) authorizes the City to carry out plans for the redevelopment of substandard and blighted areas in connection with redevelopment of the Project Site and to pay for the same from TIF Proceeds (as defined herein).

K. Neb. Rev. Stat. § 18-2107 (2007 Supp) authorizes the City to enter into contracts with redevelopers of property containing covenants and conditions regarding the use of such property as the City may deem necessary to prevent the recurrence of substandard and blighted areas.

L. Redeveloper is willing to enter into this Agreement and through an anticipated Minimum Investment (defined below) of approximately Thirty Million and No/100 Dollars (\$30,000,000.00) to redevelop the Project Site by constructing the taxable Private Improvements. The term “**Minimum Investment**” in this Agreement shall include all costs incurred by Redeveloper when constructing the taxable Private Improvements, including but not limited to design costs, permits, impact fees, and financing costs and does not include the costs associated with the UNL Garage which, upon completion, will be owned by the Board of Regents and therefore exempt from real estate taxation.

M. Redeveloper is willing to assist the City in the construction of the following public improvements (“**Redeveloper Public Improvements**”) consisting of the following:

1. “**Utility Removal/Relocation**”:

(i) Sanitary Sewer Work. Removal of the existing sanitary sewer from the Vacated ROW and relocation of said sanitary sewer as generally shown on Exhibit “C-1”, which is attached hereto and incorporated herein by this reference;

(ii) Dry Utilities. Removal and relocation of existing City of Lincoln, Nebraska d/b/a Lincoln Electric System (“LES”), Windstream Nebraska, Inc.

(“Windstream”) and Time Warner Entertainment–Advance/Newhouse (“Time Warner”) utilities and other utility related improvements and amenities (collectively “Dry Utilities”) from the Vacated ROW in the event any of the Dry Utilities are not removed and relocated at the applicable utility company’s own cost and expense.

2. **“Streetscape”**: Installation of streetscape improvements within the public right-of-way of the public streets abutting the Project Site as generally shown on Exhibit "C-2", including, without limitation, sidewalk construction, landscaping, irrigation, benches, pedestrian decorative lighting, bike plaza, and other street-scape amenities.

3. **“18th Street Repaving”**: Removal of existing pavement and repaving of 18th Street.

4. **“Public Enhancements”**: including façade improvements of the Private Improvements and the Energy Efficiency Enhancements.

N. In order to help remove blight and substandard conditions and improve conditions in this economically underutilized Redevelopment Area, the City is willing to enter into this Agreement and to make grants to the Redeveloper to be used to carry out the Redevelopment Project Improvements. The City and Redeveloper agree that such assistance is deemed essential to the success of the Redevelopment Project.

O. The City is willing to support the above described redevelopment of the Redevelopment Area and Project Site in accordance with the Redevelopment Project; provided that, Redeveloper is willing to restrict the use of the Project Site to certain approved uses; and further provided that, the Redeveloper is willing to agree to (i) covenants and conditions regarding

compulsory maintenance and upkeep of the Private Improvements to prevent a recurrence of substandard and blighted conditions; and (ii) restrict the use of the grants provided hereunder for the sole purpose of design, construction and implementation of the Redevelopment Project Improvements on behalf of the City and in the manner contractually described herein.

P. The Redevelopment Plan contains a provision dividing ad valorem property taxes upon property in the Redevelopment Project for the benefit of any public body for a period not to exceed fifteen (15) years after the effective date of such provision, as provided for in Neb. Rev. Stat. § 18-2147, et seq. Said provision is hereinafter referred to as the “**Ad Valorem Tax Provision.**”

Q. Neb. Rev. Stat. § 18-2107 and § 18-2150 (Reissue 2007) authorize the City to provide grants to private parties in order to accomplish rehabilitation or redevelopment of the Redevelopment Area in accordance with the Redevelopment Plan. In order to make the grant or grants to the Redeveloper, the City intends to issue a tax increment financing indebtedness instrument or instruments in tax exempt and taxable series (individually and collectively “**TIF Bond**”) and to incur indebtedness (“**TIF Indebtedness**”) upon the sale of the TIF Bond to be repaid with the tax increment revenues generated under the Ad Valorem Tax Provision (“**TIF Tax Revenues**”).

R. The City and Redeveloper desire to enter into this Agreement to implement the Redevelopment Project for the above purposes and in accordance with the Redevelopment Plan.

S. The City and Redeveloper mutually agree that the redevelopment of the Redevelopment Area and Project Site is in the vital and best interest of the City and is in furtherance of the health, safety, and welfare of its residents, and is in accordance with the public

purposes and provisions of applicable laws and requirements under which the Redevelopment Plan has been undertaken.

NOW, THEREFORE, in consideration of the above recitals which are hereby made part of this Agreement and of the mutual covenants contained herein the parties do agree as follows:

ARTICLE I

REDEVELOPER'S RESPONSIBILITIES

Section 101. Evidence of Financial Ability of Redeveloper. The Redeveloper shall, no later than thirty (30) days following the execution of this Redevelopment Agreement, provide to the City evidence of availability of the specific amount of finances necessary for purposes of carrying out the commitment of the Redeveloper in connection with construction of the Private Improvements. To the extent allowed by law, the City agrees to keep said information confidential. Such information shall state the amount and source of liquid assets on hand or immediately available to the Redeveloper for use in the Redevelopment Project; and shall state the amount and source of debt financing which is available, or irrevocably committed, to the Redeveloper for use in completing the Private Improvements. Such information shall be provided in a form satisfactory to the Finance Director of the City, and evidence of loan commitments shall include all the documents evidencing the loan commitment, and acceptance by the Redeveloper, the purposes of the loan, the authorized use of loan funds, and all other terms and conditions of the loan commitment, the acceptance, and the loan. Submittal of such financial information in a form satisfactory to the Finance Director of the City shall be a condition precedent to the requirement of the City to proceed with its obligations under this Agreement.

Section 102. City Property & Vacated ROW. To assist in the assembling of the Project Site, the City agrees to declare the City Property as surplus, vacate the Vacated ROW or vacate Vacated 18th Street, and convey the City Property and Vacated ROW or Vacated 18th Street to the University to be leased to the Redeveloper. The Vacated ROW or Vacated 18th Street shall be subject to a City reservation of a utility easement for the existing utilities located within the Vacated ROW or Vacated 18th Street until such time as said utilities are removed pursuant to a written notice from the City, or as otherwise provided for in this Agreement and to a public access easement on such vacated right-of-way. Said reservation of the utility easement shall automatically expire without payment of additional consideration upon the completion of the removal and relocation of such utilities as provided for in this Redevelopment Agreement. In the event only 18th Street is vacated the City agrees to grant the University a permanent easement (Easement and Hold Harmless Agreement) the form of which is attached hereto as Exhibit H in “Q” and “R” Streets to accommodate the subgrade foundations for the Private Improvements.

Section 103. Construction/Installation of Redevelopment Project Improvements.

A. Schematic Drawings. The preliminary size, shape and location of the Private Improvements are schematically outlined on Exhibit “B” (“**Schematic Drawings**”). The Schematic Drawings have been approved by the City and will serve as the basis for development of preliminary plans and specifications for the Private Improvements to be constructed by the Redeveloper. Redeveloper has presented the design of the Project to the City’s Urban Design Committee for its review and recommendation as to approval.

B. Construction Documents.

1. Private Improvements. Based upon the Schematic Drawings, the Redeveloper shall prepare or cause to be prepared, at Redeveloper's own cost and expense, detailed final construction plans and specifications (hereinafter "**Construction Documents**") for the Private Improvements. The Construction Documents for the Private Improvements shall be in compliance with the City of Lincoln Design Standards including, but not limited to, the Lincoln Downtown Design Standards and Design Standards for Pedestrian Circulation in Commercial and Industrial Areas and based upon the Schematic Drawings. Such Construction Documents shall include elevation views of the exterior of the Private Improvements ("**Exterior Drawings**") and delineation of the construction materials to be used for the exterior walls of the Private Improvements. The Construction Drawings for the Private Improvements will be submitted to the Urban Development Department for review and a recommendation as to approval. The Construction Documents for the Private Improvements will then be submitted to the City for review and approval as provide in Section 2.D. below.

2. Public Improvements.

(a) Redeveloper Public Improvements.

(i) Storm Sewer & Streetscape Improvements. Redeveloper, at its own cost and expense, subject to reimbursement as provided in Section 304 (Use of TIF Proceeds) below, shall cause the Storm Sewer Work and Streetscape Improvements to be designed in accordance with the City's Standard Specifications and final construction documents shall be submitted to the Director of the Public Works and Utilities Department and the Director of Urban Development for review and approval.

(ii) Site Clearance. The Redeveloper, at its expense, shall cause the Project Site to be cleared of substandard and blighted conditions by the demolition of existing buildings and necessary site grading essential to the preparation of the Project Site for uses in accordance with the Redevelopment Plan and this Agreement.

(b) City Public Improvements. The City and Redeveloper agree that the City may use a portion of available TIF Proceeds as identified on the Sources and Uses Schedule (Exhibit D) to fund the purchase and installation of such City Public Improvements (“City Public Improvements”) as the City may determine to be beneficial for the elimination of substandard and blighted conditions during the TIF Period to be located with the Redevelopment Area.

(c) Approvals. City shall so approve or reject the Construction Documents for the Private Improvements within fourteen (14) days after receipt of the applicable documents and/or any report and recommendation of the Urban Design Committee. Such Construction Documents shall be reviewed by the Mayor and approved only if they are prepared from and in substantial conformance with the approved Project Schematic Drawings and the provisions of this Agreement. If the City rejects the applicable plans, the City shall deliver to Redeveloper notice thereof accompanied by an explanation of the reasons for such rejection. If rejected, Redeveloper shall work with the architect or engineer to submit corrected Construction Documents, as applicable, within fourteen (14) days after the date of receiving the written rejection notice. Resubmitted Construction Documents shall be approved or rejected as provided above for original submittals.

(d) Approval Limitation. City review and approval of the Schematic Drawings and Construction Documents does not apply to the building permit review process and

is not a substitute for nor an elimination of the requirement that the Redeveloper apply for and receive any necessary building permits for construction of the Private Improvements and Public Enhancements.

(e) Urban Design Committee Failure to Act. In the event the Urban Design Committee fails to submit any recommendation as required by subsections (d) and (e) above within thirty (30) days of the submittal, then Redeveloper may provide the Construction Documents directly to the City for its review and approval.

Section 104. Construction of Redevelopment Project Improvements.

A. Construction of Private Improvements. The Redeveloper, through an anticipated Minimum Investment of Thirty Million and No/100 Dollars (\$30,000,000.00), shall at its own cost and expense construct the taxable Private Improvements (excluding the UNL Garage) substantially in conformance with the Schematic Drawings and the Construction Documents. All Private Improvements shall be constructed in compliance with all applicable local, state, and federal building and construction laws and codes. Redeveloper agrees to secure and maintain all permits and licenses necessary for its use of the Redevelopment Project including, but not limited to, necessary building permits and inspections.

1. Professional Design. All Private Improvements shall have consistent architectural or engineering features, detailing, and design elements in accordance with this Agreement. All accessory building walls, screening walls or fences, and canopy columns shall be in substantial conformity with the applicable City design standards.

2. Energy Efficiency. Construction of the Private Improvements shall utilize energy efficient building practices to the extent that they are reasonably available on a cost-effective basis. Specifically, Redeveloper shall use the equivalent of the standard

established by U.S. Green Building Council through its Leadership in Energy and Environmental Design (“LEED”) Green Building Rating Systems as a guideline for the design and construction of the Private Improvements to the extent design and construction based on LEED standards are reasonable and cost-effective.

B. Construction/Installation of Redeveloper Public Improvements.

Redeveloper, at its own cost and expense, subject to reimbursement as provided in Section 303 (Use of TIF Proceeds) below shall construct/install the Redeveloper Public Improvements. The Storm Water Work and Streetscape Improvements shall be constructed through the City’s executive order construction process. The City shall not have any obligations to fund the Redeveloper Public Improvements or make grants to the Redeveloper in excess of the available TIF Proceeds as provided within this Agreement. Any reimbursement shortfall resulting from costs incurred for construction of any Redeveloper Public Improvements that exceed the TIF Proceeds that are lawfully available and granted to the Redeveloper hereunder shall be borne entirely by the Redeveloper without recourse of any kind against the City. To the extent required by law, contracts for construction/installation of the Redeveloper Public Improvements shall be bid in accordance with City procedures.

C. Construction of Public Enhancements. Redeveloper, at its expense,

subject to reimbursement as provided in Section 303 (Use of TIF Proceeds) below shall construct the following Public Enhancements:

1. Façade Enhancements.

(a) Residential Façade Enhancements (3-Story and 4-Story)

consisting of façade materials and design for the exterior of the residential components which exceed the requirements of the Downtown Design Standards.

(b) 18th & R Streets Garage Façade Enhancements and Antelope Valley Parkway & Q Street Garage Façade Enhancements consisting of façade materials and design for the UNL Garage/Private Garage, stair towers, and associated improvements which exceed the requirements of the Downtown Design Standards.

2. Energy Efficiency Enhancements consisting of

- (a) LEED Equivalent Mechanical (3-Story Residential)
- (b) LEED Light Fixtures and Controls
- (c) LEED Equivalent Mechanical (4-Story Residential)
- (d) Energy efficient windows
- (e) Energy efficient roof
- (f) Garden roof

The City shall not have any obligations to fund the Public Enhancements or make grants to the Redeveloper in excess of the available TIF Proceeds as provided within this Agreement. Redeveloper shall not have any obligations to construct the Public Enhancements at any cost or expense in excess of the available TIF Proceeds as provided within this Agreement. Any reimbursement shortfall resulting from costs incurred for construction of any Public Enhancements that exceed the TIF Proceeds that are lawfully available and granted to the Redeveloper hereunder shall be borne entirely by the Redeveloper without recourse of any kind against the City. Provided however, to the extent that TIF Proceeds are insufficient to fully pay for the Energy Efficiency Enhancements, Redeveloper reserves the right to re-design or substitute energy efficiency products for the Energy Efficiency Enhancements in order to meet the sources and uses of funds.

Section 105. Payment of Costs for Private Improvements.

A. Complete Construction. Redeveloper agrees to use commercially reasonable efforts to complete construction of the Private Improvements as provided in this Agreement on or before August 1, 2014, and to pay, or cause to be paid, in a timely manner all persons, firms, or organizations that performed labor or furnished materials, equipment or supplies used in the prosecution of the Private Improvements. Such payment shall be made promptly after completion of the Private Improvements and in accordance with all the provisions of this Agreement relating to the obligations of Redeveloper to construct said improvements. If requested by City, the Redeveloper shall, in addition to this promise to pay, obtain and supply the City with lien waivers in favor of the Redeveloper from all persons, firms, or organizations performing any work on the Private Improvements or furnishing any materials, equipment, or supplies for construction of the said improvements. In addition, the City shall be entitled to inspect at reasonable times all records of the Redeveloper or its agents regarding such lien waiver procedures.

B. Certificate of Completion. Promptly after the Redeveloper provides the City the proper documentation that all persons, firms or organizations who performed labor or furnished materials, equipment, or supplies in the prosecution of the Private Improvements has been properly paid or satisfactorily secured, the City shall upon request by the Redeveloper cause a final inspection to be made of the of the Private Improvements. If the work has been completed according to this Agreement, the City shall execute and deliver to Redeveloper the City's acceptance of the Redeveloper's Certificate of Completion, the form of which is shown on Exhibit "E". Such certification by the City shall be a conclusive determination of satisfaction of the agreements and covenants in this Agreement with respect to the obligations of Redeveloper to construct the Private Improvements and the effective date of the Ad Valorem Provision for the

Redevelopment Project shall be as defined in Section 716 below. If the City shall refuse or fail to provide the certification in accordance with the provisions of this Section after being requested to do so by Redeveloper, the City shall, within fifteen (15) days after written request by Redeveloper, provide Redeveloper with a written statement indicating in what respect Redeveloper has failed to complete the Private Improvements subject to such certification in accordance with the provisions of Section 105 and what measures or acts will be necessary, in the opinion of the City, for Redeveloper to take or perform in order to obtain such certification. As used herein, the term “**completion**” shall mean substantial completion of the Private Improvements so that they may be reasonably used for their intended purposes but need not include the tenant finish improvements required for occupancy by such tenant.

C. **Certificate of Completion Recorded.** The Certificate of Completion shall be recorded by the City or Redeveloper in the office of the Register of Deeds for Lancaster County, Nebraska.

Section 106. Cost Certification. The Redeveloper shall submit authentic documentation to the City on approved forms or format for payment of any expenses related to construction of the eligible Redevelopment Project Costs. The Redeveloper shall timely submit receipts, invoices, or proof of payment concurrently with the request for payment of eligible Redevelopment Project Costs. The City shall approve or reject the same with reasons stated, based on the review within ten (10) days of receipt of the same.

Section 107. Duty to Maintain.

A. **Private Improvements.** Redeveloper shall, following construction of the Private Improvements and during the useful and functional life of such improvements, keep the same in a safe and sanitary condition and shall take all action reasonably necessary to (a)

maintain, in good order and condition and state of repair, all interior and exterior portions of a Building the Private Improvements including the routine and reasonable preventive maintenance of their service facilities including, but not limited to, wiring, plumbing, heating and air conditioning systems, interior insect treatment, and all glass, including plate glass, exterior doors, and automatic doors, and (b) maintain the related grounds in a safe and sanitary condition including, but not limited to, sweeping and removal of trash, litter and refuse, repair and replacement of paving as reasonably necessary, maintenance of landscaped areas (including replacement and replanting), removal of snow and ice from sidewalks, driveways, parking areas, and private roadways, in order to keep the same free from dilapidation or deterioration and free from conditions which endanger life or property by fire or other causes. In addition, with regard to maintenance of the Façade Enhancements, the duty to maintain does not authorize Redeveloper to make any material change in the Façade Enhancements including, but not limited to, a change in color, materials, or other alterations with regard to the appearance of the Façade Enhancements. Such maintenance shall be performed pursuant to a Façade Agreement the form of which is attached hereto as Exhibit "G-1". The parties will prepare, execute and file of record the Façade Easement upon substantial completion of the Private Improvements and as a condition precedent to the City's issuance of the Certificate of Completion of the Private Improvements.

B. Streetscape Improvements. Upon completion of the Streetscape Improvements, the City shall be responsible for street trees not on the Project Site (if any) and the Redeveloper shall have all the other duties and responsibilities to maintain and repair the remaining portion of the Streetscape Improvements located on or adjacent to the Project Site, at its own cost and expense and no responsibility thereof (except for street trees) shall accrue to the

City by reason of its benefits from the Streetscape Improvements pursuant to the general terms and provisions of the Streetscape Maintenance Agreement, the form of which is attached hereto as Exhibit “G-2”. The parties will prepare, execute and file of record the Streetscape Maintenance Agreement upon substantial completion of said improvements and as a condition precedent to the City reimbursing the Redeveloper for the cost of the Streetscape Improvements. In the event the City Council for the City of Lincoln, Nebraska adopts a Resolution of Intent to create a business improvement district that includes the maintenance of the Streetscape Improvements, then the Redeveloper agrees to and does hereby waive its right to protest the creation of the district(s), provided the work to be performed and the specific improvements proposed to be made or maintained for such districts and the method of assessment to pay the cost and expenses thereof are substantially the same as those included in the Downtown Business Improvement Maintenance District.

ARTICLE II

SECURITY AND RESTRICTIONS

Section 201. Penal Bond. Redeveloper, at its option, shall comply with one (1) of the following provisions:

A. Penal Bond Amount. Pursuant to Neb. Rev. Stat. § 18-2151, Redeveloper shall furnish or cause to be furnished to the City, prior to commencement of construction of the Private Improvements, a penal bond in an amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) with a corporate surety authorized to do business in the State of Nebraska. Such penal bond shall be conditioned upon the Redeveloper at all times making payment of all amounts lawfully due to all persons, firms, or organizations who performed labor or furnished materials, equipment, or supplies used in the construction of the Private

Improvements. Proof of such penal bond shall be supplied to the City prior to commencement of construction of the applicable Private Improvements ready for construction. The City shall be supplied, upon written demand, with copies of all lien waivers of each of the Redeveloper's contractors, or his or her subcontractors who performed labor or applied materials performed or used in the construction of the Private Improvements and shall be entitled to inspect at reasonable times all records of Redeveloper or their agents regarding such lien waiver procedures. If this alternative is used, proof of such penal bond shall be supplied to the City prior to the start of construction of the Private Improvements.

B. Payment and Performance Bond Alternative. The City shall accept, in lieu of the requirements in Section 201A above, a payment bond supplied by Redeveloper's general contractor meeting the requirements of Neb. Rev. Stat. §52-141 (Reissue 2010) and a lien waiver from the general contractor. The penal amount of the bond shall be not less than Two Million Five Hundred Thousand Dollars (\$2,500,000). As required by Neb. Rev. Stat. § 52-141, recorded notice of the bond must be filed of record against the Project Site. If this alternative is used, proof of said payment and recording shall be provided to the City prior to the start of construction of the Private Improvements. The lien waiver shall be provided upon completion of the Private Improvements.

C. Security Acceptable to the City Attorney. The City shall accept, in lieu of the requirements in Section 201A or B. above, a similar performance bond, escrow, or other security agreement approved by the City Law Department. If this alternative is used, proof of said security shall be provided to the City prior to the start of construction of the Private Improvements.

Section 202. Indemnification. Redeveloper agrees to indemnify and hold City harmless to the extent of any payments in connection with carrying out construction of the Private Improvements and Public Enhancements the City may be required to make, for failure of Redeveloper to make payments of all amounts lawfully due to all persons, firms, or organizations who performed labor or furnished materials, equipment, or supplies used in construction of the Private Improvements and Public Enhancements. The City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives any termination of this Agreement.

Section 203. Use Restrictions. Redeveloper agrees that no portion of the Redeveloper Property shall be used for any of the following uses:

A. The retail sale of alcoholic beverages for consumption off the premises, but excluding micro-brewing establishments that sell alcoholic beverages for consumption off the premises and restaurants allowing the removal of an unsealed bottle of wine pursuant to Neb. Rev. Stat. §53-123.04, as amended;

B. The retail sale of alcoholic beverages for consumption on the premises if such use, in the opinion of the City, has an unreasonable pattern of unlawful disturbances or alcoholic beverage law violations;

C. Any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such use that has an unreasonable pattern of unlawful disturbances or tobacco law violations;

D. A sexually oriented business including live entertainment establishments as defined in Section 27.03.545 of the Lincoln Municipal Code and any other business engaged

in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; exotic lingerie; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service. The foregoing exclusion shall not include pay for view video/audio services, internet and other forms of telecommunication/communication systems offered or available to guests in the ordinary course of hotel business and trade or to Lincoln residents;

E. Any business whose predominant operation is car wash, dry cleaning, vehicle body repair, paint, refinishing, or parts and equipment cleaning business; provided nothing herein shall be construed to prohibit dry cleaning pickup facility, convenience, food or fuel store;

F. Any business involving gambling or wagering even if otherwise permitted by law including slot machines, video lottery machines, casino games, or off-site pari-mutual wagering sites, but excluding live horse-racing, off-site pari-mutual and simulcast horse-racing, keno, bingo, and the retail sale of lottery tickets as permitted by applicable law;

G. Any business involving the sale of weapons, self-service laundromats for nonresidents or non-occupants, illegal activities, or sale of any illegal goods or products;

H. Off premises signs as defined in Section 27.69.020 of the Lincoln Municipal Code; or

I. Any business providing payday loans, liens, check cashing services, or other similar services, except for banks, savings and loans, insurance company, investment companies, stock brokers, credit unions and automated teller machines.

J. A stand-alone Cell Tower.

Redeveloper further agrees that each of the above use restrictions shall extend beyond the expiration of the Tax Increment Period, shall run with the Project Site while under the control of Redeveloper, its successors and permitted assigns (excluding the University) and thereafter with the Redeveloper Property and shall bind every person having any fee or other interest (excluding the University) in the Redeveloper Property and shall inure to the benefit of the parties hereto and their successors and permitted assigns. The use restrictions set forth in this Section shall survive Closing. The above use restrictions against the Redeveloper Property shall be included in a Memorandum of Agreement which the parties will prepare, execute and file of record at the time of Closing.

Section 204. Construction Administration.

A. **Redevelopment Project Improvements.** Redeveloper shall be responsible for all components of the Redevelopment Project Improvements, including construction management, coordination of contractors and regulatory permitting and other requirements. Redeveloper shall be entitled to charge a reasonable administrative fee for such services described above. The Redeveloper will be solely responsible for payment of all construction costs attributable to the Redevelopment Project Improvements subject to the terms and conditions of this Agreement.

B. **City Inspection.** Upon notification being provided by the Redeveloper to the City that the Public Improvements, or any portion thereof, to be constructed under this Agreement have been completed, the City shall inspect or cause to be inspected said Public Improvements so as to make certain that said improvements are properly constructed according to applicable standard specifications.

Section 205. Timing of Construction. Redeveloper will use commercially reasonable efforts to commence construction of the Private Improvements on or before May 1, 2013 and to complete the Private Improvements and Public Improvements by August 1, 2014, following City Council's approval and the Mayor's execution of this Agreement. Timely commencement of construction of the Private Improvements shall be a condition precedent to the requirement of the City to issue TIF Indebtedness as provided for and defined in Section 301 below and to reimburse the Redeveloper for the cost of the Public Improvements as provided in Sections 303 and 304 below.

Section 206. City's Option of Terminate this Agreement. In the event Redeveloper fails to timely commence construction of the Private Improvements in accordance with Section 205 above, the City shall be entitled to terminate this Agreement and exercise its rights under the Property Transfer Agreement between the City and the University.

Section 207. Condominium Regime. Redeveloper reserves the right to subject the Private Improvements to a condominium regime to facilitate the separation and financing of the various components including the creation of a condominium unit for the UNL Garage. Redeveloper shall obtain the City's consent to the initial Declaration of Condominium Regime, which consent shall be supplied if such condominium regime is consistent with the terms of this Agreement.

ARTICLE III

TAX AGREEMENT

Section 301. Issuance of TIF Indebtedness. As soon as is practicable following the commencement of construction of the Private Improvements (but no earlier than thirty (30) days) following the Commencement Date of this Agreement and as set forth in the first paragraph of

this Agreement, the City shall issue TIF Indebtedness evidenced by the City's bond in the estimated amount of the tax increment to be generated on the Redevelopment Project ("**TIF Bond**") to be purchased by the Redeveloper or Redeveloper's Lender ("**TIF Bond Purchaser**") and shall receive proceeds from the sale of the TIF Bond ("**TIF Proceeds**") from the TIF Bond Purchaser to be deposited into a City fund account (the "**City Project Account**") and expended in the priority set forth in Section 304 below. Redeveloper understands and acknowledges that the TIF Bond shall specifically provide that any shortfall in anticipated TIF Tax Revenues from the Private Improvements for any reason whatsoever, specifically including a decline in taxable valuation of the Project Site and improvements thereon, shall be borne entirely by the TIF Bond Purchaser without recourse of any kind against the City. The City and Redeveloper agree that the City Finance Director on behalf of the City shall have the authority to determine all the other necessary and reasonable details and mechanics of the TIF Indebtedness, TIF Bond, TIF Tax Revenues, City Project Account and the grant of funds for the eligible TIF cost of the Redevelopment Project Improvements that do not materially affect the amount of the TIF Proceeds obtained by Redeveloper or Redeveloper's obligations hereunder.

Section 302. Valuation of Private Improvements. The City intends to use the Ad Valorem Tax Provision to generate approximately Four Million Two Hundred Fifty Thousand and No/100 Dollars (\$4,250,000.00) which is the estimated amount of the tax increment ("**TIF Tax Revenues**") to be derived from the increased valuation of the Project Site, determined in the manner provided for in Article 8, Section 12 of the Constitution of the State of Nebraska and the Community Development Act which will be attributable to the construction of the Private Improvements under this Agreement. Redeveloper agrees not to contest any taxable valuation assessed for the Project Site and Private Improvements thereon which does not exceed the

following values, commencing on the effective date of the Ad Valorem Tax Provision and continuing for a period of not to exceed fifteen (15) years after said effective date or so long as any portion of the TIF Indebtedness with respect to the Redevelopment Project remains outstanding and unpaid, whichever period of time is shorter:

Not to Protest Total \$20,820,000.00

Section 303. Grant of Funds. In order to support redevelopment of the Redevelopment Area and as an inducement for the Redeveloper to construct the Private Improvements, the City agrees, to the extent allowed by law and then only to the extent TIF Proceeds are lawfully available from the issuance of the TIF Bond, to make a grant or grants to Redeveloper up to the total amount of the TIF Proceeds less the City's cost to issue the TIF Bond and to fund the City Public Improvements in the amount of \$325,000 ("**Grant Funds**"), to reimburse Redeveloper (or make payment directly to the contractor) for the cost of the priority items identified in Section 304 (Use of TIF Proceeds) below, provided that only costs incurred after the Commencement Date of this Agreement shall be eligible for payment. The grants are restricted and earmarked for the funding of TIF eligible Redevelopment Project Improvements as described herein and the Redeveloper does not have discretionary judgment over the applications of said Grant Funds. In order to receive reimbursement from Grant Funds, the Redeveloper shall submit a request for reimbursement to the City supported by receipts, invoices, proof of payment or other documentation satisfactory to the City to verify the expenditures were eligible Redevelopment Project Costs. The City shall approve or reject the same with reasons stated based up its review of the documentation within ten (10) days of receipt of the same. Reimbursement by the City to the Redeveloper shall be made promptly after approval of the request for reimbursement by the City. Any ineligible use of the Grant Funds shall immediately be repaid to the City.

Section 304. Use of TIF Proceeds. The TIF Proceeds deposited into the City Project Account shall be expended in the following priority for those amounts reflected on Exhibit “D”:

FIRST PRIORITY: Reimburse the City for the cost of issuing the TIF Bond, including but not limited to bond counsel fees, fiscal advisory fees, placement fees, capitalized interest, and reserves;

SECOND PRIORITY: Fund \$325,000 of the \$500,000 City project account for the City Public Improvements;

THIRD PRIORITY: Reimburse Redeveloper for costs of the Streetscape within the Project Site;

FOURTH PRIORITY: Reimburse Redeveloper for the costs of the 18th Street Repaving;

FIFTH PRIORITY: Reimburse Redeveloper for costs of the Residential Façade Enhancements in accordance with the description contained in Section 104(C)(1)(a) above;

SIXTH PRIORITY: Reimburse Redeveloper for the costs of the 18th & R Streets Garage Façade Enhancements consisting of those enhancements described in Section 104(C)(1)(b) above;

SEVENTH PRIORITY: Reimburse Redeveloper for the costs of the Energy Efficiency Enhancements as described in Section 104(C)(2) above; and

EIGHTH PRIORITY: Fund the remaining \$175,000 of the \$500,000 City project account for the City Public Improvements plus any other identified City Public Improvements in the event TIF Tax Revenues exceed the amount of the TIF Bond.

In the event there is not enough available Grant Funds from the TIF Proceeds to complete the Seventh Priority item for Energy Efficiency Enhancements, then the Redeveloper shall be authorized to use its good faith efforts to reduce the scope, scale, size or phasing of that priority item. Notwithstanding any provision in this Agreement to the contrary, Grant Funds from the

TIF Proceeds to reimburse the Developer for Third through Seventh Priority items shall not exceed the lesser of \$4,006,981 or the amount of the TIF Proceeds less the City's cost to issue the TIF Bond and to fund the City Public Improvements in the amount of \$325,000.

Section 305. Debt Service for TIF Indebtedness. The City shall, to the extent allowed by law, and then only to the extent funds are lawfully available from TIF Tax Revenues, pay the TIF Bond Purchaser the principal of and/or interest on the TIF Indebtedness with interest at a rate per annum not to exceed six percent (6%). Any debt service on the TIF Indebtedness (including interest) to be paid from TIF Tax Revenues shall not constitute a general obligation or debt of the City. Any excess TIF Tax Revenues resulting from the Tax Increment Provision on the Private Improvements not needed or required to pay the TIF Bond Purchaser for the TIF Indebtedness shall be expended by the City for priorities described above in Section 304 (Use of TIF Proceeds) and then returned to the applicable taxing authorities as provided in the Community Development Law.

Section 306. Tax Increment Deficiency on TIF Bond.

A. Redeveloper Purchased TIF Bond. If the Redeveloper purchases the TIF Bond, any shortfall in anticipated TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Project Site and the Private Improvements located thereon shall be borne entirely by the Redeveloper without recourse of any kind against the City. To the extent of any deficiency in TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on the TIF Indebtedness, the Redeveloper as purchaser of the TIF Bond agrees to defer payment of the same for each year that there exists a deficiency of such TIF Tax Revenues during the Tax Increment Period. If Redeveloper is required to defer any such payments, the City shall reimburse all sums deferred

plus interest (at the same interest rate of the then outstanding TIF Bond) if and when TIF Tax Revenues do become available during the TIF Period from the Ad Valorem Tax Provision to meet current debt service and reimburse Redeveloper for such deferred payments. In the event the TIF Indebtedness is not retired in full at the end of the Tax Increment Period, any remaining TIF Indebtedness shall be forgiven. In the event that any deficiency payments made by the Redeveloper as required by this subsection or any interest that has accrued thereon have not been repaid at the end of the Tax Increment Period, Redeveloper agrees that the City shall not be liable for payment of said amounts and that said amounts shall be forgiven.

B. Lender Purchased TIF Bond. If Redeveloper's Lender purchases the TIF Bond, the Redeveloper shall be liable to cover any shortfall in anticipated TIF Tax Revenues from the Tax Increment Provision for any reason whatsoever, specifically including a decline in taxable valuation of the Project Site and any improvements located thereon. Specifically, in the event of and to the extent of any deficiency in annual TIF Tax Revenues from the Ad Valorem Tax Provision for required debt service on the TIF Indebtedness, the Redeveloper agrees to pay the City the amount of said deficiency within thirty (30) days following receipt of a written request from the City. If Redeveloper is required to pay any such deficiency, the City shall reimburse all sums paid by said Redeveloper for such purposes plus interest (at the same interest rate of the then outstanding TIF Bond) to the extent TIF Tax Revenues do become available during the TIF Period from the Ad Valorem Provision to meet current debt service and reimburse Redeveloper for such deficiency payments. In the event that any deficiency payments made by the Redeveloper as required by this subsection or any interest that has accrued thereon have not been repaid at the end of the Tax Increment Period, Redeveloper agrees that the City shall not be liable for payment of said amounts and that said amounts shall be forgiven.

Section 307. Reimbursement of Grants. Subject to Section 501 (Remedies) below, Redeveloper agrees to repay the City the grant or grants of funds as provided for in Section 304 (Use of TIF Proceeds) above in the event Redeveloper fails to substantially complete the Redevelopment Project Improvements as provided in Section 205 (Timing of Construction) above and, upon such repayment of the of the grant funds, this Agreement shall be null and void in regards to the Redeveloper and the Project Site and the improvements located thereon. Subject to Section 501 (Remedies) below, in the event the Redeveloper fails to maintain the Redeveloper's Private Improvements as provided in Section 107 A (Duty to Maintain) above and does not cure any alleged failure to maintain within thirty (30) days of written notice by the City of said failure, then the Redeveloper shall reimburse the City the proportionate share (1/15) of the grant funds for said Private Improvements provided for in Section 303 (Grant of Funds) above, for each year the Redeveloper fails to maintain the Private Improvements, or a prorated part of the proportionate share for any portion of a year that Redeveloper is in default of this maintenance requirement.

Section 308. Restriction on Transfer. Redeveloper will not, for a period of fifteen (15) years after the effective date of the Ad Valorem Provision hereof or so long as the TIF Bond remains outstanding whichever period of time is shorter (tax increment period), convey or consent to the sublease of the Private Improvements within the Project Site or any portion thereof, to any entity which will result in such property being exempt from ad valorem taxes levied by the State of Nebraska or any of its subdivisions. Alternatively, in the event of a transfer to any entity whose real property is exempt from ad valorem taxes, any transferee shall be obligated to pay in full any outstanding principal and interest balance of the TIF Bond.

Section 309. Agreement to Pay Taxes. Redeveloper agrees to pay all real property taxes levied upon the Project Site and improvements thereon prior to the time the taxes become delinquent. This contractual obligation to pay such taxes prior to delinquency shall cease upon expiration of the Tax Increment Period, but the City in no way waives the statutory obligation to continue to pay real estate taxes. This provision shall not be deemed a waiver of the right to protest or contest the valuation of the lots or improvements for tax purposes.

Section 310. Insurance Damage or Destruction of Private Improvements. During the construction period of the Private Improvements Redeveloper agrees to keep the construction area, including completed operations insured against loss or damage by fire, and such other risks, casualties, and hazards as are customarily covered by builders' risk or extended coverage policies in an amount not less than the replacement value of the Private Improvements but allowing for reasonable coinsurance clauses and deductibles. In the event of any insured damage or destruction, Redeveloper agrees to restore the Private Improvements to their prior condition within twenty-four (24) months from the date of the damage or destruction, and shall diligently pursue the same to completion. In the event Redeveloper fails to restore the same for any reason, Redeveloper shall pay to the City the amount of tax increment received by the City for said Project Site in the preceding year times the number of years remaining in the Tax Increment Period to cover any deficiency described in Section 306. During the Tax Increment Period, Redeveloper shall include by restrictive covenant an enforceable obligation on the Redeveloper or other owner or tenant in possession to maintain property insurance on an extended coverage all-risk basis in an amount not less than the replacement value, allowing for reasonable coinsurance clauses and deductibles and also subject to the Redeveloper or other owner or tenant's obligation to restore the Private

Improvements to their prior condition within twelve (12) months from the date of the damage or destruction, diligently pursuing the same to completion.

Section 311. Condemnation. If during the Tax Increment Period, all or any portion of the Project Site is condemned by a condemning authority other than the City, and the condemning authority or its successor in interest would not be obligated to pay real estate taxes upon that portion condemned, the City shall be entitled to claim against the Condemner an interest in said property equal to the present value of the pro rata share of tax increment indebtedness outstanding as of the date of taking.

Section 312. Termination. The provisions of Article III of this Agreement shall terminate for the Project Site upon expiration of the Tax Increment Period.

ARTICLE IV

MORTGAGE FINANCING; RIGHTS OF MORTGAGEES

Section 401. Definitions.

A. Holder. For the purpose of this Agreement, the term “**Holder**” in reference to a Mortgage (defined below) shall be deemed to include any insurer or guarantor of any obligation or conditions secured by such Mortgage or similar type of encumbrance who succeeds to or becomes subrogated to the rights of the Mortgagee.

B. Mortgage. For the purpose of this Agreement, the term “**Mortgage**” shall include a deed of trust or other instrument creating an encumbrance or lien as security for a loan.

Section 402. Financing Creating Encumbrances Restricted. Prior to completion of Private Improvements, neither Redeveloper, nor any successors in interest with respect to the Project Site or any part thereof shall engage in any financing or any other transaction creating any Mortgage upon the Project Site or any part thereof, whether by express agreement or

operation of law, or suffer any encumbrance or lien to be made on or attached to any of such Project Site except for the construction and/or permanent financing obtained by Redeveloper for purposes of obtaining funds only to the extent necessary to design, construct, maintain, repair, replace and insure the Private Improvements. Redeveloper or any successor in interest as Redeveloper shall notify the City in advance of any financing secured by Mortgage that it proposes to enter into with respect to Project Site, and shall promptly notify the City of any Mortgage that has been created on or attached to Project Site whether by voluntary act of Redeveloper or otherwise. Notwithstanding the above, if any involuntary encumbrance or lien is made on or attached to any of the Project Site and which is contested by Redeveloper, then Redeveloper may defend against such encumbrance or lien, provided that a sufficient bond or security is posted with the clerk of the district court pursuant to Neb. Rev. Stat. § 52-142 to permit Redeveloper to avoid or prevent foreclosure of such encumbrance or lien. In addition, Redeveloper agrees that prior to completion of the Private Improvements, any loan proceeds secured by any interest in the Project Site shall be used solely for the payment of costs and expenses related to the development of the Private Improvements. Redeveloper shall provide a copy of all bank approvals related to the Private Improvements to the Director of Urban Development in a timely fashion.

Section 403. Mortgage Holder Obligations. Each Mortgage Holder who obtains title to the Project Site or any part thereof as a result of foreclosure or other judicial proceedings or action in lieu thereof shall not be obligated by and shall be exempt from those provisions of this Agreement which require construction and completion of the Private Improvements and which require such holder to be obligated to guarantee such construction and completion. The above exemption shall not run in favor of any purchaser at foreclosure or judicial sale other than

the Holder of the Mortgage; nor in favor of any person who subsequently obtains title to the Project Site or any part thereof from the Holder of the Mortgage; provided, however, no person, including the Holder of a Mortgage authorized by this Agreement, may devote the Private Improvements thereon or any part thereof to any use or construct any improvements thereon other than those uses and improvements provided and permitted in accordance with this Agreement.

Section 404. Copy of Notice of Default to Mortgage Holder. Whenever the City shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper of its obligations or covenants in this Agreement, the City shall at the same time forward a copy of such notice or demand to each Holder of any Mortgage against the Project Site at the last address of such Holder as shown in the records of the Register of Deeds of Lancaster County.

Section 405. Mortgage Holder Option to Cure Default. If thirty (30) days after any notice or demand with respect to any breach or default, such breach or default remains uncured, each such Holder shall (and every Mortgage or other instrument of encumbrance made prior to completion of the Private Improvements by Redeveloper or its successors in interest shall so provide) have the right, at its option, to cure or remedy such breach or default within sixty (60) days after the notice or demand referred to in Section 404 (Copy of Notice of Default) above and to add the cost thereof to the Mortgage debt and the lien of its Mortgage; provided, that if the breach or default is with respect to construction of the Private Improvements, nothing contained in this Section or any other Section of this Agreement shall be deemed to permit or authorize Holder to modify this Agreement as approved by the City. If the Holder commences efforts to cure the default within such sixty (60) day period and the default cannot, in the exercise of due diligence,

be cured within such period, the Holder shall have the right to diligently continue to cure the defaults. In the event the Holder fails to cure, then the City shall have the remedies provided for in this Agreement.

Section 406. Rights Applicable to Other Forms of Encumbrance. The rights and obligations of this Agreement relating to Mortgages of any portion of the Project Site shall apply to any other type of encumbrance on any of the Project Site, and any of the stated rights, obligations and remedies of any party relating to Mortgage foreclosures shall be applicable to procedures under any deed of trust or similar method of encumbrance.

Section 407. Termination. The provisions of Article IV of this Agreement shall terminate upon City's issuance to Redeveloper of Redeveloper's Certificate of Building Completion for all the Private Improvements to be constructed on the Project Site pursuant to this Agreement.

ARTICLE V

REMEDIES

Section 501. In General. Except as otherwise provided in this Agreement, in the event of any default in performance of this Agreement, the party in default, or its successors, shall, upon written notice from the other, proceed immediately to cure or remedy such default within thirty (30) days after receipt of notice. However, if the default cannot, in the exercise of reasonable diligence, be cured within thirty (30) days, then the defaulting party shall commence efforts to cure and shall diligently continue to cure the default. If the default is not cured, the non-defaulting party may institute any proceedings which may be necessary to cure and remedy the default.

Section 502. Waiver. The parties shall have the right to institute actions or proceedings as they may deem necessary to enforce this Agreement. Any delay in instituting or prosecuting any

action or otherwise asserting rights under this Agreement shall not operate as a waiver of rights or limit rights in any way.

Section 503. Delay in Performance For Causes Beyond Control of Party (“Force Majeure”). The parties and their successors or assigns shall not be in default of their obligations for delay in performance due to causes beyond their reasonable control and without their fault, including but not limited to acts of God, acts of the public enemy, acts of the federal or state government or subdivisions thereof, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, shortages of labor or materials, or delays of contractors, or subcontractors due to such causes. The purpose and intent of this Section is that in the event of the occurrence of any such delay, the time for performance of the obligations of either party with respect to construction of improvements shall be extended for the period of delay. However, in order to obtain the benefit of the provisions of this Section, the party seeking the benefit shall within thirty (30) days after the beginning of the delay of performance notify the other party in writing of the cause and the reasonably expected length of delay.

Section 504. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement shall be cumulative and the exercise by either party of anyone or more remedies shall not preclude the exercise by it of any other remedies for any other default or breach by the other party. A waiver of any right of either party conferred by this Agreement shall be effective only if in writing and only to the extent specified in writing.

ARTICLE VI

REPRESENTATIONS OF THE REDEVELOPER AND CITY

Section 601. Representations. Redeveloper represents and agrees that its undertakings, pursuant to this Agreement, have been, are, and will be, for the purpose of redevelopment of the Project Site and not for speculation in land holding.

Section 602. Restrictions on Assignments of Rights or Obligations. Redeveloper represents and agrees that prior to completion of the Private Improvements provided for above there shall be no sale or transfer of the Project Site or assignment of Redeveloper's rights or obligations under this Agreement to any party without the prior written approval of the City (which shall not be unreasonably withheld, conditioned, or delayed), other than Mortgages and involuntary transfers by reason of death, insolvency, or incompetence. The City shall be entitled to require, as conditions to any required approval, that:

A. Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by Redeveloper;

B. Any proposed transferee, by instrument satisfactory to the City and in form recordable in the Office of the Register of Deeds, shall for itself and its successors and assigns and for the benefit of the City, have expressly assumed all of the obligations of Redeveloper under this Agreement;

C. There shall be submitted to the City for review, not less than ten (10) days prior to the proposed execution thereof, all instruments and other legal documents involved in the transfer or described in this Agreement; and if disapproved by the City, its disapproval and reasons therefore shall be indicated to Redeveloper in writing; and

D. Nothing herein contained shall prohibit the Redeveloper from entering into any agreement to sell or other agreement as to transfer of any interest if such agreement can, by

its terms only, become effective after the City has issued a Redeveloper's Certificate of Completion. This restriction on transfer or assignment shall not apply to the transfer of the condominium unit in which the UNL Garage is located to the University.

Section 603. Redeveloper Representations and Warranties. Redeveloper represents and warrants to the parties as follows:

A. Organization; Power; Good Standing. Redeveloper is a Nebraska limited liability company duly organized and validly existing in good standing under the laws of Nebraska. Redeveloper is qualified to do business in the State of Nebraska and has all requisite power and authority to own and operate its properties and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

B. Authority Relative to Agreement. This Agreement has been duly executed and delivered by Redeveloper and constitutes a legal, valid and binding obligation of Redeveloper, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

C. Effect of Agreement. The execution, delivery and performance of this Agreement by Redeveloper has been duly authorized by all necessary action by Redeveloper and except as provided in this Agreement will not require the consent, waiver, approval, license or authorization of any person or public authority, and will not violate any provision of law applicable to Redeveloper, and will not violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which Redeveloper is a party.

Section 604. City Representations to Redeveloper. City represents and warrants to the parties as follows:

A. **Requisite Power and Authority.** The City has all requisite power and authority to carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

B. **Authority Relative to Agreement.** This Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

C. **Effect of Agreement.** The execution, delivery and performance of this Agreement by the City has been duly authorized by all necessary action by the City and except as provided in this Agreement will not require the consent, waiver, approval, license or authorization of any person or public authority, and will not violate any provision of law applicable to the City, and will not violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which the City is a party.

D. **City Maintenance.** Upon completion of the City Public Improvements which may be constructed as part of the Redevelopment Project, the City, at its expense, will maintain the City Public Improvements as public improvements and public utilities.

Section 605. Conflicts of Interest: City Representatives Not Individually Liable.
No official or employee of the City shall be personally liable to Redeveloper or any successors in interest due to any default or breach by the City or for any amount which may become due to Redeveloper or any successors under the terms of this Agreement.

ARTICLE VII

MISCELLANEOUS

Section 701. Persons Authorized to Issue Approvals. For purposes of this Agreement and the approvals and disapprovals required hereunder, the parties shall be entitled to rely on the written approval or disapproval of (i) the City Council, the Mayor, the Director of the Department of Urban Development, or the Director of Public Works, or its successor, as constituting approval or disapproval of the City; and (ii) the Manager of the Redeveloper, as constituting approval or disapproval of the Redeveloper. The Mayor is hereby authorized to take such action as the Mayor may deem necessary or advisable in order to carry out this Agreement, including, but not limited to, the authority to make ministerial alterations, changes or additions to the foregoing described Public Improvements and to this Agreement.

Section 702. Notices and Demands. A notice under this Agreement by a party to the other party shall be deemed delivered on the date it is postmarked, sent postage prepaid, certified or registered mail, or delivered personally to:

If to the City: Mayor
555 South 10th Street
Lincoln, Nebraska 68508

With a copy to: City Attorney
555 South 10th Street
Lincoln, Nebraska 68508

If to Redeveloper: AF-18R-Lincoln, LLC
c/o America First Real Estate Group
One Burlington Place
1004 Farnum Street, Suite 400
Omaha, NE 68102

With a copy to: Thomas C. Huston
Cline Williams Wright Johnson & Oldfather, LLP
233 South 13th Street, Suite 1900
Lincoln, NE 68508

or at such other address with respect to either party as that party may from time to time designate in writing and notify the other as provided in this Section.

Section 703. Approval Not Unreasonably Withheld and Timely Approval. Whenever approval or consent of either party is required hereunder, such consent shall not be unreasonably withheld or delayed. Except as may be specifically otherwise stated, any approval or disapproval required in this Agreement shall be issued within fourteen (14) days after receipt by the party issuing such approval/disapproval of all necessary information from the party requesting such approval. The party issuing such approval/disapproval shall promptly advise the requesting party as to whether all necessary information has been received. If any party to this Agreement submits any item to another party to this Agreement for approval pursuant to this Agreement, and the party so requested to approve fails to issue written approval or disapproval within the time period specified for such approval or disapproval, then such failure shall constitute approval of such item.

Section 704. Access to Project Site. During construction of the Redevelopment Project Improvements, the other parties shall permit the representatives of the City to enter all areas of the Project Site at any and all reasonable times, as the City may deem necessary for the purposes of inspection of work being performed in connection with the construction of the Private Improvements. No compensation shall be payable nor shall any charges be made in any form by any party for the access or inspection provided in this Section. The City's right of access granted under this Section as it applies to the Private Improvements within the Project Area shall terminate for any Building upon issuance by the City of the Certificate of Completion.

Section 705. Provisions Run With the Land. This Agreement shall run with the Project Site and shall inure to and bind the parties and their successors in interest for the fifteen (15) year TIF Period or other length of time as provided in this Agreement. This Agreement or a Memorandum hereof, substantially similar to the Memorandum attached hereto as Exhibit “F”, shall be recorded with the Register of Deeds of Lancaster County, Nebraska, against the Project Site (excluding the UNL Garage), at the Redeveloper’s expense. Except as otherwise provided herein, the provisions and covenants of this Agreement shall terminate upon issuance by the City of the Certificate of Completion and the City’s acceptance of the Public Improvements and dedication or conveyance of the related public easements.

Section 706. Equal Employment Opportunity. Pursuant to requirements of Section 11.08.160 of the Lincoln Municipal Code and Neb. Rev. Stat. § 48-1122 (Reissue 2010), Redeveloper, and its successors and transferees, agree that, during the performance of this Agreement, it will not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment because of race, religion, sex, color, national origin, ancestry, disability, age or marital status. Redeveloper further agrees to require that its contractor and subcontractors shall agree to conform to said requirements.

Section 707. Audit and Review. Redeveloper shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law. The City shall cooperate and make available to the Redeveloper or its agent, copies of all financial and performance related records and materials germane to the Project Account and the TIF Proceeds.

Section 708. Titles of Articles and Sections. Titles of the Articles and Sections and other parts of this Agreement are inserted for convenience only and shall be disregarded in interpreting any of its provisions.

Section 709. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally. The parties agree that any grant paid hereunder to the Redeveloper for TIF Eligible Redevelopment Project Undertakings are for the benefit of the City and the public and are granted pursuant to the contract provisions described herein and that such grant funds are not under the dominion and control of the Redeveloper and should not be construed as income to the Redeveloper under the Internal Revenue Code Section 61 (I.R.C. § 61), as may be amended.

Section 710. Certain Public Improvements. Notwithstanding any contrary provisions herein, certain Public Improvements will include design costs, improvements and construction that the City determines to be unique and not-competitive or otherwise involving professional services to the extent the same are required to coordinate, match and integrate the Public Improvements with the Private Improvements. Redeveloper shall timely submit architect, engineer or other professional designer estimates or contractor's estimates for said Public Improvements and Public Enhancements in advance of requesting payment for the same to enable the City to obtain an independent review of the same by a qualified professional or contractor. The City shall approve or reject said cost estimates based on the review within ten (10) days of receipt of the same. Where reasonable and appropriate, the Redeveloper shall utilize unit price or itemized contracts specifically showing the eligible items or quantities prior to letting or entering into the same. Overhead, overtime, incentive, office, mobilization,

administration or similar generalized charges shall be allowed only as authorized by the City in advance of incurring the same. The Redeveloper agrees to assist and make any and all pertinent documents available for inspection and copying by the City or its auditors in support of the same.

Section 711. Integrated Contract; Severance Provisions; Interpretation; Governing Law. It is intended by the parties that this Agreement and the incorporated, attached, and referenced documents shall be an integrated contract, but that invalidation of any of its provisions by judgment or court order shall in no way affect any other provisions which remain in full force and effect unless such court action shall materially change the intent of this Agreement. As this Agreement has been negotiated drafted through the efforts of the parties, any uncertainty or ambiguity shall be interpreted according to the application of rules of interpretation generally and not against either party for the reason that said party drafted that portion of the Agreement. This Agreement shall be construed and governed by the laws of the State of Nebraska.

Section 712. Successors and Assigns. The provisions of this Agreement shall be binding upon Redeveloper and its successors and assigns; provided, however, that the obligations of the Redeveloper pursuant to this Agreement shall be binding upon Redeveloper and its successors and assigns only during their respective periods of ownership.

Section 713. Purpose of Agreement. This Agreement has been entered into by the City to provide financing for the 18th & Q Streets Project, an approved project within the Redevelopment Plan.

Section 714. Expiration. Except for the duty to maintain the Façade Enhancements, Streetscape Improvements and the Use Restrictions as provided in Sections 107.A, 107.B and 203, respectively, applicable to the Redeveloper, its successors and permitted assigns (excluding the

University) and as otherwise provided herein, this Redevelopment Agreement shall terminate and expire upon (i) the completion of the Private Improvements, and (ii) the expiration of the Tax Increment Provision.

Section 715. Counterparts. This Agreement may be executed in one or more counterparts which, when assembled, shall constitute an executed original hereof.

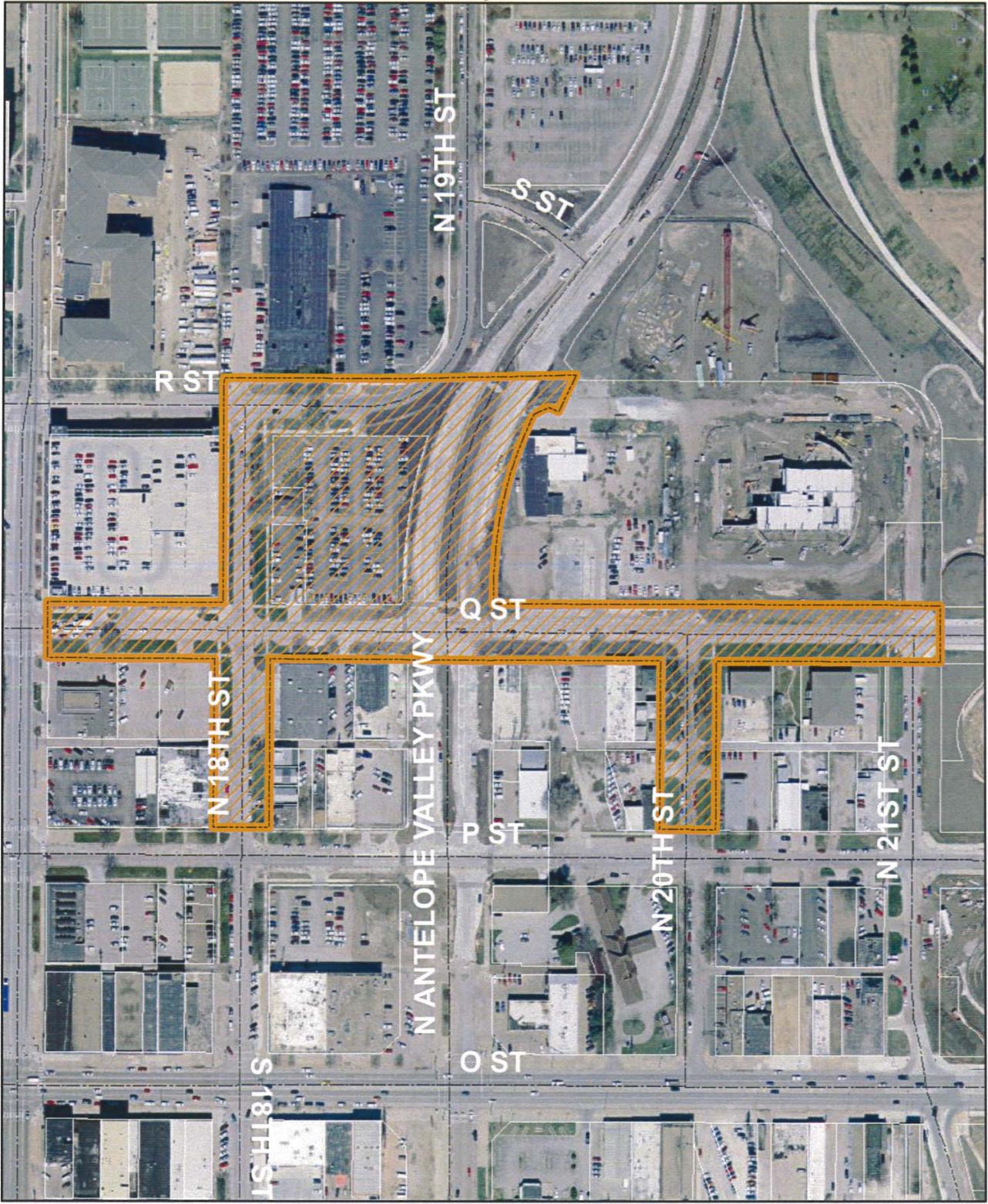
Section 716. Effective Date of the Ad Valorem Tax Provision. The effective date of the Ad Valorem Tax Provision shall be January 1, 2014 (the year of Substantial Completion of the Private Improvements) and the City will deliver written notice to the County Assessor on or before August 1, 2014 to divide the property taxes in the Project Area and use the last certified valuation for 2013 to divide the taxes for the remaining portion of the fifteen-year period as described in Section 18-2147 (3).

Section 717. Exhibits. The following Exhibits are attached to this Agreement and are incorporated herein by this reference:

- Exhibit "A" – Redevelopment Area Map
- Exhibit "A-1" – Project Site Legal Description
- Exhibit "B" – Private Improvements
- Exhibit "C-1" – Public Improvements (Utility Relocation)
- Exhibit "C-2" – Public Improvements (Street Improvements)
- Exhibit "D" – Uses and Sources of Funds
- Exhibit "E" – Certificate of Completion
- Exhibit "F" – Memorandum of Redevelopment Agreement and Use Restrictions
- Exhibit "G-1" – Façade Agreement
- Exhibit "G-2" – Streetscape Maintenance Agreement
- Exhibit "H" – Easement and Hold Harmless Agreement

[SIGNATURE PAGES FOLLOW]

Exhibit "A"
Redevelopment Area



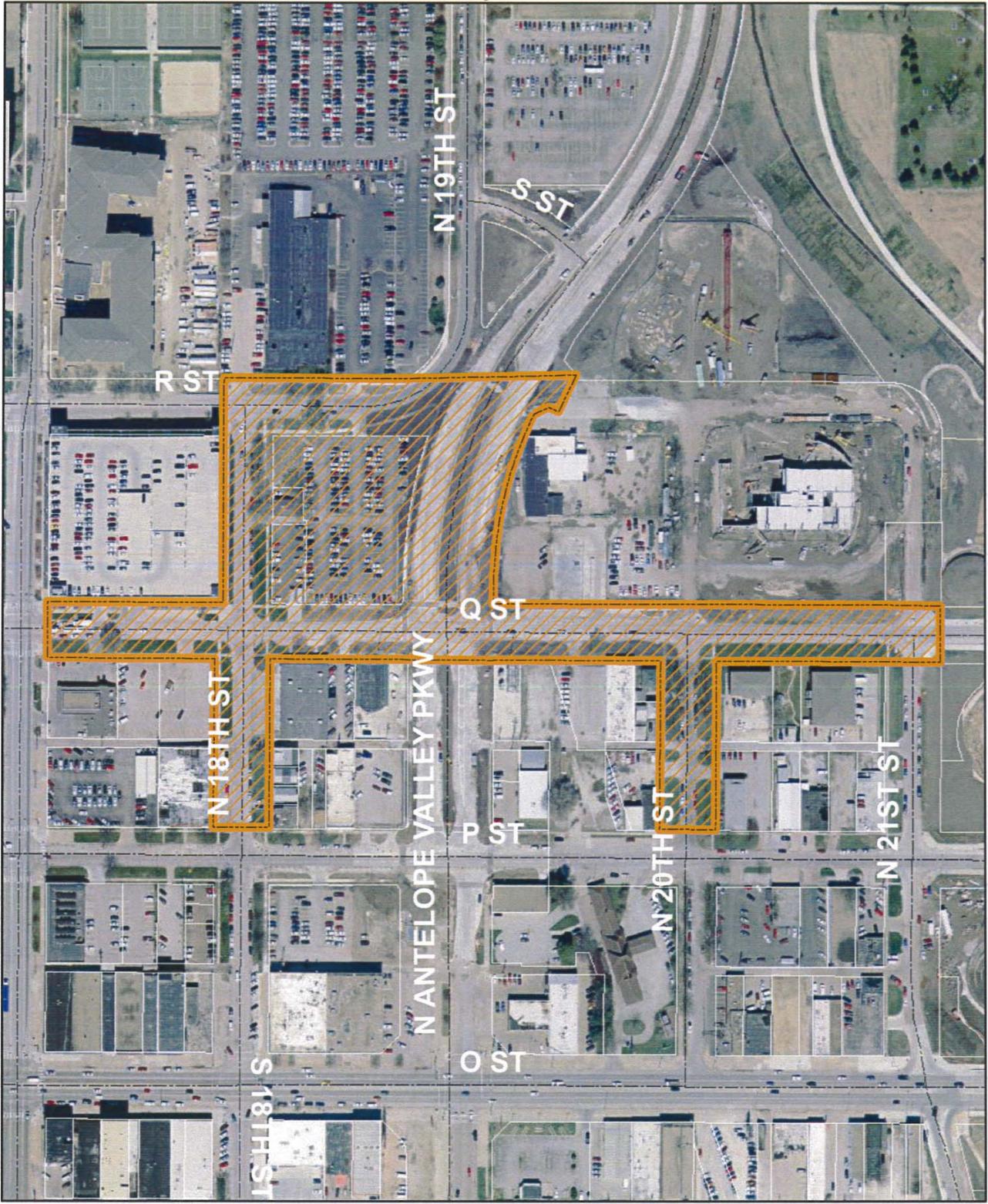
The Wrap Redevelopment & Project Area

 The Wrap Project Area

City of Lincoln: Urban Development Department



Exhibit "A"
Redevelopment Area



The Wrap Redevelopment & Project Area

 The Wrap Project Area

City of Lincoln: Urban Development Department



Exhibit "A-1"
Project Site Legal Description

Parcel 1:

Lot 1, Block 1, Antelope Valley 2nd Addition, Lincoln, Lancaster County, Nebraska.

Parcel 2:

The South 50 feet of Lot 6 and the South 50 feet of the West 5 feet of Lot 5, Block 9, Kinney's "O" Street Addition, Lincoln, Lancaster County, Nebraska.

Parcel 3:

Lot 7 and the West 11 feet of Lot 8, Block 9, Kinney's "O" Street Addition, Lincoln, Lancaster County, Nebraska.

Exhibit "B"

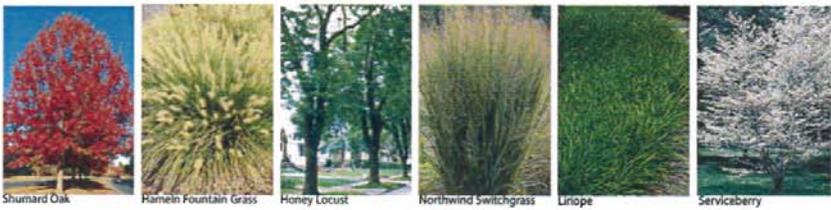
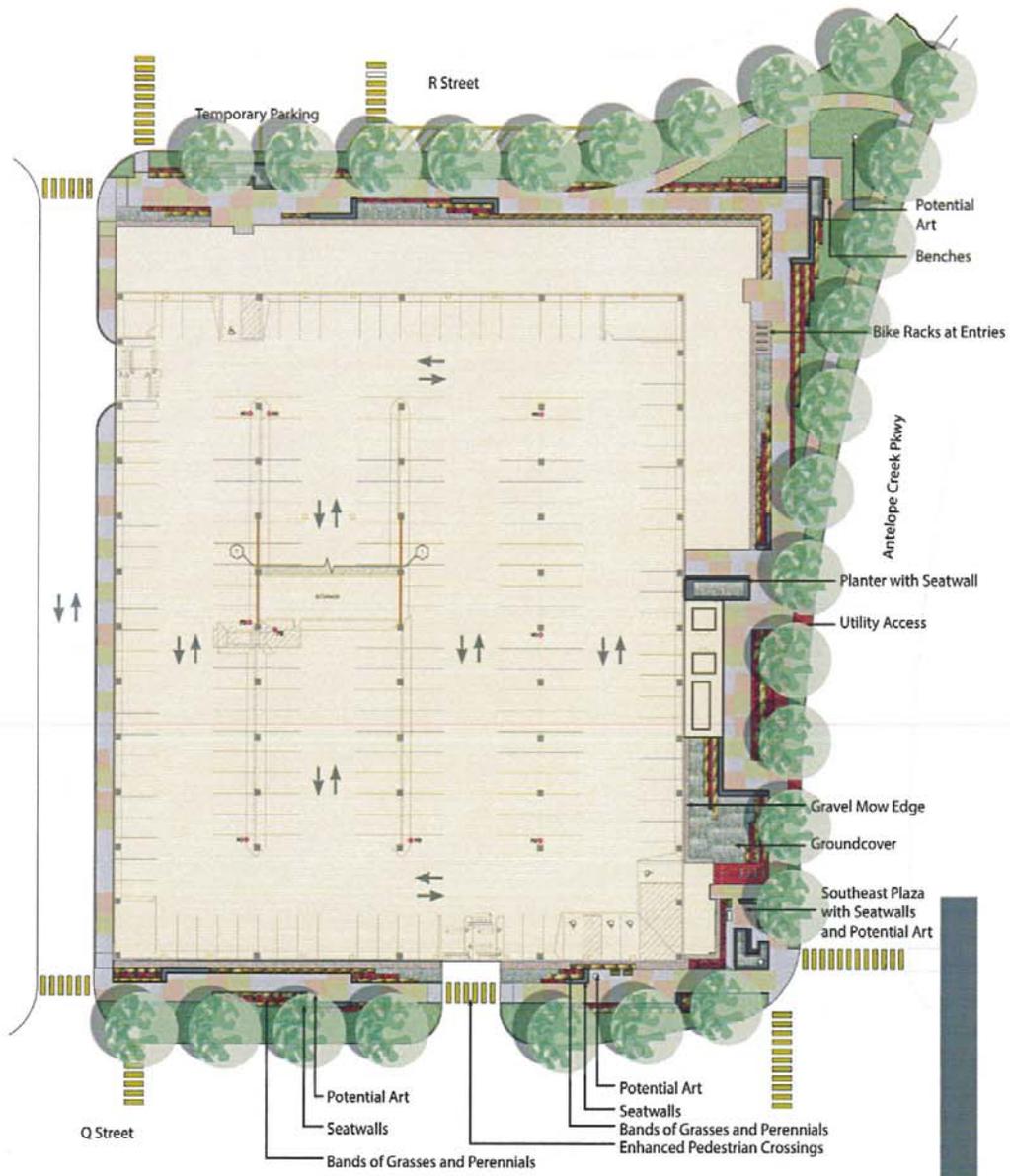
Private Improvements



Exhibit "B"



Exhibit "B"



Shumard Oak Hameln Fountain Grass Honey Locust Northwind Switchgrass Linope Serviceberry



Concept Landscape Plan

The Wrap
Lincoln, NE



Exhibit "B"



VIEW LOOKING NORTHWEST

the WRAP
lincoln, ne

P# 12046
02.10.13

HBA
HOLLAND-BANISH
ARCHITECTS

Exhibit "B"

Exhibit "C-1"

Redeveloper Public Improvements (Utility Relocation)

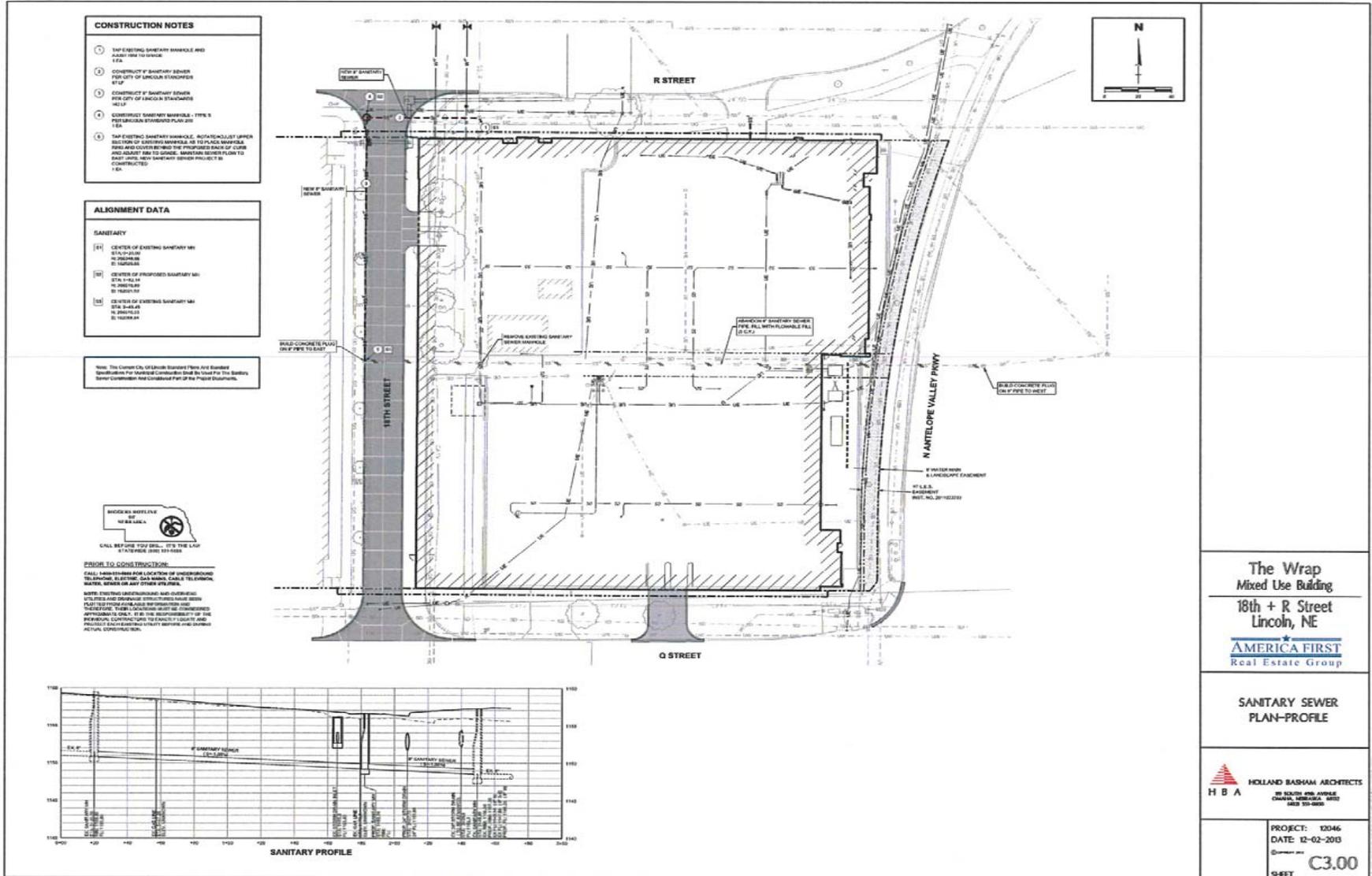
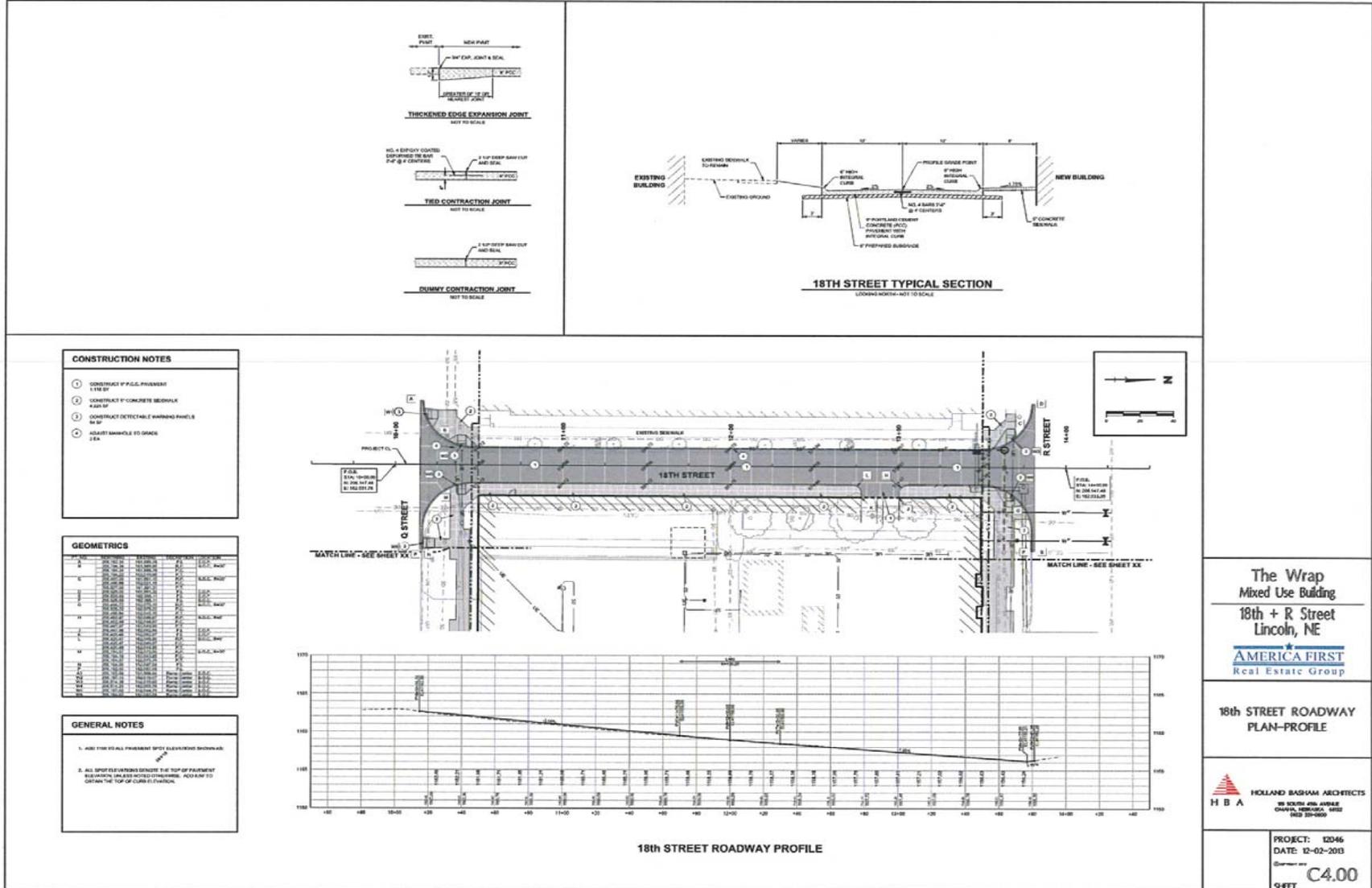


Exhibit "C-2"
 Redeveloper Public Improvements (Streetscape Improvements)



The Wrap
 Mixed Use Building
 18th + R Street
 Lincoln, NE
 AMERICA FIRST
 Real Estate Group

18th STREET ROADWAY
 PLAN-PROFILE

H B A HOLLAND BASHAM ARCHITECTS
 88 SOUTH 4TH AVENUE
 OMAHA, IOWA 68102
 402.333.0000

PROJECT: 12046
 DATE: 12-02-2013
 SHEET: C4.00

Exhibit “D”
Uses and Sources of Funds

1	Cost of Issuance	\$ 10,000.00
2	City Public Improvements	\$ 325,000.00
3	Streetscape Improvements	\$ 338,489.00*
4	18th Repaving	\$ 98,262.00*
5	Residential Façade	\$ 289,812.00*
6	Garage Façade	\$1,829,281.00*
7	Energy Efficiency	\$1,451,087.00*
	TOTAL	<u>\$4,341,931.00</u>
8	City Public Improvements	\$175,000**

* not to exceed the lesser of \$4,006,981 or the amount of the TIF Proceeds less the City’s cost to issue the TIF bond and to fund the City Public Improvements in the amount of \$325,000.

** plus any additional amount of TIF Tax Revenues.

Exhibit "E"
Certificate of Completion

**CERTIFICATE OF COMPLETION OF
PRIVATE IMPROVEMENTS**

KNOW ALL PEOPLE BY THESE PRESENTS: That the City of Lincoln, Nebraska, a Nebraska municipal corporation, hereinafter called "**City**", hereby makes the conclusive determination and certification that, with regard to the following real property situated in the City of Lincoln, Lancaster County, Nebraska, to wit ("**Redeveloper Property**"):

_____, Original Lincoln, Lancaster
County, Nebraska

all the improvements required to be constructed upon the above-described Redeveloper Property have been satisfactorily completed in accordance with the requirements of the CITY OF LINCOLN REDEVELOPMENT AGREEMENT (18th & Q Streets) ("**Agreement**") by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation in the State of Nebraska ("City") and **AF-18R-LINCOLN, LLC**, a Nebraska limited liability company, and its successors and assigns ("Redeveloper"), said Agreement dated as of _____, 2013 and recorded as Instrument No. _____, in the office of the Register of Deeds for Lancaster County, Nebraska.

The City further makes the conclusive determination that the Private Improvements (as defined in the Agreement) to the above-described Redeveloper Property are presently in conformance with the Agreement.

IN WITNESS WHEREOF, the City and Redeveloper have executed this instrument this _____ day of _____, 20__.

“City”

CITY OF LINCOLN, NEBRASKA, a municipal corporation

ATTEST:

City Clerk

By: _____
Chris Beutler, Mayor of Lincoln

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public

“Redeveloper”

AF-18R-LINCOLN, LLC, a Nebraska limited liability company

By: _____

Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, _____ of AF-18R-Lincoln, LLC, a Nebraska limited liability company, on behalf of the limited liability company.

(Seal)

Notary Public

Exhibit "F"
Memorandum

MEMORANDUM OF REDEVELOPMENT AGREEMENT & USE RESTRICTIONS

THIS MEMORANDUM OF REDEVELOPMENT AGREEMENT & USE RESTRICTIONS ("Memorandum") is made and entered into as of the date of execution hereof by the last signatory hereto as indicated below (the "Effective Date") by and between the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation in the State of Nebraska and its successors and assigns ("City") and **AF-18R-LINCOLN, LLC**, a Nebraska limited liability company, and its successors and assigns ("Redeveloper").

1. **Redevelopment Agreement.** The City and Redeveloper entered into that certain Redevelopment Agreement dated as of this even date, describing the public improvements being made on behalf of the City in the Redevelopment Area and the Private Improvements being made to real property owned by (or to be leased by) the Redeveloper and legally as _____, Lincoln, Lancaster County, Nebraska.

2. **Tax Increment Financing.** The Redevelopment Agreement provides for the capture of the Tax Increment, as defined therein, by the City of the Private Improvements to be made by the Redeveloper for a period not to exceed fifteen (15) years after the Redevelopment Project effective date defined in the Redevelopment Agreement. The Tax Increment so captured by the City shall be used to make the Public Enhancements and Private Improvements as described in the Redevelopment Agreement.

3. **Remaining Terms.** The rest and remaining terms of the Redevelopment Agreement are hereby incorporated into this Memorandum as if they were set forth in full. A

full and correct copy of the Redevelopment Agreement may be inspected at the office of the City Clerk of Lincoln, Nebraska.

4. **Use Restrictions of the Property.** The Redeveloper agrees that no portion of the Project site under the ownership or control of Redeveloper shall be used for any of the following uses:

A. The retail sale of alcoholic beverages for consumption off the premises, but excluding micro-brewing establishments that sell alcoholic beverages for consumption off the premises and restaurants allowing the removal of an unsealed bottle of wine pursuant to Neb. Rev. Stat. §53-123.04, as amended;

B. The retail sale of alcoholic beverages for consumption on the premises if such use, in the opinion of the City, has an unreasonable pattern of unlawful disturbances or alcoholic beverage law violations;

C. Any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such use that has an unreasonable pattern of unlawful disturbances or tobacco law violations;

D. A sexually oriented business including live entertainment establishments as defined in Section 27.03.545 of the Lincoln Municipal Code and any other business engaged in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; exotic lingerie; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service. The foregoing exclusion shall not include pay for view video/audio services, internet and other forms of telecommunication/communication systems offered or available to guests in the ordinary course of hotel business and trade or to Lincoln residents;

E. Any business whose predominant operation is car wash, dry cleaning, vehicle body repair, paint, refinishing, or parts and equipment cleaning business; provided nothing herein shall be construed to prohibit dry cleaning pickup facility, convenience, food or fuel store;

F. Any business involving gambling or wagering even if otherwise permitted by law including slot machines, video lottery machines, casino games, or off-site pari-mutual wagering sites, but excluding live horse-racing, off-site pari-mutual and simulcast horse-racing, keno, bingo, and the retail sale of lottery tickets as permitted by applicable law;

G. Any business involving the sale of weapons, self-service laundromats for nonresidents or non-occupants, illegal activities, or sale of any illegal goods or products;

H. Off premises signs as defined in Section 27.69.020 of the Lincoln Municipal Code; and

I. Any business providing payday loans, liens, check cashing services, or other similar services, except for banks, savings and loans, insurance company, investment companies, stock brokers, credit unions and automated teller machines.

J. A stand-alone Cell Tower.

It is intended that each of the restrictions set forth hereby shall extend beyond the TIF Tax Period, shall run with the Project Site while under the ownership or control of the Redeveloper its successors and assigns (excluding the University) and thereafter with the Redeveloper Property and shall bind every person (excluding the University) having any fee or other interest in the Redeveloper Property and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

5. **Inquiries.** Further inquiries regarding this Memorandum may be made to the following parties:

If to the City: Mayor
555 South 10th Street
Lincoln, Nebraska 68508

With a copy to: City Attorney
555 South 10th Street
Lincoln, Nebraska 68508

If to Redeveloper: AF-18R-Lincoln, LLC
c/o America First Real Estate Group
One Burlington Place
1004 Farnam Street, Suite 400
Omaha, NE 68102

With a copy to: Thomas C. Huston
Cline Williams Wright Johnson & Oldfather, L.L.P.
233 South 13th Street, Suite 1900
Lincoln, NE 68508

or at such other address with respect to either party as that party may from time to time designate in writing and notify the other as provided in this Section.

[SIGNATURE PAGES TO FOLLOW]

Exhibit "G-1"
Façade Agreement

FAÇADE AGREEMENT
(_____)

THIS FAÇADE AGREEMENT (the "Agreement") is made this ____ day of _____, 2013 by and between AF-18R-Lincoln, L.L.C., a Nebraska limited liability company, ("Redeveloper"), and the City of Lincoln, Nebraska, a municipal corporation in the State of Nebraska ("City").

RECITALS

- A. Redeveloper leases under a long term lease certain real estate located in Lincoln, Lancaster County, Nebraska, legally described as:

Parcel 1:

Lot 1, Block 1, Antelope Valley 2nd Addition, Lincoln, Lancaster County, Nebraska.

Parcel 2:

The South 50 feet of Lot 6 and the South 50 feet of the West 5 feet of Lot 5, Block 9, Kinney's "O" Street Addition, Lincoln, Lancaster County, Nebraska.

Parcel 3:

Lot 7 and the West 11 feet of Lot 8, Block 9, Kinney's "O" Street Addition, Lincoln, Lancaster County, Nebraska;

to be known as: Units _____, 18th and R Condominium Regime pursuant to that Declaration of Condominium dated March ____, 2013 and recorded March ____, 2013 as Inst. No. 2013-_____.

- B. Redeveloper entered into a Redevelopment Agreement (the "Redevelopment Agreement") with City for the redevelopment and renovation of the Property.
- C. Pursuant to the Redevelopment Agreement, to ameliorate the blighted and substandard conditions of the Property and to enhance the aesthetics of the Garage and Residential Housing Facility constructed on the Property (the "Private Improvements"), Redeveloper

agreed to make certain improvements to the façade of the Private Improvements (the “Façade”) for the benefit of the public. Under the Redevelopment Agreement, Redeveloper is receiving tax increment financing from City to make certain public improvements including, but not limited to the improvements to the Façade.

D. This Agreement sets forth the parties’ rights and obligations with respect to the Façade.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, Redeveloper and City do now hereby agree as follows:

1. Façade. In consideration of the benefits received by Redeveloper under the Redevelopment Agreement, Redeveloper hereby agrees to subject the façade of the Property to the restrictions described herein.

2. Façade Restrictions. Redeveloper agrees to observe and comply with the following restrictions:

a. Redeveloper shall not demolish, remove or raze the Façade during the term of this Agreement.

b. Redeveloper shall not undertake, or allow to be undertaken, any material changes to the Façade without the express written consent of the City. Such restricted changes to the Façade include, but are not limited to:

(i) Any material change in the Façade, including the alteration, partial removal, construction, remodeling or physical or structural change or change in color or surfacing with respect to the appearance or construction of the Façade;

(ii) Any significant reconstruction, repair, repainting or refinishing of any Façade feature that alters its state from the existing condition.

c. This section shall not preclude Redeveloper from implementing any ordinary or necessary maintenance as set forth in Section 3 below.

3. Façade Maintenance. Redeveloper shall perform all ordinary and/or necessary maintenance and repairs on the Façade to maintain its appearance and structural soundness and to prevent any deterioration of the Façade.

4. Specification of Work. In the event Redeveloper desires to make any material changes to the Façade, Redeveloper shall give the City for its review and approval copies of the plans, designs, elevations, specifications and documents relating to the change or work, including specification of all materials, colors and construction techniques to be used in any such work and photographs of the subject area as it appears at the time of the request.

5. Casualty Damage. In the event that the Private Improvements or any part thereof shall be damaged by fire or other casualty, then Redeveloper shall use reasonable effort to

reconstruct the Façade to the condition required under this Agreement. If the Private Improvements are damaged to such an extent that Redeveloper determines that reconstruction of said Improvements is not feasible and provides City with a statement from an independent engineer to the same effect, then this Agreement shall be void and of no further force or effect with respect to said Private Improvements.

6. Inspection. The City shall be permitted to have reasonable access to the Property to inspect the Façade for the purpose of determining conformance with this Agreement.

7. Term. The term of this Agreement shall be permanent and shall run from and after the date of substantial completion of the improvements to the Façade. Provided, however, this Agreement shall terminate upon expiration of the useful life of the Façade as determined by the City or at any earlier date that the Redevelopment Agreement is terminated and is no longer in effect.

8. Public Access. Redeveloper acknowledges and agrees that the general public shall have the regular and substantial opportunity to view the Façade from the streets, sidewalks and other property near the Private Improvements. Redeveloper shall have no obligation under this Agreement to allow the general public to view the interior of the Private Improvements.

9. Indemnification. Redeveloper shall defend, indemnify and hold the City harmless from and against any liability, claims, suits, demands, judgments (including costs, expenses and attorneys fees), resulting from actions or claims by third parties or defaults under this Agreement by Redeveloper arising out of the conveyance of or possession of the Façade Agreement.

10. Binding Effect. This Agreement shall be appurtenant to and run with the Project Site while under the control or ownership of the Redeveloper its successor and permitted assigns (excluding the University). The Redeveloper Agreement shall bind every person having any fee or other interest in the Redeveloper Property and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

[SIGNATURE PAGE FOLLOWS]

“CITY”

THE CITY OF LINCOLN, Nebraska, a municipal corporation

Attest: _____
City Clerk

By: _____
Chris Beutler, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public

Exhibit "G-2"
Streetscape Maintenance Agreement

STREETSCAPE MAINTENANCE AGREEMENT

This STREETSCAPE MAINTENANCE AGREEMENT is made and entered into as of this ____ day of _____ 2013, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation (hereinafter referred to as the "City"), and **AF-18R-LINCOLN, LLC**, a Nebraska limited liability company, and its successors and assigns (hereinafter referred to as "**Redeveloper**").

RECITALS

I.

WHEREAS, the City and Redeveloper on _____, 2013, entered into a City of Lincoln Redevelopment Agreement (18th & Q Streets) ("Redevelopment Agreement") with respect to the redevelopment of the real property ("Property") bounded by Q Street on the south, R Street on the north, the west line of vacated 18th Street on the west, and Antelope Valley Parkway on the east and legally described on Exhibit A attached hereto and by this reference incorporated herein. In particular the Redevelopment Agreement defines the Redeveloper's responsibilities regarding the construction and maintenance of the sidewalks, landscaping, pedestrian decorative lighting, bike plaza, and other streetscape amenities in the public right-of-way abutting the Property (collectively "Streetscape Improvements").

II.

WHEREAS, as an inducement for the City to enter into the Redevelopment Agreement and reimburse Redeveloper for its cost to construct the Streetscape Improvements the City requested that Redeveloper assume, and Redeveloper agreed to assume, responsibility for the maintenance and repair of the Streetscape Improvements. The Streetscape Improvements are depicted on Exhibit "B" attached hereto and by this reference incorporated herein.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. Construction of the Streetscape Improvements. Redeveloper shall construct the Streetscape Improvements pursuant to the City's executive order construction process in accordance with the terms of the Redevelopment Agreement. Redeveloper shall be responsible for all cost associated with the construction of the Streetscape Improvements subject to reimbursement as provided in the Redevelopment Agreement.

Redeveloper shall further keep the Streetscape Improvements free from litter, debris and unsafe conditions and cleared of snow and ice, except to the extent such maintenance work is included and performed under a Maintenance Improvement District.

2. Maintenance of the Streetscape Improvements. The Redeveloper, at its sole cost and expense, shall maintain the Streetscape Improvements in good order and state of repair (including removal and replacement thereof as reasonably necessary) so as to prevent deterioration thereof.

3. License to Perform Maintenance. The City shall and does hereby grant Redeveloper permission and license to enter upon the public right-of-way to maintain the Streetscape Improvements in good order and state of repair, provided that Redeveloper shall notify the City if any maintenance work requires closure of any sidewalk or lane of traffic and/or which involves partial removal and reconstruction of any portion of the Streetscape Improvements. In such event the closure of any sidewalk or lane of traffic may be limited by the City to non-peak hours of traffic. The City may reasonably require Redeveloper to install a construction fence and/or provide traffic control devices or use flagman operations for public safety and to keep traffic flowing. The permission and license to maintain the Streetscape Improvements in good order and state of repair does not authorize Redeveloper to make any material change in the Streetscape Improvements including, but not limited to, a change in color, materials or other alteration with respect to the appearance of the Streetscape Improvements. This permission and license to maintain the Streetscape Improvements is not a substitute for and does not eliminate the requirement that Redeveloper apply for and receive necessary excavation, building or other permits needed for such work.

4. Notice of Lack of Repair. The City shall give Redeveloper thirty (30) days written notice regarding any lack of repair of the Streetscape Improvements.

5. Failure to Maintain. In the event Redeveloper fails to timely repair the Streetscape Improvements after receiving thirty (30) days written notice from the City to perform needed repairs, the City may perform said work or remove in whole or part the Streetscape Improvements at its option and Redeveloper will bear and pay the entire cost of repairing or removing the Streetscape Improvements. Redeveloper will reimburse the City for the actual costs incurred by the City in connection with such repairs within thirty (30) days of receipt of a detailed statement reflecting such costs. Redeveloper shall and does hereby grant the City permission and license to enter upon the Property to perform such repair and/or removal of the Streetscape Improvements. Said permission and license to enter upon the Property shall also apply to Emergency Repair and Removal of the Streetscape Improvements pursuant to Section 6 and Section 13 below, respectively.

6. Emergency Repairs. In the event that any emergency repairs must be made to the Streetscape Improvements, the City may perform said work and Redeveloper will reimburse the City for the actual costs incurred by the City in connection with such repairs within thirty (30) days of receipt of a detailed statement reflecting such costs.

7. Indemnification by Redeveloper. Redeveloper shall, to the maximum extent allowed by law, fully release, indemnify, defend, save and keep harmless the City from and against all claims, losses, damages, or expenses, including but not limited to attorney fees, for any injury, sickness, disease, or death of persons or damage to, destruction of a loss of use of tangible or intangible property on account of, arising out of or resulting from Redeveloper's construction, maintenance, repair and/or removal of the Streetscape Improvements performed by Redeveloper, its contractors, employees, agents or others acting on behalf of Redeveloper. Provided, Redeveloper's indemnification obligations set forth in this paragraph shall not apply to any work performed by the City as described in paragraphs 5 and 6 of this Agreement.

8. Commercial General Liability Insurance. During the term of this Agreement, Redeveloper shall maintain commercial general liability insurance naming and protecting it and the City against claims for damages resulting from (i) bodily injury, including wrongful death, (ii) personal injury liability, and (iii) property damages occurring on the Streetscape Improvements. The minimum acceptable limits of coverage to be provided by such insurance shall be as follows:

- | | | |
|----|---|---|
| A. | Bodily Injury and Property Damage | \$1,000,000 Each Occurrence/\$2,000,000 Aggregate |
| B. | Personal Injury Damage | \$1,000,000 Each Occurrence/\$2,000,000 Aggregate |
| C. | Contractual Liability | \$1,000,000 Each Occurrence/\$2,000,000 Aggregate |
| D. | Products Liability and Completed Operations | \$1,000,000 Each Occurrence/\$2,000,000 Aggregate |

The liability insurance required by this section shall include the following extensions of coverage:

- A. The coverage shall be provided under a Commercial General Liability form or similar thereto.
- B. X.C.U. Coverage - If the contract requires any work procedures involving blasting, excavating, tunneling, or other underground work, the liability coverage shall include Standard Blastings or Explosion Coverage, Standard Collapse Coverage, and Standard Underground Coverage commonly referred to as XCU Property Damage Liability.
- C. The property damage coverage shall include a Broad Form Property Damage Endorsement or similar thereto.
- D. Contractual Liability coverage shall be included.
- E. Products Liability and/or Completed Operations coverage shall be included.

F. Personal Injury Liability coverage shall be included.

9. Automobile Liability Insurance. Redeveloper shall take out and maintain during the term of this Agreement such automobile liability insurance as shall protect it against claims for damages resulting from bodily injury, including wrongful death, and property damage which may arise from the operations of any owned, hired, or non-owned automobiles used by or for it in any capacity in connection with the carrying out of this Agreement. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
--------------------------------------	-----------------------------------

10. Minimum Scope of Insurance. All liability insurance policies shall be written on an "occurrence" basis only. All insurance coverage required hereunder shall be placed with insurers authorized to do business in the State of Nebraska.

11. Certificate of Insurance. All Certificates of Insurance shall be filed with the City Clerk on the standard ACORD CERTIFICATE OF INSURANCE form showing the specific limits of insurance coverage required by Sections 8 and 9 above and naming the City as an additional insured. Such certificate shall specifically state that insurance policies are to be endorsed to require the insurer to provide the City thirty (30) days' notice of cancellation, non-renewal, or any material reduction of insurance coverage.

12. Replacement of Streetscape Improvements. Upon expiration of the useful life of the Streetscape Improvements (assuming the Streetscape Improvements have been kept in good order and state of repair) the City shall be responsible for all costs associated with any replacement of the Streetscape Improvements, in accordance with standard design requirements of the City and without the enhancements made thereto pursuant to the Redevelopment Agreement. Redeveloper, at its own cost and expense, may enhance the replacement improvements subject to the same conditions provided for in the Redevelopment Agreement and this Streetscape Maintenance Agreement, except that the required amounts of insurance shall be adjusted to conform to the City's requirements then in effect.

13. Removal of Streetscape Improvements. Redeveloper agrees that the construction and maintenance of the Streetscape Improvements and any use thereof by Redeveloper does not grant or convey to Redeveloper any right, title or interest in such Streetscape Improvements. Redeveloper acknowledges and understands that the City is hereby reserving the right at any time to remove any or all of the Streetscape Improvements at its sole discretion. Redeveloper agrees that in such event that the removal of any of such Streetscape Improvements shall not be deemed to be a taking of or damage to the Property for public use by the City without paying just compensation therefor.

14. Notices and Demands. A notice by a party to the other party shall be deemed delivered on the date it is postmarked, sent postage prepaid, certified or registered mail, or delivered personally to the address set forth in the Redevelopment Agreement, or at such other address that Redeveloper may from time to time designate in writing.

15. Binding Effect. This Maintenance Agreement shall run with Redeveloper's interest in the Property and shall be binding upon Redeveloper and Redeveloper's successors or assigns in interest.

16. Agreement Runs with the Redeveloper Property. Redeveloper shall in any reconveyance of the Redeveloper Property cause the Redeveloper Property to be subject to this Maintenance Agreement.

17. Business Improvement District. In the event the City creates a business improvement district that includes the maintenance of the Streetscape Improvements, then the Redeveloper's obligations and duties hereunder shall be eliminated to the extent such obligations and duties become part of the created business improvement district.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

Executed by City this ____ day of _____, 2013.

ATTEST:

CITY OF LINCOLN, NEBRASKA
a municipal corporation

City Clerk

Chris Beutler, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Chris Beutler, Mayor of the City of Lincoln.

Notary Public

EXHIBIT A
(to Streetscape Maintenance Agreement)

Parcel 1:

Lot 1, Block 1, Antelope Valley 2nd Addition, Lincoln, Lancaster County, Nebraska.

Parcel 2:

The South 50 feet of Lot 6 and the South 50 feet of the West 5 feet of Lot 5, Block 9, Kinney's "O" Street Addition, Lincoln, Lancaster County, Nebraska.

Parcel 3:

Lot 7 and the West 11 feet of Lot 8, Block 9, Kinney's "O" Street Addition, Lincoln, Lancaster County, Nebraska;

to be known as: Units 2-4, 18th and R Condominium Regime pursuant to that Declaration of Condominium dated March ____, 2013 and recorded March ____, 2013 as Inst. No. 2013-_____ with the Register of Deeds of Lancaster County, Nebraska.

Exhibit "H"
Easement and Hold Harmless Agreement

EASEMENT AND HOLD HARMLESS AGREEMENT

THIS EASEMENT AND HOLD HARMLESS AGREEMENT ("Agreement") is entered into by and between the **City of Lincoln, Nebraska**, a municipal corporation ("City"), the **Board of Regents of the University of Nebraska**, a public body corporate and governing body of the University of Nebraska, Lincoln ("UNL"), and **AF-18R-Lincoln LLC**, a Nebraska limited liability company ("Redeveloper"). (UNL and Redeveloper are collectively referred to herein as "Owner")

RECITALS

A.

In response to UNL's Request for Proposal No. 918397-12, dated June 22, 2012, (the "RFP"), **America First Real Estate Group, LLC**, a Nebraska limited liability company (the "Proposer"), was selected by UNL to develop, construct, manage and lease a mixed-use development consisting of a multi-level parking facility ("Garage") containing approximately 1,600 parking stalls along with a 124-dwelling-unit residential housing facility contained in three stories of residential suites on top of the Garage and the first four stories wrapping around the Garage along R Street and Antelope Valley Parkway (collectively, the "Building") to be located on the property on the block bounded by 18th Street on the west, R Street on the north, N. Antelope Valley Parkway on the east, and Q Street on the south, and legally described as:

Parcel 1: Lot 1, Block 1, Antelope Valley 2nd Addition, Lincoln, Lancaster County, Nebraska;

Parcel 2: The South 50 feet of Lot 6 and the South 50 feet of the West 5 feet of Lot 5, Block 9, Kinney’s “O” Street Addition, Lincoln, Lancaster County, Nebraska;

Parcel 3: Lot 7 and the West 11 feet of Lot 8, Block 9, Kinney’s “O” Street Addition, Lincoln, Lancaster County, Nebraska;

collectively “UNL Property.”

B.

In connection with the Building, the Proposer and UNL entered that certain Ground Lease Agreement dated as of _____, 2012 (the “Lease”) pursuant to which UNL agreed to lease the UNL Property for the Building to the Proposer or its permitted assign and the Proposer became obligated for the development, construction, management and leasing of the Building.

C.

Redeveloper, pursuant to that certain Assignment and Assumption Agreement dated as of _____, 2013, has assumed the obligations of Proposer to lease the UNL Property and for the development, construction, management and leasing of the Building which Assignment and Assumption has been consented to by UNL.

D.

In order to construct the Building with zero setbacks from the property lines abutting Q Street and R Street, Redeveloper has requested the City to grant UNL a permanent easement in, on, and under the south four (4) feet of R Street and the north four (4) feet of Q Street from the east line of 18th Street to the west line of N. Antelope Valley Parkway for the construction of an underground foundation system consisting of piles, pile caps and grade beams (“Foundation”) for the purpose of supporting the Building. The piles are constructed of concrete with steel reinforcement, and are 18” in diameter, and vary in depth from 60' to 80'. A few of these will be

located in the Easement Area, roughly 3' from the property line. The pile caps are a slab of concrete that capture the piles and transfer the load resistance up to the Building. These vary in size from 4'6" x 4'6" to 20'6" x 13'6" and thickness from 3'6" to 6'0". The pile caps that capture the piles in the Easement Area will encroach roughly 3'3" beyond the Building. The tops of these caps will be minimum 1'6" below grade. The grade beams are concrete foundations that span the pile caps and spread the load of the Building out to them. These vary in size from 16" wide x 36" deep to 36" wide x 36" deep. These protrude from the Building no more than 3" - 4" and are down at the same level as the pile caps, 1'6" below grade. The Foundation is depicted in the Walker Parking Consultant; Foundation Plan, the Section 1, Through Piles and Pile Cap Drawing, and the Section 2, Grande Berm that Spans Between Pile Cap Drawings, and attached hereto as Exhibit A and incorporated herein by this reference.

E.

The City presently operates and maintains a 16-inch wastewater main located within the south half of R Street from the east line of 18th Street to the west line of N. Antelope Valley Parkway, Lincoln, Lancaster County, Nebraska.

F.

The separation between the City's waste water main and the Foundation will be in the range of 13'6" and 9'3" at its most narrow point which range of separation would be less than the minimum 15' separation desired by the City in order to have adequate space to perform repairs, maintenance, replacement or reconstruction of the wastewater main.

G.

The City is agreeable to granting UNL the above described permanent easement over the north four (4) feet of Q Street and the south four (4) feet of said R Street upon the terms and conditions below.

NOW, THEREFORE, in consideration of the above recitals and the covenants contained herein, the parties agree as follows:

1. Grant of Easement. The City agrees to and does hereby grant UNL a permanent easement over the north four (4) feet of Q Street and the south four (4) feet of said R Street, from the east line of 18th Street to the west line of Antelope Valley Parkway, Lincoln, Lancaster County, Nebraska (“Easement Area”) to construct, maintain and repair the Foundation below the ground surface. The Permanent Easement is granted in connection with and for the benefit of Redeveloper’s construction and use of the Building on the UNL Property. UNL has the right of ingress and egress to (enter, exit and re-enter by vehicle or otherwise) the Easement Area at all times and in such places as may be necessary or convenient to construct, maintain and repair the Foundation as permitted in this Agreement. UNL may temporarily use such additional portions of Q Street and R Street as may be reasonably required to access the Easement Area and to construct, maintain or repair the Foundation as permitted in this Agreement. provided prior written notice is given to and written approval is received from the City for any such temporary use of Q Street and R Street outside the Easement Area.

2. Covenants. In consideration of the grant of this Permanent Easement to UNL, Owner covenant and agree with the City to be bound by the following terms and conditions:

(i) In the exercise of UNL’s rights under the Permanent Easement, Owner is subject to any and all design, construction, or safety permits and permit conditions required for the Foundation by the City, including but not limited to applicable permits for land use, excavation, obstructions, stormwater and building construction. Prior to the commencement of work to construct, maintain or repair the Foundation, Owner shall obtain all requisite governmental approvals and permits necessary for such work. All such work shall be completed in accordance with the governmental approvals and permits issued to Owner and shall be made

at Owner's sole cost and expense.

(ii) In the exercise of UNL's rights under the Permanent Easement, Owner will perform all Foundation work in Q and R Street in a good and workmanlike manner, in conformance to the requirements of any and all permits required for such work by the City. Owner shall perform or cause Redeveloper to perform all work so as to cause no unnecessary damage or disturbance to any existing utilities located in the Q Street and R Street right-of-way. Following completion of the Foundation, Owner shall cause all debris and materials incident to such activity to be removed; fill any excavations and to the extent reasonably possible cause any damage to Q Street and R Street right-of-way to be repaired and restored to a condition fully equal to that existing before construction operations were commenced. Such restoration work shall be performed in accordance with all governmental regulations, permits and approvals, and such restoration shall be made at Owner's sole cost and expense.

(iii) Except during construction, maintenance and repair of the Foundation, Owner shall not impair the use of the Q Street and R Street rights-of-way, nor impair the protection of pedestrians and vehicles traveling upon said rights-of-way.

(iv) To the extent allowed by law, Owner shall be responsible for any damages caused to the wastewater main located in R Street by the construction, maintenance, or repair activities of Owner within R Street. Owner further agrees that if the wastewater main is damaged or destroyed by construction, maintenance or repair of the Foundation, the City shall have the right to restore or replace the wastewater main to a condition reasonably satisfactory to the City and bill Owner for the cost thereof. Owner shall pay said cost to the City within thirty (30) days from the date Owner receives a request from the City for payment of said cost. Owner further agrees that if the City's cost to maintain, repair or replace the wastewater main are increased due to the close proximity of the Foundation to the wastewater main, Owner shall be responsible for

such reasonable increased costs. Owner shall pay said increased cost to the City within thirty (30) days from the date Owner receives a request from the City for payment of said costs.

(v) The City shall not be responsible for any damages to the UNL Property or the Building, or injuries to persons resulting from a broken wastewater main in R Street or any subsequent repair or maintenance thereof. Owner agrees to make no claim against the City for and expressly waives all rights and claims Owner may have against the City for loss or damage to the UNL Property or the Building or the Owner's business operations due to the loss of use thereof arising or resulting from a wastewater main break in R Street or any other failure of the wastewater main.

(vi) Owner agrees to indemnify, defend and hold the City harmless and free from any and all liability and expense, including reasonable attorney fees incurred by City arising out of Owner's use of the Easement Area or other parts of Q Street and R Street pursuant to this Easement and Agreement.

(vii) Owner agrees to make no claim against the City or any of its officers, employees, agents or representatives and expressly waives all rights and claims of Owner for any loss or damage caused by the City's use or maintenance of Q Street and R Street including, but not limited to, any loss or damage arising out of or resulting from any resurfacing thereof.

The City is not divesting itself of title and ownership of the rights to use and enjoy the Easement Area for any purpose except the construction thereon of permanent buildings. The City specifically retains the right to use the surface of the Easement Area for right-of-way purposes. Said Permanent Easement is conveyed by City to UNL "AS IS, WHERE AS" and "WITH ALL FAULTS;" and neither City nor its agents, employees or other representatives make any guarantee, representation or warranty, express or implied (and City shall not have any liability to Owner whatsoever) as to the condition or fitness of the Easement

Area for the Foundation to support the Building. Further, City shall have no liability for any latent, hidden, or patent defect as to the Easement Area or the City's Q and R Streets rights-of-way adjacent thereto.

(viii) Owner shall maintain in effect throughout the term of this Easement and Agreement comprehensive general liability insurance with an A rated insurance carrier, or better, qualified to transact business in the State of Nebraska, insuring against all legal liability for injuries or damages suffered as a result of the exercise of rights granted pursuant to this Easement and Agreement in an amount not less than \$2,000,000 each occurrence and \$5,000,000 aggregate. The City shall be named as an additional insured on such insurance policy.

Prior to commencement of construction of the Foundation, Owner shall furnish the City with a certificate of insurance which shall include the provision that the City is named as an additional insured and shall be given 30 days written notification prior to cancellation of such insurance. It is the responsibility of Owner to ensure that a current certificate of insurance is on file with the City at all times.

3. Covenant Running with the Land. This Easement and Agreement and the duties imposed hereunder shall run with the UNL Property including the Building and the Easement Area and shall be binding and obligatory upon the parties, and their successors and assigns, and shall terminate only at such time as the Building is demolished.

4. Execution of Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute the same instrument, and any of the undersigned may execute this Agreement by signing any counterpart.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated below.

CITY OF LINCOLN, NEBRASKA

By: _____
Chris Beutler, Mayor of Lincoln

Date of Execution: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013 by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public

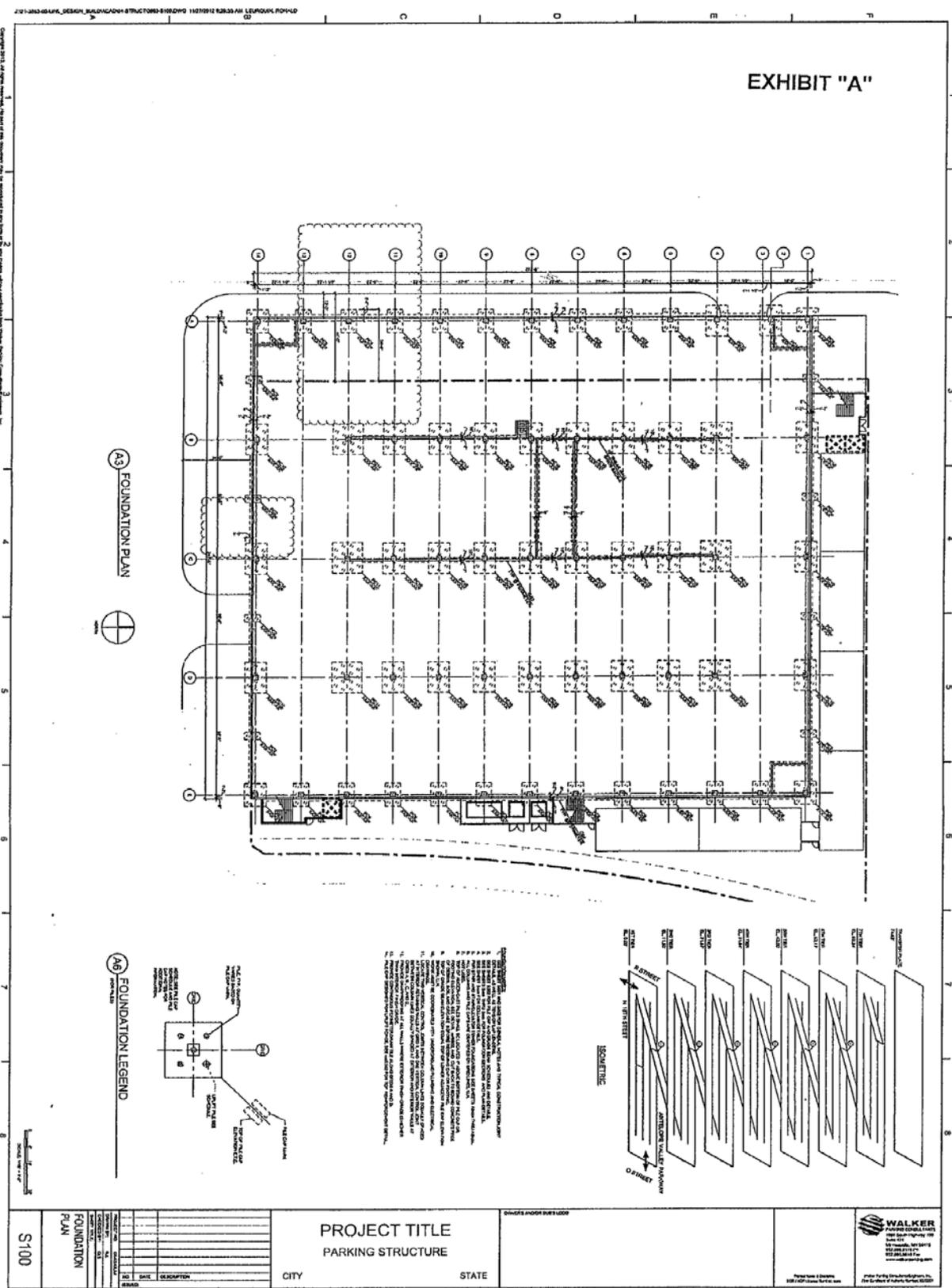
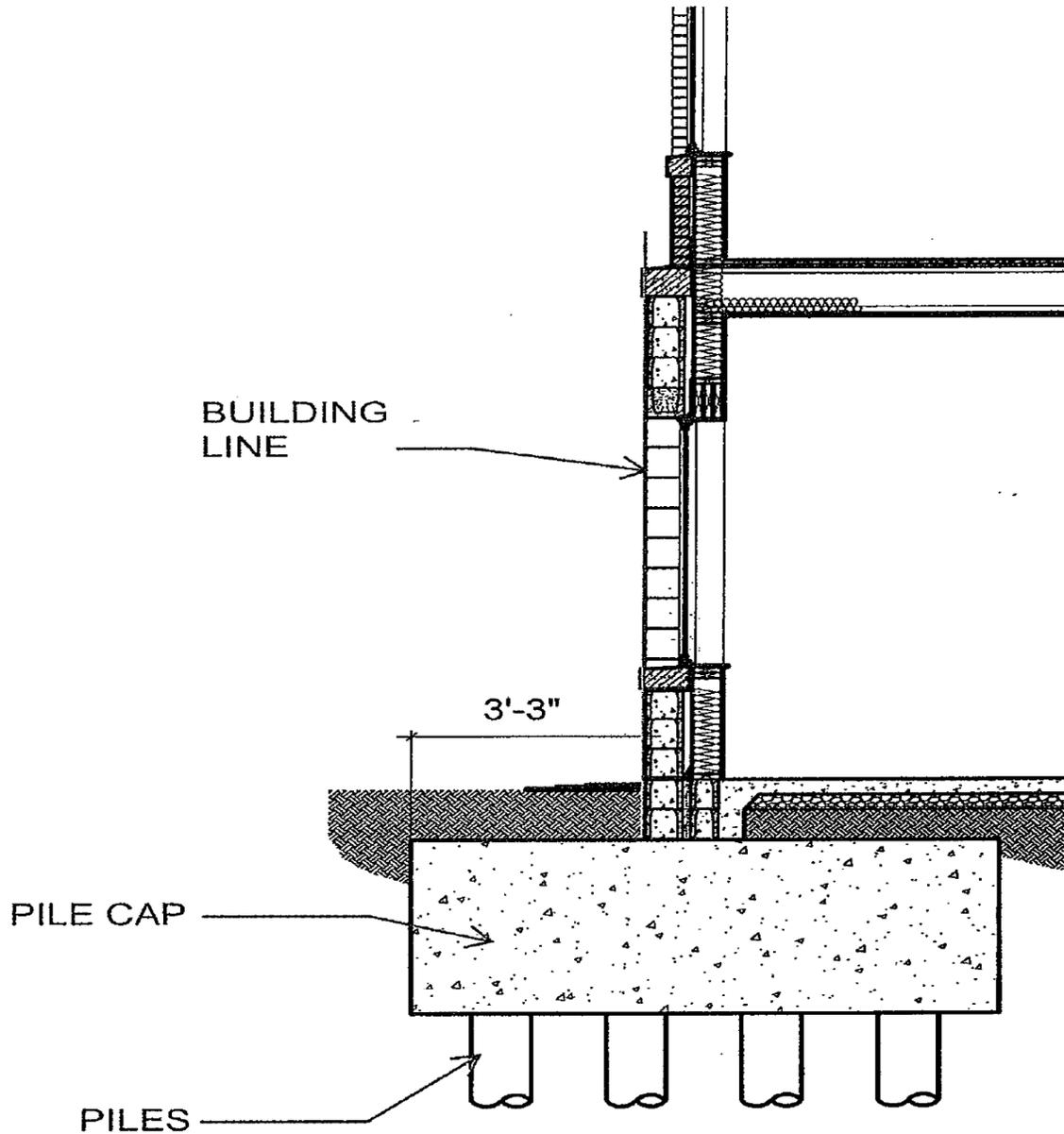
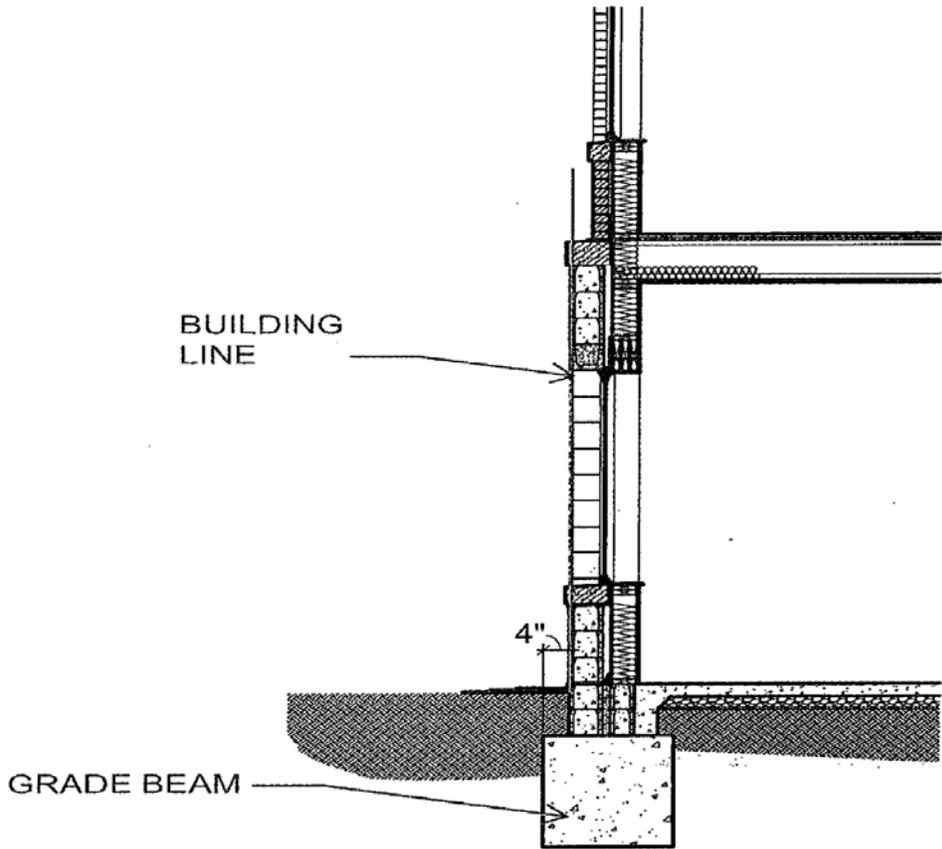


Exhibit "A"
of the Easement and Hold Harmless Agreement



**SECTION 1 - THROUGH PILES
AND PILE CAP**

Exhibit "A"
of the Easement and Hold Harmless Agreement



SECTION 2 - GRADE BEAM THAT SPANS BETWEEN PILE CAPS

EASEMENT AND HOLD HARMLESS AGREEMENT

THIS EASEMENT AND HOLD HARMLESS AGREEMENT ("Agreement") is entered into by and between the **City of Lincoln, Nebraska**, a municipal corporation ("City"), the **Board of Regents of the University of Nebraska**, a public body corporate and governing body of the University of Nebraska-Lincoln ("UNL"), and **AF-18R-Lincoln LLC**, a Nebraska limited liability company ("Redeveloper"). (UNL and Redeveloper are collectively referred to herein as "Owner")

RECITALS

A.

In response to UNL's Request for Proposal No. 918397-12, dated June 22, 2012, (the "RFP"), **America First Real Estate Group, LLC**, a Nebraska limited liability company (the "Proposer"), was selected by UNL to develop, construct, manage and lease a mixed-use development consisting of a multi-level parking facility ("Garage") containing approximately 1,600 parking stalls along with a 124-dwelling-unit residential housing facility contained in three stories of residential suites on top of the Garage and the first four stories wrapping around the Garage along R Street and Antelope Valley Parkway (collectively, the "Building") to be located on the property on the block bounded by 18th Street on the west, R Street on the north, N. Antelope Valley Parkway on the east, and Q Street on the south, and legally described as:

Parcel 1: Lot 1, Block 1, Antelope Valley 2nd Addition, Lincoln, Lancaster County, Nebraska;

Parcel 2: The South 50 feet of Lot 6 and the South 50 feet of the West 5 feet of Lot 5, Block 9, Kinney's "O" Street Addition, Lincoln, Lancaster County, Nebraska;

Parcel 3: Lot 7 and the West 11 feet of Lot 8, Block 9, Kinney's "O" Street Addition, Lincoln, Lancaster County, Nebraska;

collectively "UNL Property."

B.

In connection with the Building, the Proposer and UNL entered that certain Ground Lease Agreement dated as of _____, 2013 (the "Lease") pursuant to which UNL agreed to lease the UNL Property for the Building to the Proposer or its permitted assign and the Proposer became obligated for the development, construction, management and leasing of the Building.

C.

Redeveloper, pursuant to that certain Assignment and Assumption Agreement dated as of _____, 2013, has assumed the obligations of Proposer to lease the UNL Property and for the development, construction, management and leasing of the Building which Assignment and Assumption has been consented to by UNL.

D.

In order to construct the Building with zero setbacks from the property lines abutting Q Street and R Street, Redeveloper has requested the City to grant UNL a permanent easement in, on, and under the south four (4) feet of R Street and the north four (4) feet of Q Street from the west line of 18th Street to the west line of N. Antelope Valley Parkway for the construction of an underground foundation system consisting of piles, pile caps and grade beams ("Foundation") for the purpose of supporting the Building. The piles are constructed of concrete with steel reinforcement, and are 18" in diameter, and vary in depth from 60' to 80'. A few of these will be located in the Easement Area, roughly 3' from the property line. The pile caps are a slab of concrete that capture the piles and transfer the load resistance up to the Building. These vary in

size from 4'6" x 4'6" to 20'6" x 13'6" and thickness from 3'6" to 6'0". The pile caps that capture the piles in the Easement Area will encroach roughly 3'3" beyond the Building. The tops of these caps will be minimum 1'6" below grade. The grade beams are concrete foundations that span the pile caps and spread the load of the Building out to them. These vary in size from 16" wide x 36" deep to 36" wide x 36" deep. These protrude from the Building no more than 3" - 4" and are down at the same level as the pile caps, 1'6" below grade. The Foundation is depicted in the Walker Parking Consultant; Foundation Plan, the Section 1, Through Piles and Pile Cap Drawing, and the Section 2, Grande Berm that Spans Between Pile Cap Drawings, and attached hereto as Exhibit A and incorporated herein by this reference.

E.

The City presently operates and maintains an 8-inch wastewater main located within the south half of R Street from the west line of 18th Street to the west line of N. Antelope Valley Parkway, Lincoln, Lancaster County, Nebraska. In order to allow the Building to be constructed on the UNL Property, the Redeveloper will be constructing through the City's Executive Order construction process an 8-inch wastewater main in 18th Street extending north up 18th Street and then turning east into to R Street as shown on the attached drawing attached hereto as Exhibit B.

F.

The separation between the City's existing wastewater main in R Street and that portion of the future wastewater main extending north in 18th Street and then turning east into R Street and the Foundation will be in the range of 13'6" and 9'3" at its most narrow point which range of separation would be less than the minimum 15' separation desired by the City in order to have adequate space to perform repairs, maintenance, replacement or reconstruction of the wastewater main.

G.

The City is agreeable to granting UNL the above described permanent easement over the north four (4) feet of Q Street and the south four (4) feet of said R Street upon the terms and conditions below.

NOW, THEREFORE, in consideration of the above recitals and the covenants contained herein, the parties agree as follows:

1. Grant of Easement. The City agrees to and does hereby grant UNL a permanent easement over the north four (4) feet of Q Street and the south four (4) feet of said R Street, from the west line of 18th Street to the west line of Antelope Valley Parkway, Lincoln, Lancaster County, Nebraska (“Easement Area”) to construct, maintain and repair the Foundation below the ground surface. The Permanent Easement is granted in connection with and for the benefit of Redeveloper’s construction and use of the Building on the UNL Property. UNL has the right of ingress and egress to (enter, exit and re-enter by vehicle or otherwise) the Easement Area at all times and in such places as may be necessary or convenient to construct, maintain and repair the Foundation as permitted in this Agreement. UNL may temporarily use such additional portions of Q Street and R Street as may be reasonably required to access the Easement Area and to construct, maintain or repair the Foundation as permitted in this Agreement, provided prior written notice is given to and written approval is received from the City for any such temporary use of Q Street and R Street outside the Easement Area, which approval will not be unreasonably withheld.

2. Covenants. In consideration of the grant of this Permanent Easement to UNL, Owner covenants and agrees with the City to be bound by the following terms and conditions:

(i) In the exercise of UNL’s rights under the Permanent Easement, Owner is subject to any and all design, construction, or safety permits and the conditions of such permits

required for the Foundation by the City, including but not limited to applicable permits for land use, excavation, obstructions, stormwater and building construction. Prior to the commencement of work to construct, maintain or repair the Foundation, Owner shall obtain all requisite governmental approvals and permits necessary for such work. All such work shall be completed in accordance with the governmental approvals and permits issued to Owner and shall be made at Owner's sole cost and expense.

(ii) In the exercise of UNL's rights under the Permanent Easement, Owner will perform all Foundation work in Q and R Street in a good and workmanlike manner, in conformance to the requirements of any and all permits required for such work by the City. Owner shall perform or cause Redeveloper to perform all work so as to cause no unnecessary damage or disturbance to any existing utilities located in the Q Street and R Street right-of-way. Following completion of the Foundation, Owner shall cause all debris and materials incident to such activity to be removed; fill any excavations and to the extent reasonably possible cause any damage to Q Street and R Street right-of-way to be repaired and restored to a condition fully equal to that existing before construction operations were commenced. Such restoration work shall be performed in accordance with all governmental regulations, permits and approvals, and such restoration shall be made at Owner's sole cost and expense.

(iii) Except during construction, maintenance and repair of the Foundation, Owner shall not impair the use of the Q Street and R Street rights-of-way, nor impair the protection of pedestrians and vehicles traveling upon said rights-of-way.

(iv) To the extent allowed by law, Owner shall be responsible for any damages caused to the wastewater main located in R Street and/or the future extension of the wastewater main in 18th Street extending north up 18th Street and then east into R Street by the construction, maintenance, or repair activities of Owner within R Street. Owner further agrees that if the

wastewater mains are damaged or destroyed by construction, maintenance or repair of the Foundation, the City shall have the right to restore or replace the damaged wastewater main(s) to a condition reasonably satisfactory to the City and consistent with the condition existing prior to such damage and bill Owner for the cost thereof. Owner shall pay said cost to the City within thirty (30) days from the date Owner receives a request from the City for payment of said cost. Owner further agrees that if the City's cost to maintain, repair or replace the wastewater mains are increased due to the close proximity of the Foundation to the wastewater mains, Owner shall be responsible for such reasonable increased costs. Owner shall pay said increased cost to the City within thirty (30) days from the date Owner receives a request from the City for payment of said costs.

(v) The City shall not be responsible for any damages to the UNL Property or the Building, or injuries to persons resulting from a broken wastewater main in 18th Street or R Street or any subsequent repair or maintenance thereof, except for damages or injuries covered by the negligent acts or omissions of the City due to causes unrelated to the Foundation. Owner agrees to make no claim against the City for and expressly waives all rights and claims Owner may have against the City for loss or damage to the UNL Property or the Building or the Owner's business operations due to the loss of use thereof arising or resulting from a wastewater main break in 18th Street or R Street or any other failure of the wastewater main, except for damages or injuries covered by the negligent acts or omissions of the City due to causes unrelated to the Foundation.

(vi) Owner agrees to indemnify, defend and hold the City harmless and free from any and all liability and expense, including reasonable attorney fees incurred by City arising out of Owner's use of the Easement Area or other parts of Q Street and R Street pursuant to this Easement and Agreement.

(vii) Owner agrees to make no claim against the City or any of its officers, employees, agents or representatives and expressly waives all rights and claims of Owner for any loss or damage caused by the City's use or maintenance of Q Street and R Street including, but not limited to, any loss or damage arising out of or resulting from any resurfacing thereof, to the extent such loss or damage is caused by the presence of the Foundation in the Easement Area.

The City is not divesting itself of title and ownership of the rights to use and enjoy the Easement Area for any purpose except the construction thereon of permanent buildings. The City specifically retains the right to use the surface of the Easement Area for right-of-way purposes. Said Permanent Easement is conveyed by City to UNL "AS IS, WHERE AS" and "WITH ALL FAULTS;" and neither City nor its agents, employees or other representatives make any guarantee, representation or warranty, express or implied (and City shall not have any liability to Owner whatsoever) as to the condition or fitness of the Easement Area for the Foundation to support the Building. Further, City shall have no liability for any latent, hidden, or patent defect as to the Easement Area or the City's Q and R Streets rights-of-way adjacent thereto.

(viii) Owner shall maintain in effect throughout the term of this Easement and Agreement comprehensive general liability insurance with an A rated insurance carrier, or better, qualified to transact business in the State of Nebraska, insuring against all legal liability for injuries or damages suffered as a result of the exercise of rights granted pursuant to this Easement and Agreement in an amount not less than \$2,000,000 each occurrence and \$5,000,000 aggregate. The City shall be named as an additional insured on such insurance policy.

Prior to commencement of construction of the Foundation, Owner shall furnish the City with a certificate of insurance which shall include the provision that the City is named as an additional insured and shall be given 30 days written notification prior to

cancellation of such insurance. It is the responsibility of Owner to ensure that a current certificate of insurance is on file with the City at all times.

Notwithstanding anything in this agreement to the contrary, the City acknowledges and agrees that UNL may self-insure pursuant to the University of Nebraska Self-Insurance Program (the "Program"). Subject to the terms, conditions, exclusions, and limits of the Statement of Self-Insurance Coverage contained in the Program, the Program shall pay on behalf of the University during any of its fiscal years all sums for which the University shall become legally obligated to pay as damages for liability occurrences, up to the limits of \$1,000,000 per liability occurrence and \$3,000,000 in the aggregate of liability occurrences in any fiscal year. The City shall be treated as an additional insured as if the University possessed General Liability Insurance. Upon written request of the City, the University shall provide the City with a copy of the University of Nebraska Self-Insurance Trust Fund Program Statement evidencing such coverage.

3. Covenant Running with the Land. This Easement and Agreement and the duties imposed hereunder shall run with the UNL Property including the Building and the Easement Area and shall be binding and obligatory upon the parties, and their successors and assigns, and shall terminate only at such time as the Building is demolished.

4. Execution of Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute the same instrument, and any of the undersigned may execute this Agreement by signing any counterpart.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated below.

**BOARD OF REGENTS OF THE
UNIVERSITY OF NEBRASKA**

By: _____
James B. Milliken, President

Attest:

By: _____
Carmen K. Maurer, Corporation Secretary

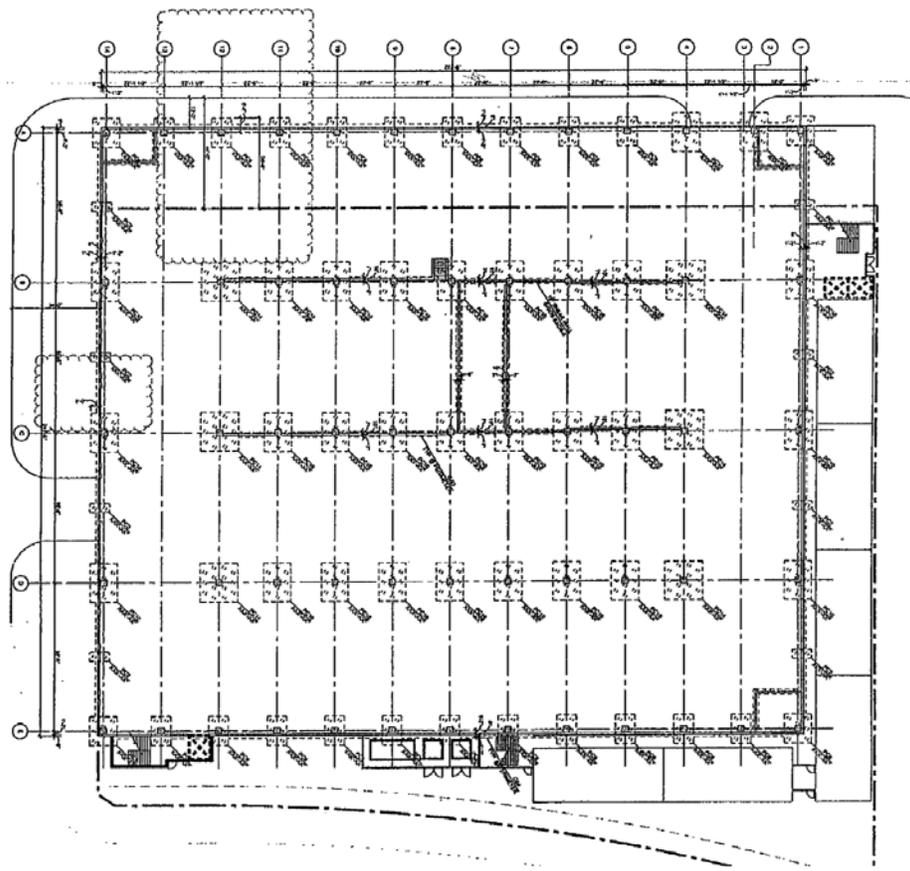
Date of Execution: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013 by James B. Milliken, President, and Carmen K. Maurer, Corporation Secretary of the Board of Regents of the University of Nebraska, a public body corporate and governing body of the University of Nebraska-Lincoln, on behalf of the University.

Notary Public

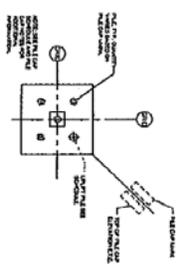
EXHIBIT "A"



A5 FOUNDATION PLAN

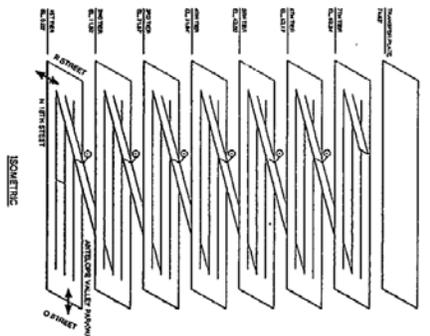


A6 FOUNDATION LEGEND



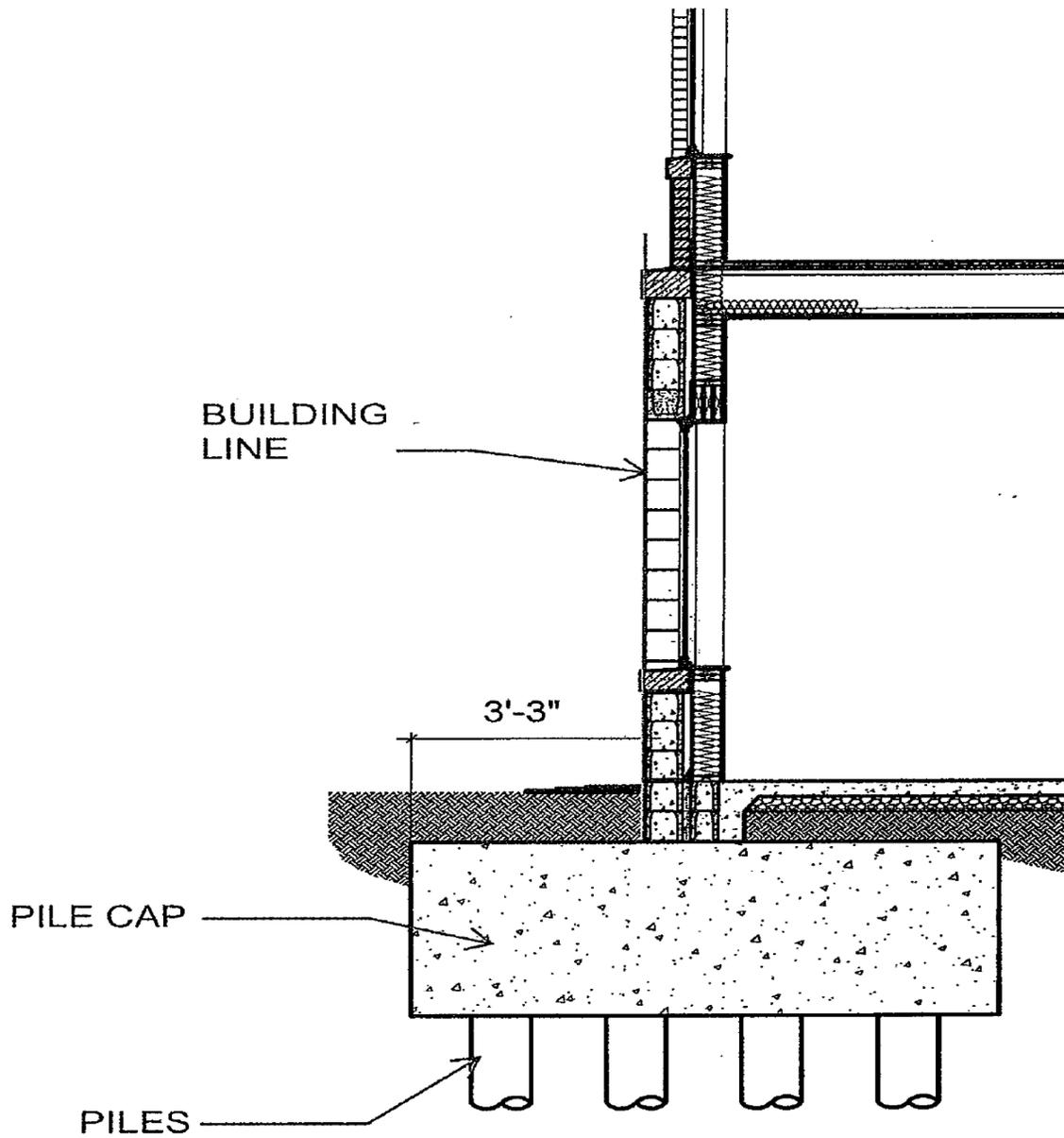
NOTES:

1. ALL FOUNDATION ELEMENTS SHALL BE CONCRETE UNLESS OTHERWISE NOTED.
2. ALL FOUNDATION ELEMENTS SHALL BE CAST IN PLACE.
3. ALL FOUNDATION ELEMENTS SHALL BE CAST ON A 4" MINIMUM THICKNESS OF COMPACTED GRANULAR FILL.
4. ALL FOUNDATION ELEMENTS SHALL BE CAST WITH A MINIMUM 3" CLEARANCE FROM ALL ADJACENT FOUNDATION ELEMENTS.
5. ALL FOUNDATION ELEMENTS SHALL BE CAST WITH A MINIMUM 3" CLEARANCE FROM ALL ADJACENT FOUNDATION ELEMENTS.
6. ALL FOUNDATION ELEMENTS SHALL BE CAST WITH A MINIMUM 3" CLEARANCE FROM ALL ADJACENT FOUNDATION ELEMENTS.
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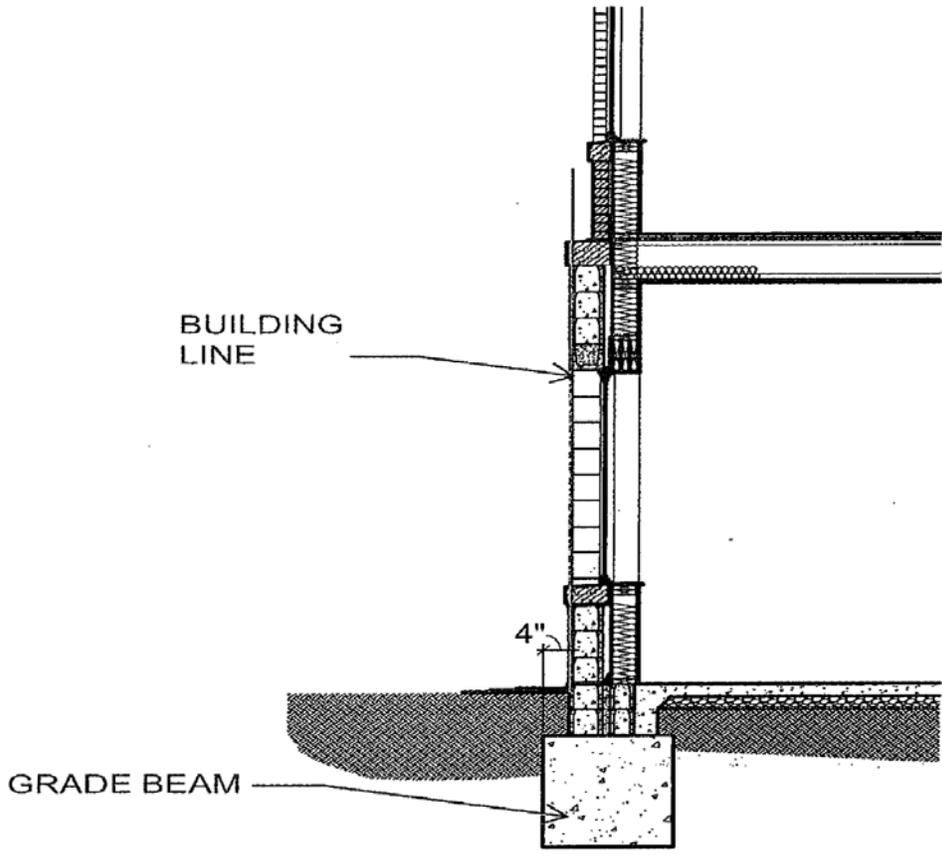


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<p>S100</p> <p>FOUNDATION PLAN</p>	<p>NO. DATE DESCRIPTION REVISION</p>	<p>PROJECT TITLE</p> <p>PARKING STRUCTURE</p>	<p>CITY STATE</p>	<p>OWNER'S FOOT PRINT</p>	<p>WALKER Structural Engineers, Inc.</p> <p>1000 North Highway 100</p> <p>San Jose, CA 95128</p> <p>408.261.1111</p> <p>www.walkereng.com</p>
	<p>DATE: 10/10/12</p> <p>DESCRIPTION: FOUNDATION PLAN</p> <p>REVISION: 1</p>	<p>CITY: SAN JOSE</p> <p>STATE: CALIFORNIA</p>	<p>OWNER'S FOOT PRINT</p>	<p>WALKER Structural Engineers, Inc.</p> <p>1000 North Highway 100</p> <p>San Jose, CA 95128</p> <p>408.261.1111</p> <p>www.walkereng.com</p>	



SECTION 1 - THROUGH PILES
AND PILE CAP



SECTION 2 - GRADE BEAM THAT SPANS BETWEEN PILE CAPS

